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# “Refugees as You Call Them”: The Politics of Refugee Recognition in the Nineteenth-Century United States<sup>1</sup>

EVAN TAPARATA

ON NOVEMBER 6, 1783, TWO MONTHS AFTER American and British officials signed the Treaty of Paris and ended the American Revolution, members of the Passamaquoddy, Maliseet, Micmac, and Penobscot Indian tribes met on the banks of the St. Croix River, on the border of present-day Maine and New Brunswick, Canada. Holding a belt of wampum beads that American officials had given the St. Croix Indians three years earlier as a symbol of their alliance, Nicholas Hawwawas, a Maliseet leader, veteran of the Revolution, and ally of American independence, asked John Allan, the Superintendent of Indians in the Eastern Department, what the rise of the United States as an independent nation meant for Indigenous people in the newly christened northern borderlands.

Before the war, the Maliseet freely crossed to and from British Canada and the colonies. American officials promised the St. Croix Indians they would retain control of the land where they lived and hunted beaver. But war's end brought strangers to the St. Croix River valley. Hawwawas told Allan that “refugees as you call them” had begun to arrive, offering gifts in exchange for a “right to the land.” Hawwawas worried about the intentions of these refugees and wondered why the US government would not “drive them away.” “You remember,” he said, “when we came from St. Johns and followed you—we had plenty of everything for the comfort of our families—you see the situation we are now in, and the distress of our families . . . We cannot sleep or rest, our women and children are crying about us, all our villages are disturbed—we cannot set down easy in any one place—our old homes are forsaken and like a deer pursued by the hunters, have no place of rest.”<sup>2</sup>

Hawwawas's words evoke what was at stake in the politics of refugee recognition, relief, and resettlement in early American history. Though they were loyal to the United States and now faced encroachment by settlers and displacement from their homelands, the US government did not call

Hawwawas and his people “refugees.” The presence of “refugee” settlers on Native land, meanwhile, was no isolated event. Four months before Hawwawas’s encounter with Allan, George Washington suggested to the President of the Continental Congress that “Refugees from Canada” be allowed to settle in the “interior parts of our Territory.” Giving land to Canadian refugees, particularly in places where the government wielded limited authority over land it wished to populate with white settlers, Washington argued, would be “useful to the United States.”<sup>3</sup> For displaced and persecuted people in late eighteenth-century North America, recognition as a “refugee” was contingent on what government officials believed could be gained by giving refuge to some and denying refuge to others—a distinction that had profound implications.

Although scholars have traditionally linked the origins of American refugee regulation to the Displaced Persons Act of 1948, when lawmakers allowed some European refugees of World War II to bypass exclusionary immigration quotas and enter the United States, this article explores the formation of US refugee regulation from the Revolutionary era through the Civil War.<sup>4</sup> In the first decades of American history, many European migrants—including those of German, French, Irish, Polish, and Austro-Hungarian descent—made their way to the United States, where they sought a haven from religious, political, and economic persecution. In this era of relatively open borders, American statesmen occasionally described these migrants as exiles, asylum seekers, and refugees. Internally and along the nation’s expanding borders, war and conflict—including the Indian Wars, the War of 1812, and the US–Mexico War, as well as innumerable episodes of state and settler violence against Native people—made displacement and persecution familiar experiences for residents of North America. Only in a handful of moments, however, did officials take substantive action for groups of people whom they formally recognized as “refugees” at the turn of and during the nineteenth century.

In particular, this article offers a comparative analysis of the political motivations that undergirded the US nation-state’s identification of three groups as refugees: Canadians and Nova Scotians, emancipated slaves, and Creek Indians.<sup>5</sup> Calling someone a “refugee” in early American history was a distinction of no small consequence. In the early nineteenth century, when Indigenous people faced a federal government whose hunger for land and resources fueled its westward expansion, they were not called refugees, though they were displaced from their ancestral homelands. When the institution of slavery forced people of African descent from their homes to a

foreign land, they were not called refugees, though they were consigned against their will to a lifetime laboring in the service of building the United States. When men and women fled their homes in British Canada to support the American Revolution, however, US officials *did* call them refugees. Unlike Native Americans and America's slaves, who from the start of US history were arguably refugees in experience if not in legal status, Canadian and Nova Scotian refugees were given access to land and wealth, and they had the attention of government officials who considered their concerns. Officials recognized emancipated slaves and Native Americans as refugees for the first time in the Civil War. Yet the US government's recognition of African Americans and Creeks as refugees was fundamentally compromised by the US government's overarching interest in controlling black labor and undermining Native sovereignty.

This article contends that refugee regulation did not originate in the twentieth century as an exception to exclusionary immigration policies that allowed some displaced peoples to enter the United States after World War II. Rather, the earliest forms of refugee law and policy in the United States were rooted in westward expansion, settler colonialism, and slavery. Alongside those systemic projects of oppression, early American refugee regulation encompassed a form of governance over populations whom US officials deemed unworthy of membership in the new nation, and was thus central to US nation and state formation in the nineteenth century. When viewed together, the three examples discussed in this article reveal how American officials used the country's foundational refugee policies to wield authority over the land and people that constituted the United States. In so doing, it lays out a framework for the study of US refugee history that connects concepts of refuge in the United States to the US government's imperial ambitions to control land, labor, and resources in North America and beyond. It also posits that there is no understanding the past and present of American refugee regulation without considering how the country's foundational histories of violence—including settler colonialism and slavery—laid the foundation for modern refugee policy.<sup>6</sup>

### **“REFUGEES FROM THE BRITISH PROVINCES OF CANADA AND NOVA SCOTIA”**

The recognition and regulation of refugees was not unique to the formation of the United States. British Parliament recognized French Huguenot refugees in its 1709 Act for Naturalizing Foreign Protestants, which for two

years welcomed Huguenots exiled from France after Louis XIV revoked the Edict of Nantes and outlawed Protestantism in 1685. England also encouraged views of its American colonies as an asylum by promoting emigration of Britain's "undesirables" across the Atlantic. Whether or not America's first policy makers and state actors drew on past conceptions of refuge and asylum, a law concerning refugees was among the US government's earliest legislative actions.<sup>7</sup>

The United States government passed its first refugee law in 1798. "An Act for the relief of the Refugees from the British Provinces of Canada and Nova Scotia" allowed Canadian and Nova Scotian refugees who supported the American Revolution to apply for land grants in the Northwest Territory. US officials referred to "justice and humanity" when they explained why they believed Canadian and Nova Scotian refugees ought to resettle on American soil. But giving land to Anglo-American refugees in the westernmost reaches of US territory was not the example of unadulterated humanitarianism that officials described. The United States' first refugee law also served the government's broader aims to assert control over land where Indigenous people challenged American claims to territorial sovereignty, settle that land with able-bodied men of European descent, and transform America's territorial possessions into states of the union.<sup>8</sup>

Hoping to seize upon Canadian opposition to the British Empire and pull Canadians into the struggle for independence, the American Continental Army invaded Quebec at the end of December in 1775. The Invasion of Quebec was a disaster for the Americans and the Canadians who joined them. Their decisive defeat by British troops caused US forces to flee south to the colonies. The Canadians who renounced the Crown by allying with the Continental Army faced British retribution for their disloyalty and joined the Americans in their retreat.<sup>9</sup> One American general said the conditions of the Canadian retreat were so dire that they were more like "the effect of imagination" than a "history of fact." In another act of imagination, the retreat caused American officials and displaced Canadians to imagine for the first time who was and was not a refugee in the early American republic.<sup>10</sup>

Shortly after the Canadian volunteers and the US Army made their way to New York, Canadians began writing to the Continental Congress about the persecution they would have faced by the British if they stayed in their homes. A soldier by the name of Prudent la Jeunesse told Congress he had no choice but to abandon his "Native Country" of Canada and "take refuge amongst the United States to avoid the Persecutions he should have suffered." Whether financial compensation for his military service or some

other form of relief, Jeunesse implored Congress to pledge some support to revolutionary Canadians like himself.<sup>11</sup>

Jeunesse's plea for relief was among the first of many petitions that Canadians sent to Congress after the Revolution. Their efforts to gain the attention of US lawmakers did not go unheard. Some of the most prominent Americans indicated their concern for the Canadians. Benjamin Franklin, for example, wrote to John Adams to communicate his support for a man he referred to as Mr. Measam. Measam, whom Franklin described as a merchant of "great reputation," was forced to flee Canada "to the great Detriment of his Affairs." Franklin recommended that Congress consider giving him some support to acknowledge his loyalty and remedy his displacement.<sup>12</sup>

