
CHIEF JUSTICE JOHN MARTIN AND THE ORIGINS OF
WESTERNIZED TRIBAL JURISPRUDENCE

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Judge John Martin created the modern Tribal Court.² This template, still in use today, envisions a Court based on notions of jurisprudence easily recognizable to western eyes, yet leavened with aspects of Tribal culture and tradition. The model comprises a Court system that is familiar and dedicated not only to sovereignty, but also to defiance.

The significance of the beginnings of the modern Tribal Court has been consistently underestimated, particularly by the Supreme Court of the United States. John Martin's crucial role in it has largely been forgotten.

This is partially because the origins of the Courts of the Cherokee Nation are seen, and correctly so, as but one example of the overall transformation of Cherokee society in a desperate attempt to demonstrate to the dominant white society that the Cherokee people had been assimilated to a degree and their removal from the Southeast was unnecessary. This view is incomplete, however, and has had the effect of diminishing the monumental success of creating a Western system of laws and justice in the Cherokee Nation—a system which began to exercise full jurisdiction in the early 1820s. Such diminution allows the Supreme Court of the United States to gloss over the truth—that

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² Elizabeth Arnett Fields, *Between Two Cultures: Judge John Martin and the Struggle for Cherokee Sovereignty*, in *THE SOUTHERN COLONIAL BACKCOUNTRY: INTERDISCIPLINARY PERSPECTIVES ON FRONTIER COMMUNITIES* 182, 183 (David Colin Crass et al. eds., 1998).

Indian people historically operated respected Tribal systems of justice replete with all the components we take for granted today in our state and federal courts.

The origins of the Tribal Court should be celebrated for what they are: the establishment of a durable system of formalized problem solving and justice-seeking institutions capable of translating between cultures and between peoples. Tribal courts were alien, based not on a shared common law, but rather on an increasingly dominant society's template, making them even more remarkable. The fact that Tribal courts were created from scratch, in only a period of months, is astonishing. That Judge John Martin was repeatedly highlighted at the center of the Court system is a testament to his extraordinary vision. This is his story.

"Judge John Martin was a product of two conflicting worlds."³ Blonde-haired and blue-eyed and one-eighth Cherokee, he was nonetheless recognized completely as an American Indian, by both Cherokees and white Americans, although he "easily could have passed for white."⁴ Highly educated for the time, he was also "wealthy by any standards of the day, being a slave owner whose plantations produced nearly seven thousand bushels of corn and wheat in 1834."⁵

For such a significant figure of Cherokee history, John Martin's early years have been the subject of confusion.⁶ Most scholars considered John Martin to be the son of General Joseph Martin who served during the American Revolution as Virginia's Indian agent to the Cherokee Nation.⁷ However, recently, researchers have demonstrated that John Martin was actually the son of Joseph Martin's brother, John

³ *Id.*

⁴ *Id.* Suggestions that John Martin and other Cherokees of mixed blood were in some way more privileged or even superior to other Cherokees with less or no European heritage is historically discredited as a remnant of an organized and racist plan to exploit differences amongst Tribal members in order to effectuate their removal. THEDA PERDUE, MIXED BLOOD INDIANS: RACIAL CONSTRUCTION IN THE EARLY SOUTH 89-92 (2003).

⁵ Fields, *supra* note 2, at 183.

⁶ *Id.* at 184-85.

⁷ Patricia Lockwood, *Judge John Martin*, 64 THE CHRONICLES OF OKLA. 61, 61-62 (1986); PERDUE, *supra* note 4, at 24, 29.

“Jack” Martin.⁸ John Martin’s mother, Susannah Emory, was one-quarter Cherokee and had grown up in the Cherokee Nation.⁹

Judge Martin’s birthplace is unknown and, like his parentage, is the subject of some disagreement.¹⁰ One contention is that he was born “probably in one of the Overhill Towns, a cluster of Cherokee villages in the western foothills of the Great Smoky Mountains in what is now Tennessee.”¹¹ Another scholar felt “a more logical explanation” was that Jack Martin moved to the Tugaloo region in what is now Georgia “well before 1789,” where John Martin was born on October 20, 1784.¹²

John Martin, along with his siblings and half-siblings, was most likely raised by his mother and her brothers in keeping with Cherokee custom and tradition.¹³ Susannah Emory died when her son was an adolescent.¹⁴ Following Susannah’s death, John Martin was raised by James Lynch, his brother-in-law, the husband of his sister, Nancy.¹⁵ His “father died when he was ‘almost grown,’ probably in 1801 or 1802.”¹⁶

Given that Jack Martin worked “‘primarily . . . as a trader,’” he was a man of some means and his children’s education would have been provided for.¹⁷ “Cherokees who could afford the luxury often employed white teachers for their children,” and “[i]t is most likely” that John Martin’s early education came at home from a tutor.¹⁸ “He probably attended a school outside of the Cherokee Nation for his later education. General Benjamin Cleveland related to Governor Gilmer in 1831 that he [Cleveland] had gone to school with Martin. The location of this school is undetermined.”¹⁹ His “pursuit of knowledge be-

⁸ Fields, *supra* note 2, at 184. Indeed, Judge Martin was also called Jack. JAMES FRANKLIN CORN, RED CLAY AND RATTLESNAKE SPRINGS 48 (1956).

⁹ Fields, *supra* note 2, at 185.

¹⁰ *Id.*

¹¹ Lockwood, *supra* note 7, at 61.

¹² “This explanation is further supported by a letter to [Georgia] Governor Gilmer, in which Samuel Wales asserts that Judge John Martin was born in ‘Habersham County.’ At the time Wales wrote the letter, Habersham County encompassed both present-day Habersham and White counties, which include the Tugaloo River region.” Fields, *supra* note 2, at 185.

¹³ *Id.*

¹⁴ *Id.* at 185-86.

¹⁵ *Id.* at 186.

¹⁶ *Id.*

¹⁷ *Id.* at 184-85.

¹⁸ *Id.* at 185.

¹⁹ *Id.*

came an ongoing habit, and he supplemented his education by extensive reading on his own.”²⁰

Martin did not emerge as a political leader among the Cherokees until 1818.²¹ He apparently did not serve in the War of 1812.²² Likewise, it appears he did not serve in the Creek War, although two of his half-brothers and a cousin did.²³

Instead, Martin returns to the historical record, fully grown at “five feet ten inches tall, blond and weighing 170 pounds”²⁴ and “one of the ruling elite of the Cherokee Nation.”²⁵ Martin and other Cherokees who parlayed their inherited wealth in conjunction with education, talent and ambition into even greater rights “formed a Cherokee aristocracy.”²⁶

Appointed to the Cherokee delegation to Washington in 1818, Martin was one of the signers of the Treaty of 1819 between the Cherokee Nation and the United States.²⁷ As in other treaties, the Cherokees ceded land to the insatiable Americans. In this Treaty, Martin’s own plantation on Sautee Creek in the Nacoochee Valley, what is now White County, Georgia, was ceded to the United States.²⁸ However, each person named in a list accompanying the Treaty was allowed by its terms to reserve 640 acres in fee simple by giving notice to the Indian Agent.²⁹ This meant accepting fee land outside of the boundaries of the Cherokee Nation, a harbinger of the allotment policy, which would reach full flower later in the century.

