

Sovereignty, Land, and Language: The Marshall Trilogy & John Rollin Ridge's *Joaquín Murieta*

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INTRODUCTION

Sovereignty, Law, and Language

A History of Resilience

Resilience bloomed, and continues to do so, in the accounts of the experiences endured during the Cherokee Removal, and although the actions of the United States government against the Cherokee people tested the capacities of the Tribe, they prevailed despite the devastating efforts against them. In reviewing a history of the Cherokee Nation, the civilization program in combination with the pressure the Tribe experienced to comply with removal, shaped a central moment in their history. The removal of the Tribe from their ancestral lands challenged conceptions of Indigenous sovereignty as it related to the occupation of space. With both the government of the United States and the government of the Cherokee Nation in opposition with one another, the push for land ownership on both sides led to increased tension over the Nation's definition of sovereignty.

While this research focuses on the Cherokee Nation and the impacts of removal specific to them, it is critical to recognize that the official process of removal affected five tribes in total. In addition to the forced removal of the Cherokee peoples, the Chickasaw, Choctaw, Seminole, and Creek peoples all underwent removal and displacement under Andrew Jackson's administration. In reviewing a timeline of removal, three very important court cases outlined the legal fight that ensued between the Cherokee government and the Supreme Court. Amidst those three cases, heard by the Supreme Court in 1823, 1831, and 1832, the Indian Removal Act passed in 1830. Jackson brought the act to Congress, which then passed it into law. Prior to the legal battles beginning, the Cherokee Nation previously agreed upon and executed the cessation

of some lands in 1819¹, but would go on to sign a key treaty in 1835, the Treaty of New Echota. Throughout this period of Cherokee history, ongoing cessations and deals rose out of the federal government's greed for the resource rich land. This timeline establishes broader chronological context for the legal cases and is important to help organize and conceptualize the events leading up to removal.

Some of the tribes mentioned previously had already ceded their land and departed west, but in the case of the Cherokee peoples who are the focus of this research, the struggle for their ownership of land escalated rapidly. The formation of political factions within the Tribe further sparked the turmoil enveloping the issues around leaving the land and migrating. Despite the best efforts of the greater majority of the Tribe to remain on their ancestral lands, militarized efforts by the federal government began in 1838, effectively forcing Cherokee peoples out of their homes. The militarization became known as the Trail of Tears, resulting in the painful relocation of the Cherokee Tribe to Oklahoma. Although sadness induced by the Trail of Tears, and anger towards the United States government both affect the story of the Cherokee Nation, a deep-rooted resilience resulted from the removal of the Cherokee from their land.

This brief history sets out the central concerns around the relationship between land and sovereignty, and in the case of this research, how they interact in both the realm of the law and literature. Each of these people, cases, documents, and events constitute a powerful bank of language vital in defining civilization and how language controls the definition of sovereignty. Acute attention to language should and will be paid throughout the course of the following pages, in both the historical and literary components of this research. Language is pivotal in how

¹ The Cherokee government ceded a limited amount of land prior to the legal battles that eventually ensue over the entirety of the Cherokee Nation's homelands. It is important to note that while the National Council of the Cherokee people ceded land to the federal government, they in turn rightfully expected protections for the remainder of their

sovereignty is shaped through a historical lens, but also in how Cherokee sovereignty persists today. Integral to navigating the relationship through the language used both in terms of law and Cherokee writings (i.e. *The Life and Adventures of Joaquín Murieta*) I argue the Tribe managed to retain their sovereignty through the resilience they gathered to persevere despite the actions taken against them by the United States. The Cherokee Nation maintained its sovereignty even though it was forced to endure the theft of ancestral lands.

Modeling Civilization: The Cherokee Attempt to Save the Land

The concept of government, integral in understanding the fight for Cherokee independence from the United States, began with the Cherokee's attempt to adopt a certain model of civilization, in an effort to retain the ownership of their land. For the purpose of this thesis, I will refer to the government of the United States of America as a separate entity from the Cherokee Nation's government—they were two separate governmental structures, each to be recognized as individually independent from the other. Although the Cherokee Nation geographically sits within the United States, the governments discussed in the following pages exist in independent geographical and political spheres. I will often refer to the government of the Cherokee Nation as the National Council, as it was historically referred to during the formation of the new Cherokee government, and throughout the trials held in the Supreme Court pertaining to removal. Creating the distinction between the two governments shapes a better understanding of the Council's efforts in fighting for sovereignty of their people and land. As if to prove their legitimacy to an encroaching white government, the National Council reshaped its own functioning form of government to appease its national counterpart. During the restructuring of the Cherokee's central government, borders became increasingly more important since the

United States refused to recognize Cherokee ownership of the land situated within mapped borders of other states. While the dispute over land ownership and forced removal hung in question, tensions raged between governments.

Critical legal shifts commenced with the move from “law [which] had been informal and clan-based” (Purdue and Green 13) to the “creation of a written law code” (14). Traditionally speaking, in 1796 and prior, “the Cherokee Nation was divided into seven clans [...] –each with a distinct genealogy traced through the female line of descent and at that time the influence of clan tradition on Cherokee life reached into every sphere” (Wilkins 29). For the Nation to leap so drastically to written laws, and eventually to a system of government modeled on U.S. democracy, demonstrated the external pressures on tribal leadership. By 1808 the first law was written which established a national police force. In 1810 a second written law appeared which gave the responsibility of avenging deaths to the Cherokee centralized government instead of individual clans. 1817 marked the year that the National Council determined no other entity than itself could cede the Nation’s land, and in 1827, the Cherokee Constitution established a new formalized government. Each of these milestones in the development of a different Cherokee government were particularly important because they demonstrated the extent of the pressure placed on the National Council by the United States. For the National Council to shift from a clan-based system to a three party system so quickly illustrated the dire nature of political pressures they experienced because of the United States.

Political Schisms within the Cherokee Tribe

As a result of the rapid reshaping of their government, the Cherokee peoples became politically divided into two distinct factions. On one side of the political schism sat predominant

families like the Ridges and Boudinots—their party aptly named the Ridge faction due to the high political involvement of the Ridge family. The Ridge faction argued for removal, pushing the agenda to relocate. From their perspective, refusing to cede the land meant jeopardizing the preservation of their culture. The faction hoped that the solution in preserving the Tribe equated to moving everyone further West. On the opposing side of the schism the Ross faction formed, led by the Ross family. They adamantly opposed removal, and argued for the preservation of land as a leading way to exercise sovereignty. Not only did they argue to remain on the land, but they also greatly outnumbered the Ridge faction. In the heat of the internal political debates occurring amongst Cherokee members, outside pressures continued to force the Tribe towards ceding the land and moving off of it, regardless of the opinions of each faction within the newly shaped government of the Cherokee peoples.

The political schism was both polarized and extreme, and two sides fought against one another over issues regarding the definition of sovereignty. During such a tumultuous time within their own political structure, attempting to set out guidelines and fight for their independence from a domineering mass of U.S. politicians encroaching on their ancestral lands proved difficult. The importance of outlining and defining sovereignty appeared throughout the unrest occurring within the Tribe. A battle perceived as a choice between preserving the culture and preserving the land led to the inability of the Cherokee members to agree upon the best route in defining themselves and remaining sovereign. The schism within the Tribe resulted in the Ridge faction signing and supporting a treaty not comporting with the beliefs of the majority of the Tribe. They moved ahead without obtaining consent from the rest of the National Council, which drove a deeper wedge through the Cherokee Nation.

Ridge Family: Their Role in Politics and Power

In what they believed to be more progressive movements, the Ridge family exposed different versions of “whiteness” to the Tribe. While the Ross family also adopted aspects of Westernized ideology, they led a faction who did not agree that “Christianity and colonial-styled education were the only symbols of civilization” (Clair 318). In fact, the Ross faction constituted a large population of Cherokees who invested in understanding their culture through spirituality and the education provided by stories from elders² (318) rather than investing in white culture. The Ridge family represented the opposite stance on access to legitimacy in the eyes of the federal government; they built a European style home on Native Cherokee land, educated their children in white schools, and focused on passing along Western ideals and values to the next generation. They were also a mixed-race family and white passing, which contributed to their easier ability to participate in white culture.

Amidst their attempts to expose the Cherokee peoples to the benefits of adopting Western beliefs in their daily lives, the Ridge family provided a unique perspective in the overall restructuring of the Council. An incredibly influential family, the Ridges, alongside the Boudinots and others, “stepped forward to snatch their people from ruin, secure payments for property which they no longer possessed, and lead them to a country in the West,” as one history sympathetic to the Ridge faction explained (Wilkins 4). There they hoped they could reestablish the power and retain the culture of the Cherokee peoples. In the eyes of the Tribe, the Ridge family was seen as remarkably progressive, although some saw their progressive attitudes as a negative attribute, even too radical. Jeopardizing their land meant the Tribe not only ceded their ancestral ties, but also their power over land ownership. The Ridge faction recognized the power

² Robin Patric Clair writes about the population of Cherokee people who invested in their traditional beliefs and values, one of which defended the current state of Cherokee governance as a civilized entity, prior to the restructuring of the National Council (318).

of the United States government over the Cherokee people and so sovereignty therefore could not tie directly to property titles. For the Ridge faction, admitting they needed the land to remain a sovereign nation, independent of the U.S. government, appeared to be a losing battle.

