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Cover: Color illustration from Frank Leslie's Illustrated Newspaper, *October 18, 1862, of women and children fleeing Louisville by order of General William Nelson because of the expected bombardment. The Filson Historical Society*

Contributors

HONOR R. SACHS is a doctoral candidate in U.S. Women's History at the University of Wisconsin, Madison. She currently holds the J. Willard Hurst Fellowship in Legal History at the University of Wisconsin Law School. This article derives from a paper presented at The Filson Institute Conference, "Constructing and Reconstructing a Region: 21st-Century Approaches to the Ohio Valley's History," held at The Filson Historical Society in May 2003.

GAUTHAM RAO IS A PH.D. candidate in American History at the University of Chicago. His dissertation focuses on the legal culture and administrative capacities of the antebellum federal state. This article derives from a paper presented at The Filson Institute Conference, "Constructing and Reconstructing a Region: 21st-Century Approaches to the Ohio Valley's History," held at The Filson Historical Society in May 2003.

STEPHEN I. ROCKENBACH is a doctoral candidate in American History at the University of Cincinnati. He currently holds a Charles Phelps Taft Fund Dissertation Fellowship.

WILLIAM H. BERGMANN is a doctoral candidate in American History at the University of Cincinnati. He is the former editorial assistant of *Ohio Valley History*.

WAYNE K. DURRILL is Associate Professor of History at the University of Cincinnati.

The Myth of the Abandoned Wife:
Married Women's Agency and the Legal Narrative of Gender in Eighteenth-Century Kentucky

HONOR R. SACHS

In 1791, *The Kentucky Gazette* ran a fictional tale about a man on trial for rape. In the "Isle of Man," the story went, "a young Woman prosecuted a young man of that place for rape." Found guilty, he came before the court for sentencing. "According to the custom of the island," the judge delivered to the woman a rope, a sword, and a ring, and "by these presents the young woman had her choice, whether she would hang, behead, or marry him." The woman picked the ring, which they all agreed was "the severest punishment."[1]

While most likely intended as a joke, this tale also carries valuable commentary about the ways that gender operated in the law and in everyday life. On the one hand, this story pokes fun at the uneven relationships between husbands and wives in their everyday married lives. At the same time, it describes how the courts could use marriage as a remedy for social problems. The "punishment" of marriage would prevent the accused from further criminal activity. The punch line of this tale illuminated tensions between the legal meanings of marriage and the lived experiences of husbands and wives.

"An American Log-house," engraving from a drawing by Victor Collot, ca. 1796. Published by Collot in A Journey in North American, Paris, *1825. The Filson Historical Society*

This essay contrasts the vision of marriage structured by early Kentucky lawmakers with the more contentious lived experiences of husbands and wives on the eighteenth-century frontier. More specifically, it explores the ways that state lawmakers approached the idea of divorce within the larger context of popular marriage practices as a vehicle into broader questions about legal and cultural meanings of gender. Legislative divorces in eighteenth-century Kentucky marked out a dependent role for women in such a way as to mask the significant contentiousness of everyday marital life on the frontier, while ob-

scuring our view of gender relations in the early West.

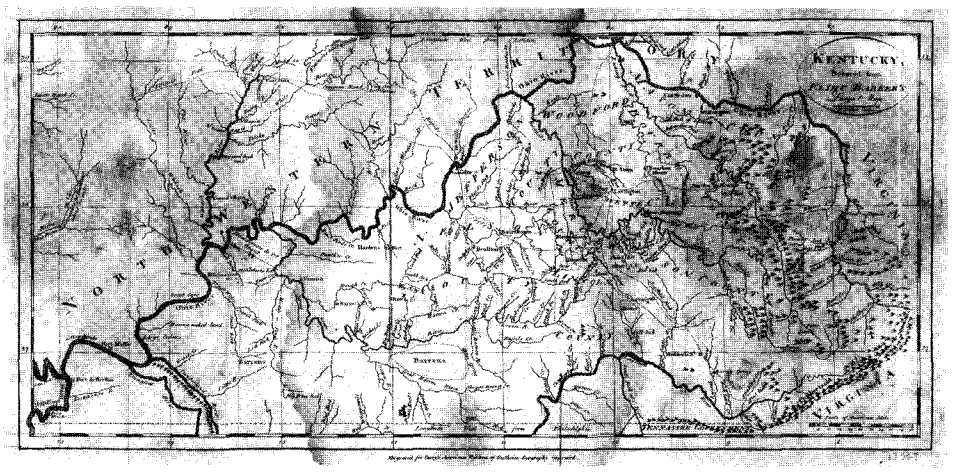
By giving closer attention to legal sources as constructed documents, persistent images of women in the eighteenth-century backcountry as lonely frontier housewives forced into lives of drudgery by land hungry husbands appear largely inaccurate. Although recent scholarship has begun to acknowledge how ideas about gender and manhood have influenced the historiography of the early national West, women's experiences remain solidly on the domestic fringes of historical events.[2] While at first glance, divorce petitions from hapless wives complaining of rogue husbands confirm ideas about women's dependence in early Kentucky, such records distilled fluid social relations into formulaic, legal language. Looking at the construction of gender in divorce records alongside the struggles between husbands and wives in daily life raises important questions about the ways that ordinary people participated in shaping the law and how they acknowledge the dynamic relationship between legal language and cultural experience.

Ultimately, studying the legal history of marriage and divorce provides new perspective on the developing relationships between settlers and lawmakers in early Kentucky. In particular, such perspective suggests that women's daily activities played a larger role within legal, economic and social changes in the eighteenth-century West than scholars have yet acknowledged. The ability of women to negotiate favorable, extra-legal divorce settlements and protect their interests in property touched a particularly sensitive nerve for men struggling in the embattled, unstable Kentucky economy. Women's challenges to their husbands' property and status as head of household threatened already tenuous access to patriarchal control. Acknowledging women's presence and impact on the emerging shape of law and society forces a rethinking of persistent historical assumptions about the role of women on the eighteenth-century frontier.

Two significant methodological problems emerge in studying marriage and divorce in eighteenth-century Kentucky. First, a paucity of extant documents precludes any sweeping survey of marriage and divorce practices. Many divorce records were either destroyed or lost, which merely confounds the larger problem that many Kentucky settlers opted to practice a form of "self-divorce" that required no contact with legal machinery and left little formal record. Kentucky remained technically part of Virginia until 1792, and adherence to Virginia law at a considerable geographic distance was logistically impractical for ordinary settlers. Virginia remained loyal to the English parliamentary model of legislative divorce and allowed only occasional, private acts of marital separation.[3] When a couple living in Kentucky wished to separate, they most often chose to remain in Kentucky and informally "divorce" each other through an extra-legal, mutually accepted agreement, rather than cross the Appalachian Mountains and present their petition of divorce

before state legislators in Williamsburg.

