No Asylum for Mankind: The Creation of Refugee Law and Policy in the United States, 1776-1951

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Introduction

"O ye that love mankind! Ye that dare oppose, not only the tyranny, but the tyrant, stand forth! Every spot of the old world is overrun with oppression. Freedom hath been hunted round the globe. Asia, and Africa, have long expelled her. Europe regards her like a stranger, and England hath given her warning to depart. O! Receive the fugitive, and prepare in time an asylum for mankind."

- *Thomas Paine, Common Sense, 1776* [1]

"The United States is under no moral or legal obligation to furnish an asylum to noncombatant aliens who may seek entrance into the United States."
- *Anthony Caminetti, Commissioner General of Immigration, 1913* [2]

Even before the United States was an independent nation, let alone the global superpower it became over the course of the long nineteenth century, the United States of America was shaped by the idea that it would be a refuge for the world's oppressed people. Indeed, this concept pervaded the minds of the country's earliest political thinkers. In the first days of January, 1776 — after war had broken out in the British colonies, but before Americans declared their independence in the summer of that same year — an English immigrant to the British colonies in North America published a political pamphlet that helped fan the flames of revolution. In *Common Sense*, Thomas Paine offered his fellow would-be Americans a thorough rebuke of the imperial rule that the British wielded over colonists on the eastern seaboard of North America, obstructing their self-rule and marking them as inferiors to the Crown and its subjects across the Atlantic. In the most

[1] Thomas Paine, *Common Sense* (Philadelphia: W. & T. Bradford, 1776; reprint, edited with an introduction by Richard Beeman, New York: Penguin, 2012).
[2] Anthony Caminetti, Commissioner General of Immigration, Washington, DC, to Immigration Service, Eagle Pass, TX, October 9, 1913, Folder 53018/72G, Box 1111, Records of the Immigration and Naturalization Service, Record Group 85, National Archives and Records Administration, Washington, DC.

influential words of his treatise, Paine painted a portrait of the world in which an independent United States of America, free from the yoke of the British empire and wholly apart from the forces that arrested freedom around the world, might fulfill its destiny as an "asylum for mankind," the only nation on earth where any individual might find refuge from tyranny.[3]

Paine's belief in the United States as an "asylum for mankind" accompanied his conviction that with independence, Americans could remake the entire world. "We have it in our power to begin the world over again," Paine wrote. Predicting a decisive American victory in a revolutionary war with its oppressors, Paine declared that "The birth-day of a new world is at hand, and a race of men perhaps as numerous as all Europe contains, are to receive their portion of freedom from the events of a few months." Like the doctrine of Manifest Destiny that Americans later invoked to portray the supposed inevitability of westward expansion across North America, according to Paine, it was only a matter of time before the American people — unlike the peoples of Asia, Africa, and Europe — would give shape to a nation that protected mankind's freedom.[4]

Paine's prognosis of an American refuge was so influential that 139 years later, when James A. Reed debated with his colleagues in Congress whether a literacy requirement in American immigration law should include an exemption for refugees, the senator from Missouri described how the arrival of countless European refugees throughout American history had formed a "race comingling the best bloods of all the

[3] Richard Beeman, introduction to Thomas Paine, *Common Sense* (New York: Penguin, 2012), xxxi.
[4] Paine, *Common Sense,* 85.

world." Those refugees, Reed explained, helped make a country where the rest of the world's refugees would forever be able to find solace, and carried with them to America "dreams of empire." Both Paine's projection in 1776 of an all-powerful United States that sheltered oppressed and persecuted peoples, and Reed's recollection in 1915 of an American history where European refugees established the nation as a "temple of liberty," partook in the creation and recreation of an enduring American mythos that celebrated the United States' unfettered commitment to serving as a refuge on the world stage. However, it was this same mythos that excised from the image of America as an "asylum for mankind" the various ways that the U.S. government, from its earliest years, subjected different groups of people to oppression, displacement, and persecution — making them refugees in experience, if not always in name or legal status.[5]

This dissertation examines the paradox at the crux of American refugee history — the United States, in myth, as an unassailable refuge for the world's most vulnerable people, and in fact, a nation-state that was built on the backs of Indigenous peoples, slaves, "undesirable" immigrants, and other marginalized communities — and the fundamental role that paradox played in the development of a regime of American refugee regulation that helped the U.S. nation-state rise from a newly independent nation on the eastern seaboard of North America to a world power in the mid-twentieth century. From the American Revolution through World War II, the United States underwent dramatic transformations in its geography, population, and capacity to govern. American officials created and maintained policies that subjected Native peoples, slaves, and

[5] Senator Reed, remarking on political refugees, February 4, 1915, 63rd Cong., 3rd Sess., *Congressional Record,* 3006-3007.

racialized foreigners to dispossession, extermination, and the wholesale denial of human dignity. Along the way, they identified some displaced and persecuted peoples as "refugees" who were entitled to the government's support, excluded others from recognition as "refugees" and the relief that came with it, and gave inferior forms of relief to refugees whom they viewed as only partially "belonging" in the nation.[6]

No single law guided the nation-state's earliest representatives as they worked out the puzzle of defining who was and was not a "refugee" in the United States. Rather, American officials put in place a range of laws, policies, administrative choices, military orders, treaty clauses, and on-the-ground-decisions that formed a broader system for the administration of refugees that I call "refugee regulation." The motivations that inspired officials' differential responses to different oppressed groups reflected and advanced the interests of a growing U.S. nation-state that sought to wield its influence in American territory and overseas. Refugee regulation developed within and reinforced various branches of the U.S. nation-state, from the legislative branch to the military and including administrative agencies like the Bureau of Refugees, Freedmen and Abandoned Lands and the Bureau of Immigration. The United States' ability to make and enforce different forms of refugee regulation in different realms of local and federal government helped define the administrative and legal backbones that would grow and reinforce the authority of the nation-state. This dissertation thus argues that the creation of American refugee regulation and the creation of an expansionist, imperial, gatekeeping American nation-

[6] For a theorization of belonging in the United States as it relates to citizenship, personhood, and the development of the nation-state, see Barbara Young Welke, *Law and the Borders of Belonging in the Long Nineteenth Century United States* (New York: Cambridge University Press, 2010).

state fueled each other, over time and in different ways, depending on the populations who at any given moment bore the boon or the brunt of the country's emerging policies regarding refugees.

If America's founding fathers promoted an idealized version of American refuge in which all of mankind might find sanctuary across America's shores, they also acknowledged how privileging particular refugees might benefit the new nation. In July of 1783, two months before the Treaty of Paris brought a formal end to the American Revolution, future president George Washington remarked in a letter to Elias Boudinot, the President of the Continental Congress, how giving land to Canadian refugees in the "interior parts of our Territory" would be "useful to the United States." Washington's suggestion was made law in 1798. "An Act for the relief of the Refugees from the British Provinces of Canada and Nova Scotia" set in motion procedures for Congress to grant tens of thousands of acres in the Northwest Territory to Canadian and Nova Scotian refugees who supported America's bid for independence but faced British persecution as a result of their loyalty to the United States. In addition to being the first refugee law in American history, the Canadian Refugee Act of 1798 specifically allowed white refugees of European descent to settle in a part of the nation's territory where Native peoples resisted the U.S. government's claim to the land. In this foundational example of American refugee policy, refugee resettlement was "useful" for the United States because it advanced westward expansion, reinforced the nation's territorial sovereignty in a place where American officials wielded only the most tenuous authority, and imperiled the ability of Native Americans to remain in their ancestral homelands by inviting white settlers into their midst. America's first refugee law did not just give refuge to persecuted

people. It also made refugee regulation a foundation for the dispossession of Native Americans, establishing a settler colonial orientation toward governing that was among the U.S. government's earliest articulations of imperial power.[7]

By following the development of American refugee regulation alongside the development of the U.S. nation-state, this dissertation builds on scholarly literature whose aim has been to challenge the idea that the United States federal government was largely absent from the lives of everyday Americans in the nation's early history. More than that, however, it argues that refugee regulation was in fact one of the more robust areas of the early nation-state's governing capacity. Historian and political theorist Aristide R. Zolberg argued in his article "The Formation of New States as a Refugee-Generating Process" that the revolutionary moments that lead to the formation of new states play a fundamental role in generating refugees. Published in the same year as Benedict Anderson's foundational treatise on the history of nationalism, *Imagined Communities*, Zolberg's article emphasized 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 within their borders, and to remove and deter those who do not meet that criteria. Whereas Zolberg focuses on the moment of state formation as a refugee generating process, this dissertation contends that in the case of the United States, refugee regulation was a process that began with the formation of

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[7] "From George Washington to Elias Boudinot, July 16, 1783," *Founders Online*, National Archives, last modified June 29, 2017, http://founders.archives.gov/documents/Washington/99-01-02-11601. [This is an Early Access document from The Papers of George Washington. It is not an authoritative final version.]; Pub. L. No. 5-26, 1 Stat. 547 (1798).

the nation-state and continued to play a significant role in several major moments of becoming in the nation-state's transformation to global hegemony after World War II. It further complicates Zolberg's claim by arguing that refugee regulation was not just constitutive of the U.S. nation-state, but had an important role to play, as well, in the rise of the United States as an imperial power that sought to expand its influence across North America in the nineteenth century and throughout the globe in the twentieth century.[8]

In seeking to outline the relationship of American refugee regulation to the rise of an imperial U.S. nation-state, this dissertation builds on scholarship that recognizes "empire" as the intimately linked structures of oppression over people, places, and resources that, taken together as a whole, contribute to the state's overarching goal to give order to the world and its people in the pursuit of domestic and global power. In the context of the United States, Lisa Lowe defines the modern imperial state as coming into fruition when "Liberal forms of political economy, culture, government, and history

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[8] Aristide R. Zolberg, "The Formation of New States as a Refugee-Generating Process," *The Annals of the American Academy of Political and Social Sciences* 467 (May 1983): 24-38; Benedict Anderson, *Imagined Communities: Reflections on the Origin and Spread of Nationalism* (London: Verso, 1983). For studies that recast the history of what scholars had previously understood as the "weak" American nation-state in the long nineteenth century, see especially William J. Novak, "The Myth of the 'Weak' American State," *The American Historical Review* 113, no. 3 (2008): 757-772; Michelle Landis Dauber, *The Sympathetic State: Disaster Relief and the Origins of the American Welfare State* (Chicago: University of Chicago Press, 2013); Bethel Saler, *The Settler's Empire: Colonialism and State Formation in America's Old Northwest* (Philadelphia: University of Pennsylvania Press, 2015); Brian Balogh, *A Government Out of Sight: The Mystery of National Authority in Nineteenth-Century America* (Cambridge: Cambridge University Press, 2009); *Bringing the State Back In*, ed. Peter B. Evans, Dietrich Rueschemeyer, and Theda Skopcol (New York: Cambridge University Press, 1985). It is worth mentioning here, as well, that Margot Canaday's *The Straight State: Sexuality and Citizenship in Twentieth-Century America* (Princeton: Princeton University Press, 2011) inspired my early and ongoing thinking about the history of the U.S. nation-state.

propose a narrative of freedom overcoming enslavement that at once denies colonial slavery, erases the seizure of lands from Native peoples, displaces migrations and connections across continents, and internalizes these processes in a national struggle of history and consciousness." A central feature of the modern liberal state that trucks in imperial power, Lowe explains, is to promise freedom and liberty to all, and then to divide populations into groups whose freedom and liberty is limited in part or completely denied. To trace the arc of America's history of making, accepting, and excluding refugees is to examine how refugee regulation intersected with three forms of imperial power that were critical to the development of the U.S. state: settler colonialism, legal slavery, and exclusionary immigration policy. Contradictory though it may seem for Americans to have celebrated the United States as an "asylum for mankind" while dispossessing Native Americans in their homelands, subjecting peoples of African descent to chattel slavery, and restricting immigration according to a range of beliefs about who was and was not "desirable," it was those seeming contradictions that in fact defined and made possible the existence of the U.S. state, and any lofty imaginings of it as an "asylum for mankind."[9]

This dissertation explores how American political officials, administrative actors, lawmakers, concerned citizens, and refugees shaped American refugee regulation across three major eras in the genesis of the nation-state: from 1776 to the 1850s, when westward expansion, the attempted genocide, removal, and subordination of Native people, and the institution of slavery comingled in the creation of a democratic republic

[9] Lisa Lowe, *The Intimacies of Four Continents* (Durham: Duke University Press, 2015), 3.

that defined full membership in the nation according to the interests of able-bodied, property owning white men of European descent; during and after the Civil War, when the end of slavery, the 14th Amendment's granting of citizenship and equal protection under the law to anyone born in the United States, and a shift in federal Indian policy from removal to Native assimilation on reservations began to shift conceptions of American citizenship and belonging to include non-whites; and from the 1880s through the 1940s, when the dawn of federal immigration enforcement reinforced racial exclusion as the sovereign right of nation-states to define national membership through laws that allowed some people to cross American borders while keeping others out. Thomas Paine wrote of how the architects of an American asylum might "build the world over again." George Washington indicated that welcoming particular refugees into the American fold might be "useful" for the U.S. government's efforts to build the world its representatives wished to see. By 1915, when Senator James A. Reed commemorated the history of European refugees who came to the United States with "dreams of empire," the U.S. state was well on its way to forging an American system of refugee regulation that heralded an "asylum for mankind," but used the distribution and withholding of relief to different groups of refugees to define who belonged in its conception of "mankind," and reinforce the political and legal instruments of the state that enforced those distinctions of membership and personhood.

By examining the history of refugee regulation in the United States from the country's founding through the middle of the twentieth century, this study ends when most histories of American refugee law and policy begin. Although some historians have written about the migrations of various refugee groups to North America before

American independence and over the nineteenth century — focusing especially on Acadian and Huguenot refugees in the colonial era, and including studies about French planters fleeing revolution in Haiti and France, black refugees to Canada, and Irish refugees seeking asylum from famine and political oppression — these scholars have followed the reigning assumption in American migration history that the United States had an open and free policy regarding international migration. They thus have not systematically considered what forms of law, policy, or other kinds of regulation the emerging U.S. state might have directed against refugees in the nineteenth century.[10]

Inspired by scholars of settler colonial studies, American Indian and Indigenous history, the history of slavery, migration studies, and critical race and ethnic studies, this dissertation identifies connections across a diversity of scholarly literatures to excavate America's forgotten history of refugee regulation. In so doing, it advances an approach to studying migration that focuses on mobility — or the ability of people to move, as well as their ability to stay put and live where they wish. A mobility studies lens combined with acknowledging the history of the United States as a settler state — described in greater detail below — allows this dissertation to identify the removal of Native Americans, and the U.S. state's broader efforts to obstruct their ability to stay in their ancestral

[10] See, for example, Maya Jasanoff, *Liberty's Exiles: American Loyalists in the Revolutionary World* (New York: Alfred A. Knopf, 2011); Nathalie Dessens, *From Saint-Domingue to New Orleans: Migration and Influences* (Gainesville: University of Florida Press, 2010); Kit Candlin, "The Expansion of the Idea of the Refugee in the Early-Nineteenth Century Atlantic World," *Slavery and Abolition* 30, no. 4 (2009): 521-544; Marilyn C. Baseler, *"Asylum for Mankind": America, 1607-1800* (Ithaca: Cornell University Press, 1998); Kerby A. Miller, *Emigrants and Exiles: Ireland and the Irish Exodus to North America* (New York: Oxford University Press, 1985); Jon Butler, *The Huguenots in America: A Refugee People in New World Society* (Cambridge: Harvard University Press, 1983).

homelands, as the foundational example of American refugee regulation during an era when migration scholars typically identify few constraints on migration.[11]

The majority of scholarship on the history of refugee law, meanwhile, identifies the origins of regulations on refugees to the United States from 1948, when the Displaced Persons Act opened up a four-year window for European refugees to resettle in the United States after World War II, to 1953, when the Refugee Relief Act renewed the Displaced Persons Act after its terms expired. The passage of the Displaced Persons Act was distinctive in that it was the first formal, federal law passed for the relief of refugees after the United States had moved immigration enforcement to the purview of the federal government with the passage of the Immigration Act of 1882. Historians such as David Wyman, Gil Loescher, and John A. Scanlan have written about how the federal refugee policies that arose in 1948 and the years that followed were presaged by anti-Semitism and a racialized exclusionary nationalism that had offered only a tragically inadequate refuge to Jewish refugees fleeing the Holocaust. Learning from its refusal to allow Jewish refugees to enter the U.S. in the 1940s, and motivated as well by the international push after World War II that formed the United Nations and their Universal Declaration of Human Rights, which announced the right to refuge as a right for all the world's people, Congress began opening its doors to refugees in 1948. Even then, however, historians like Carl Bon Tempo, María Cristina García, and Stephen R. Porter have shown the limits of humanitarianism and notions of universal rights in guiding the implementation of American refugee policies in the post-war years. Instead, domestic and international

[11] See Mimi Sheller and John Urry, "The New Mobilities Paradigm," *Environment and Planning* 38, no. 2 (2006): 207-226.

political calculations guided refugee law-making and the enforcement of those laws, making refugee law and policy a venue where American officials could flex the state's authority at home and abroad. In particular, during the Cold War, the U.S. privileged the entry of refugees fleeing countries whose governments were allied with the Soviet Union, and thus used refugee admissions as a weapon in its efforts to thwart what it saw as the looming threat of global communism. In another major development in the history of refugee law, terrorist attacks in 1993 and 2001, as García observes, have made national security the U.S. government's primary justification for excluding refugees. In each of these eras of refugee law, the policies that American officials put in place were inflected with socially constructed and politically and legally reinforced ideas about the racial, economic, and gendered inferiority of individual groups of refugees — and, increasingly after 9/11, conflations of religious belief with propensity for terrorism.[12]

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[12] David S. Wyman, *Paper Walls: America and the Refugee Crisis, 1938-1941* (New York: Pantheon Books, 1968); Gil Loescher and John A. Scanlan, *Calculated Kindness: Refugees and America's Half-Open Door, 1945-Present* (New York: The Free Press, 1986); Carl Bon Tempo, *Americans at the Gate: The United States and Refugees during the Cold War* (Princeton: Princeton University Press, 2008); María Cristina García, *The Refugee Challenge in Post-Cold War America* (New York: Oxford University Press, 2017); Stephen R. Porter, *Benevolent Empire: U.S. Power, Humanitarianism, and the World's Dispossessed* (Philadelphia: University of Pennsylvania Press, 2017). Scholars in critical race and ethnic studies have studied the prejudices that guided the prospects of relief for different refugee groups seeking aid from the United States. Those works include María Cristina García, *Havana U.S.A: Cuban Exiles and Cuban Americans in South Florida, 1959-1994* (Berkeley: University of California Press, 1997); Aihwa Ong, *Buddha Is Hiding: Refugees, Citizenship, the New America* (Berkeley: University of California Press, 2003); Jeremy Hein, *Ethnic Origins: The Adaptation of Cambodian and Hmong Refugees in Four American Cities* (New York: Russell Sage Foundation, 2008); Chia Youyee Vang, *Hmong America: Reconstructing Community in Diaspora* (Urbana: University of Illinois Press, 2010); Martha Bigelow, *Mogadishu on the Mississippi: Language, Racialized Identity, and Education in a New Land* (Malden, MA: Wiley-Blackwell, 2010); Sandra M. Chait, *Seeking Salaam: Ethiopians, Eritreans, and Somalis in the Pacific Northwest* (Seattle: University of Washington Press, 2011). Additional

Standard histories of American refugee regulation begin with the formation of a federally codified system of policies that secured relief for displaced and persecuted people whom American officials formally recognized as "refugees." However, scholars of American Indian and Indigenous studies, settler colonialism, slavery, immigrant gatekeeping, and other projects of systemic subordination that the U.S. government imposed against racialized people within, along, and beyond the country's borders have written many volumes showing the innumerable ways the United States has never lived up to its lofty reputation as an "asylum for mankind."[13] The historiography of America's

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examples of studies of American refugee history include Henry Hill Collins, Jr., *America's Own Refugees: Our 4,000,000 Homeless Migrants* (Princeton: Princeton University Press, 1942); Sharon Lowenstein, *Token Refuge: The Story of the Jewish Refugee Shelter at Oswego, 1944-1946* (Bloomington: Indiana University Press, 1986); Jana K. Lipman, "A Refugee Camp in America: Fort Chaffee and Vietnamese and Cuban Refugees, 1975-1982," *Journal of American Ethnic History* 33, no. 2 (2014): 57-87.

[13] I am indebted to many works in these scholarly literatures that have proven foundational to my analysis of the relationship between settler colonialism, slavery, and immigrant gatekeeping to the long history of refugee regulation in the United States. It would be impossible to note them all here, but they include: Kevin Bruyneel, *The Third Space of Sovereignty: The Postcolonial Politics of U.S.-Indigenous Relations* (Minneapolis: University of Minnesota Press, 2007); Jodi A. Byrd, *The Transit of Empire: Indigenous Critiques of Colonialism* (Minneapolis: University of Minnesota Press, 2011); Cathleen D. Cahill, *Federal Fathers and Mothers: A Social History of the United States Indian Service, 1869-1933* (Chapel Hill: University of North Carolina Press, 2013); Jessica Cattelino, "The Double Bind of American Indian Need-Based Sovereignty," *Cultural Anthropology* 25.2 (2010): 235-263; David A. Chang, *The Color of the Land: Race, Nation, and the Politics of Land Ownership in Oklahoma, 1832-1929* (Chapel Hill: University of North Carolina Press, 2010); C. Joseph Genetin-Pilawa, *Crooked Paths to Allotment: The Fight over Federal Indian Policy after the Civil War* (Chapel Hill: University of North Carolina Press, 2012); Jean M. O'Brien, *Firsting and Lasting: Writing Indians out of Existence in New England* (Minneapolis: University of Minnesota Press, 2010); Mark Rifkin, *Manifesting America: The Imperial Construction of U.S. National Space* (Oxford: Oxford University Press, 2009); Michael Witgen, *An Infinity of Nations: How the Native New World Shaped Early North America* (Philadelphia: University of Pennsylvania Press, 2013); Sven Beckert, *Empire of Cotton: A Global History* (New York: Alfred A. Knopf, 2014); Eric Foner, *Reconstruction: America's Unfinished Revolution, 1863-1877* (New York: Harper & Row, 1988); Steven

several forms of state-sanctioned persecution, however, has not examined those histories through the lens of refugee history. Moreover, studies of settler colonialism, slavery, and immigrant gatekeeping often fail to address the ways in which those forms of power all cohered in the shaping of the American state.[14] By tracing the genesis of American refugee law and policy to the founding era of the United States, and following its evolution through the nineteenth and early twentieth centuries, this dissertation bridges these seemingly disparate scholarly literatures, and reveals a much wider world of refugee regulation that was not the result of the United States' emergence as a global superpower in the twentieth century, but was constitutive of the U.S. nation-state and its rise to power.

Hahn, *A Nation Without Borders: The United States and Its World in an Age Without Borders* (New York: Penguin, 2016); Walter Johnson, *Soul by Soul: Life Inside the Antebellum Slave Market* (Cambridge: Harvard University Press, 1999) and *River of Dark Dreams: Slavery and Empire in the Cotton Kingdom* (Cambridge: Harvard University Press, 2013); Chandra Manning, *Troubled Refuge: Struggling for Freedom in the Civil War* (New York: Alfred A. Knopf, 2016); Patrick Ettinger, *Imaginary Lines: Border Enforcement and the Origins of Undocumented Immigration, 1882-1930* (Austin: University of Texas Press, 2010); Erika Lee, *At America's Gates: Chinese Immigration during the Exclusion Era, 1882-1943* (Chapel Hill: University of North Carolina Press, 2007); Gerald L. Neuman "The Lost Century of American Immigration Law." *Columbia Law Review* 93, No. 8 (1993): 1833-1901; Mae M. Ngai, *Impossible Subjects: Illegal Aliens and the Making of Modern America.* (Princeton: Princeton University Press, 2004); Kunal M. Parker, *Making Foreigners: Immigration and Citizenship Law in America, 1600-2000* (New York: Cambridge University Press, 2015); Aristide R. Zolberg, *A Nation by Design: Immigration Policy in the Fashioning of America*. (Cambridge: Harvard University Press, 2006).

[14] Notable exceptions include studies that are more expansive in chronology and geographical approach, like Kelly Lytle Hernández, *City of Inmates: Conquest, Rebellion, and the Rise of Human Caging in Los Angeles, 1771-1965* (Chapel Hill: University of North Carolina Press, 2017); Lowe, *The Intimacies of Four Continents*; Lee, *Making of Asian America.*

This dissertation is centrally concerned with the creation of refugee law and policy in the United States. As Nicholas De Genova observes, however, "Legislation is in fact only one feature of the law." Following Laura F. Edwards' reflection that "Legal historians usually enter their research assuming the presence of the law as a readily identifiable, unified body of rules, enforced uniformly by a centralized structure," this dissertation goes back to the founding era of the United States in order to trace how American refugee law and policy took shape, evolved, and came of age in the mid-twentieth century.[15] In addition to identifying moments in the creation of legislation concerning refugees, however, the six chapters in this study undertake an exploration of what I describe as "refugee regulation." Examining this broader system of refugee regulation, I argue, shows how American officials over time created refugee law as just one feature in a broader arc of practices that subjected refugees to the will of the U.S. state. A more sustained discussion of "refugee regulation" will help further elucidate the theoretical and methodological approaches that undergird this study.[16]

The Production of Refugees in the Settler State

[15] Laura F. Edwards, "The Peace: The Meaning and Production of Law in the Post-Revolutionary United States," *UC-Irvine Law Review* 1, no. 3 (2011): 567.
[16] Nicholas P. De Genova, "Migrant 'Illegality' and Deportability in Everyday Life," *Annual Review of Anthropology* 31, no. 1 (2002): 431. To the degree that this study is interested in tracking a history of refugee regulation that includes formal law- and policy-making but also considers broader forms of legal and social regulation, this dissertation also follows in the tradition of legal scholarship that follows from Robert Gordon's seminal article, "Critical Legal Histories," *Stanford Law Review* 36, no. 1-2 (January 1984): 57-125.