George Washington was also an advocate for aiding displaced Canadians. When he learned that Canadians were receiving shelter and rations at Continental Army camps in New York, Washington commended military officers' decision to temporarily provide for their subsistence. But the man who would become the first president of the United States believed that "justice and humanity" required the US government to give Canadians who "left their own country" in support of American independence more than temporary assistance. In 1783, Washington claimed that the United States owed "some provision" to Canadians who were "exiled from their native Country." Knowing that Congress was short on funds, he insisted that the government give "unallocated lands in the interior parts of our Territory" to the "Refugees from Canada."<sup>13</sup>

For early US officials like Washington, encouraging the settlement of European Americans was vital to the new nation's territorial expansion and political development. Refugees who settled on American territory would strengthen the United States by populating the country with settlers who had demonstrated their loyalty to the United States while European imperial powers and powerful Indigenous nations threatened US claims of territorial sovereignty west of the Appalachian Mountains.<sup>14</sup> US officials likely viewed land grants for refugees as part of the broader constellation of treaties, settler squatting, corporate claims, and ordinances privileging white settlers that the US government used to populate the nation.<sup>15</sup> At the same time, the petitions that Canadian refugees submitted to Congress validated the United States government. When refugees wrote to Congress and requested relief, they legitimized the sovereign authority of the new nation. When refugees asked Congress for aid, they expressed their belief that the US government was benevolent, stood in stark contrast to British colonial oppression, and had the power, the means, and the authority to

name “refugees” and give them relief. Together, the requests of Canadian refugees and the willingness of American officials to listen and act on them created a foundational form of refugee relief that served the interests of the United States and accommodated those who were believed to “belong” in early America.<sup>16</sup>

When Canadian refugees learned that the Treaty of Paris included no provisions to protect them from British persecution, they realized that returning to their homes was a perilous proposition and took action. For example, Joseph Binden, John D. Mercier, and Benjamin Thompson, merchants and traders from Canada, sent a memorial to Congress on April 18, 1783 in which they implored the US government to compensate the destitution they suffered because they risked their lives and property for the cause of American independence.<sup>17</sup>

Congress responded favorably to their request. In addition to valuing the loyalty of Canadian refugees who supported the cause of American independence, US officials viewed Canadians of French and English ancestry who opposed British authority in Canada as prospective citizens. On April 21, 1783, American lawmakers issued a resolution that recognized the services of “the officers, men and others, refugees from Canada,” and pledged to give them land “for their virtuous sufferings in the cause of liberty.”<sup>18</sup> The following year, Jonathan Eddy, who led a failed revolt against the British in Nova Scotia in 1776, issued his own memorial on behalf of refugees from that province whose homes were destroyed by the British. Eddy appealed to the “justice and humanity” of Congress and asked that they compensate Nova Scotian refugees for their “singular sufferings.”<sup>19</sup> In response, on April 13, 1785, Congress passed a resolution that promised land to Nova Scotian refugees. But lawmakers did not pledge land in any part of the country to all Nova Scotian refugees. In particular, they approved of giving land to Nova Scotian refugees who were “disposed to live in the western country.”<sup>20</sup>

That the US government singled out “the western country” was no small matter. At the same time that members of Congress resolved to give land to Canadian and Nova Scotian refugees, the country’s lawmakers faced the challenge of seizing control over its westernmost territorial possessions. The treaty that ended the American Revolution required the British to cede to the United States its land holdings west of the Appalachian Mountains, from the Ohio River to the Mississippi River. The Treaty of Paris may have given these lands to the United States on paper. But occupying and wielding authority over the land was another matter. At the turn of the nineteenth century, the land that the United States recognizes today as the Upper Midwest was not

the vast, empty landscape that early Americans often imagined. It more closely resembled “an infinity of nations,” where many Indigenous peoples had their own governments, laws, customs and, crucially, their own claims to sovereignty over their ancestral homelands—claims that competed with and threatened the US government’s control of the West.<sup>21</sup>

Congress tried to achieve greater control over the land it gained from the Treaty of Paris with the land ordinances of 1784, 1785, and 1787. Together, these three ordinances defined the borders of the Northwest Territory—which at the time included the present-day states of Ohio, Illinois, Indiana, Michigan, Wisconsin, and part of Minnesota. They outlined the formal procedures for dividing the territory into identifiable parcels of land that could be granted to prospective settlers. They also set guidelines that described the minimum number of white “free men” required for each area in the territory to establish a government and achieve statehood.<sup>22</sup>

Refugee resettlement was part of the strategy that the ordinances laid out for transforming the Northwest Territory into states. The Ordinance of 1785 included a provision that specifically set aside land for Canadian and Nova Scotian refugees along Lake Erie, in the present-day state of Ohio.<sup>23</sup> Creating bounded states out of the land that constituted the Northwest Territory was a difficult process complicated by a lack of understanding about the land and the whims of settlers on the ground who did not always know the location of land boundaries or willingly disregarded them.<sup>24</sup> Establishing refugee lands in the Northwest Territory was one way to define a particular tract of land, settle it with the population required for statehood, and abet westward expansion.

Even though the Land Ordinance of 1785 formally set aside land for refugees, it took nearly fifteen years for Congress to move forward with its refugee resettlement plans. From the mid-1780s through the 1790s, the United States waged war with the Western Confederacy, a group of Wyandot, Shawnee, Lenape, Miami, and several other Indian tribes who resisted US claims of sovereignty in the Northwest Territory.<sup>25</sup> The Northwest Indian War culminated with a decisive American victory in the Battle of Fallen Timbers in 1794. The Treaty of Greenville, signed on August 3, 1795, created a border along the Cuyahoga River that divided the Ohio Territory into Native American land on the northern side of the line while reserving land in the south for settlement by Anglo-Americans.<sup>26</sup>

The Treaty of Greenville allowed Congress to move forward with its plan to give land to Canadian and Nova Scotian refugees. In 1798, Congress enacted the first refugee law in American history. “An Act for the Relief



of the Refugees from the British Provinces of Canada and Nova Scotia” called on newspapers in New York, New Hampshire, Pennsylvania, Vermont, and Massachusetts to advertise that Canadian and Nova Scotian refugees could submit petitions to Congress for grants of land in the Northwest Territory. The law established a commission to review the claims of refugees who supported the American Revolution. Depending on the degree of their “services, sacrifices, and sufferings,” members of the commission were to reward refugees with anywhere from one hundred to two thousand acres of land in Ohio. After two years of reviewing the petitions that Canadian and Nova Scotian refugees submitted to Congress, the committee on refugee claims decided that forty-nine refugees ought to receive a total of nearly 35,000 acres of land in Ohio. Congress approved the committee’s decision by passing another act in 1801 that made it federal law for the Secretary of Treasury to give land to Canadian and Nova Scotian refugees.<sup>27</sup> Although details regarding how the committee distinguished which refugees were more deserving of relief than others are sparse, they are consistent. Of the seventy-nine claims that the committee reviewed, women put forward only three. The claimants were largely men of means, wealthy enough to own private property and businesses, and politically engaged. Of European descent, male, able-bodied, loyal to the nation, and eligible to own land, they were people who, for all intents and purposes, would have “belonged” in American society. They also would have counted toward the population of sixty thousand required for Ohio to achieve statehood.<sup>28</sup>

The General Land Office began issuing land patents to refugees in 1802. In 1803, Ohio became the seventeenth state in the union—and the first area in the Northwest Territory to become a state. It is difficult to assess the degree to which settlement of the refugee lands helped Ohio achieve statehood, because it is difficult to know exactly how many of the refugees who received land in the Ohio Territory actually settled there.<sup>29</sup> Difficult though it may be to know how many Canadian and Nova Scotian refugees ended up in Ohio, it is clear that the US government’s first experiment in refugee relief coincided with its efforts to settle the Northwest Territory—and thus coincided, as well, with its efforts to dispossess Indigenous North Americans. The granting of land to Canadian refugees was not merely the extension of aid to individuals who suffered persecution as a result of their loyalty to the nation. It was also the institutionalization of a selective vision of citizenship, belonging, and property ownership in early American society, one that enabled the permanent settlement of Anglo-Americans while removing Native Americans to the edges of the country’s expanding

territory. US officials' decision to recognize Canadians and Nova Scotians as refugees gave some credence to early beliefs that the United States was a place of refuge. That decision, however, also made the country's foundational example of refugee regulation complicit with attempts to dispossess Native Americans.<sup>30</sup>