At the time of the execution of the treaty, Martin notified the Agent of the United States to the Cherokees, Colonel Return J. Meigs, that he wished to accept the 640-acre tract.³⁰ By accepting the fee simple land, Martin became a citizen of the United States, categorized in

²⁰ Lockwood, *supra* note 7, at 63; *see also* RENNARD STRICKLAND, FIRE AND THE SPIRITS: CHEROKEE LAW FROM CLAN TO COURT 156 (1975).

²¹ Fields, *supra* note 2, at 186-87.

²² *Id.* at 186.

²³ *Id.*

²⁴ Lockwood, *supra* note 7, at 63; CORN, *supra* note 8, at 49.

²⁵ Fields, *supra* note 2, at 186.

²⁶ Theda Perdue, *The Conflict Within*, in CHEROKEE REMOVAL: BEFORE AND AFTER (William L. Anderson ed., 1991) [hereinafter *The Conflict Within*].

²⁷ *Id.*

²⁸ *Id.*; Lockwood, *supra* note 7, at 63-64.

²⁹ Lockwood, *supra* note 7, at 63.

³⁰ Fields, *supra* note 2, at 186.

the racial delineation of the times as “a free person of color.”³¹ Within two months, Martin complained to Colonel Meigs of Georgian efforts to force the reservation Cherokees off of their land.³² Many white north Georgians hated the Indians and lusted after their lands.³³ Additionally, Georgians resented the federal government’s attempts to give Georgian land to Indians.³⁴ “Whether intentionally or not, much of the land reserved for the Cherokees in the [Treaties of 1817 and 1819] actually was sold or granted by Georgia to its white citizens.”³⁵ An extraordinary theft of land was in full swing.

Between 1820 and the spring of 1822, Martin sold his reservation on Sautee Creek for \$2,000.00 and moved his family to the Coosawattee District, within the heart of the Cherokee Nation.³⁶ In so doing, Martin made a statement that he was a Cherokee, not an American.³⁷

John Martin had two wives, sisters Eleanor (Nelly or Nellie) and Lucy McDaniel.³⁸ “The fact that Martin had two wives must have played a large part in his decisions to remain within the Cherokee Nation.”³⁹ Although by this time monogamy was the more widespread marital practice among Cherokees, Cherokee men of means and stature engaged in polygamy.⁴⁰ It is likely that he married both of his wives at the same time.⁴¹ Both Nelly and Lucy each had eight children with John Martin.⁴²

In Coosawattee, Martin built spectacular homes on two separate farms for his two families.⁴³ Both homes were magnificent for their era on the frontier and “far grander” than the homes of the average Cher-

³¹ *Id.*

³² *Id.* at 187.

³³ See WALTER ECHO HAWK, *IN THE COURTS OF THE CONQUEROR: THE 10 WORST INDIAN LAW CASES EVER DECIDED* (2010).

³⁴ Fields, *supra* note 2, at 187.

³⁵ *Id.*

³⁶ *Id.* at 187; Lockwood, *supra* note 7, at 64.

³⁷ See Fields, *supra* note 2, at 187, for a discussion of Lockwood’s belief that Martin’s decision to move was based on his observations of the treatment of the Cherokee by their white neighbors.

³⁸ *Id.* at 191; Lockwood, *supra* note 7, at 63.

³⁹ Fields, *supra* note 2, at 191.

⁴⁰ *Id.*; on November 10, 1825, the Cherokee Nation enacted a law “so that it shall not be lawful hereafter, for any person or persons whatsoever, to have more than one wife.” *LAWS OF THE CHEROKEE NATION: ADOPTED BY THE COUNCIL AT DIFFERENT PERIODS* 57 (1996 ed.) (1852); THEDA PERDUE, *CHEROKEE WOMEN* 146 (Univ. of Neb. Press 1998).

⁴¹ Fields, *supra* note 2, at 191.

⁴² *Id.*; Lockwood, *supra* note 7, at 66; CORN, *supra* note 8, at 49.

⁴³ Fields, *supra* note 2, at 191; Lockwood, *supra* note 7, at 64.

okees: “The Coosawattee plantation had twenty-eight buildings (house, kitchen, smoke house, slave cabins, stables, barns, and chicken coops) and 300 acres in cultivation, plus peach and apple orchards.”⁴⁴ In 1834, it produced 6,000 bushels of corn and thirty-five bushels of wheat.⁴⁵ “The main dwelling was a two-story frame house, valued at four thousand dollars.”⁴⁶ Even to observers a century later, that the Coosawattee house remained gorgeous seems beyond dispute: “The house is quaint and old-fashioned and beautiful. The mantel pieces have Indian carvings and the iron door hinges are of Indian workmanship No one can be indifferent to a spot of such natural beauty or to a body of land of such tremendous productiveness.”⁴⁷ Nellie and her children lived at the Coosawattee house.⁴⁸ “Lucy and her children lived fifteen miles south on Salequoyah (Salacoa) Creek”⁴⁹ “The Salequoyah plantation was somewhat smaller, with only eleven buildings and 110 acres in cultivation. Between these two plantations, Martin and his wives owned eighty-nine slaves,” sixty-nine stationed at the Coosawattee plantation and twenty situated at the Salacoa home.⁵⁰

A tidy, small village lay within sight of the Coosawattee plantation.⁵¹ There at Coosawattee, John Martin maintained a gate on the turnpike, where the Federal Road crossed the river.⁵² “In John Martin’s day, the Federal Road was the great highway, and on it were droves of horses, hogs, mules, driven from Kentucky and Tennessee to Augusta and Savannah.”⁵³ He ran a public house or tavern nearby, cashing in on thirsty travelers.⁵⁴ The owner of the gate was granted the right to collect a pikeage or toll from the travelers on the road,⁵⁵ a lucrative entitlement on such a busy thoroughfare.

⁴⁴ Fields, *supra* note 2, at 191.

⁴⁵ *Id.*

⁴⁶ *Id.*

⁴⁷ Leola Selman Beeson, *Homes of Distinguished Cherokee Indians*, 11 THE CHRONICLES OF OKLA. 927, 934-35 (1933).

⁴⁸ Fields, *supra* note 2, at 191.

⁴⁹ *Id.*

⁵⁰ Lockwood, *supra* note 7, at 66.

⁵¹ CORN, *supra* note 8, at 49.

⁵² Fields, *supra* note 2, at 191.

⁵³ Beeson, *supra* note 47, at 933.

⁵⁴ CORN, *supra* note 8, at 49.

⁵⁵ Fields, *supra* note 2, at 188.

The Coosawatee District contained the reconstituted capital of the Cherokee Nation, New Echota.⁵⁶ With his holdings situated so closely, and his personal wealth assured, Martin was well positioned for National service.