To refer to the history of refugee law and policy in the United States as a history of refugee regulation is to begin from the crucial distinction that the Displaced Persons Act of 1948, though it was among the first federally codified forms of refugee law in the U.S., was in fact not the first form of American refugee regulation, but one iteration in a longer history of refugee policy making that dates back to the country's earliest days as an independent nation. Refugee regulation did not arise as an offshoot of federal immigration policy. Since independence, refugee regulation in the United States was defined by the ways that the U.S. government produced whole classes of people who were arguably refugees in experience, if they were not always refugees as a matter of legal and political identification. This dissertation thus posits that in addition to recognizing the impact that immigration policy had on the formation of refugee policy in the U.S., there can be no accounting for the depth of American refugee regulation, in the past and in the present, without acknowledging its roots in the United States' ongoing existence as a settler state and its founding as a society that legalized the ability of white Americans to own African and African American slaves as human property.

Although the United States government would identify emancipated slaves and Native Americans as "refugees" during the Civil War — an evolution in refugee regulation that this dissertation takes up in its second, third, and sixth chapters — American officials passed no laws and otherwise made no efforts to recognize Native peoples and enslaved peoples as "refugees" from the American Revolution through the 1850s. On the contrary, settler colonialism — the constellation of practices that the United States government engaged in to affect the dispossession, removal, and disappearance of Indigenous peoples from North America — and the institution of

slavery were themselves forms of refugee regulation. As settler colonial studies scholar Lorenzo Veracini observes, the U.S. government's insistence on removing Native Americans from their ancestral homelands was a form of "ethnic transfer" that displaced Indigenous peoples from their homes, and allowed white settlers to challenge their indigeneity by virtue of their no longer residing on their originary lands. "Settler colonial projects are specifically interested in turning Indigenous peoples into refugees: refugees, even more so peoples that have been repeatedly forced to abandon their homes, are by definition Indigenous to somewhere else," Veracini writes. The U.S. government's repeated efforts to remove Native Americans from their homelands and turn them into refugees was thus not just foundational to American refugee regulation — it was part of the U.S. government's repeated and varied attempts to undermine Native sovereignty and affect their subordination in relation to the U.S. federal government.[17]

Indigenous studies scholar and historian Jean M. O'Brien has described how the practice of "writing Indians out of existence" in local historical narratives in New England and elsewhere in the United States was a central strategy that American settlers and statesmen used to suggest that Native Americans had "disappeared" from North America. These narratives, O'Brien explains, were crucial to Anglo American settlers' ability to claim that they had "replaced" Native Americans as the Indigenous peoples of North America. As Veracini suggests, the act of making Native Americans refugees from their homelands was also an act of "replacing" Native people, because it allowed white Americans to claims themselves as "native" to the United States while forming a nation-

[17] Lorenzo Veracini, *Settler Colonialism: A Theoretical Overview* (London: Palgrave Macmillan, 2010), 35.

state that further advanced that interests of able-bodied, property owning white males at the exclusion of Native people, slaves, immigrants, and other marginalized peoples in and from American society. Looking at the development of American refugee regulation in the long term, U.S. officials' decisions to allow particular refugees to resettle in the United States was itself another example of "replacing" Native people with populations whom American elites wished to welcome across American borders. If the production of Native American refugees was central to settler colonialism, then the selection of refugees to resettle in the United States must inherently make American refugee regulation an instantiation of the settler state.[18]

On the one hand, traditional narratives of the history of the U.S. as an "asylum for mankind," a place of refuge, and even a "nation of immigrants" too often portray white Americans as the rightful heirs of the land that is widely recognized today as the United States, while excising histories of colonization and enslavement from those narratives. On the other, the state's ongoing practice of asserting its sovereignty by defining which refugees may and may not enter the U.S. further entrenches the assumed authority of the United States to "replace" Native people on Native land with non-Natives, thus making any invocation of American refugee regulation part of what makes the ongoing occupation of Indigenous land "a structure not an event," as Patrick Wolfe has so evocatively phrased. Indeed, each of the examples of refugee regulation that I discuss in this dissertation involve some combination of discussions about land settlement, who did and did not belong in the nation, the defining and protection of American borders, and

[18] O'Brien, *Firsting and Lasting.*

decisions about who could and could not cross those borders. Each episode of refugee regulation discussed herein was entangled with political and legal officials' determinations of who was able to achieve full membership on a permanent basis in U.S. settler society. Refugee regulation in the United States — and all policies related to migration, for that matter — thus stem from and are inextricably tied to settler colonialism.[19]

The emergence of refugee regulation as a tactic of the settler state was not limited to the governance of Native people. According to Veracini, the dispossession of Native Americans and the institution of chattel slavery formed the "indigenous and exogenous limits of the settler democracy." Along with settler colonialism, American officials used legal slavery to assert its dominance over a group of people who were forcibly seized from their homes, brought to the United States against their will, and subjected to a lifetime laboring in a brutal regime of racialized servitude that denied the humanity of African-descended peoples in the United States. The institution of slavery — along with laws like the Fugitive Slave Acts that Congress passed to reinforce it — defined refugee regulation because it permitted the United States government to oversee the utter dispossession of an entire group of people while absolving itself from recognizing them as "refugees," or even acknowledging that it had committed any wrongdoing. Slavery abetted settler colonialism, too, not just by extending the settler state's prerogative to define who "belonged" in the U.S. to those confined to bondage, but also by forcing slaves to work land occupied by white settlers. The settler colonial state, Veracini argues,

[19] Patrick Wolfe, "Settler colonialism and the elimination of the native," *Journal of Genocide Research* 8, no. 4 (2006): 388.

thus applies the tactics of colonialism not just to Native peoples, but to any and all people marked as "other," including slaves, African Americans after emancipation, immigrant and refugee populations, and other marginalized communities. Whether it be through the "extermination, expulsion, incarceration, containment, and assimilation for indigenous peoples," or the "restriction and selective assimilation for subaltern exogenous Others" who arrive in North America from beyond its shores, the U.S. government's will to make various groups "progressively disappear in a variety of ways" is a hallmark of the settler state.[20]

Following Veracini's claim about how the othering of multiply marginalized communities within the United States are interconnected, and building on the work of scholars like Kelly Lytle Hernández, Lisa Lowe, and Jodi Byrd, this study follows Alyosha Goldstein's argument that "analyzing U.S. colonialism demands understanding U.S. empire and the imperial nation-state as itself a comparative project and mode of power." Using a longue durée approach to examine the evolution of American refugee regulation reveals not just the roots of American refugee law and policy in settler colonialism and the formation of a settler state — but also how it interfaced with and brought together different forms of governance over populations within and beyond the borders of North America.[21]

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[20] Veracini, *Settler Colonialism*, 80

[21] Alyosha Goldstein, "Introduction: Toward a Genealogy of the U.S. Colonial Present," introduction to *Formations of United States Colonialism,* ed. Alyosha Goldstein (Durham: Duke University Press, 2014); Hernández, *City of Inmates*; Lowe, *The Intimacies of Four Continents*; Byrd, *Transit of Empire.*

While this dissertation uses both terms — "settler state" and "nation-state" — to describe the U.S. federal government's expansive and ever-expanding architecture of governance from independence through World War II, it is worth nothing that my use of the term "nation-state" in any given instance is not meant to obscure the inextricable relationship of settler colonialism to American authority. Rather, readers should assume that this dissertation understands the U.S. nation-state always as a settler state whose interest in controlling land, labor, and resources began with seizing Native land, denying Native sovereignty, and extended to a range of marginalized peoples whose presence within American borders was in any way coerced, forced, or rooted in their dispossession.

Who is a refugee?

Understanding American refugee regulation requires revealing how the United States produced refugees and denied their existence as a matter of facilitating the rise, expansion, and consolidation of the settler state. It is also necessary to explore how the shaping of "refugee" as a legal category and political subject was a key feature of American refugee regulation from the turn of the nineteenth to the middle of the twentieth century.

The release of the United Nations' "Convention on the Status of Refugees" in 1951 offered a definition that to this day stands as the cornerstone of domestic and international legal definitions of "refugee." According to the Convention, a refugee is someone who, "owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is

outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country." Although the 1951 Convention specifically limited the definition of "refugee" to Europeans fleeing their home countries because of World War II, the UN's 1967 "Protocol Relating to the Status of Refugees" lifted any geographical or chronological prerequisite from its definition of who was a refugee according to international agreement. As legal scholar Andrew E. Shacknove notes, slight domestic and regional variations in legal definitions of "refugee" do exist — for example, the Organization of African Unity's 1969 definition of "refugee" relies on a conception of "persecution" that not only includes nation-states persecuting their own citizens, but also accounts for "external aggression, occupation, foreign domination or events seriously disturbing public order." Nevertheless, Shacknove writes that contemporary domestic and international definitions of "refugee" generally follow the criteria laid out in the 1951 Refugee Convention of that year: that nation-states owe their citizens protection, trust, and loyalty; that citizens become "refugees" when nation-states break that bond; and that persecution, and becoming a "refugee," requires not just persecution by one's nation-state, but persecution that pushes someone across an international border.[22]

[22] The purpose of Shacknove's piece, however, is to argue that the standard legal definition of "refugee" ought to follow a broader definition of persecution that adheres more closely to that identified by the OAU. The fundamental moral question at the heart of refugee policy, Shacknove posits, is that definitions of "refugee" should be broad enough to include people who face persecution, but also clear enough that resources will be spent on those individuals who most need protection, relief, and assistance. Andrew E. Shacknove, "Who Is a Refugee?" *Ethics* 95, No. 2 (January 1985): 275.

Conceptions of the United States as an "asylum" and a "refuge" were not far from the minds of America's earliest political thinkers and lawmakers. Before 1951, however, American officials did not have a standard operating legal definition of who was a "refugee," nor did they have any clearly laid out sense of what forms of relief "refugees" were entitled to. Broadly speaking, the Oxford English Dictionary defines "refugee" in early American history as any displaced person seeking refuge. Meanwhile, the etymology of the word "refugee" reaches back to French origin in the seventeenth century, and was used to describe Huguenots whose religious persecution caused them to flee France for North America. As legal scholar Christopher Tomlins argues, since the colonial era of the United States, "law organized mobile masses into discrete socioeconomic strata with very distinct legal profiles—freemen, masters and servants, slaves, 'Indians,' the settled, the unsettled (vagrant) poor." The legal stratification of people in movement played a major role in the appropriation of land and labor that fueled the imperial expansion of the British colonial project and continued to influence the formation of the United States after independence. "Refugee" was among the categorizations that came to bear significant consequence in North America for the ability of displaced and persecuted peoples to rebuild their lives, and for their relationship with the U.S. nation-state.[23]

[23] "refugee, n.," OED Online, January 2018, Oxford University Press, http://www.oed.com.ezp3.lib.umn.edu/view/Entry/161121?rskey=MB0I4C&result=1&isAdvanced=false (accessed March 24, 2018); Christopher Tomlins, "Law, Population, Labor," in *The Cambridge History of Law in America, Volume 1*, ed. by Michael Grossberg and Christopher Tomlins (New York: Cambridge University Press, 2011), 213.

Because scholars have not systematically examined the question "Who is a refugee?" in American history before 1951, this dissertation required that I construct an archive of refugee regulation spanning the late eighteenth through the mid-twentieth century. The methodological foundation of this dissertation lay in keyword searches for the word "refugee" in the database U.S. Congressional Serial Set, which includes transcripts of Congressional debates, as well as Congressional hearings, publications, and records of laws passed in the House and the Senate. Once I identified several cases from which to begin my study, I followed up my initial queries with additional research in many other online databases and archival collections — and especially research in a wide range of holdings at the U.S. National Archives in Washington, DC and College Park, MD. As a result, my dissertation's six chapters focus on several groups of people whom American officials identified as "refugees" before 1951, including groups whom refugee studies scholars have not previously included in their analyses of refugee law and policy: Canadians and Nova Scotians who were loyal to the cause of American independence during the Revolution, emancipated slaves, Creek Indians, Mexican refugees during the Mexican Revolution, American citizens during World War I, and a host of immigrant groups were all identified as "refugees" from the Early Republic through World War II. While each of these groups were named as "refugees," this dissertation shows that recognition did not translate to equal forms of relief for all refugees. In some cases, identification as a "refugee" was a way for American officials to continue the persecution of marginalized peoples in American society.

As Barbara Welke notes, the long nineteenth century was a "formative moment in the long history of the development of the modern liberal democratic state." Central to

defining the state, Welke continues, were conceptions of who did and did not "belong" in the United States. On the one hand, then, this dissertation examines how American officials used refugee regulation as a venue to define and reinforce ideas about who "belonged" in America according to socially constructed and legally reinforced differences of race, ethnicity, class, gender, ability, political belief, and religious preference. On the other hand, the study of refugee regulation from American Independence through the rise of internationally codified definitions of "refugee" after 1951 shows the long evolution of the concept of the "refugee" in American history, and the different ways it overlapped with, reflected, and advanced the interests of the emerging U.S. state.[24]

Refugee regulation, and defining who was a "refugee" in the United States, however, was not simply a matter of defining who belonged in the nation. It was inextricably linked with two additional and related questions.

What constitutes refugee regulation, and where is refuge?

Officials extended unequal forms of refuge to different groups of refugees across American history. While some refugees received thousands of acres of land for permanent resettlement in the United States, others received only temporary asylum and promises of economic compensation for property they lost as a result of their persecution. These forms of refuge carried with them the weight of the state's legal and political authority, and were thus part of a broader picture of "the law" that extends beyond formal

[24] Welke, *Law and the Borders of Belonging*, 1-4.

legislation and court decisions. Indeed, refugee regulation evolved in many sectors of the American state. In addition to analyzing moments when American officials in Congress created laws concerning the resettlement of refugees within U.S. borders, this dissertation looks beyond the formal letter of the law to find that refugee regulation took shape in a variety of settings, including Congressional debates, petitions to Congress from refugees seeking relief, military-run refugee camps, federal treaties with Native nations, the Department of State, the Indian Claims Commission, the U.S. Court of Claims, and several administrative branches of the nation-state including the Bureau of Land Management, the Bureau of Refugees, Freedmen, and Abandoned Lands, the Bureau of Indian Affairs, and the Bureau of Immigration.

While most studies of refugee law and policy focus on forms of regulation that were created to allow particular refugees to enter the country, this study focuses on forms of refugee regulation that extended beyond resettlement, and outlines the politics and interests that guided the administration of those forms of refuge. Citing political philosopher Giorgio Agamben, critical race and ethnic studies scholar Yên Lê Espiritu notes how scholars ought to bring "social and political critiques" to their study of refugee history not by treating "'the refugee' as an object of investigation, but rather as a *paradigm* 'whose function [is] to establish and make intelligible a wider set of problems.'" By tracing how the category "refugee" was shaped over time and in different moments in American history, we can begin to put together a fuller picture of the

interests that have shaped U.S. refugee regulation over time, and how those interests shaped conceptions of who counted as a "refugee" throughout American history.[25]

As noted above, American officials actively persecuted Native Americans and African Americans from independence through the nation's founding. By the end of the Civil War, however, the United States had abolished slavery. The U.S. government's exponentially increasing acquisition of territory in the North American west, meanwhile, caused the federal government to shift from a policy of Native removal toward the creation of reservations where Indigenous people would be segregated from white Americans yet reside within the federal borders of the United States. With the incorporation of Native people and former slaves into American borders on the horizon, American officials acknowledged them as "refugees" during and after the Civil War. When officials recognized them as refugees, however, it was more of a mark of their difference than a sign of their inclusion in American society. Although officials considered giving land to African American refugees of the Civil War, for example, they ultimately did not, and instead gave African American refugees only temporary asylum in refugee camps, where officials believed they could subject former slaves to American ideas about civility, modernity, and family life. An 1866 Treaty that identified members of the Creek Nation as "refugees" who were entitled to economic compensation for property they lost during the war, meanwhile, also stripped the Creek Nation of half its land.

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[25] Giorgio Agamben, "What Is a Paradigm?" The European Graduate School (August 2002), cited in Yên Lê Espiritu, "Toward a Critical Refugee Study: The Vietnamese Refugee Subject in U.S. Scholarship," *Journal of Vietnamese Studies* 1, Nos. 1-2 (2006): 421.

In addition to forms of refugee regulation that included refugees into the fold of American society — inviting Canadian and Nova Scotian refugees to resettle in the United States, as Chapter One demonstrates — and forms of refugee regulation that advanced exclusionary immigration policies by keeping foreign-born refugees out of America, as shown in Chapters Four and Five — American refugee regulation also marked members of America's population as fundamentally "other." Refugee regulation may have entailed the creation of refuge law and policy. But it also represented a way for American officials to participate in a broader form of governance that singled out members of populations and subjected them to regulation, discipline, and management by the state. In other words, refugee regulation was as much about the state's regulation of refugees, as it was about the creation of a regime that defined who was eligible for relief in the United States as a "refugee."[26]

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[26] For a discussion of the ways that the U.S. government figured particular groups of people in North America in the liminal position of being somewhere between "domestic" and "foreign," "citizen" and "alien," see Linda Bosniak, *The Citizen and the Alien: Dilemmas of Contemporary Membership* (Princeton: Princeton University Press, 2006) and Parker, *Making Foreigners*. See also Kevin Bruyneel's observation that the United States' existence as a settler state is predicated upon Indigenous peoples being formally excluded from political participation in the nation, while at the same time being forcibly included within the boundaries of "a dominating and restrictive colonial sphere." Kevin Bruyneel, *The Third Space of Sovereignty: The Postcolonial Politics of U.S.-Indigenous Relations* (Minneapolis: University of Minnesota Press, 2007), 4.
Indeed, the disciplining of emancipated slaves in Union-operated refugee camps during the Civil War is an illuminating example of Foucault's theorization of how American officials could use different spaces to deploy "tactics," or "the art of constructing, with located bodies, coded activities and trained aptitudes," to try and shape former slaves into an individuality in relation to white Americans that would maintain the racial status quo of inequality after slavery. Michel Foucault, *Discipline & Punish: The Birth of the Prison*, 2nd ed. (New York: Random House, 1995), 143.

In that sense, when this dissertation refers to "refugee regulation," it is in the tradition of scholarship that draws from a Foucauldian analysis of power, and in particular, the different apparatuses of the state in which its representatives use state power in the regulation and ordering of different members of society. As sociologist Serhat Karakayali and legal philosopher Enrica Rigo have observed, concepts such as "refugee" and other migrant categories "represent categories of governance" that permit "state authorities, public discourses, and collective agents to relate to and govern migration in a specific way, according to the given social and political compromise of migration." The many actors, agencies, and individuals who participated in the creation of American refugee regulation thus also participated in the creation of a legal, political, and social category that officials might use to govern people at home and abroad through their production as refugees, their inclusion or exclusion from recognition as a refugee, and their access to different forms of refuge.[27]

While American refugee regulation sought to limit who had access to resources, relief, and resettlement as a "refugee," its power was not absolute. This dissertation also accounts for the ways that refugees experienced regulation, and describes how refugees and those who advocated for them pushed back against exclusionary and marginalizing definitions of American refuge. Members of the Creek Nation whom American officials

[27] Serhat Karakayali and Enrica Rigo, "Mapping the European Space of Circulation," in *The Deportation Regime: Sovereignty, Space, and the Freedom of Movement*, ed. Nicholas De Genova and Nathalie Peutz (Durham: Duke University Press, 2010), 129. For an additional analysis of "refugee" as a category of governance that draws on both Foucault and Agamben's theorization of *homo sacer* as an individual "who may be killed, but not sacrificed," see Bülent Diken and Carsten Bagge Lausten, *The Culture of Exception: Sociology Facing the Camp* (London: Routledge, 2005).

identified as "refugees" during the Civil War, for example, sought the economic compensation that was promised to them in a legal battle that took place in Congress, the Indian Claims Commission, and the U.S. Court of Claims over the course of nearly a century. In addition to pursuing their claims as refugees who were promised aid, the Creeks explained how their grievances reflected the broader settler colonial power dynamics that sought to subordinate Native Americans to the will of the American state. Advocates for refugees in the 1910s and early 1920s, meanwhile, questioned the ethics of the U.S. government prioritizing its right to define membership through the exclusion of foreign-born migrants over the needs of refugees seeking safe haven in the United States. These examples of refugees and their supporters challenging American refugee policies further demonstrate the different ways refugee regulation in the United States overlapped with and advanced broader articulations of state power, as seen through the eyes of refugees and concerned citizens.

Refugee regulation did not just advance notions of who counted as a legitimate "refugee" in the United States and the forms of refuge to which they were entitled. It was also fundamentally intertwined with the creation and enforcement of the nation's territory and its borders. This dissertation posits that American refugee regulation has its roots in the formation of the U.S. settler state, not only because the United States government made Native Americans refugees from their homelands, but also because the country's first refugee law, passed in 1798, allowed Anglo American refugees to resettle on land that the federal government wished to wrest from Indigenous peoples. The relationship between refugee regulation, the colonization of North America, and the dispossession of Native people, however, does not begin or end with any single law, policy, or decision

related to refugees. In her study about the history of incarceration in the city of Los Angeles, Kelly Lytle Hernández identifies incarceration as "just one of many 'eliminatory options' deployed in settler societies." According to Hernández, the settler society's varied efforts to "block, erase, or remove racialized outsiders from their claimed territory" further entrench the eliminatory practices that U.S. officials waged against Native people to try and bring about their disappearance from North America. As one among the settler state's many "eliminatory options," refugee regulation — whether in the form of invitations to refugees to resettle on American soil, temporary asylum in refugee camps, decisions to withdraw offers of land to refugees, treaties with Native nations that forced them to cede their land to America, or decisions among border officials and American lawmakers to apply exclusionary immigration laws to keep refugees from entering the nation — always hinged in some way on the U.S. government's efforts to assert its authority over territory it claimed as its own despite the ongoing presence of Indigenous peoples. The many forms that refugee regulation took were all part of the U.S. government's broader efforts to define and maintain control over its territory.[28]

The key moments in the development of refugee regulation examined in this dissertation each coincided with a specific era in the development of the nation's geographical footprint. In particular, it shows how refugee regulation facilitated westward expansion and Anglo settlement in the Northwest Territory at the turn of the nineteenth century; in the Civil War era, when the U.S. government sought to maintain the unity of

[28] Hernández, *City of Inmates*, 7-9.

the North and South and keep its national borders intact; and from the late nineteenth through the twentieth century, when territorial expansion across the continental United States came to an end, and the federal government began policing its national borders through border enforcement, immigrant exclusion, and the exclusion of foreign-born refugees. Defining who was and was not a "refugee" during each of these three eras was one way the U.S. settler state defined who did and did not belong in the United States. In other words, marking someone as a refugee was one way for the U.S. to signal which refugees it was willing to welcome across its borders, while also being part of a broader set of processes that defined who was "domestic" and who was "foreign" in the nation. The question "who is a refugee?" is thus not only about defining vulnerable peoples' status and the forms of relief they might receive from the nation-state. Defining someone as a refugee — along with other categorizations that demark migrant status — also define *where* refugees are in relation to the nation-state, its borders, and conceptions of the United States as a bounded place of refuge.

Refugee regulation was a project that thus helped shape the U.S. government's ability to manage mobile people, the territory where they might find refuge, and the borders that define that refuge. Refugee regulation began as a way for American officials to expand across the North American continent and define which populations in its expanding territory belonged in the nation. With the rise of federal immigration enforcement at the turn of the twentieth century, however, and the emergence of international definitions of "refugee" that required crossing an international border, the focus of American refugee regulation shifted to displaced and persecuted people who were overseas. Although this dissertation argues that American refugee regulation was

always about defining the line between what was "domestic" and "foreign," refugee regulation in the post-World War II years became increasingly used as a tool to advance the nation's foreign affairs agenda and spread American influence abroad. The roots of American refugee regulation may have been in facilitating the rise, expansion, and consolidation of the U.S. settler state. But by the mid-twentieth century, American refugee regulation evolved into a way for U.S. officials to exert the nation-state's authority over the mobility of globally displaced and persecuted peoples — and thus became part of the state's broader imperial agenda to expand its power and influence around the world.[29]

Parts and Chapter Summary

This dissertation traces the evolution of American refugee regulation and the development of the U.S. nation-state across six chapters. The dissertation's first half examines refugee regulation as American officials used it to distill the nation-state's

[29] In his book *Manifesting America: The Imperial Construction of U.S. National Space*, Mark Rifkin explains how the U.S. government has, in the past and in the present, sought to naturalize its geographical boundaries and figure Native territory as "always-already domestic." According to Rifkin, the U.S. government has long been engaged in a project of "recoding land formerly beyond the purview of U.S. governance as intimately embedded in national space." In terms of refugee regulation's relationship to territoriality and border making, the very act of making provisions for the production, selection, and exclusion of refugees was part of the U.S. government's practice of making the nation seem "always-already domestic" because it both assumed and reinforced the notion that the U.S. wields the authority as a sovereign nation-state to control its territory and define its membership, without acknowledging the coercive and destructive means by which the United States came to be in the first place. Mark Rifkin, *Manifesting America: The Imperial Construction of U.S. National Space* (Oxford: Oxford University Press, 2009), 6. For an overview of the relationship between U.S. immigration history and American foreign affairs, see Donna Gabaccia, *Foreign Relations: American Immigration in Global Perspective* (Princeton: Princeton University Press, 2012).

authority looking inward to its expansion across North America, while the second half accounts for the history of American refugee regulation within the context of the U.S. nation-state's changing role in the world after the turn of the twentieth century. Parts I and II focus on refugee regulation as it was directed to individuals within North America in a moment of the nation's history when the nation's borders were in flux. Parts III and IV consider the effects of refugee regulation's shift toward focusing primarily on international migrants beyond the borders of the continental United States, while individuals within North America, including American citizens, remained entangled in refugee regulation. This dissertation's four parts thus consider how the U.S. nation-state used refugee regulation in every instance to define the people and places that were "internal" and "external" to the nation, a distinction that was central to the nation-state's sovereignty and required constant management and oversight.

