

## THE WINDING TRAIL: A LOOK AT NON-LINEAR TEMPORALITY IN LITERARY WORKS IN RESPONSE TO THE ISSUE OF SOVEREIGNTY

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*On the far end of the Trail of Tears was a promise . . . .*

-- Justice Gorsuch<sup>1</sup>

### *I. Introduction: Recurring Tropes*

In a 2013 case in the United States District Court of the Western District of Texas, Steven John Busti alleged copyright infringement of his comic, “Cowboys and Aliens,” by two works: a graphic novel and a movie, both named “Cowboys & Aliens.”<sup>2</sup> Based on titles of works alone, a reader can already glean how the court approached this copyright claim. The graphic novel contains three Indians pursuing a cowboy; the Indians come across a reptilian alien invader who kills them while the cowboy watches.<sup>3</sup> During the story, a cowgirl lassos an alien.<sup>4</sup> “At one point, a cowgirl character uses a lasso on one of the aliens. The aliens are ultimately defeated when the cowboys and Indians put aside their archetypical differences[] and cooperate against the common foe.”<sup>5</sup> The movie is a “derivative of the Graphic Novel.”<sup>6</sup> Busti’s work contains a reptilian alien coming across two Indians and injuring one and a cowboy teaming up with the Indians to stop the alien invader.<sup>7</sup> Safe to say, the media contain some similarities. After noting these similarities, the court then analyzed the evidence of originality and alleged infringement. Examining possible prior access with a *Comic Shop News* article, the court stated: “[T]he text of the piece describing Busti’s work merely describes a general idea: ‘cowboys and aliens.’”<sup>8</sup> Further, the court noted that “[s]triking similarity is similarity of such a

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1. *McGirt v. Oklahoma*, 140 S. Ct. 2452, 2459 (2020).

2. *Busti v. Platinum Studios, Inc.*, No. A-11-CA-1029-SS, 2013 WL 12121116, at \*1 (W.D. Tex. Aug. 30, 2013).

3. *Id.*

4. *Id.*

5. *Id.*

6. *Id.* at \*2.

7. *Id.*

8. *Id.* at \*3.

strong degree that it ‘preclude[s] the possibility of independent creation.’”<sup>9</sup> With only the potential prior access of a general idea, it is unlikely that the defendants infringed. “Ideas are not protectable in copyright; only particular expressions of ideas may be protected.”<sup>10</sup> Ultimately, the defendants were entitled to summary judgment on the grounds that they did not infringe Busti’s copyright.<sup>11</sup>

In the context of this Comment, the copyright case above introduces an overarching concept: tropes and their uses. While Busti did not succeed with his claim, its content and that content’s issues are pertinent to the discussion of tropes used in Indigenous literary works, both about Native issues and by Native authors. The ever popular ‘cowboys and aliens’ persists as a framing device to highlight Indigenous issues, historical and present. For example, *Invaders*, a video game developed by Dr. Elizabeth La Pensée, reimagines the arcade game, *Space Invaders*, to tackle the issue of violent settlers.<sup>12</sup> Various authors and creators repeatedly use tropes to explore long-lasting issues. This Comment explores the use of temporality and communion with the past in works by Cherokee authors to understand the long-lasting effects of sovereignty issues from the Indian Removal Act, *Cherokee Nation v. Georgia*, and *Worcester v. Georgia*. The Comment focuses on two works, *Riding the Trail of Tears* by Blake M. Hausman and *Sovereignty: a Play* by Mary Kathryn Nagle. Firstly, this Comment will examine the two cases and then the Indian Removal Act. Secondly, this Comment will explore the use of tropes in the two literary works to handle interpretation of these legal consequences. Thirdly, this Comment returns to the contemporaneous issues presented by *McGirt v. Oklahoma*.

## II. Sovereignty and Georgia

### A. Cherokee Nation v. Georgia

The issue of sovereignty arises in the case of *Cherokee Nation v. Georgia*.<sup>13</sup> After notice of a bill served by the Cherokee Nation to the governor of Georgia, the Cherokee Nation moved for an injunction and subpoena to the United States Supreme Court to prevent the state of

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9. *Id.* at \*5 (quoting *Jorgensen v. Epic/Sony Records*, 351 F.3d 46, 56 (2d Cir. 2003)).

10. *Id.* at \*6.

11. *Id.* at \*7.

12. *Invaders (2015)*, ELIZABETH LAPENSÉE, <https://elizabethlapensee.itch.io/invaders> (last visited June 20, 2023) (download link); Jake Dahl, *Invaders*, 21ST CENTURY DIGIT. ART, <http://www.digiart21.org/art/invaders> (last visited June 20, 2023).

13. 30 U.S. (5 Pet.) 1 (1831).

Georgia from enacting legislation contrary to treaties with the United States.<sup>14</sup> The Cherokee Nation claimed it was a sovereign, foreign nation and was not bound to the United States' laws, and the United States had recognized this sovereignty in various treaties.<sup>15</sup> In particular, the Cherokee Nation referenced the Hopewell and Holston treaties.<sup>16</sup> The governor's bill referenced constitutional provisions that treaties are supreme law and that Congress had the power to regulate commerce with the Indian tribes.<sup>17</sup> The State of Georgia passed laws to effectively occupy Cherokee Nation land.<sup>18</sup> The opinion refers to the supposedly "voluntary cession" of lands to the United States, notably the Indian Removal Act: "An Act to provide for an exchange of lands with the Indians residing in any of the states or territories, and for their removal west of the river Mississippi."<sup>19</sup>

At the start of the opinion, Justice Marshall summarized the claims from the bill:

This bill is brought by the Cherokee nation, praying an injunction to restrain the state of Georgia from the execution of certain laws of that state, which, as is alleged, go directly to annihilate the Cherokees as a political society, and to seize, for the use of Georgia, the lands of the nation which have been assured to them by the United States in solemn treaties repeatedly made and still in force.<sup>20</sup>

However, the Court did not look at this issue of sovereignty. Instead, this case focused on whether the Supreme Court has jurisdiction. The Court cited the constitutional provision that grants it jurisdiction over cases with foreign states.<sup>21</sup> The issue then became whether the Cherokee Nation is a foreign state within the context of the Constitution.<sup>22</sup> The Court concluded that the Cherokee Nation is not a foreign state based upon the history of treaties and relations with the United States.<sup>23</sup> The Court stated that Indian tribes and the United States are uniquely situated unlike any other relations because the "Indian territory is admitted to compose a part of the United

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14. *Id.* at 14–15.

15. *Id.* at 16.

16. *Id.* at 17, 45.

17. *Id.* at 17–18, 44–45.

18. *Id.* at 28.

19. *Id.* at 14; Indian Removal Act, ch. 148, § 1, 4 Stat. 411, 411 (1830) (repealed 1980).

20. *Cherokee Nation*, 30 U.S. at 15.

21. *Id.*

22. *Id.* at 16.

23. *See id.*

States.”<sup>24</sup> Also, the Treaty of Hopewell allowed for Indian tribes to send representatives to Congress, which further adds to the unique relationship between the tribes and the federal government.<sup>25</sup> The Court wrote that Indian tribes more closely resemble “domestic dependent nations” and that “[t]heir relation to the United States resembles that of a ward to his guardian.”<sup>26</sup> Justice Marshall concluded, “[T]he majority is of opinion that an Indian tribe or nation within the United States is not a foreign state in the sense of the constitution, and cannot maintain an action in the courts of the United States.”<sup>27</sup> As a result, because the Cherokee Nation could not maintain an action in the Supreme Court, the motion for injunction was denied.<sup>28</sup>

#### B. *Worcester v. Georgia*

In the 1832 case of *Worcester v. Georgia*, Samuel Worcester was indicted by a state county court for living in the Cherokee Nation without a license by the state governor.<sup>29</sup> He defended that the Cherokee Nation was a sovereign nation where the territory occupied by them was “solemnly guaranteed to them” by the United States, and the Georgia state laws under which he was indicted were “unconstitutional and void” for interfering with treaties between the Cherokee Nation and the United States.<sup>30</sup> The Georgia county court ruled in favor of the state and sentenced Worcester to hard labor.<sup>31</sup> The Supreme Court exercised jurisdiction by writ of error.<sup>32</sup>

The Court began with a history of the right of discovery.<sup>33</sup> European nations gained title by a respective European citizen or government discovering and acquiring title through possession.<sup>34</sup> The United States gained its claims from Great Britain.<sup>35</sup> “The third article [of the Treaty of Hopewell] acknowledges the Cherokees to be under the protection of the United States of America, and of no other power.”<sup>36</sup> “The Cherokees

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24. *Id.* at 17.

25. *Id.*

26. *Id.*

27. *Id.* at 20.

28. *Id.*

29. 31 U.S. (6 Pet.) 515, 537–38 (1832).

30. *Id.* at 538–39.

31. *Id.* at 539–40.

32. *Id.* at 536–37.

33. *Id.* at 542–44.

34. *Id.* at 543–44.