Even after Kentucky statehood in 1792, married couples continued to practice informal methods of self-divorce. Just because Kentucky lawmakers began exploring the legal outlines of divorce in the eighteenth century did not necessarily mean that ordinary settlers readily accepted these laws as solutions to their marital problems. Kentucky was not unique in rates of self-marriage and divorce. Throughout colonial America, and particularly in the South, informal, or "common law," marriages were readily accepted by local communities and validated by the courts. Wedding ceremonies before a secular or clerical official were not common until the middle of the eighteenth century, when lawmakers began to require such rituals. In rural areas such as Kentucky, however, common law marriage and informal divorce practices persisted well into the nineteenth century.[4]



Kentucky Reduced from Elihu Barker's Large Map, W. Baker Sculp. *(1795). Cincinnati Museum Center, Cincinnati Historical Society*

The second problem with studying divorce in Kentucky is that so many of the legislative records of divorces have not survived. Fire destroyed extensive holdings of public records at the Kentucky state capitol in 1813 and again in 1824. Journals of the House and Senate–where lawmakers recorded notes and discussions of divorce petitions – exist only in partial form for the years 1792, 1794, 1798, and 1799. Additionally (and in keeping with Kentucky's reputation for poor record keeping), lawmakers threw out the notes and records of the committees that discussed divorce cases.[5]

Despite such obstacles, disparate sources catch the otherwise elusive details of married couples' lives, affairs, conflicts, and separations and compensate for the lack of legislative records. Husbands and wives placed nearly one hundred desertion notices and advertisements in the *Kentucky Gazette* from its founding in 1787 through 1800. County court records–specifically those collected from Lincoln, Madison, Bourbon, and Fayette counties–provide evidence of marital conflicts, property disputes, or informal separations. Finally, genealogical material and marriage records document the names of litigants, petitioners, and deserters and give greater depth to individual stories. Together, these records helped fill in silences about marital conflicts that couples often hoped to keep hidden from the public records.

Formal legislative records–specifically the petitions approved by the Ken-

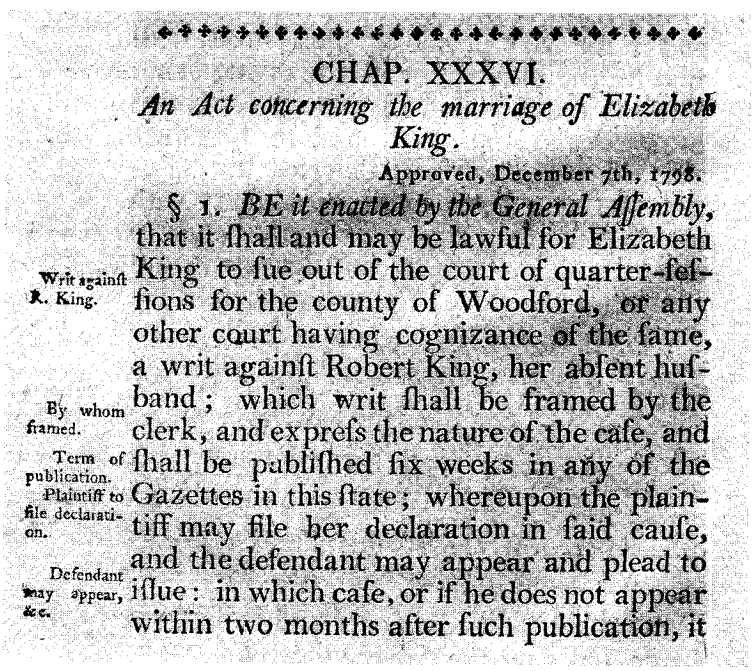
tucky General Assembly–suggest that lawmakers were concerned with the cultural parameters of divorce. The Kentucky Assembly received at least twenty-six divorce petitions between 1792 and 1800. Of these, fourteen were from women, nine were from men, and three are unclear as to whether the husband or wife initiated the petition. The journals of the House and Senate include explicit discussions of some of these petitions, while the *Kentucky Gazette* announced or described the content of others in an official act for divorce. Within the Kentucky Assembly itself, the process of defining what constituted grounds for divorce was a shared project between the legislature as a whole and the legislative Committee on Religion. When the Assembly received a petition for divorce, they first read it aloud during a session, then recommended it to the Committee on Religion for closer attention. After discussing divorce petitions, the Committee made recommendations to the House floor, the House called for a vote, and if necessary, the Committee drafted an act of divorce. If the legislature did not accept the recommendations from the Committee on Religion, they could either reject the divorce petition or they could send it back to the Committee for reconsideration and revision. In some cases, upon further review the Committee actually redrafted the language and intent of divorce and incorporated new language into their revisions that actually changed the intention behind petitioners' complaints.

The precedents that emerge from Kentucky's legal records reveal a conspicuous narrative of gender running throughout eighteenth-century acts of divorce. In other words, taken together, Kentucky's acts of divorce follow common story lines and share common themes about the ways husbands and wives participated in marital discord. The English common law doctrine of coverture, which established that a wife's legal existence, along with her wages, labor and property were "suspended during the marriage, or at least incorporated and consolidated into that of her husband,"[6] influenced these themes. Lawmakers did not pass a formal divorce law in Kentucky until 1809, and until then, the gender narrative derived from decisions on individual petitions provided an informal structure through which legislators could evaluate evidence of marital conflict in subsequent divorce petitions.[7] Kentucky lawmakers incorporated assumptions about women's financial dependence, the roles of husbands and wives in marriage, and the balance of power within the household into their decisions and codified a legal understanding of gender difference through divorce precedents.

The basic story line embedded in Kentucky's acts of divorce focused on the plight of abandoned wives. The story began when a woman agreed to marry a man she assumed would support her. At some point in the relationship–often after the couple moved to Kentucky–the husband began to fail to provide for and protect his wife. He treated his wife cruelly, failed to support his family, or took up with other women. The obedient wife waited for the hus-

band to come to his senses and return home or withstood his abuses and poor decisions. In many cases, the husband also mismanaged his estate or squandered his wife's income, leaving the family penniless. Selflessly and with great sacrifice, the wife held her family together by earning her own income and trying to feed her children without the benefit of husband or kin. When the husband finally outright abandoned his family, he either left the state or moved in with another woman and often expressed adamant refusal to live with his lawful wife again.

The legislature's formal acts of divorce revolved around this basic story line. A husband's desertion, adultery, cruelty–or some combination of the three–was the primary cause behind divorce acts in Kentucky. Although petitioners submitted requests for divorces that did not fit this story line exactly, evidence in the legislative journals suggests that lawmakers could re-craft petitions to better articulate stories of a husband's rogue behavior and a wife's self-sacrifice. Those that clearly did not fit the narrative were usually rejected. This narrative of deserting husbands and abandoned wives helped shape coherent legal decisions out of the messy, often vague, particulars of marital conflict.