Part I aims to establish how the United States' foundational forms of refugee regulation advanced the formation of the settler state and laid the groundwork for American empire. While political thinkers like Thomas Paine and Thomas Jefferson described the U.S. as an "asylum for mankind" and an "empire for liberty," American officials sought the removal of Native people from North America and legalized slavery. At the same time, they discussed how the nation might encourage the arrival of refugees whom they wished to participate in the settlement of the American west. Chapter One explores this contradiction at the crux of American refugee regulation by presenting a broad overview of the individuals and groups whom members of Congress specifically identified as "refugees" from the American Revolution through the middle of the nineteenth century. In particular, it examines the formation of the very first refugee law in

the United States. Passed in 1798, "An Act for the relief of the Refugees from the British Provinces of Canada and Nova Scotia" invited Canadian and Nova Scotian refugees of the American Revolution to apply for grants of land in the United States. Congress pledged tens of thousands of acres of land to these refugees in the Northwest Territory — a region of the new nation the U.S. government was eager to populate with white Americans in order to reach the minimum population for territories to become states, and to resist the influence of Native nations who posed a challenge to American claims of territorial sovereignty in the region. I argue that American officials envisioned the first refugee law in the United States as a way to achieve westward expansion by dispossessing Native people and encouraging the settlement of Anglo Americans in their stead.

Whereas Part I establishes that part of the founding of American refugee regulation was rooted in the production of Native peoples and slaves as groups who were arguably refugees in experience, if not in legal categorization or recognition by the state, Part II explores how American officials broadened their conceptualization of who could be a "refugee" during and after the American Civil War, when the southern states seceded from the Union and brought the nation-state to the brink of collapse. In the 1860s, officials identified both emancipated slaves and Creek Indians as refugees. With this evolution in the parameters that defined who was eligible for relief in the United States as "refugees," refugee regulation, on the face of it, suddenly became more inclusive. Inclusion, however, did not mean equality. American officials did not recognize all African Americans and Creeks as refugees, but specifically identified those who remained loyal to the Union as refugees who deserved some form of relief from the

state. Identifying loyal African Americans and Loyal Creeks as refugees was part of the Union's military strategy to weaken the Confederacy, strengthen the Union, and reinforce the U.S. federal government's authority by rewarding those who refused to acknowledge the legitimacy of the Confederate States of America. Furthermore, the forms of relief that African Americans and Creek Indians received paled in comparison to the thousands of acres that Canadian and Nova Scotian refugees received decades earlier.

Chapters Two and Three examine these hedged openings in American refugee regulation. Chapter Two considers how President Abraham Lincoln's issuing of the Emancipation Proclamation resulted in countless numbers of former slaves to seek shelter across Union lines. Military officials and members of the American Freedmen's Inquiry Commission identified them as "refugees," and allowed them to seek shelter in sites that they interchangeably described as "refugee" and "contraband" camps. Although emancipated slaves may have found refuge with the Union, their temporary asylum in refugee camps reflected the racial inequality that entrenched the institution of slavery so deeply within American society. Officials forcibly removed African American refugees from Union camps, stated their desire to leverage their admission into refugee camps as a way to encourage the enlistment of African American soldiers when the Union army desperately needed more recruits, and perceived of camps as spaces where they could assimilate newly freed slaves into American society. Chapter Three takes as its point of departure an 1866 peace treaty that the U.S. federal government entered into with the Creek Nation. This treaty was unique among treaties with Native nations in the wake of the Civil War in that it was the only one that offered economic compensation to those whom it identified as "loyal refugees." The treaty promised funds to members of the

Creek nation who were displaced by fellow Creeks and other southern sympathizers who aligned themselves with the Confederacy — another example in the long history of displacement and removal to which Native peoples were subjected since the formation of the settler state. However, the 1866 treaty also required the Creek Nation to surrender over half of the nation's territory to the United States, along with a range of provisions that further circumscribed the Creek Nation's sovereignty. When the federal government backed away from its pledge to compensate Creek refugees for the property they lost as a result of their loyalty to the Union, members of the Creek Nation began a decades long legal battle in pursuit of those funds that would not be resolved until after the formation of the Indian Claims Commission in 1946. In both chapters, I argue that while the inclusion as "refugees" granted access to some forms of relief to African Americans and Creek Indians, it also perpetuated their marginalization as racialized "others" in American society.

Part III examines the evolution of American refugee regulation in relation to the rising federal authority of the U.S. nation-state and its emerging role as a significant power on the world stage at the turn of the twentieth century. After the Civil War, when the end of slavery and the unification of the American north and south encouraged the United States government to stretch its authority across the states of the union, the rise of federal immigration restriction became one of the most expansive and fastest growing branches of the American nation-state. After 1882, when the Immigration Act of that year made immigration enforcement the purview of the federal government, and the passage of the Chinese Exclusion Act made the racialized exclusion of immigrants from the United States the backbone of federal immigration law, American lawmakers introduced

a wide range of provisions that restricted the arrival of foreign-born migrants across the nation's borders. Meanwhile, revolutions, global conflicts, and examples of persecution around the world caused many people to recognize the moral reasons why nation-states ought to welcome refugees. As the entrenchment of immigrant exclusion caused the United States government to more forcefully assert its ability to define national membership through immigrant exclusion as its sovereign right as a nation-state, Part III includes two chapters that explore how debates about the moral impetus to support refugees abroad conflicted with the fact that, as one American immigration official explained during the Mexican Revolution, the United States had "no legal or moral obligation" to shelter refugees.[30]

In the wake of newly expanded measures to restrict immigration, Chapter Four investigates how the trend toward immigrant exclusion influenced Bureau of Immigration officials who were tasked with managing the entry of refugees across the U.S.-Mexico border during the Mexican Revolution. Although immigration officials pointed to a humanitarian interest in harboring refugees, they turned to exclusionary provisions of immigration law to justify their exclusion and deportation of Mexican refugees at the border. Chapter Five turns from the development of American refugee regulation on the ground during the Mexican Revolution to the halls of Congress during the 1910s and early 1920s, when American lawmakers in Washington, DC debated three major areas in the development of immigration law that overlapped with international refugee

[30] Anthony Caminetti, Commissioner General of Immigration, Washington, DC to Immigration Service, Eagle Pass, TX, October 9, 1913, Folder 53018/72G, Box 1111, Records of the Immigration and Naturalization Service, Record Group 85, National Archives and Records Administration, Washington, DC.

admissions. Elected officials had for many years attempted to incorporate a literacy test in immigration law. Some congressmen, however, along with American citizens sympathetic to the plight of refugees, argued that including a literacy test would allow immigration officials to exclude refugees from the United States. Among the reasons why refugee advocates believed this was so problematic was the fact that immigration officers could already use a wide range of provisions in immigration law, including the "likely to become a public charge" and moral turpitude clauses, to exercise their discretion in the restriction of immigrants and refugees alike. While debates over the literacy test proved to be a battleground where restrictionists and refugee supporters fought over refugee admissions, the ability of political refugees to enter the U.S. was another lightning rod for debate. In particular, after the Bureau of Immigration colluded with British officials to deport East Indian political dissidents who resisted British imperialism in India, a wide range of Americans, labor unions, and people from abroad protested that decision and claimed that deporting East Indians was tantamount to deporting political refugees. Ultimately, however, those inclined toward the restriction of immigrants and refugees won out. Congress's eventual passing of the Emergency Quota Act of 1921 and the National Origins Act of 1924, I argue, not only reflected the various ways that immigrant exclusion influenced debates about refugee admissions in the 1910s, but also made these laws anti-refugee laws, in that their restriction of immigration according to national quotas based on country of origin effectively cut off refugee admissions into the United States after World War I.

Part IV considers the evolution of refugee regulation within the broader context of the U.S. nation-state's rise to global dominance after World War II, which occurred at the

same time as nation-states around the world began to arrive at an international consensus through their work with the United Nations to define "refugees" as individuals crossing international borders to find shelter from persecution. In the post-World War II era, the United States embraced its role as the leading nation protecting democracy in the world. In doing so, America's past as a refugee-producing and refugee-excluding nation became a liability to its credibility as an advocate for freedom and equality in a world where recognition of human rights was beginning to play a larger role in an international political order that for years had exclusively privileged the sovereign rights of nation-states. The dissertation's final chapter explores this dynamic by returning to the story of the Loyal Creeks whom the United States federal government identified as refugees in 1866. In 1903, Congress passed a resolution that gave Creek Refugees $600,000 to repay them for the property they lost because of their persecution during the Civil War. This amounted to just half the sum of money that American officials concluded Creek refugees were owed. In addition to only paying the Loyal Creek refugees half the amount to which Indian Affairs officials concluded they were entitled, Congress stipulated that the Creek Nation's acceptance of this payment barred them from ever pursuing additional funds for Loyal Creek refugees in the future. When the Indian Claims Commission was established in 1946, however, the descendants and representatives of the Loyal Creek refugees once again picked up the fight for the rest of the money owed to them. While the attorneys for the Loyal Creeks and the U.S. government wrangled over what the U.S. owed to individuals whom American officials had identified as refugees nearly a century earlier, members of the international community reeling from the horrors of World War II began cohering around a set of principles regarding international refugee relief that

hinged on the definition of "refuge" as a human right. The fact that American officials continued their efforts to withhold the relief it promised to Creek refugees of the Civil War in this moment of a burgeoning international commitment to the human rights of refugees, I argue, reflected the degree to which refugee regulation in the United States was informed more by a will to subordinate marginalized peoples within and at the edges of American society than by any universal claim to offering refuge to persecuted and oppressed peoples. Although refugee regulation by the middle of the twentieth century may have shifted to focus primarily on individuals from overseas seeking international resettlement, the Loyal Creek case offers a reminder that refugee regulation, as a tool of the nation-state to define national membership, did not just assert American sovereignty through the exclusion of refugees abroad. American refugee regulation's defining feature has been its capacity to both bring about and obscure how the U.S. settler state has attempted to subordinate vulnerable people within, along, and outside its borders.

Part I

"We Cannot Set Down Easy in Any One Place:" Refugee Regulation and the Making of American Empire

Several times throughout his luminary political career, Thomas Jefferson noted his aspiration that the United States of America might become an "empire of liberty." Jefferson envisaged the fledgling nation as the rightful arbiter of freedom across the world. In the late eighteenth and early nineteenth centuries, that meant extending America's influence in one direction in particular: westward. The British, Spanish, and the French maintained a foothold on the continent, and Native nations, who opposed white settlement in their ancestral homelands, all posed a major threat to America's expansion across the Mississippi and beyond. Nevertheless, the nation's most influential political thinkers painted a portrait of American progress that hinged upon the United States government spreading its influence and authority over the North American landscape.[1]

Central to the Jeffersonian idea that the United States would rise from its colonial past to form an "empire of liberty" was the notion that oppressed people around the world could find in America a haven from persecution. "Philosophers, Patriots, and virtuous men," wrote George Washington in a letter to François-Jean de Chastellux in the spring of 1788, saw in the United States an "asylum for mankind" where the world's vulnerable people might seek succor from tyranny. This image of an American asylum motivated migration. In the decades that followed the American Revolution, more than three

[1] Gordon S. Wood, *Empire of Liberty: A History of the Early Republic, 1789-1815* (New York: Oxford University Press, 2009), 357-358.

hundred thousand people from Britain and Ireland alone, along with Frenchmen fleeing Revolution in France and Haiti, sought refuge in the United States, where they hoped to be beneficiaries of the Declaration of Independence's promise of "Life, Liberty, and the Pursuit of Happiness" for all men the world over.[2]

America's founding fathers fantasized about a nation that spread liberty from the Atlantic to the Pacific oceans and accepted anyone fleeing oppression with open arms. Some already in North America, however, expressed doubt about their place in an early American sanctuary. "We cannot set down easy in any one place," said Nicholas Hawwawas, a leader of the Maliseet Indians and veteran of the American Revolution who fought for American independence, as he described to an American official in 1783 how the arrival of revolutionary refugees in search of land on the border of present-day Maine and Canada might displace Native people from their homes in the St. Croix River valley. Stuck between emerging nations and the interests of their governments, Hawwawas and other Native Americans looked toward the United States not as their safe haven from displacement and persecution, but as a threat to their ability to stay on their land.[3]

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[2] "From George Washington to Chastellux, April 25 – May 1, 1788," *Founders Online,* National Archives, last modified November 26, 2017, http://founders.archives.gov/documents/Washington/04-06-02-0202 [Original source: *The Papers of George Washington*, Confederation Series, vol. 6, *1 January 1788–23 September 1788*, ed. W. W. Abbot. Charlottesville: University Press of Virginia, 1997, pp. 227–230.] (accessed March 25, 2018); Wood, *Empire of Liberty*, 46; 142-143; 252.

[3] John Allan, "Report re: eastern Indians," December 12, 1783, p. 59-62, *Papers of the Continental Congress* (National Archives, Microfilm Publication M247, roll 71), Records of the Continental and Confederation Congress and the Constitutional Convention, Record Group 360, National Archives and Records Administration, Washington, DC.

The words that Hawwawas used to describe his displacement and that of his people from their homelands — "we cannot set down easy in any one place" — are words that could have been used to describe the experience of enslaved Americans, as well. Brought to foreign shores against their will and forced to a lifetime of servitude, several generations of American slaves also bore the brunt of American ambition. The dispossession of Native people and legal slavery were two foundational forms of persecution in the U.S. nation-state's thirst for power. They were part, too, of a broader trajectory in the structuring of early American society that preserved full membership in the nation for able-bodied, property owning white males at the expense of nearly everyone else. Jefferson touted the "empire of liberty." The question of who belonged in that empire was a question that was answered in part by the distinctions American officials made to determine who was a welcome refugee in the United States, and whose persecution was dismissed as a necessary cost of America's political, economic, territorial, and social development. Defining who was a "refugee" in the country's first centuries helped define who was an "American." It also contributed to the rise of the U.S. nation-state by giving American officials a regulatory arena where they could determine which displaced and persecuted peoples had an audience with the country's government and a place to live within the bounds of its territory.[4]

[4] Barbara Young Welke, *Law and the Borders of Belonging in the Long Nineteenth Century United States* (New York: Cambridge University Press, 2010); Larry E. Tise, *The American Counterrevolution: A Retreat from Liberty, 1783-1800* (Mechanicsburg, PA: Stackpole Books, 1988), xlvii-xlviii. On Thomas Jefferson's political vision, including the contradictions that tarnished his professions of American freedom, see Robert W. Tucker and David C. Hendrickson, *Empire of Liberty: The Statecraft of Thomas Jefferson* (New York: Oxford University Press, 1990).

In the first decades of American history, refugee regulation took shape in several ways. By allowing oppressed Europeans to arrive unfettered in America and contribute to the peopling of the United States, and by making law that encouraged Canadian refugees to settle on land in the American west that the U.S. government had recently claimed from Native people, American officials used refugee regulation to further westward expansion and assert the nation-state's earliest claims to territorial sovereignty. At the same time, by sanctioning the legal ownership of humans as property and the removal of Indigenous people from their homelands, and thus subjecting whole groups of North Americans to displacement and persecution without acknowledging them as "refugees," American officials also used refugee regulation to define who did and did not belong in the new nation. In subsequent decades, the U.S. would continue to use refugee regulation in its broader efforts to maintain authority over the land, resources, and people of North America. Refugee regulation, the rise of the U.S. nation-state, and the making of American empire went hand-in-hand.

Chapter One

"Refugees as You Call Them:" Defining Refugees in America, 1776-1850

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. They gathered in Passamaquoddy Bay, on the border of the present-day state of Maine and New Brunswick, Canada. Holding a belt of wampum beads that American officials had given to the St. Croix Indians three years earlier as a symbol of their allegiance, Nicholas Hawwawas, a Maliseet leader, veteran of the American Revolution, and ally of American independence, turned to John Allan, the Superintendent of Indians in the Eastern Department, who was among the crowd. Hawwawas asked Allan what the end of the Revolution and the rise of the United States as an independent nation meant for Indigenous people in the newly christened northern borderlands.

Before the war, Hawwawas explained, the Maliseet freely crossed to and from Canada and the American colonies. Before the war, American officials promised the St. Croix Indians that they would retain control of the land where they lived and hunted beaver, a practice that was vital to their livelihoods. But the end of the war 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 the people whom American officials called "refugees," and wondered why the U.S. government would not "drive them away" when they posed a threat to him and his people. "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.[1]

Hawwawas' words reveal what was at stake in the politics of refugee recognition, relief, and resettlement in early American history. According to Hawwawas, individuals whom the U.S. government recognized as "refugees" threatened their livelihoods on the St. Croix River. Though they were loyal to the United States during the Revolution, and though they now faced encroachment by Anglo settlers and potential displacement from their homelands, the U.S. government did not call Hawwawas and his people refugees. That “refugee” settlers might make their homes on contested Native land, meanwhile, was no isolated event. Just four months before Hawwawas' encounter with John Allan, George Washington penned a letter to the President of the Continental Congress in which he suggested that Congress allow "Refugees from Canada" to settle in the "interior parts of our Territory." Giving land to Canadian refugees, particularly in parts of the country where the U.S. wielded only tenuous authority over the land, Washington argued, would be "useful to the United States."[2] For displaced and persecuted peoples in early America, recognition as a “refugee” was contingent on what government officials believed could

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[1] John Allan, “Report re: eastern Indians,” December 12, 1783, p. 59-62, *Papers of the Continental Congress* (National Archives, Microfilm Publication M247, roll 71), Records of the Continental and Confederation Congress and the Constitutional Convention, Record Group 360, National Archives and Records Administration, Washington, DC.
[2] “From George Washington to Elias Boudinot, July 16, 1783,” *Founders Online*, National Archives, last modified June 29, 2017, http://founders.archives.gov/documents/Washington/99-01-02-11601 [This is an Early Access document from The Papers of George Washington. It is not an authoritative final version.] (accessed March 25, 2018).

be gained by giving refuge to some and denying refuge to others. Who officials called "refugees" in America's earliest days as a nation was a distinction that was interwoven with broader privileges in early American society that preserved American citizenship for white men at the exclusion of others. This was thus a distinction that not only had profound implications for the ability of displaced and persecuted people to live their lives, but also for American political development and American society as a whole.[3]

When Hawwawas said "we cannot set down easy in any one place," he distilled the refugee experience to its essence. He also foreshadowed the repeated episodes of Native dispossession that would come to define the United States government's strategy to expand its territory and control the land, resources, and people of North America.[4] His nine words are a stark reminder that American refugee history is a history of Native dispossession. They are a reminder that refugee history is also a history of the many racially, economically, and variably "othered" people whom American officials have subjected to displacement, persecution, and removal — in other words, the people whom the U.S. government turned into refugees, though it did not recognize them as such — as

[3] In my emphasis on law and "naming," I borrow from the framework of legal disputes laid out in William L.F. Felstiner, Richard L. Abel, and Austin Sarat, "The Emergence and Transformation of Disputes: Naming, Blaming, Claiming…", *Law and Society Review* 15, no. 3/4 (1980/1981): 631-654.

[4] This chapter suggests that the U.S. government's ongoing, structural displacement and dispossession of Native people and its general refusal to acknowledge Native people as "refugees" — and, as shown below, its recognition of other populations as refugees and even its seldom identification of Native people as refugees — is part of the broader power dynamics that shape the United States as a settler colonial political regime. For foundational analysis of settler colonialism, see especially Patrick Wolfe, "Settler colonialism and the elimination of the native," *Journal of Genocide Research* 8, no. 4 (2006): 387-409 and Lorenzo Veracini, *Settler Colonialism: A Theoretical Overview* (London: Palgrave Macmillan, 2010).

much as it is about the laws and policies that American lawmakers and government officials put in motion to accommodate refugees.

This chapter argues that refugee regulation is as old as the American nation itself. Although the U.S. did not enact federally codified procedures for refugee resettlement until after World War II, the country's officials did, in fact, recognize different groups of people as "refugees" at the turn of the eighteenth and during the nineteenth century. These early discussions among lawmakers did not bring about a comprehensive system of refugee resettlement. They did, however, result in the first refugee law in American history in 1798, when Congress passed a law that established procedures for granting plots of land in the Northwest Territory to Canadian and Nova Scotian refugees who supported American independence during the Revolution. By tracing congressional debates about the U.S. government's obligation to refugees in the early republic — some of which resulted in law, some of which did not — this chapter establishes that refugee lawmaking in the United States did not emerge after the post-Civil War expansion of federal power, the rise of federal immigration policy at the turn of the twentieth century, and the emergence of the United States as a world power in the early twentieth century. Refugee regulation dates back to the country's founding era.

This chapter charts the foundational questions that were at the heart of American refugee policy in its formative moments: Who did the U.S. owe relief as a refugee, and what form of relief were refugees entitled to? The questions that defined early American refugee regulation overlapped, as well, with questions that were pivotal to United States nation building and statecraft in the country's earliest years as a nation. When American officials discussed particular displaced and persecuted people as refugees and considered

giving them or denying them relief, they also discussed the federal government's obligation to assist people in need, and the will of American officials to project an image of the United States as a benevolent, humanitarian nation that stood in contrast to Great Britain, its former colonizer. They made distinctions about who had a claim to public relief and who did not, and thus not only tied refugee relief to questions of who belonged in the United States, but made the distribution and withholding of refugee relief an engine of inclusion in and exclusion from the nation.

The first section of this chapter describes the landscape of refugee recognition in the United States from the end of the eighteenth century through the middle of the nineteenth century. Drawing on transcripts of debates in Congress as well as Congressional publications, including resolutions and proposed bills, this section of the chapter presents a broad overview of the groups that Congress identified as "refugees" in the first decades of American governance. Notably, the displaced and persecuted people whom Congress described as "refugees" were predominantly able-bodied white men of European descent whose political ideals overlapped with those of the early American republic. In contrast, Indigenous and enslaved people, the subjects of state-sanctioned persecution and oppression in early America, do not enter the historical record as "refugees." Congress's silence on the state's complicity in producing people who were refugees in experience, if not in legal or political standing, belies the fact that the United States has always been, at best, a refuge for some at the expense of others. This first section of the chapter thus establishes refugee regulation in the first instance as a willful form of amnesia. By discussing different groups of Europeans as refugees and ignoring the forms of persecution and displacement that the United States government actively

participated in, early Congressional discussions of refugee regulation did the work of obscuring the nation's participation in the creation of refugees, and did the work, too, of normalizing the falsehood that the United States was and has ever been a granter of refuge without being, as well, a denier of refuge.

The second section of this chapter delves deeper into this foundational tension in American refugee regulation by describing the first example of refugee law-making in early U.S. history. It describes how Congress's decision to give land in the Northwest Territory to Canadian and Nova Scotian refugees of the American Revolution was inherently linked with the early American government's interest in claiming Indigenous land, asserting control over it, removing Native people from its bounds, and replacing them with white settlers. By giving thousands of acres of land in the Northwest Territory to Canadian and Nova Scotian refugees, this first form of refugee relief in American history was also the most generous form of refugee relief in American history — no group of prospective refugees has since gained access to such a generous form of relief in the United States. At the same time, it established the precedent that American refugee regulation was instrumental in its humanitarianism. In addition to providing for select groups of individuals in need of shelter and protection from persecution, American officials made refugee regulation a tool at their disposal to achieve the nation-state's broader interests in westward expansion, encouraging white settlement, and dispossessing North America's Indigenous population.

