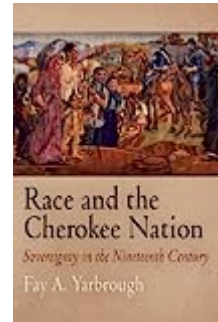




Fay A. Yarbrough. *Race and the Cherokee Nation: Sovereignty in the Nineteenth Century.* Philadelphia: University of Pennsylvania Press, 2008. x + 184 pp. \$55.00 (cloth), ISBN 978-0-8122-4056-6.



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Published on H-Genocide (March, 2009)

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Nineteenth-Century Practices, Twenty-First Century Decisions

This seminal study of Cherokee race relations during the antebellum and post-Civil War eras and their consequences in the twentieth and twenty-first centuries has broad applications across many disciplines—not just to history or sociology or anthropology, but to the legal and educational fields as well. The author has approached this subject with sensitivity and pragmatic analysis. She has drawn thoughtful conclusions based on the empirical analysis of a host of available documents and of numerical data that she collected from census records, marriage records, and other demographic sources. Where the results might be inconclusive, Yarbrough offers avenues for further investigation and analysis.

This review begins with the end. Yarbrough's second-to-last paragraph reflects that on March 3, 2007, the tribal citizenship of about 3,800 "freedmen" (a category that includes women) was revoked because a court decided they did not meet the "by blood" requirement of Cherokee citizenship law. The Cherokee freedmen were black slaves taken in by the Cherokee Nation who were later emancipated by the Emancipation Proclama-

tion. Their descendants were entitled to Cherokee Nation status into the twenty-first century. The origins of the new citizenship policy can be traced to the Treaty of 1866 with the United States, which created two categories of legal citizenship—Cherokee citizenship by birth and by law. The "by birth" requirement would eventually become a "by blood" requirement in 1880, when the 1880 U.S. census was taken. In this census the federal government defined membership in the Cherokee Nation using the language of "blood" and "nativity." Citizenship then applied to anyone who was connected to the Cherokee Nation "by blood." Blood quantum, however that may have been determined, was thus not originally the sole measure of citizenship. Decisive was *connection* by blood. So, citizens by law could be adoptees from outside of the Cherokee Nation who had no biological "blood" connection.

This decision marked the culmination of debates about identity and belonging that had been developing within the Cherokee Nation since it first adopted the institution of slavery and encountered European

colonists.[1] Although the recent tribal ruling is certain to be appealed by the freedmen, its origins date to several centuries ago, thus making it a complex and difficult issue. The author Susan Miller, who wrote *In Search of Coacoochee's Bones* (2003) and is herself a Seminole, has noted to me that the issue of disenfranchisement of freedmen is not restricted to the Cherokee Nation. Rather, it is an issue being addressed by the Seminole Nation as well. Yarbrough's work is significant in that it explores and analyzes the variables that led to the Cherokee expulsion of the freedmen, from the earliest modern debates about Cherokee citizenship to the most recent legal decision. One cannot help but suspect that the Cherokee model will affect in some way the other nations who not only engaged in slavery but also permitted varying degrees of interracial marriages. In my own work with the Kickapoo Indians and their relations with the Black Seminoles in Mexico, it became apparent that the modern-day descendants of the Black Seminoles might experience a possible disenfranchisement along the lines of the Cherokee freedmen. To date, however, there is no evidence that this will happen in the foreseeable future. What will happen in the long term is another question. Yarbrough's work then stands of and by itself as a model for further investigations into the issues of race and the tribal nations.

One question that this work raises is whether the Cherokees were selective in their racial bias, that is, whether they preferred unions with people of European descent over unions with African Americans. The answer is yes. Yarbrough points out a number of times in Cherokee history when whites were favored over African slaves for marriage and Cherokee citizenship. Yarbrough's data was collected from marriage records and census data, among other sources. According to the evidence, the Cherokee made cultural determinations about a person's suitability for marriage on a case-by-case basis. For example, if a Cherokee woman wanted to marry either a white American or an African slave, members of her clan, usually men, would vote on whether the marriage should or should not be sanctioned.

The Cherokee Nation found justification for its discriminatory actions in its constitution, which was based on the American Constitution. Although neither constitution directly addressed race relations, the Cherokees were aware of laws regarding slavery that defined slaves as chattel. It is possible that they followed as well the Lincoln-Douglas debates of 1858. Cherokees admired the practices of southern white Americans towards their

black slaves and could have sensed that such actions were protected under the Constitution. Whatever the case, Yarbrough's data convincingly reflects a Cherokee bias towards marriage with white Americans over black slaves and freedmen. Yarbrough supports her interpretations with empirical evidence, which clearly shows a greater number of marriages concluded between Cherokees and whites than between Cherokees and African slaves. For example, over 2,300 cases of marriage in the Cherokee Nation's district clerk's records were examined along with data from the 1880 census which enumerates citizens of the Cherokee Nation (p. 87). Based on her findings, the author maintains that the evolution of racial bias within the Cherokee Nation shows an increasing exclusion of former slaves and freedmen from Cherokee citizenship while making exceptions for white membership in the Cherokee Nation, albeit with some restrictions.