John Ridge, alongside his cousin Elias Boudinot, would continue devoting their lives to attempting to protect the culture of tribe by prescribing to whiteness. They believed assimilating would provide a better opportunity to gain respect from the United States government, and relocating the Tribe meant they would all remain together geographically without the threat of violence (or so they thought). They could preserve their culture if the Tribe remained united. John Ridge attended a white school as a young adult, and very similar to his father, demonstrated a unique “eagerness to embrace the white man’s ways; he expressed the hope that the Cherokee tribe would soon be admitted as one of the states of the Union” (Debo 59). The family continued to align with the progressive members of the Tribe, and they struggled to gain the support of the more traditional members (60). This information is key to my focus on physical, traditional, ceremonial, and emotional connections to land since “the fertility of the fields which their ancestors had tilled” (60) is what drew white settlers in, and effectively pushed the Cherokee out. The appeal of fertile land and ample resources led to unrest over official ownership.

The Ridge family heavily influenced the decision to cede land and leave the area, which broke the connection to the land, even though their intentions to preserve the tribe led them to their political decision (60). In addition to concerns regarding cultural preservation, John Ridge viewed ceding the land as the only way to prove to the national government of the United States that the Cherokee Nation must be taken seriously and recognized as an independent party. Additionally, leaving the land meant preserving the tribe as a singular nation. Under militarized threat by the national government, John Ridge believed fighting for the land ran the risk of not

only losing cultural independence, but also decimating the Tribe altogether. The importance of the Ridge family is complex, but condenses to the documents that would shape the Cherokee Nation as it adjusted to white America. The Ridges were a key part of a process in which land that had once belonged to the Cherokee people was bought, sold, ceded, and fought over. The family attempted to keep pace with the world developing around the Cherokee peoples, to reclaim their sovereignty and stake out their space within the United States' overwhelmingly powerful government. The legal documents the Ridges participated in writing shaped the future for their people, and eventually resulted in the forced removal of the Cherokee Nation.

The Role of Language: Legal and Literary Sovereignities

With the rising political factions drawing attention to the occupation of the Cherokee Tribe on their land located within state borders, the tumultuous relationship between the Cherokee Nation and the United States government over land and Native sovereignty continued to develop. Before the Ridge faction signed the Treaty of New Echota, three legal cases related to Cherokee sovereignty against the state of Georgia passed through the Supreme Court. The cases outlined the future of Native American law within the United States. The Court began hearing the cases that would later become known as the Marshall Trilogy in 1823. Chief Justice John Marshall utilized the opportunity during the rulings of the three cases to develop legal principles to govern the relationship between the United States and Native populations: a large step in the development of Native American law. His influence on the cases played a role in the current state of Native American law today. Each of the cases dealt with the issues of land, and each pertained in some way to the United States stealing native territory away from the occupying populations.

To expand on the important legal documents pertaining to the connection between land and sovereignty, I must acknowledge the 1827 Cherokee Constitution and the 1835 Treaty of New Echota. The Cherokee Constitution, signed and ratified in 1827, established the ties of the people to the land by outright restricting the sale of property to anyone other than the Council itself. The goal of the constitution “delineated the boundaries of the Nation, thereby linking the governing document to the Cherokee homeland: without the land, the Nation did not exist” (Perdue and Green 14). The document sought to make Cherokee governance recognizable to the United States, and thus command respect for Cherokee independence on a federal level. The discrepancies in legal documents between the Cherokee Council and the Supreme Court developed because the Cherokee deemed treaties “the supreme law of the land” (Pappas 34). Unfortunately for the Nation, the U.S. government did not hold the treaties produced to a similar standard. In the case of the Treaty of New Echota however, the U.S. legitimized the document despite extremely limited support from the Tribe. While the Ridge faction truly believed they supported removal for the right reasons to protect the Tribe, the United States supported Cherokee documents under selfish motives, based on convenience and federal gain.

Beyond the legal documents produced by the Supreme Court and the Cherokee Nation, Andrew Jackson and the Indian Removal Act of 1830 brought the Cherokee’s efforts to protect their land to a crossroad. With the question of sovereignty up for debate, and the threat of militarized removal now encroaching on their borders, the people were left with no choice but to move or face violence. Due to the radical nature of the Ridge faction, and the unfortunate results of the dishonored Treaty of New Echota (Clair 321), the Ridge family witnessed the murder of John Ridge, Elias Boudinot, and Major Ridge in 1839 for breaking Cherokee law. The murders of the men ensued in the aftermath of the passive decision to force the Cherokee off their land

(Wilkins 4). The trauma of John Ridge's death further implanted bitterness within the family about the politics and cultural change affecting the Nation at the hand of the U.S. government and legal system.

The Indian Removal Act and the Marshall Trilogy, in combination with documents produced by the Cherokee Nation, namely the Treaty of New Echota, brought insurmountable political pressure on the Nation. The aftermath of and recovery from removal produced literature speaking to the cultural impact of restructuring and implementing new laws. Historically speaking, the Ridge family's presence in places where political decisions were made became important when John Ridge's son, John Rollin Ridge, authored his first novel. In his novel Rollin Ridge challenges the power in ceding land if ownership stands in the way of the safety for those living on it. His characters experience violence over defending homesteads—mirroring the militarized violence his people experienced for refusing to cede to the state during the Cherokee Removal.

For readers unfamiliar with *The Life and Adventures of Joaquín Murieta, the Celebrated California Bandit*, the novel broke stigmas in 1854 as the first book published by a Native author. Rollin Ridge situates the storyline of the novel around the relocation of the U.S.-Mexico border and the California Gold Rush—a relatable period in United States history. The novel weaves the harrowing tale of the legendary Mexican-American bandit Joaquín Murieta, and follows his gruesome adventures throughout the state of California. Joaquín undergoes a drastic character shift from an honorable workingman to a criminal; yet debatably, he embodies vigilante justice despite his outward representation as a bold outlaw.

A crucial aspect in comprehending sovereignty is understanding how borders shape it. Murieta faces adversity and displacement after Mexico lost to the United States in the Mexican-

American War. The novel acknowledges the border shifting simply as a result of political powers deciding to move it. Although Murieta elects to migrate from Mexico to the United States based on his understanding of and desire to embody American ideals, the movement of the northern border of Mexico is important because it represents the fragility of land usage and ownership, as well as the uncertainty of national borders. Similar to the struggle that the Cherokee people faced with borders appearing and disappearing with regard to their own land within established state borders, Joaquín found himself in a peculiar limbo within “this land of luck and chances” (Ridge 4). His fresh start in America represents the tumultuous decision by Ridge’s own family to relocate the Tribe—and a very clear internal battle ensues after Murieta migrates north. Despite Ridge’s appropriation of a Mexican perspective, he addresses extremely similar concepts to his own experience with regard to removal and the acquisition of land—he represents a literary aspect of personal sovereignty living on ambiguous, politically charged territory.

While the surface reading of the book allows for the reader to become lost in and enthralled by the adventures of the banditti, the underlying theme speaks to the deeply rooted history of Native American removal and questions the concept of borders and how they define an entire population. The history of the Ridge family’s involvement in the removal of their people, the publishing of Rollin Ridge’s novel, and the court proceedings which determined the Cherokee’s fate, all contribute to the construction and reconstruction of documented Native American sovereignty in literature. Rollin Ridge’s work intertwines personal experience and human emotion with the clinical approach to sovereignty addressed by the Supreme Court cases. Somewhere between the clinical and sterile approach from the Court and the deeply emotional contingencies of experience represented in the novel, the Cherokee Tribe navigated the balance of determining how to define national sovereignty. The majority of the Tribe argued that land

determined the sovereignty of the nation; without ties to authority over space, the Nation would fail to remain intact³.

Defining Sovereignty—An Ongoing Conversation

The issue of sovereignty in the context of the Cherokee Nation arguably ties directly to land usage and the Nation's eventual forced removal. In reviewing the Marshall Trilogy argued in the Supreme Court juxtaposed with John Rollin Ridge's novel, *The Life and Adventures of Joaquín Murieta*, I will argue that sovereignty does not directly bind people to the ownership of land. A sovereign nation can in fact be contingent upon a group of people remaining together despite displacement. While history has shown tribes have maintained sovereignty despite removal, they also redefine the meaning of sovereign from a term pertaining to land ownership, to a word based on relationships. With the Cherokee Nation under pressure from the United States government to cede their land, the Nation claimed ownership over their territory within Georgia's established borders⁴. Despite the Ridge faction's efforts to preserve Cherokee culture and sovereignty by electing to relocate everyone, the overwhelming consensus of the National Council argued that sovereignty would dissolve should they surrender their land. John Rollin Ridge explores and expands upon the idea of sovereignty and the relationship between independence and established ownership of land throughout his novel.