By statute, the Cherokee Nation created a judicial system on October 20, 1820.⁵⁷ The original trial court sessions began on November 2, 1820.⁵⁸

The system was comprised of eight districts presided over by eight district judges and four circuit judges, whose jurisdiction comprised two districts each.⁵⁹ “The Circuit Judges were assigned more expensive and complicated cases, including murder, leading one commentator to analogize the District Judges to Justices of the Peace and the Circuit Judges to general jurisdiction Judges.”⁶⁰ “John Martin was the [C]ircuit [J]udge for the Coosawatee and Amohee districts [beginning] in 1822,” approximately the same time that he returned to live within the Cherokee Nation.⁶¹

“[A]s originally conceived[,] the Cherokees modeled the system after what they considered the Anglo-American pattern.”⁶² On November 12, 1822, the Nation created “a superior court, to be held at New Town, during the session of each National Council, to be composed of the several Circuit Judges, to determine all causes which may be appealed from the District Courts”⁶³ “Although the National Council and Committee continued to refer to the high Court as the Superior Court as late as 1824, from the time it began the Court referred to itself as the Supreme Court of the Cherokee Nation.”⁶⁴ The

⁵⁶ Beeson, *supra* note 47, at 927; *District Boundaries of the Cherokee Nation 1820*, GA. TRIBE OF EASTERN CHEROKEE, <http://www.georgiatribeofeasterncherokee.com/boundaries.htm> (last visited Sept. 9, 2011).

⁵⁷ LAWS OF THE CHEROKEE NATION, *supra* note 40, at 11-12.

⁵⁸ JOHN LOUIS DICKSON, *THE JUDICIAL HISTORY OF THE CHEROKEE NATION FROM 1721 TO 1835* 303 n.51 (1964) (unpublished Ph.D. dissertation, University of Oklahoma) (on file with author).

⁵⁹ *Id.* at 11.

⁶⁰ J. Matthew Martin, *The Nature and Extent of the Exercise of Criminal Jurisdiction by the Cherokee Supreme Court: 1823-1835*, 32 N.C. CENT. L. REV. 27, 39-40 (2009).

⁶¹ Fields, *supra* note 2, at 187. The courthouse for the Amohee District was located at the Thompson Spring, near what is today Cleveland, Georgia. “The Court stood on a hill just south of the Spring. It was here that Judge Martin held his court.” CORN, *supra* note 8, at 49.

⁶² STRICKLAND, *supra* note 20, at 64.

⁶³ LAWS OF THE CHEROKEE NATION, *supra* note 40, at 28.

⁶⁴ Martin, *supra* note 60, at 40.

Supreme Court of the Cherokee Nation sat, for the first time, for the disposition of its business on the morning of October 9, 1823.⁶⁵ “The first Judges were John Martin, James Daniel, Richard Walker and James Brown.”⁶⁶ “None of these early lawyers had Office or Inns of Court education.”⁶⁷

Eighteen cases were heard during the first term of Court, October 9, 1823, through October 25, 1823.⁶⁸ The cases ran the gamut of disputes, all recognizable today: damages, ejectment, indebtedness, fraud, land disputes, horse possession, and hog stealing.⁶⁹

During the session, “Judge John Martin observed his thirty-ninth birthday.”⁷⁰ Judge Martin was absent from the Court from October 20, 1823 through October 22, 1823, necessitating an adjournment.⁷¹

One other matter came before the Court in 1823.⁷² “On the last day of the session, one Harris Tharp appeared before Judge Martin.”⁷³ Tharp swore under oath that on September 26, 1823, he traded with “a certain Cherokee man by the name of Tarrapin Head” for a coin purported to be a Spanish-milled dollar from 1808, but which was “found to be a counterfeit.”⁷⁴ Tharp presented the coin to Tarrapin Head “for redemption.”⁷⁵ The reasons for documenting the circumstances are lost to history, but could involve putting individuals on notice regarding the counterfeit coin or in assistance to Tarrapin Head in the event he sought redress from the individual from whom he obtained it.

The incident demonstrates that, even in its first term, the Cherokee Supreme Court was truly open and the Judges available to the public for all sorts of redress. From its inception, the Court was recognized and accepted by the Cherokee people as an independent arbiter of

⁶⁵ *Id.*

⁶⁶ *Id.*

⁶⁷ *Id.*

⁶⁸ Entries from the Cherokee Supreme Court Minute Book, 1823-1834, New Echota, Oct. 9-25, 1823.

⁶⁹ *Id.*

⁷⁰ Lockwood, *supra* note 7, at 64.

⁷¹ Entries from the Cherokee Supreme Court Minute Book, *supra* note 68, at Oct. 9-25, 1823.

⁷² *See id.* at Oct. 25, 1823.

⁷³ *Id.*

⁷⁴ *Id.*

⁷⁵ *Id.*

disputes.⁷⁶ Early on, Judge John Martin was sought out for his wisdom and assistance.

Indeed, from the very beginning of the Court, Judge Martin acted, if not as the Chief Justice, at least as the chief executive of the Supreme Court, entering notations, recording compromises of judgments, and speaking for the Court.⁷⁷ Usually with his name shortened to “J. Martin,” and with the suffix “CJ or C.S.C.,” Martin made a number of entries into the Supreme Court Minute Book, stepping into an area which would ordinarily be the province of the Clerk.⁷⁸ Perhaps the proximity of his plantation to the Court allowed him to be present when the other Judges and Clerk were not. Nevertheless, the entries suggest that Judge Martin embraced the Court and rapidly became its public face. After 1823, he was known as Judge Martin for the rest of his life.

All in all, the Cherokee Supreme Court heard 237 cases from 1823 to 1835, 213 civil matters and twenty-four criminal ones.⁷⁹ Judge John Martin served on the Cherokee Supreme Court from 1823 through the 1827 term. During his tenure on the Court, Judge Martin heard 123 cases, more than half of the entire known docket of the Court.⁸⁰ Additionally, seven other matters, including the counterfeit coin caper, came before the Supreme Court during that period.

Review of the minutes of the Cherokee Supreme Court demonstrates that the Court applied recognized principles of law. It dismissed indictments for lack of a true bill, divided up lands, declined to hear matters for want of jurisdiction, awarded fees for witnesses and, in general, acted in its core functions as a modern court does.⁸¹ It was a frontier Court, no doubt, but the Cherokee Supreme Court lent sophisticated stability to the Nation’s “social order [which] was more advanced than that of many of the rude white settlements around [it].”⁸² Significantly, the Cherokee Court system tried white citizens of the United States, and the Cherokee Supreme Court exercised complete

⁷⁶ See Martin, *supra* note 60, at 33.

⁷⁷ Fields, *supra* note 2, at 183.

⁷⁸ See Entries from the Cherokee Supreme Court Minute Book, *supra* note 68.

⁷⁹ Martin, *supra* note 60, at 36.

⁸⁰ *Id.* at 36. It is possible that documentation of the 1831 term has been lost.

