THE WHATCOM COUNTY NINE

Legal and Political Ramifications of Metis Family Life in Washington Territory

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Court cases from yesteryear offer insight into the nature of society and the problems that were faced at that time. The premier court case of 1879 in Whatcom County, Washington Territory, revolved around nine Euro-American men accused of being illegally married to their Native American wives. These nine men—Henry C. Barkhousen, Charles W. Beale, Enoch Compton, Fritz Dibberin, Alexander Hemphill, James H. Taylor, David H. Whitehill, Richard B. Wooten, and his brother, Shadrack Wooten—lived with Coast Salish women in publicly acknowledged marriages in a county where Metis marriages were common. The question is, why were these nine Metis families singled out for prosecution by the authorities?

To understand the nature of interracial marriage within Whatcom County, Washington Territory, during the last half of the 19th century, one must examine these men and their circumstances. Each person's history has been assembled using information collected from United States Census documents; court documents dealing with marriage, probate, and criminal affairs; published historical accounts; and autobiographical accounts.

In December 1878 the Whatcom County sheriff arrested Henry C. Barkhousen for "open and notorious fornication." At that time he lived with Julia Sehome, whom he had married around 1860 according to Clallam/Samish custom. Julia was the daughter of Chief Sehome of Bellingham and Tsis-wahl-use, a Clallam woman.

The charge against Henry Barkhousen was identical to the charge placed against the other eight men. The temporary prosecutor, C. H. Hanford, acting on behalf of Irving Ballard, filed all nine indictments in December 1878 at the Whatcom County Courthouse in La Conner (which in 1884 became incorporated into Skagit County). In most cases the sheriff personally delivered each warrant. Each of the accused posted $300 bail and promised to appear at the trial, scheduled for June 1879. Four of the nine indicted men stood as bondsman for each other. Several of the bondsmen for the accused were single men and at least two were married to Euro-American women.

After trying his hand at gold mining along the Fraser River, British Columbia, in 1858, Henry Barkhousen had settled on Fidalgo Island, near the present city of Anacortes. He cleared trees on his property and began raising cattle and hogs. Before long, Barkhousen had become a member of Whatcom County's political elite. He ran for elective office, serving as county auditor in 1860 and then as a territorial legislator for the 1863-64 session. Using his political influence, he secured a position as postmaster for Fidalgo Island.

In a short biography of Barkhousen, more of his personal life was revealed than in most biographies of pioneer settlers printed in the local histories. While his biography left out the

name of his wife, her identity as a member of "the native tribes" fitted into his self-justification about protecting the legitimacy of his children. None of the other Euro-American men whose biographies were included in the histories of either Skagit or Whatcom counties chose to identify the background of their Indian wives. At most, the wife's place of birth was identified as somewhere within Washington Territory. In contrast, the histories of the Euro-American wives of the other pioneer settlers identified their maiden names and ethnic origins.

In short, Henry Barkhousen settled in Whatcom County, married a Samish woman, raised seven Metis children in the community, and served in positions of power within the county and territorial governments. The accusation against him was, in fact, an act of persecution against a respected member of the community because he lived with a Samish woman without the sanction of the Euro-American community.

Barkhousen chose to fight his indictment in court while the others preferred to conform to the law. Shortly after their arrest, most of the other men legalized their marriages with a civil ceremony. For example, Enoch Compton also had arrived in Whatcom County after an 1858 stint in the Frazer River gold mines. He won elected office in 1863 as county commissioner and served until 1866. In 1864 he married Margaret, a Native American woman born about 1840 in British Columbia. They legalized their marriage on December 15, 1878, ten days after his arrest. Henry Barkhousen conducted the ceremony in his capacity as justice of the peace; ten days later he performed the same service for the Wooten brothers.

Alexander Hemphill, born about 1832 in Ireland, died in 1879, a citizen of the United States. In 1870 he lived near Semiahmoo in Whatcom County, where he worked as a telegraph line tender. The only information available about his wife identified her as a "squaw." At the time of his arrest, bail was waived due to the poor state of his health. He died six months before his scheduled trial date.