CHAP. XXXVI.

An Act concerning the marriage of Elizabeth King.

Approved, December 7th, 1798.

§ 1. *BE it enacted by the General Aſſembly*, that it ſhall and may be lawful for Elizabeth King to ſue out of the court of quarter-ſeſſions for the county of Woodford, or any other court having cognizance of the ſame, a writ againſt Robert King, her abſent huſband; which writ ſhall be framed by the clerk, and expreſs the nature of the caſe, and ſhall be publiſhed ſix weeks in any of the Gazettes in this ſtate; whereupon the plaintiff may file her declaration in ſaid cauſe, and the defendant may appear and plead to iſſue: in which caſe, or if he does not appear within two months after ſuch publication, it

Writ againſt R. King.

By whom framed.

Term of publication.

Plaintiff to file declaration.

Defendant may appear, &c.

An Act concerning the marriage of Elizabeth King from the Acts of the General Assembly, Kentucky, 1798. The Filson Historical Society

In short, legislators accepted that husbands might abandon their wives far more easily than the reverse. The legislature was most sympathetic to stories like those of Elizabeth King. King petitioned for divorce in 1798 on the grounds of desertion and adultery. Elizabeth married Robert King and with him had ten children. When Robert left her, she claimed he "hath deserted her, leaving her to support four of the said children, and took with him the whole of his estate and is now living in adultery with another woman." She hoped that an act of divorce "may pass, allowing her a part of the estate of said Robert, for the support of herself and children, and that the contract of marriage be dissolved." The legislature accepted King's position of vulnerability, favored her narrative of abandonment, and granted her a divorce.[8]

The petition of Polly Rogers also reflected an acceptable narrative of victimization. Polly Rogers explained that after less than a year of marriage to Robert Rogers in 1796, her husband began to mistreat her. In the spring of

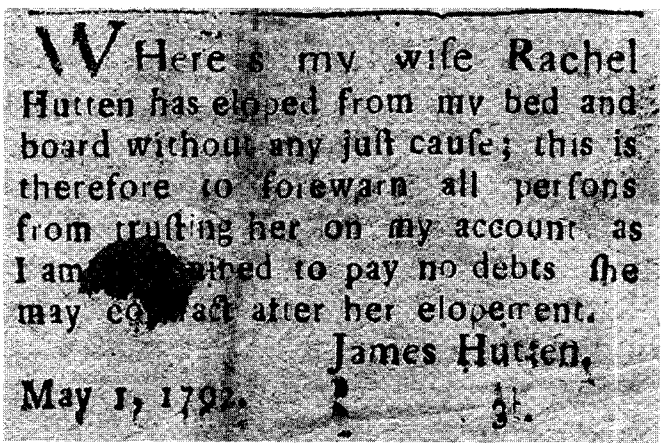
1797, she claimed that Robert moved her from her home in Kentucky to "the Spanish dominions on the Mississippi, where he treated her in the most brutal and cruel manner, and at length drove her off and obliged her to return to Kentucky." Robert's treatment, she claimed, left her destitute. He "possessed himself of the greater part of her property, and had abandoned her altogether." Polly Rogers's story of abuse, cruelty, and desertion by her husband proved reasonable grounds for divorce for the Kentucky General Assembly.[9]

Kentucky legislators even considered a special law to provide relief for abandoned wives. As early as 1794, the Kentucky Senate debated a relief law to provide for abandoned wives whose husbands left them and who were ostensibly unable to support themselves in the Kentucky economy.[10] Though it is unclear whether or not this act ever passed, the discussion implied that the Assembly approached the problem of marital abandonment as one that affected women particularly, perhaps exclusively. The legislature granted an act of relief and divorce to only one husband, John Funk, on the grounds that his wife, Susannah, left him in charge of their five children. Seldom did the legislature acknowledge that a wife could abandon her husband.[11]

The cases that most clearly contradicted the narrative of the abandoned wife were those petitions that described abandoned husbands. While the Kentucky General Assembly nearly always debated and passed official acts accepting and granting women's requests for divorce, identical complaints submitted by men hardly ever made their way out of committee. Out of a total of twenty-six existing divorces debated in the Kentucky General Assembly between 1792 and 1799, fourteen petitions came from women and nine came from deserted husbands, while the source of three petitions remain unclear. Although the Assembly committee discussed and accepted all but one of the women's petitions, it rejected eight of the nine petitions from husbands. Failed petitions from abandoned husbands contained the same complaints about desertion, adultery, and bigamy as did those from abandoned wives, yet the Assembly viewed such transgressions differently when women were the guilty parties.

For Kentucky legislators, abandoned husbands did not have tenable claims to justify special acts of divorce; they simply did not fit the story line that shaped legal understandings of marital conflict. While historian Linda Kerber points out that, legally, "the option to divorce was obviously one shared by both men and women," in Kentucky, legislators responded to the petitions of husbands and wives from different legal perspectives.[12] The legislature's narrative of gender difference simply did not accommodate a wife's active or intentional breach of the marriage contract. Men's marital transgressions had a potential legal remedy, while a woman's did not.

Henry Chapese, for example, petitioned for divorce on two separate occasions and was rejected both times. In 1794, Chapese petitioned for a divorce from his wife, Sarah Carnett. He said little about the reasons for their marital troubles in his first petition, and merely asked that "a law may pass to declare their marriage null and void." The legislature voted down Chapese's request.[13] In 1799, he explained his marital problems more clearly in a second petition. Chapese explained that he and Sarah had married in 1785 and lived together for about eight years. The couple separated when "from existing circumstances it became necessary for them to part." Shortly after they separated, Chapese claimed Sarah took up with and married a man named William Young.[14]


WHereas my wife Rachel Hutten has eloped from my bed and board without any juſt cauſe; this is therefore to forewarn all perſons from truſting her on my account as I am determined to pay no debts ſhe may contract after her eloperent.
James Hutten.
May 1, 1792.