The relationship between sovereignty, the Marshall cases, and Ridge's novel are riddled with intricacies that are centrally focused on legal documents and policies put in place to subdue

³ Purdue and Green discuss the faction schism throughout their commentary provided on various documents produced before, during, and after removal (14). The connection between land ownership and sovereignty constituted the root of the argument made by the Ross faction.

⁴ The dispute argued in this thesis pertains specifically to the land the Cherokee people lost in Georgia. It is important to note that Cherokee territory spanned across the borders of Georgia, Tennessee, Alabama, and North Carolina (Purdue and Green 20).

the Cherokee Nation. Despite the United States' best efforts to erase the Cherokee people from history by stripping them of their ancestral lands, forcing "whiteness" upon them despite their continued efforts to assimilate, and physically relocating the Tribe beyond their borders, the Nation continues to persevere. Arguably, through the lens of the more traditional members of the Tribe, without their ancestral land in the southern United States, the Cherokee peoples would risk abdicating their authority over their independence within the United States. The U.S. government invaded the Cherokee populations' territory and, by forcing them out, stripped an element of voice from the governments that were created to inscribe boundaries between the United States and the Native tribes.

Losing control over land ownership but not cultural capital seemed to govern the Tribe's concept of sovereignty during the height of removal. Most Cherokee peoples viewed cessation of the land as detrimental to instead of a catalyst for retaining culture. I argue that within the political schism that occurred amongst the Cherokee peoples, they were able to retain their sovereignty despite removal. While I believe it is paramount to recognize how the idea of sovereignty shifted after the invasion of the United States military and the relocation of the Cherokee Nation altogether, resilience among the people preserved the sovereignty of the Tribe. That is to say, more weight fell upon their ability to retain their culture and make connections to the land in a new and different territory.

CHAPTER ONE

The Marshall Trilogy, Legal Matters, and the Law of the Land

The legal environment around the Cherokee Nation drastically shifted over the course of time from colonization to removal. Discrimination against the Cherokee and Native American peoples in general began with the colonization of North America, and for the purpose of this thesis, resulted in the Indian Removal Act of 1830. Native American law has been shaped and reshaped by legal systems established within the tribe, but also by elaborate external pressures like the Supreme Court. Focusing specifically on the Cherokee Nation, which harbors a deep history with regard to legal proceedings and the United States government, illuminates the complicated connections between land, law, and importance of Native sovereignty.

Historical Documents Pertinent to Cherokee Interactions with United States of America

The legal framework engulfing the Cherokee Nation⁵ drastically affected not only the geographic location for the Tribe, but also the sovereignty of the people. Although legal proceedings existed at the forefront of the thoughts and attitudes the Cherokee Nation faced, cultural identity suffered a toll when the United States government coveted ancestral land the Cherokee people inhabited for all of their history. The purpose of this review of pertinent legal documents from the United States of America in regards to the Cherokee Nation serves to examine the breakdown of communication among and between the National Council and the federal government. The two political bodies disputed land usage and ownership, and it is

⁵ I am choosing to focus on the Cherokee Nation because of the critical analysis I will later provide about *The Life and Adventures of Joaquín Murieta* by John Rollin Ridge. The novel provides incredible insight and perspective about land and sovereignty. Additionally, as discussed, the Ridge family was paramount in the legal consequences the Cherokee people faced.

important to examine the disregard by the United States for the ancestry of Indigenous peoples. While these documents provide a very sterile approach to the Cherokee Removal, analyzing the language the U.S. used to obtain a desired end makes them pertinent in understanding why the legal side of the battle over land weighed so heavily on the definition of Cherokee sovereignty.

The tumultuous relationship between the Cherokee Nation and the United States government continued to develop, and eventually led to intervention by the U.S. Supreme Court. The court utilized the opportunity during the rulings of the three Marshall Trilogy cases to develop legal principles to govern the relationship between the United States and Native populations. Chief Justice John Marshall made a large impact in the development of how the courts understand Native American law as it stands today. Throughout this comprehensive and general review of legal documents, it is crucial to note that the Supreme Court constructed what is today recognized as Native American law during the time the cases were heard. Prior to these cases, no law stood in place to guide the Court's decisions. Marshall, for the most part, did not hold any regard for the previous structure and systems of government practiced by the Cherokee Nation under Cherokee government. Each of the Marshall Trilogy cases addresses the issues of land, and each pertains in some way to the United States stealing and forcing Cherokee territory away from the populations already there.

Johnson v. M'Intosh appeared in the Supreme Court in 1823. The case regarded the purchasing of land and whether or not the state should recognize land purchased from Cherokee people after 1763. Chief Justice John Marshall ruled against whites that argued their land purchased from the Cherokee was legitimate, claiming the United States exercised jurisdiction over land claimed as Cherokee territory in the aftermath of the Revolutionary War⁶ (Purdue and

⁶ By definition established in international law, because England discovered the colonies, the country therefore owned the land associated (Purdue and Green 8) which included Cherokee territory. The United States government

Green 8). The second case, heard in 1831, *Cherokee Nation v. Georgia*, became famous as a valiant effort by the Tribe to restrict settlers from moving on to Cherokee lands. At the heart of the issue, the Cherokee Nation would either go on record as a state or a foreign nation since they had to be able to oppose the state of Georgia. In order to do so, the Nation needed to be recognized by the Court as an independent actor. Because of the inherent messiness of the case, the Court managed to avoid an official ruling, passing the responsibility of the decision off to the jurisdiction of the state. In the third case of the trilogy, *Worcester v. Georgia*, the Cherokee Nation scored a legal win. In 1832, Justice Marshall actually ruled in favor the Nation by determining that Georgia violated the Treaty of Hopewell in asserting jurisdiction over a missionary living on Cherokee land. Despite the positive ruling in favor of the Nation, the follow-up and accountability passed from the Supreme Court to the state, which is also where the victory for the Cherokee Nation then ceased to exist.

Language played a key role in the history of politics between the Native American populations and the United States government. With the onset of the word *indigenous* to describe native populations, an interesting phenomenon began. The legal system adopted an umbrella term to describe Native peoples, “encompass[ing] such categories as *Indian*, *native*, and *aboriginal*” (Bens 248). In doing so, the term *indigenous* “is now the most frequently used term inside and outside international law to signify communities whose ancestors inhabited territories in pre-colonial times” (248). From a legal perspective, it is important to recognize this colloquial shift since it further demeans the sovereignty of the Cherokee Nation. Jonas Bens comments extensively on the use of language in the courts, and in this particular case, although it does pertain to all Native groups, the Cherokee peoples experienced erasure by the Supreme Court.

considered Native American peoples as enemies of the state since a majority of tribes allied with England during the Revolutionary War. When England lost the war, the federal government viewed their conquest as all encompassing of their enemies’ territories, which in this case applied to the land of sovereign Native nations (8).

The Court would not recognize independent Cherokee identity via the language it used throughout the cases. By referring to the Tribe as Indigenous instead of by their given name, the Court managed to simplify the culture and the people. The large-scale erasure came directly from the Supreme Court, but on a smaller level, the people were now othered in an extreme sense. A singular description emerged to group every Native population together under one amassing term. Both individuality and land suffered—along with it the sovereign identity of the Cherokee peoples.

The Marshall Trilogy: Johnson v. M'Intosh

Johnson v. M'Intosh, the first case of the trilogy to be heard in 1823, dealt with the legal purchases of Native American land and contested “whether or not purchases of land by private individuals from American Indians after 1763 were based on good title” (Pappas 29). Justice Marshall ruled against the appellants, the individuals who came forward to appeal to the Supreme Court, and defend the deeds to their properties. Justice Marshall determined that the government would not recognize the individual deeds. His ruling reflected the attitude of the government, that the United States inherited the “rights of exclusive purchase of Indian land” (29) from Britain after the conclusion of the war. Again, the idea of ownership as it relates to quickly moving and redefining borders appears with this line of thought.

The Native perspective was lost in this case, as the appellants were white landowners attempting to defend their purchases of *Native land*. The case became incredibly important in understanding how the Court dealt with Native land because Justice Marshall “laid out a detailed survey of how land ownership originated in the New World by discovery [...] the Indians were acknowledged to have an *occupancy*, rather than full title to their land” (Pappas 29). Essentially,

the Court determined the white fight over Indigenous land was between white owner and government; the Native perspective completely faded into the political abyss.

The Marshall Trilogy: Cherokee Nation v. Georgia

The second case, *Cherokee Nation v. Georgia*, was heard in 1831; the case represented a seemingly last-ditch effort by the Cherokee government to stop the state of Georgia from allowing U.S. settlers to move in and live on their land. The main issue in the case centered on whether or not the Cherokee Nation “would be recognized by the U.S. Supreme Court as a “state” or “foreign nation” for the purposes of asserting original jurisdiction to hear claims against the State of Georgia” (Pappas 33). The Cherokees referenced documents such as the 1763 Royal Charter and the Doctrine of Discovery in their defense, and asserted to the Court that because they had never agreed to such documents, they could not be held to their jurisdiction. Additionally, since the Tribe had signed multiple treaties by the time the Court tried this case, their argument asserted that treaties, “not state law, are the supreme law of the land” (34).