James H. Taylor, born in New York around 1831, arrived in Whatcom County in 1854 and worked as a ship's carpenter for a Bellingham coal company. During the Indian War of 1856 he served in Company H, Second Regiment, of the Washington Volunteers. He remained single until 1870 when he married Emma Hyatt, the Native American wife and widow of John G. Hyatt of Ohio. She was born about 1841 in Washington Territory. James Taylor legally married Emma on October 25, 1878, in a ceremony performed by Judge J. H. Plaster even before the charges were filed by the district attorney.

David H. Whitehill, born about 1807 in either Pennsylvania or Switzerland, arrived in Skagit County around 1869 and settled near Blanchard, along the Samish River. He soon married Fanny Richardson, a Samish woman born about 1840. They legalized their marriage on May 12, 1879, three weeks before the trial was scheduled to convene.

Richard Wooten married Ellen Toney about 1866. Ellen, born around 1850 in Washington Territory, had parents from different tribes. Her Clallam father's name was We-wise-man; her Samish mother's name was Pat-las-hat-soota. Shadrack Wooten married for a second time around 1874 to Ellen's older sister, Mary Toney, born about 1845. On December 25, 1878, 20 days after the district attorney handed down the indictments, both brothers legalized their marriages. Their neighbor, Enoch Compton, held the services at his home.

Charles W. Beale, born in 1831 in Mason County, Virginia, searched for gold in California in 1852, in the Fraser River goldfields in 1858, and at the Cariboo mines of British Columbia until

1867. He was a member of the Democratic Party and a justice of the peace. About 1857 Charles Beale married Julia Ke-shugush, also known as Neshagusho, a Lummi woman.

When Charles W. Beale had his biography written up in a history of Skagit County, he did not mention his wife. However, they legalized their relationship in a ceremony performed on March 12, 1879, three months prior to the trial. Not being content to just escape the sentence of the court, Beale hired a lawyer to query the court as to the meaning of the term "marriage." Could a common-law marriage be acknowledged as legalized under other than statutory law? In a deposition made to the court, the defendant and the prosecuting attorney asked the court to expand the definition of marriage:

> *1st. The defendant and the woman that he claims to be his wife commenced to cohabit together as man and wife…on or about A.D. 1857…. 2nd. No license was taken out. None of the persons authorized by the statute to perform the marriage ceremony were present; that is, there was no Justice of the Peace, Priest, Minister or judge or clergyman of any denomination present at the time said parties agreed in presence of witnesses to take each other as man and wife. The Question is, do the above facts constitute a valid marriage in this Territory?*

If the court agreed, then all similar cases would be settled in favor of the accused.

The men who prosecuted these nine cases were also married, most of them to Euro-American women. Three men were responsible for the all the accusations. The prosecutor of the Third Judicial District, which included Jefferson County, was C. H. Hanford. He did not live in Whatcom County. Edward Eldridge of Bellingham ran the grand jury. One man testified against all of the accused. He was George Washington Lafayette Allen, the sheriff of Whatcom County. Allen's accusations were supported by Samuel B. Best in five of the nine cases, by Jasper Gates in two cases, by John Wilbur in two cases, and by J. E. Freese and William Woods in one case apiece. Eldridge and Allen, Best, Gates, and Freese lived with their Euro-American wives. John Wilbur, who previously lived with a Swinomish woman whom he had abandoned, resided at the time with a Euro-American woman who took care of his son by his first marriage. William Woods lived with his Snohomish wife and family. Edward Eldridge raised and educated Tol Stola, a Samish/Swinomish child, until she married James Kavanaugh, formerly of Ireland. Given that the ties that some of the accusers had with their Native American wives, or adopted Native American children, it appears that racism or white supremacy were not the sole motives of the accusers.