An abandoned husband issued a warning in the Kentucky Gazette, *May 1, 1792. The Filson Historical Society*

The General Assembly struggled over Chapese's second petition. The Committee on Religion moved to reject it. After the petition was read twice with the committee's rejection, a motion was made and seconded to accept Chapese's request for a divorce. When the General Assembly voted, however, they resoundingly rejected Chapese's petition for divorce. Despite a six-year separation and Sarah's bigamous second marriage, the legislature would not allow the abandoned Chapese to receive a divorce.[15]

Other examples illustrate the General Assembly's apparent inability to recognize that a wife could voluntarily abandon her contractual obligations to her husband. John Nancarrow's wife, Nancy Morris, walked out on their marriage only a few days after she "entered into a state of matrimony." Although the couple agreed to an informal dissolution of their marriage, the Assembly denied Nancarrow's petition for a legal divorce.[16] Another abandoned husband, Captain Martin Nall, petitioned that his wife, Elizabeth "hath deserted him, and refuses to return and live with him as his lawful wife." After three votes, the Assembly rejected Nall's petition for divorce.[17]

The pattern of accepting divorce petitions from women and denying those from men directly contradicts the traditions of other states experimenting with divorce in the late eighteenth century. In his research on divorce in eighteenth-century Maryland, for example, historian Richard Chused found that a majority of divorce petitions submitted to and accepted by the legislature were from men. Lawmakers in Maryland, Chused claims, looked at divorce as a way to help husbands get out of fulfilling the payments that their wives' had negotiated in informal separation agreements.[18] Kentucky lawmakers, in contrast, did not acknowledge when husbands mentioned payments and prop-

erty from informal separations with the wives. Rather, their acts of divorce seemed to separate women from financial matters altogether.

The story of Elizabeth Rutherford illustrates how lawmakers could manipulate divorce petitions into an acceptable narrative. John and Elizabeth Rutherford married in Virginia some time around 1776. They had had six children. In the mid-1790s, John and Elizabeth moved their family to Kentucky. Not long after they arrived, John left his family and returned to Virginia, leaving Elizabeth in Kentucky with their children. Elizabeth stayed in Kentucky, worked to support herself, and acquired a small amount of property.[19] In 1798, Elizabeth petitioned the Kentucky General Assembly to secure a divorce from John and to separate her earnings from her husband's legal control. John had been absent for a few years, and Elizabeth worried that he would return and claim her property as his own.[20] Under the common law doctrine of coverture, a husband received legal control of a wife's property, wages, and labor upon marriage.[21] Without a divorce, Elizabeth and John were still legally married. When the petition came to the house floor for a vote, however, it was read several times and rejected.[22]

The State House in Frankfort, Kentucky, 1794. The Filson Historical Society

Elizabeth submitted a second petition the following year. Though the petition itself does not exist, legislative journals discuss the petition in detail and reveal how the General Assembly manipulated the content of her complaint. The Committee on Religion discussed Elizabeth's second petition and recommended that the legislature reject it. They selected key elements of Elizabeth's petition and drafted a summary to submit for a vote. This version of Elizabeth's petition, which the Committee submitted to the House floor, emphasized Elizabeth's concern for securing her property.[23]

The committee's version of Elizabeth's second petition explained that after moving to Kentucky, Elizabeth and her children "were deserted by [John] without any kind of sustenance." Elizabeth feared John would return to claim the income she had worked for on her own. Elizabeth claimed that "by her own personal industry she has supported herself and children and acquired some little property." She voiced her "well grounded apprehensions that the said John will return and deprive her of her children and property." She requested either a divorce, or an act from the legislature that would "secure to her the property she has acquired."[24]

The legislators read the Committee on Religion's recommendations aloud twice and could not make up their minds. They returned the petition to the Committee for another round of discussion. One month later, the Committee drafted a third version of Elizabeth's petition and resubmitted it to the Assembly for a vote. This third time, Elizabeth's story of marital strife sounded quite different from earlier versions. In this round, the Committee adopted sentimental conventions designed to relay a new image to the legislature, that of a victimized wife.[25]

In the third version of Elizabeth's petition, the Committee buried her hopes to secure her income within literary images of abandonment and cruelty. They reshaped her story to emphasize how "for 18 or 20 years she experienced the most cruel treatment from her husband." They recast Elizabeth's story of economic independence into one of abuse and presented her as a selfless, sacrificing wife and mother. They described how "on account of her children she was determined to encounter the misery attendant on the barbarous treatment of her said husband." After dragging his family to Kentucky, John "left her and returned to the state of Virginia, where he has been ever since, leaving her and her children to the scanty support arising from her own personal industry." In this version, they mention almost parenthetically that Elizabeth hoped to "[secure] to her the small earnings of her labour."[26]

The Assembly approved this final version of Elizabeth Rutherford's story and ordered the Committee on Religion to draft an act of divorce. This petition illustrates how a legislative committee could transform a marital conflict between a husband and wife into a narrative rich with gender meaning. Elizabeth Rutherford and her husband had very little place within the legislature's revisions of her petition. The approved version of their story revealed more about the Assembly's attempt to construct images of a wife's sacrifices and a husband's neglect. Their actual marital problems were secondary to the process of transforming her petition into a story that warranted divorce.

Other examples illustrate how the legislature manipulated the content of divorce petitions. In the case of John and Rebecca Green, for example, the Assembly granted a divorce using language that differed considerably from the original intent of the petition and changed the story of their marital dispute. In 1793, John and Rebecca Green announced publicly that they agreed to petition for divorce "mutually and by our own consent."[27] Their petition for divorce stated, simply, that they "had been unhappily joined in a state of Wedlock" and wished to have their marriage "declared null and void." Though estranged, the couple worked out the nature of their divorce request together. [28]

The Assembly's Committee on Religion accepted the petition as reasonable, yet composed an act for divorce that concerned Rebecca alone and reshaped the request into a story of abuse and neglect. The "Act concerning the

marriage of Rebecca Green" granted a divorce on the grounds of desertion and cruelty, finding that her husband, John, "treated her inhumanely, deserted her for five years, . . . refused to live with her, or to contribute any thing towards her support." What began as a mutual decision initiated by both husband and wife to end a marriage became constructed in legal terms as a narrative of a cruel husband abusing a helpless wife.[29]

This pattern, then, illustrates how the Kentucky General Assembly's approach to divorce cases legally constructed images of gender difference. In marital disputes husbands and wives were both abandoned and abandoner, yet the law favored women as victims. Accepting divorces which portrayed stories of women's dependence and victimization created a common narrative to marital conflict. At the heart of this narrative lay the assumption that a man might leave his marriage while a woman would not. As the foundation for the emergence of divorce law in eighteenth-century Kentucky, this narrative encoded gender difference into the legal construction of marriage and marital conflict.

In practice, the popular politics of gender functioned quite differently from their construction in the law. The formal evidence of divorce, in fact, represented a legal fiction that did not reflect the more contentious politics of marriage and divorce in the daily lives of Kentucky settlers. The scattered, unofficial records of marital discord in Kentucky piece together far more complex and involved narratives of women's experiences within dissolving marriages than the official records suggest. By looking at the discrepancies between legislative divorces and the lived experience of marital conflict, we begin to see the connections between state decisions and the activities of everyday settlers.