Beginning with 1750 as a foundation for the study and ending with the Cherokee decision to disenfranchise the freedmen in 2007, Yarbrough analyzes in detail the decisions about citizenship made by the Cherokee legal system. She finds that these became increasingly exclusionary for the black population but inclusive for the white population. Through the use of charts, maps, and tables she clearly charts the nation's history in this area of interracial inclusion and exclusion. Several examples bearing on these interpretations are well presented in chapter 4, which covers the Cherokees and the Civil War, such as "Racial Identification of Women Married to Cherokee Grooms" which includes "Cherokee, White, Other Indian, U.S. Citizen, Adopted White, and Race not Listed" (p. 82) Table 4, "Racial Identification of Men Married to Cherokee Brides," includes Cherokee, White, Colored, Other Indian, U.S. Citizen, Other White, Adopted White and Race Not Listed (p. 80).

Although Yarbrough begins in 1750, the main focus of the book is on the evolution of the idea of the Cherokee Nation and race during the nineteenth century. That she is sensitive and respectful of the term "race" is evident in the introduction. Because she must herself engage in the difficult business of classification, Yarbrough is forced to make difficult decisions concerning the people she comes across in the nineteenth-century historical record. She combines not only physical appearances but also cultural traditions in interpreting somebody's position within past Cherokee society. In Yarbrough's words, she relied "on physical description, lineage, community perception, and self identification in classifying people as members of racialized [*sic*] groups" (p. 6).

Yarbrough reminds the reader that the Cherokee, like other indigenous tribes of the American Southeast, developed ideas about citizenship based on lineality. In this case, matrilineality was the binding measure of acceptance and assignment of roles within the nation and later a determinant of the “by blood” connection as well. Furthermore, Yarbrough is sensitive to the social significance of the clan, for if there was no acceptance of a non-Cherokee by a clan, the importance of the non-Cherokee in Cherokee life was greatly diminished. For example, if a Cherokee male married a white or black woman, then there could be no clan affiliation or citizenship because the woman was not a Cherokee. However, if a Cherokee woman married a white or black man, then theoretically there could be a clan that would welcome her mate and thus perhaps grant him citizenship. This gender difference was due to the role of matrilineality in determining group belonging.

However, several factors later cast the acceptance and granting of citizenship to a white or black man into doubt. One of these factors was the evolution of the Cherokee constitution in the early years of the nineteenth century. For a little background on Cherokee legal history, one needs to begin with the 1790 American Trade and Intercourse Acts. These were an attempt by the United States to establish uniform trade regulations not only for the federal government but also for the states, individual Americans, and indigenous groups such as the Cherokee Nation. Based on these acts the Cherokee Nation began to create a governing system based on the American Constitution, with three branches of government, a presiding leader, a bicameral legislature, and a judiciary. The Cherokee also reduced their language to Sequoyah’s Cherokee syllabary so as to have a unified linguistic system. And then, times changed. There was the Indian Removal and subsequent interpretations of the 1834 Intercourse Act which was increasingly questioned by American citizens and American courts concerning Cherokee citizenship requirements and the legal jurisdictions of the Cherokee courts and American courts. “The language of the Intercourse Acts left the status of intermarried or, later, adopted citizens such as the freedmen open to judicial interpretation. So many American citizens ignored or attempted to circumvent the jurisdictional limits set by the Intercourse Acts by marriage into the Nation” (p. 63). Ultimately this dispute led to the Cherokee 1855 Marriage Law. This law “essentially excluded people of African descent from legitimate citizenship” (p. 73). In 1839 the Cherokee Nation passed the Tahlequah Constitution to replace the first constitu-

tion, keeping the structure of its government intact. Following the 1839 constitution the Cherokee Nation began passing laws establishing itself as a sovereign polity with rights that it expected the United States to respect. Over time these constitutional revisions reflected the influence of American racism on Cherokee views of identity. These racialized concepts of identity were carried into the twentieth century. Yarbrough suggests that the Cherokees adopted attitudes towards the black population—both freedman and slave—similar to those adopted by southern slave owners. Perhaps the best explanation for this adaptation of southern slave owners’ attitudes by the Cherokees is that it was due to several factors: First, the white slave owners were successful in controlling their slaves; second, such practices maintained the superiority of the whites. Adopting this cultural form of control would ensure the Cherokees their supremacy as well.