1785 marked the first official treaty signed between the United States and the Cherokee, the Treaty of Hopewell, in which “the union recognized the legal status of the Cherokee’s homeland” (Strickland 64). With the history of the relationship between the Cherokee and the government weighing on the decision by the Court, the final ruling by Marshall “looked for other judicial grounds to *avoid* the controversy [between the Cherokees and the State of Georgia] altogether” (Pappas 34). While the Court officially managed to avoid an official, definitive ruling, they placed power back into the state’s jurisdiction, allowing Georgia to decide how to move forward and the Cherokees suffered for it.

The Marshall Trilogy: Worcester v. Georgia

The third and final case in the Marshall Trilogy, *Worcester v. Georgia*, passed through the Supreme Court in 1832 and partially flipped the script on the ambiguous reactions of the Court in *Cherokee Nation*. *Worcester* challenged the growing national attitude towards American Indian sovereignty when the Court ruled in favor of the Cherokee, holding that the “Cherokee Nation was sovereign in relation to states and that any legislation by the State of Georgia asserting jurisdiction over the Cherokee Nation was void” (Pappas 35). Again, the Court considered the Treaty of Hopewell, and the issue on the table was whether or not Georgia violated the treaty by asserting jurisdiction over a missionary who was working and living on Cherokee land. The question of sovereignty emerged again and this time Chief Justice Marshall sided with the Cherokee Nation.

It is heavily debatable whether the Marshall Court truly believed that the Cherokee Nation could operate as a sovereign entity and I would argue that Marshall set the Tribe up for failure. Although he offered them a win in *Worcester*, he also explicitly stated at the conclusion of the trial that the Cherokee Nation’s “independent natural rights are subject to the imposition of an ‘irresistible power’” (38). He foreshadowed the loss of native sovereignty as it relates to land, implying the United States represented the irresistible power he referenced. Despite handing the Cherokee Nation an apparent victory in the case ruling, Marshall did not correct himself regarding the racism he exercised within the Court. According to Nathan Goetting, Marshall “oft emphasized belief that native peoples were puerile, innocent, and in desperate need of the federal government’s beneficent guidance” (Goetting 212). The terminology Marshall applied to describe an entire population of people demonstrated the federal government’s stance on supporting the sovereignty of the Cherokee Nation. Marshall did not express any interest in

helping the Tribe, despite the ruling, and I agree with Goetting that Marshall did not allow the National Council very much room to succeed alone without the continued support of the federal government.

The Indian Removal Act of 1830

Despite the heavy pressure exerted by the Supreme Court throughout the Marshall cases, Congress interjected and began to make enormous changes in 1830 when the Indian Removal Act was signed into law. In his State of the Union Address in December of 1830, President Andrew Jackson proclaimed

What good man would prefer a country covered with forests and ranged by a few thousand savages to our extensive Republic, studded with cities, towns, and prosperous farms, embellished with all the improvements which art can devise or industry execute, occupied by more than 12,000,000 happy people, and filled with all the blessings of liberty, civilization, and religion? (Jackson 127)

He refers to good men in his questioning, therefore appealing to his audience of white listeners, aspiring to attain the best resources the land could offer. Additionally, comparing the empty untouched land to the untapped potential in expanding civilization created a deeper basis of appeal for those looking to increase their own capital. Jackson glamorizes the potential for land usage without addressing the displacement and havoc the Removal Act would eventually wreck on the Tribes inhabiting the land. By demonizing what he refers to as a scant population, he rallies white support without hesitation while erasing the death of perhaps millions. Despite his flashy ideas for the land he interprets as seemingly empty, Jackson's ideas for "Indian removal"

did not echo unanimously throughout Congress and he faced opposition on many fronts.

Lawmakers like Senator Theodore Frelinghuysen drove the argument

to uphold the sovereignty of the Cherokee Nation, condemn Georgia's extension of jurisdiction and Jackson's refusal to protect the Cherokees from Georgia law, charge that the entire scheme was a transparent attempt to force the Cherokees and other tribes out of their lands, and predict terrible suffering for the Indian victims of the policy (Purdue and Green 122)⁷

Frelinghuysen was by no means the only United States politician who disagreed with Jackson's intentions to remove the Cherokee people⁸ from their land. Representatives and senators throughout the House and the Senate battled in "extremely bitter, highly partisan, emotionally supercharged, and exhausting" (122) ways in an attempt to bar President Jackson from passing the act. The audacity in Frelinghuysen's claim that the United States concocted a scheme deviant enough to try and force Cherokee people off of their land, meant that political bodies could recognize the malice in Jackson's actions. Frelinghuysen could identify the suffering of the Native Tribes before they underwent removal, and in his attempt to contradict Jackson's act, he defended the sovereignty of the Cherokee Nation with direct regard to the ownership of land. Despite opposing politicians' best efforts to divert away from passing the act, "the final vote, clearly along party lines, was 28 to 19" (122).

The decisions occurring in the Supreme Court during the span of Jackson's presidency constituted a small piece of the Cherokee removal debate in the grand scheme of American

⁷ Recognition is owed to Theda Purdue and Michael D. Green for the information provided regarding the Indian Removal Act of 1830, Jackson's addresses, and the details about Congress. They included Jackson's original address in their collection, but provide additional context and commentary.

⁸ To reiterate the Indian Removal Act of 1830 affected and removed five tribes, commonly referred to as the Five Civilized Tribes: the Chickasaw, Choctaw, Creek, Seminole, and Cherokee.

politics. Jackson made decisions, as reflected in Congress, that permanently and violently disconnected the Cherokee peoples from their land. According to Jackson, because the Cherokee population lived on land within the established borders of the state of Georgia, it would be completely unconstitutional to grant sovereignty to the Cherokee Nation as a separate state (Purdue and Green 125). No state can exist within a previously established state, without first gaining the consent of the state. In declaring such statements, Jackson purposely ignored the historical occupation of the Cherokee Nation on their land, prior to colonization. He set his goal on removal and refused to acknowledge any opposition to his grand, obnoxious plans for the Cherokee Nation's land. As the Supreme Court cases reflect, Georgia was not going to compromise or yield. Jackson and the government of the United States bound the Cherokee Nation and forced the Tribe to migrate by providing no comprehensive alternative to removal. Abiding by state laws was the only other option the Tribe was handed (125). The United States government disregarded the history of Native sovereignty before the invasion of white populations from Europe, and held fast to the decisions and militarized efforts against the Native populations including, but not limited to, the Cherokee Nation.

An Overview of Historical Documents Pertinent to the Cherokee Nation

Although the United States government intended for the Cherokees to quietly accept their dismal fate, the official court documents and legislature passing through the branches inspired the Cherokee Nation to fight back for the ownership of their land. The Cherokee effort to retain their land and sovereignty from the United States government demonstrates just how relevant the role of land plays in the conversation about sovereignty—this was a tie the Ridge faction would eventually break. The more traditional members of the Tribe argued their ties to the land defined

their sovereignty (Perdue and Green 14). With the production of legal documents churning out of the United States government, the Cherokee Nation retaliated in writing their own.

Before I address the major legal documents produced by the National Council, it is important to note the critical governmental and legal shifts that began to occur. Traditionally speaking, the original tribal council represented each of seven clans, specifically the Wolf, Deer, Bird, Paint, Blue, Long Hair, and Kituwah (Wilkins 29). The structure of the Council at the time seeped into the framework of the Cherokee government; the clan leaders met in a space divided into seven sections and the representatives from each clan sat in segregated areas of the room. The way the Council behaved in meetings reflected how the Nation was run, each member representing their own areas of land and people. To the more traditional members of the Tribe, the original form of government represented civilized practices, and functioned beneficially for everyone (Clair 318). Prior to the enforcement of a government mirroring that of the United States, the clans did not enforce laws outside of the blood law, which essentially allowed for individual acts of revenge (Mondragon 173). Beyond the basic principles set by the clan leaders, the original form of government did not consist of rigidly structured written law.

The Cherokee Constitution of 1827

Signed and ratified in 1827, the Cherokee Constitution solidified an official, formal government in the eyes of the Cherokee people. As always, during this tumultuous legal time, the decision to draft a constitution did not gain unanimous support from all members of the Tribe. The constitution transported “a national body loosely composed of representatives from traditional towns to a formal government with three branches” (Perdue and Green 58). Beyond setting up a general structure, the Constitution also established the ties between the people and

the land by outright restricting the sale of property for anyone other than the National Council itself. The goal of the constitution “delineated the boundaries of the Nation, thereby linking the governing document to the Cherokee homeland” (Perdue and Green 14). With the installation of the Cherokee Constitution, the Council enacted laws to govern social change in conjunction with the political movements they were making. This particular document is pertinent in drawing a connection between language and sovereignty as they apply to land ownership, because the National Council experienced enough external pressure to reform their government in an effort to compete politically with the federal government. By mirroring language used by the U.S. government in the creation of the U.S. Constitution and the political structure itself, the Cherokee government believed they would legitimize their own efforts to retain ownership of their land.