⁸¹ See Entries from the Cherokee Supreme Court Minute Book, *supra* note 68.

⁸² William G. McLoughlin, *Thomas Jefferson and the Beginning of Cherokee Nationalism, 1806 to 1809*, 32 WM. & MARY Q. 547, 547 (1975).

jurisdiction over the Cherokee Nation.⁸³ Nothing like it had existed before in Indian Country. John Martin was its *de facto* head.

Judge Martin also served in other capacities while he was a jurist. In 1825, he was appointed to the “committee which laid out the lots in the Nation’s new capitol, New Echota.”⁸⁴ This included the location of the fine new courthouse for the Supreme Court.⁸⁵ In February 1827, “following the death of Principal Chief Charles Hicks,” Judge Martin accepted the National office of Treasurer, *pro tem*.⁸⁶

“In May 1827, Martin was elected a delegate from the Coosawattee District to the Cherokee Constitutional Convention,” which was “held at New Echota.”⁸⁷ On July 26, 1827, the delegated Representatives ordained and established a constitution for the Cherokee Nation “in order to establish justice, ensure tranquility, promote our common welfare, and secure to ourselves and our posterity the blessings of liberty; acknowledging with humility and gratitude the goodness of the sovereign Ruler of the Universe”⁸⁸ John Martin was one of the signers.⁸⁹ Among its remarkable accomplishments, the Cherokee Constitution of 1827 created a constitutional basis for the judicial branch of a tripartite Tribal government. With the guiding hand of one of the original Judges, the statutory Courts of the early 1820s had achieved constitutional legitimacy.

The Constitution contained numerous provisions critical to the success of the judicial branch of government. Article V of the Cherokee Constitution vested the judicial powers in a new Supreme Court and “such Circuit and Inferior Courts as the General Council may, from time to time ordain and establish.”⁹⁰ Section 8 of the Article provided that “[t]he Judges of the Supreme Court and Circuit Courts shall have comple[te] criminal Jurisdiction in such cases and in such manner as may be pointed out by law.”⁹¹

⁸³ Martin, *supra* note 60, at 33-34, 48.

⁸⁴ Fields, *supra* note 2, at 187; CORN, *supra* note 8, at 50.

⁸⁵ Fields, *supra* note 2, at 187.

⁸⁶ *Id.* (According to Emmett Starr, “Martin had held the position of treasurer earlier, too, and had been elected to that position in 1817.”).

⁸⁷ *Id.*; Lockwood, *supra* note 7, at 64; CORN, *supra* note 8, at 50.

⁸⁸ LAWS OF THE CHEROKEE NATION, *supra* note 40, at 118.

⁸⁹ *Id.* at 130.

⁹⁰ *Id.* at 126.

⁹¹ *Id.* at 127.

The nature of criminal prosecution in the Tribal Courts was different in some ways from that with which we are familiar in the modern context. For one thing, “[g]rand juries and tribal prosecution by an official solicitor were not introduced into the Cherokee legal system until after the Civil War. Until that time criminal indictment was essentially a private procedure instituted by a wronged individual”⁹² Prosecutors do appear in the record, however, as appointed counsel, and were required to post a bond for their services.⁹³ Punishments included “confiscation, fines,” and “corporeal punishment,” including flogging, “ear cropping and death,” typically by hanging.⁹⁴

In these new laws, however, there were many rights and protections instantly familiar to modern Americans: a due process right, a right to a remedy at law, a right of confrontation, a right to speedy and public trial, a right to trial by jury, a right to bail, a right to have compulsory process, a prohibition of compulsory self-incrimination, a prohibition of unreasonable searches and seizures, a prohibition of general warrants, and a prohibition of double jeopardy.⁹⁵

An additional protection for the accused included trial by indictment.⁹⁶ Under Article V, Section 11 of the Cherokee Constitution of 1827, indictments were to “run in the name of the Cherokee Nation.”⁹⁷ Indictments were to include allegations of the date, defendant, and crime.⁹⁸ Additionally, indictments included constitutionally compulsory, conclusory language that the alleged crime was “against the peace and dignity” of the Nation.⁹⁹

By this time, John Martin held five national positions: Treasurer, Circuit Judge, Supreme Court Judge, constitutional representative, and turnpike franchisee.¹⁰⁰ This did not go unnoticed amongst the citizenry. In a pseudonymous article entitled “Money and Principles” printed in the *Cherokee Phoenix* newspaper on Thursday, February 28, 1828, the anonymous “A. Cherokee” objected to the largess of the Nation being vested into one individual, no matter how talented:

⁹² STRICKLAND, *supra* note 20, at 83, 146.

⁹³ LAWS OF THE CHEROKEE NATION, *supra* note 40, at 99.

⁹⁴ DICKSON, *supra* note 58, at 309.

⁹⁵ CHARLOTTE HYAMS PELTIER, THE EVOLUTION OF THE CRIMINAL JUSTICE SYSTEM OF THE EASTERN CHEROKEES 1580-1838 158-59 (1982); DICKSON, *supra* note 58, at 317-18.

⁹⁶ DICKSON, *supra* note 58, at 333.

⁹⁷ *Id.*

⁹⁸ *Id.*

⁹⁹ *Id.*

¹⁰⁰ Fields, *supra* note 2, at 187-88.

[I]t was inconsistent and exceptionable in a high degree to have elected a treasurer who was at the same time a presiding Circuit Judge, a Judge of the Supreme Court, and holding a 4th executive appointment as public Turnpike keeper on the Federal Road:-being one of the signers of the Constitution.¹⁰¹

On Friday, October 17, 1828, Judge Martin was replaced as a Judge on the Cherokee Supreme Court.¹⁰² He had served for five years.¹⁰³ His connection to the Court would continue, however.

On April 11, 1829, a white man by the name of Thomas Ligon was traveling on the road from Alabama towards Georgia in a two-horse carriage along with a young slave.¹⁰⁴ The road passed through the Cherokee Nation, and in this place was a toll road, designated a turnpike.¹⁰⁵ In a matter of a few minutes, a heated dispute arose between Ligon and a number of Cherokees, including one Captain White, regarding the payment of the pikeage.¹⁰⁶ When the dispute ended, Ligon rode off in his wagon and sought refuge nearby at the residence of one Jacob West, another white man, where he reported that the Cherokees had stolen \$1,500.00 from him.¹⁰⁷ Fifteen hundred dollars was a very large sum of cash for the times.

After taking Captain White's statement, Agent Montgomery, the Indian Agent assigned to the Cherokee Nation by the Secretary of War, sent a memo to John Martin, asking that he "please lend his aid &

¹⁰¹ Letter to the Editor, *Money and Principles*, CHEROKEE PHOENIX, Feb. 28, 1828.

¹⁰² *National Committee*, CHEROKEE PHOENIX, Oct. 22, 1828, available at <http://www.wcu.edu/library/DigitalCollections/CherokeePhoenix/Vol1/no34/pg1col1b-5bPg2colla-2a.htm>.