The case came to trial on June 3, 1879. By the time the court convened, Henry Barkhousen had still refused to legalize his marriage on the grounds that the ceremony would "de-legitimate" his children (i.e., convey to the world that his children were "bastards" as defined by the law). In a biographical account, Henry Barkhousen stated why he was arrested:

> *Like many others of the early settlers of the Northwest, Mr. Barkhousen took a wife from the native tribes, marrying her according to Indian ceremony at Whatcom in 1860, but unlike many other white men in similar relation he declined to hold that [the] marriage was not binding in the eyes of the law. He held that relation sacred and argued that an admission of its lack of force would brand his children as illegitimate. As a result he would not be remarried according to civilized usages and was indicted by a grand jury for the offense against statute, but was acquitted by Judge Greene.*

Barkhousen asserted to the end that his children were legitimate, despite being the offspring of an "unsanctified" marriage.

The other eight cases were without foundation inasmuch as the principals were married by the time the court convened. However, the accused still had to appear in court. The *Bellingham Bay Mail* published the results of the district court proceedings.

The case against Henry Barkhousen was to be decided in his favor. Two pieces of evidence demonstrated his innocence: first, unlike the other cases, the county assumed the expenses of the case. Then, when Judge Greene ruled on the question in the Charles Beale case, the ruling provided the justification for Barkhousen's innocence. After mentioning that the case against Charles Beale was like a number of others, Judge Greene noted that writing one opinion would address each of the other cases. His opinion addressed the following:

> *1st. Whether, in this Territory, at any time since the passage of the Marriage Act of 1854, a good and valid marriage contract could have been entered into, per verba de presenti (by verbal presentation), without any statutory form or solemnization? And 2nd. Whether, assuming such a marriage valid, it could, subsequent to the 29th of January, 1855, and prior to the 18th of January, 1868, have been lawfully entered into by a white person with a person of one-half or more Indian blood?*

This trial was the focus of several trends. It represented one more fight in the ongoing crusade of the antimiscegenationists (opponents of mixed-race marriage), and it can be seen as a symbol of the continuing struggle between those with political clout and those without. The accusation against the nine Metis families certainly did not fit the normal profile of "fornication" cases, which typically involved married couples coping with adultery. Instead, it appears that these nine indictments were being used to create a wedge issue…designed to undermine the political authority of the Metis community, which enjoyed a good reputation and had a solid political base within the county.

In 1854, when Washington Territory was established, the majority of Metis families were the result of marriages between native women and employees of the Hudson's Bay Company. Most of the men involved in the Metis marriages were French-Canadians, Hawaiians, British citizens, or British North Americans. After the Oregon Territory was established in 1846, American citizens immigrated into the area until they represented the largest Euro-American population in Washington Territory, outnumbering the employees and former employees of the Hudson's Bay Company. Most of the Americans were unmarried men, some of whom joined the Metis community by marrying Native American women. These families lived on homesteads granted by the United States government under the Donation Land Act of 1850. Since the men wanted their children to inherit their land, the Metis community, transformed by the addition of American citizens, pressured the territorial legislature to legalize their children's right to inherit.

The Metis community comprised the majority of voters in Whatcom, Skagit, and San Juan counties between 1860 and 1880. Consequently, they chose county officials and legislators from their own ranks. However, not all of the Metis leaders were members of one political party. For example, four Metis men were Democrats—William Moore, James Gilliland, Benjamin Davis, and John Plaster—while eight belonged to the Republican Party—James Mathews, Franklin Buck, John Tennant, Joseph Maddox, Enoch Compton, Henry Barkhousen, James Taylor, and John Wilbur. Interestingly, Wilbur was one of Compton, Barkhousen and Taylor's accusers. However, the accusers did not all come from one party.

After the federal government established Washington Territory in 1853, the territorial legislature prohibited all marriages between Indians and whites, including all previously sanctioned interracial marriages solemnized in either Protestant or Roman Catholic ceremonies.

The Metis community protested that prohibition and, by degrees, managed to reverse the law 12 years later. Judge Greene summarized the transformation of territorial marriage laws from 1854 until 1868. As he put it, after 1855 all interracial marriages were forbidden; however, couples having relationships that predated the 1855 law could have their common-law marriage legalized under the 1858 change to the Color Act of 1855. In another twist, exceptions to the interracial marriage law were prohibited after 1866; but suddenly, in 1868, the entire Color Act was repealed, and after this date any interracial marriage could be legalized. But some Metis family men—e.g., the Whatcom County nine—failed to take advantage of the 1868 legislation to legalize their marriages.