Outside of the National Council and the new written Constitution, the state of Georgia was infuriated by the ratification of the document. While it closely followed the structure of the United States Constitution, Georgia viewed the document “as an attempt to legitimize the sovereignty of the Cherokee Nation” (59)—an idea the state adamantly opposed. Colossal issues surfaced concerning sovereignty and what the implications of recognizing a sovereign nation would mean for the Cherokee people as well as the United States government. Should the U.S. have moved forward in honoring the decision of the Supreme Court in recognizing the Cherokee Nation, forcing Georgia’s hand in upholding the rulings, and legitimize the new constitution and government, the Nation could have owned and governed their historically occupied land in peace. Efforts to dispossess western lands suggest this counter-history is a hopeful yet unsustainable long-term solution. Despite the actions the United States government *could have* taken, the result of the mounting tension officially boiled over at the Conference of New Echota.

Treaty of New Echota

The Treaty of New Echota definitively determined the fate of the land belonging to the Cherokee. The treaty, signed in 1835, sealed the fate of the Nation in Georgia by ceding their ancestral land to the state. Although the treaty itself created massive rifts in the Nation, the politics leading up to legitimizing the document highlights the Cherokee's political unrest pertaining to land and how it intersects with sovereignty. In the year leading up to the ratification of the treaty, the deep party divide worsened between the radical and traditional members of the Cherokee Tribe. Those who "favored negotiation and those who refused to even consider removal" (Purdue and Green 146) were in such staunch opposition to each other that the Senate involved itself to support moves made by the Treaty Party.

The Treaty Party, represented by the Ridge faction and in favor of removal, did not wish to see the Cherokee disbanded and forced off of their land. Sovereignty in the eyes of politically progressive Cherokee peoples meant moving in an effort to keep their people together. The opposing party, the Ross faction, viewed the land as an integral piece of national sovereignty, and therefore losing their ownership would mean suffering the loss of a critical aspect of who they were as a collective tribe. Despite the inner-tribe politics raging between the two parties, the Treaty Party held fast to their belief in a better future ahead of the Cherokee people, by cooperating with the United States government. Much to the Nation's later dismay, the United States never intended to make the Cherokee people comfortable post-removal, despite the empty promises offered at the conference.

In the drama leading up to the ratification of the Treaty of New Echota, the members of the Party attempted to sign a fraudulent document prematurely, which the Senate refused to

recognize. The official New Echota conference, called in December of 1835, legitimately ratified the treaty with a Senate vote of seventy-five to seven. Unfortunately, the Cherokee Nation as a whole was wildly underrepresented at the conference, with only roughly two thousand members of a total sixteen thousand in attendance. The Cherokee Council did not make an appearance. Because of the lack of representation, the majority population of Cherokees not in attendance was outraged. Conclusively, the United States government elected which documents produced by the Council they would support, and in other cases like that of the Constitution, the U.S. ignored the Cherokee's independence altogether.

The Law of the Land: Connecting Land, Sovereignty, and Law

The political race for land arguably divided the Cherokee people and their land by creating political rifts amongst themselves. With the Tribe members pitted against each other, the argument for sovereignty did not come across as a strong front, due to the political schisms working against one another. With discrepancies raging within the National Council as to how to define their sovereignty, their efforts to present as a united body wavered from the perspective of the United States government. In every aspect of the legal war between the United States government and the Cherokee, the fight over land remained rampant all the way up until the moment the United States military forcibly escorted members of the Cherokee Nation off of their own land. While most Cherokee peoples firmly detested ceding their land to the state, and with only a very small portion of the population willing to sign away the land without the approval of the Council, the connection to land remained strong despite the impending demand for their removal.

Regardless, the dispute amongst the political factions regarding how they would address sovereignty with an unknown future looming ahead of them resulted in nervousness for everyone involved. With so much to lose and the Ross faction much more populous than their counterpart, the Ridge faction struggled to gain support for their idea regarding how to remain a sovereign body. Despite the tumultuous legal battle and resulting documents, the Cherokee Nation undoubtedly discovered a way to maintain resilience, sovereignty, and national identity despite their forced removal from their ancestral lands.

CHAPTER TWO

The Novel: Perpetuating and Pushing Back on the Law

John Rollin Ridge crafted *The Life and Adventures of Joaquín Murieta* to represent the Cherokee Tribe and their fight for sovereignty and ownership over land. Through the main character Joaquín, Ridge successfully traces a parallel structure between the removal of the Cherokee people and the forced removal of Joaquín throughout the state of California. The concepts of removal and cultural retention arise within the novel, something important in referring back to the schism created in the Cherokee Nation. Joaquín embodies the Cherokee's ability to migrate and reconcile sovereignty, despite the loss over land ownership. His ability to do so reflects the perspectives of the Ridge faction.

The novel addresses issues concerning borders and displacement, and incorporates the tensions felt between different ethnicities during the California Gold Rush. Although the setting and timeframe of the Cherokee Removal and the Gold Rush very obviously differ, ethnic tensions in the novel run high, mirroring the way white American's attitudes and treatment of Native groups occurred throughout the Marshall cases and eventual removal. The novel frames an experiential way of interpreting the federal actions against the Cherokee Nation, and in doing so sets up an opposing way to view removal juxtaposed to the Marshall Trilogy. The fictional aspects of the myth shrouding the infamous Joaquín must be accounted for, since the novel was produced for entertainment purposes in some capacity. Despite entertainment value, Rollin Ridge adopts pointed views on Cherokee removal and the fight for sovereignty from the main character's perspective. As a member of the Ridge faction, John Rollin Ridge sets up the narrative storyline within his novel to reflect the argument that sovereignty is maintained within

an independent party, despite the loss of ownership over land. He incorporates resilience in his main character, promoting the original attitude of the Ridge faction, and the eventual beliefs of the Cherokee people in their search to redefine sovereignty. Recognizing the strength in Joaquín allows for Rollin Ridge's audience to identify the amount of strength in the Cherokee peoples for enduring the pain of which was attributable to the United States government.

Representing Ethnic Groups in the Novel

Interpreting Rollin Ridge's representation of different ethnic groups throughout the novel means recognizing stereotypes he challenges and affirms in many of his characters. Before discussing his representation of Indigenous groups, I wish to address how he paints a contradictory portrait of Americans—the Americans posing as the main antagonist of the story. Ridge writes, “the country was then full of the lawless and desperate men, who bore the name of Americans but failed to support the honor and dignity of that title. A feeling was prevalent among this class of contempt for any and all Mexicans, whom they looked upon as no better than conquered subjects of the United States, having no rights which could stand before a haughtier and superior race” (Ridge 9). Joaquín Murieta's perspective on American society stems from his uneasiness concerning the state of affairs in Mexico. In his initial migration from the province of Sonora to California, he bases his decision to move on his relationship with a very limited number of Americans he encountered prior to leaving the Mexico. These relationships planted the idea of “American-ness” in Murieta's consciousness as an identity brimming with honor and dignity for “he had formed the most favorable opinion from an acquaintance with the few whom he had met in his own native land” (8). In his frustration with the Mexican state at the conclusion

of the Mexican-American war, these characteristics he identifies amongst the new people he met from the United States, inspires his migration across the border.

At the beginning of the story, the description of the American people describes the population as “full of the lawless and desperate men” suggesting chaos among the people who harness enough power to conquer others, i.e. American citizens. His basis stems from the results of the war and the border having shifted to include California in American territory. He recognizes for his readers that although the men claim the American title, they completely lack the “honor and dignity” to carry such a label based on how he conceptualizes the esteem associated with citizenship to the United States. According to Rollin Ridge, America, “the land of luck and chances” (11) is framed as a hopeful place despite the caliber of people claiming citizenship. Rapidly, Joaquín discovers the extent of racism towards Mexican citizens in his experience with brutish Americans living in the West. Framing himself and other Mexicans as “conquered subjects” and Americans as the “superior race” sets up the racist dichotomy he did not anticipate across the border. In creating the distinction between the low caliber of men claiming ownership of being American and yet suggesting honor in the title itself, Rollin Ridge elevates the power behind American identity without explicitly stating so.