¹⁰³ Fields, *supra* note 2, at 188; *National Committee*, *supra* note 102.

¹⁰⁴ Statement of Thomas Ligon to Agent Hugh Montgomery (April 16, 1829), *microformed on* Letters received by the Office of Indian Affairs 1824-1881, reel 73 (National Archives).

¹⁰⁵ *Id.*

¹⁰⁶ Cherokee Circuit Court records from the Hightower District (Sept. 17, 1829), *microformed on* Letters received by the Office of Indian Affairs 1824-1881, reel 73 (National Archives); Memorandum of Agent Hugh Montgomery to Judge John Martin (Apr. 16, 1829), *microformed on* Letters received by the Office of Indian Affairs 1824-1881, reel 73 (National Archives); Letter from Vann to Judge Walter Adair (Sept. 16, 1829), *microformed on* Letters received by the Office of Indian Affairs 1824-1881, reel 73 (National Archives); Memorandum of Judge Walter Adair (May 14, 1829), *microformed on* Letters received by the Office of Indian Affairs 1824-1881, reel 73 (National Archives); Statement of Thomas Ligon to Agent Hugh Montgomery, *supra* note 104.

¹⁰⁷ Statement of Thomas Ligon to Agent Hugh Montgomery (Apr. 16, 1829), *supra* note 104.

influence” in obtaining the return of the stolen money.¹⁰⁸ Eventually, the case came before Judge Walter Adair, Martin’s former Supreme Court colleague sitting as the Circuit Judge for the Hightower District of the Cherokee Nation. On May 14, 1829, Judge Adair wrote a note that Captain White had appeared and denied the crime, but since no Agent “or other person for him” could attend, he deferred the investigation.¹⁰⁹

The case came back before Judge Adair for investigation on September 17, 1829, at which time William Thompson was present as “Agent for Co. Hugh Montgomery.”¹¹⁰ Judge Adair then received testimony from Ah Da Ka Ha Gee, Captain White and Black Fox. Each witness was then questioned under oath in the Tribal Court by Agent Thompson.¹¹¹

This series of extraordinary events is significant on a number of notable levels. First and foremost, this case demonstrates the first known instance where the government of the United States actually appeared and participated in proceedings before a Tribal Court.¹¹² If acceptance came almost instantly from Cherokees, legitimization of the Tribal Courts on the part of the government dates to this moment. And, like the Cherokees, in its time of need, the government turned to John Martin, even though he was no longer a Supreme Court Judge. To the outside world as well as to the Cherokee Nation, Martin had become a living symbol of the Court.

Following his service on the Court, John Martin came before the original Cherokee Supreme Court on two occasions. Both instances illustrate his faith in the Court and its processes.

Initially, he appeared before the Court on October 30, 1829 to sign a pledge of security in the case of *William Richardson v. Ambrose Harnage*. “I do hereby acknowledge myself security to stay the above judgment attained against Ambrose Harnage in favor of William Rich-

¹⁰⁸ Memorandum of Agent Hugh Montgomery to Judge John Martin (Apr. 16, 1829), *supra* note 106.

¹⁰⁹ Memorandum of Judge Walter Adair (May 14, 1829), *supra* note 106.

¹¹⁰ Cherokee Circuit Court records from the Hightower District, Sept. 17, 1829; Letters Received by the Office of Indian Affairs 1824-1881, Cherokee Agency East, *microformed on M-234*, reel 73.

¹¹¹ *Id.*

¹¹² Martin, *supra* note 60, at 58-59.

ardson according to law.”¹¹³ Such a pledge would have bought Harnage time in which to work out a resolution with Richardson and avoid execution.

In the second instance, he was a litigant, sued in *John McCarver [and] M. Gore by their agent McConnell vs. John Martin*, a case heard on Thursday, October 21, 1830.¹¹⁴ The case involved Martin’s purchase of three slaves from McCarver and Gore for three-hundred and fifty dollars. One of the slaves, a woman, had some physical or mental infirmity and was considered to be “unsound” by the Supreme Court, which found that McCarver and Gore knew of the infirmity at the time in which they purchased the slave at a significant discount.¹¹⁵ When Martin refused to pay the note as it came due in March of 1830, McCarver and Gore sued him for the balance under the contract. The case backfired on McCarver and Gore when the Court found that they had perpetrated a fraud on Martin.¹¹⁶ Instead of three-hundred and fifty dollars, they were awarded only nineteen dollars and forty-four and one-half cents, plus the costs of the suit.¹¹⁷ Martin’s confidence in the Court was well-placed.

On the same day as he was replaced on the Supreme Court, “[t]here appearing no other candidate, John Martin was declared Treasurer of the Cherokee Nation.”¹¹⁸ The next week, on Thursday, October 23, 1828, “John Martin appeared before the Committee and executed his bond as Treasurer of the Cherokee Nation, to the satisfaction of the Committee, agreeably to law.”¹¹⁹ His annual salary as Treasurer was \$350.00.¹²⁰ He would remain the Treasurer until he was removed to Oklahoma in the spring of 1837.¹²¹ “He continued to maintain the turnpike,” and apparently remained in service as a circuit judge.¹²²

¹¹³ Entries from the Cherokee Supreme Court Minute Book, *supra* note 68, at Oct. 30, 1829.

¹¹⁴ *Id.* at Oct. 21, 1830.

¹¹⁵ *Id.*

¹¹⁶ *Id.*

¹¹⁷ *Id.*

¹¹⁸ *Cherokee Phoenix*, *supra* note 101.

¹¹⁹ *General Council of the Cherokee Nation: National Committee*, CHEROKEE PHOENIX, Oct. 29, 1828, available at <http://www.wcu.edu/library/DigitalCollections/CherokeePhoenix/Vol1/no35/pg1col4b-5bPg2colla-2a.htm>.

¹²⁰ Fields, *supra* note 2, at 188; Lockwood, *supra* note 7, at 64.

¹²¹ Fields, *supra* note 2, at 188.

¹²² *Id.*; CORN, *supra* note 8, at 49-50.

The national treasury was the repository for the annuity paid to the Nation by the United States.¹²³ The annuity served as an annual stipend from Congress in partial payment for land ceded to the United States in various treaties.¹²⁴ Other duties of its Treasurer included: advertising for bids for public works, including the construction of the Courthouse at New Echota; collecting debts owed to the treasury; and leasing national properties such as ferries and turnpikes.¹²⁵

“While John Martin was the national treasurer, the Cherokee Nation went heavily into debt”:¹²⁶ “Beginning in 1830 . . . [President Andrew] Jackson ordered that henceforth the annuity payment must be divided and paid per capita to each individual Cherokee.”¹²⁷ This decree, made under the ruse that the Nation’s leaders were siphoning money for themselves, had the effect of separating the treasury from the Nation as the *per capita* share for each member of the Nation was but forty-three cents and required a lengthy trip to the U.S. Agency for receipt.¹²⁸ “Almost none bothered, and for four years the annuity went into an escrow account that none of the Cherokee leaders could touch.”¹²⁹

A number of diabolical threads began to weave a tapestry of ethnic cleansing. Gold was discovered in the Cherokee Nation in 1829.¹³⁰ What had been a constant stream of intruders became a torrent. In 1830, President Jackson signed the Indian Removal Act, designed to effectuate the removal of the Cherokees and other Southeastern Tribes to west of the Mississippi River.¹³¹ Six days later, on June 3, 1830, Georgia extended its jurisdiction over that portion of the Cherokee Nation within its geographic boundary.¹³² In so doing, the State of Georgia declared the operation of the Cherokee Courts unlawful.¹³³ “Another act authorized the governor to ‘take possession’ of the gold district and station a Guard force there to keep the peace and keep out

¹²³ See Fields, *supra* note 2, at 188; Lockwood, *supra* note 7, at 64.