35. *Id.* at 544.

36. *Id.* at 551.

acknowledge themselves to be under the protection of the United States, and of no other power. Protection does not imply the destruction of the protected.”<sup>37</sup> While conceding oneself under the protection of the United States may seem to give up sovereignty, the Court noted that a weaker nation “may place itself under the protection of one more powerful, without stripping itself of the right of government, and ceasing to be a state.”<sup>38</sup> The Court concluded that the Georgia state government had no power over the Cherokee Nation without the nation’s assent, the power of applicable treaties, or congressional authority.<sup>39</sup> As such, the Georgia act from which the suit arose was void.<sup>40</sup>

### *C. The Indian Removal Act and the Trail of Tears*

Despite the ruling of *Worcester v. Georgia*, settlers’ claims to Cherokee territory persisted. With the Indian Removal Act of 1830, a new period of Cherokee history began. The Act calls itself “[a]n Act to provide for an exchange of lands with the Indians residing in any of the states or territories, and for their removal west of the river Mississippi.”<sup>41</sup> In his book *Myths of the Cherokee*, James Mooney delves into the resulting history from the Act and from the period that followed. “The history of this Cherokee removal of 1838, as gleaned by the author from the lips of actors in the tragedy, may well exceed in weight of grief and pathos any other passage in American history.”<sup>42</sup> The Removal began in the summer but was accompanied by so much “sickness and mortality” that several chiefs petitioned to remove in the fall.<sup>43</sup> The removal, itself, was plagued by sickness and death with thousands of Cherokee Indians dying from the Trail of Tears.<sup>44</sup>

## *III. Literary Tropes as an Interpretation of Legal Consequences*

### *A. Riding the Trail of Tears*

Blake Hausman’s novel *Riding the Trail of Tears* follows a similar vein as the works mentioned in the introduction. It takes a science fiction

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37. *Id.* at 552.

38. *Id.* at 561.

39. *Id.*

40. *Id.*

41. Indian Removal Act, ch. 148, § 1, 4 Stat. 411, 411 (1830) (repealed 1980).

42. JAMES MOONEY, *MYTHS OF THE CHEROKEE* 130 (2014) (ebook).

43. *Id.* at 131-32.

44. *Id.* at 132.

approach to Indigenous issues.<sup>45</sup> Rather than a futuristic setting or an alien invasion, however, the novel explores Cherokee history through a science fictional simulation of the Trail of Tears.<sup>46</sup> The narrator of the novel begins with a confusion of time and cannot seem to exactly remember the amount of time they spent with the protagonist, Tallulah Wilson, but, nevertheless, experienced the world through her senses.<sup>47</sup> From the beginning of the novel, the reader can determine that time, interpretation of time, and perspective will become central parts of the story. The first-person narrator, distinct from the protagonist, and the use of past tense signal to the reader that these issues will reappear throughout the novel. Why does time matter so much in this science fiction story? From the general conceit of the novel, temporality and history persist as key themes. Hausman introduces the reader to the narrator as a “Little Little Person” or “the real Nunnehi” to draw upon Cherokee myth.<sup>48</sup> For convenience’s sake, I will refer to the narrator as the Nunnehi, per their own suggestion.<sup>49</sup> The Nunnehi continues to reference their last day with Tallulah in the first chapter, playing with the notion of endings and beginnings.<sup>50</sup>

The black bear motif recurs throughout the novel. The black bear is a figure in Cherokee myth that also takes the form of a man.<sup>51</sup> The Nunnehi explains Tallulah’s dream in the first chapter of the novel.<sup>52</sup> The Nunnehi relays, “[H]er father has come to her as a black bear in her dreams, and he’s speaking. Tallulah’s father died when she was nine. He had an unmistakable voice.”<sup>53</sup> Here, Hausman uses the Nunnehi to portray information as both someone who experiences the dreams and someone who does not experience the factual information snug in the middle of the quotation. It is information that the voice of the novel cannot experience but tries to call upon for a “historical” reference. Specifically, the history comes from an ancestor no longer part of the present timeline. Hausman notes the importance of visions of the past: “Tallulah grew up knowing that Indians are supposed to have visions, an awareness weighted with tragic irony for her, given the fact that she is surrounded by digital visions at work but

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45. BLAKE M. HAUSMAN, *RIDING THE TRAIL OF TEARS* (2011).

46. *Id.*

47. *Id.* at 1.

48. *Id.* at 6.

49. *Id.*

50. *Id.* at 6–17.

51. MOONEY, *supra* note 42, at 327–29.

52. HAUSMAN, *supra* note 45, at 12.

53. *Id.*

never by real ones in her head.”<sup>54</sup> Considering the context of her work, a tour guide for the simulation-based Trail of Tears, tragic irony is a key choice for Hausman. The simulation is based on tragedy. Also, the notions of what is real are important here. What most people would consider real, the experience of the digital visions through the tour, Tallulah does not consider real. It is the experience of something or someone from the past, but inside her head, that Tallulah considers real.

Hausman does not reveal the history of Tallulah’s father to the reader until later in the novel. Joe Wilson died in a drunken car accident when Tallulah was nine years old.<sup>55</sup> Before his death, he did not connect his children with their Indian grandparents, but Tallulah’s mother makes that effort upon his death.<sup>56</sup> Hausman uses a dead character to have a presence throughout the novel’s temporality to shape the narrative.

Near the end of the novel, Hausman reintroduces the black bear. With the tour gone awry, Tallulah experiences a deep frustration for the present situation and lashes out at the bear.

Is that what you’ve come to tell me? That I suck! That I’m a poseur and a hack, a tourist bullshit artist who sold her fucking soul to Coca-Cola for my air-conditioning, who’s so fucked up she can’t even have a real vision? I can’t even have a fucking vision in a computer game filled with big fucking visions. Oh, God!<sup>57</sup>

In this moment, Tallulah compares herself to the tourists who ride the Trail of Tears simulation. She is not permanent to the time nor does she belong to space despite its near constant presence in her life. The reference to Coca-Cola is evocative. Georgia-based, the massive company has a dominating presence. It is transactional, capitalistic, and consumes the land around it. Much like the history for Indian removal, the image of transaction persists in this moment of the novel. Also, the notion of real visions reemerges. The need for a real communion with the past eats away at Tallulah. Supposedly, clarity and better understanding comes from the science-fiction simulation. Furthermore, this novel demonstrates that the technology only presents confusion and questions for Tallulah. In contrast, the black bear, a symbol of her past and a symbol of tradition, stays with her until she can find some peace in the messy temporality. “I love you,”

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54. *Id.*

55. *Id.* at 30-31.

56. *Id.* at 31.

57. *Id.* at 324.

said the bear, ‘I love you so much. That’s why you have to let me go,’” Hausman writes.<sup>58</sup> The bear is a peaceful resolution. Hausman continues, “Tallulah recognized the cliché, but it was just the cliché she needed.”<sup>59</sup> The meta writing speaks to Hausman’s use of tropes throughout this novel. It was the cliché Tallulah needed, and the cliché Hausman needed to explore ever-present issues for Cherokee people that supposedly belong in the past.

The character of Tallulah herself is a play on temporality and the Cherokee identity with Southeastern historical land. Hausman writes, “When tourists ask Tallulah Wilson if she was named after Tallulah Bankhead, she tells them, ‘Actually, Tallulah Bankhead was named after me.’”<sup>60</sup> Hausman juxtaposes the past and present through Tallulah’s dialogue. “Tallulah Falls was once the second-largest waterfall in all of North America. How Tallulah Bankhead’s grandmother was given that name because her parents honeymooned at the Falls back in the nineteenth century, some time not too long after the Removal.”<sup>61</sup> Logically, the reader knows that Tallulah cannot actually be named after Tallulah Bankhead, but her witty dialogue forces the reader to consider temporality. Tallulah Falls still exists but is an echo of its past environmental presence. The land once key to Cherokee sovereignty is framed in this passage as a tourist destination, and Hausman makes this comparison and transformation of space explicit with his reference to the Removal. He wants the reader to know “how it all comes back to Cherokee words and ancient rivers and things that lived here long before the Old South began to imagine itself as Old.”<sup>62</sup> Mooney’s historical entries cover this long history that existed for hundreds of years before the Removal.<sup>63</sup> Hausman plays upon this history to give weight to the history of Cherokee sovereignty in the present.

The science fiction concept most explicitly uses temporality to bring historic legal consequences to the present. Upon a childhood visit to her grandparents’ home, Tallulah’s grandfather introduces the technology that becomes the simulation.<sup>64</sup> The “red Jeep Cherokee with television windows” becomes the prototype to the later tourist trap.<sup>65</sup> Her grandfather

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58. *Id.* at 328.

59. *Id.*

60. *Id.* at 22.

61. *Id.* at 23.