The racial politics that defined early American refuge only deepened in the decades after Congress called Canadians and Nova Scotians "refugees." Although the arrival in the United States of allegedly radical French and Irish political exiles was so controversial it resulted in Congress passing the Alien and Sedition Acts in 1798, a suite of laws that threatened to deport foreign-born political dissidents and stymie opposition to the American government, no federal legislation was passed to restrict their entry to the United States. After the Haitian Revolution, the country's policy of open borders even made permissible the irony of French planters, with slaves in tow, seeking refuge and a restoration of their "right" to enslaved labor in the United States.<sup>31</sup> Meanwhile, in 1830, President Andrew Jackson passed the Indian Removal Act, weaving the removal and dispossession of Native people into federal law. The US government outlawed the importation of African slaves in 1807, but the number of people born into slavery on US soil, as well as the entry into the union of the slaveholding Republic of Texas in 1845, exponentially increased the country's population of slaves. Slavery grew more entrenched in the United States when Congress passed the Fugitive Slave Act of 1850. While Congress first passed a Fugitive Slave Act in 1793, the new law required that state and federal officials cooperate in returning runaway slaves who fled their persecution under slavery. By seeking to ensure their bondage even after they escaped, the Fugitive Slave Act effectively denied black asylum seekers the status of "refugee."<sup>32</sup> American officials favored Canadian and Nova Scotian refugees with land grants and generally allowed European political refugees and exiles to cross the nation's borders. The country's earliest officials, however, did not pass laws that called American Indians and African Americans "refugees." Instead, they passed laws that deepened their dispossession and perpetuated their persecution.

## AFRICAN AMERICAN REFUGEES IN THE CIVIL WAR

Throughout the first half of the nineteenth century, runaway slaves and freed people of color in the United States sought asylum from slavery in Mexico and Canada. Abolitionists recognized the persecution that escaped

slaves were fleeing and called them “refugees.” An abolitionist named Benjamin Drew, for example, received a commission from the Canadian Anti-Slavery Society to interview former slaves who had escaped from the United States to Canada. In 1856, Drew published his account and titled it *The Refugee: Narratives of Fugitive Slaves in Canada*. Still, it was not until President Abraham Lincoln issued the Emancipation Proclamation during the Civil War that US officials formally acknowledged runaway African Americans as “refugees” who might receive some aid as opposed to fugitives or contrabands who had violated their owners’ right to hold them as property.<sup>33</sup>

In the Emancipation Proclamation, Lincoln declared that as of January 1, 1863, any slave residing in a state whose population was in rebellion against the United States of America would be “forever free.” The US military and the navy, he claimed, would “recognize and maintain” their freedom and do nothing to interfere with “any efforts they may make for their actual freedom.” Lincoln’s proclamation represented the federal government’s endorsement of the end of slavery in the United States for the first time in American history.<sup>34</sup>

Acting in his capacity as commander-in-chief, Lincoln’s delivery of the Emancipation Proclamation was as much military stratagem—freeing the South’s slaves would deprive the Confederacy of its main source of wealth and labor, while creating a prospective pool of new recruits for the Union Army—as it was a plea for abolition. Lincoln’s main priority was preserving the union, and he was unclear on how to resolve the issue of slavery. Before the war, he advocated that freed African Americans leave the United States and resettle abroad, rather than attempt to integrate into American society. Even after issuing the Emancipation Proclamation, Lincoln momentarily supported plans that would have sent freed African Americans to British colonies in Central America. White Americans—including Lincoln himself—did not know whether wartime emancipation would apply after the war, when only an amendment to the Constitution could legally end slavery in the United States. With the nation at war and the southern slave states in open rebellion against the Union, it remained unclear whether Lincoln’s promise of freedom would materialize, what freedom would look like, and what American officials would do to protect it.<sup>35</sup>

The Emancipation Proclamation did have one clear, immediate effect. The prospect of freedom inspired hundreds of thousands of enslaved people to seek refuge across Union lines. Union encampments numbered in the hundreds before the war’s end. They permitted an estimated 400,000 freed

and emancipated slaves to find shelter during the war. This was undoubtedly a boon to African American refugees seeking freedom from slavery and from Confederate soldiers who were willing to die to maintain Southern slaveholders' ability to legally own slaves. It did not take long, however, for camp overseers, military officers, and government officials to reveal how the United States' longstanding investment in racial inequality influenced their motives when they welcomed refugees.<sup>36</sup>

Camp Nelson offers one example of the competing interests that characterized refuge for African Americans in the Civil War. Situated along the Kentucky River about ninety miles from Louisville, Camp Nelson was one of many camps located in the western theater of the war that permitted refugee slaves to find shelter after Lincoln delivered the Emancipation Proclamation. But it was not simple humanitarianism that led Union officials to allow refugees in the camp. The Union Army needed soldiers to fight the war. With great numbers of African Americans making their way across Union lines after Lincoln promised emancipation in 1863, army officials reasoned that runaway and freed slaves might be more inclined to enlist in the Union Army if officials agreed to shelter and care for their families, whom they identified as "refugees." In July 1864, the War Department issued a general order stating that enlistments of African American soldiers would increase if Army officials followed orders that "colored refugees be treated with justice and humanity." American officials envisioned refuge as a tool to recruit troops, while able-bodied African American men traded military service for the hope that their families would find protection and relief as "refugees" in places like Camp Nelson.<sup>37</sup>

Tensions rose soon after refugees began arriving at Camp Nelson. In particular, camp officials' gendered concerns about morality and sexuality caused them to view formerly enslaved women seeking entry into the camp with suspicion. Those in command at Camp Nelson ordered several soldiers to guard duty in order to keep out so-called lewd women. Soldiers who failed to keep women suspected of moral depravity from Camp Nelson were to be "arrested and punished." Missionary groups at Camp Nelson worried that refugee women seeking shelter there would "corrupt" the camp and its inhabitants if they were allowed to enter. Prejudices against women seeking refuge at Camp Nelson had tragic consequences.<sup>38</sup>

On November 23, 1864, officials at Camp Nelson ordered the expulsion of four hundred women and children refugees from the camp. Several enlisted African Americans described how their families were treated leading up to the expulsion. When Private Joseph Miller told a soldier overseeing the

expulsion that his wife and children had nowhere else to go, that soldier told Miller that he would shoot his family if they did not leave. The wife of another soldier, who arrived at Camp Nelson after she and her family were “driven out of doors” by their master, found themselves again facing eviction. The same soldier who initially welcomed her family as refugees threatened to burn down their cabin inside the camp if they did not leave.<sup>39</sup>

Refugees went to Camp Nelson in search of protection and compassion. They found neither. Kentucky faced a harsh winter at the time of the expulsion. At least one Army official, Captain T.E. Hall, warned that the expulsion would cause “untold suffering” because of the severe winter weather. Hall’s prediction was not misplaced. Of the four hundred refugees removed from Camp Nelson, one hundred died. Private Miller’s family, who faced the threat of execution if they did not leave Camp Nelson, were among those who perished during the expulsion: his son died from exposure six miles from the camp. The decision to remove refugees from Camp Nelson further endangered the lives of people whose lives were already imperiled.<sup>40</sup>

The Camp Nelson expulsion fomented outrage in US officials. In a letter he submitted to the *New York Tribune* several days after the expulsion, Captain Hall condemned what he described as “a system of deliberate cruelty.” Union officials claimed to abhor slavery and risked their lives to end it. How, then, could they have allowed such cruelty? Hall pleaded with the “just and humane public” to demand that the government bring to justice those who ordered the expulsion and brought “the darkest associations of the slave mart” to the Union’s doorstep.<sup>41</sup>

Hall’s anger, however, was not only animated by his concern for refugees. Like George Washington, who in 1783 evoked “justice and humanity” when he described the US government’s obligation to Canadian refugees but then emphasized how “useful” the settlement of Canadian refugees would be for the country’s broader objective of westward expansion, Hall circled back to enlistments. According to Hall, nothing could have harmed the recruitment of African American soldiers more than the expulsion of refugees who had been promised a haven at Camp Nelson.<sup>42</sup>