Local court disputes, desertion notices, separations and other evidence of informal marital exits suggest that women were able to negotiate far more favorable settlements in extra-legal arrangements than legislative divorce formally allowed. In many ways, women's negotiating power stemmed from their position in what Alexis de Tocqueville called the "shadow of the law."[30] Within the shadow of the law, men and women were influenced by the idea of the legal system more than they were engaged with laws themselves. Individuals could acknowledge the existence of a larger legal framework, yet operate beyond the reaches of law in their daily activities. In eighteenth-century Kentucky, individuals interpreted legal concepts through popular practice, individual needs, and everyday experience. Strict legal rules about marriage and divorce did not always penetrate their daily lives. Rather, couples operating within the law's shadow acknowledged the *idea* of legal rules, yet considered the law subject to local–and at times, personal–interpretation.

The marriage and separation of James McGinty and three-time widow Ann Lindsay provides a good example through which to explore the ways that

husbands and wives understood their relationships to the marriage contract, the law, and the community in eighteenth-century Kentucky. It also illustrates how the context of community and family could give a wife advantages in negotiating separation agreements that she might not have been able to exercise in a court or divorce petition. Ann's personal history and respectable social position and James' relative anonymity may provide the first clue to the uneven balance of power between them. Ann Kennedy was born some time in the mid-1730s in Virginia. She married John Wilson in Virginia and gave birth to a daughter, Martha, in 1760. Both Wilson and Martha died within a few years. Ann remarried William Poague in 1762, with whom she spent most of her married life. The couple had five children in Virginia, and would have two more in Kentucky.

The Poagues were among the original settlers who traveled over the mountains with Daniel Boone to settle Boonesboro in 1776. When Boonesboro proved too dangerous, the Poagues moved to Fort Harrod which had been settled in 1775. Both William and Ann played vital roles in the success of the fort. William was a talented craftsman who made all of the pails, buckets, and wood bowls used by the fort's inhabitants and Ann had brought the only spinning wheel to the region. She experimented with various weeds and grasses growing outside the fort in order to spin thread. William built the first loom west of the Appalachians on which Ann began producing coarse cloths out of nettles and buffalo hair. She taught women at the settlement to sew with foreign materials, and managed the production of all new cloth and clothing at the fort.[31]

Indians killed William outside the fort in 1778 or 1779, and Ann married a third time. Her newest husband, Joseph Lindsey, was a West Indian merchant turned western explorer and Indian trader. An army officer, Lindsey served as commissary general to the Army of the West under George Rogers Clark, only to be killed during the Battle of Blue Licks in 1782 a year after his marriage to Ann. For the next five years, Ann lived as a widow, opened a tavern in her home, and maintained and raised her youngest children at her house in Harrodsburg. By the time she met her fourth husband, James McGinty, Ann held valuable property in and around the town of Harrodsburg, had amassed a considerable fortune, and sustained herself by running a busy tavern in the county seat.[32]

When James McGinty met Ann Lindsey in 1787, he was virtually penniless. He posted a bond for two hundred acres of land on Elkhorn Creek, and otherwise possessed some twenty pounds worth of personal possessions. Perhaps he stayed at Ann's tavern and saw opportunity in the wealthy widow. Perhaps he saw her property and slave holdings as a quicker vehicle to personal advancement than settling his Elkhorn land and working it himself. Whatever the reason, he sold his plot of land for three second-rate horses and

began courting the widow. Throughout their courtship, he readily acknowledged his "indigent circumstance" and claimed that he was, mysteriously, "unable to work for his livelihood." He repeatedly vowed that it was not his intention to make Ann's property "*his* entire, proper, identical ownership and estate," and claimed that he merely wanted the use of it for "subsistance and comfort during his martimonial life." He promised that when he died, the whole of Ann's estate would remain in her and her heirs' hands and he tried to assure Ann's suspicious children that he did not have designs on their inheritance.[33]

Ann and James McGinty married in 1787, despite the protest of her children. Their marriage was brief and tempestuous. Ann later claimed that shortly after they married, James became abusive. After a few years of cruel treatment, Ann abandoned him. He begged her to come back, promised he would change, and assured her of better treatment. She returned to him only to find his abuse more frequent and violent and realized that James wanted nothing from her but her money. Under "specious pretenses of love and tenderness," she claimed, James "imposed himself on her merely to become possessed of her estate as he, after marriage, often insultingly told her." She deserted him a second time and, in 1793, demanded a separation.[34]

Ann decided to separate outside of court, in private negotiations before a handful of witnesses. She did not wish to "involve her old age in difficult and expensive contest" with James in court. She proceeded with the aid of her family. Ann's son, Robert, called in independent appraisers who valued her property between 1,800 and 1,900 pounds. Ann, her two sons, her son-in-law, and a handful of witnesses arranged to meet with James for the separation and final division of property. Ann's son-in-law drew up a conveyance to return to Ann her land, slaves, and other property to which James had legal title after their marriage. She allowed a small provision for James's subsistence, and nothing more.[35]

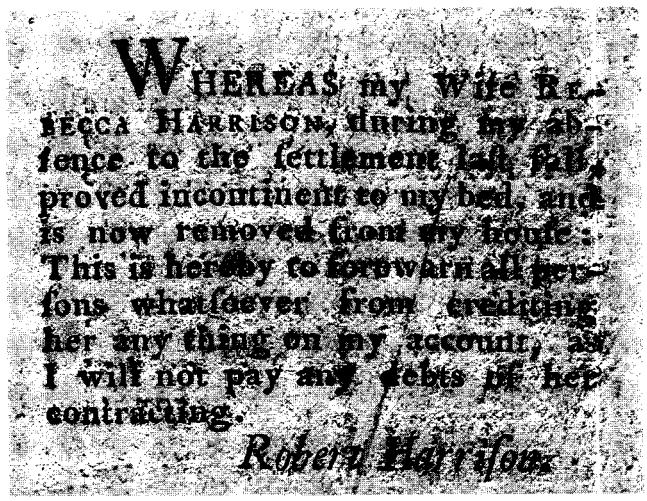
The negotiations did not go smoothly. James refused to sign the conveyance and claimed half of the property belonged to him. Ann's son, Robert, offered to concede half of the property to James' use, but not to his possession. This left Ann "extremely astonished." James, in turn, demanded that Ann relinquish her dower rights to valuable lands and legally hand them over to his full possession. Ann refused to respond to this request. Confronted with a hostile audience and realizing Ann's resolve, the defeated James declared that "he did not care a damn about it," and signed the conveyance of lands back to his estranged wife.[36]

Ann probably hoped she had seen the last of James McGinty in 1793. She provided him with enough property and necessaries to ensure his well being, including four hundred acres of land and the tavern that he had managed since their marriage – a value of 220 pounds.[37] She gave him a wagon, four

horses, one hay stack, four hundred feet of plank board, a bed, a teakettle and a coffee mill. Apparently satisfied that he had enough provisions to sustain his life alone, she returned to the business of raising her family.[38]