Understanding how refugee policy began to take shape in the United States requires understanding how the term "refugee" was defined and which groups of people American

political officials identified as refugees in the early American republic. Indeed, as this chapter will show, the country's first lawmakers discussed refugees as a matter of official state business shortly after America achieved independence. Though the idea that the United States was a place of refuge was a founding feature of American democracy, the use of the word "refugee" to describe displaced and persecuted peoples arriving in North America predates the founding of the United States. According to the Oxford English Dictionary, the word “refugee” was first popularly used in the English language to describe a group of French protestants called Huguenots, who began fleeing their homes in France after Louis XIV ushered in a wave of religious persecution when he revoked the Edict of Nantes in 1685, and the freedom of religious practice it promised when Henry IV approved it in 1598. From the sixteenth through the eighteenth centuries, tens of thousands of Huguenots sought asylum throughout Europe. They fled, as well, to America, forming major settlements in South Carolina and New York. Historian Jon Butler observes that the Huguenot refugees were the largest group of religious refugees to seek shelter in the British colonies since the Puritans, who arrived in North America in the mid-1600s in pursuit of religious freedom and were among the first European settlers of the so-called “New World.”[5]

[5] It is worth noting that even if historical linguists date the English term “refugee” to the year 1671, refugees — or put simply, people in need of shelter from religious, political, social, or economic persecution — have existed for as long as people have organized themselves into distinct groups of people. “refugee, n.,” OED Online, January 2018, Oxford University Press, http://www.oed.com.ezp3.lib.umn.edu/view/Entry/161121?rskey=MB0I4C&result=1&isAdvanced=false (accessed March 24, 2018). Jon Butler's *The Huguenots in America: A Refugee People in New World Society* (Cambridge: Harvard University Press, 1983) remains the foundational study of Huguenot refugees in the United States. For a broader social history of the Huguenots, including detailed context of their experience in France

The religious refugees who migrated to North America before the United States gained its independence were the first groups of Europeans who sought refuge in America, though they would not be the last. In particular, political refugees comprised a major constituency of the global migrations that took place from the end of the eighteenth century through the middle of the nineteenth century. When a group of French settlers in Nova Scotia called the Acadians refused to take sides in the imperial competition between France and England that would result in the Seven Years War from 1756 to 1763, British forces expelled them from their homes, driving them into a global diaspora that reached from Louisiana to South America to France. In the 1790s, the French Revolution caused tens of thousands of French citizens to flee the country, lest they face prosecution or even death under the Napoleonic regime that sought to squash opposition to the monarchy. Irish who faced British persecution after resisting the crown's imperial rule of Ireland likewise sought in the United States a place of refuge at the turn of the eighteenth century. Although no legislation was passed to restrict their arrival into the United States, Americans were so divided about the arrival of allegedly radical French and Irish political exiles that Congress passed the Alien and Sedition Acts in 1798, a suite of laws that threatened to deport foreign-born political dissidents and stymy opposition to the American government by foreigners and Americans alike. A group of Poles who resisted Russia's imperial rule of Poland in the early 1830s and subsequently faced imprisonment or execution were acknowledged by American officials as "exiles" — Congress even considered giving them grants of land in Illinois and Michigan where they

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and the religious suppression they faced there, see Geoffrey Treasure, *The Huguenots* (New Haven: Yale University Press, 2013).

might have settled permanently in the United States, had American settlers not voiced their opposition. And the revolutions that sprung across Europe during the late 1840s resulted in political exiles arriving in the United States from Germany, Ireland, and Hungary.[6]

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[6] On the Acadians, see Christopher Hodson, *The Acadian Diaspora: An Eighteenth-Century History* (New York: Oxford University Press, 2012); John Mack Faragher, *A Great and Noble Scheme: The Tragic Story of the Expulsion of the French Acadians from Their American Homeland* (New York: W.W. Norton & Company, 2005); Carl A. Brasseaux, *The Founding of New Acadia: The Beginnings of Acadian Life in Louisiana, 1765-1803* (New Orleans: Louisiana State University Press, 1997). Aristide Zolberg *A Nation By Design: Immigration Policy and the Fashioning of America* (Cambridge: Harvard University Press, 2006), 89; 94-96. On the settlement of French refugees of the French Revolution in America, see 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 Press, 1940). Members of Congress devoted a significant amount of time on the floor to discussing Polish political dissidents and their travel to America. Instead of using the term "refugee," however, Congress referred to them as "exiles." Congressman Churchill C. Cambreleng, for example, urged Congress to "grant an asylum to these exiles" because doing so would reflect "the laws of hospitality and the usage of nations" and because Poland supported the American Revolution. "The brave Pole" who fought for the independence of their nation," Cambreleng claimed, "can never be an exile in a land of liberty" – a bold statement to make, one embedded in the early American social and political imaginary that made the United States the home of white males of European descent, while North Americans outside that exclusive group — Native Americans, slaves, and other racialized groups — were excluded from conceptions of American refuge. When the Committee on Public Lands reviewed the petition submitted by the Polish exiles, they recommended that land be given to the exiles but were quick to caveat their commitment. Although they said they "do not admit the justice or policy of granting any portion of the public domain to emigrants from foreign countries who voluntary seek an asylum on our shores from the arbitrary governments of Europe," and noted that the "usages of civilized nations" nor "the principles of our free institutions" legally required the U.S. to give any land to political exiles, the committee believed the U.S. government ought to break from the tradition of simply allowing refugees to enter the country and honor the Polish exiles' request for land. See 23rd Cong., 1st sess., *Register of Debates in Congress* (April 22, 1834), 3748; U.S. Congress, Senate, Committee on Public Lands, *On the application of the Polish exiles for land for settlement*, April 29, 1834, 23rd Cong., 1st sess., 1834, Pub. Land Doc. 1237.

Although many groups facing religious, political, and other forms of persecution arrived in the United States during its first decades as an independent nation, Congress only discussed a small subsection of them specifically as "refugees." Several examples in particular produced the greatest amount of debate among members of Congress: British loyalist refugees who resisted American independence; white planters, along with their slaves, who went to the United States as refugees from the Haitian Revolution; and Canadian and Nova Scotian refugees who supported America's bid for independence during the Revolution. American lawmakers' discussion of Loyalist and Haitian planter refugees sheds light on the themes that early American political officials believed were related to decisions about which refugees did and did not have claims to the United States' protection in early American history, including loyalty to nation-states; the role of the early United States government as a benevolent force on the world stage; the obligations of nation-states; and nascent ideas about humanitarianism. Congress did not make law concerning Loyalist and Haitian refugees. They did, however, pass several acts that promised land to Canadian and Nova Scotian refugees. The final section of this chapter will examine how these refugee laws — the first in American history — were entangled with westward expansion and the dispossession of Native people, making

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In my research for this chapter, it is worth nothing that I did also identify a Senate document from December 24, 1849 titled "Granting land to Hungarian refugees now in this country, or arriving within given period, on condition of permanent settlement," in regard to Hungarians who fled Europe during the revolutions of the late 1840s. The word "refugee," however, appears in the document only once. See U.S. Congress, Senate, *Granting land to Hungarian refugees now in this country, or arriving within given period, on condition of permanent settlement; expediency of suspending diplomatic relations with Austria; requesting President of United States to intercede with government of Turkey for liberation of Kossuth, late Hungarian general*, December 24, 1849, 31st Cong., 1st sess., 1849, S. Misc. Doc. 13.

America's foundational form of refugee relief complicit with the displacement of Indigenous people from their ancestral homelands.

Loyalists

When the United States Congress discussed particular groups of people as "refugees" for the first time, they did so under the auspices of its new status as an independent national government that sought legitimacy and recognition on the world stage. With the world watching eagerly in anticipation of seeing how the first democratic republic would fare in its experiment of representative electoral governance, the fact that the recognition of refugees was among the first orders of business in Congress makes refugee recognition an important window into the questions, interests, and concerns that motivated American officials in their earliest moments of governing.

British loyalists were among the first groups whom members of Congress and American political leaders discussed as refugees after the United States achieved independence. After the American Revolution, thousands of Tories and Loyalists who supported the British cast themselves into diaspora as political exiles. Fearing that they'd face the wrath of a not only vengeful but also newly empowered American government, white, black, and Indian Loyalists abandoned their homes and sought refuge in the nearby British colony of Nova Scotia and in the further reaches of the British empire.[7]

[7] For an authoritative account of the exodus of British Loyalist refugees from the United States, see Maya Jasanoff, *Liberty's Exiles: American Loyalists in the Revolutionary World* (New York: Alfred A. Knopf, 2011).

Congress did not recognize British Loyalists as refugees who ought to receive relief from the United States. Lawmakers did, however, refer specifically to British "refugees" several times at the turn of the eighteenth century. They usually did so in disparaging fashion, and their disdain for British refugees ranged from innocuous to deadly.[8] Congressman Joseph Desha of Kentucky, for example, when discussing on the house floor whether the U.S. should repeal an embargo against importing British goods into the country, vilified "refugees or old Tories" whom he believed remained in the United States only to "assist their master George the Third in bringing about colonization and vassalage in this happy land." Two years later, Desha railed further against British refugees as a thorn in the side of American foreign affairs. When Americans across the country erupted into a "universal burst of indignation" after the British Navy launched an attack against the *U.S.S Chesapeake* that resulted in the deaths of several American passengers, he noted that "British partizans, tories, and refugees…had the hardihood to go all lengths in justification of this atrocious massacre." Other discussions of British refugees had more serious implications. Congressman Robert Wright of Maryland, for example, when discussing foreign investment in the Bank of the United States, criticized the idea that foreigners, including refugees, should have a stake in America's financial

[8] In some instances, the word "refugee" carried a negative connotation of individuals fleeing from "justice." In their use of the term in association with British loyalists, it likely cut both ways: Congress believed them not only to be "refugees" in the sense that Loyalists were fleeing a place where they believed they'd face persecution, but also in the sense that they were fleeing what would have been their just punishment at the hands of the state for their loyalty to the British monarchy.

institutions, and in particular claimed that "refugees from the country…ought to have been hung during the Revolution."[9]

The disdain with which elected officials described British refugees evokes how distinctions about who was and was not a refugee worthy of the government's support and relief were drawn along lines of national loyalty and political affiliation. Loyalist refugees were not just illegible to the United States as individuals who had a claim to the government's protection. They were characterized as enemies of the nation who were so unwelcome they may as well have been hung. Declaring someone a refugee at this time was only as meaningful as the relief attached to that designation. British Loyalists, in their fear of persecution by the U.S. government and in their actual persecution at the hands of American troops and civilians, were refugees in experience — but because they took up arms against the American movement for independence and staked their loyalty with the new nation's former colonizer, United States officials perceived no obligation to assist them.

It may seem no surprise that the United States would fail to recognize British Loyalists, people who actively opposed American independence, as refugees. But in this

[9] 10th Cong., 1st sess., *Annals of Congress* (December 8, 1808), 779-780; 11th Cong., 2nd sess., *Annals of Congress* (January 24, 1810), 1302; 13th Cong., 3rd sess., *Annals of Congress* (November 18, 1914), 614. Congress mentioned refugees on other occasions who were likely British, though the record of debate in Congress leaves insufficient detail to know for certain. For example, when Congress debated the country's naturalization policy, Congressman George Clymer of Pennsylvania proposed that foreigners should gradually receive the same rights as Americans and that the government should make it easy for individuals who once had American citizenship, but moved elsewhere, to denaturalize, with the sole exception of "the refugees, who were adding to the wealth and strength of a Power no ways friendly to us, and are actually injuring some of the States by the rivalship they create in fisheries." 1st Cong., 2nd sess., *Annals of Congress* (February 4, 1790), 1163.

foundational moment in the formation of American refugee policy, were there no other options available? The United States and the British government reached a peace agreement with the Treaty of Paris in 1783. The Treaty outlawed individual American states from persecuting Loyalists. It did not, however, establish any procedures for Loyalists to reclaim their property or otherwise formally recognize them as "refugees." By calling Loyalists refugees in passing but refusing to recognize them as refugees who had any claim to relief or resettlement, the United States government mobilized an understanding of refuge that doubled down on the brand of exclusionary nationalism that creates refugees in the first place. The national independence movement of the Americans resulted in the displacement and persecution of British citizens, and continued their exclusion from the United States after agreeing to terms of peace. Refusing to allow British Loyalists to remain in the United States as refugees was a choice to perpetuate national difference rather than imagine a coexistence that transcended national affiliation. This earliest example of American officials recognizing a group of people as refugees and, in this case, condemning them rather than giving them relief, lays bare the political handwringing around loyalty to nation that accompanied the earliest forms of refugee policy.

Slaveholders

American political officials may have refused to recognize British loyalists as "refugees" who had a place in the United States. But members of Congress did express sympathy for another group of displaced people: French refugees from St. Domingo. In late 1793, several years after a band of freed people of color started a slave revolt that eventually

resulted in the creation of the independent nation-state of Haiti, over three hundred French "sufferers" from St. Domingo sought refuge in the United States. They arrived in Baltimore, where William Patterson, Samuel Sterrett, Gustavus Scott, and members of the Maryland state legislature passed a resolution in November 1793 that approved a sum of $500 to be paid each week "for the relief of French emigrants" from December of that year to February 2, 1794. When the citizens of Baltimore and the state of Maryland questioned how long they could — or were willing — to pay for the food and shelter being provided for the more than 300 people taking refuge there, Patterson, Sterrett, and Scott wrote to the United States Congress and asked if the federal government would offer some financial assistance to help pay for relief. Representative Samuel Smith reported on their petition. He called these sufferers the "Refugees from St. Domingo," and claimed that they were "strongly recommended to the compassion of Congress, by the many distressing circumstances that attend their case." Smith suggested that Congress allow the State Legislature of Maryland to withdraw funds from the U.S. treasury in an undisclosed amount and for an undisclosed period of time for the purpose of assisting the refugees.[10]

Congressman Smith believed the experience of French refugees in the United States to be an unprecedented situation in the country's brief history. According to Smith,

> Such a scene of distress had never before been seen in America. Three thousand fugitives had been at once landed, without the least previous expectation of their arrival…Fifteen hundred of these people were quite helpless; three hundred and

[10] Throughout this report, Smith uses the terms "refugee," sufferer," and "emigrant" interchangeably, suggesting the degree to which these categories were in formation in the early American republic. 2nd Cong., 2nd. sess., *Annals of Congress* (January 10, 1793), 308. For an analysis of the words used to describe immigrants, see Donna R. Gabaccia, "Nations of Immigrants: Do Words Matter?" *The Pluralist* 5, no. 3 (Fall 2010): 5-31.

> fifty of them were old men, or women without their husbands, or children without their parents. Some had credit, and some had not. Five hundred of them had been sent to France by the Minister, at the expense of the Republic; the rest remain in this country.

Smith suggested that Congress hesitate no further on the issue. But his colleagues were not so certain. Congressman John Nicholas of Virginia, for example, believed it was "laudable" to relieve the French refugees. Yet he was unsure whether it was even Constitutional and within the authority of Congress to extend this kind of "charity" from the country's public coffers. Smith, however, said that the American Minister at Paris thought it was within Congress's authority to do so. By following the lead of the people of Baltimore and giving money to the refugees, Smith believed that "in this affair, the American nation had exerted a degree of generosity unparalleled in the history of any other people."[11] Smith thus envisioned relief to refugees from Saint-Domingue as an example of America's exceptional benevolence compared to other nations.

The question of whether to use federal funds for the relief of the French refugees dovetailed into a broader debate about the U.S. government's obligation to refugees and whether or not Congress even had the authority to pay for such relief. Congressman James Madison of Virginia expressed skepticism to Smith's claim of America's unprecedented generosity. The British Parliament, he observed, gave 100,000 pounds to victims of an earthquake that shattered Lisbon in 1755. Though he believed the United States "possessed an equal degree of magnanimity, generosity, and benevolence" as the British, he did not think Congress had the right "of expending, on objects of benevolence, the money of our constituents." If Congress took this kind of action, he worried it would

[11] 3rd Cong., 1st sess., *Annals of Congress* (January 10, 1794), 169-173.

set a "dangerous precedent" of using America taxpayers' money for the relief of non-Americans. At any rate, the United States owed the French government money for its assistance during the Revolution. Why not just pay the debt, and let the French decide if it wanted to use those funds to support refugees who were French citizens?[12]

Congressman Abraham Clark of New Jersey intervened and criticized Madison. Less than a week earlier, Madison, who now opposed the idea that Congress ought to pay for the relief of French refugees, expressed his support for a resolution in which the House would have "indemnified" American citizens who "suffered losses" at the hands of British pirates. But Madison was quick to defend himself, and said they were two different scenarios. According to the "law of Nations," Madison explained, American sailors who flew American flags were under American protection. "French sufferers," he claimed, "unquestionably were not."[13] In other words, Congress was obligated to protect American citizens. It was not obligated to protect the citizens of another nation.

Madison may not have thought that the law of Nations obligated the United States to come to the aid of the French refugees. But Congressman Elias Boudinot from New Jersey disagreed. According to Boudinot, both the law of Nature and the law of Nations — "in a word, by every moral obligation that could influence mankind" — "bound" the United States to care for "the citizens of a Republic who were at present our allies, and who had formerly been our benefactors." Furthermore, Boudinot said that the general welfare clause of the constitution gave Congress wide latitude to use taxpayer dollars for

[12] *Ibid.*, 170-171.

[13] *Ibid.,* 171-172.

charitable purposes. And, he argued, they already had. Congress paid for Indians to stay in Philadelphia while they negotiated with the American government on issues of trade and diplomacy, and approved funds to help feed prisoners of war. If Congress relieved these groups, they ought to relieve French refugees, because the U.S. had "stronger obligations to support the citizens of our allies than either Indians or prisoners of war."[14]

After the debate of January 10 ended in stalemate, Congress hesitated to finalize the details for Smith's proposal to appropriate federal dollars for French refugees from St. Domingo in Baltimore. Several weeks after Smith's report, Congress returned to the issue when two men named Peter Gauvain and Louis Dubourg submitted a petition to Congress on behalf of the "French refugees of Cape François." Gauvain and Dubourg asked Congress to swiftly decide on Representative Smith's suggestion that funds in the U.S. Treasury be set aside for French refugees in Baltimore. Several congressmen voiced their support for Congress to approve the resolution and grant the funds to the French refugees immediately. Representative Murray, for example, described the proposal as an "act of humanity" that required Congress to decide as soon as possible rather than keep the refugees waiting for relief. Congressman Hunter, who represented the state of South Carolina, believed that the people of Maryland exhibited a "remarkable exertion of benevolence" for the French refugees. With members of Congress expressing their support or relief for refugees as a matter of humanity and benevolence, Congress authorized the President to allocate $10,000 of public funds "for the use of the refugees."[15]

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[14] *Ibid.,* 172.
[15] 3rd Cong., 1st sess., *Annals of Congress* (January 28, 1794), 350.

Some officials felt that when it came to offering economic support to individuals in need, the role of the federal government ought to extend beyond refugees. Elias Boudinot, for example, stood by his interpretation that the General Welfare Clause of the Constitution provided that Congress shouldn't just approve funds for French refugees in Baltimore. Rather, he thought Congress should consider giving relief to "all the people of this sort in North America." French refugees from Saint-Domingue had resettled throughout the United States, particularly in Charleston and New Orleans. Most of those refugees, he noted, were being cared for primarily by the "benevolence of some well-disposed people." In Philadelphia in particular, Boudinot pointed out that many people would have perished in the harsh winter weather that had recently befell the nation's capital were it not for the generosity of the city's private citizens who came to the aid of those less fortunate. Congress should take care to provide for all people in need, Boudinot claimed, lest public support dissipate and people suffer. Congressman Smith was not concerned at all about the financial side of relief, as he believed the refugees would eventually return to their "settlements" and be able to repay the funds that the government spent on their behalf. Congressman Clark's support, meanwhile, rang a more humanitarian tone. Clark said Congress should not bother with the General Welfare Clause or any other consideration about whether they were "tied up by the Constitution," but instead ought to act without hesitating. It didn't matter whether the refugees from St. Domingo were "democrats," or if they were "aristocrats," Clark noted. "They were men,"

he claimed, "and, as such, were entitled to compassion and to relief."[16]

Clark's humanitarianism was shared by several of his colleagues. Congressman Smith expressed disbelief that any member of Congress might refuse to support refugees — many of whom were women and children — and asked, "…are we to stand up here, and tell the world that we dare not perform an act of benevolence? Is this to be the style of an American Congress?" Yet the French refugees from Saint-Domingue had two additional arguments in their favor. Giving relief to these refugees satisfied both domestic and foreign affairs. On the one hand, Congressman Nicholas reminded his colleagues that it was "the universal wish of our constituents" to help refugees. On the other, because France was an ally of the United States government and helped the country achieve independence, Congress in particular owed French subjects their protection.[17] Acknowledging particular people as refugees and giving them relief hinged not just on how much they suffered, but also on the nature of the United States' relationship with its own citizens as well as with the refugees' home country of France. Ultimately, Congress agreed to a resolution stating that Congress ought to pass a relief bill for the French refugees. The resolution approved the President to disburse an undisclosed amount of money for the "inhabitants of St. Domingo" who were residing not just in Baltimore, but anywhere in the United States and who were "in want of such support."[18]

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[16] *Ibid.,* 350. Ashli White describes the diaspora of French refugees from St. Domingo in her book *Encountering Revolution: Haiti and the Making of the Early Republic* (Baltimore: Johns Hopkins University Press, 2010).
[17] *Ibid.,* 351.
[18] *Ibid.,* 352.

Members of Congress pointed to various reasons to explain why the U.S. government should pay for the relief of French refugees — that they owed it to the French government for their support during the Revolution; that it was the will of the American people to help the refugees; that giving relief to refugees was necessary for making the United States respected on the world stage; and that it was the moral thing to do. The urgency of the situation also moved some members of Congress. When Representative Smith described the arrival of French refugees in Baltimore as "a scene of distress…never before been seen in America," he marveled at the human drama of thousands of refugees arriving on the country's shores. He also, however, selectively remembered one example of displacement and persecution while disregarding others. The silences of Smith's comment — in which he evoked the calamity of French refugees fleeing a revolution borne by former slaves and free people of color in the slaveholding colony of Haiti while ignoring the experiences of enslaved people and Native Americans who were subject to marginalization amid the U.S. government's efforts to gain control over North America — speaks volumes about the contradictions that made America's stature as a place and granter of refuge in early American history so fraught. Smith, his fellow Congressmen, and the Americans who offered support to French refugees in Baltimore and elsewhere throughout the country either did not see the irony of recognizing individuals who may have owned slaves as "refugees" while dismissing the horrors of slavery and Indian removal — or that irony was illegible to them.

Elias Boudinot and other elected officials argued that Congress had a moral obligation to provide for refugees. Boudinot and others, in their reference to the General Welfare Clause of the Constitution, even went a step further when they argued that the

United States had a broader obligation to alleviate the suffering of anyone within the country's borders. In practice, however, American officials placed limits on who they imagined was eligible for relief as a refugee. The tension embedded within the politics of early American asylum is especially apparent in Congress's discussion about giving relief to a separate group of French refugees who fled to the U.S. from Cuba in 1809. After a slave rebellion resulted in the temporary emancipation of slaves in Cuba, a group of slave-owners on the island fled to the United States for refuge. Three of those individuals — Madam Chazel, Madam Burreau, and Mr. Duvalles — were "forcibly expelled" by the Cuban government and took to Kingston, Jamaica, where they hoped to find safe passage and a safe haven in New Orleans. Chazel, Burreau, and Duvalles were not alone. They traveled with the "slaves or domestics belonging to them." The three slave-owners approached Moses R. Smith, the captain of a ship called the *Joseph Ricketson*, and asked if he would be able to secure their passage to the United States. Smith hesitated. He was unsure whether it was legal for him to carry slaves into American waters and disembark them on American shores. Smith was unfamiliar with American law — but apparently he knew enough to know that the United States had passed a law in 1807 that banned the importation of slaves into the United States.[19] Smith conferred with one of his consignees and the American consul officer in Kingston about whether bringing Chaze, Burreau, Duvalles, and their slaves into the U.S. would violate the law that made the importation of slaves illegal. They advised that it was safe to give them passage. According to Smith, the American consul even said that he "was desirous to take as many such passengers as

[19] Pub. L. No. 9-22, 2 Stat. 426 (1807).

he could" to the United States himself. Only then did Smith agree to carry the French merchants and their slaves across the gulf and into New Orleans.[20]

It turned out, however, that by bringing Chaze, Bureau, Duvalles, and their slaves to the United States, Smith did violate the Act Prohibiting Importation of Slaves. American officials seized the *Joseph Ricketson* when it docked in New Orleans. The *Ricketson's* owners, Harry Caldwell and Amasa Jackson, submitted a petition to Congress asking that they consider passing a bill to "remit any penalty or forfeiture" levied against the ship and its passengers. Caldwell and Jackson's reasoning didn't just rely on Smith's pleading ignorance on his violation of the law. He believed he "was running no risk in giving an opportunity to these unfortunate refugees." Smith gave passage to Chazel, Burreau and Duvalles because he felt "impelled…by the distressing situation" of the refugees to help them get to the United States. Like Smith, Duvalle emphasized he had no intention of breaking American laws. In the deposition he submitted to Congress, he claimed that he "simply sought a shelter in New Orleans from the violence and persecution" he had recently experienced. Ford and Gireau, the consignees of the *Ricketson*, appealed to Congress in the hopes that the President would forgive the fines they accrued for the *Ricketson's* seizure through an 1809 bill called "An act for the remission of certain penalties and forfeitures, and for other purposes." But the

[20] Richard Tice, a mariner and captain of a schooner called William, of Philadelphia, made a deposition to the justice of the peace in the district court of New Orleans in which we backed up Smith's claim that Savage, the American Consul at Kingston, told him it would cause no legal trouble for Smith to carry the refugees and their slaves to the U.S. Congress, House, *Violation of the Act Prohibiting the Importation of Slaves,* 10th Cong., 2nd sess., 1809, H. Misc. Doc. 269.

President did not think the act applied to them. Caldwell and Jackson, the ship's owners, implored Congress to pass a new law to absolve the *Ricketson* of the penalties it accrued for bringing slaves across American borders.[21]

Chazel, Burreau, and Duvalles were not the only French slave-owners from Cuba who made their way to the United States as "refugees" with their slaves. Later in the month of January, while Congress deliberated about whether to release the *Joseph Ricketson* from the custody of the federal government, they considered an amendment to include the "similar cases" of Levin Jones and James Reynolds. Two individuals named Harry Caldwell and Amasa Jackson were also added to the bill. On January 18, Congress passed "An act for the relief of Harry Caldwell and Amasa Jackson, Jeremiah Reynolds and Levin Jones." Jones owned a vessel that was seized in Norfolk, VA in October 1808 because he brought slaves there and wanted relief for penalties he incurred for violating the law.[22]

These refugees who arrived in the United States felt entitled to claim relief for violating a law that was intended to stop the international trade in slaves — a law that in effect was designed to stop the forced displacement of people from their homes, even if the word "refugee" was not used in its creation. In the United States' earliest years in its history as a nation, the landscape of refuge and oppression, of slavery and freedom, was such that it was not inconceivable or perceived as contradictory for white, slave-owning

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[21] Smith used the word "refugee" several times in his short statement. It is impossible to know for certain, but it is likely that he did so deliberately in order to help convince Congress that his violation of the anti-importation law was done for a reason that he thought was just — to carry "unfortunate refugees" into the U.S., even if it meant that he brought their slaves along with them and violated the law. *Ibid.*

[22] 11th Cong., 2nd sess., *Annals of Congress* (1810), 530.

refugees to bring their slaves with them as they sought asylum in a country that had just made it a crime for white planters, merchants, and traders to import slaves. The fact that those refugees actually maintained an audience with the nation's lawmakers as they sought immunity for violating the ban on the international slave trade belies the complexities and contradictions that undergirded early American refuge. Congress considered making an exception to the law and lifting the seizure on the *Joseph Ricketson*, and thus freeing the St. Domingo refugees from the fines they incurred for bringing slaves into the United States. It is currently unclear whether or not Congress approved the bill to release the *Ricketson*. Regardless of whether they did or did not, it remains that Congress recognized French slave owners from the Caribbean as "refugees" while in the same breath discussing their slaves and neglecting to acknowledge that perhaps they, too, might qualify as refugees who deserved protection and relief from the United States government.