62. *Id.*

63. See MOONEY, *supra* note 42, at 14.

64. HAUSMAN, *supra* note 45, at 32.

65. *Id.*

tells Tallulah, ““When in doubt, go to the source.””<sup>66</sup> Going to the source is usually the case for reading an article or book. Instead, Hausman brings the source to the present. “Arthur and Tallulah rode the whole Trail of Tears that night, all the way from the stockades in Georgia to the hills and lakes in northeastern Oklahoma.”<sup>67</sup> The Cherokee story begins in Georgia and seemingly ends in Oklahoma, but Hausman uses the setting of the novel to reorient the history back in Georgia. He uses transactions to reflect on the original transaction of the Trail of Tears.

When her grandfather died, the Museum of the Cherokee Indian inherited the intellectual property rights to his inventions. Grandma Lee was promised royalties. When Tallulah was nineteen, the museum sold Arthur Wilson’s “Surround Vision” concept to Atlanta moneyman Jim Campbell, complete with the prototypical big red Jeep Cherokee with television windows.<sup>68</sup>

A Cherokee property goes to another Cherokee property upon the death of the original owner. There is subtext that the grandmother’s royalties were never paid. She was promised said royalties, but Hausman does not write that she received payment. The reader is left to imagine a transaction that is not entirely fair and truly fulfilled, like in the previous cases discussed where the State of Georgia acquired Cherokee territory. The invention is further separated from the original owner by selling to Jim Campbell. Much like how the United States government is the entity to foster transactions of Cherokee property, the museum is a removed entity fostering a transaction of intellectual property. Supposedly, the grandmother was under the protection of the museum to receive her royalties, but the protection did not seem to actually occur. The sentence ends with the technology through which people could originally experience the Trail of Tears simulation. Hausman deliberately uses a make and model to tie the origins of the experience to the Cherokee while also drawing upon temporality. The car in literature often depicts liminal spaces. Here, Hausman uses the car as a method through which a person experiences the Trail of Tears but can leave. However, he does not allow Tallulah or the reader to forget the history of the simulation or the simulation’s historical background.

The plot thickens with the introduction of Tour Group 5709.<sup>69</sup> Tallulah begins the tour with her standard question and answer time for the

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66. *Id.* at 33.

67. *Id.*

68. *Id.* at 34.

69. *Id.* at 43.

tourists.<sup>70</sup> However, the session grates on Tallulah. “Tallulah’s stomach grinds while telling her tourists that it will all be over soon. For her it never ends. This is her one thousand one hundred and third trip through the Trail of Tears. . . . Nothing really changes. Nothing really ends.”<sup>71</sup> Tallulah must keep up the customer service persona to speak to the sensibilities of the tourists. Her ride cannot end due to the repetition. Through the use of free indirect discourse with “Nothing really changes. Nothing really ends,” the voice of Tallulah and the Nunnehi blend. The first part uses “changes” that would suggest there is some permanence, but the word “ends” suggests constant continuance. It is an ironic thought that plays on the use of present tense while in a past tense driven story. The singular word switch from “changes” to “ends” creates just enough instability to create tension between Tallulah’s previous 1102 trips and her 1103rd.

Immediately after this thought, she tells the tour group, “The Removal will begin soon, so right now is your best and last chance to ask questions before the Trail of Tears begins.”<sup>72</sup> Once again, Hausman makes an explicit reference to the Removal while using language to create a dissonance of temporality. The reader knows the real Removal has already occurred. For Tallulah, the Removal is a near constant presence. For this tour group, the Removal is a future and singular moment. The “last chance” for questions juxtaposes the future of the Removal. The “last chance” suggests a past to which one cannot return. However, as the simulation works, one can repeatedly ride the Trail of Tears, something usually associated with the past.

During the simulation, the tourists believe people discovered gold in Cherokee territory.<sup>73</sup> Tallulah corrects the tourists and leads them into a discussion of the right of discovery: “And this takes us back to the uncomfortable question of whether a traveler can actually discover something that is already common knowledge for the people who actually live in that area.”<sup>74</sup> Hausman uses layman’s terms to discuss the right of discovery for both the tourists and for the reader. In the two cases discussed previously, the Supreme Court referenced the right of discovery and the inheritance of the United States’ rights to land through England’s original

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70. *Id.* at 44-45.

71. *Id.* at 60-61.

72. *Id.* at 61.

73. *Id.* at 64.

74. *Id.* at 65.

invocation of the right of discovery.<sup>75</sup> It is through these references that Hausman addresses the constant presence of legal issues supposedly belonging to history.

*B. Sovereignty: A Play*

*1. Background and Setting*

Mary Kathryn Nagle's play *Sovereignty: A Play* is, perhaps, one of the most precise examples of the use of temporality to explore the recurring issue of Cherokee sovereignty. The play first premiered on January 12, 2018, in Washington, D.C., at Arena Stage.<sup>76</sup> To set the scene, the premiere occurred nearly two hundred years after the two central cases of this Comment. From the beginning, the introductory remarks regarding the composition of the play acknowledge a use of temporality as a central element.<sup>77</sup> Nagle gives this final statement before introducing the cast of characters in regard to the two settings of the 1800s and the present day: "The worlds coexist, since at any given moment we are a reflection of our past and present, and we project that into the future."<sup>78</sup>

In the *Characters* section of introductory material, Nagle provides brief character summaries for each of the roles portrayed.<sup>79</sup> The play includes nine actors, many of whom portray multiple roles both in the 1800s setting and the present setting.<sup>80</sup> Following the layout of what roles are grouped together, Nagle provides background to each of the characters.<sup>81</sup> Some of the 1800s characters include real historical figures such as Major Ridge, John Ridge, John Ross, and Samuel Worcester.<sup>82</sup> Nagle specifically notes Samuel Worcester and *Worcester v. Georgia*.<sup>83</sup> The present setting characters include fictional figures such as Sarah Ridge Polson, Roger Ridge Polson, and Jim Ross.<sup>84</sup> Specifically, these fictional characters are portrayed as direct descendants of historical figures of the 1800s setting.<sup>85</sup> It

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75. See *Cherokee Nation v. Georgia*, 30 U.S. (5 Pet.) 1, 17–19 (1831); *Worcester v. Georgia*, 31 U.S. (6 Pet.) 515, 543–44 (1832).

76. MARY KATHRYN NAGLE, *SOVEREIGNTY: A PLAY* loc. 46 (2020) (ebook).

77. *Id.* at loc. 60.

78. *Id.*

79. *Id.*

80. *Id.*

81. *Id.*

82. *Id.*

83. *Id.* at loc. 85.

84. *Id.*

85. *Id.*

is worth noting that the past and present characters are connected through lineage. While one can interpret a notion of inheritance of the past through pure cultural ties, the direct familial lineage emphasizes that inheritance.

For the purposes of clarity of this Comment, the textual analysis will follow the play's act and scene sequence. Because of the nature of temporality, discussion following the structure presented by the playwright is of the utmost importance. I will be strictly analyzing the text of the printed, official copy of the script and not any of the performances for consistency and for a precise analysis of Nagle's writing choices.

## 2. Act I Scene 1

Beginning with the end, Nagle sets the first scene of the play in the present setting at the Ridge Polson cemetery.<sup>86</sup> Immediately, the setting description clues the reader into how important the notion of time is. Literally, the setting description notes "*Present day. The Ridge Polson Cemetery . . .*"<sup>87</sup> While a live audience would be able to distinguish the physical setting of the cemetery, Nagle's written setting description highlights specifically the juxtaposition of present and past while forcing them into the same space. Many think of the past as dead, and a cemetery would be one way to make this point. However, Nagle begins with a cemetery to demonstrate how the past lives with the present.

Also, this first scene introduces one conflict of the play: the conflict between the Ridges and the Rosses.<sup>88</sup> These present setting characters appear to have tension that remains unresolved.<sup>89</sup> Sarah Ridge Polson's application to the attorney general's office brings the tensions to the surface.<sup>90</sup>

While the interpersonal conflict draws in a reader, legal consequences interweave throughout the act. Sarah Ridge Polson's career as a lawyer lingers in the background as the reason for her return to Oklahoma.<sup>91</sup> Interspersed through the dialogue between Sarah Ridge Polson and Flora Ridge legal history lingers.<sup>92</sup> Casually, the characters discuss Sarah Ridge

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86. *Id.*

87. *Id.*

88. *Id.*

89. *Id.*

90. *Id.*

91. *Id.*

92. *Id.* It is worth noting that the characters of Flora Ridge and Sarah Bird Northup are both played by the same actress. One can read the lines where Flora Ridge reminds Sarah Ridge Polson of her namesake, Sarah Bird Northup, as coming from Sarah Bird Northup directly.