Whether it was remorse for the expulsion’s cost to human life or interest in securing enlistments that influenced their decision, officials recommended that Camp Nelson reopen its doors to refugees. A month after the expulsion, Senators Thomas Hood and S.W. Bostwick published a report about “the condition and treatment of colored refugees in Kentucky, Tennessee, and Alabama.” They noted that the expulsion at Camp Nelson had many consequences. Chief among them was a reduction in the enlistment

of African American soldiers. In order to prevent “great suffering” among the refugees and boost enlistments, Hood and Bostwick suggested to the War Department that officials at Camp Nelson outfit the site for operation as a place of refuge for both white and black refugees. According to Hood and Bostwick, the government had a “common obligation” to care for all refugees. African American refugees, however, had a special case for protection. Many formerly enslaved persons, Hood and Bostwick suggested, faced worse conditions during the war than “before they were refugees.” If American officials did not undertake procedures to ensure the relief of freed slaves, Hood and Bostwick claimed, they would continue to lose “the elements of manhood” that they lost during the “centuries of oppression” they endured as slaves.<sup>43</sup>

American officials represented refuge to former slaves as an act of redemption. When individuals like Hood and Bostwick called emancipated slaves who crossed Union lines “refugees,” they invoked the North’s moral superiority over the slave-owning Confederacy. The Union’s sheltering of emancipated refugees offered proof of the US federal government’s evolution from a country that for centuries was tainted by slavery to a benevolent, just, and more racially egalitarian nation. According to Hood and Bostwick, African Americans “were degraded and they suffered through a nation’s weakness: they have a right to be lifted up by a nation’s wonderfully developing strength.” When they imagined sites like Camp Nelson as refugee camps for former slaves, they imagined them as sites of absolution, where the federal government might begin to atone for the decades of brutality enslaved people experienced. However, those same officials also saw Civil War refugee camps as paternalistic institutions where American officials could demonstrate the nation-state’s “wonderfully developing strength” and take credit for overseeing enslaved peoples’ transition from bondage to freedom.<sup>44</sup>

In Hood and Bostwick’s eyes, refugee camps were places where the US government could observe and govern emancipated slaves while affecting their assimilation into the social and cultural expectations that shaped American society. They proposed, for example, that the government withhold the wages of enlisted African American men to teach them “self-dependence,” and “impress upon him the obligation he is under to aid in the support of his family.” It was up to the US government, Hood and Bostwick claimed, to teach African Americans in refugee camps “the distinguishing features of a true manhood.” Despite previous reports from S.G. Howe that African American refugees in Canada had learned to “put away slavish things” of

their own accord, Hood and Bostwick nevertheless exclaimed that it was the purview of the United States government to manage African Americans' newfound freedom.<sup>45</sup>

Government officials pondering how to handle the emancipation and eventual citizenship of freed slaves shared Hood and Bostwick's concern that African American refugees be trained for and assimilated into "true manhood." Before the Bureau of Refugees, Freedmen, and Abandoned Lands (commonly referred to as the Freedmen's Bureau) was established on March 3, 1865, the War Department assembled the American Freedmen's Inquiry Commission to explore what a government agency for the assistance of former slaves might look like. In June 1864, several months before the Camp Nelson expulsion, the commission published a report claiming that even though a large number of white refugees were seeking relief from the war, the US government had a special interest in taking care of African American refugees. The members of the commission believed that sheltering African American refugees would allow American officials to reform the "vices chiefly apparent in these refugees . . . as appertain to their former social condition." In addition to teaching them how to respect private property, tell the truth, and abstain from stealing, the Commission stressed that African Americans under the care of refugee camps should marry, to "impose upon the husband and father the legal obligation to support his family."<sup>46</sup> From taking pains to divulge former slaves of their alleged "vices" to undertaking efforts to ensure that African American families conform to social expectations regarding monogamous, heteronormative, and patriarchal nuclear family structures, the US government utilized refugee camps not only to shelter displaced and persecuted peoples, but also to reify prejudices that racialized African American men as helpless peoples who needed to be led toward so-called true manhood.

Officials backed away from the one relief measure that would have directly quelled concerns about former slaves' prolonged dependency on the US government. Like loyal Canadian and Nova Scotian refugees, Congress considered giving land to African American refugees. An early draft of the bill that created the Bureau of Refugees, Freedmen, and Abandoned Lands included a provision that would have given "tracts of land" in the South to "loyal refugees" so they could "become at once self-supporting." The distribution of land to African American refugees, however, never materialized as postwar federal policy. Members of Congress protested any special provisions in American policy that would give land to African Americans without also giving land to white Americans. After Lincoln's assassination,

President Andrew Johnson ordered that any land that had been temporarily given to emancipated slaves during the war be returned to its original owners. The US government's reluctance to give land to emancipated slaves, including those whom they identified as "refugees" during the Civil War, reflected the Freedmen's Bureau's limitations. Although the Bureau helped African Americans establish schools and opened Bureau-managed courts where, unlike local courts managed by resentful white southerners, African Americans could testify and pursue actual legal redress, its effectiveness was undercut by agency officials who harbored racist attitudes against African Americans. Many Bureau officials shared the belief that African Americans were better suited to sharecropping and waged labor rather than working their own land. Although the Southern Homestead Act, passed in 1866, created provisions that allowed free blacks to own land, the land offered was barely arable. In addition, the Bureau failed to keep white southerners from physically intimidating African Americans who attempted to settle on plots set aside for them. Unlike with Canadian and Nova Scotian refugees decades earlier, provisions securing land for African American refugees never came to pass.<sup>47</sup>

The US government's recognition of former slaves as "refugees" marked a significant departure from the decades of brutality it allowed under slavery. Yet even if the US government's identification of former slaves as "refugees" signaled the possibility of a more equal American society, the Union's self-interest in giving refuge to African Americans as a way to weaken the Confederacy and bolster its own war effort foreshadowed the injustices that would continue to define American race relations after abolition. Giving land to African American refugees would have challenged a foundational belief about citizenship and belonging in the nineteenth-century United States: that full membership in American society was the domain of able-bodied white American males who held the reins to property ownership. After emancipation, former slaves faced the daunting task of negotiating their freedom in a nation whose economy had come to depend on cotton produced by slaves' unpaid labor. They also confronted the full force of a post-emancipation southern legal regime intent on restricting their freedom by instituting restrictions on their ability to move freely between jobs and rent land. The refusal to distribute lands to refugee slaves exposes the limits of the US nation-state's support of African American refugees and their transition from slavery to citizenship. It also reveals how US officials used refugee policy, in its earliest forms, to govern populations who were not perceived as being fully "American" and perpetuate their inequality in the United States.<sup>48</sup>



## CREEK REFUGEES DURING AND AFTER THE CIVIL WAR

Enslaved people were not the only historically dispossessed group in the United States whom American officials called “refugees” during the Civil War. The Indian Removal Act made it a cornerstone of the federal government’s policy in dealing with Native Americans to remove Indigenous North Americans from their homes and effectively make them refugees even if the US government did not acknowledge them as such. In 1864, however, American officials recognized Native Americans in the southeastern United States as “refugees.” “An Act to aid the Indian Refugees to return to their Homes in the Indian Territory” earmarked \$153,000 from the US Treasury to relocate and temporarily provide for “refugee and destitute Indians” in the Southern Superintendency of the Bureau of Indian Affairs.<sup>749</sup>

The general relief bill for Indian refugees passed in 1864 was not the last example of American lawmaking for Indian refugees in the Civil War era. In 1866, the United States entered into a treaty with the Creek Nation that promised economic compensation to “loyal Creek refugees” who lost their property during the war. Yet the treaty continued the federal government’s practice of subordinating Indigenous people, even as it counted them as “refugees.”<sup>750</sup>

Long-standing tensions within the Creek Nation culminated in one of the earliest refugee flights of the Civil War. In late December 1861, a battalion of slave-owning Creeks and Confederate sympathizers drove a band of Union-supporting Creeks from their homes. Between five and six thousand Creeks sought safety in Union-controlled territory in Kansas. Reporting on their arrival across Union lines, Commissioner of Indian Affairs William P. Dole said the “loyal Indians” were in a “most deplorable condition.” Major General D. Hunter, who oversaw the arrival of the displaced Creeks, noted that he “fulfilled a duty due to our common humanity” when he decided to give them shelter. Many of the Creeks stayed in Union territory until the end of the war. When they returned to their homes, they found that hostile forces had destroyed their houses, livestock, and personal possessions. Like Canadians and Nova Scotians who had demonstrated their loyalty to the United States during the American Revolution, the loyal Creeks received a promise from the government for relief as “refugees.”<sup>751</sup>

After the war, the United States entered into peace treaties with the Native American nations who participated in the conflict, including the Creeks. Treaty negotiations with the Five Nations—the Creeks, Cherokees,