While he asserts that the title “American” carries with it honor and dignity, he also draws attention to the arrogant nature of the American people in conquering Mexico, despite the Americans’ complete lack of respect in their interactions with Murieta. A deep contrast between Murieta’s perception of American identity and the realistic nature of the American people in the West, sets up the platform to expand on ethnic tension throughout the novel. Similar to this line of thought, John Carlos Rowe discusses dominant culture as it is addressed in the novel, claiming Rollin Ridge’s work “fits most definitions of the category “mass culture” in its resolution of

social and political problems by recourse to established cultural conventions [...] bring[ing] into sharp relief historical and ideological issues crucial to the formation of dominant cultural values” (Rowe 150). Rowe’s criticism of Rollin Ridge’s work helps to illuminate the tensions I am addressing between ethnic groups, by asserting the emphasis within the novel on dominant cultural values. The American citizens attempt to dominate the Mexican citizens living in California, imposing their values as superior. Therefore, the “formation of dominant cultural values” perpetuates the ethnic tension expressed in the novel.

Rollin Ridge initially presents these contradictions at the start of the novel. He sets up an understanding of the American people, which then allows for discussion around the marginalized groups on which the novel focuses more heavily. The precedent of the book hinges upon the border shifting after the Mexican-American War (1846-1848) and through the outcome and aftermath of the violence, addresses the concept of national sovereignty as it correlates with physical space and land. When Murieta moves into California, he “engage[s] in the honest occupation of a miner” (Ridge 8). The land he prospects quickly amasses a small fortune in gold, and the Americans hijack his claim as rapidly as possible after his discovery on the property. Sovereignty arises early in the novel when the American men arrive on Murieta’s plot and “peremptorily bade him leave his claim, as they would allow no Mexicans to work in that region” (10). Upon refusing to cede his property to the “lawless men,” they bind him and rape his mistress—acts Murieta identifies as “the first injury he had ever received at the hands of the Americans” (10). This moment is important, and a clear emphasis on “the first injury” indicates Murieta views the intrusion on the land he owned and the violation of his partner as the initial start for the wrongs to come. Through these experiences he begins to recognize his rapidly vanishing sovereignty from his home country.

Despite the chilling actions of the Americans against Murieta and his lover, Murieta again claims new land and attempts to rebuild a life in a different area. His sense of sovereignty, especially in a new country, seems directly connected to the land he prospects and has little to do with the sense of connection to people. That is to say, sovereignty constitutes physical ties to land and has less to do with social connectivity and relationships⁹. His peaceful disposition and effort to seclude himself to make an honest living in the heat of the gold rush unfortunately leads to, “a company of unprincipled Americans—shame that there should be such bearing the name! —[who] saw his retreat, coveted his little home surrounded by its fertile tract of land, and drove him from it, with no other excuse than that he was ‘an infernal Mexican intruder!’” (10). Twice, the Americans push Murieta from his land, mirroring the removal experienced by Rollin Ridge’s family, and force physical migration upon him. By doing so the Americans attack his personal sovereignty and claim to land. In the larger scheme of the novel, much of the Mexican population was displaced without ever moving, and so to place a heavy emphasis on Joaquín as an intruder speaks immensely to the loss of sovereignty as it correlates to the loss of land. Repeatedly he is forced to deal with “unmanly cruelty and oppression” (10) at the hands of the Americans. The amount of movement occurring in Joaquín’s life by the third page of the novel places in perspective the level to which marginalized groups of people suffered displacement due to the cruelty of the Americans.

Rollin Ridge provides perspective on the unsettling relationship between the United States government and the Cherokee peoples by reiterating the initial violence committed by the Americans during the first time Murieta suffered by them, but frames the story in the larger historical context of the time. Murieta’s personal narrative puts into perspective the removal of

⁹ Ridge sets up fictional parallels to the experience of the Cherokee Nation during removal. The ties to land are incredibly important when considering the historical context the Cherokee people are situated within.

Native peoples off of land originally belonging to them, for illegitimate reasons such as those Rollin Ridge highlights through Joaquín. From the mere fact of not wanting certain groups of people to be in certain places, the white populations conquering the land invoke inherent privilege given to them through their citizenship to torment those already living in the area. When land and property are in question, the concept of sovereignty also seeps into Rollin Ridge's writing. Smaller scale land seizures demonstrate the importance of the novel's representation of Cherokee removal because they become incredibly more personal to the reader than do large land seizures by the federal government. In the context of Cherokee removal, Louis Owens writes "as is common knowledge today, the prosperity and large landholdings of the so-called Five Civilized Tribes, the Cherokee and Choctaw in particular, led to conflict with whites who wanted what the Indians possessed" (Owens 35). Owens discusses greediness over land from the individual perspective of whites interested in holding the plots. Similar to the white people in the novel, whites in and around the Cherokee Nation felt it was their inherent privilege to own the land belonging to the Tribe. The smaller scale land seizures add an emotional layer to literature pertaining to removal that court cases and legal documents cannot access.

To further explain this idea, when the United States seizes land from Mexico at the conclusion of the Mexican-American War and the border shifts, the newly revised southern border of the United States envelopes Mexican citizens and their property. When individual people lose their land because of encroaching greedy American citizens, the full impact of the border seizure becomes clear for newly displaced people. The impact of the land seizure occurs not when the government broadly explains the border relocated, but instead when Mexican individuals lose their land to whites. Rollin Ridge translates this phenomenon in his novel almost perfectly into the reality of his tribe's political and physical situation preceding the Trail of

Tears. With the colonization of North America and a new government emerging around the Cherokee Nation's ancestral land, the devastating impact of displacement and the importance of sovereignty emerge when the Supreme Court forcibly seized Cherokee land. Yet, the individual citizens of Georgia see that the rulings either are or are not upheld, depending upon whether the rulings are in Georgia's favor. The impact of small-scale seizure versus federal seizure eventually shifts with the militarization of removal, but for the purposes of comparing the beginnings of removal parallel to the beginning of Rollin Ridge's novel, small-scale seizures make impactful ripples through the lives of those affected.

While the focus of the novel concentrates on Mexican heritage in the United States, Rollin Ridge includes Indigenous Americans among the marginalized groups discussed throughout the novel. The complex representation of Indigenous peoples also begins at the start of the novel, and they are in some capacity aligned with the Mexican population in the hierarchical structure imposed at the time. Rollin Ridge identifies the West as a "range inhabited only by human savages and savage beasts" (Ridge 26). Associating Indigenous populations with animals and concurrently referring to both human and animal as "savage," degrades the Indigenous populations arguably lower than the Mexican population. Rollin Ridge continues on in his introduction of these "savages" by explaining how the Mexicans "induced the Indians to aid them in this *laudable* purpose, and so efficiently did these simple people render their assistance that the rancheros of that region loaded the very air with their curses of the "naked devils," who tormented them to such an intolerable degree!" (26). In this particular instance, the "naked devils" refers to the Indigenous populations. The complexity of the relationship between the Mexicans and the Native populations emerges in the introduction of the partnership they have arranged. Focusing on language, Ridge emphasizes "laudable" as if to enhance the sarcasm in

theft having a commendable purpose. The banditti continuously steal horses and convince the Native peoples to take part in the action at which point Rollin Ridge offers descriptions of the Native groups as “simple,” much to the frustration of the Mexicans. In a particular scene of the novel the bandits and the Native peoples are caught between a group of angry Americans attempting to reclaim their stolen horses and a raging river. In the outlaws’ attempt to cross the water all of them die either due to gunshots or the rapid currents. The conclusion of this scene is both impactful and important because it speaks to the power the federal government held over various ethnic groups present in the United States. To depict a scene of mass murder leaves a lasting impact on the reader pertaining to the power harbored by the U.S. in general.

While it seems there are negative stereotypes attached to the Native populations, not only through the language Rollin Ridge utilizes but also the actions he has them perform in the narrative, Rollin Ridge defends their acts to an extent when he labels them as “the ignorant Indian” and claims they “suffered for many a deed which had been perpetrated by civilized hands” (27). Rollin Ridge provides further evidence of the proposed ignorance and therefore innocence of the Native peoples by challenging “many [prospectors] were found dead, supposed to have been killed by the Indians, and yet bearing upon their bodies the marks of knives and bullets quite as frequently as arrows” (27). The relationship between the Mexican bandits and the tribes they encounter suggests unawareness by the Native populations, which Rollin Ridge addresses directly in referring to the group as “ignorant Indians,” and references their counterparts as “civilized hands” (27). Peter Christensen argues both the American Indian and Chinese immigrant populations act cowardly, which distracts from the courageous actions of the Mexican bandits¹⁰. Rollin Ridge’s representation of his own race creates an interesting

¹⁰ Peter Christensen analyzes the representation of Native populations in the novel as a way of expressing inferiority in general, yet he also argues Rollin Ridge views some tribes like the Cherokee, Aztec, and Incas as superior

perspective on the relationship between his experience and the “ambivalent position that [he] held as a minority writer towards other minority groups of the time” (Christensen 70). In the debate over the meaning of Native representation in the novel though, my opinion more closely aligns with Maria Mondragon’s work on the ambiguity of identity within Rollin Ridge’s work. Mondragon outlines the issues with attempting to reduce the novel to a specific commentary on a particular experience (Mondragon 173). I argue Rollin Ridge does provide commentary on redefining sovereignty, but, in alignment with Mondragon, “the novel portrays the function of written language as both violent and dangerous” (Mondragon 173). I believe Rollin Ridge’s writing signifies the tumultuous and difficult task in isolating an understanding of sovereignty through language.