The United States emerged from and through two foundational forms of persecution: legalized slavery and the dispossession of Indigenous people. Some members of Congress suggested that providing for the Saint-Domingue refugees who had arrived in America was a matter of benevolence, charity, or humanity. Others suggested that the government ought to give support to anyone who needed it. Congress's consideration of relief for slave-owning refugees and not the slaves they brought with them throws into sharp relief how unlikely the early American government would be to follow through on any rhetoric or mention of universal refuge. The politics of refugee recognition in the first decades of American history reflected the early U.S. nation-state's interests in cultivating the legal, political, social, and economic privilege of able-bodied

white males of European descent, while at the same time disavowing the government's culpability in the persecution and displacement of enslaved and Indigenous peoples. But while American officials' primary failure in not giving relief to the slaves brought by French refugees may have been their failure of imagination to see non-whites as worthy refugees, Congress's first experiment in refugee law-making was more explicitly intertwined with an act of persecution that defined the evolution of the early American nation-state: westward expansion and the dispossession of Native people.

Revolutionary Refugees

The United States government passed its first refugee law in 1798. Approved one hundred and fifty years before the Displaced Persons Act allowed European refugees of World War II to enter the United States, "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.[23] American officials often 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 America's territory was not the example of unadulterated humanitarianism that officials described. America's first instance of refugee law also served the U.S. government's broader aims to assert control over land where Indigenous people contested American claims to territorial sovereignty, settle that land with white, able-bodied men of

[23] Pub. L. No. 5-26, 1 Stat. 547 (1798).

European descent, and transform America's territorial possessions into states of the union.

The revolutionary fervor that overtook the eastern seaboard of North America was not isolated to the thirteen colonies that signed the Declaration of Independence. British Parliament passed the Quebec Act in 1774. The law entrenched the presence of the British government in Quebec, and asserted British possession of the present-day American states of Ohio, Illinois, Indiana, Michigan, Wisconsin, and Minnesota. Advocates for American independence and many Canadians viewed the Quebec Act as another example of Britain trying to deepen its control of North America. Hoping to seize Canadian opposition to British empire and pull Canadians into the push 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 caused U.S. forces to flee south to the colonies. The Canadians who renounced the Crown by allying with the Continental Army faced the threat of British retribution for their disloyalty, and had little choice but to join the Americans in their retreat from Canada.[24] 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 alike to imagine for the first time who was and was not a refugee in the early American republic.[25]

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[24] Gustave Lanctot, *Canada & the American Revolution, 1774-1783*, trans. Margaret M. Cameron (Cambridge: Harvard University Press, 1967), 17-42.
[25] John Sullivan, Crown Point, to John Hancock, July 20, 1776, p. 15, *Papers of the Continental Congress* (National Archives, Microfilm Publication M247, roll 178),

Shortly after the Canadian volunteers and the U.S. Army made their way to New York, Canadians began writing to the Continental Congress about the persecution they faced by the British. One soldier, a man 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 it be financial compensation for his military service or some other form of relief, Jeunesse implored Congress to relieve himself and the other Canadians who aided the Revolution and were displaced from their homes.[26]

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 America's lawmakers succeeded. Some of the most prominent figures in early American history indicated their concern for the Canadians. Benjamin Franklin, for example, wrote to Sam Adams to communicate his support for a man he referred to as Mr. Measam. Measam, who Franklin described as a merchant of "great reputation," was forced to flee Canada because of his loyalty to America "to the great Detriment of his Affairs." Franklin recommended that Congress consider giving him some support to acknowledge his loyalty and remedy his displacement.[27]

Records of the Continental and Confederation Congress and the Constitutional Convention, Record Group 360, National Archives and Records Administration, Washington, DC.

[26] Prudent Jeunesse to United States Board of War, November 4, 1778, p. 9, *Papers of the Continental Congress* (National Archives, Microfilm Publication M247, roll 54), Records of the Continental and Confederation Congress and the Constitutional Convention, Record Group 360, National Archives and Records Administration, Washington, DC.

[27] Benjamin Franklin to John Adams, August 28, 1776, p. 23, *Papers of the Continental Congress* (National Archives, Microfilm Publication M247, roll 55), Records of the

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 supported those relief efforts. But the man who would become the first president of the United States believed that "justice and humanity" required the United States to give Canadians who "left their own country" in support of American independence more than temporary assistance. In 1783, Washington recommended to Elias Boudinot, the President of the Continental Congress, that the U.S. owed "some provision" to Canadians were who "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." Doing so, Washington suggested, would be useful for the United States as much as it would be useful for the Canadians. By giving them land, the Canadian refugees could help the U.S. settle land in territory over which the new nation only tenuously controlled.[28]

George Washington aligned America's earliest form of refugee relief with the interests of the American government. Refugees who settled on American territory would strengthen the United States by populating the country with white settlers at a moment when European colonial powers and powerful Indigenous nations threatened U.S. claims

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Continental and Confederation Congress and the Constitutional Convention, Record Group 360, National Archives and Records Administration, Washington, DC.

[28] George Washington to the President of Congress, Head Quarters, Prackness, NY, November 1, 1780, in John C. Fitzpatrick, ed., vol. 20 of *The Writings of George Washington from the Original Manuscript Sources* (Washington: U.S. Government Printing Office, 1937), 275-276; "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. [This is an Early Access document from The Papers of George Washington. It is not an authoritative final version.] (accessed March 25, 2018).

of territorial sovereignty west of the Mississippi River.[29] For early American government officials, encouraging the settlement of Anglo Americans was vital to the new nation's territorial expansion and political development. At the same time, the petitions that Jeunesse and others submitted to Congress did their own work for the United States government. When refugees wrote to Congress and requested relief, they legitimized this new nation called the United States. When refugees asked Congress for aid, they expressed their belief in the U.S. government as a benevolent and passionate government, one that not only stood in stark contrast to British colonial oppression, but that also 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.[30]

So-called "Refugees from Canada" wrote to Congress after America's declaration of independence in 1776 through the declaration of peace that ended the war in 1783. When Canadian refugees learned that the Treaty of Paris included no provisions to

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[29] On relations between American Indians and the U.S. Government in the Upper Midwest at the turn of the 19th century, see Paul Frymer, *Building an American Empire: The Era of Territorial and Political Expansion* (Princeton: Princeton University Press, 2017); John P. Bowes, *Land Too Good for Indians: Northern Indian Removal* (Norman: University of Oklahoma Press, 2016); Michael A. McDonnel, *Masters of Empire: Great Lakes Indians and the Making of America* (New York: Hill and Wang, 2015); Michael Witgen, *An Infinity of Nations: How the Native New World Shaped Early North America* (Philadelphia: University of Pennsylvania Press, 2011).

[30] 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).

protect them from British persecution, they realized that returning to their homes was an increasingly perilous proposition. 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 U.S. government to compensate the destitution they suffered because they risked their lives and property for the cause of American independence.[31]

Congress responded favorably to their request. On April 21, 1783, American lawmakers issued a resolution in which they 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."[32] 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 because they supported the Revolution. Eddy appealed to the "justice and humanity" of Congress and asked that they compensate Nova Scotian refugees for their "singular sufferings."[33] In response, on April 13, 1785, Congress passed a resolution that promised land to Nova

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[31] Memorial of Joseph Binden, John D. Mercier, and Benjamin Thompson, submitted to Congress, April 18, 1783, p. 134-135, *Papers of the Continental Congress* (National Archives, Microfilm Publication M247, roll 49), Records of the Continental and Confederation Congress and the Constitutional Convention, Record Group 360, National Archives and Records Administration, Washington, DC.

[32] U.S. Congress, *Resolves re: Canadian Refugees*, April 23, 1783, p. 67, *Papers of the Continental Congress* (National Archives, Microfilm Publication M247, roll 41), Records of the Continental and Confederation Congress and the Constitutional Convention, Record Group 360, National Archives and Records Administration, Washington, DC.

[33] Inhabitants of Nova Scotia, Boston, to Congress, February 25, 1784, p. 412-415, *Papers of the Continental Congress* (National Archives, Microfilm Publication M247, roll 53), Records of the Continental and Confederation Congress and the Constitutional Convention, Record Group 360, National Archives and Records Administration, Washington, DC.

Scotian refugees. But lawmakers did not pledge land in any part of the country to any and all Nova Scotian refugees. In particular, they approved of giving land to Nova Scotian refugees who were "disposed to live in the western country."[34]

That the U.S. government singled out "the western country" in its resolution to give land to Nova Scotian refugees 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 peace 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. Actually claiming control and wielding authority over the land, however, was another matter. At the turn of the eighteenth century, the land that the United States recognizes today as the Upper Midwest was not the vast, empty landscape that early Americans often described. It more closely resembled "an infinity of nations," where many Indigenous peoples had their own governments, their own laws, their own customs, and, crucially, their own claims to sovereignty over their ancestral homelands — claims that competed with and threatened the U.S. government's control of the west.[35]

Congress tried to achieve greater control over the land it gained from the British via 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

[34] U.S. Congress, *Journal of the United States in Congress Assembled*, Congress of the Confederation, April 13, 1785.
[35] Witgen, *An Infinity of Nations*.

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 easily identifiable parcels of land that could be granted to prospective settlers. They also established guidelines that described the minimum number of white "free men" required for each area in the territory to establish a government and achieve statehood.[36]

Refugee resettlement was part of the strategy that the ordinances laid out for transforming the Northwest Territory into American 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.[37] 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

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[36] U.S. 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/yctasyep (accessed March 25, 2018); U.S. 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, D.C., 1904-37), https://tinyurl.com/ycyx8njo, 28: 380-381 (accessed March 25, 2018); U.S. 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, D.C., 1904-37), https://tinyurl.com/ka83ew8, 32: 334-343 (accessed March 25, 2018). The Northwest Ordinance also said that "The utmost good faith shall always be observed towards the Indians, their lands and property shall never be taken from them without their consent; and in their property, rights and liberty, they never shall be invaded or disturbed, unless in just and lawful wars authorised (sic) by Congress; but laws founded in justice and humanity shall from time to time be made, for preventing wrongs being done to them, and for preserving peace and friendship with them."

[37] U.S. Congress, *An Ordinance for ascertaining the mode of disposing of Lands in the Western Territory*.

did not always know or willingly disregarded land boundaries.[38] Establishing refugee lands within the Northwest Territory was one way to specifically define a particular tract of land, settle it, and achieve the minimum population necessary for statehood in a part of the country where the U.S. government experienced great difficulty in asserting its control. Together, Congress's resolutions for Canadian and Nova Scotian refugees and its provision for those refugees in the Land Ordinance of 1785 cemented the U.S. government's commitment to westward expansion through refugee relief. Even though the Land Ordinance of 1785 formally set aside land for refugees, it would take nearly fifteen years before Congress was actually able to move forward with its refugee resettlement plans.

The members of the Wyandot, Shawnee, Lenape, Miami, and several other Indian tribes who formed the Western Confederacy resisted U.S. claims of territorial sovereignty in the Northwest Territory.[39] From the mid-1780s through the 1790s, the United States waged war with the Western Confederacy. 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

[38] Peter S. Onuf, *Statehood and Union: A History of the Northwest Ordinance* (Bloomington: Indiana University Press, 1987), 89.
[39] In addition to resistance from the Western Confederacy, the U.S. government faced another challenge in the state of Connecticut's claim to land in Ohio that they had inherited from King Charles II in the years before the Revolution. See Carl Wittke, "Canadian Refugees in the American Revolution," *Canadian Historical Review* 3, no. 4 (1922): 325-326.

divided the Ohio Territory into Native American land on the northern side of the line and reserved land in the south for settlement by Anglo Americans.[40]

The Treaty of Greenville paved the way for 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 the 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 100 to 2,000 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 49 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.[41] Although details regarding how the committee distinguished

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[40] Fred Anderson and Andrew Cayton, *The Dominion of War: Empire and Liberty in North America* (New York: Penguin, 2005), 194-195.

[41] 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 actually increased to 160 and 2,400 acres. 5 received grants of 2,400 acres each; 4 received grants of 1,280 acres; 15 received 960; 14 received 640; 9 received 320; and just one received 160 acres. Congress passed additional laws for the relief of Canadian and Nova Scotian refugees in 1803, 1804, 1810, and 1812. Congress also considered reviving the bill in 1822 for those who were "driven" from their homes during the Revolution but never benefitted from the refugee land bill because they learned of its existence too long after the bill was last renewed in 1810. The

between which refugees were more deserving of relief than others are sparse, they are consistent. Of the 79 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. White, male, able-bodied, loyal to the nation, and eligible to own land, they were people who, for all intents and purposes, "belonged" in American society. They also would have counted toward the minimum population of 60,000 required for Ohio to achieve statehood according to the Northwest Ordinance of 1787.[42]

America's first refugee relief law paralleled Ohio's push for statehood. 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 know the degree to which settlement of the refugee lands helped bring about Ohio statehood because it is difficult to know exactly how many of the Canadian and Nova Scotian refugees who received land in the Ohio Territory actually went and settled there.[43] Still, it is clear that the U.S. government's first

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resolution did not receive enough votes to move forward as a bill, even after Congressman Walworth referred specifically to a man in his 70s who was "pining in want" because of his poverty. 17th Cong., 2nd sess., *Annals of Congress* (December 27, 1822).

[42] Pub. L. No. 6-5, 2 Stat. 100 (1801); Welke, *Law and the Borders of Belonging,* 43.

[43] Several historians have claimed it is likely that many of the refugees sold their land to speculators. However many settled, enough of the land remained untouched that Congress passed a law in 1816 that opened up the unsettled refugee lands for sale to the wider public. See Pub. L. No. 14-153, 3 Stat. 326 (1816). See Wittke, "Canadian Refugees in the American Revolution," 332 and Allan Seymour Everest, *Moses Hazen and the Canadian Refugees in the American Revolution* (Syracuse: Syracuse University Press, 1976), 135. For more on the history of Ohio statehood, see R. Douglas Hurt, *The Ohio Frontier: Crucible of the Old Northwest* (Bloomington: Indiana University Press, 1998).

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 presence of Native people in the Northwest Territory, and their resistance to the United States government's claim to the land, drove U.S. officials to try and displace Native Americans to make way for Anglo American settlement. After fifteen years of inactivity, refugee relief for Canadian and Nova Scotian refugees swiftly moved forward once the Treaty of Greenville required the tribes of the Western Confederacy to cede their land to the United States. The Treaty effectively cleared the way for the settlement of those lands by those whom the U.S. government deemed worthy of living in the new nation, at the cost of those whom they wished to exclude from it. In other words, 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, a vision that enabled the permanent settlement of Anglo Americans and while removing Native Americans to the westernmost edges of the country's expanding territory.

The U.S. government's decision to acknowledge the displacement and persecution of Canadians and Nova Scotians by calling them "refugees" and giving them land did more than offer refuge to some while denying refuge to others. By allowing Canadian and Nova Scotian refugees to settle on Indigenous land, America's earliest form of refugee relief was complicit with the dispossession of Indigenous people. Entangled with the land ordinances of the 1780s and treaties that wrested land from Native people, refugee relief created an opportunity for the U.S. government to claim its authority over

land by deciding who did and did not get to reside upon it. By recognizing Canadians and Nova Scotians as refugees and giving some credence to claims that the U.S. was a refuge for oppressed and persecuted people, refugee relief obscured the early U.S. government's state-sanctioned persecution of Native Americans. In 1783, George Washington said that giving land to "Refugees of Canada" was a matter of "humanity and justice." But in practice, America's foundational example of refugee relief facilitated westward expansion, the dispossession of Native people, and securing the place of able-bodied white males of European descent as the primary benefactors of American refuge.[44]

Nearly thirty years after the Thirteen Colonies won their independence from Great Britain, the War of 1812 brought the United States into another open conflict with their former colonizer. When the Treaty of Ghent formally ended the war in 1814, American officials once again found themselves deciding how best to relieve people whom they identified as "refugees" from a conflict that tested the loyalty of those residing in the borderlands of the American republic.[45]

On January 24, 1816, members of Congress reported on a memorial they had received from Abraham Markle and Gideon Frisbee, two residents of Upper Canada. Markle and Frisbee were originally from the United States. When war arrived on "their

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[44] As Lorenzo Veracini suggests, displacing Indigenous people from their homelands literally and figuratively distances Native Americans' claims to indigeneity to a particular place, and in so doing creates the conditions that make it possible for Americans to claim themselves as "native" to North America. See Veracini, *Settler Colonialism*, 3-4, 14, 35.
[45] On the War of 1812 as a borderlands conflict that helped define the terms of national identity and belonging in nineteenth century North America, see Alan Taylor, *The Civil War of 1812: American Citizens, British Subjects, Irish Rebels, & Indian Allies* (New York: Random House, 2010).

frontier" in their adopted British homeland, Markle and Frisbee threw their support behind the United States. Consequently, the British government seized their property. Markle and Frisbee's support was not immaterial. Congressman Throop, who was on the committee that reviewed their memorial, noted that their military service to the United States contributed to the American Army's success during the Niagara campaign of 1814. While the United States gained their service in arms, their knowledge of Upper Canada's terrain, and their connections to other Canadians who sympathized with the American cause, Markle and Frisbee — along with other residents of Upper Canada who broke rank with the British to support the United States — "were reduced from opulence, and all of them to want." Congressman Enos Throop of New York believed that Markle, Frisbee, and others in their situation had "a strong claim on the equity of this Government," and recommended that Congress draft "a bill for their relief."[46]

Markle and Frisbee's story was not unlike those of the Canadian and Nova Scotian refugees to whom American officials had, several years prior, promised land in the American west. And for a moment, it seemed that Congress would follow suit and create a law for refugees of the War of 1812 that continued in the tradition of the country's first series of refugee legislation. On the same day that they discussed Markle and Frisbee's petition, members of Congress presented a bill for Canadian refugees who suffered for American liberty in the War of 1812. Titled "For the relief of certain Canadian Refugees, who joined the American army, during the late war between the

[46] U.S. Congress, House, Select Committee on the Petition of Canadian Volunteers and Refugees, *Indemnity to the Refugees from Canada*, January 24, 1816, 14th Cong., 1st sess., Claims Vol. 1, p. 457, Pub. No. 284. Reports on Private Bill, American States Papers, January 24, 1816.

United States and Great Britain," the bill advised the Secretary of State to create a two-member commission to determine the "losses of real estate" incurred by residents of Upper Canada who lost their property because they sided with the United States during the war. If the commissioners could substantiate their claims, then the commissioner of the land-office would issue the Canadian refugees a certificate of payment that Canadian refugees might use to purchase land in Indiana and Illinois, territories that lay further west from the Ohio land that Congress previously set aside for Canadian and Nova Scotian refugees.[47]

Several lawmakers participated in a spirited debate about the bill for Canadian refugees in the weeks that followed. The debate hinged on the line between loyalty to nation and treason. According to Congressman John Hulbert of Massachusetts, the Canadians who sided with the United States in the War of 1812 were guilty of treason. They lived in British territory. They therefore ought to have remained loyal to the British at the outbreak of war. Giving relief to Canadian refugees, he argued, would be to "embrace the traitor, and give him a rich reward for his crime." If it was the policy of the United States government to punish its own citizens for treasonous actions, Hulbert believed it was a contradiction to give relief to individuals who effectively did the same thing, but whose loyalty happened to fall with the Americans. What's more, Hulbert questioned why Canadian refugees ought to have a special claim on the government's "generosity, or your justice," when thousands of "good citizens" likewise suffered but had yet to receive any formal compensation or relief. According to Hulbert, giving land

[47] 14th Cong., 1st sess., *Annals of Congress* (January 24, 1816).

to refugees in Canada, specifically those who once lived in the United States and left to pursue opportunity in their neighbor of British empire to the north, should not be given any form of preference to those "who have constantly remained within your territory, been undeviatingly faithful to your government, and suffered in consequence of the war, the severest losses."[48]

Congressman Thomas Robertson from Louisiana went a step further. He proposed an amendment to the bill that would have included all American citizens who "lost property by the ravages of the enemy." When the amendment was rejected, Robertson echoed Hulbert's sentiment that Congress was unjustly giving preference to Canadian refugees over American citizens: "Let it not be said that these traitors, these refugees, are faring sumptuously at the national table, while your own citizens, who have constantly adhered to your government, are left, like dogs, to pick up the crumbs that fall from the same table." Passing a law for Canadian refugees at the expense of American citizens would be "a foul stain, an indelible blot, on the annals of American legislation," Robertson argued.[49]

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[48] In particular, Hulbert pointed to American citizens living in Lewiston and Buffalo, NY, who pleaded for assistance to help them recover from devastation they suffered during the war. In that instance, Hulbert said Congress only told them they "pitied" those Americans, but that "justice did not require, and policy forbade" giving them relief. On the ill-informed lessons about treason this bill might impart to American citizens, Hulbert said further: "You teach them that fidelity is no virtue, and that treason is no crime. What must they think of the political morality of that Government, which, in one law denounces against his own citizens the awful punishment of death, for desertion, and in another law, in force at the same time, gives a high reward to the subjects of a foreign nation for having been guilty of the same crime?" 14th Cong., 1st sess., *Annals of Congress* (February 16, 1816).

[49] *Ibid.*

Several days later, Congressman Barbour of Virginia suggested a revision to the bill that took Canadian refugee relief in an altogether different direction. Rather than award land to Canadian refugees based on how much property they lost during the war, Barbour suggested "an entire substitute to the bill" that gave land to Canadian volunteers who fought alongside the American military in direct proportion to their rank.[50] Congress passed a version of the bill on March 5, 1816. "An Act granting bounties in land and extra pay to certain Canadian Volunteers" removed any discussion of "refugees" from Congress's relief plans. Rather, only individuals who were American citizens, moved to Canada prior to the start of the War of 1812, and then took up arms on America's behalf during the war could receive land in the Indiana territory. At most, the bill entitled colonels to 960 acres of land, and at least, non-commissioned officers, musicians, and privates were entitled to 320 acres.[51]

Although Congress struck out any mention of refugees from the bill that was passed for Canadian volunteers, several congressmen voiced their dissatisfaction with the

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[50] 14th Cong., 1st sess., *Annals of Congress* (February 19, 1816).

[51] Pub. L. No. 14-25, 3 Stat. 256 (1816); In between colonels and non-commissioned officers, majors were eligible for 800 acres of land; captains for 640 acres; and "subaltern officers" to 480 acres. Congress may have changed the language of the law so that it accommodated Canadian volunteers rather than Canadian refugees. Nevertheless, Canadian refugees continued to submit individual claims to Congress through the 1830s. See U.S. Congress, House, Committee on Private Land Claims, *Application for land on account of services of a Canadian refugee*, February 15, 1830, 21st Cong., 1st sess., 1830, Public Lands, Vol. 6, p. 146-147, Pub. No. 807; U.S. Congress, House, Committee on Private Land Claims, *On granting land to a Canadian refugee*, March 3, 1830, 21st Cong., 1st sess., 1830, Public Lands Vol. 6, p. 156, Pub. No. 824; U.S. Congress, House, Committee on Private Land Claims, *On the claim of a Canadian refugee to bounty land*, February 8, 1831, 21st Cong., 2nd sess., 1831, Public Lands, Vol. 6, p. 266, Pub. No. 893; U.S. Congress, House, Committee on Private Land Claims, *On the claim for bounty land for a Canadian refugee*, March 14, 1834, 23rd Cong., 1st sess., 1834, Public Lands, Vol. 6, p. 955, Pub. No. 1208.

law's shift away from relief for refugees. Congressman John Alexander of Ohio, for example, believed that giving land to Canadian refugees was not just the right thing to do, but the American thing to do. "Humanity and every noble principle of our nature," he said, "cry aloud in their favor."[52] Lawmakers also cited precedent in refugee lawmaking as a reason why Canadian refugees of the War of 1812 ought to receive land in the American west. Congressman Throop specifically pointed to the country's first refugee law of 1798, which set aside land in Ohio for Canadian and Nova Scotian refugees who abandoned the British to fight for America during "the glorious cause of the American Revolution." The idea that the federal government should give land to Canadian refugees of the War of 1812 because it had done so after the American Revolution was not an uncommon refrain. When Congress considered the petitions of Samuel Thompson and John Dailey, who were forced to abandon their homes in Upper Canada because their allegiance to the United States caused them to fear persecution by the British, Congressman Spencer asserted that giving them relief would fall in line with the government's treatment of refugees since America's founding:

> The policy of the United States in remunerating refugees from the enemy for their losses began with the Government, and has continued with its progress. The promises made in the revolutionary war to the refugees from Nova Scotia and from Canada have been fulfilled by repeated acts of Congress since that period; and since the late war lands have been given to Canadian volunteers who were born Americans.[53]

Members of Congress invoked the legislative memory of giving land to Canadian and Nova Scotian refugees several times in the decades that followed the first instances of

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[52] 14th Cong., 1st sess., *Annals of Congress* (February 20, 1816), 1033.
[53] 4th Cong., 1st sess., *Annals of Congress* (February 16, 1816), 1000; 15th Cong., 1st sess., *Annals of Congress* (April 6, 1818), 608.

refugee law-making in American history. In 1822, when Congressman Reuben Walworth of New York reminded his colleagues that there still existed individuals who sacrificed "immense property" because they were "driven" from their homes during the American Revolution, he recalled the country's first refugee law of 1798.[54] When Congress debated whether to give land in Arkansas territory to New York's influential Livingston family, they proposed extending "the provisions of the several acts of Congress in relation to refugees from Canada and Nova Scotia."[55] When the Committee on Private Land Claims considered the case of Dr. Eliakim Crosby — who lost more than $10,000 worth of property when he abandoned his home in Upper Canada to support the Americans during the War of 1812 — Congressman John Sterigere of Pennsylvania referred to his "sacrifices, sufferings, and services," which was the same phrasing Congress used when it first passed refugee law for Canadian and Nova Scotian refugees in 1798.[56] Despite remembering the laws Congress passed for Canadian and Nova Scotian refugees and suggesting that it was a matter of "humanity" and "justice" to give land to Canadian refugees, Congress rebranded the War of 1812 refugee bill so that it

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[54] 17th Cong., 2nd sess., *Annals of Congress* (December 27, 1822), 462-463. Walworth in fact proposed to revive the last version of the Canadian and Nova Scotian refugee act, passed in 1810, but his proposal did not receive enough votes to move forward. Representative Burwell Bassett of Virginia suggested that if there were only a few impoverished refugees who needed assistance that Congress address them with private acts of relief rather than a general law.