Choctaws, Chickasaws, and Seminoles—were fraught from the start. The US federal government was inclined to punish the Five Nations for their support of the Confederacy during the war. Congress even considered turning the Indian Territory into a territorial government, a move that would have dealt a fundamental blow to the sovereignty of Native nations by welcoming settlers onto the land and undermining Native peoples' ability to enter into treaties with the United States. Commissioner Dole, however, argued that the United States was obligated to maintain relations with southern Native American nations who formally aligned with the Confederacy because many of their members remained loyal to the Union. Although government officials decided to enter into new treaties with the Five Nations, the representatives of the United States in postwar treaty negotiations did so with an eye toward weakening Native sovereignty.<sup>52</sup>

The 1866 treaty that the federal government reached with the Creek Nation was unique. It included a provision that called for a special commission to investigate the losses sustained by "loyal refugee Indians" whose allegiance to the Union caused their displacement, and to compensate them for the value of their lost property.<sup>53</sup> Although the Treaty of 1866 promised relief for Creek refugees who sided with the Union, it was riddled with compromises that reflected some US officials' interests in disciplining Native Americans. Although Article One pledged that the United States would protect the Creeks from the hostilities of other Indian nations and offer financial reparations in the event of an attack, for example, it required that the Creeks allow military occupation within Creek territory whenever and for however long the US government deemed it necessary. Article Three forced the Creeks to sell 3.25 million acres in the western half of their territory. This amounted to nearly half of their land, which had already been greatly reduced over decades of cessions. Additionally, the treaty required that the Creeks use funds from the sale of their land to help pay the Creek refugees for their lost property. The treaty may have included a provision that promised relief to loyal Creek refugees, but by forcing the Creeks to surrender their land and agree to the presence of the US army within their borders at any time, it also challenged Creek sovereignty.<sup>54</sup>

The treaty's promise to compensate Creek refugees was not what it seemed. On February 14, 1870, Southern Superintendent of Indian Affairs W.B. Hazen and US Agent for the Creek Nation F.A. Field released the findings of their commission investigating the losses of Creek refugees. They valued the claims of loyal Creek refugees at more than \$5,000,000. Rather than pay that amount in full, however, Hazen and Field suggested

that the US government pay the loyal Creeks only \$1.8 million. Although the Commissioner of Indian Affairs approved this amount, the Secretary of the Interior intervened and capped the award at just \$100,000.<sup>55</sup>

Loyal Creeks believed they were being swindled. Two delegates submitted a petition to Congress on behalf of the Creek Nation in 1878 in which they protested the US government's decision to pay loyal Creek refugees only \$100,000 for claims that the Hazen and Field commission valued at \$1.8 million. They claimed that although the 1866 treaty specifically noted that the loyal Creeks should be paid up to \$100,000 for their losses, nowhere in the treaty did it stipulate that amount as the maximum award. They asserted that during treaty negotiations American officials explained to Creek delegates that \$100,000 was meant to be only a partial payment, and that loyal Creeks would be paid in full for their losses.<sup>56</sup>

On March 10, 1880, fourteen years after the treaty between the United States and the Creek Nation was signed, prominent Creek lawyer David M. Hodge presented a memorial to the Committee on Indian Affairs to support a Senate bill that approved a sum of \$1.8 million to be paid from the US Treasury to the loyal Creeks or their heirs. At a moment in US-Indian affairs when the US government had moved from a policy of removal to assimilation, Hodge spoke in a discourse of civility that would have resonated with American officials. He emphasized that the loyal Creeks were "civilized" and "had made much advancement in the arts of civilization." He pointed to how their property was enclosed with fences—a marker of western understandings of private property ownership—and remarked at how upon returning to their homes after hostilities had ceased, the Creeks found that those fences had been destroyed.<sup>57</sup>

Yet Hodge's memorial was no embrace of US standards of "civilization." He minced no words criticizing the federal government's attitude and behavior toward the loyal Creek refugees. In particular, he described the government's delay to fully pay the Creek refugees for their losses as a violation of the "guardian and ward" relationship between the United States and Native Americans, which premised that the United States was morally and legally bound to respect the interests of Native people in their official dealings with the federal government. If the United States was the "guardian" of the Creeks, Hodge argued that it was inconsistent with the nature of this relationship for the US government to force the sale of half the Creek Nation's territory, pay the Nation less than the land's value, and then force funds from the sale of those lands to be used for a partial reimbursement of the property that loyal Creek refugees lost during the Civil War. Hodge also pointed out that the

Creek Nation was a “domestic dependent state” that possessed “the inherent right of self-government.” Hodge claimed that the treaties the United States held with the Creeks as a sovereign nation made the US government’s decision to not fully compensate them for their lost property both abhorrent *and* unlawful.<sup>58</sup>

Hodge’s efforts to push the Senate bill through Congress were unsuccessful. When Congress revisited the question of compensating loyal Creek refugees seventeen years later, it was as part of the Dawes Commission’s efforts to dissolve the national governments and the territorial sovereignty of the Five Nations by breaking apart their land into allotments for individual sale. In an effort to gain the money promised to Creek refugees, the Principal Chief of the Creek Nation submitted a memorial to Congress in 1897 in which he echoed Hodge by claiming it was not just a violation of guardian and wardship that the US had not yet paid the Creek refugees. It was also a violation of “solemn treaty stipulation.”<sup>59</sup>

The appeals that Creek leaders made from the 1870s through the 1890s resulted in Congressional action. On March 1, 1901, Congress passed an act that ordered the Senate to hear all pending claims of loyal Creek refugees and their descendants and make final determinations of the amount owed to them. At the same time, however, the 1901 Act forced the loyal Creeks and the Creek Nation as a whole to make several concessions. First, as a condition of paying the claims of loyal Creek refugees, Congress stipulated that the Creek Nation had to allow their national territory to be allotted for individual resale. The US government thus used its agreement to compensate loyal Creek refugees as part of its broader objective of imposing allotment and breaking apart Native nations in Indian Territory. Additionally, the Creeks had to grant the Secretary of the Interior wide latitude in the Creek Nation’s management of allotments, further undermining their ability to self govern. This arrangement fell in line with the US federal government’s broader agenda to break up Indian lands, usher Native peoples into private land ownership, and weaken Native sovereignty.<sup>60</sup>

After taking two years to review the pending claims, Congress passed an act in 1903 that offered \$600,000 to loyal Creek refugees—or more likely their descendants, as the awards arrived nearly forty years after the Treaty of 1866 first promised relief to loyal Creek refugees. The Creeks reluctantly accepted the offer, which amounted to nearly half the sum the Hazen and Field commission had concluded was owed to loyal Creek refugees. In addition to paying the Creeks \$600,000, the 1903 act barred the loyal Creeks from pursuing additional payments and proved effective in limiting their

pursuit of further compensation—at least for a time. Descendants of the loyal Creek refugees renewed their efforts after the Indian Claims Commission was formed in 1946. It would not be until 1951—coincidentally, the same year that the United Nations published its “Convention Relating to the Status of Refugees,” a document that for the first time in international law defined “refugee” and the rights to which refugees are entitled—that the United States would award the rest of the money the federal government pledged to loyal Creek refugees nearly one hundred years earlier.<sup>61</sup>

By outlining several foundational moments when American officials identified and governed different groups as refugees in the first century of the United States’ existence as a nation, this article has shown how situating the origins of refugee policy in the twentieth century sequesters the history of American refuge from the systems of oppression that fueled the country’s founding, expansion, and political development. Since its earliest days as an independent nation, American political thinkers portrayed the United States as a haven for the world’s oppressed peoples. In practice, however, the early American government established itself as a settler state whose economic development and territorial expansion was fueled by the elimination of Native peoples and the twinned forced removal of African peoples from their homes and their legalized enslavement in America. The country’s first refugee act passed in 1798 encouraged Anglo-Americans to resettle on tens of thousands of acres of land in the Northwest Territory, advancing the removal of Indigenous peoples from their ancestral homelands and undermining their claims to political and territorial sovereignty. When conceptions of who might be a refugee in the United States expanded to include emancipated slaves and Native Americans during the Civil War, American officials used the inclusion of these groups under the purview of refugee regulation to enforce their liminal position—somewhere between citizenship and alienage—and their unequal membership in American society. Even if the US government’s decision to give aid to displaced and persecuted peoples may have contained seeds of humanitarianism, exploring early examples of American refugee policy shows how the antecedents of modern refugee regulation were motivated, as well, by American officials’ inclination to advance the US nation-state’s interests in establishing a republic that privileged the personhood of able-bodied men of European descent and asserting its authority over the people and places of North America.