Alongside the development of Cherokee discrimination against black people, there were also restrictions in place for whites seeking acceptance in the Cherokee Nation. For example, Cherokee legislators noticed in the early eighteenth century that Cherokee women were increasingly seeking non-nation spouses while at the same time there were non-Native American men seeking Cherokee wives for the purpose of increasing their access to Cherokee natural resources. Consequently, “First on the agenda was to remove the possibility of black marriage partners for Cherokee men and women early in the 19th century. Then the lawmakers “complicated the process for intermarriage between white men and Cherokee women, ostensibly to protect Cherokee women from making bad choices and to protect the Nation from the bad choices that women might make” (p. 10). These restrictions were fairly consistent through the constitutional revisions of 1827 and 1855. However, after the Civil War, which is addressed in chapter 4, the United States began to forcibly require the Cherokee Nation to accept the freed slaves, or freedmen, as Cherokee citizens. The nation acquiesced to American demands, but, as Yarbrough writes, “on their own terms,” thus “limiting the legal rights of the newly freed people” (p. 11). White men seeking to marry into the nation did not face these same restrictions.

Yarbrough’s closing comments in chapter 3 clearly state the Cherokee attitude towards the slaves: “The regulation of interracial marriage in the Cherokee Nation, then served multiple functions: The laws reinforced Cherokee sovereignty, marked Cherokees and whites as social and racial equals, and starkly reduced people of

African descent to an inferior statusâ (p. 73). That attitude persisted in the aftermath of the Civil War even though the U. S. government was demanding acceptance of the freemen into the nation. Nevertheless, in fairness to the Cherokee Nation, the governing council did emancipate the slaves in their nation and abolished slavery in 1863. On the surface it seemed the Cherokee Nation was acquiescing to American demands. However, such was not entirely the case. It is here that Yarbrough uses available empirical data to explain or conceptualize the Cherokee approach to non-Cherokee and non-Native American unions, especially concerning marriages between Cherokee women and white men. For example, Cherokee women were the most active participants, by far, in interracial marriages in the Cherokee Nation, and they overwhelmingly chose unions with White menâ (p. 80). Table 4, "Racial Identification of Men Married to Cherokee Brides," reflects that 14 percent of these men were Cherokee, 0.8 percent were "colored," 1.9 percent were "other Indian," and 82 percent were white. Furthermore, according to table 5, more white laborers were issued permits to legally reside in the nation than black laborers. This data is based on the Cherokee Nationâs 1880 census. What becomes apparent after the Civil War is that the Cherokees began to recognize three racial entities within the nation and these were natives, whites, and blacks. The Cherokees also viewed themselves as racially distinct from whites and blacks. Yarbrough then goes on to discuss criteria for one to be considered native Cherokee by birth and by blood. This eventually became the "by blood" doctrine for citizenship rights. In other words the Cherokees were increasingly laying the groundwork for their own self-identity by more clearly defining the identities of those categories of people who were neither Cherokee nor Native American. It was according to this interpretive tradition that in 2007 the Cherokee Nation declared that those not of Cherokee blood could not be

citizens of the Cherokee Nation.

One of the more interesting treatments Yarbrough brings to her work is her intertwining of actual case studies, drawn from interviews she conducted herself or from other sources such as the WPA interviews of the 1930s, with statistical data. This book raises several interesting questions for future research. For example, what is the position of other tribal nations, such as the Choctaws, Creeks, and Seminoles, on the issue of race and tribal citizenship? Did these nations establish guidelines for citizenship and were they exclusionary to persons of non-Native American origin?

In conclusion, Yarbroughâs work is timely and provocative. It is provocative in a positive sense for it addresses an issue that is seldom discussed by the general public or by scholars. She has done very well in provoking open discussion about Native Americans, racial issues, and the continuing effort by Native Americans to define who they are in America. As white and black Americans continue to define, redefine, and search for possible solutions to racism, segregation, and ethnic identity, so too do Native Americans. In a sense Yarbrough has offered a poignant insight—that human beings, after hundreds of years in this "New World," are still wrestling with what is fair, just, and equal to all of its citizens and trying to maintain a sense of balance, a sense of fairness to all concerned. The Cherokee Nation is coming to grips with these issues and addressing them in its own ways. Will its journey be copied by other nations? Therein lies the question for further inquiry.

Note

[1]. Slavery was common among Indians throughout the Southeast and Southwest. A number of the Southeastern Indians adopted the European concept of slavery but their practices differed from nation to nation.

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Citation: John Gesick. Review of Yarbrough, Fay A., *Race and the Cherokee Nation: Sovereignty in the Nineteenth Century*. H-Genocide, H-Net Reviews. March, 2009.

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