Multiple populations play significant roles in Rollin Ridge’s novel, with the Mexican bandits at the forefront and the Americans trailing behind them. Recognizing the Indigenous population’s role is paramount to understanding how Rollin Ridge’s personal experience fits into the work he produced. Nevertheless, it would be remiss to omit the role women play in the novel, although for the purpose of this close reading and due to the nature of this research, the women do not occupy the forefront of the marginalized populations under scrutiny. Additionally, recognizing the Chinese population present in California during the gold rush is important because historically they faced intense discrimination at the hand of the American people. To track the marginalized groups’ progress through the novel, understanding how Ridge introduces them and navigates their representation alludes to the hierarchy he creates in the book itself, namely between the Mexican and American populations. It translates into understanding his personal experiences growing up in the United States of America. Joaquín Murieta’s battles with

representations of their race (Christensen 62). Christensen clarifies Rollin Ridge does not express empathy towards the Native populations.

sovereignty speak to the challenges the Ridge family faced during the era of the Marshall Court and the Supreme Court cases that would determine the fate of the Cherokee Tribe, among others. The physical violence against him and other ethnic groups in the novel also draws a critical connection to the role of the United States military in removal.

Joaquín: Outlaw vs. Vigilante Justice

Murieta, presented throughout the novel as an outlaw, challenges the stereotypes around the label because of the nature of the crimes he commits on behalf of his country. Beyond robbing and pillaging innocent people, the character makes the argument that his actions stem from deep-rooted contention about/for his country. A key moment in the novel when the

month of December was drawing to a close, and the busy brain of the accomplished chief had mapped out the full plan of his operations for the new year just at hand. It was the year which would close his short and tragical career with a crowning glory—a deed of daring and of power which would redeem with its refulgent light the darkness of his previous history and show him to aftertimes, not as a mere outlaw, committing petty depredations and robberies, but as a *hero* who has revenged his country's wrongs and washed out her disgrace in the blood of her enemies (Ridge 80).

Understanding how the novel conceptualizes hero versus outlaw begins with tracing Murieta's activity through the course of the novel, and traveling from Mexico to the United States catalyzes his development as the eventual noble outlaw. His initial movement over the border results from his personal unrest with the "uncertain state of affairs in his own country" (8). Violence and political tension due to the war provoked the uncertain state of affairs Rollin Ridge refers to in

the novel, and therefore incites Joaquín's urge to migrate north. An important aspect of Murieta's frustration with his country originates from "usurpations and revolutions" (8) within his native borders, and he views his countrymen as degenerate for having lost against the Americans. In the same vein of thought, Rollin Ridge crafts Murieta as an individual who admires American ideals and strives to attain a similar American character. These characterizations and thought processes embodied in Murieta's character are crucial in translating Ridge's experience as a Cherokee individual living under the Jackson Administration, although only a child at the time¹¹.

The political motivations inspiring Joaquín's arguably heinous actions allow for an argument regarding whether or not he truly embodied heroism. When he considers the potential for future deeds committed in the new year as an opportunity to "revenge his country's wrongs" the idea of justice for his country rather than personal vengeance, begins to play a role in his actions against the state of California. With his activism at the forefront of his actions, he hangs in a balance between Mexico and America, deciding where his loyalties lie and therefore experiencing displacement as a result. Yet, despite Murieta's feelings of uncertainty he gathers a close community to move around the state of California and feels grounded through his connection with people, rather than his connection to the land. This is a large development since the beginning of the novel, when land meant everything in defining Murieta's independence in the United States. In response to a heinous kidnapping committed by one of the trusted members of his group, Murieta responds to the situation with respect for their friendship by explaining, "I am no such robber, and I never will be. Reis—I *ought* to kill you, but since you have had *some* honor and manhood about you in this rascally matter, I will let you off this time" (105). The bond between the people he travels across the landscape holds weight because not only are they

¹¹ During President Andrew Jackson's administration, John Rollin Ridge had only just been born. His families involvement with the government, as it has already been explored, greatly impacted and affected his experience growing up.

stronger in numbers, but the value placed on their relationship outweighs the value he invested into the land he lost earlier in the story. His response to Reis's crime shows that Murieta fights for human connection, similar to the argument put forth by the Ridge faction as a way to keep the Cherokee people together.

To this point, I would argue Joaquín evades the outlaw label, and embodies vigilante justice. He does not commit the crimes his banditti carries out solely driven by revenge. While anger towards the Americans produced his initial focus, Murieta continues to develop throughout the story to the point where he depends and provides on the people he travels with. His numbers are extensive and they are recognizable as “the tremendous organization which that bold chieftain had established throughout the country” (112). Rollin Ridge allows Murieta to embrace the displacement he experiences, and instead mold a thriving organization, seemingly independent of the law of the United States government. Rollin Ridge recognizes Murieta as the “chief” or “chieftain” throughout the novel, an important aspect of language that draws a connection between the ethnic group represented in the novel and Rollin Ridge's Cherokee ancestry. In the same fashion the Cherokee practiced resilience, Murieta works to keep his organization safe and independent from federal grasp.

Impacts of The Supreme Court on the Novel—How History Plays a Role in the Narrative

Similar to the ways in which Rollin Ridge crafts Murieta as someone seeking stability beyond the borders of his native homeland, the Ridge family sought similar refuge for the Cherokee people beyond the Nation's borders located within the larger state borders of Georgia. Intense parallels between the history of the Cherokee Nation and the myth of Joaquín align in ways which promote the social commentary presented about the United State's treatment of the

Cherokee people. This is demonstrated through the banditti and the displacement of individuals due to removal of land rights. In examining the closely related storyline in *Joaquín Murieta* as it correlates with the usage of land, it becomes increasingly evident how deeply rooted the rights to physical space correlate with sovereignty as a banditti in the case of the novel, but also as a Nation with regard to the Cherokee people and their inevitable removal from their ancestral homelands.

The novel presents a response to the legal documents produced at the time leading up to and around the Cherokee Removal—and supports the narrative and more emotional appeal to the forced removal of the Tribe. While the novel embodies a daring adventure of a vigilante terrorizing California, the underlying themes surrounding the fight for land versus culture bubble to the surface of Rollin Ridge's text. The interpretation of his work supports the idea that sovereignty remains intact based upon the resilience of the group and not the ownership and physical tie to any land. While a large discrepancy between the novel and the historical events hinges upon the ancestral ties the Cherokee faced losing, Rollin Ridge addresses the overwhelming ability to persevere through the feelings of intense loss and displacement.

The story of *Joaquín Murieta* is bloody, terrifying at times, and packed with the thrill of the chase. As I mentioned before, Rollin Ridge incorporated entertainment value into his work, but in the final scenes of the novel, the resilience he orchestrates in his main character shines through and speaks to the resilience of the Cherokee people. In the face of true violence and the threat of death, "Prescott [...] discharged both barrels of his shot-gun into Joaquín's breast, and was amazed to see him stand firm after a momentary stagger and return the fire" (140). The imagery of pure strength created in this scene begins the final portion of the novel, Joaquín's death. The militarization of Captain Harry Love constitutes one of the most important aspects of

the final battle scene. Similar to the ways the federal government threatened and executed militarized removal of the Cherokee, the government in California calls for the participation of Captain Love who transformed into “a leader [...] now in the field and armed with the authority of the State” (146). Love embodies the military movements made against the Cherokee in the ways he moves against the banditti and Joaquín. While the aspect of government ordered military control dominates the foreground of the final scene, the lessons produced by Murieta’s death also resonate as Rollin Ridge’s personal narrative concerning his family’s experience.

Rollin Ridge asserts “the import lesson that there is nothing so dangerous in its consequences as *injustice to individuals* –whether it arise from prejudice of color or from any other source; that a wrong done to one man is a wrong to society and to the world” (158) as something Murieta’s death should teach to his audience. He addresses the injustices against the Cherokee peoples, and in doing so highlights prejudice. In the final lines of the novel Rollin Ridge concludes the stories of the banditti and of Joaquín’s lover; they all continued to persist with “all the elements [...] still in active existence” (158). So despite the atrocious acts committed against Joaquín by the Americans at the start of the novel, the resilient and sovereign group of desperadoes continued to live their lives after the conclusion of the story.

CONCLUSION

Resilience, Survivance, and the Contemporary State of Sovereignty

The Marshall Trilogy cases and Ridge's novel depict tension between land and sovereignty in different ways, on a continuum between clinical and personal experience, respectively. The Cherokee Nation is situated somewhere between the two. The literature of the Court creates a strict distinction between the harshness of the courtroom and politics in general. The novel depicts how those decisions play out in the personal narratives and lives of those affected by policy and law. The varying perspectives from both the Supreme Court and John Rollin Ridge assist in helping to understand the drastic shift in the definition of sovereignty, and how sovereignty does not necessarily need to be tied directly to the ownership of land. While Rollin Ridge addresses the heartbreak in losing land throughout his novel, he shows his readers via Joaquín continuing to live despite his anger and never forgetting his humanity, that resilience is not only attainable for Rollin Ridge's characters, but for his people as well.