Polson's detour through Georgia where Sarah Ridge Polson states, "I visited Worcester's house, Elias Boudinot's house, the old Supreme Court building, and then I stopped at Sarah [Bird Northup] and John [Ridge]'s."<sup>93</sup> Using the voice of Sarah Ridge Polson, Nagle creates a specific structure when describing the detour. Worcester's house is a reference to Samuel Worcester, the historical figure and character in the play. Next, there is Elias Boudinot, another historical figure and character, who was John Ridge's cousin and the first editor of the *Cherokee Phoenix*.<sup>94</sup> Next, Nagle includes the Supreme Court building in Georgia. The building serves as a symbol of generations of legal conflict. Finally, the list ends with a blend of the historical and the personal. To Sarah Ridge Polson, John Ridge and Sarah Bird Northup are John and Sarah, so she says. However, the reader has the information to contextualize the importance of these two people in regard to Cherokee sovereignty. Nagle uses Sarah's level of familiarity to make these figures seem much more present rather than long past.

### 3. Act I Scene 2

The second scene of Act I provides a legal conflict of the play.<sup>95</sup> Watie meets Ben and Mitch at the Cherokee Nation Hard Rock Casino.<sup>96</sup> Watie, Sarah Ridge Polson's brother, is part of the Cherokee Nation police force.<sup>97</sup> Ben is a non-Indian Special Victims Unit police officer.<sup>98</sup> Mitch is a non-Indian lawyer.<sup>99</sup> When the three men meet, a drunk man arrives and behaves unruly, ultimately assaulting Watie.<sup>100</sup> The stage description reads "*WATIE, aware that he has no jurisdiction, isn't quite sure how to react.*"<sup>101</sup> Ben makes the arrest as a state officer. The following lines occur:

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93. *Id.*

94. *Id.* at loc. 60.

95. *Id.* at loc. 125.

96. *Id.*

97. *Id.* at loc. 85.

98. *Id.*

99. *Id.*

100. *Id.* at loc. 168.

101. *Id.*

WATIE: You can't arrest him.

DRUNK MAN: You can't arrest me!

WATIE: This is Cherokee Nation.

DRUNK MAN: Fuck Cherokee Nation.<sup>102</sup>

To contextualize, Drunk Man is part of a collection of roles under White Chorus Man portrayed by one actor.<sup>103</sup> Much like the traditional Greek chorus, White Chorus Man echoes important statements by prominent characters. Here, Drunk Man acts as a refrain to Watie. Watie tells Ben that he cannot arrest Drunk Man, speaking from his knowledge and authority as a Cherokee officer, and Drunk Man reiterates the statement but from a position that notes some authority outside the realms of these officers. Watie contextualizes his original statement with the Cherokee Nation; Drunk Man exclaims profanity and disrespect towards the Cherokee Nation.

After Drunk Man leaves, Sarah Ridge Polson arrives to the scene.<sup>104</sup> She tells her brother that he should report this incident to federal agents, but he complains of federal agents' lack of initiative with such issues.<sup>105</sup> This leads into a discussion by the characters regarding jurisdiction, Cherokee sovereignty, and a quick case summary.<sup>106</sup> Sarah Ridge Polson notes that *Oliphant* is the main cause for neither Watie (Cherokee authority) nor Ben (state authority) having jurisdiction over Drunk Man.<sup>107</sup> She says, "In 1978 the Supreme Court said Tribes can no longer exercise criminal jurisdiction over non-Indians who come onto tribal lands and commit a crime."<sup>108</sup> Ben's reply and Sarah Ridge Polson's following comments provide an excellent character profile and issue highlight.

BEN: That's just wrong.

SARAH: Tell that to your United States Supreme Court.

BEN: You don't like the court?

SARAH: I respect it.

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102. *Id.* at loc. 220.

103. *Id.* at loc. 60.

104. *Id.* at loc. 220.

105. *Id.* at loc. 220, 269.

106. *Id.* at loc. 269, 317, 363. Nagle writes in a comprehensive yet manageable way for even non-legal community audiences.

107. *Id.* at loc. 317.

108. *Id.*

BEN: So you're like a Catholic that hates the Vatican.

SARAH: It's hard to worship an institution that always decides against you.<sup>109</sup>

Rather than a long soliloquy or monologue on the issues of sovereignty, Nagle provides quick and sharp dialogue that gets to the heart of the personal and persisting issue of Cherokee sovereignty. Sarah Ridge Polson says “*your* United States Supreme Court” (emphasis added), noting the often partial impartiality of the highest judicial institution in the country. Ben provides an analogy that nearly any reader, certainly any Western reader, could comprehend. Sarah Ridge Polson is to a disgruntled Catholic as the Supreme Court is to the Vatican. Being part of a system does not automatically denote devotion. Sarah Ridge Polson makes that explicitly clear.

The characters' discussion turns to *Worcester v. Georgia*.<sup>110</sup> Sarah Ridge Polson states, “We won that case. And we've lost ever since.”<sup>111</sup> Previously in this Comment, the discussion on this case included how the Supreme Court determined that the Cherokee Nation did have sovereignty with regard to Georgia's state laws, and that the state would need to act accordingly with treaties or other such examples in order to attain the Cherokee Nation's assent.<sup>112</sup> Despite the win to assert sovereignty, Sarah Ridge Polson's comment denotes two hundred years of diminished sovereignty. She summarizes to Ben the present reality of such diminished sovereignty, particularly due to *Oliphant*: “You could set my house on fire, graffiti our courthouse, kill someone, basically do whatever you want, and Cherokee Nation could never prosecute you.”<sup>113</sup> She quickly follows with the need for the Violence Against Women Act (VAWA) and the need to “prosecute domestic violence crimes perpetrated by non-Indians.”<sup>114</sup> She notes that Congress's passage of VAWA (“with a tribal jurisdiction provision”) restored some “of our criminal jurisdiction.”<sup>115</sup> While Nagle does not explicitly use the word sovereignty in this section, the titular issue of the play looms with this discussion. Having jurisdiction over crimes perpetrated within the Cherokee Nation provides clear sovereignty.

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109. *Id.*

110. *Id.*

111. *Id.*

112. *Worcester v. Georgia*, 31 U.S. (6 Pet.) 515, 561 (1832).

113. NAGLE, *supra* note 76, at loc. 317.

114. *Id.*

115. *Id.*

#### 4. Act I Scene 3

This scene portrays Sarah Ridge Polson's job interview at the attorney general's office with Jim Ross.<sup>116</sup> She accepts the job, and Jim Ross assigns her to prepare his talking points for the discussion with the Department of Justice regarding the Cherokee Nation's implementation of VAWA.<sup>117</sup> She tells him that VAWA is like a "treaty signing," describing it as "a modern-day treaty from one sovereign to another."<sup>118</sup> While he agrees with her, she mentions the Treaty of New Echota, which he promptly tells her not to mention.<sup>119</sup> James Mooney provides a succinct summary of the treaty: "Briefly stated, by this treaty of New Echota, Georgia, the Cherokee Nation ceded to the United States its whole remaining territory east of the Mississippi for the sum of five million dollars and a common joint interest in the territory already occupied by the western Cherokee, in what is now [Oklahoma] . . . ."<sup>120</sup> This treaty provides a conflict between the Ridges and the Rosses. When Sarah Ridge Polson says Ridges signed the treaty, Jim Ross calls them traitors.<sup>121</sup> It is his direct descent from John Ross that creates this desire to avoid discussion on the treaty.<sup>122</sup>

#### 5. Act I Scene 4

This scene provides the plays first transition to the 1800s setting in Connecticut.<sup>123</sup> The first part of the stage directions read: "Shift to the past. 1820s. JOHN RIDGE enters . . . ."<sup>124</sup> While "[s]hift to the past" may seem like an obvious phrase for set designers to follow or the obvious explanation of setting the scene, the use of the verb shift creates a sense of movement. A reader can perceive the shift to the past as a seamless transition. It is important to note the structure of drama and the choice to write this story for the stage. Theater exists in the present. Stage directions and dialogue are written in the present in dramatic works. Specifically, using the medium of theater to convey the past highlights its continuing presence.

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116. *Id.* at loc. 363, 406, 456, 505.

117. *Id.* at loc. 456, 505.

118. *Id.* at loc. 456.

119. *Id.*

120. MOONEY, *supra* note 42, at 123.

121. NAGLE, *supra* note 76, at loc. 456.

122. *Id.*

123. *Id.* at loc. 505.

124. *Id.*

This scene mainly establishes the characteristics of several of the historical figures while presenting them in intimate and human situations.<sup>125</sup>

*6. Act I Scene 5*

The setting remains in the 1820s.<sup>126</sup> However, it changes to Georgia with Major Ridge and John Ross.<sup>127</sup> Major Ridge and John Ross discuss a draft bill regarding sexual abuse of Cherokee women after more abuses perpetrated by the Georgia militia.<sup>128</sup> Ross states they “need to make clear the law applies to everyone, Cherokees, non-Cherokees, citizens of Georgia, any non-Indian.”<sup>129</sup> This line highlights the need for sovereignty over a nation’s laws—especially when victims of abuses are part of that nation. Calling back to the present setting with how Watie was attacked, it is clear that the return to the past juxtaposes how little has changed. Specifically, this scene more explicitly introduces the theme of body sovereignty as a parallel to legal sovereignty. Major Ridge states, “[W]e can’t be divided. Our women are the foundation of our sovereignty. Without them, we have no nation.”<sup>130</sup> This statement foreshadows the present setting issues.