Taking a long view on the lineage of American refugee regulation allows scholars to see in new ways the interests that have historically shaped decisions about which displaced and persecuted peoples might find refuge in the

United States. A focus on the origins of American refugee law and policy in the World War II era presumes that refugee policies were the result of a United States government that had emerged on the world stage as a global superpower. Tracing the genesis of American refugee law to the first decades of United States history, however, shows how policies concerning refugees were constitutive of the US nation-state by facilitating its territorial expansion and honing its capacity to govern. Examining the wider world of refugee regulation as it existed in the nineteenth century United States likewise has the potential to transform refugee studies by emphasizing that it has not only been internationally displaced and persecuted people whom US officials have identified as “refugees” in American history, but also residents of North America whose experience and legal categorization as refugees occurred at a time when the people and places that were “internal” and “external” to the nation were inchoate. Recasting the history of US refugee law to the nineteenth century is a stark reminder that histories of settler colonialism and slavery are integral, not adjacent, to US refugee history. This story is as much about the multiply marginalized people whom American officials have subjected to displacement and persecution over time as it is about the laws and policies that American lawmakers and government officials put in motion to accommodate refugees.

## NOTES

1. I would like to thank those who offered feedback on this article’s various drafts, including Chantel Rodríguez, Andrew Urban, the *JAEH*’s anonymous reviewers, Erika Lee, Donna Gabaccia, Barbara Welke, David Chang, Laura Matson, Aaron Eddens, and Nate Holdren. I also express thanks to the University of Virginia’s Jefferson Scholars Foundation for providing fellowship support that enabled my writing of this article.

2. John Allan, “Report re: eastern Indians,” December 12, 1783, Microfilm M247, The Correspondence, journals, committee reports, and records of the Continental Congress (1774–1789) [hereafter cited as Microfilm M247], roll 71, p. 59–62, Record Group 360, Papers of the Continental Congress [hereafter cited as RG 360], National Archives and Records Administration [hereafter cited as NARA].

3. “From George Washington to Elias Boudinot, 16 July 1783,” Founders Online, National Archives, last modified June 29, 2017, <https://tinyurl.com/ybrh87xt> (accessed March 25, 2018).

4. On US refugee policy in the twentieth century, see Maria Cristina García, *The Refugee Challenge in Post-Cold War America* (New York: Oxford University Press, 2017); Stephen Porter, *Benevolent Empire: U.S. Power, Humanitarianism, and the World’s Dispossessed* (Philadelphia: University of Pennsylvania Press, 2017); Carl J. Bon Tempo, *Americans at the Gate: The United States and Refugees During the Cold War* (Princeton, NJ: Princeton University Press, 2008); Gil Loescher and John Scanlan, *Calculated Kindness: Refugees*

and *America's Half-Open Door, 1945 to the Present* (New York: The Free Press, 1986). For studies that consider examples of refugee regulation in the United States before 1948 but do not consider their influence on the development of US refugee law in the longue durée, see Andrew Urban, "Asylum in the Midst of Chinese Exclusion: Pershing's Punitive Expedition and the Columbus Refugees from Mexico, 1916–1921," *The Journal of Policy History* 23, No. 2 (2011): 204–30; Maya Jasanoff, *Liberty's Exiles: American Loyalists in the Revolutionary World* (New York: Alfred A. Knopf, 2011); Marilyn C. Baseler, "Asylum for Mankind": *America, 1607–1800* (Ithaca, NY: Cornell University Press, 1998); Jon Butler, *The Huguenots in America: A Refugee People in New World Society* (Cambridge, MA: Harvard University Press, 1983).

5. My dissertation discusses these examples in greater detail, and considers how settler colonialism, slavery, and the rise of exclusionary immigration policy helped shape modern refugee regulation. See Evan Taparata, "No Asylum for Mankind: The Creation of Refugee Law and Policy in the United States, 1776–1951" (doctoral dissertation, University of Minnesota, 2018).

6. Historian and political theorist Aristide R. Zolberg argued in his article "The Formation of New States as a Refugee-Generating Process," *Annals of the American Academy of Political and Social Sciences* 467 (1983): 24–38 that the dissolution of European empires and the rise of nation-states produced great flows of refugee migrations because nation-states draw their sovereignty from their ability to define who belongs in their borders and to deter those who do not meet that criteria. This article builds on Zolberg's analysis by arguing that refugee regulation, in addition to the production of refugees, fueled the United States' imperial ambitions to expand its authority in North America in the nineteenth century—and though not taken up here, across the globe in the twentieth.

7. Tom Lambert, "Hospitality, Protection and Refuge in Early English Law," *Journal of Refugee Studies* 30, no. 2 (2016): 243–60; Phil Orchard, "The Dawn of International Refugee Protection: States, Tacit Cooperation and Non-Extradition," *Journal of Refugee Studies* 30, no. 2 (2016): 282–300. For a general overview of immigration in colonial and the early national United States, including perspectives on migrants looking to North America as an asylum, see Baseler, "Asylum for Mankind."

8. Pub. L. No. 5–26, 1 Stat. 547 (1798).

9. Gustave Lanctot, *Canada & the American Revolution, 1774–1783*, trans. Margaret M. Cameron (Cambridge, MA: Harvard University Press, 1967), 17–42.

10. Letter from John Sullivan, Crown Point, to John Hancock, July 20, 1776, Microfilm M247, roll 178, p. 15, RG 360, NARA.

11. Letter from Prudent la Jeunesse to United States Board of War, November 4, 1778, Microfilm M247, roll 54, p. 9, RG 360, NARA.

12. Letter from Benjamin Franklin to John Adams, August 28, 1776, Microfilm M247, roll 55, p. 23, RG 360, NARA.

13. Letter from George Washington to the President of Congress, Head Quarters, Prackness, NY, November 1, 1780, in John C. Fitzpatrick, ed., *The Writings of George Washington from the Original Manuscript Sources, Vol. 20* (Washington: US Government Printing Office, 1937), 275–76; "From George Washington to Elias Boudinot, 16 July 1783," Founders Online, National Archives, last modified June 29, 2017, <http://founders.archives.gov/documents/Washington/99-01-02-11601> (accessed March 25, 2018).

14. On relations between American Indians and the US Government in the Upper Midwest at the turn of the nineteenth century, see Paul Frymer, *Building an American Empire: The*

*Era of Territorial and Political Expansion* (Princeton, NJ: Princeton University Press, 2017); John P. Bowes, *Land Too Good for Indians: Northern Indian Removal* (Norman: University of Oklahoma Press, 2016); Michael A. McDonnell, *Masters of Empire: Great Lakes Indians and the Making of America* (New York: Hill and Wang, 2015); Witgen, *Infinity of Nations*.

15. For an overview of US efforts to control land, see Bethel Saler, *The Settlers' Empire: Colonialism and State Formation in America's Old Northwest* (Philadelphia: University of Pennsylvania Press, 2014).

16. On the shaping of American ideas in law and politics about who did and did not “belong” in early American history, see Barbara Young Welke, *Law and the Borders of Belonging in the Long Nineteenth Century United States* (New York: Cambridge University Press, 2010).

17. Memorial of Joseph Binden, John D. Mercier, and Benjamin Thompson, submitted to Congress, April 18, 1783, Microfilm M247, roll 49, pp. 134–35, RG 360, NARA.

18. US Congress, *Resolves re: Canadian Refugees*, April 23, 1783, Microfilm M247, roll 41, p. 67, RG 360, NARA.

19. Letter from inhabitants of Nova Scotia, Boston, to Congress, February 25, 1784, Microfilm M247, roll 53, pp. 412–15, RG 360, NARA.

20. Carl Wittke, “Canadian Refugees in the American Revolution,” *Canadian Historical Review* v. 3, 1922: 320–321; U.S. Congress, *Journal of the United States in Congress Assembled*, Congress of the Confederation, April 13, 1785.

21. Witgen, *An Infinity of Nations*. For a study of the interdependent relationship between Native Americans, Europeans, and Americans in the Great Lakes, see Richard White, *The Middle Ground: Indians, Empires, and Republics in the Great Lakes Region, 1650–1815*, 20th Anniv. Edition (Cambridge: Cambridge University Press, 2011).