¹²⁴ See THEDA PERDUE & MICHAEL D. GREEN, *THE CHEROKEE NATION AND THE TRAIL OF TEARS* 100 (2007).

¹²⁵ See Fields, *supra* note 2, at 188; Lockwood, *supra* note 7, at 66.

¹²⁶ Fields, *supra* note 2, at 188.

¹²⁷ PERDUE & GREEN, *supra* note 124, at 123.

¹²⁸ See *id.* at 100-01.

¹²⁹ *Id.* at 101.

¹³⁰ *Id.* at 74.

¹³¹ *Id.* at 77; Fields, *supra* note 2, at 188.

¹³² See PERDUE & GREEN, *supra* note 124, at 77.

¹³³ See *id.* at 71, 77-79.

trespassers. The result was that the disposition of the entire region was fully in the hands of the state of Georgia.”¹³⁴

In a classic example of the fox guarding the hen house, Georgia then began to assume the role of keeping intruders out of the Cherokee Nation.¹³⁵ The Guard was the state militia, known as the Georgia Guard.¹³⁶ Whites were to be kept out and gold mining curtailed only to preserve property for Georgia citizens who would receive the tracts in lotteries.¹³⁷ The Georgia Guard quickly became an instrument of oppression. For example, in February 1831, Judge Martin “was arrested on ‘merely suspicion’ and held overnight” after offering shelter to members of the Guard at his Coosawattee plantation.¹³⁸

The political fabric of the Cherokee Nation began to unravel under the stress. In December 1831, Principal Chief John Ross appointed a group of trustworthy men, including John Martin, to constitute a delegation to Washington seeking redress for the predations of Georgia.¹³⁹ Despite being briefly buoyed by victory in the Supreme Court of the United States in *Worcester v. Georgia*,¹⁴⁰ the delegation heard directly from the President that he would not enforce the Court’s opinion.¹⁴¹ Instead, the government attempted to foist a removal treaty onto the delegates.¹⁴² “John Martin . . . [was] dejected.”¹⁴³ He and another delegate, William Shorey Coodey ruefully wrote the Secretary of War that “[s]uch a mode of extinguishing the title of the Cherokees to their lands is certainly one never contemplated by any one until the present Chief Magistrate came into office and is at war with all the professions of the government, and the principles of its action heretofore.”¹⁴⁴ After six futile months, the delegation returned home with more problems and fewer allies, as the sentiment in Washington was that removal from the ancestral homeland had become a *fait accompli*.¹⁴⁵

¹³⁴ *Id.* at 84.

¹³⁵ See Fields, *supra* note 2, at 189.

¹³⁶ See *id.*

¹³⁷ *Id.*; PERDUE & GREEN, *supra* note 124, at 74.

¹³⁸ Fields, *supra* note 2, at 189.

¹³⁹ *Id.*

¹⁴⁰ 31 U.S. (6 Pet.) 515 (1832).

¹⁴¹ PERDUE & GREEN, *supra* note 124, at 94.

¹⁴² See *id.* at 94-96.

¹⁴³ *Id.* at 96.

¹⁴⁴ GRANT FOREMAN, INDIAN REMOVAL: THE EMIGRATION OF THE FIVE CIVILIZED TRIBES OF INDIANS 238-39 (1932).

¹⁴⁵ PERDUE & GREEN, *supra* note 124, at 94; see also Fields, *supra* note 2, at 189.

At home, the political situation worsened within the Cherokee Nation. President Jackson's re-election victory over the more sympathetic Henry Clay further dashed hopes. The pressure from Georgia increased. Georgia went ahead with its lottery of Cherokee lands.¹⁴⁶ Included in the sale were the fine plantations of John Martin.¹⁴⁷

The house on Salequoyah Creek was lost to the Georgian lottery in 1833 or early 1834.¹⁴⁸ A January 20, 1835 letter from Colonel William Bishop, the State's Agent for Georgia, demanded the fine Coosawattee plantation on behalf of Colonel Farish Carter, who purchased the property from the lucky lottery winner: "Under the laws of the State of Georgia, passed in 1833 and 1834, it is made my duty to comply with his request, therefore, prepare yourself to give entire possession of said premises on or before the 20th day of February next; fail not under penalty of the law."¹⁴⁹

As he demonstrated throughout his life, Martin was not without resources. He "appealed to Georgia's Gov[ernor] Wilson Lumpkin, who interceded on his behalf."¹⁵⁰ With the Governor's involvement, a deal was struck between Colonel Carter and Judge Martin whereby Martin could "continue to occupy his place the present year, by paying a reasonable rent."¹⁵¹ This success, however, was fleeting.

By this time, two political factions competed for control of the future of the Cherokee Nation.¹⁵² John Ross, the Principal Chief, continued to resist dispossession.¹⁵³ John Ridge and his Treaty Party concluded that striking the best deal for lands in the east was the only course of action.¹⁵⁴

John Martin thought that some middle passage between the two factions might be possible. In February 1835, the Secretary of State of Tennessee, Samuel Smith, characterized Martin in a letter to President Jackson as having "his object . . . first to produce a reconciliation between Ross and Ridge both now at Washington and then prepare to

¹⁴⁶ Fields, *supra* note 2, at 193.

¹⁴⁷ *Id.*

¹⁴⁸ *Id.*

¹⁴⁹ Lockwood, *supra* note 7, at 68; Fields, *supra* note 2, at 193.

¹⁵⁰ Fields, *supra* note 2, at 193.

¹⁵¹ Lockwood, *supra* note 7, at 69.

¹⁵² Fields, *supra* note 2, at 189.

¹⁵³ *Id.*

¹⁵⁴ *Id.*

offer terms to you for a Treaty.”¹⁵⁵ An impasse in this mediation occurred. Subsequently, in October 1835, the Cherokee Nation rejected an offer of \$5,000,000.00 in exchange for lands west of the Mississippi.¹⁵⁶

Incredibly, and in obvious dedication to the judicial branch he had midwived, Judge Martin still had time and energy to return to the bench.