*7. Act I Scene 6*

This scene returns the setting to the present and to the Ridge Polson Cemetery.<sup>131</sup> There’s a distinct tonal dissonance with dialogue subject matter between Sarah Ridge Polson and Ben. She tries to introduce him to her family buried at the cemetery while he frantically looks for a restroom.<sup>132</sup> He reads John Ridge’s gravestone which states John Ridge was assassinated and then proposes to Sarah Ridge Polson.<sup>133</sup> He tells her he “wanted to ask [her] in front of [her] family.”<sup>134</sup> During the proposal, she emphasizes that her name is Sarah Ridge Polson and not Sarah Polson.<sup>135</sup> The scene provides an offbeat interlude between 1800s scenes. This scene works with time while throwing in lines of legacy and lasting historical

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125. *See id.* at loc. 505, 560, 616.

126. *Id.* at loc. 616.

127. *Id.*

128. *Id.* at loc. 616, 670.

129. *Id.* at loc. 670.

130. *Id.*

131. *Id.* at loc. 722.

132. *Id.* at loc. 722, 774.

133. *Id.* at loc. 817.

134. *Id.*

135. *Id.*

effect. Previously established, the cemetery is often a place associated with the past. This scene is set in the present setting of the play, occurs in a location associated with the past, and involves an action (a proposal) often associated with the future. While it is not a scene heavily or explicitly laying out the issues surrounding Cherokee sovereignty, the scene uses dramatic tools to create the sense of multiple times converging.

*8. Act I Scene 7*

This scene returns the reader to the 1800s setting.<sup>136</sup> John Ross, Major Ridge, and John Ridge are at the White House to discuss violence enacted upon members of the Cherokee Nation.<sup>137</sup> Specifically, John Ross lays out the agenda of prioritizing "the discussion of Georgia's escalating use of violence against Cherokee citizens."<sup>138</sup> He says it is "critical that we emphasize our sovereignty, and that we're exercising it."<sup>139</sup> From the beginning of the scene, the reader clearly can understand the three men's goal for this discussion and can understand the legal consequences at stake with the previous scenes' information. However, that discussion gets derailed by the very man the three men came to see.<sup>140</sup> Andrew Jackson's dialogue focuses on re-living war stories involving Major Ridge and little else. He even states that he gave Major Ridge his name.<sup>141</sup> It is only after lengthy rambling that John Ross is able to plead their case that Georgia looks to take Cherokee land.<sup>142</sup> Andrew Jackson's solution is for the Cherokee Nation to follow the example of other tribes to create treaties to sell land and go west.<sup>143</sup> John Ridge makes it clear that they are not another tribe, they are the Cherokee Nation, and have no plans of leaving.<sup>144</sup>

Governor Forsyth enters the scene and dominates the conversation, once again derailing the issue.<sup>145</sup> Andrew Jackson dismisses John Ridge, Major Ridge, and John Ross with little thought to discuss the same issue with Governor Forsyth.<sup>146</sup> Andrew Jackson says: "You find yourselves established in the midst of a superior race, and although you do not

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136. *Id.*

137. *Id.*

138. *Id.* at loc. 862.

139. *Id.*

140. *Id.*

141. *Id.*

142. *Id.*

143. *Id.*

144. *Id.* at loc. 862, 920.

145. *Id.* at loc. 920.

146. *Id.*

appreciate the cause of your inferiority, if you do not yield to the force and progress of civilization and move west, you will disappear.”<sup>147</sup> Andrew Jackson’s statement provides a clear image of a racist and dismissive man who cares nothing for Cherokee sovereignty when it comes to his perceptions of society.

However, it is the final independent clause of his statement that provides great work for Nagle’s themes and techniques. Immediately following this line, there is a stage direction for John Ridge, Major Ridge, and John Ross to exit the stage. Effectively, Andrew Jackson’s line appears to make the three men disappear. It is a connection between the dialogue and the physical actions of the play to emphasize the growing threat to Cherokee sovereignty. More particular to the theme of temporality, the three men disappear during the middle of the scene. While it is not uncommon for characters to come and go during a single scene of a dramatic work, scenes are more commonly organized by one unchanged location and central characters persisting throughout the scene. Here, these three central characters are removed from the scene, but the issue of Cherokee sovereignty persists, and as the play persists, so, too, does the physical presence of the three men.

Nagle effectively uses pacing and a sense of time in the scene to demonstrate Andrew Jackson’s motivations. In the second half of Act I Scene 7, Andrew Jackson and Governor Forsyth waste little time in addressing Cherokee sovereignty.<sup>148</sup> This juxtaposes the dallying of the first half of the scene where Andrew Jackson seemed uninterested in the issue. Governor Forsyth presents the perceived problem that the Cherokee Nation “think[s] their jurisdiction extends to *United States* citizens living on Cherokee lands.”<sup>149</sup> Note that this line specifically italicizes *United States*. Here, Nagle chooses to make a clear written emphatic choice for the actor. The stress of the sentence belongs on the *United States* to make it clear to the reader, and to an audience, that the *United States* is something wholly different from the Cherokee Nation, at the very least in the mind of Governor Forsyth. This compares to the early statement by Sarah Ridge Polson where she separates herself and the Cherokee Nation from the United States Supreme Court by calling it “your *United States* Supreme Court.”<sup>150</sup> While Governor Forsyth’s statement is meant to permit special privileges to *United States* citizens from the sovereignty of the Cherokee

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147. *Id.*

148. *Id.*

149. *Id.*

150. *Id.* at loc. 317.

Nation, Sarah Ridge Polson's statement acknowledges a lack of rights perpetuated by an authority meant to include the Cherokee Nation. Following Governor Forsyth's comment, Andrew Jackson says, "[T]ake their lands and you'll take their jurisdiction."<sup>151</sup> Here, he explicitly ties sovereignty to Cherokee land foreshadowing the legal devastation of the Indian Removal Act. Also, this scene contains similar thematics of sovereignty and land like *Riding the Trail of Tears*.<sup>152</sup> As previously discussed, the novel's focus on the cultural significance of land ties into the legal consequences faced in the present by the Cherokee Nation and Cherokee individuals.

Andrew Jackson and Governor Forsyth reframe the issue of Cherokee sovereignty from one of rights as a sovereign nation to that of an economical issue.<sup>153</sup> Governor Forsyth notes that gold has been discovered on Cherokee land and begins to describe the way to obtain it.<sup>154</sup> Andrew Jackson interrupts: "This is about the economy of the entire United States. From the Potawatomi to the Cherokee, until we've moved them all, the progress of the entire nation will be blocked."<sup>155</sup> For these men, the issue of Cherokee sovereignty is not about national identity nor legal rights; it is about profit. Like the mention of Coca-Cola in *Riding the Trail of Tears*, commodification and capitalist enterprise perpetuated by the United States persists in opposition to Cherokee sovereignty.<sup>156</sup>

The scene ends with one final legal conflict raised. Andrew Jackson asks about Samuel Worcester.<sup>157</sup> Governor Forsyth explains the man's presence in the Cherokee Nation to which Andrew Jackson tells the governor to remove Samuel Worcester.<sup>158</sup> The governor explains they have no authority to do so. Andrew Jackson provides the solution to Governor Forsyth's problem and the real legal issue of the *Worcester* case: "[M]ake some [authority]. Pass a law. Forbid him to be there."<sup>159</sup> While this case exists in the 1800s past setting, the case was foreshadowed by Sarah Ridge Polson in the present. Her brief mention of the cases in Act I Scene 2 has a significantly smaller presence than the discussion of *Oliphant*, but the name

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151. *Id.* at loc. 920.

152. *See* HAUSMAN, *supra* note 45.

153. *See* NAGLE, *supra* note 76, at loc. 973.

154. *Id.*

155. *Id.*

156. *Id.*

157. *Id.*

158. *Id.*

159. *Id.*

in this scene and the connection to a previous scene provide the reader with further context while spanning temporality.<sup>160</sup>

9. Act I Scene 8

In contrast to the rude reception in the previous scene, Scene 8 opens with the setting of dinner in the Cherokee Nation with John Ridge, Elias Boudinot, Samuel Worcester, and Sarah Bird Northup.<sup>161</sup> Upon their entrance to the scene, Major Ridge and John Ross begin a discussion with the other dinner attendees in a thorough manner.<sup>162</sup> John Ross states that the paper they work on threatens the plans of Jackson and Governor Forsyth for the removal of Cherokee people from their sovereign land.<sup>163</sup> He elaborates by stating the governors of Georgia, Tennessee, and Mississippi call Cherokee people “uncivilized, uneducated, an obstacle to progress and democracy” and “*that* is why [the Cherokee people] must be removed.”<sup>164</sup> Mary Kathryn Nagle directs the emphasis of the sentence with the italicization of “*that*,” loading the amorphous word with meaning. Based on the previous scene, the reader and the audience can juxtapose the intention of Jackson and Governor Forsyth for profit with what John Ross reports to his colleagues. The reader can read the italicized word, and an actor would deliver the word laced with emphasis to a listening audience, allowing any consumer of the play to understand how the racist words meant to appeal to white citizens of the United States. The proposed theory of racial superiority contrasts the true intentions of eradication of Cherokee sovereignty in pursuit of profit off of land. John Ridge explains the new Georgia law enacted to reach this result: “Georgia has made it a crime for any American citizen to set foot on Cherokee lands without their governor’s permission.”<sup>165</sup> The law ignores basic concepts of sovereignty. A foreign nation, the United States tries to impose and control a criminal law on another nation, the Cherokee Nation. More explicitly, Samuel Worcester states, “According to this law, any American citizen residing on Cherokee lands must sign his allegiance to Governor Forsyth.”<sup>166</sup> The swearing of

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160. *Id.* at loc. 317, 973. The case name reference should have a reader’s or audience member’s jump in time to the previous scene to recall the information while creating a sense of anticipation for future references.