22. US Congress, *Resolved, that so much of the territory ceded, or to be ceded by individual states, to the United States, as is already purchased, or shall be purchased, of the Indian inhabitants, and offered for sale by Congress, shall be divided into distinct states in the following manner . . .*, United States in Congress Assembled, April 23, 1784, <https://tinyurl.com/ycstasyep> (accessed March 25, 2018); US Congress, *An Ordinance for ascertaining the mode of disposing of Lands in the Western Territory*, United States in Congress Assembled, Friday, May 20, 1785, in *Journals of the Continental Congress, 1774–1789*, ed. Worthington C. Ford et al. (Washington, DC, 1904–1937), <https://tinyurl.com/ycyx8njo>, 28: 380–81 (accessed March 25, 2018); US Congress, *An Ordinance for the government of the territory of the United States North West of the river Ohio*, United States in Congress Assembled, Friday, July 13, 1787, in *Journals of the Continental Congress, 1774–1789*, ed. Worthington C. Ford et al. (Washington, DC, 1904–1937), <https://tinyurl.com/ka83ew8>, 32: 334–43 (accessed March 25, 2018).

23. US Congress, *An Ordinance for ascertaining the mode of disposing of Lands in the Western Territory*.

24. Peter S. Onuf, *Statehood and Union: A History of the Northwest Ordinance* (Bloomington: Indiana University Press, 1987), 89.

25. The US government also faced a challenge in Connecticut’s claim that King Charles II ceded land in Ohio to that state in the years before the Revolution. See Wittke, “Canadian Refugees in the American Revolution,” 325–26.

26. Fred Anderson and Andrew Cayton, *The Dominion of War: Empire and Liberty in North America* (New York: Penguin, 2005), 194–95.

27. Pub. L. No. 5–26, 1 Stat. 547 (1798); Pub. L. No. 6–5, 2 Stat. 100 (1801). The minimum and maximum amounts of land were increased to 160 and 2,400 acres. Congress



passed additional laws for Canadian and Nova Scotian refugees in 1803, 1804, 1810, and 1812.

28. Pub. L. No. 6–5, 2 Stat. 100 (1801); Welke, *Law and the Borders of Belonging*, 43.

29. Several historians have suggested that many refugees sold their land to speculators. Enough land remained for Congress to pass an 1816 law that opened up the unsettled refugee lands for sale to the wider public. See Wittke, “Canadian Refugees in the American Revolution,” 332 and Allan Seymour Everest, *Moses Hazen and the Canadian Refugees in the American Revolution* (Syracuse, NY: Syracuse University Press, 1976), 135. For more on Ohio statehood, see R. Douglas Hurt, *The Ohio Frontier: Crucible of the Old Northwest* (Bloomington: Indiana University Press, 1998).

30. As Lorenzo Veracini notes, settler colonial governments, including the United States, “are specifically interested in turning Indigenous peoples into refugees,” because refugees “are by definition Indigenous to somewhere else—the very opposite of ‘Aboriginal.’” In other words, displacing Indigenous people from their homelands literally and figuratively distances Native Americans’ claims of Indigeneity to a particular place, creating the conditions that permit Americans to self-identify as “native” North Americans. See Veracini, *Settler Colonialism: A Theoretical Overview* (Basingstoke, UK: Palgrave Macmillan, 2010), 35.

31. Eric Saugera, *Reborn in America: French Exiles and Refugees in the Vine and Olive Adventure, 1815–1865*, trans. Madeleine Velguth (Tuscaloosa: University of Alabama Press, 2011); Frances Sargeant Childs, *French Refugee Life in the United States, 1790–1800* (Baltimore: Johns Hopkins University Press, 1940); Kerby A. Miller, *Emigrants and Exiles: Ireland and the Irish Exodus to North America* (Oxford: Oxford University Press, 1985); Zolberg, *A Nation by Design*; Nathalie Dessens, *From Saint-Domingue to New Orleans: Migration and Influences* (Gainesville: University of Florida Press, 2010); Rebecca J. Scott and Jean M. Hébrard, *Freedom Papers: An Atlantic Odyssey in the Age of Emancipation* (Cambridge, MA: Harvard University Press, 2012).

32. Today, the Fugitive Slave Act would violate non-refoulement laws that prohibit returning refugees to places where their lives would be endangered.

33. Sean Kelley, “‘Mexico in His Head’: Slavery and the Texas-Mexico Border, 1810–1860,” *Journal of Social History* 37 (Spring 2004): 709–23. Benjamin Drew, *The Refugee: Narratives of Fugitive Slaves in Canada* (1856; Toronto: Dundurn Press, 2008). On fugitive slaves who fled to Canada, see Harvey Amani Whitfield, *Blacks on the Border: The Black Refugees in British North America, 1815–1860* (Lebanon, NH: University Press of New England, 2006).

According to historian Chandra Manning, “contraband camps” emerged in the Civil War on May 23, 1861, when three slaves named Shephard Mallory, Frank Baker, and James Townsend escaped to Union-occupied Fort Monroe in Virginia. Mallory, Baker, and Townsend had been ordered by their master, a Confederate army officer, to build fortifications for the Confederacy. They fled to Fort Monroe after learning that their master planned to send them further south to continue fortifying the Confederacy. When an agent caught up with the three men and demanded their return under the Fugitive Slave Law, the Union officer in charge at Fort Monroe, General Benjamin Butler, refused. Butler claimed he was authorized to “confiscate” Mallory, Baker, and Townsend because they helped fortify a force in rebellion against the United States. The ability of runaway slaves to seek refuge in Union-controlled camps, then, stemmed from laws that defined their status as property under slavery. Manning, *Troubled Refuge*, 32. For an analysis of the category “contraband,” see Kate Masur, “‘A Rare Phenomenon of Philological Vegetation’: The Word ‘Contraband’

and the Meanings of Emancipation in the United States,” *Journal of American History* 93, no. 4 (March 2007): 1050–84.

34. Emancipation Proclamation, January 1, 1863, Presidential Proclamations, 1791–1991, Record Group 11, General Records of the United States Government, NARA, <https://tinyurl.com/yddbzl2> (accessed March 25, 2018).

35. Phillip W. Magness and Sebastian N. Page, *Colonization after Emancipation: Lincoln and the Movement for Black Resettlement* (Columbia: University of Missouri Press, 2011). See also Richard Newman, “The Grammar of Emancipation: Putting Final Freedom in Context,” in *Beyond Freedom: Disrupting the History of Emancipation*, ed. David W. Blight and Jim Downs (Athens: University of Georgia Press, 2017), 11–25; Michael Vorenberg, *Final Freedom: The Civil War, the Abolition of Slavery, and the Thirteenth Amendment* (Cambridge: Cambridge University Press, 2001) and “Abraham Lincoln’s ‘Fellow Citizens’—Before and After Emancipation,” in *Lincoln’s Proclamation: Emancipation Reconsidered*, ed. William A. Blair and Karen Fisher Younger (Chapel Hill: University of North Carolina Press, 2009), 151–69.

36. For an analysis of emancipation, citizenship, and refugee camps in the Civil War, see Manning, *Troubled Refuge*.

37. General Orders No. 4, July 12, 1864; Vol. 111/256, 54 in Richard Sears, ed., *Camp Nelson: A Civil War History* (Lexington: University Press of Kentucky, 2002) [hereafter cited as CN], 98. Historian Richard D. Sears’s edited volume of archival sources detailing life in Camp Nelson, Kentucky, provides several of the primary sources I consult here.

38. Orders, September 3, 1864; Vol. 111/256, 84; General Orders; RG 393 in CN, 117–18; Letter from Fee to Strieby, September 22, 1864, American Missionary Association Archives, 44038 in CN, 119.

39. Affidavit of Joseph Miller, November 26, 1864; M999: Roll 7, Frames 682–84; Record Group 105, Records of the Bureau of Refugees, Freedmen, and Abandoned Lands [hereafter cited as RG 105], NARA, in CN, 135–36; Affidavit of John Higgins, November 28, 1864; Box 720; Record Group 92, Records of the Office of the Quartermaster General, [hereafter cited as RG 92], NARA in CN, 140.

40. Hall to Restieaux, December 16, 1864; Camp Nelson, Box 720; in RG 92, NARA in CN, 134–35; Affidavit of Joseph Miller, November 26, 1864; M999: Roll 7, Frames 682–84; RG 105, NARA, in CN, 135–36.

41. Affidavit of John Higgins, November 28, 1864; Box 720; RG 92, NARA, in CN, 140.

42. *Ibid.*, 139–40.

43. US Congress, Senate, *Letter of the Secretary of War, communicating, in compliance with a resolution of the Senate of the 11th instant, a copy of the report of Hon. Thomas Hood and Hon. S.W. Bostwick, special commissioners upon the condition and treatment of colored refugees in Kentucky, Tennessee, and Alabama*, February 27, 1865, 38th Cong., 2nd sess., 1865, S. Exec. Doc 28, 18–20.