Up to this point, Ann McGinty's story resonates with the experiences of many other women in Kentucky who "deserted" or "eloped from their bed and board." The evidence of women's "elopement" found in published desertion notices provides the most accessible evidence of women's ability to alter their married status. Sandwiched in between notices for stores, taverns, and stray horses, desertion notices appeared in the *Kentucky Gazette* with great regularity. The *Gazette* listed notices from eighty-nine husbands from the time it began publishing in 1787 until 1800, suggesting that wives preferred desertion as a solution to marital conflict than legislative divorce. During 1796, the busiest year for desertion notices, nineteen announcements chronicled dissolving marriages for Kentucky's reading public. Because advertisements ran for several weeks, subscribers and readers of the *Kentucky Gazette* read about deserting wives in nearly every weekly issue.[39]

Some desertion notices masked complex domestic battles, while others simply reported a missing wife. Nicholas Harrison, for example, reported that his wife left in 1789 and fled down the Ohio River with another man. Philip Durbin was not quite so sure where his wife had gone, and knew only that she left him to commence "running up and down the country." Some women left for other men, though few husbands were as forthcoming as Robert Harrison, who publicly announced that his wife had proved "incontinent to [his] bed."[40]


WHEREAS my Wife Re-
BECCA HARRISON, during my ab-
fence to the fettlement laſt fall,
proved incontinent to my bed, and
is now removed from my houſe:
This is hereby to forewarn all per-
ſons whatſoever from crediting
her any thing on my account, as
I will not pay any debts of her
contracting.
Robert Harriſon.

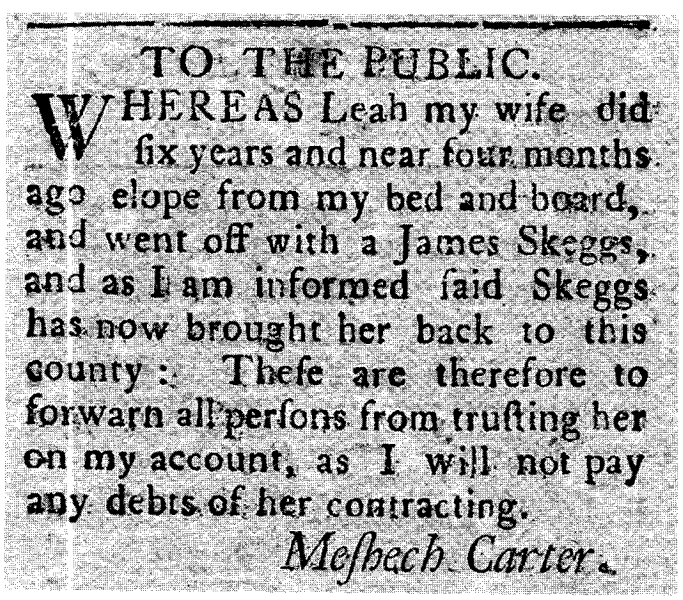
Robert Harrison's public announcement in the Kentucky Gazette, *May 31 1794. The Filson Historical Society*

Like Ann McGinty, these women appear to have viewed marriage as an elastic, negotiable contract, rather than a legally and morally binding, lifelong obligation. Desertions and self-divorces permitted estranged Kentucky couples, in effect, to divorce themselves, remarry, or even start new families. Many women's "desertions" functioned as extra-legal community sanctioned divorces based on decisions reached by either one or both spouses. Mary Prewitt, for example, decided she did not want to move to a different county with her husband and refused to go with him. Her husband moved anyway and published a notice of desertion as a means to financially separate from one another and, effectively, divorce each other.[41]

The marital history of Meshach and Leah Carter, for example, reveals a complicated web of infidelity, separation, and bigamy that was negotiated entirely beyond the scope of the law. In 1787, Leah Carter ran away with her

neighbor, a Baptist preacher named James Skeggs. Marriage records show that Meshach remarried less than a month after Leah left him.[42] Six years after the fact, Meshach published a notice in the *Kentucky Gazette* announcing that Leah had left him and that he planned to petition the Assembly for a divorce.[43] For six years, the legally married Carters behaved as though they were divorced without ever requesting a legal separation. Meshach's *Kentucky Gazette* notice indicated that he well understood that a divorce would legally sanction his marital arrangement with his new wife, although he never went through with the petition.

While some couples found that informal divorce worked to their advantage, many husbands and wives struggled over the terms of marriage and separation. In some cases, such conflicts ended up in local courts. Both men and women initiated cases in local courts, though the tenor of their claims differed dramatically. Wives who separated from their husbands sued for what they thought was a fair division of property, while husbands defended their patriarchal rights to control the marital estate. Although only a small handful of such cases exist, those that remain provide perspective into the ways that ordinary men and women constructed their rights and roles within marriage.


TO THE PUBLIC.

WHEREAS Leah my wife did fix years and near four months ago elope from my bed and board, and went off with a James Skeggs, and as I am informed ſaid Skeggs has now brought her back to this county: Theſe are therefore to forwarn all perſons from truſting her on my account, as I will not pay any debts of her contracting.

Meſhech Carter.

Meshach Carter's notice in the Kentucky Gazette, *October 12, 1793, announced that his wife had left him and that he planned to petition the Assembly for a divorce. The Filson Historical Society*

If we return to the story of Ann and James McGinty, for example, we can see how women's initiatives in the everyday mediation of marital conflict did not always go unchecked or unchallenged. In 1795, James McGinty filed suit in the Mercer County courthouse to reclaim his rights to Ann's property.[44] Although Ann agreed to provide a parcel of property to secure her husband's well being, James claimed more expansive rights to her estate. Drawing on the laws of coverture, James hoped to reclaim the property lost in his earlier separation from Ann. The case raised issues about whether or not a husband's legal rights to authority could trump an informal separation agreement that was executed privately between an estranged couple.

The court case between James and Ann suggests that a husband's authority over property acquired through marriage was not necessarily secure so long as women could negotiate favorable separation agreements. Struggles between husbands and wives over the terms of informal separations highlight the tensions between the legal vision of patriarchal authority and the realities

of daily power relations within the household. Ann McGinty hardly occupied dependent status. Rather, she was able to alter and ultimately abandon the terms of her marriage and could control property that legally belonged to her husband. Men looking to secure their place in Kentucky society through property ownership often found that their patriarchal claims stood on insecure foundations.