161. *Id.* at loc. 973.

162. *Id.*

163. *Id.* at loc. 1029, 1087.

164. *Id.* at loc. 1029.

165. *Id.*

166. *Id.*

allegiance to the governor builds into the law a requirement for American citizens to acknowledge this breach of sovereignty against the Cherokee Nation. When Samuel Worcester declares he defies the law, John Ridge denies the validity of the Georgia law due to a lack of jurisdiction.<sup>167</sup> Later in the scene, Georgia guards arrive to arrest Samuel Worcester for violation of the Georgia law.<sup>168</sup> The arrival of foreign state actors provides for an abrupt realization of the disregard for Cherokee sovereignty. The scene is set for the infamous case.

*10. Act I Scene 9*

Samuel Worcester sits in a Georgian prison for five days in 1832 when John Ridge visits to develop the case.<sup>169</sup> John Ridge asks Samuel Worcester to remain in custody with the intention to appeal the conviction to the Supreme Court of the United States.<sup>170</sup> While Samuel Worcester expresses his desire to sign his allegiance to the governor to return home to his family, John Ridge declares, “This isn’t about you.”<sup>171</sup> Samuel Worcester challenges this statement: “I seem to be the one sitting [in prison].”<sup>172</sup> Nagle highlights a tension of sovereignty on several different levels between these two lines. Explicitly within the text, Nagle juxtaposes the focus on the broader issue of Cherokee sovereignty with a singular man’s sovereignty over his decisions. Societal need conflicts with individual need in this moment. Implicitly within the text lies the tension between individual sovereignty and a lack thereof when an individual is in custody of the State. One sovereign nation exerts control over a singular person’s liberty in order to restrain and extinguish the sovereignty of another nation.

While John Ridge tries to reiterate how Georgia has no jurisdiction in Cherokee Nation, Samuel Worcester counters: “[Georgia has] soldiers. And they’re arresting people like me. . . .”<sup>173</sup> John Ridge quickly interrupts to

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167. *Id.*

168. *Id.* at loc. 1087.

169. *Id.* at loc. 1142.

170. *Id.*

171. *Id.*

172. *Id.*

173. *Id.* It is worth noting the historical phenomenon and cultural understandings of nations utilizing the force of state officers to enact the nation’s desires, as humorously and succinctly put forth in one comedy show: “Laws are threats made by the dominant, socio-economic ethnic group in a given nation. It’s just a promise of violence that’s enacted, and police are basically an occupying army.” Dimension 20, *Family in Flames (Ep. 15) | Fantasy High*, YOUTUBE, at 48:28 (Sept. 22, 2019), <https://www.youtube.com/watch?v=x>

highlight the greater issue: “They arrested you to make a statement. If they can enter our lands and remove you, they can remove me. And every other citizen of the Cherokee Nation.”<sup>174</sup> Nagle illustrates a key legal consequence of the history of the Removal (and, as a result, the Trail of Tears) through this line. With the ability to physically remove Cherokee Nation citizens from their own sovereign land, the United States could completely control a sovereign nation. The Cherokee Nation’s sovereignty appears nonexistent if the United States can simply supplant Cherokee laws with its own.

Samuel Worcester returns the conversation to personal sovereignty. He tells John Ridge that he wants to go home.<sup>175</sup> John Ridge replies, “So you’ll let them take mine.”<sup>176</sup> The conversation circles around broader legal concerns along with the individual concern, both legal and personal.<sup>177</sup> Samuel Worcester and John Ridge interchange the focus of the conversation between these levels of sovereignty. How the conversation moves between the levels of sovereignty may seem to speak to the fraught emotional situation, which it does, but it also highlights the larger technical elements Nagle utilizes for the themes of the play. This brief exchange serves as a microcosm of the larger theme of the play: sovereignty is a temporally cyclical issue, both for a person and for a nation. The need to constantly and consistently exert sovereignty persists.

### *11. Act I Scene 10*

The play returns to the present, however, in a familiar setting, a family sitting around a table for a meal, mirroring Act 1 Scene 7’s scene.<sup>178</sup> Sarah

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174. NAGLE, *supra* note 76, at loc. 1142.

175. *Id.*

176. *Id.*

177. *Id.* at loc. 1142, 1196. “The personal is political” is a phrase often associated with second wave feminism. Christopher J. Kelly, *The Personal Is Political*, BRITANNICA, <https://www.britannica.com/topic/the-personal-is-political> (last updated Mar. 1, 2022). However, the slogan has often been associated with other social and systemic issues. One can understand the phrase “the personal is political” as the notion that larger societal issues impact a person on the daily and the individual scale, where “individual experiences are inextricably connected with the greater social and historical context.” *Id.* Nagle exemplifies the concept in her writing by consistently juxtaposing characters and the legal and systemic issues they face. In fact, the use of theater and dialogue only highlights the personal nature by almost entirely using direct dialogue (excluding narration and stage directions in a written version of the play).

178. NAGLE, *supra* note 76, at loc. 1196.

Ridge Polson introduces Ben to her father, Roger Ridge Polson, for the first time where the conversation turns to a discussion of modern Cherokee attitudes.<sup>179</sup> Ben mentions how he learned that Cherokee are Christian, but Roger Ridge Polson snarks back, “Some of us even drive cars.”<sup>180</sup> While the clever retort is meant to reveal Roger Ridge Polson’s character and his feelings regarding Ben, the exchange recalls back to Samuel Worcester’s Christian appeals to John Ridge.<sup>181</sup> Even with the switch from past to present, the same topics recur throughout the play, seamlessly translating ever-present issues across time. This use of writing technique primes the reader and the audience for another acknowledgement of how the past lingers in the present. While discussing whether any children Sarah Ridge Polson and Ben have would be considered Cherokee, the family’s conversation turns towards the notion of Cherokee citizenship and what it means to be Cherokee.<sup>182</sup> When discussing the status of Cherokee citizenship for former Cherokee slaves and their descendants, Roger Ridge Polson presses Sarah Ridge Polson by asking, “Is that what makes you Cherokee? Walking the Trail of Tears?” in regard to her point that former slaves also endured the event.<sup>183</sup> She elaborates her point that those former slaves and descendants should retain their Cherokee citizen status by stating that, “Sovereignty isn’t about race. It’s about citizenship. And they’re citizens. We signed a treaty!”<sup>184</sup> Once again, citizenship arises as a key feature in the present timeline just as it did in the past timeline. Sovereignty is tied to a person’s citizenship. Laws, treaties, etc. provide a person with rights derived from a nation. Sarah Ridge Polson’s statement recalls Samuel Worcester’s charge by Georgia. While not a Cherokee, nor even a Cherokee citizen, his conversation with John Ridge highlights his time in Cherokee Nation as maintaining him in that jurisdiction and not under the United States.<sup>185</sup>

This scene also highlights the continuing interplay between sovereignty and capital. “When Cherokee Nation moved west, the nation was paid five million dollars,” Roger Ridge Polson says.<sup>186</sup> He explains that the money went “directly to Ross’s brother” and how “the Rosses profited from [the

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179. *Id.* at loc. 1247.

180. *Id.*

181. *Id.* at loc. 1196.

182. *Id.* at loc. 1247, 1295.

183. *Id.* at loc. 1295.

184. *Id.*

185. *See id.* at loc. 1142, 1196.

186. *Id.* at loc. 1295.