Contemporaries tell of an incident in 1835 when he convicted an Indian of killing another Indian and sentenced the culprit to death. The sentence was carried out the next day by hanging the offender in a ravine just east of the court house. During the same term another Indian was convicted of horse stealing and given fifty lashes on his bare back by the Sheriff, who is said to have brought blood with each lick and to have treated the wounds with salt and whiskey.¹⁵⁷

On Wednesday, October 28, 1835, during the final term of the original Cherokee Supreme Court, Judge Martin was pressed back into service in the case of *Nathan Hicks vs. Isaac Bushehead, Tho[mas] Foreman & Jesse Bushehead*.¹⁵⁸ Judges Walter S. Adair and Archy Fields were objected to by one of the parties, so the General Council of the Cherokee Nation appointed John Martin and George M. Martin by a resolution as *pro tem* Judges.¹⁵⁹ All objections to his service as Treasurer seemed to fade. After appearing and qualifying, the Judges Martin “took their seats.”¹⁶⁰ The case was resolved with a nonsuit, the dismissal of Nathan Hicks’ case.¹⁶¹

Just a few weeks later, in December 1835, Judge Martin returned to Washington with John Ross and others in a delegation “for the cause of Cherokee sovereignty.”¹⁶² This mission was doomed to failure.

While Martin and Ross were in Washington with their delegation, the Treaty Party negotiated a deal at New Echota, the so-called “Christ-

¹⁵⁵ Lockwood, *supra* note 7, at 68.

¹⁵⁶ Fields, *supra* note 2, at 190; *see also* PERDUE & GREEN, *supra* note 124, at 106 (“In light of over \$6 million worth of coins ultimately minted from Cherokee gold, the United States stood to make a tidy profit on the deal.”).

¹⁵⁷ CORN, *supra* note 8, at 49-50.

¹⁵⁸ Entries from the Cherokee Supreme Court Minute Book, *supra* note 68, at Oct. 28, 1835.

¹⁵⁹ *Id.*

¹⁶⁰ *Id.*

¹⁶¹ *Id.*

¹⁶² Fields, *supra* note 2, at 190.

mas Trick,” in which a \$5,000,000.00 offer was accepted.¹⁶³ Two of John Martin’s sons-in-law, George W. Adair and John A. Bell, signed what has come to be known as the Treaty of New Echota.¹⁶⁴ Despite the protests of John Martin and John Ross and others, the fraudulent Treaty of New Echota was immediately recognized by the government of the United States.¹⁶⁵ “With one vote more than the necessary two-thirds majority, the Senate approved the Treaty of New Echota in May 1836. President Jackson proclaimed it ratified on May 23, thereby setting the date for removal at May 23, 1838.”¹⁶⁶

In 1836, John Martin moved his family to the Red Hill Valley of Tennessee, where “[t]he main dwelling was a ‘hewed log house’ valued at five hundred dollars,” a far cry from the mansion at Coosawattee.¹⁶⁷

In giving up this home, with its sylvan beauty, it causes no wonder when one reads the words of Rev. Mr. Cotter on the family’s leave-taking, when he said ‘I saw his daughter sweep the house and burn the broom for good luck, walk out and start on the long journey, no doubt with a sad heart.’¹⁶⁸

Red Hill, however, was merely a staging ground for the move west.¹⁶⁹ Harassment of the Cherokees was now being undertaken not just by the Georgians, but by soldiers of the United States. Martin was arrested along with members of the General Council by soldiers and his account books and official papers were seized late one evening in December 1836.¹⁷⁰ Brigadier General John Wool released the men, but kept the papers for a period of time, all the while threatening the men with re-arrest if they failed to cooperate with the removal effort.¹⁷¹

“In March 1837, accompanied by at least one son-in-law (George W. Adair), John Martin led a group of three hundred Cherokee families overland” to the Indian Territory.¹⁷² Martin’s great-granddaughter,

¹⁶³ *Id.*; PERDUE & GREEN, *supra* note 124, at 112.

¹⁶⁴ Fields, *supra* note 2, at 191; Lockwood, *supra* note 7, at 68.

¹⁶⁵ Fields, *supra* note 2, at 190; Lockwood, *supra* note 7, at 68.

¹⁶⁶ PERDUE & GREEN, *supra* note 124, at 113.

¹⁶⁷ Fields, *supra* note 2, at 194. *But see* CORN, *supra* note 8, at 48; Randall Higgins, *House of History*, TIMES FREE PRESS (Aug. 5, 2010), <http://www.timesfreepress.com/news/2010/aug/05/house-history/> (last visited Jan. 20, 2011) (suggesting that after being dispossessed at Coosawattee, Judge Martin purchased and moved into the fine house now known as the Byrd Hambright house).

¹⁶⁸ Beeson, *supra* note 47, at 934.

¹⁶⁹ Fields, *supra* note 2, at 194; CORN, *supra* note 8, at 50.

¹⁷⁰ Fields, *supra* note 2, at 194.

¹⁷¹ *Id.*

¹⁷² *Id.*

Cherrie Adair Moore, documented the journey: “‘It isn’t known just how long it took the families to make the journey, but with family, slaves and live stock, and only covered wagons in which to move, it must have taken them almost three months, if not more.’”¹⁷³

The genocidal, bayonet point of the “Trail of Tears” would come a few months later, beginning in 1838 and continuing into 1839. Thus, Judge Martin’s family was spared some of the worst excesses.

Indeed, pursuant to the Treaty of New Echota, John Martin was eligible for compensation for his improvements on the properties upon which he homesteaded in the Cherokee Nation.¹⁷⁴ The final valuation of his property in the original Cherokee Nation, including the cabin at Red Hill, amounted to \$22,278.50.¹⁷⁵ “He was paid an advance of \$8,257[.00] on this amount on January 24, 1837. . . . The balance was sent to the West in two payments: \$9,229.37 in May and \$4,350[.00] in September.”¹⁷⁶

However, the new Indian Territory proved to be no respite from the predations of the white Americans.¹⁷⁷ Traders at Fort Gibson were restricted from selling to the Indians.¹⁷⁸ In June 1838, the United States Agent, Montford Stokes, wrote the Secretary of War, protesting the restrictions: “‘There are many wealthy Cherokees settled in this country, the Ridges, the Vanns, Judge Martin, the Adairs, . . . and many others who live as the Whites do. . . . These people are displeased at not being allowed to buy what they consider necessaries.’”¹⁷⁹

Political instability continued as those forced at gunpoint to leave their homeland straggled into the Indian Territory, homeless, starving, and dispossessed.¹⁸⁰ Three leaders of the Treaty Party were assassinated.¹⁸¹ On September 6, 1839, a new Constitution, similar to the 1827 Constitution, was ratified amidst hopes of internal political reconciliation.¹⁸² Once again, Judge Martin was called to the bench, elected

¹⁷³ Lockwood, *supra* note 7, at 69 (quoting Cherrie Adair Moore, *William Penn Adair*, 29 THE CHRONICLES OF OKLA. 33, 33-34 (1951)).

¹⁷⁴ *Id.*; Fields, *supra* note 2, at 195.