Other cases suggest that wives' informal powers to dissolve marriage and claim property further compromised men who were trapped in a land-poor economy. In a Mercer County court case, for example, complainant Frederick Baker used the law in an attempt to salvage his right to property through marriage. Frederick Baker married Barbara Bibbs in 1791.[45] Barbara had been married once already, to a man named William Bibbs. Her first husband left Kentucky to work on a ship, and was gone for several years. She eventually received a letter suggesting he was dead. Not long after receiving notice of her husband's death, Barbara was "induced to marry" Frederick Baker. She lived with Baker as his wife "for a considerable length of time." When Barbara received "good appearances that the report was false and her said husband [William] was still alive," she left Baker and commenced working to support herself until her first husband returned. So long as Barbara suspected her first husband was alive, she believed her marriage to Baker was void.[46]

Throughout her marriage to Baker and after their separation, Barbara closely managed the income and property she earned through her own labors. On her own and "by her own industry [she] procured a tolerable property which enabled her to live without being dependant [*sic*]." After their separation, however, Baker claimed Barbara's income as his own and refused to return it. Barbara claimed that Baker retained "nearly all the property she had procured by her own industry and several lay sums of money collected." Accusing him of conspiracy, Barbara argued that "Baker confederating to and with diverse persons unknown...hath converted the whole of her property to his own use and refus[ed] to restore it."[47]

William Bibbs returned to Kentucky in the late 1790s, providing further evidence that the marriage between Barbara and Frederick Baker was void. Baker, however, insisted that the only way that Barbara could legally reclaim her property was to petition for and receive a formal divorce from the Kentucky General Assembly. Baker claimed that Barbara "did unlawfully separate herself from bed and house and society of [him] and never since hath cohabitated with him; nor has she been legally divorced from him whereby she might lawfully maintain" her property. The jury was unpersuaded and decided in favor of Barbara Bibbs.[48]

Such cases describe how both husbands and wives struggled over interpretations of the marriage contract. Such disputes revealed tensions between popular understandings of legal authority within the household and cultural

concepts of roles and responsibility within marriage. Property acted as the catalyst for husbands and wives to shape their marriages in legal terms. Separation agreements often brought conflicts over property into high relief. While certainly not all couples in eighteenth-century Kentucky experienced conflict over separations, those who did exposed the vulnerable and contested legal and cultural foundations that held marriage contracts together.

Just such contest was never resolved between James and Ann McGinty. In Kentucky's rapidly evolving court system, cases could linger on and bounce between courts for years. The McGintys languished in administrative limbo while Kentucky lawmakers worked through the details of building their legal institutions. James brought his case to the Court of Quarter Sessions in 1795. Ann stalled for over a year before submitting her answer to James' complaint. The case was not scheduled for a hearing until 1799. By 1800, the court transferred the case to the newly formed and short–lived district court at Danville. By 1802, the Kentucky General Assembly replaced the district courts with a system of circuit courts and began dismantling the original system of courts.[49]

The courts agreed to continue the McGintys' case session after session. James paid court expenses to keep his case moving forward for over ten years. The case ended unceremoniously with a simple notation of James' death in 1806.[50] He had little in worldly possessions when appraisers valued his estate and bequeathed what money he had to the sons of two friends to help fund their education.[51] By taking little interest in the case against her, Ann, who died in 1815, managed to spend her old age as she had hoped–free from the burdens of litigation.

That Ann McGinty fared better in the "best poor man's country" than her husband defies traditional images of women's opportunities in the eighteenth-century West. Exploring married women's influence over property in Kentucky–where men's access to property proved to be a particularly volatile issue in the eighteenth century–allows us to rethink the role of women in Kentucky's unfolding political and economic culture. At the same time that married women challenged men's control over property in the "best poor man's country," the legal definitions of womanhood narrowed. Exploring marriage and divorce in early Kentucky forces us to consider side by side the debates about gender and property. Placing the legal visions of wives' dependence on their husbands' assets alongside the realities of men's economic hardship and women's leverage forces us to consider images and realities about Kentucky as part of the same story.