[55] U.S. Congress, House, Committee on Revolutionary Claims, *A Bill For the relief of the heirs at law of Richard Livingston, a Canadian Refugee,* February 15, 1827, 19th Cong., 2nd sess., 1827.

[56] U.S. Congress, House, Committee on Private Land Claims, *On granting land to a Canadian refugee,* March 3, 1830, 21st Cong., 1st sess., 1830, Public Lands, Vol. 6, p. 156, Pub. No. 824.

became a relief measure for Canadian "volunteers." Upon doing so, they effectively wrote refugees out of the bill entirely.

Upon passing its first resolution for Canadian refugees in 1783 and turning that resolution to law in 1798, American lawmakers made it one of the earliest acts of the new United States government to take action on behalf of displaced and persecuted people whom they identified as "refugees." Like any law, Congress's first experiment in refugee regulation had greater implications than the explicit language it included. Giving land to Canadian and Nova Scotian refugees of the American Revolution may have been a reward for the "services, sacrifices, and sufferings" of a group of people who staked their loyalty to American independence and in so doing made themselves vulnerable to expulsion from their homes and persecution by the British. But the country's first refugee bill also constituted an effort to possess Indian land. It set in motion a preferential system for the treatment of refugees that acknowledged the claims of able-bodied, property owning white men of European descent while at the same time ignoring the state-sanctioned persecution of Indigenous and enslaved peoples in North America. It enhanced the authority of the early American state by extending its power to govern the fate of vulnerable people, some of whom could claim the state's protection, some of whom could not. America's earliest example of refugee lawmaking was thus a chapter in the development of the federal government's reach into the daily lives of North Americans. The very first refugee law in the United States marked particular people as constituents of the state by recognizing them as refugees and inviting them to settle in the Northwest Territory. In doing so, it tied refugee relief to the defining of North America itself.

Calling someone a “refugee” in early American history was a distinction of no small consequence. In the nineteenth century, while Indigenous people faced in the United States 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. While the legalization 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 occupied Canada to support the American Revolution, however, American officials *did* call them refugees. Unlike American Indians and America’s slaves, who from the start of American history were effectively refugees in experience if not in legal status, Canadian refugees were given access to land; they were given access to wealth; and they had the attention of government officials who were sympathetic to their concerns.

The contradictions that defined early American refuge only deepened in the decades after Congress first called Canadians and Nova Scotians "refugees" and rewarded them with land in America's expanding west. In 1830, President Andrew Jackson passed the Indian Removal Act, weaving the removal and dispossession of Native people into the law of the land. While the dispossession of Indigenous people occurred in the shadow of relief for Canadian and Nova Scotian refugees, so, too, did the continued legalization of slavery. The U.S. government outlawed the importation of African Slaves in 1807. Ending the international slave trade, however, did not end slavery in the United States. The number of people born into slavery on American soil exponentially increased the country's population of slaves, especially in the South. Slavery grew more deeply

entrenched in the United States when Congress passed the Fugitive Slave Act of 1850. Effectively an anti-refugee law, the Fugitive Slave Act required that state and federal officials cooperate in returning runaway slaves who fled their persecution under slavery.[57]

The Indian Removal Act and the Fugitive Slave Act reflect the U.S. government's definition of refugees in the nineteenth century. America's founding fathers called Canadians and Nova Scotians refugees because they fit well into popular conceptions about who "belonged" in American society. They passed laws that reserved large amounts of land for those refugees to resettle in the west and do the work of expanding America's territorial footprint and its authority over the land. In contrast, the country's earliest political officials did not pass laws that called American Indians and African Americans "refugees." Instead, they passed laws that deepened their dispossession and perpetuated their persecution.

When Congress was divided over whether or not to give relief to Canadian refugees of the War of 1812, meanwhile, their decision did not hinge on whether or not American lawmakers imagined that Canadians belonged in America or whether they were fit for citizenship. They clearly had, or else they would not have approved the granting of thousands of acres of land to Canadian and Nova Scotian refugees several years prior. The primary source of dissension that some lawmakers harbored about Canadians once more being invited to settle in the United States was the fact that if

[57] In today's terms, the Fugitive Slave Act would be tantamount to a violation of non-refoulement laws that make it illegal to return refugees to a place where they their lives would be endangered.

American citizens were not being compensated for their losses, than neither should Canadian refugees. If giving land to refugees was about what protections and entitlements the state owed to refugees, it was a distinction that implicated what protections and entitlements the state owed to citizens, as well.

The political uses of the country's foundational examples of refugee regulation revolved primarily around lawmakers' use of refugee regulation to protect citizenship as the domain of white men of European descent whose political affiliations hinged upon loyalty to the new American nation. As conceptions of American citizenship gradually became more inclusive over the course of the nineteenth century, through increased opposition to the institution of slavery as well as to a shift in federal Indian policy that prioritized the assimilation of Indigenous people over removal, the way that American officials imagined who was a refugee and what refuge entailed likewise became more inclusive. The ways officials used refugee policy to achieve the broader interests of the U.S. government also evolved alongside the state's official roster of people whom it identified as "refugees."

During the Civil War, officials recognized African Americans and Native Americans as refugees for the first time. Yet the relief they received was vastly inferior to that which Canadian refugees received. What's more, as the following two chapters of this dissertation will show, inclusion in programs for refugee relief subjected African Americans and Native Americans to continued marginalization at the hands of the U.S. government.

Part II

"Half the World is Refugeeing:" Refugee Regulation and the Nation-State in Crisis

On April 4, 1865, in the waning days of the United States Civil War, a woman from Georgia named Eliza Frances Andrews reflected in her journal on how war had affected the lives of southerners. "Half the world is refugeeing," she claimed, observing how four years of violence caused the displacement of untold numbers of Confederate sympathizers from their homes. Andrews likely had only her fellow white southerners in mind when she remarked on the magnitude of people who were displaced during the war. But they were hardly alone in their predicament. Southerners, northerners, runaway and emancipated slaves, and Native Americans all fled toward safety across the divided United States. The ravages of the U.S. Civil War, slavery's slow-to-loose grip on the south, and simmering tensions between and among Native nations comingled to turn the United States during the 1860s, according to Frederick A.P. Barnard, a self-identified refugee who penned a letter to President Abraham Lincoln in 1862, into "one vast camp" — a place where refugees abounded and any semblance of routine, everyday life was lost.[1]

Until the Civil War, the United States government pursued policies that recognized white Anglo American men as "refugees" who could resettle in the country's

[1] Eliza Frances Andrews, *The War-Time Journal of a Georgia Girl, 1864-1865* (New York: D. Appleton and Company, 1908), 133, quoted in Mary Elizabeth Massey, *Refugee Life in the Confederacy* (Baton Rouge: Louisiana State University Press, 1964; reprint, with a new introduction by George C. Rable, Baton Rouge: Louisiana State University Press, 2001), 28; Frederick A.P. Barnard, "Letter to the President of the United States, by a refugee" (New York: C.S. Westcott & Co., 1863), 9. Accessed at non-circulating General Collections, Newberry Library.

western territory and contribute to the nation-state's goal of expanding America's territorial footprint and its authority over the land, people, and resources within its bounds. Meanwhile, the institution of slavery — along with the laws and court decisions that deepened its arrest of any sense of racial equality in the nation — and federal Indian policies that centered on separating Native people from white Americans through removal and relocation to reservations, made it a characteristic trait of early American refugee regulation to give refuge to some, while actively oppressing others without acknowledging them as "refugees" who had claims to relief. Refugee regulation thus helped lay the foundation for the rise of an American nation-state that reflected the interests of white settlers and slave-owners.

The American Civil War utterly upended any illusion of a unified U.S. nation-state. Americans had for decades debated whether the United States of America ought to resemble a loosely-knit confederation of individual states who held primary authority over their residents, or one nation of people under a centralized, federal government. The institution of slavery lay at the crux of that debate, as it lay at the crux of the southern states' decision to secede from the Union, form the Confederate States of America, and throw the United States into a war that would determine its future existence as a nation.[2]

The outbreak of war across North America displaced all manner of Americans. With war also emerged the possibility that American officials might broaden their conception of who they might recognize as "refugees." In particular, the gradual evolution of America's relationship with Native people and slaves before, during, and

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[2] James H. Kettner, *The Development of American Citizenship, 1608-1870* (Chapel Hill: University of North Carolina Press, 1978), 340.

after the war portended a significant shift in refugee regulation. The U.S. government's continued acquisition of land in the southwestern and western reaches of North America, along with the expansion of the railroad and its hastening of travel through the country, convinced American officials that they ought to use reservations not to isolate Native Americans from white Americans, but to treat them as places where Indian Affairs officials might foster their assimilation. During the war, meanwhile, President Lincoln's delivery of the Emancipation Proclamation promised freedom to America's slaves. Nevertheless, no one yet knew whether emancipation would produce a form of citizenship for African Americans that was equal with white Americans, and whether the federal government would allow any room for members of Native nations to exercise their sovereignty and practice their customary ways of life while trying to affect their assimilation. Lincoln called for emancipation. But his announcement of freedom for slaves was limited only to the southern states rebelling against the Union. It was less a plea for equality than a war-time measure that benefited the Union Army by creating a whole new class of recruits that might aid the North's war effort, and weakened the Confederacy by eliminating its labor power and diminishing its ability to wage war. American Indian policy began to shift from removal, but American officials nevertheless pursued the dispossession of Native Americans through a strategy of education and assimilation that sought to "Kill the Indian…and save the man." The end of slavery and the decline of Indian removal signaled a shift from the ways the U.S. government pursued the elimination of Native Americans and slaves in the nation's early history. But the

changing relationship of African Americans and Native Americans with the United States nevertheless left them in a subordinated position.[3]

American refugee regulation underwent changes during the Civil War that paralleled these broader developments in the relationship between the United States and the racially marginalized and colonized peoples of North America. For the first time, American officials identified emancipated slaves and Native Americans as "refugees" during the Civil War. The forms of relief that American officials offered them, however, paled in comparison to the grants of land that Congress gave to Canadian and Nova Scotian refugees after the American Revolution, when the U.S. government was cash-strapped and eager to populate the west with white settlers. While refugee slaves received temporary asylum in Union-controlled refugee camps, the United States federal government entered into a treaty with "loyal Creek refugees" that promised them economic compensation but also forced them to cede half their land. By the middle of the nineteenth century, refugee regulation may have evolved to include groups of North Americans who had hitherto been unrecognizable to the United States government as "refugees." Rather than encourage their equality with white American citizens, however, American officials used refugee regulation to continue the subordination of people whose integration in American society remained mired by inequality. With the United States on the brink of collapse, American officials' recognition of African Americans and Native

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[3] David E. Wilkins and Heidi Kiiwetinepinesiik Stark, *American Indian Politics and the American Political System* 3rd ed., (Lanham, MD: Rowman & Littlefield, 2011), 126; Captain Richard H. Pratt, "The Advantages of Mingling Indians with Whites," in *Americanizing the American Indians: Writings by the "Friends of the Indian," 1880-1900*, 260-271, ed. Francis Paul Prucha (Cambridge: Harvard University Press, 1973).

Americans as refugees —particularly those who demonstrated their loyalty to the Union — buttressed the fragile U.S. nation-state by using refugee regulation to wield authority over marginalized people, and by continuing the nation-state's long-standing commitment to marginalizing African Americans and Native Americans by seizing their labor and their land.

Chapter Two

"A Right to be Lifted Up by a Nation's Wonderfully Developing Strength:" Slavery, Emancipation, and the Shaping of Refugee Regulation through the U.S. Civil War

On September 22, 1862, President Abraham Lincoln promised freedom to America's slaves. In his preliminary version of the Emancipation Proclamation, Lincoln declared that by 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 U.S. 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.[1]

Lincoln's call for emancipation was hardly a call for racial equality. It was no coincidence that the first general appeal to freedom for America's slaves came from the executive office during wartime. Acting in his capacity as commander-in-chief of a nation at war, 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 himself, whose foremost priority lay with preserving the union, was unclear on the best way to resolve the issue of slavery in the United States. Before the war, he was an ardent advocate for freed African Americans to

[1] Emancipation Proclamation, January 1, 1863, Presidential Proclamations, 1791-1991, Record Group 11, General Records of the United States Government, National Archives, https://www.archives.gov/historical-docs/emancipation-proclamation (accessed March 25, 2018).

leave the United States and resettle abroad, rather than integrate into American society. Even after issuing the Emancipation Proclamation, Lincoln momentarily supported plans that would have sent freed African Americans to the British colonies in Central America. Americans at the time — including Lincoln himself — did not know whether wartime emancipation would or even should 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. [2]

The Emancipation Proclamation did have one clear, immediate effect. The prospect of freedom inspired hundreds of thousands of enslaved people to flee the South and seek refuge across Union lines. On December 26, 1864, nearly two years after the Emancipation Proclamation went into effect, U.S. Senators Thomas Hood and S.W. Bostwick submitted a report to Secretary of War Edwin M. Stanton in which they discussed the sudden migrations across the divided nation of African Americans whom they identified as "refugees." In their capacity as the "Special Commissioners of Investigation of Colored Refugees in Kentucky, Tennessee, and Alabama," Hood and

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[2] 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*, 11-25, ed. David W. Blight and Jim Downs (Athens: University of Georgia Press, 2017); 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,* 151-169, ed. William A. Blair and Karen Fisher Younger (Chapel Hill: University of North Carolina Press, 2009).

Bostwick outlined the conditions experienced by refugee slaves who made their way into Union custody during the Civil War. In particular, they focused on camps that had been established in Nashville, Clarksville, and Gallatin, Tennessee; in Louisville, Lexington and Camp Nelson, in Kentucky; and Huntsville, in Alabama. Hood and Bostwick noted that the camp in Nashville was established on February 4, 1864 as a "camp for the reception of contrabands." In their report, however, Hood and Bostwick used the term "colored refugee camp" to describe the facilities at Nashville and the other camps they visited. The two senators explained that refugee camps in Alabama, Kentucky, and Tennessee were not used merely as safe havens for displaced freedmen, freedwomen, and runaway slaves. According to Hood and Bostwick, the U.S. government's establishment of refugee camps for African Americans constituted an "experiment" in state philanthropy "for which there has never before been either occasion or precedent."[3]

Hood and Bostwick's description of the Union Army's reception of African American refugees as experimental could not have been more apt. Before emancipation, slaves who fled their bondage were generally described by the U.S. government as "fugitives" and "runaways." In the early years of the war, with slavery still in effect and enslaved African Americans still widely viewed as property, slaves who fled their owners

[3] Historian Chandra Manning suggests that over 400,000 slaves fled to the Union by the end of the war. Manning, *Troubled Refuge*, 34. U.S. 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. Read, ordered to lie on the table and be printed*, February 27, 1865, 38th Cong., 2nd sess., 1865, S. Exec. Doc 28, serial 1209, 19 [cited hereafter as *Letter of the Secretary of War…a copy of the report of Hood and Bostwick*].

were seen as "contraband." It was only once the Emancipation Proclamation promised freedom to slaves — and thus recognized them as people, not property — in the southern states that lawmakers like Hood and Bostwick, along with Union Army officers and other government officials, began calling former slaves "refugees."[4]

Hood and Bostwick were not the only ones who used the terms "refugee" and "refugee camp." William F. Mitchell, a general agent of the Pennsylvania Freedmen's Relief Association, for example, gave testimony to Hood and Bostwick in which he used the term "colored refugee camp" to describe the places where African Americans sought shelter during the war, as did two officials at the refugee camp in Nashville, a commissary and a surgeon named Justin Romayne. Still, officials who discussed refugee slaves interchangeably used the terms "refugee," "contraband," and even "inmate" to describe those seeking shelter across Union lines. This inconsistent terminology reflected the murkiness of emancipation: whether or not the Emancipation Proclamation had legally freed slaves was an open question, and the Proclamation did not apply to slaves in the border states of Missouri, Kentucky, Maryland, and Delaware. The fact that refugee

[4] A search for the term "colored refugee" in the digital database *ProQuest Congressional* from 1789, the dates of the database's earliest records, to 1900, returns 84 results. Only one of those results — a congressman expressing his support of any measure that would allow "colored refugees" to enlist in the Union Army — predates the Emancipation Proclamation, by several months. A search for the terms "refugee camp" and "contraband camp" during the same time period, meanwhile, return 13 and 24 results, respectively. Although a search through Congressional documents is not an exhaustive accounting of the terms used to describe emancipated refugees during the Civil War — a deeper dive into the multi-volume edited collection *Freedom: A Documentary History of Emancipation, 1861-1867,* for example, would offer additional context — it nonetheless offers a starting point from which to consider the variation of these terms and their significance. Senator Grimes, remarks on the surrender of slaves by the Army, April 14, 1862, 37th Cong, 2nd sess., *Congressional Globe,* 1652.

slaves were occasionally called "contrabands" and "inmates," however, also reflected the U.S. government's uncertain commitment to protecting former slaves. While Hood and Bostwick noted that some "colored refugee camps" offered suitable shelter and provisions to refugees encamped there, others, like the camp in Nashville, TN — where 550 men, 557 women, and 567 children stayed as "refugees" from April 4 to July 31, 1864 — offered only crowded living conditions in "tents…of very inferior quality," with inadequate supplies of necessary resources like clothing. Conditions in Union camps where emancipated refugees sought shelter varied wildly according to a number of factors, including their location — whether a camp was located near fresh water, for example, or a camp's proximity to resources refugees might use to build shelter or grow food — had a direct correlation with the quality of camp life. So, too, did the views of Union officials whom refugees encountered in camps, whose attitudes about race, slavery, and equality informed whether they treated former slaves with compassion or cruelty. Hood and Bostwick noted that the U.S. government had failed to pay many "colored refugees" who labored on behalf of the Union Army, and reported that some military officials even "committed the crime" of returning some refugees to their owners. Emancipation encouraged officials to recognize African Americans as refugees. However, the lack of consistency in the terminology used to describe emancipated refugees, the poor conditions they faced in some camps, and their mistreatment by American officials all signaled how the U.S. government's recognition of African Americans as "refugees," while offering hope to former slaves in their transition to

freedom, amounted to a trial in the federal protection of black Americans, and an experiment that remained closely tied to the nation's legacy of racial inequality.[5]

Indeed, the experimental nature of the black refugee experience during the Civil War resonated, as well, within the broader context of emancipation and reconstruction, a pivotal moment in United States history. Military emancipation, the federal government's pressure on loyal slave-holding states to abolish slavery, and the passing of the 13th and 14th amendments after the Civil War resulted in the end of slavery and the promise of citizenship to all people born on U.S. soil, including African Americans. Four million people would transition from slavery to freedom and imagine, for the first time, the opportunity to pursue economic and social equity as citizens and political constituents of a nation that had denied their humanity and allowed their enslavement for all its history. The emancipation experiment made possible the experiment in refugee regulation to which Hood and Bostwick alluded: the federal government's recognition of freedom for African Americans, the wartime necessity of freeing slaves from the Confederacy through military emancipation, and the arrival tens of thousands of refugee slaves seeking protection from the U.S. government all resulted in American officials recognizing African Americans as "refugees" rather than simply "fugitives" or "runaways" for the first time in American history. The experiences of African American refugees who interacted with government officials during the war reflected the profound liminality that

[5] *Letter of the Secretary of War…a copy of the report of Hood and Bostwick,* 7, 9, 23; Manning, *Troubled Refuge,* 24-25; 35-39. Manning notes that military records, newspapers, and the records of African Americans describing their experiences in the war show that "refugee" and "contraband" were used interchangeably.

former slaves faced in their transition from bondage to freedom, from aliens to citizens, from property to people.[6]

This chapter examines the remarkable transition that occurred in American refugee regulation from the turn of the nineteenth century through the Civil War. The federal government's understanding that freeing the south's slaves would weaken the Confederacy and strengthen the Union caused American officials to recognize African Americans as "refugees" during the Civil War. This dissertation contends, however, that refugee regulation does not exist only in the identification of persecuted people as refugees and in the distribution of relief to them. It dwells, as well, in decisions to deny aid to refugees, and in actions that turn people into refugees in the first place. Though an American refugee policy that recognized America's slaves as individuals who deserved protection and relief did not emerge until emancipation, this chapter elaborates on the

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[6] James Oakes, *Freedom National: The Destruction of Slavery in the United States* (New York: W.W. Norton & Company, 2014), xiii-xiv; Manning, *Troubled* Refuge, 11-14. Eric Foner, *Reconstruction: America's Unfinished Revolution, 1863-1877* (New York: Harper & Row, 1988). The spirit of experimentation during the Civil War era extended to the very existence of the Confederate States of America, whose representatives undertook their own experiment as they sought to establish and secure the sovereignty of what would have been the world's first explicitly pro-slavery nation-state, and to the establishment of the Bureau of Refugees, Freedmen, and Abandoned Lands, as well, the first federally mandated welfare and regulatory agency in the United States. Stephanie McCurry, *Confederate Reckoning: Power and Politics in the Civil War South* (Cambridge: Harvard University Press, 2010). For a history of the Bureau of Refugees, Freedmen, and Abandoned Lands as a critical first moment in the evolution of the welfare state, see Chad Alan Goldberg, *Citizens and Paupers: Relief, Rights, and Race from the Freedmen's Bureau to Workfare* (Chicago: University of Chicago Press, 2007). Paul Cimbala's *Under the Guardianship of the Nation: The Freedmen's Bureau and the Reconstruction of Georgia, 1865-1870* (Athens, GA: University of Georgia Press, 1997) considers how local administrators played a pivotal role in defining the Bureau of Refugees, Freedmen, and Abandoned Lands through its local enforcement of the Bureau's activities.

conceptual framework laid out in the introduction of this dissertation: that legal slavery was itself a form of refugee regulation.

America's founding fathers — many of whom were slave owners themselves — wrote a national constitution that allowed white Americans to legally own human beings as property. Slavery was so entrenched in the founding fabric of American society that although the Constitution did not name slavery, it included a host of provisions that protected the institution and the people who owned slaves. When the first states of the union ratified the Constitution in the late 1780s, they did not just legalize slavery. They encouraged an American culture in which slavery was a fact of everyday life, and they shaped a nation where it was common sense to deny the humanity of an entire group of people and allow the many forms of abuse, punishment, and death to which slaves would be subjected by those whom the U.S. government legally recognized as their masters. The law's protection of slavery sanctioned the U.S. government's oppression of an entire class of people within its borders, while naturalizing the idea that the United States had no obligation whatsoever to the people they subjected to wholesale racial, economic, political, and social dispossession. The logic of slavery extended to refugee regulation in other ways, too. As shown in Chapter One, for example, American officials allowed French slave owners whom they recognized as refugees to enter the U.S. with their slaves, despite the fact that after 1807, it was illegal to bring slaves into the country. The law also empowered white Americans to capture runaway slaves who fled their persecution in pursuit of freedom. As a bundle of legal norms, as an economic institution, and as a way of organizing American society, slavery was a form of refugee regulation

because it helped shape how Americans understood who belonged in the "asylum for mankind."[7]

Though the United States did not formally recognize its enslaved population as refugees before emancipation, many slaves took flight from the American South. In so doing, they became refugees in experience. According to the law, however, they were not refugees, but "fugitives."[8] Through the first half of the nineteenth century and after Congress passed the Fugitive Slave Act of 1850, thousands of runaway slaves and freed people of color in the United States fled to Canada. They saw in Canada a refuge from slavery's hold on the South and the tendrils of inequality that seized the American North and maintained discrimination in a part of the country that was supposed to be "free." Some abolitionists recognized the persecution that escaped slaves were fleeing and called

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[7] Christopher Tomlins, *Freedom Bound: Law, Labor, and Civic Identity in Colonizing English America, 1580-1865* (Cambridge: Cambridge University Press, 2010), 411. David Waldstreicher, *Slavery's Constitution: From Revolution to Ratification* (New York: Hill and Wang, 2009). For a broad theorization of slavery's complete denial of humanity to enslaved people, see Orlando Patterson, *Slavery and Social Death: A Comparative Study* (Cambridge: Harvard University Press, 1982). Lisa Marie Cacho's *Social Death: Racialized Rightlessness and the Criminalization of the Unprotected* (New York: New York University Press, 2012) extends the concept of social death to the criminal justice system, the war on terror, and immigration enforcement.

[8] It is important to note that according to the Oxford English Dictionary, the word "refugee" was used to describe individuals fleeing persecution as well as individuals who broke the law and were "refugees from justice." The examples I refer to throughout this chapter demonstrate how American officials used the term "refugee" to identify emancipated slaves who sought shelter across Union lines. Still, in the early moments of emancipation when slavery had yet to be formally and legally abolished by the 13th amendment, is merits further analysis to determine the degree to which African Americans were "refugees" in both senses of the term: as individuals fleeing persecution and seeking shelter, and as fugitives who had escaped their legal owners. "refugee, n.," OED Online, January 2018, Oxford University Press, http://www.oed.com.ezp3.lib.umn.edu/view/Entry/161121?rskey=MB0I4C&result=1&isAdvanced=false (accessed March 24, 2018).