¹⁷⁵ Lockwood, *supra* note 7, at 69.

¹⁷⁶ *Id.*

¹⁷⁷ PERDUE & GREEN, *supra* note 124, at 143-46.

¹⁷⁸ Lockwood, *supra* note 7, at 69-70.

¹⁷⁹ *Id.*

¹⁸⁰ PERDUE & GREEN, *supra* note 124, at 147-53.

¹⁸¹ *See id.* at 150.

¹⁸² *See id.* at 151.

as the first Chief Justice of the Cherokee Supreme Court under the new Constitution.¹⁸³

Some scholars have suggested that John Martin was sympathetic to the Treaty Party.¹⁸⁴ There is conflicting evidence as to this.¹⁸⁵ While it is true that two of his daughters' husbands signed the fraudulent Treaty of New Echota, thereby committing their families to removal,¹⁸⁶ it is also true that John Martin publicly protested the Treaty.¹⁸⁷ It is also clear that, once the die of the Treaty was cast, Martin recognized the inevitability of removal and left for the Indian Territory before the Trail of Tears, at roughly the same time as members of the Treaty Party.¹⁸⁸ His subsequent election as Chief Justice indicates that he was seen in somewhat of a different light than the signatories of the Treaty of New Echota, some of whom were targeted for assassination once John Ross's party (the National Party) arrived in the Indian Territory.¹⁸⁹

In a government largely dominated by the National Party of John Ross, Judge Martin retained considerable personal significance and public relevance.¹⁹⁰ Had he been clearly associated with the Treaty Party, he may have been politically marginalized in the reconstituted government. What is attributed to sympathy may have simply been the fatalistic pragmatism of a planter who knows when a crop has failed.

Once again, Chief Justice John Martin set out to create a judicial branch of Tribal government, but he did not serve long in this final judicial post.¹⁹¹ After just over a year in office and three days prior to his fifty-sixth birthday, John Martin died "of brain fever" or tuberculo-

¹⁸³ Fields, *supra* note 2, at 195; Lockwood, *supra* note 7, at 70. No Chief Justice was provided for the original Cherokee Supreme Court.

¹⁸⁴ *Id.* at 191, 194.

¹⁸⁵ Compare *id.* at 191 (stating that "Martin apparently tried for a time to steer a neutral course" before throwing "his lot with the Treaty Party"), and Lockwood, *supra* note 7, at 68, with FOREMAN, *supra* note 144, at 246 (noting that, as early as 1832, "[t]here was a strong sentiment in favor of agreeing to a treaty of removal but the influence of Ross, Ridge, Martin, and others was too powerful to be overcome."), *The Conflict Within*, *supra* note 26, at 68 (observing Martin's "steadfast opposition" to a removal treaty), and CORN, *supra* note 8, at 50 (Martin was a "strong opponent of the removal").

¹⁸⁶ Fields, *supra* note 2, at 195.

¹⁸⁷ *Id.* at 190-91.

¹⁸⁸ *Id.* at 194.

¹⁸⁹ *Id.* at 195; PERDUE & GREEN, *supra* note 124, at 149-50.

¹⁹⁰ See Fields, *supra* note 2, at 195.

¹⁹¹ See *id.*

sis on October 17, 1840.¹⁹² His death merited an obituary in the *Arkansas Gazette*. “DIED. Near Fort Gibson, on the 17th October, of brain fever, the Hon. John Martin, of the Cherokee Nation, aged 51 (sic) years, 11 months, and 27 days.”¹⁹³

John Martin was buried at Fort Gibson.¹⁹⁴ “[T]he inscription on the monument over his stone-walled grave recites that ‘he was the chief justice of the supreme court of the Cherokee Nation.’”¹⁹⁵ Like many lawyers, he died intestate, and it took almost eight years to conclude his estate, as, at the time of his death, he still had significant assets in the State of Tennessee, most likely in the form of loans and other indentures.¹⁹⁶

It has been argued that the early Cherokee Tribal Court system “was an instrument designed to serve the needs of the small group of wealthy . . . Cherokees.”¹⁹⁷ Perhaps this is so, but it seems to miss the larger picture that in creating a true Court that was easily cognizable to western eyes, Judge John Martin and his fellow Indian Judges conclusively demonstrated that, as opposed to aboriginal methodologies whose worth had already been proven, formalized Western systems of justice could flourish in native environs.

The original Cherokee Court system exercised complete criminal jurisdiction.¹⁹⁸ The specter of Indian Judges trying white citizens of the United States must have horrified the racist citizens of Georgia and doubtlessly contributed to the cries for removal. The appearances of citizens of the United States and of the Indian Agent of the Secretary of War before the Indian Judges demonstrate the validity of the Cherokee Courts and the high regard in which they were held on the frontier.¹⁹⁹ The Cherokee Tribal Court may have its origins in serving the needs of the wealthiest citizens of the Nation, but its significance quickly outstripped such a narrow application.

The original Cherokee Supreme Court was a symbol of idealism, relevance, and defiance. No one embodied it more than Judge John

¹⁹² Death Announcements, *ARKANSAS GAZETTE* (Little Rock), Dec. 2, 1840; Fields, *supra* note 2, at 195.

¹⁹³ Death Announcements, *supra* note 192.

¹⁹⁴ Fields, *supra* note 2, at 195.

¹⁹⁵ Beeson, *supra* note 47, at 933.

¹⁹⁶ Lockwood, *supra* note 7, at 70.

¹⁹⁷ STRICKLAND, *supra* note 20, at 73.

¹⁹⁸ Martin, *supra* note 60, at 34.

¹⁹⁹ *Id.* at 57-60, 62.

Martin. Although rightly considered a Cherokee “founding father[],” time and again he was sought out, not as signor of the Constitution, but as a Judge.²⁰⁰ Time and again he returned to the Court from his many other duties. His greatest achievements came in service to the Court: “Justice John Martin, first chief justice of the Supreme Court of the Cherokee Nation in the West, set a pattern of excellence in devotion, education, and personal training which few who followed were able to match.”²⁰¹

The Cherokee Supreme Court was dismantled by the Curtis Act in 1898.²⁰² However, Judge John Martin’s significance did not end there. The idea of the Tribal Court could not be mowed down—the seed had already taken root. Lionized over eighty years after his death as one of the history-making “noble knights of the Bar of the East Side,” John Martin and his successors on the Cherokee Supreme Court comprised the vanguard of a Native bar that continues to this day.²⁰³ That vibrant Tribal Courts sit in Cherokee, North Carolina, and Talequah, Oklahoma, today is a testament to his vision.

²⁰⁰ *The Conflict Within*, *supra* note 26, at 62-63.

²⁰¹ STRICKLAND, *supra* note 20, at 156.

²⁰² *Id.* at 7, 176; Curtis Act, 55 Cong. Ch. 517, 30 Stat. 495 (1897).

²⁰³ William P. Thompson, *Courts of the Cherokee Nation*, THE CHRONICLES OF OKLA., March 1924, at 633-64.