Trail of Tears].”<sup>187</sup> While in the present timeline there is a prejudice and bias between the Rosses and the Ridges, the turn in conversation is important for the reader and the audience to remember the issue of sovereignty and capital. Land often creates profit. As the players in the past timeline understand Jackson’s and Governor Forsyth’s desire to obtain the Cherokee Nation land would give them capital, Roger Ridge Polson understands how the sovereignty could be exchanged for profit.<sup>188</sup>

*12. Act I Scene 11*

Back in 1832, Major Ridge, John Ridge, John Ross, Elias Boudinot, and former United States attorney general William Wirt meet to discuss the brief for the Supreme Court case of Samuel Worcester.<sup>189</sup> The first piece of evidence they discuss is a collection of treaties between Cherokee Nation and the United States.<sup>190</sup> Specifically, the men highlight the Treaty of Hopewell to William Wirt that “recognizes Cherokee Nation’s sovereign right to exercise jurisdiction over all Cherokee lands.”<sup>191</sup> John Ridge points out that the United States “Constitution makes clear that once a treaty is signed by your president and ratified by your Senate, it becomes the supreme law of the land.”<sup>192</sup> The treaty is an acknowledgement of the Cherokee Nation’s sovereignty over its land, but John Ridge also uses American constitutional law to establish how the United States does not have the ability to disregard its own acknowledgment of another nation’s sovereignty once established by treaty. Elias Boudinot succinctly states the United States has “no law.”<sup>193</sup>

The men later discuss the notion of sovereignty and define it in different ways.<sup>194</sup> William Wirt references Webster’s dictionary with the definition of sovereignty as ““a country’s independent authority and the right to govern itself.””<sup>195</sup> He states that he includes it in the brief but is interrupted by the other men with various examples of sovereignty in practice.<sup>196</sup> John Ross provides the example of establishing the Cherokee Nation’s Supreme

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187. *Id.*

188. *See id.* at loc. 817, 862, 920, 973, 1295; *see supra* note 153.

189. NAGLE, *supra* note 76, at loc. 1343.

190. *Id.* at loc. 1393.

191. *Id.*

192. *Id.*

193. *Id.*

194. *Id.* at loc. 1393, 1444.

195. *Id.* at loc. 1444.

196. *Id.*

Court.<sup>197</sup> Elias Boudinot offers, “When the council votes on a resolution.”<sup>198</sup> John Ross translates John Ridge’s example: “*Na-yu-no ya-gi-wo-ni-si a-gi-wo-ni-hi-sdi na-sgi-na-i u-nv-sa u-ni-hv di-gu-go-ta-ni-da-sdi ge-so-I (Sovereignty is when I speak my language).*”<sup>199</sup> These three examples of sovereignty are contrasted by the refrain Nagle employs. With the two national levels of sovereignty, both men provide their examples followed by the independent clause “that’s sovereignty.”<sup>200</sup> Nagle flips the repetition of “sovereignty” having John Ridge’s statement establish the word before the example of language.<sup>201</sup> The reversal of where the key word rests in each sentence clues the reader and the audience into the slight difference between the examples. While the first two examples speak to larger national levels of sovereignty, the third example may do so, as well, but also speaks to personal sovereignty. Nations may have official languages, but language is also a deep experience and tool employed by everyone to craft how they represent themselves. Nagle uses these literary techniques to emphasize the repetition of these themes in the present and past timelines.

### 13. Act I Scene 12

This scene returns the reader and the audience to the present setting.<sup>202</sup> Sarah Ridge Polson joins Jim Ross in his office where they discuss some of the abusers they prosecute.<sup>203</sup> The conversation turns to the upcoming discussion with the President of the United States. Jim Ross tells Sarah Ridge Polson not to “debate the constitutionality of what [the President] wants, or thinks he can do,” but rather to focus on helping “him understand jurisdiction.”<sup>204</sup> His words echo the previous scenes need to focus on the law rather than the whims and desires of the contemporarily sitting President.

### 14. Act I Scene 13

With the President on the mind of the reader, and the audience, the scene description of Act 1 Scene 13 establishes the setting of the Oval Office in

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197. *Id.*

198. *Id.*

199. *Id.* It is important to note that the written version of the play offers a direct translation of the lines in Cherokee even when another character may translate which highlights a different experience between the reader and the audience.

200. *Id.*

201. *Id.*

202. *Id.* at loc. 1500.

203. *Id.*

204. *Id.* at loc. 1548.

1832.<sup>205</sup> Once again, Nagle complements scenes by having their settings mirror each other or have one timeline's setting reflect the content of the other timeline's scene. Justice Marshall's decision in the case of *Samuel Worcester* holds that Georgia cannot exert jurisdiction over the Cherokee Nation land.<sup>206</sup> However, John Ridge tells the President of persisting problems despite the Supreme Court decision: Georgia continues to enforce Samuel Worcester's hard labor sentence and uses a lottery to give "away Cherokee lands to Georgia citizens, in violation of Cherokee law."<sup>207</sup> Presidential whims could not be more present, however. Jackson tells John Ridge, "John Marshall made his decision. Let him enforce it."<sup>208</sup> While this play is historical fiction, the creative liberty and freedom to choose how Jackson expresses the United States' disregard of the decision and, ultimately, leading to the Trail of Tears, provides the emphatic punch to the reader and the audience. He does not elaborate; he offers nothing other than a refusal to acknowledge Cherokee sovereignty.

*15. Act 2 Scene 1*

Moving into the second act of the play, the setting returns to the present.<sup>209</sup> Act 1 focused on the supposed retainment of Cherokee sovereignty only for the last line of the act to demonstrate how that sovereignty was ripped away.<sup>210</sup> The first present timeline scene in Act 2 follows Sarah Ridge Polson's work to restore that sovereignty for the Cherokee Nation in regards to VAWA and the Treaty of New Echota, especially how that work involves another President.<sup>211</sup>

*16. Act 2 Scene 2*

This scene establishes Ben's increasing intoxication and his doubts in Sarah Ridge Polson—believing she does not want to marry him.<sup>212</sup>

*17. Act 2 Scene 3*

This scene establishes the present timeline's focal case. Ben returns to his and Sarah Ridge Polson's home shortly after Jim Ross drops her off

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205. *Id.* at loc. 1548.

206. *Id.* (referencing *Worcester v. Georgia*, 31 U.S. (6 Pet.) 515, 520 (1832)).

207. *Id.*

208. *Id.* at loc. 1590.

209. *Id.* at loc. 1590

210. *See id.*

211. *Id.* at loc. 1590, 1634.

212. *Id.* at loc. 1634, 1680, 1722.

from the airport.<sup>213</sup> Sarah Ridge Polson excitedly tells Ben she's pregnant.<sup>214</sup> In a drunken stupor, Ben accuses her of cheating on him with Jim Ross and proceeds to physically abuse her.<sup>215</sup> The stage directions imply the scene ends with sexual abuse.<sup>216</sup>

*18. Act 2 Scene 4*

In this scene, John Ridge relays Jackson's refusal to enforce the Supreme Court's decision.<sup>217</sup> He and John Ross debate whether the Cherokee Nation should leave its lands.<sup>218</sup> John Ridge claims they would lose their lands but would "preserve the nation."<sup>219</sup> John Ross emphasizes the connection between Cherokee sovereignty and Cherokee land and refuses to leave.<sup>220</sup>

At the end of the scene, the stage directions state: "SARAH RIDGE POLSON enters and approaches JOHN ROSS."<sup>221</sup> For the first time in the play, Nagle directly and explicitly melds the two timelines together. She merges temporality by having the two temporally different characters interact. Sarah Ridge Polson speaks to John Ross: "Sorry I'm late."<sup>222</sup> Her first words to a character in the past are an apology for her lateness, a time where she would never even normally be present. Nagle masterfully uses dialogue to juxtapose the merging of timelines with efficient and effective dialogue.

*19. Act 2 Scene 5*

The setting returns to the "present, the next day" with no explicit indication of the combination of the past and present.<sup>223</sup> Jim Ross tells Sarah Ridge Polson of the new prosecutors to their team.<sup>224</sup> His dialogue connects to Sarah Ridge Polson's last line in the previous scene, where she reminds John Ross of the training she and John Ross need to do.<sup>225</sup> Nagle

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213. *Id.* at loc. 1722.

214. *Id.* at loc. 1769.

215. *Id.*

216. *Id.*

217. *Id.* at loc. 1769, 1809.

218. *Id.* at loc. 1809, 1864.

219. *Id.* at loc. 1809.

220. *Id.* at loc. 1809, 1864.

221. *Id.* at loc. 1864.

222. *Id.*

223. *Id.*

224. *Id.*

225. *Id.*

uses lines to recall previous scenes and lines. The past and present foreshadow each other.

In this scene, Sarah Ridge Polson reveals her injuries to Jim Ross.<sup>226</sup> When asking her about the assault, she tells him it occurred at her home.<sup>227</sup> He reminds her that her home is in Cherokee Nation where they have jurisdiction.<sup>228</sup> Sarah Ridge Polson tells him she “want[s] Cherokee Nation to prosecute.”<sup>229</sup> While this final line in the scene appears simple despite its impact, Nagle creates a clear image of who the parties are in this issue. Like the case of Samuel Worcester, this present case exists on the personal level and the broader national level. The government prosecutes a criminal case, but an individual victim is present to the issues at force. Sarah Ridge Polson is the individual bringing the Cherokee Nation to a larger sovereignty issue, now.