The story of the Cherokee Nation represents a long and powerful history, not to be redefined by their loss over the fight against removal. The Trail of Tears outlined and developed a new meaning of sovereignty for the Nation, and the Tribe's resilience persists today. In my own review of the literature produced by Rollin Ridge, as a representation of cultural preservation despite displacement, there is a strong presence of resilience throughout the layers of adversity the Cherokee people faced during removal. Gerald Vizenor offers a deep consideration of native literature in that he states, "tragically, many readers consider native literature as an absence not a presence, a romantic levy of the enlightenment, a heroic separatism and disappearance, and others review native stories as cryptic representations of cultural

promises obscured by victimry” (Vizenor 8). He argues “Native American Indian literature is not a newcomer in the course of literary resistance to dominance” (8). In thinking about the sliding scale between law and literature on which to situate the Cherokee people, accounting for Vizenor’s criticism adds weight to the argument that defining sovereignty looks different throughout the course of time. Rollin Ridge’s production of *Joaquín Murieta*, although groundbreaking in being the first of its kind, did resist dominance by an overpowering culture. The ways in which Rollin Ridge crafts Murieta’s individual resilience separate from the rest of the banditti demonstrates who the author is, and the character’s refusal to bend under the United States government in their treatment of the Cherokee Tribe.

Vizenor addresses victimry as if readers of Native literature will not see the victimization of Native groups of peoples. He offers the interpretation of disappearance from the national stage as a heroic effort made by Native authors continuing to discuss the issues of Native treatment. In reality, his theory of survivance appears and holds fast with the narrative of the Cherokee Nation throughout removal and beyond as “the nature of survivance creates a sense of narrative resistance to absence, literary tragedy, nihilism, and victimry” (1). Rollin Ridge does craft resistance within his novel, and brings to the national stage issues with stripping the Cherokee peoples of their land, assuming they would succumb to the social pressures by the United States.

Compare and Contrast: Court Cases vs. Literature

The clinical representation of the Tribe within the court cases draws attention to the lack of humanity on the behalf of the United States government when addressing the affairs of the Cherokee Nation, as well as the other tribes also affected by the Removal Act. The legal language within all of the documents explored throughout this research perpetuates stereotypes

regarding heartlessness in law. Rollin Ridge's novel does not necessarily allow for the exploration of the direct impact of the political tension on the Tribe, but he does play out some of the results of the political battles on future generations. For instance, Murieta's view of Americans shifts from one of admiration at the beginning of the novel, to one of disgust that he harbors towards the end. He feels betrayed by the American population for the wrongs they committed against him with regard to land ownership and inhumane treatment. He embodies the shifting definition of sovereignty demonstrated by the Cherokee Nation in his ability to remain a powerful and recognizable force within California. Additionally he maintains the relationships and respect of the rest of his banditti.

Most importantly in Rollin Ridge's novel, he addresses the original staking and stealing of land between two different ethnic groups, primarily the Americans and Mexicans, the abrupt shift in borders, and the resilience in continuing to thrive in new territory based upon the people his main character travelled with. The underlying tones directed specifically towards American people in general, speak to the treatment of the Cherokee people by the Americans, especially those involved in the legal matters determining the fate of the Nation's ancestral lands. To reinforce the argument made earlier, clinical language taints the political processes surrounding removal, while experience laces throughout the novel. The literature makes an important distinction when discerning between the ways individuals felt in the aftermath of legal rulings. While it is easier to speak to court cases and their impact on a nation as a whole, it becomes increasingly more difficult to create distance when personal experience is involved.

Rollin Ridge demonstrates how the experiential side of removal allowed for the growth of the Tribe culturally, but also illustrates the pain in losing land and physical ties to the ownership of territory. The court cases remove the personal narrative making it extremely

difficult to envision the individual impact two out of the three rulings made on the Cherokee Nation. Further, when Georgia did not uphold the ruling in *Worcester*, the Tribe, completely abandoned by the federal government, had to discern how to move forward as an independent entity. The clinical language found throughout the trials is offset by the novel to show how the shifting definitions of sovereignty connect to the ownership of land and culture.

Readdressing Language: Key Terms

To begin with the results of the political schism, the Cherokee government, despite the National Council's efforts to dispute within the Tribe, could not preserve the nature of the argument within and amongst disputing factions, due to the overwhelming power of the federal government. The militarized efforts to remove the Tribe should be addressed in continuing the conversation about forced removal. The language of the Supreme Court cases that resulted from the battle over land ownership adds to the clinical, cold, political approach to the removal of the Cherokee peoples. The Treaty of New Echota, which effectively ceded the land to the federal government, in line with Andrew Jackson's address on the Indian Removal Act, all chalk up to the distant approach of the federal government and the Ridge faction in favor of relocating the Tribe.

While the Ridge faction argued for the preservation of the Nation via the preservation of culture, the Ross faction risked engaging in violence against the United States government in order to preserve land ownership as the only way to remain a sovereign nation. Rollin Ridge's novel introduces the emotional language associated with the removal of his main character from his land. Murieta creates community and a sense of sovereignty within the United States borders

despite his lack of metaphorical roots in the land, and instead because he can depend on the people surrounding him.

The Cherokee Nation Through Time: Resistance Beyond Literature

One hundred and eighty years after the federal removal of the Cherokee peoples, resistance continues to persist. To recognize resistance is to also recognize pain, which retraces the spectrum between clinical government business and the emotional narrative Rollin Ridge crafts; the Tribe exists somewhere in between. The pain of contemporary recognition of the Trail of Tears and the cessation of the land recounted by Wilma Mankiller, who served as principle chief from 1985 to 1995, is both emotional and empowering. During a reunion to commemorate removal she recounts, “the reunion was very emotional. I stepped into the circle where Cherokee meetings had been held such a long time ago. I felt the anger and passion of my ancestors as they gathered to discuss whether to fight to the death for the right to remain in our ancestral homeland, or to cooperate with the federal removal” (Mankiller 185). Her recognition of how important the land was to her ancestors reaffirms the grip the Tribe had on associating the land with sovereignty. Yet, the reunion itself held in 1984, now affirms the sovereignty of the Tribe survived despite forced cessation of the land. The reunion Mankiller references brought together two Cherokee councils to begin regular meetings on behalf of the entire Tribe¹². Although battered by the United States government both politically and physically throughout the course of history, the Tribe’s resilience speaks to their sovereignty in the contemporary United States. The Nation ratified a new constitution affirming sovereignty in 2003.

¹² In her *Reflections on Removal*, Mankiller explains the reunion between the Cherokee Nation of Oklahoma and the Eastern Band of Cherokees. The Eastern Band evaded soldiers during removal and escaped to the mountains where they remained in hiding. Because of the geographic split, the two Councils developed independently (Mankiller 185).

Similar to Joaquín Murieta in the repeated loss of his own land, the Cherokee people continued to resist in unfamiliar territory. Murieta's nomadic tendencies, adopted after his own forced removal parallel the ways in which the Cherokee retained and continued to practice their culture in Oklahoma. First and foremost, we should recognize the Cherokee Nation's resilience in facing the horrors brought against them by the federal government of the United States—but within the recognition of resilience, we must also recognize pain. Wilma Mankiller calls the Trail of Tears the Cherokee Nation's holocaust. The United States inflicted insurmountable pain on a Nation, who continues to rise. As a country we have restitution to face, and although I do not have the answers as to where and how to begin, we must recognize and work towards finding a way to respectfully commemorate the holocaust endured by the Cherokee.

At the root of this research, I asked myself how I envisioned my capstone project of my undergraduate career. I am not Cherokee, but I am passionate about immigration law. I asked myself how a government determines who constitutes a citizen. I challenged myself to consider the notion of creating definitions for words like citizen, and sovereign. Borders mean something on a map and while political bodies seem to believe physical barriers will prohibit people from finding their way to different opportunities, loved ones, both, or more, I began to delve deep into the possibility that people experience displacement without ever witnessing a border shift. I discovered my passion for this project after finding these intersections within Ridge's novel, and I realized that citizenship seems impressively arbitrary when immigrants, or the ancestors of immigrants are left to decide who earns the title "American." Those who truly deserve ownership and claim of this land resided on it first, and yet the treatment the federal government has shown tribes like the Cherokee is appalling.

To learn about the resistance and resilience of the Tribe has been both educational and transformative in how I view citizenship and land ownership. Therefore, I argue and continue to argue that despite the best efforts of the Ross faction to retain the land as an indication of tribal sovereignty, the Ridge faction through questionable tactics, sought to maintain sovereignty via cultural ties amongst members. The Cherokee peoples retained their sovereignty despite removal; the practice of resilience and survivance among the people preserved the culture and sovereignty of the Cherokee Nation.

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