The Washington Territorial Legislature passed an odd law just prior to its reversal of the antimiscegenation law. The law of inheritance denied any child born out of wedlock a portion of the parents' property upon their death. One of the consequences of recording a marriage with the civil or religious authorities was the granting of legitimacy to the child, which was sufficient proof for a probate court. The legislature decreed that the children of previous unrecorded Metis marriages could be legitimated in order to provide for the inheritance of real estate. The title of the Act of l866 stated plainly the intent of the bill: "DECLARING LEGITIMATE THE ISSUE OF MARRIAGES OF WHITE MEN WITH INDIAN WOMEN."

Despite the repeal of the Color Act, the antimiscegenationists did not stop trying to establish dominance. To that end, they began to enforce the law against unmarried couples living together. The form of that enforcement took a different tack in San Juan County. James Francis Tulloch, who lived on Orcas Island with his Euro-American wife, from 1875 until 1910, participated in the coercive actions against the unsanctioned married couples of San Juan County. He justified his actions by appearing to uphold the law: "Judge Lewis of the Superior Court had just rendered a decision that all squaw men must marry their squaws or give them one third of their property and send them back to their tribes in a certain time or be punished severely." On one occasion Tulloch found himself a spontaneous witness at an unscheduled wedding performed by W. H. Gifford, the justice of the peace for Lopez Island and a native New Yorker married to a Euro-American woman. Tulloch wrote:

> *On the way down [to Lopez Island] we stopped at Yott's Landing for a time and as it was cold, Stevens, who ran the boat, asked us to go up to the house some distance from the landing. We found Mr. Yott sitting in front of his fireplace in his stocking feet and shirtsleeves contentedly smoking while his squaw went about her household duties in her bare feet and dressed seemingly in one calico garment. Presently Gifford, who had been elected Justice of the Peace [of Lopez Island], arrived to marry them, for they had learned that the law must be complied with. They both stood up just as they were, except that Yott took his pipe out of his mouth long enough to make the responses. Then he went on smoking and she resumed her work. It sure was a strange wedding.*

The Yotts had not prepared for this wedding. They had not changed into wedding clothes, nor did they invite guests to participate in the ceremony. In fact, they acted as if they were taken by surprise at the unexpected visit of Gifford and Tulloch. It seems as though the Yotts did not resist being legally married. This ceremony was a small intrusion into their lives, certainly smaller than being taken to court for violating the law against "fornication."

When the trial court opened for business in June 1879, the prosecuting attorney addressed Greene, chief justice of the Supreme Court of Washington Territory and judge of the Third Judicial District, with a request that the case against seven of the nine Metis family men be dismissed. As noted earlier, seven of the cases were rendered moot by virtue of the fact that

they had become legally married prior to the trial date. Consequently, the prosecuting attorney asked the judge for a directed verdict of nolle prosequi, "a formal entry upon the record…by the prosecuting attorney in a criminal action, by which he declares that he will not further prosecute the case, either as to some of the defendants or altogether."

In the other two cases, Judge Greene wrote an opinion for the Beale case that upheld the validity of his Indian marriage ceremony as being consistent with the tradition of the "common law marriage." Since Beale and Barkhousen were married by Indian custom prior to the time period (1866 to 1868) that voided any prohibited marriages, they were both acquitted. From 1854 to 1866 such marriages could not be solemnized by statutory rites, which was not the same as being prohibited. Therefore, both Beale and Barkhousen had valid common law marriages. However, there were several differences in outcome of the cases that reflected their legal status.

The assumption of court costs varied from case to case. Defendants Charles Beale, Richard Wooten, David Whitehill and Enoch Compton had to bear the burden of their own court costs. The *Bellingham Bay Mail* did not cite the case of Territory vs. Shadrack Wooten, but it may be assumed that this case was dismissed along with the others and that Wooten had to pay his court costs as well. These defendants were the same accused men who had legalized their marriages with their spouses prior to the trial date. In contrast, the other defendants did not have to pay their own court costs.