44. *Ibid.*, 19–20.

45. *Ibid.*, 20–21. S. G. Howe, *The Refugees in Slavery from Canada West: Report to the Freedman’s Inquiry Commission* (Boston: Wright & Potter, 1864), iv.

46. U.S. Congress, Senate, *Report of the Secretary of War, communicating, in compliance with a resolution of the Senate of the 26th of May, a copy of the preliminary report, and also of the final report of the American Freedmen’s Inquiry Commission. June 22, 1864. Referred to the Select Committee on Slavery and Freedmen. June 23, 1864. Ordered to be*

printed. June 27, 1864. Three thousand additional copies ordered to be printed for the use of the Senate, June 22, 1864, 38th Cong., 1st sess., 1864, S. Exec. Doc 53, 1–2.

47. U.S. Congress, House, *Bureau of Freedmen and Refugees*. (To accompany Bill H.R. No. 598.) March 10, 1868, Ordered to be printed, March 10, 1868, 40th Cong., 2nd sess., 1868, H. Rpt. 30, 11; Manning, *Troubled Refuge*, 261–71; Andrew Urban, *Brokering Servitude: Migration and the Politics of Domestic Labor during the Long Nineteenth Century* (New York: New York University Press, 2018), 80. For a sustained study of the US government's decision to abstain from giving land to freed blacks, see Claude F. Oubre, *Forty Acres and a Mule: The Freedmen's Bureau and Black Land Ownership* (Baton Rouge: Louisiana State University Press, 1978).

48. Eric Foner, *Reconstruction: America's Unfinished Revolution, 1863–1877* (New York: Harper & Row, 1988), 161; Welke, *Law and the Borders of Belonging in the Long Nineteenth Century United States*, 48–49. For an analysis of ongoing US efforts to harness African American labor after emancipation, see chapter 2 of Urban, *Brokering Servitude*.

49. Pub. L. No. 38–74, 13 Stat. 62 (1864).

50. Treaty with the Creeks, June 14, 1866, 14. Stats. 785, Ratified July 19, 1866.

51. U.S. Congress, House, *Relief to the Indian refugees in southern Kansas. Letter from J.P. Usher, Assistant Secretary of the Interior, in answer to resolution of the House of 28th ultimo relative to mode and amount of relief extended to Indian refugees in southern Kansas. June 16, 1862*, June 16, 1862, 37th Cong., 2nd sess., 1862, H. Exec. Doc. 132, 2. According to Dole, the “Union Indians” included “three-fourths of the Creeks, one-half to two-thirds of the Seminoles, and members from all other tribes in said Territory, except, perhaps, the Choctaws and Chickasaws, of whom very few, if any, adhered to the government,” 2; For more on the Creek refugee flight during the Civil War, see William G. McLoughlin, *After the Trail of Tears: The Cherokees' Struggle for Sovereignty, 1839–1880* (Chapel Hill: University of North Carolina Press, 1994), 217; Daniel K. Littlefield, *Africans and Creeks: From the Colonial Period to the Civil War* (Westport, CT: Greenwood Press, 1979), 236; Annie Heloise Abel, *The American Indian in the Civil War, 1862–1865* (1919; Lincoln: University of Nebraska Press, 1992), 80–81; Lela J. McBride, *Opothleyaholo and the Loyal Muskogee: Their Flight to Kansas in the Civil War* (Jefferson, NC: McFarland, 2000).

52. Francis Paul Prucha, *American Indian Treaties: The History of a Political Anomaly* (Berkeley: University of California Press, 1994), 265–67.

53. Treaty with the Creeks, June 14, 1866, 14. Stats. 785, Ratified July 19, 1866.

54. *Ibid.*

55. U.S. Congress, House, *Loyal Indians and freedmen of the Creek Nation. Letter from the Secretary of the Interior asking for an appropriation for the payment of losses sustained by soldiers who enlisted in the federal Army, and loyal refugee Indians and freedmen of the Creek Nation, during the rebellion. March 23, 1870. — Referred to the Committee on Indian Affairs and ordered to be printed*, March 23, 1870, 41st Cong., 2nd sess., 1870, H. Exec. Doc 217, 1–2.

56. U.S. Congress, House, *Petition of the delegates of the Creek Nation, with reference to the awards made to those Creeks who enlisted in the federal Army, loyal refugees and freedmen, asking early action of Congress upon that subject. (To accompany Bill H.R. 3513.) March 4, 1878. — Referred to the Committee on Indian Affairs. March 16, 1878. — Recommended to the Committee on Indian Affairs and ordered to be printed*, March 16, 1878, 45th Cong., 2nd sess., 1878, H. Misc. Doc. 38, 1–2.

57. David M. Hodge, *Argument of David M. Hodge, of the Muscogee or Creek nation of Indians, before the Committee on Indian Affairs of the United States Senate, March 10, 1880: in support of Senate Bill, No. 1145, providing for the payment of awards made to Creek Indians who enlisted in the Federal army. Loyal refugees and freedmen* (Rochester: J.E. Beardsley, 1880), 4.

58. Legal scholars David E. Wilkins and K. Tsianina Lomawaima explain that the guardian and ward relationship also relates to the “trust doctrine.” Some scholars, they note, date these principles to the Northwest Ordinance of 1787, when the US government claimed it would always act in “good faith” with Native Americans; that American Indian land would never be taken without their consent; that their “property, rights, and liberty” will never be “invaded or disturbed, unless in just and lawful wars authorized by Congress;” and that laws founded in “justice and humanity” would occasionally be passed to ensure fair and peaceful relations with native people. See Wilkins and Lomawaima, *Uneven Ground: American Indian Sovereignty and Federal Law* (Norman: University of Oklahoma Press, 2002), 12–13; 68–72; Hodge, *Argument of David M. Hodge, of the Muscogee or Creek nation of Indians, before the Committee on Indian Affairs of the United States Senate*, 9.

59. US Congress, Senate, *Creek Indians in the Federal Army, etc. May 5, 1897. Referred to the Committee on Indian Affairs, May 6, 1897, May 6, 1897, 55th Cong., 1st sess., 1897, S. Doc. 67, 5–6; Warde, When the Wolfe Came*, 306.

60. Pub. L. No. 56–676, 31 Stat. 861 (1901); *Docket No. 1, Before the Indian Claims Commission. The Loyal Creek Band or Group of Creek Indians, and the Loyal Creek Claimants’ Committee, on the relation of Joseph Bruner, S.W. Brown, Jesse McDermott, Lasley Haynes, Ben Johnson, Robert Severs, Hosa Holley, Noley Buck, John H. Jones, Elmer Hill, Thompson King, and Seborn Smith, Plaintiffs, vs. The United States of America, Defendant, Plaintiffs’ Requested Findings of Fact, and Brief Wilfred Hearn, 223 Prospect Street, Chevy Chase 15, Maryland, Attorney of Record for Plaintiffs, Of Counsel: S.R. Lewis, W.N. Maben, George E. Norvell, Tulsa, Oklahoma, Filed January 26, 1950, Docket 1, Box 1, Records of the Indian Claims Commission, Record Group 279, NARA, 4. On the politics that undergirded the allotment of Native lands, see C. Joseph Genetin-Palowa, *Crooked Paths to Allotment: The Fight over Federal Indian Policy after the Civil War* (Chapel Hill: University of North Carolina, 2012).*

61. Pub. L. No. 57–994, 32 Stat. 982 (1903). The loyal Creeks might have taken their case to the United States Court of Claims. But since its formation in the 1850s, the Court of Claims had been a legal instrument to which white Americans enjoyed the greatest access. The Court of Claims’ reluctance to hear Native claims, combined with the federal government’s retreat from treaty making with Indian nations in the 1870s, left Indians with limited legal recourse aside from Congress. And given their experience with the Act of March 3, 1903, Congress was likely not the most effective place for loyal Creeks to make their appeal. Administrative delay and the US government’s general distrust of Indian claims made federal claims court an inhospitable venue for Native legal challenges even after the Indian Citizenship Act of 1924 announced all American Indians as US citizens. It was not until the 1946 formation of the Indian Claims Commission, whose sole purpose was to hear the hundreds of unresolved claims that Native people introduced from the 1850s to the 1940s, that the descendants of loyal Creek refugees found an avenue to pursue their claim. For a history of the Indian Claims Commission, see H.D. Rosenthal, *Their Day in Court: A History of the Indian Claims Commission* (New York: Garland Publishing, 1990).