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*. The institution of slavery itself, along with the laws and legal decisions that the United States federal government and individual states enacted to reinforce slavery, created the conditions that turned people into refugees. Abolitionists like Drew and other opponents of slavery recognized this, even if American officials did not. Although the government's formal recognition of African Americans as refugees may not have occurred until the Civil War — an analysis of which constitutes the second half of this chapter — this shift in American refugee regulation must be understood within the context of the laws and institutions that completely denied enslaved peoples their humanity, figured runaway slaves as "fugitives" rather than refugees, and precipitated the gradual shift from slavery that emancipation brought to American race relations and American refugee policy.[9]

Before the Civil War, America's first formal examples of refugee policy encouraged the settlement of people of European descent in the United States. When American officials accepted African Americans into Union-operated military camps as refugees during the Civil War, conceptions of who might be the subjects of American refugee policy widened to the degree that Anglo Americans were no longer the only

[9] Benjamin Drew, *The Refugee: Narratives of Fugitive Slaves in Canada* (Toronto: Dundurn Press, 2008; reprint, John P. Jewett and Company, 1856). On fugitive slaves who escaped to Canada, see Harvey Amani Whitfield, *Blacks on the Border: The Black Refugees in British North America, 1815-1860* (Lebanon, NH: University of Vermont Press, 2006).

individuals whom the federal government identified as "refugees." Inclusion, however, did not mean equality. While Congress offered white Canadian refugees of the American Revolution land for permanent settlement in the American west, American officials shied away from giving land to African Americans whom they called "refugees." Instead, they used refugee camps as sites to subject emancipated slaves to American notions of progress, modernity, and civilization and to regulate their transition from slavery to freedom. By imagining refugee camps as places to affect the assimilation of African Americans into American society, the U.S. government's acceptance of emancipated refugee slaves was an example of American refuge that perpetuated racial inequality under the guise of abolition and humanitarian relief. As it was directed against emancipated slaves, refugee regulation's evolution was twofold: in its identification of African Americans as refugees, and in that the broadened scope of who counted as a "refugee" gave American officials an opportunity to regulate refugees who were on the edge of membership in the nation.

American officials did not recognize slaves as "refugees" in the late eighteenth and early nineteenth centuries. But since the American Revolution, enslaved people fled the United States and sought haven where they could and when the opportunity arose. When the colonies began their revolution against Great Britain, British authorities in Canada declared that they would offer freedom to any slave in America who fled north and joined the British military. Approximately 3,500 men of African descent — individuals who escaped their masters to Canada in exchange for freedom, but also slaves who were brought to Canada against their will by white American loyalists who opposed American

independence — made their way north. One British official, Sir Henry Clinton, even promised land to any slave who fled to Canada and supported the British. Once the war ended and patterns of everyday life were slowly restored, the Black Loyalists found that freedom in Canada did not mean equality with white Canadians. Racism and inequality abounded in the province of Nova Scotia, where most Black Loyalists who went north settled, so much so that many ended up leaving Canada and resettling in the British colony of Sierra Leone.[10]

Although Canada was no perfect refuge, enslaved peoples in the United States nevertheless had reason to believe they might find safe harbor there. In 1793, Upper Canada passed a law declaring that slaves born in Canada after July 3 of that year would be made free when they turned twenty-five years old. The law also stipulated that any slave brought to Upper Canada could not be subjected to servitude. In contrast, in the same year, the United States government passed its first Fugitive Slave Law, emboldening slave owners to seek and recapture runaway slaves. Like the American Revolution, the War of 1812 offered American slaves another opportunity to find freedom in Canada. In 1814, British officials once again promised freedom and land to slaves in the United States. Enslaved people, many of whom took up arms with the

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[10] Black Loyalists may have been promised land, but as historian Harvey Amani Whitfield notes, they were at the bottom of a long list of people to whom Nova Scotian officials promised land. When Black Loyalists did receive land, they were given land of poorer quality and in lesser amounts than the land set aside for white settlers in Canada. Harvey Amani Whitfield, *Blacks on the Border: The Black Refugees in British North America, 1815-1860* (Lebanon, NH: University of Vermont Press, 2006), 18. For more on the history of the Black Loyalists, see James W. St. G. Walker, *The Black Loyalists: The Search for a Promised Land in Nova Scotia and Sierra Leone, 1783-1870* (Longman Group, 1976; reprint, Toronto: University of Toronto Press, 1993) and Robin W. Winks, *The Blacks in Canada: A History* (New Haven: Yale University Press, 1971).

British, once more migrated to Canada in the thousands. Indicating the belief among enslaved people in the United States that flight to Canada might offer them a chance to find freedom from slavery in the American South and oppression in the North, slaves actually began going to Canada in the fall of 1813, well before Vice Admiral Sir Alexander Cochrane declared that slaves would be given their freedom if they assisted the crown during the war. For black Americans seeking freedom from slavery, Canada appeared a likely refuge. Although the black refugees who migrated to Canada during and after the War of 1812 formed communities throughout Canada, they did not do so without struggle. Black Canadians were recognized as British subjects and thus ought to have received the same legal protection other British subjects enjoyed. Nevertheless, they faced discrimination from the government and in their daily interactions with Canadians. Black refugee communities in Canada persevered, however, and represented the possibility that freedom, albeit an imperfect freedom, might be found to the north.[11]

As African American communities in Canada grew after the War of 1812, and as the American abolitionist movement gradually gained support across North America, another pathway to refuge for black Americans expanded in secret. The Underground Railroad was comprised of networks of locations and individuals who banded together to

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[11] Sharon A. Roger Hepburn, "Following the North Star: Canada as a Haven for Nineteenth-Century American Blacks," *Michigan Historical Review* 25, No. 2 (Fall 1999): 95; Whitfield, *Blacks on the Border*, 30-32. The flight of slaves and free blacks from the United States formed a broader international diaspora that spanned from North America to Africa and the Caribbean. For example, by 1830, as many as eight to thirteen thousand free African Americans migrated to Haiti. David Brion Davis, *The Problem of Slavery in the Age of Emancipation* (New York: Alfred A. Knopf, 2014), 178. For the continued migration of African American migration to Canada after the Civil War, see Sarah-Jane Mathieu, *North of the Color Line: Migration and Black Resistance in Canada, 1870-1955* (Chapel Hill: University of North Carolina Press, 2010).

help enslaved people find freedom. Though black Americans escaped slavery for as long as slavery existed, the Underground Railroad expanded in the late 1820s and early 1830s, when African American communities, churches, and abolitionist groups joined Quakers and other white abolitionists in the North and the South in their efforts to create pathways to freedom for slaves. The historical record leaves no authoritative accounting of how many slaves escaped the South. From the early 1830s, when the Underground Railroad expanded from the border states to the U.S.-Canada border, through the start of the Civil War, it is estimated that between one and five thousand slaves sought refuge in the North each year.[12]

While the Underground Railroad and the spread of abolitionism offered hope to slaves, the Fugitive Slave Act of 1850 signaled the federal government's continued commitment to protecting slave owners while jettisoning slaves' hopes for freedom. The Fugitive Slave Act did more than maintain the right of slave owners to capture runaway slaves. It also penalized anyone who assisted a fugitive slave with a fine of as much as one thousand dollars and a prison term of up to six months, and forced offenders to pay owners one thousand dollars for any slave they helped escape. The law also encouraged commissioners presiding over runaway slave cases to rule in favor of slave owners by

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[12] Cheryl Janifer LaRoche, *Free Black Communities and the Underground Railroad* (Urbana: University of Illinois Press, 2014); Eric Foner, *Gateway to Freedom: The Hidden History of the Underground Railroad* (New York: Norton, 2016), 4; Keith P. Griffler, *Front Line of Freedom: African Americans and the Forging of the Underground Railroad in the Ohio Valley* (Lexington: The University Press of Kentucky, 2004). Opposition to slavery in America can be traced back to the colonial era. Quakers believed that slavery was inconsistent with Christian virtues. Abroad, shortly after independence, in 1787, abolitionists founded the Committee for Effecting the Abolition of the Slave Trade, and influenced early American abolitionists in the process. Bordewich, *Bound for Canaan*, 37.

rewarding them with greater sums of money when they sided with slave owners over slaves, and allowed commissioners to call on any individual for assistance in recapturing runaway slaves — even if they opposed slavery or did not wish to incriminate a slave.[13]

The Fugitive Slave Act was, in effect, an anti-refugee law. It criminalized slaves who attempted to escape slavery, protected those responsible for their enslavement, and punished those who might help slaves in search of a safe haven. Enslaved people met the Fugitive Slave Act with resistance. Slaves and free people of color continued seeking refuge in Canada; an estimated three thousand slaves fled north in the first three months after the Fugitive Slave Act passed. They found places in present-day Ontario like St. Catharines, a town that abolitionist Benjamin Drew described as a "Refuge! Refuge for the oppressed! Refuge for Americans escaping from abuse and cruel bondage in their Native land! Refuge for my countrymen from the lash of the overseer, from the hounds and guns of southern man-hunters, from the clutches of northern marshals and commissioners!" Drew, who was hired by the Canadian Anti-Slavery Society in the early 1850s to interview African Americans who fled to Canada, spoke with many former slaves and free people of color who cited the Fugitive Slave Act as their reason for seeking refuge to the north. Nancy Howard, for example, lived free in Massachusetts for seven years before the Fugitive Slave Law passed in 1850. Once the bill became law, however, she fled north for fear that slavecatchers would track her down and force her return to bondage in the south. Nelson Moss, meanwhile, was a freeman who lived in Virginia from the time he was born until his late thirties, when he moved to

[13] Bordewich, *Bound for Canaan*, 318-319.

Pennsylvania. Moss remarked that the prejudice he faced in Pennsylvania was worse than that he experienced in Virginia. It was not prejudice that drove him to Canada, however, but the Fugitive Slave Act. "I did not like to live in a country which was governed by a partial law," Moss explained, referring to the hypocrisy of living as a "free" man in the North where he was vulnerable to a law that emboldened slavecatchers to not only entrap former slaves, but also kidnap freedpeople for sale into slavery.[14]

The testimony of African Americans who fled north to Canada gives further credence to the notion that "fugitive" slaves were refugees in experience, even if U.S. law and political officials did not identify them as such. Reverend Alexander Hemsley, for example, was born into slavery in Maryland. When he was twenty-three years old, he fled to New Jersey, and eventually traveled to Toronto, where he "had a comfort in the law" that his freedom from slavery was secure. Hemsley hoped that he might eventually be able to return to his "native land," but enforcement of the Fugitive Slave Act discouraged him from traveling back to the states. Harriet Tubman, meanwhile, recollected that "[w]e would rather stay in our native land, if we could be free there as we are" in Canada, and William Grose, a former slave from Harper's Ferry, Virginia, likewise wished to "stay in my native country." Instead, he armed himself with an "old razor" and made his way for Canada. The United States may have been no friend to slaves and free people of color, but to many of them, it was home — a home they had reason to abandon, if the opportunity arose, because of the ever-present threats that slavery laid at their feet.[15]

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[14] Benjamin Drew, *The Refugee: Narratives of Fugitive Slaves in Canada,* introduced by George Elliott Clarke, (Toronto: Dundurn Press, 2008), 41; 68-70; 152-153.
[15] Drew, *The Refugee*, 38-39; 30; 86. I do not know if the Harriet Tubman whose testimony appears in Drew's volume is the same Harriet Tubman of abolitionist fame.

The Fugitive Slave Act invigorated the work of abolitionists. In the North, civil disobedience transformed from philosophical musing over individuals' obligation to obey immoral laws, to a renewed commitment to anti-slavery that found greater numbers of abolitionists actively working to undermine the institution and, in some instances, coming directly to the aid of runaways. For example, when fourteen white Americans and twelve African Americans were charged with conspiring to protect a fugitive slave named William Henry — who fled his master in Missouri for freedom in Syracuse, New York — from a mob intent on his return to the South, the federal government only prosecuted one person. Southerners took this as a sign that the federal government had little interest in enforcing the Fugitive Slave Act. But the law was not ineffective — in just over a year after the law's passing, Commissioners forcibly returned eighty-four captured slaves to their masters and allowed only five to remain free.[16]

The law that Congress passed in 1850 to bring about the return of runaway slaves was not the first of its kind. The Constitution first mandated that slaves who absconded from their owners were legally bound to be returned to their owners. In 1793, an early version of the Fugitive Slave Act gave slave owners — and slave catchers at their employ — the legal right to pursue runaway slaves across state lines. As noted by historian Fergus M. Bordewich, at the turn of the nineteenth century, "for fugitive slaves, there was no safe haven anywhere." Some slaves managed to find refuge in Canada after the Revolution and the War of 1812. In 1820, Pennsylvania became the first state to pass a law that challenged slave owners' right to capture escaped slaves. Freed slaves, those

[16] Bordewich, *Bound for Canaan*, 320-323; 333-340.

stuck in bondage, and abolitionists laid the groundwork for the Underground Railroad. But with 1850's invigorated Fugitive Slave Law, refuge for America's slaves remained elusive through the middle of the century.[17]

The Fugitive Slave Law of 1850 deepened the United States federal government's sanctioning of slavery and its refusal to recognize escaped slaves as "refugees" instead of lost property or "fugitives." The Supreme Court's decision in the landmark case *Dred Scott v. Sanford* further showed how deeply racial inequality was entwined with American society in the years leading to the Civil War. In the Court's pivotal 1857 decision, Chief Justice Roger Taney described free and enslaved blacks as "a subordinate and inferior class of beings" who were not fit for the privileges of American citizenship. Regardless of whether they were free or enslaved, Taney declared that black Americans "are not included, and were not intended to be included" in the United States body politic, and that they were "so far inferior that they had no rights which the white man was bound to respect." With *Dred Scott*, the nation's highest court ruled that it was not possible for African Americans to be American citizens. They may have been within the bounds of the nation, but as historian Linda Kerber has observed, they were effectively "stateless." In declaring African Americans' lack of rights, it implied, as well, that the United States government was in no way duty-bound to acknowledge the abject denial of personhood to which it subjected slaves, or redress the discrimination it allowed to fall on the shoulders of free blacks in the North. Slavery denied the possibility that American officials might recognize enslaved people as having rights, whether as freed people or as

[17] *Ibid.*, 26, 136.

"refugees" in pursuit of freedom. America's stance on slavery and refugees, however, would begin to shift in the Civil War.[18]

The arrival of the American Civil War threw a spotlight on slavery's centrality to the very existence of the U.S. nation-state. Slavery had brought wealth and power to white southerners who owned slaves, as it had brought wealth and power to a nation that seized slaves' labor. Because slavery was the flint that set fire to the explosion of American commerce and industry in the U.S. nation-state's formative decades, and was the cornerstone of the nation's economy, white southerners saw the election of Abraham Lincoln in 1860 as a threat to slavery and to the racial status quo that enabled it. Lincoln's election to the presidency immediately sparked talk of the southern slave states withdrawing from the United States to form their own separate nation. By the end of winter in 1861, eleven southern states seceded from the United States and began their bid to create the first nation-state in the world whose existence was premised on an open and unrelenting commitment to slavery.[19]

War broke out between the United States and the Confederate States of America on April 12, 1861, when Confederate forces attacked Fort Sumter in South Carolina's Charleston Bay. With the nation's North and South at arms against each other, thousands of slaves began escaping their masters. Many of them found refuge with the Union army, whose officials identified them as "contraband" to justify their decision not to return

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[18] Ian Haney López, *White by Law: The Legal Construction of Race* (New York: New York University Press, 2006), 29; *Scott v. Sandford*, 60 U.S. 393 (1856); Linda K. Kerber, "The Stateless as the Citizen's Other: A View from the United States," *American Historical Review* 112, no. 1 (February 2007): 1-34.
[19] McCurry, *Confederate Reckoning*, 21-22.

runaway slaves to their owners, and instead employ escaped slaves as workers whose labor would help buttress the Union. According to historian Chandra Manning, "contraband camps" first 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 help 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's reasoning lay in the fact that because Mallory, Baker, and Townsend helped fortify a force in rebellion against the United States, that he was authorized to "confiscate" them as contraband. The ability of runaway slaves to seek refuge in Union controlled camps, then, stemmed from the laws that undergirded their status as human property under slavery.[20]

When President Abraham Lincoln issued the Emancipation Proclamation on January 1, 1863, outlining a route to freedom for America's enslaved people, African Americans fled en masse to Union lines. Union encampments — which established permanent locations in the Eastern theater, tended to open and close in the trail of the Union Army's traipsing through the war's Western theater, and numbered in the hundreds before war's end — permitted an estimated 400,000 freed and emancipated slaves to find shelter during the war. This was undoubtedly a boon to African American

[20] Manning, *Troubled Refuge*, 32.

refugees seeking shelter from slavery and Confederate soldiers who were willing to die to maintain southern slaveholders right to own slaves. It did not take long, however, for camp overseers, military officers, and government officials to express their true motives when they welcomed refugees.[21]

Camp Nelson offers one example of the competing interests that characterized refuge for African Americans in the Civil War. Located along the Kentucky River about 90 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." And so it came to pass that 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.[22]

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[21] *Ibid.,* 32-33.

[22] General Orders No. 4, 12 July 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. I am indebted to the work of historian Richard D. Sears, whose edited

Tensions rose soon after refugees began arriving at Camp Nelson. In particular, camp officials' gendered concerns about morality and sexuality caused them to view women seeking entry into the camp with suspicion. Camp commanders 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 also worried that women among the refugees 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.[23]

On November 23, 1864, officials at Camp Nelson ordered the expulsion of 400 women and children refugees from the camp. Historian Richard D. Sears notes that Union officials had ordered at least eight expulsions before the Camp Nelson incident. The expulsion of refugees from Camp Nelson was different, however, because it took place during a particularly harsh cold front that left refugees without shelter in frigid temperatures. Several enlisted African Americans described how their families were treated prior to the expulsion. When Private Joseph Miller told a soldier overseeing the removal that his wife and children had nowhere else to go, that soldier told Miller that he

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volume of archival sources detailing life in Camp Nelson, KY provides a large portion of the primary source material I consult here. The records included in this volume come from a wide variety of archives, including the National Archives and Records Administration, the American Missionary Association Archives, Berea College Archives, in addition to many published government records related to the Civil War.

[23] Orders, 3 Sept. 1864; Vol. 111/256, 84; General Orders; Records of United States Army Continental Commands, Record Group 393, National Archives, in *CN*, 117-118; Fee to Strieby, 22 Sept. 1864, American Missionary Association Archives, 44038 in *CN*, 119.

would shoot his family if they refused to leave. The wife of another soldier, who arrived at Camp Nelson because she and her family were "driven out of doors" by their master, tried to stay at the camp. The same soldier who welcomed the Higgins family as refugees threatened to burn down their cabin inside the camp if they stayed.[24]

Refugees went to Camp Nelson in search of protection and compassion. They found neither. 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 400 hundred refugees removed from Camp Nelson, 100 died. Private Miller's family, who faced the threat of execution if they didn't leave Camp Nelson, were among those who perished during the expulsion: his son died from exposure six miles from the camp.[25]

The Camp Nelson expulsion fomented outrage in U.S. officials. In an editorial 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 asked? He pleaded with the "just and humane public" to

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[24] Sears, "Historical Introduction," *Camp Nelson, Kentucky: A Civil War History* (Lexington: University of Kentucky Press, 2002), li. Affidavit of Joseph Miller, 26 Nov. 1864; M999: Roll 7, Frames 682-684; Records of the Bureau of Refugees, Freedmen, and Abandoned Lands, Record Group 105, National Archives, in *CN*, 135-136; Affidavit of John Higgins, 28 Nov. 1864; Box 720; Records of the Office of the Quartermaster General, Record Group 92, National Archives, in *CN*, 140.

[25] Hall to Restieaux, 16 Dec. 1864; Camp Nelson, Box 720; Records of the Office of the Quartermaster General, Record Group 92, National Archives, in *CN*, 134-135; Affidavit of Joseph Miller, 26 Nov. 1864; M999: Roll 7, Frames 682-684; Records of the Bureau of Refugees, Freedmen, and Abandoned Lands, National Archives, Record Group 105, in *CN*, 135-136.

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.[26]

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 U.S. 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 shelter at Camp Nelson.[27]

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. But African American refugees, they insisted, had a special case

[26] Affidavit of John Higgins, 28 Nov. 1864; Box 720; Records of the Office of the Quartermaster General, Record Group 92, National Archives, in *CN*, 140.
[27] *Ibid*., 139-140.

for protection. Many former slaves 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.[28]

Hood and Bostwick's views shed light on the U.S. nation-state's interest in harboring African American refugees. 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 projected the North's moral superiority compared to the states of the Confederacy, who were so committed to slavery they would send tens of thousands of men to their deaths to defend their right to own humans as property. The Union's sheltering of emancipated refugees also offered proof of the United States federal government's evolution from a country that for centuries was tainted by slavery to a benevolent, just, racially equal 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 places of redemption, where the federal government might begin to right the decades of brutality enslaved people experienced in the United States. However, those same officials also saw Civil War refugee camps as paternalistic institutions where American officials could claim the nation-state's "wonderfully

[28] *Letter of the Secretary of War…a copy of the report of Hood and Bostwick,* 18-20.

developing strength" by its willingness to shelter refugees, and take credit for overseeing enslaved peoples' transition from enslavement to freedom.[29]

The concerns that American officials like Hood and Bostwick had when they considered harboring African American refugees after emancipation — giving shelter and protection to people in need, making amends for the nation's history of slavery, and touting what they believed was America's capacity to uplift a group of people from servitude — were all foreshadowed by the American Freedmen's Inquiry Commission's interest in black refugees who fled to Canada. Established in March of 1863, two months after Lincoln delivered the Emancipation Proclamation, the American Freedmen's Inquiry Commission was organized to consider the conditions that black refugees faced during the Civil War and to determine the role the U.S. government might play in the transition to freedom for the nation's population of enslaved African Americans. The AFIC published several reports, among them an overview of the experience of "refugees from slavery in Canada West." Samuel Gridley Howe, an abolitionist who Congress appointed to the AFIC, traveled to several locations in present-day Ontario, where he interviewed refugees from slavery, elected officials, government employees, teachers, and clergy members. According to Howe, he wished to "learn the history, condition, and prospects of the colored population of Canada" because they had for several years "been trying the experiment, for their race, of their capacity for self-support and self-guidance…amidst an unsympathizing population, just as our freedmen are about to do." In determining how capable African Americans might be for self-sufficiency based on the

[29] *Ibid.,* 19-20.

prospects of enslaved people who sought refuge in Canada, Howe's words revealed the underlying assumptions about race that grounded slavery and motivated the regulation of African American refugees in the Civil War.[30]

On the face of it, Howe's report on African American refugees from slavery in Canada seemed to be about how African Americans might fare in freedom. However, it was in equal parts a treatise on the "mental and moral condition" of African Americans, and more, a speculative view on the impact that the sudden emancipation of more than three million enslaved people might have on American society. Howe reported on the temperament of African Americans and "mulattoes," and how their freedom of movement brought with emancipation would cause many to move to warm climates that would temper their "ferocity." He claimed they had "inferior fertility" to whites, which would eventually result in a population decline of the "colored breed." He suggested that although people of African descent were not idle, they "shirk hard work." Howe also noted a preoccupation among white Americans that emancipation would lead to intermarriage, and "breaking down certain barriers between the white and black races." Howe emphasized, however, "that there need be no anxiety upon the score of amalgamation of races in the United States." Howe condemned slavery in the report, and professed the importance of America's commitment to ending the legal ownership of people as property in the United States. But like many Americans who recognized slavery's moral failings while also having known only a world in which slavery was

[30] Manning, *Troubled Refuge*, 22; Samuel G. Howe, *Report to the Freedmen's Inquiry Commission, 1864: The Refugees from Slavery in Canada West* (Boston: Wright & Potter Printers, 1864; Reprint, New York: Arno Press, 1969), 2.

acceptable, Howe's attention to the conditions that drove African Americans to seek haven in Canada fell short of advocating racial equality in America, or even allowing that equality was possible.[31]

In addition to drawing racially essentializing conclusions about the character of African Americans, Howe signaled that the U.S. government's interest in the plight of refugee slaves and freed people of color was rooted as much in managing their transition to freedom as it might be in giving them refuge. Howe emphasized that it was "not desirable to have [African Americans] live in communities by themselves," because their proximity to white Americans would cause black Americans to "imitate the best features of white civilization, and…improve rapidly." He noted in the conclusion to his report, as well, that former slaves would be "docile and easily governed by laws." In other words, Howe made a case for white Americans to oversee emancipated slaves' transition to freedom. To those concerned that emancipation might mean equality, Howe's report seemed to inform the AFIC and reassure white Americans that the end of slavery would not rupture the status quo of racial inequality in the United States.[32]

Indeed, in the report that Hood and Bostwick later issued on Civil War "refugee camps," they described camps as places where the U.S. 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

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[31] Howe, *Report to the Freedmen's Inquiry Commission,* 6; 29; 33; 55.
[32] *Ibid.,* 103-104.

his family." It was up to the U.S. government, Hood and Bostwick claimed, to teach African Americans in refugee camps "the distinguishing features of a true manhood." Despite the fact that S.G. Howe had himself reported that African American refugees in Canada 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.[33]

Hood and Bostwick's emphasis that African American refugees be trained for and assimilated into "true manhood" was a consistent factor among government officials who had been thinking about how to handle the emancipation and eventual citizenship of freed slaves. In June 1864, several months before the Camp Nelson expulsion, the AFIC published a report claiming that even though there was a large number of white refugees seeking relief from the war, the U.S. government had a special interest in 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."[34] From taking pains to divulge former slaves of their alleged "vices" to

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[33] *Ibid.*, 20-21. On the relationship of gender and marriage to how Americans imagined freedom and emancipation, see Amy Dru Stanley, *From Bondage to Contract: Wage Labor, Marriage, and the Market in the Age of Slave Emancipation* (Cambridge: Cambridge University Press, 1998).