The county assumed court costs in the cases of Mary Ann Miller, Henry Barkhousen, and James Taylor. The reasons varied. James Taylor had been falsely accused inasmuch as he had been legally wed prior to his arrest. The prosecutor dropped the case against Mary Ann Miller since Henry Kruse had fled the county to avoid prosecution and Mary Ann no longer lived with him. Unlike the others, Barkhousen was actually proved innocent, and so the county assumed his court costs.

After the trial was adjourned, the *Bellingham Bay Mail* put forward an alternate explanation for the legal harassment of the Metis families. The publisher printed an anonymous letter under the heading of, "A Lesson for Future Grand Juries to Profit by. La Conner, June 16, 1879":

> *Editor B.B. Mail: It is to be hoped that future grand juries will learn a lesson by the result of the several indictments disposed of at the recent term of court for Whatcom County. Most of the indictments found at the December term were frivolous or conceived in malice, and were very properly summarily disposed of or nolle prosequied, but yet at considerable expense to the county and also to the defendants in some instances. We naturally ask the reason for this useless expense which cannot be afforded, and of such reckless attack upon the private character of gray-headed men, and, in one instance, an innocent girl? It had been generally alleged, with some apparent foundation for the charge, that these prosecutions were instituted to render the local court expensive and unpopular, in the hope of eventually effecting its abolishment, for the boast was openly made that the "town of La Conner would pay dearly for her judicial whistle." It is almost incredible that local jealousies, selfish interests, or political resentments should sway men to the extent of perpetrating this public and private wrong. We trust that the taxpayers of Whatcom County shall never be called upon to witness a repetition of this spirit of envy and discord. Signed, TAX PAYER.*

The anonymous author of this letter understated his argument that the case caused a "considerable expense to the county." Receipts for taxes collected by the county for the most current fiscal period amounted to $8,026.80. The newspaper listed all the "paid" warrants as of

August 6, 1879. All expenses associated with the justice system amounted to $2,623.53, or 32 percent of the annual county budget. The executive half of the county government resided in Bellingham—the county seat, then and now, for Whatcom County. These included the major offices of the county commissioners, the auditor, and the assessor. The northern half of the county received two-thirds of the benefits of all of the taxes spent in the county.

Additionally, in support of the "Taxpayer's" conclusion, seven of the accused men resided in the southern half of Whatcom County, the part that later separated in 1884 to form Skagit County; Alexander Hemphill and James Taylor lived in the northern half, the part that remained Whatcom County. Of the seven men who lived in the southern half, five resided on Fidalgo Island: Barkhousen, Beale, Compton, and the Wooten brothers. Three of these five were former officials of the county government, and were therefore well acquainted with the marriage laws of the territory.

Additional data exists that supports a negative interpretation of this trial. Thirty other men in lower Whatcom County who had married Coast Salish women had not legally recorded their marriages as of 1870. Shortly after the trial of Barkhousen and the others, 14 of these 30 men still lived within the confines of southern Whatcom County. The presence of these unindicted men suggests that the "Whatcom County nine" were being made an example of for the rest of the community.

In 1875 the officers of Whatcom County included 7 Metis men out of a total of 23. Elections during the 1870s were closely contested affairs. For example, in 1878—the year before the trial—only 71 votes separated the winner from the loser in the contest for school superintendent. John Tennant, a Metis family man, tallied 349 votes to E. D. Winslow's 278. At a time when miscegenation was a concept that generated great controversy, the electoral margin between winner and loser might indeed have been affected by involving public-spirited Metis men in some sort of a controversy. It would appear that a small group of Whatcom County Euro-Americans attempted to do just that. The antimiscegenationists were putting Metis county officials on notice that their reign over a culturally mixed society would be not be easy to maintain.

Peyton Kane has been working on the history of Skagit, San Juan, and Whatcom counties for nearly ten years. Currently, he is finishing a biographical compendium of 300 marriages that occurred in the three-county area during the last half of the 19th century between pioneer settlers and local native women.