1. *Kentucky Gazette*, November 2, 1791.
2. A particularly good collection of essays exploring new avenues in the politics of gender and race in the backcountry is Andrew R. L. Cayton and Frederika Teute, eds., *Contact Points: American Frontiers from the Mohawk Valley to the Mississippi, 1750-1830* (Chapel Hill: University of North Carolina Press, 1998). Works that emphasize white women's hardships in Kentucky and the early West include, Stephen Aron, *How the West Was Lost: The Transformation of Kentucky from Daniel Boone to Henry Clay* (Baltimore: Johns Hopkins University Press, 1996); Joan Cashin, *A Family Venture: Men and Women on the Southern Frontier* (Baltimore: Johns Hopkins University Press, 1994); John Mack Faragher, *Women and Men on the Overland Trail* (New Haven: Yale University Press, 1979); David Hackett Fischer and James C. Kelly, *Bound Away: Virginia and the Westward Movement* (Charlottesville: University Press of Virginia , 2000); Daniel Blake Smith, "'This Idea in Heaven': Image and Reality on the Kentucky Frontier," in Craig Friend, *The Buzzel About Kentuck: Settling the Promised Land* (Lexington: University Press of Kentucky, 1999). While these works identify women's presence in western migration, their discussion highlights white women as what western historian Susan Johnson critiques as a "marked" category as opposed to the "unmarked" experience of men, Susan Lee Johnson, "'A Memory Sweet to Soldiers': The Significance of Gender," in Clyde A. Milner II, *A New Significance: Revisioning the History of the American West* (New York: Oxford University Press, 1996), 258.
3. Marylynn Salmon, *Women and the Law of Property in Early America* (Chapel Hill: University of North Carolina Press, 1986), 64.
4. For a discussion of rural marriage and divorce practices see, Nancy Cott, *Public Vows: A History of Marriage and the Nation* (Cambridge: Harvard University Press, 2000), 30-33.
5. The author wishes to thank James Prichard at the Kentucky Department of Libraries and Archives and James Holmberg at The Filson Historical Society for their lessons in the history of Kentucky's poor archival practices. See also, Philip P. Mason, "Trans-Mountain States: Alabama, Illinois, Indiana, Kentucky, Michigan, Mississippi, Ohio, and Tennessee," in H.G. Jones, ed., *Historical Consciousness in the Early Republic: The Origins of State Historical Societies, Museums, and Collections, 1791-1861* (Chapel Hill: University of North Carolina Press, 1995), 125-61.
6. William Blackstone, *Commentaries on the Laws of England* (London, 1765-1769; reprint, Chicago: University of Chicago Press, 1979), v. 1, 430.
7. Lewis Collins, *History of Kentucky* (Frankfort: Kentucky Historical Society, 1966), v. 1, 26.
8. *Journal of the House of Representatives at the Second Session of the Sixth General Assembly for the Commonwealth of Kentucky* (Frankfort: John Bradford, 1798), November 8, 1798 [because of lack of uniformity in this source's pagination, the author will use dates by which cases may be found].
9. *Journal of the House of Representatives of the Commonwealth of Kentucky at the First Session of the Eighth General Assembly, beginning Nov. 4, 1799* (Frankfort: William Hunter, 1799), November 11, 13, 1799.
10. *Journal of the Senate at the Fourth Session of the General Assembly for the Commonwealth of Kentucky*, December 2, 1794 and December 3, 1794 (Frankfort: John Bradford, 1794).
11. *Acts of a Local, or Private Nature Passed at the Second Session of the Sixth General Assembly for the Commonwealth of Kentucky* (Frankfort: John Bradford, 1798), 39-41.
12. Linda Kerber, *Women of the Republic: Intellect and Ideology in Revolutionary America* (Chapel Hill, 1980; reprint New York: W. W. Norton), 162.
13. *Journal of the Senate at the Fourth Session of the General Assembly for the Commonwealth of Kentucky* (Frankfort: John Bradford, 1794), December 9, 1794.
14. *Journal of the House of Representatives of the Commonwealth of Kentucky at the First Session of the Eighth General Assembly, beginning Nov. 4, 1799* (Frankfort: William Hunter, 1799), November 21, 1799.
15. Ibid., November 21, 1799, and November 23, 1799.
16. Ibid., November 6, 1799 and November 9, 1799.
17. *Journal of the House of Representatives of the Commonwealth of Kentucky at the Seventh General Assembly, Regular Session, November 5-December 22, 1798*, (Frankfort: Hunter and Beaumont, 1798 or 1799), November 22, 1798.
18. Richard Chused, *Private Acts in Public Places: A Social History of Divorce in the Formative Era of American Family Law* (Philadelphia: University of Pennsylvania Press, 1994), 22.
19. *Journal of the House of Representatives of the Commonwealth of Kentucky at the First Session of the Eighth General Assembly, beginning November 4, 1799* (Frankfort: William Hunter, 1799), November 1799.
20. The records do not explain the precise content of Elizabeth's first petition, nor do they suggest what the Committee on Religion recommended.
21. William Blackstone defined the laws of coverture in his *Commentaries on the Laws of England*, v. 1, 355-59. For good discussions of the legal implications of coverture on women's status see, Norma Basch, *Framing American Divorce: From the Revolutionary Generation to the Victorians* (Berkeley: University of California Press, 1999); Cott, *Public Vows*; Michael Grossberg, *A Judgment for Solomon: The d'Hauteville Case and Legal Experience in Antebellum America* (Cambridge: Cambridge University Press, 1996); Hendrik Hartog, *Man and Wife in America* (Cambridge: Harvard University Press, 2000); Kerber, *Women of the Republic*; Salmon, *Women and the Law of Property in Early America*.
22. *Journal of the House of Representatives of the Commonwealth of Kentucky at the Seventh General Assembly, Regular Session, November 5-December 22, 1798*, (Frankfort: Hunter and Beaumont, 1798 or 1799), December 10, 1798.
23. *Journal of the House of Representatives of the Commonwealth of Kentucky at the First Session of the Eighth General Assembly, beginning Nov. 4, 1799* (Frankfort: William Hunter, 1799), November 1799.
24. Ibid.
25. Ibid., November 9, 1799, and December 14, 1799.
26. Ibid., December 14, 1799.
27. *Kentucky Gazette*, July 27, 1793.
28. *Journal of the House of Representatives at the First Session of the Third General Assembly for the Commonwealth of Kentucky* (Frankfort: John Bradford, 1794), November 1794.

29. *Acts of a Local, or Private Nature, Passed at the Second Session of the Sixth General Assembly for the Commonwealth of Kentucky* (Frankfort: John Bradford, 1798), 42-44.
30. Grossberg, *Judgment for Solomon*, 2.
31. Ann [Kennedy Wilson Poague Lindsay] McGinty holds the status of a pioneer legend in Kentucky lore. In particular see George Morgan Chinn, *Kentucky: Settlement and Statehood, 1750-1800* (Frankfort, Ky. The Kentucky Historical Society, 1975), 328-30, 337. William is also mentioned in George W. Ranck, *Boonesborough: Its Founding, Pioneer Struggles, Indian Experiences, Transylvania Days, and Revolutionary Annals* (New York: Arno Press, 1971), 41.
32. Ann Lindsay registered her tavern in Mercer County on January 2, 1787. Michael L. Cook, *Mercer County, Kentucky Records* (Evansville, Ind.: Cook Publications, 1987), v. 1, 15.
33. *James McGinty v. Ann McGinty and Robert Pogue*, Case Numbers 334 and 335, Lincoln County Equity Court, Kentucky Department of Libraries and Archives, Frankfort, Kentucky (hereinafter cited as KDLA).
34. Ibid.
35. Ibid.
36. Ibid.
37. James McGinty renewed the license to Ann's tavern on March 27, 1788. Cook, *Mercer County, Kentucky Records*, v. 1, 73.
38. *James McGinty v. Ann McGinty and Robert Pogue*, case numbers 334 and 335, Lincoln County Equity Court, KDLA.
39. Only recently, scholars have begun to pay attention to deserting wives in other early national contexts. These include, Sarah Leavitt, "'She Hath Left My Bed and Board': Runaway Wives in Rhode Island, 1790-1810," *Rhode Island History* 58 (August 2000), 91-104, and Mary Beth Sievens, "'The Wicked Agency of Others': Community, Law, and Marital Conflict in Vermont, 1790-1830," *Journal of the Early Republic* 21 (Spring 2001), 19-39.
40. *Kentucky Gazette*, June 13, 1798, February 21, 1795, May 31, 1794.
41. Ibid., September 27, 1797.
42. Meshach's second marriage is recorded in Jordon R. Dodd, *Kentucky Marriages, Early to 1800: A Research Tool* (Bountiful, Utah: Precision Indexing, 1990), 36.
43. *Kentucky Gazette*, October 5, 1793.
44. The court was in Mercer County, though the case file is stored with the Lincoln County cases at KDLA.
45. *Barbara Bibbs v. Frederick Baker*, Case File 777, Lincoln County Ordinary Court, KDLA; *Barbara Bibbs v. Frederick Baker*, case files 98 and 116, Lincoln County Equity Court, KDLA.
46. *Barbara Bibbs v. Frederick Baker*, Case Files 98 and 116, Lincoln County Equity Court, KDLA.
47. Ibid.
48. Ibid.
49. William C. Richardson, *An Administrative History of Kentucky Courts to 1850* (Frankfort, Ky.: Kentucky Department of Libraries and Archives, 1983), 3-8.
50. *James McGinty v. Ann McGinty and Robert Pogue*, case numbers 334 and 335, Lincoln County Equity Court, KDLA.
51. The author wished to thank James Prichard for locating the will of James McGinty.