#### *IV. A Jump in Time: McGirt*

##### *A. The Case*

In the landmark case of *McGirt v. Oklahoma*, the issue of sovereignty arises yet again. The statutory concern of *McGirt* is the applicability of the federal Major Crimes Act.<sup>230</sup> The Act states that “within ‘the Indian country,’ ‘[a]ny Indian who commits’ certain enumerated offenses ‘against the person or property of another Indian or any other person’ ‘shall be subject to the same law and penalties as all other persons committing any of the above offenses, within the exclusive jurisdiction of the United States.’”<sup>231</sup> The key elements of the statute are: (1) “within Indian country,” (2) an Indian criminal offender, (3) offenses against another person (Indian or non-Indian) or a person’s property, and (4) exclusive United States federal jurisdiction. The exclusive federal jurisdiction in Indian Country potentially creates a sovereignty infringement against the Creek Nation, so the Court addresses the first element.<sup>232</sup>

The Supreme Court poses the following issue of whether McGirt committed the crime in Indian Country.<sup>233</sup> The MCA provides that Indian

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226. *Id.*

227. *Id.*

228. *Id.*

229. *Id.*

230. *McGirt v. Oklahoma*, 140 S. Ct. 2452, 2459 (2020).

231. *Id.* (quoting 18 U.S.C. § 1153(a)).

232. *Id.*

233. *Id.*

Country includes “any Indian reservation.”<sup>234</sup> The Court begins with the treaty history where “Congress established a reservation for the Creeks.”<sup>235</sup> Specifically, the Court notes how “the 1833 Treaty fixed borders for what was to be a ‘permanent home to the whole Creek nation of Indians.’”<sup>236</sup> The Court proceeds into a nineteenth century legal history of the interpretation of the treaties and the attitude of treating the Creek Nation lands as a reservation.<sup>237</sup> The Court establishes that Congress created “a reservation for the Creek Nation,” but Congress has also “since broken more than a few of its promises to the Tribe.”<sup>238</sup> Therefore, the Court looks to whether the Creek Nation still holds a reservation.<sup>239</sup>

In sum, the Supreme Court states that only Congress may determine whether a reservation still exists.<sup>240</sup> States determining such a matter would interfere with federal legislation as the “supreme Law of the Land.”<sup>241</sup> The Court examines explicit examples of when Congress withdrew reservation status.<sup>242</sup> Ultimately, the Supreme Court holds that “[t]he federal government promised the Creek a reservation in perpetuity.”<sup>243</sup> Also, the Court holds that “[i]f Congress wishes to withdraw its promises [reservation status], it must say so.”<sup>244</sup>

#### *B. The Present and the Potential Future*

One can examine the Supreme Court’s decision in *McGirt* much like one would examine the previously discussed literary pieces. The Court draws on precedent—history—to interpret the present. Built into the nation’s very structure of case law, history lingers in the present and in future implications. While the Supreme Court cannot craft a speculative future or fashion science-fiction conceits to analyze a present issue, it does rely upon history and provides comparison.

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234. *Id.* (quoting the Major Crimes Act, 18 U.S.C. § 1151(a)).

235. *Id.* at 2460.

236. *Id.* at 2461 (quoting Treaty with the Creeks, Muscogee (Creek) Nation-U.S., pmbl., Feb. 14, 1833, 7 Stat. 418).

237. *Id.*

238. *Id.* at 2462.

239. *Id.*

240. *Id.*

241. *Id.* (quoting U.S. CONST. art. VI, cl. 2).

242. *Id.*

243. *Id.* at 2482.

244. *Id.*

Much like the extrapolation of a criminal offense in *Sovereignty: A Play*, the criminal offense in *McGirt* raises the same larger issue.<sup>245</sup> Specifically, sexual offenses give rise to these larger legal issues.<sup>246</sup> While the Supreme Court does not focus on the nature of the crimes involved in McGirt's case, Mary Katherine Nagle uses deeply personal offenses to highlight how sovereignty issues can reflect the deeply personal as previously discussed.<sup>247</sup> The Court also notes how personal interests align in a larger societal scale: "[T]he Creek Nation participates because Mr. McGirt's personal interests wind up implicating the Tribe's."<sup>248</sup> Recall the previous discussion of the fictional version of Worcester and how his personal interest expanded beyond him. The play purposefully places his case and Sarah Ridge Polson's case in proximity. Here, I place McGirt's case in proximity to both the fiction and the past.

The Supreme Court's reliance upon previous, historical cases, is a communion with the past similar to the communitons with the past in *Riding the Trail of Tears* and *Sovereignty: A Play*. For example, the *Worcester* case influences the Court's opinion.<sup>249</sup> As previously discussed, this case laid the groundwork for much of the history that influenced the two literary works at focus in this Comment. While the works of fiction may interact with this legal history seemingly more directly with the trope of a loose temporality, the Supreme Court, obviously, cannot do so. However, legal history clearly influences both the Supreme Court and the authors of fiction.

The issue of sovereignty persists. The Supreme Court states that "[e]ach tribe's treaties must be considered on their own terms, and the only question before us concerns the Creek."<sup>250</sup> The Court focuses its opinion. However, a loose temporality wiggles its way into the opinion. The Court looks forward: "In reaching our conclusion about what the law demands of us today, we do not pretend to foretell the future and we proceed well aware of the potential for cost and conflict around jurisdictional boundaries, especially ones that have gone unappreciated for so long."<sup>251</sup> While focused on the specific issue of Creek sovereignty, the Court acknowledges potential issues of sovereignty for the future. A Supreme Court opinion is not all that different from speculative fiction.

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245. Compare *id.* at 2459 with Nagle, *supra* note 76, at loc. 1864.

246. *McGirt*, 140 S. Ct. at 2459.

247. See *id.*

248. *Id.* at 2460.

249. *Id.* at 2477.

250. *Id.* at 2479.

251. *Id.* at 2481.

Both the novel and play discussed juxtapose a legal history with a present fictional story. The authors provide science-fiction conceits or communion with the past to utilize temporality to create this comparison. Sovereignty is enduring both as a power and as a legal issue. As the Supreme Court acknowledges this concept, the authors of these fictional pieces do so, as well, which is why they use this trope to craft their stories.

#### V. Conclusion: A Look Toward the Future

Native Sovereignty, by no means, reaches a perfectly clear resolution after *McGirt*. After all, how could one expect an issue hundreds of years old to be fixed after one case. I do not mean to diminish the significance of the case. Rather, I acknowledge the looming and repeating issue currently on the docket for the Supreme Court. In April 2022, the Supreme Court heard arguments for the case of *Oklahoma v. Castro-Huerta*.<sup>252</sup> The case involved a non-Native man's conviction of neglect of his stepdaughter, a member of the Eastern Band of Cherokee Indians.<sup>253</sup> The Oklahoma Court of Criminal Appeals vacated the conviction due to the crime's occurrence in Native land and due to the "conclusion that *McGirt* applies not only to major crimes committed by Native Americans but also to crimes committed by others in Indian country."<sup>254</sup> *Scotus Blog* reports that, previously, the State of Oklahoma "filed more than 30 separate petitions asking the justices to overrule *McGirt*."<sup>255</sup> While the report notes that the then upcoming case would focus on the scope of *McGirt*, rather than overruling the decision, the issue of *McGirt*'s scale and sovereignty, as a whole, remains ever-present.<sup>256</sup>

In conclusion, this Comment aimed to explore the use of temporality and communion with the past in works by Cherokee authors to understand the long-lasting effects of sovereignty issues from a long legal history looks to the future. The lingering presence of the Indian Removal Act, *Cherokee Nation v. Georgia*, and *Worcester v. Georgia* greatly influence the novel, *Riding the Trail of Tears*, by Blake Hausman and the play, *Sovereignty: A Play*, by Mary Katherine Nagle. The two historical cases and the Indian

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252. Amy Howe, *Justices Will Review Scope of McGirt Decision, but Won't Consider Whether to Overturn It*, SCOTUSBLOG (Jan. 21, 2022, 3:22 PM), <https://www.scotusblog.com/2022/01/justices-will-review-scope-of-mcgirt-decision-but-wont-consider-whether-to-overturn-it/>.

253. *Id.*

254. *Id.*

255. *Id.*

256. *Id.*

Removal Act created a legal reality that greatly influenced the history of the Cherokee and other Indigenous nations. As a result, that legal reality influenced Cherokee authors' fiction. Hausman and Nagle use the past to influence the present of their stories. Similarly, the history—precedent— influences the Supreme Court in the contemporary case of *McGirt*. The case, while not providing a determination for future sovereignty issues, looks to the future. The nature of the past is that it influences the present and the future. Hausman and Nagle specifically use the trope of temporality to interpret this legal history. The issue of Indigenous sovereignty lingers and is decidedly not decided, as evidenced by how the play provides a strikingly similar situation of individual sovereignty in a criminal case like the facts of *McGirt* and how *McGirt* remains malleable with the recent Supreme Court case of *Oklahoma v. Castro-Huerta*. Sovereignty is an issue of the past, present, and future. Here, at the end, is a promise.