[34] 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*

undertaking efforts to ensure that African American families conform to social expectations regarding monogamous, heteronormative, and patriarchal nuclear family structures, the U.S. government utilized refugee camps not only to shelter displaced and persecuted peoples, but also to reify prejudices that racialized African Americans as helpless peoples who needed to be lead toward so-called "true manhood."

The American Freedmen's Inquiry Commission imagined refugee camps as something between a place of refuge, a laboratory, and a proving ground for African Americans in their transition from slavery to freedom. Even while the commission urged officials to practice "comprehensive benevolence and humanitarian views" while operating refugee camps, they also encouraged officials not to give refugees any "special favor." "Mild firmness is the spirit in which to control them," the AFIC urged. Instead of treating African American refugees as "children of preference," camp officials should teach them "self-reliance and self-support." Any government official who undertook this approach in their oversight of emancipated refugees, the commission noted, would "find little difficulty in managing refugee freedmen." Being a refugee was thus one more way that former slaves experienced a state of liminality on the road to freedom. On the one hand, government officials were adamant that refugee camps be used to "educate,"

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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, serial 1176, 1-2 [cited hereafter as *Report of the Secretary of War…final report of the American Freedmen's Inquiry Commission]*.

"uplift," and "teach" former slaves. On the other, they cautioned that temporary asylum in refugee camps would result in African American refugees' perpetual dependence.[35]

Indeed, Union officials' concerns about the dependency of black refugees extended beyond refugee camps. In a section of their report titled "Negroes as Refugees," agents with the American Freedmen's Inquiry Commission focused first on the relationship between refugees and work. They suggested that African Americans who "find refuge within our lines" were not just loyal to the United States government, but were "docile and easily managed" laborers who were "able and willing, on the average, to work as long and as hard as white laborers, whether foreign or native born." Officials claimed that women and children in Union camps should be allowed to stay for as long as they needed, provided they worked as washers or performed "other service" that would aid Union soldiers. Able-bodied male refugees, on the other hand, should only have been allowed to stay in camps until they could find work "as military laborers or on plantations" in order to limit their dependency on the government. As historian Andrew Urban notes, refugee camps were not just themselves sites of war-time work, but also served as places where white employers and their brokers — especially those seeking to place African American refugees in northern households as domestic workers — might recruit emancipated slaves who were on the path to becoming free laborers. That freedom, however, was to be mediated in a "carefully orchestrated and limited fashion."

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[35] United States War Department, *The War of the Rebellion: A Compilation of the Official Records of the Union and Confederate Armies. Series 3 - Volume 3* (Washington: Government Printing Office, 1899), 449, via Cornell University Library, Making of America Digital Collection, http://digital.library.cornell.edu/cgi/t/text/text-idx?c=moawar;idno=waro0124 (accessed September 1, 2017).

Whether at work in Union camps, on plantations, or as domestic servants, American officials and white employers viewed the employment of emancipated refugees as a way to keep refugees from relying too heavily on the U.S. government, while continuing their participation in racialized, exploitative labor markets that presumed their subordination, limited their freedom, and showed them their place in the hierarchy of "free labor" after slavery.[36]

Officials backed away from the one relief measure they could have given freed slaves that would have quelled concerns about their prolonged dependency on the U.S. 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 — which was established on March 3, 1865 to oversee the transition of slaves to freedom — included a provision that would have given "tracts of land" in the south to "loyal refugees" so they could "become at once self-supporting." Unlike Canadian and Nova Scotian refugees decades earlier, however, the distribution of land to African American refugees never materialized. Members of Congress protested any special provisions in American policy that would give land to African Americans without also giving land to white Americans, and 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 U.S. government's reluctance to give land to emancipated slaves, including those whom they identified as "refugees"

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[36] *Report of the Secretary of War…final report of the American Freedmen's Inquiry Commission*, 2, 14. Andrew Urban, *Brokering Servitude: Migration and the Politics of Domestic Labor during the Long Nineteenth Century* (New York: New York University Press, 2018), 68.

during the Civil War, reflected the Bureau of Refugees, Freedmen, and Abandoned Lands' broader limitations. The Bureau marked a pivotal shift in the relationship between African Americans and the U.S. government — in 1857, the Supreme Court decided in *Dred Scott v. Sandford* that black Americans effectively had no recourse with the U.S. government, and less than ten years later the Freedmen's Bureau represented a government agency that was created expressly for the purpose of giving former slaves direct access to government officials. It helped African Americans establish schools, and gave them access to legal institutions by opening Bureau-managed courts where, unlike local courts managed by resentful white southerners, they could testify and pursue actual legal redress. But the Bureau's effectiveness was also undercut by agency officials who harbored racist attitudes against African Americans, and an overarching sentiment in the Bureau that black 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, it offered them land that could hardly have been considered arable, created only an ineffective infrastructure for the distribution of homesteads, and failed to keep white southerners from physically intimidating African Americans who attempted to settle on plots set aside for them.[37]

[37] 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, serial 1357, 11; Manning, *Troubled Refuge*, 261-2701; Urban, *Brokering Servitude*, 80. For a sustained study of the U.S. 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).

The U.S. government's recognition of former slaves as "refugees" marked a significant departure from decades of brutal oppression it allowed African Americans under slavery. Yet even if the U.S. government's identification of former slaves as "refugees" signaled the possibility of a more free 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, and the half-measures that characterized refugee relief for African Americans — especially when compared with the relief Congress extended to Canadian and Nova Scotian refugees — foreshadowed the injustices that would continue to define American race relations after abolition. Giving land to African American refugees would have challenged a cornerstone of ideas 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. Without access to land, where they could make their own livelihoods from outside the yolk of wage labor managed by white landholders who were invested in maintaining racial inequality, African American refugees faced the daunting task of negotiating their freedom in a nation whose economy had come to depend on cotton produced by slaves' unpaid labor. After emancipation, former slaves confronted the full force of a post-emancipation southern legal regime intent on restricting their freedom by instituting restrictions on their ability to, for example, move freely between jobs, or to rent land. The refusal to distribute lands to refugee slaves exposes the limits of the U.S. nation-state's support of African American refugees and their transition from slavery to citizenship. It

also reveals how in its earliest forms, American officials made refugee regulation do the work of perpetuating refugees' inequality in the United States.[38]

When the United States allowed African Americans to seek shelter in Union controlled refugee camps during the Civil War, it broke with a decades-long pattern in which the U.S. nation-state allowed the persecution of an entire group of people within American borders. The end of slavery was a remarkable step forward for American democracy. So, too, was the temporary asylum that was offered to refugee slaves who sought refuge in Union camps from the Confederacy's commitment to maintaining slavery at any cost. Just as Canada and the northern free states offered no perfect refuge for American slaves who managed to escape the clutches of bondage before the Civil War, however, the camps where emancipated slaves took shelter during the war were marred by North America's legacy of systemic racial inequality and persecution.

The promise of refuge to emancipated slaves was not just the promise of a safe haven from persecution and war. American officials used the prospect of refuge as a strategy to increase enlistments in the Union Army and bolster the North's chances of defeating the Confederacy. By imagining refuge as an opportunity to oversee African Americans' transition from slavery to freedom, American officials used refugee camps to introduce black Americans to a relationship with the United States government in which their freedom was formally recognized, but was fundamentally compromised. Shelter

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[38] Eric Foner, *Reconstruction: America's Unfinished Revolution, 1863-1877* (New York: Harper & Row, 1988), 161; Barbara Young Welke, *Law and the Borders of Belonging in the Long Nineteenth Century United States* (New York: Cambridge University Press, 2010), 48-49.

from persecution may have been part of African Americans' experience in the Civil War as refugees. But so, too, was a paternalistic American government in which some of its officials identified refuge as an opportunity to regulate what emancipation, freedom, and incorporation into American society would look like for former slaves. Refugee regulation began in the United States in part with the legalization of slavery and thus the simultaneous production of black Americans as persecuted peoples whom the nation-state refused to see as "refugees." American refugee regulation may have expanded during the Civil War to include black Americans. But despite that shroud of inclusion, the recognition of emancipated slaves as refugees opened up a path for American officials to regulate a group of refugees who only had a liminal claim to belonging in the nation. Before the Civil War, refugee regulation did the work of mediating membership in American society by legalizing slavery, sanctioning the dispossession of Native people, and encouraging Anglo refugees to settle on Native land. After emancipation, the expansion of the category "refugee" to include African Americans transformed refugee regulation to mediate membership in American society in a new way: by giving inferior forms of relief to persecuted people whom American officials only reluctantly called "refugees."

The formal incorporation of African Americans into American refugee regulation had broader implications for the trajectory of American refugee law and policy. Before the Civil War, America's legal and political institutions only formally acknowledged Anglo Americans as refugees, while also allowing European migrants fleeing political, economic, and religious persecution to resettle in the United States. Access to American refuge was reserved for individuals whom American officials wished to settle the

country's expanding territory as property owning members of American society. This chapter has suggested that the legalization of slavery was itself a form of refugee regulation in that it both made enslaved people refugees and caused the United States to deny slaves relief as refugees. By formally recognizing African Americans as refugees, American officials for the first time seriously considered giving a form of refuge to a group of people whom they believed were not fully fit for inclusion in American society. Their aim in doing so, however, was first and foremost to preserve a nation-state that the Confederacy's secession and war had brought to the brink of collapse. The expansion of refugee policy in the Civil War thus further entrenched refugee regulation as an arm of the U.S. nation-state that American officials could use in their efforts to assert the nation-state's authority, determine the contours of American citizenship, and shape the degree of political, legal, and economic autonomy that displaced and persecuted people might experience if the U.S. government decided to embrace them as "refugees." By opening up refugee policy to include African Americans, refugee regulation did not become more equitable. Its expansion allowed American officials to regulate racially, economically, and otherwise multiply marginalized people through their inclusion in refugee relief, rather than their exclusion from it.

Enslaved people were not the only historically persecuted group in the United States whom American officials called "refugees" during the Civil War. Since the 1830s, removal had been the cornerstone of the federal government's policy in dealing with American Indians. In 1864, however, American officials recognized Indigenous people as "refugees." "An Act to aid the Indian Refugees to return to their Homes in the Indian Territory" earmarked $153,000 from the U.S. Treasury to relocate and temporarily

provide for "refugee and destitute Indians" in the South. This general relief bill indicated a shift in the U.S. federal government's dealings with American Indians and coincided with broader transformations in American citizenship and belonging after the end of the Civil War through the rise of the Jim Crow South in the 1890s that saw oppressed Americans begin to be marginally included in American society, albeit in a way maintained the nation's status quo of racial inequality.

In fact, the general relief bill for Indian refugees passed in 1864 was not the only example of American lawmaking for Indian refugees in the Civil War era. The following chapter examines the United States government's recognition of members of the Creek Nation as "refugees" after the Civil War. In 1866, the U.S. entered into a treaty with the Creek Nation that promised economic compensation to "loyal Creek refugees" who lost their property during the war. But like African American refugees, the form of relief that the government extended to Creeks not only paled in comparison to that which it extended to Canadian and Nova Scotian refugees of the American Revolution. It also continued the federal government's practice of subordinating Indigenous people at the same time that it counted them as "refugees" for the first time in American history.[39]

[39] "An Act to aid the Indian Refugees to return to their Homes in the Indian Territory," Pub. L. No. 38-74, 13 Stat. 62 (1864); Treaty with the Creeks, June 14, 1866, 14. Stats. 785, Ratified July 19, 1866.

Chapter Three

"Almost Another Trail of Tears:" Refugee Regulation and Legacies of Dispossession and Removal in U.S.-Native Relations, 1861-1903

In December, 1861, during what would become known as the first flight of refugees during the United States Civil War, thousands of Creek Indians abandoned their homes in Indian Territory for safety across Union lines. This group of Creek refugees, who sided with the U.S. federal government in the conflict, faced persecution and displacement at the hands of Confederate soldiers, fellow Creeks, and members of surrounding Indian nations allied with the Confederacy. When they returned home from Union refugee camps in Kansas several years later, they found that hostile forces had taken or destroyed their property, including their houses, livestock, and personal possessions. After the war ended, the U.S. government signed a peace treaty with the Creek Nation in 1866. A provision in that treaty called for a special commission to investigate the losses sustained by "loyal refugee Indians" whose loyalty to the Union during the Civil War caused their displacement, and compensate them for the value of their lost property.[1]

The federal government's 1866 decision to offer economic relief to "loyal refugee Indians" is a peculiar event in the history of U.S.-Native relations. Only three decades earlier, the Five Nations — the Creeks along with the Cherokees, Chickasaws, Choctaws, and Seminoles — faced federal policies, including the Indian Removal Act of 1830, that expelled Native peoples from the southeastern U.S. and relocated them to newly christened "Indian Territory" in the present-day state of Oklahoma. When the U.S.

[1] Treaty with the Creeks, June 14, 1866, 14. Stats. 785, Ratified July 19, 1866.

government pledged economic compensation to Creek refugees after the Civil War, officials promised relief measures for a group of people whom they had previously displaced and effectively made refugees from their ancestral homelands. The fact that the Creeks were multiply displaced over several decades — first as a result of President Andrew Jackson's Indian removal policies, and again as a result of choosing sides in the Union and Confederacy's war over slavery, not to mention state-sanctioned efforts to displace Native people by private settlers, rail tycoons, and other economic actors — underscores the fact that instances of displacement in Indigenous North America were not isolated events, but endemic to U.S.-Native relations in the nineteenth century. This legacy of displacement raises questions about the interests and politics that inform a settler colonial nation-state's decision to extend relief to people whom it has historically subjected to direct and indirect displacement and persecution. More broadly, it calls attention to settler colonialism's influence on the legal instruments that define what it means to be and receive relief as a "refugee" in the United States.

The U.S. federal government's repeated complicity in displacing Indian peoples from their homelands — making them refugees, in other words — and its failure to follow through after promising them relief reveals the contradictions that arise when the government of a settler colonial nation implements refugee policy for peoples whom it has dispossessed and displaced as a matter of federal policy. This chapter uses the 1866 Creek-U.S. treaty as a point of departure to explore how experiences among American Indians of being displaced and persecuted, and their subsequent struggles for recognition and relief as refugees, is, to borrow a phrase from settler colonial studies scholar Patrick Wolfe, "a structure not an event" in U.S.-Native relations. The effects of displacement

reverberate long after any singular act of dispossession, past any one moment of removal, and in the case of loyal Creek refugees of the Civil War, decades after their moment of flight from hostile forces.[2]

While one article in the 1866 treaty between the Creek Nation and the U.S. federal government established a commission to determine how much money to pay Creek refugees for their losses, another article in the same treaty stripped the Creek nation of half its land. As for the compensation itself, the U.S. government failed to live up to its promises. As Chapter Six demonstrates, it would take Creek refugees — or more accurately, their descendants — nearly one hundred years and many appearances before

[2] Patrick Wolfe, "Settler colonialism and the Elimination of the Native," *Journal of Genocide Research* 8.4 (2006): 387-409. Historian Mae Ngai's analysis of undocumented migrants as "impossible subjects" of the U.S. federal government helps elucidate the contradictions of the U.S. government promising refugee relief to Native people. According to Ngai, the U.S. invested resources in excluding and deporting particular groups of immigrants as an expression of its sovereign right to define national membership. But the mere presence of "undocumented" people in the U.S. already undermined that sovereignty by virtue of their very presence within American borders. To assert sovereignty required that sovereignty be compromised. A form of this "impossible" logic informs the definition of American Indians as refugees. For the U.S. government to ever fully and without qualification recognize and give relief to Native people as "refugees" would require acknowledging the U.S. nation-state's culpability in making Native people refugees. In that sense, it is a requirement of settler colonialism to both create refugees and then deny their status as such. Ngai, *Impossible Subjects: Illegal Aliens and the Making of Modern America* (Princeton: Princeton University Press, 2004). Jessica Cattelino describes a parallel contradiction in her definition of the "double bind" of settler colonialism. Using the Florida Seminole's participation in the gaming industry as an example, Cattelino explains that attaining economic self-sufficiency is necessary to the sovereignty of Indigenous nations, yet they are accused of not being authentically "Indian" when they engage in "modern" enterprises like the gaming industry to secure their economic stability. Creek refugees lost everything during the Civil War, and the state's assistance was critical in helping them rebuild. But entering into the 1866 treaty which promised that economic salve made the Creeks vulnerable to renewed attacks on their land and sovereignty. See Jessica Cattelino, "The Double Bind of American Indian Need-Based Sovereignty," *Cultural Anthropology* 25, no. 2 (2010): 235-263.

Congress, the Court of Claims, and the Indian Claims Commission, established in 1946, to receive the full value of relief that the 1866 treaty commission pledged to them.[3]

The Creeks' decades-long struggle for compensation raises questions, as well, about Native sovereignty. After removal to lands west of the Mississippi River, the Creeks, Choctaws, Chickasaws, Cherokees, and Seminoles continued to exercise their sovereignty as independent nations with their own legal institutions. [4] Yet the Civil War threatened major changes to the legal and political relationship between Indian nations and the United States. The end of the Civil War and the reunification of the North and South augured a stronger and more centralized U.S. federal government, and with it the likelihood of increased challenges against the sovereignty of Native nations. Historian Bradley R. Clampitt notes that "the quest for sovereignty most accurately frames the story of the Civil War in Indian Territory." The decision to give economic relief to loyal Creek refugees and the dispute that followed was a harbinger of the conflicts over jurisdiction, law, and sovereignty that Native peoples would wage with the U.S. federal government for years to come.[5]

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[3] Chapter Six of this dissertation resumes the story of the Creek refugees and their claim before Congress through 1951, when the Indian Claims Commission ruled in favor of the Creeks and granted them the relief they sought as refugees of the U.S. Civil War. Chapter Six also contextualizes their legal struggle within broader transformation in U.S. refugee policy and U.S.-Native relations from the early- to mid-twentieth century.

[4] As historian Clarissa Confer notes, "Before the war, the Five Nations had existed as nearly autonomous entities, providing their own legislative, judicial, and law enforcement systems." Confer, "Hardship at Home: The Civilian Experience," in *The Civil War and Reconstruction in Indian Territory*, ed. by Bradley R. Clampitt (Lincoln: University of Nebraska Press, 2015), 41.

[5] Bradley R. Clampitt, "Introduction: The Civil War and Reconstruction in Indian Territory," in *The Civil War and Reconstruction in Indian Territory*, ed. by Bradley R. Clampitt (Lincoln: University of Nebraska Press, 2015), 2.

This chapter argues that it was not just the value of lost property that Loyal Creeks pursued in their struggle for the funds they were promised as refugees. Rather, their legal and political sovereignty as Native peoples and members of an independent Indian nation was at stake. Taking the provisions of relief outlined in the Treaty of 1866 at face value would suggest that the U.S. federal government's decision to compensate Creek refugees represented a break from the structural dispossession that informed U.S.-Native relations, and a shift toward more equitable policies with and for Native peoples. Yet examining the plight of Indian refugees of the Civil War within the broader context of displacement and removal in Indian history, and looking beyond the text of the 1866 treaty to analyze whether the U.S. government actually fulfilled its pledge to provide loyal Creek refugees with economic relief, reveals how the policy that emerged for refugee Indians in the 1860s was embedded in the government's broader attempts to undermine Native sovereignty.

To describe the violence that transpired from 1861 to 1865 as "the U.S. Civil War" is a misnomer. Many civil wars took place in the five years commonly associated with the division of the American north and south. In particular, conflict between and within the Five Nations — and the flight of Indian refugees that resulted from such conflict — makes all too evident the many divisions and conflicts in Indian Country that paralleled the American Civil War.[6]

[6] In the two decades preceding the Confederacy's secession from the United States, the Cherokees, Choctaws, Creeks, Chickasaws, and Seminoles — the "Five Nations," or as they were commonly referred to in U.S. documentation, the "Five Civilized Tribes" — exercised their sovereignty while restoring order to the consequences that President

The United States government entered into treaties with each of the Five Nations after the end of the war. The treaties between the U.S. and the Five Nations shared several characteristics. They restored the peace between Indian Nations and the U.S.; they outlawed slavery (and involuntary servitude, except, as in the United States, for punishment of a crime), setup provisions for former slaves to own lands, and declared them citizens of the nations in which they were enslaved; they exchanged lands, made borders, established jurisdictions, and laid the groundwork for allotment policies that would break up Indian land into parcels for individual resale. The U.S. government's

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Andrew Jackson's removal policies brought to Indian Country. The introduction of "common schools" laid the groundwork for the construction of boarding schools that American officials would later use to try and assimilate Native people into white American conceptions of culture, politics, and economy. The Creeks and the Cherokees contended with cattlemen who disregarded treaty definitions of the new boundaries of the Five Nations and allowed their cattle to roam freely across their borders. The expansion of railroads was a reminder to all Native people relocated to the present-day state of Oklahoma of the ongoing threat to their land not just from the U.S. government, but from corporations and private enterprises. Tensions around race and slavery, meanwhile, threatened to divide the citizens of Indian nations. Christian missionaries exacerbated tensions over slavery in the Five Nations. While Presbyterians encouraged abolition, Baptists favored the continuation of slavery, driving further wedges between those who supported and opposed slavery, especially among the Cherokees and Seminoles. The years leading up to the Civil War and the prospect of emancipation for enslaved Africans in both the United States and Indian nations made the complex landscape of race, slavery, and kinship in Indian Country even more tenuous. Just like white families in the North and South split their loyalties to either side, individual members and families of Indian nations divided over slavery also met on opposite ends of the battlefield. By the end of the Civil War, all Five Nations — or more accurately, factions within each of the Five Nations — would sign treaties with the Confederate States of America. Francis Paul Prucha, *The Great Father: The United States Government and the American Indians* (Lincoln: University of Nebraska Press, 1984), 416; Brad Agnew, "Our Doom as a Nation Is Sealed: The Five Nations in the Civil War," in *The Civil War and Reconstruction in Indian Territory*, ed. by Bradley R. Clampitt (Lincoln: University of Nebraska Press, 2015), 64-66.

treaty with the Creek Nation, however, was unique in its inclusion of a provision that guaranteed relief to refugees.[7]

Before moving to the treaty itself, it's worth offering some context for the cleft that turned members of the Creek Nation into refugees during the war. The divisions that pitted Creeks against each other during the Civil War and created the conditions that led to the U.S. government formally acknowledging displaced Creeks as "refugees" began decades before the Civil War. Factionalism within the Creek Nation first emerged in the late eighteenth and early nineteenth century, when pervasive belief among the Creeks in common ownership of land and resources gave way to the rising influence of private property and all its connotations for the division of land, goods, and people. At the turn of the nineteenth century, a minority of Creeks began to deviate from communal principles, choosing instead an agricultural system that relied on private ownership of land and slaves. Slavery in Creek country defined many elements of life within the Nation, and drove a wedge between those who owned slaves and those who did not.[8]

The "Lower Creeks," as they came to be known, not only embraced slavery, but also heeded the U.S. government's suggestions that the Creeks centralize their

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[7] In addition to Treaty with the Creeks, June 14, 1866, 14. Stats. 785, Ratified July 19, 1866, see Treaty with the Cherokee*,* July 19, 1866, 14 Stats. 799, Ratified July 27, 1866; Treaty with the Chocktaw and Chickasaw*,* April 28, 1866, 14 Stats. 769, Ratified June 28, 1866; Treaty with the Seminole, March 21, 1866, 14 Stats. 755, Ratified July 19, 1866.

[8] Overall, slavery in the Creek Nation bore little resemblance to the practice of holding humans in bondage across the American south. Many Creek slaves farmed for their own subsistence, contributing only a portion of the crops produced from their labor to their masters. They were often freed during their lifetimes, and one's enslavement was not passed between generations. David A. Chang, *The Color of the Land: Race, Nation, and the Politics of Land Ownership in Oklahoma, 1832-1929* (Chapel Hill: University of North Carolina Press, 2010), 21-23.

government and adopt a national council. The "Upper Creeks," meanwhile, adopted slavery on a much smaller scale and opposed the consolidation of Creek political power into a single body that represented the entire nation. Private land ownership and slavery thus engendered social divisions, economic disparities, and changing conceptions of political organization that caused a rupture in the Creek Nation and culminated with the Red Stick War. In April 1813, the Upper Creeks — who organized under the mantle "Redsticks," after the red clubs they carried into battle — banded together in a civil war against the wealth, power, and property that the Lower Creeks had accumulated over the previous decades. Many hundreds of Creeks died before the Treaty of Fort Jackson ended the fighting on August 9, 1814. The Treaty of Fort Jackson did not just mark the end of the war. It also forced the Creeks to surrender over half of the Creek Nation's territory to the United States government.[9]

The divisions that fueled the Red Stick War extended to removal. The U.S. government began making removal part of its federal policy as early as the 1820s, when officials in James Monroe's presidential administration pressured southeastern Indians to relocate west of the Mississippi River. Before long, those officials began using treaties as

[9] Chang, *The Color of the Land,* 23-24. Claudio Saunt, "'The English Has Now a Mind to Make Slaves of Them All': Creeks, Seminoles, and the Problem of Slavery," in *Confounding the Color Line: The Indian-Black Experience in North America*, ed. James Brooks (Lincoln: University of Nebraska Press, 2002), 48. At the time of the Red Stick War, Saunt explains that "the top 20 percent of Muskogees owned between 60 and 70 percent of the assessable wealth in Creek country, goods such as cattle, cotton, and spinning wheels. The bottom 50 percent, in contrast, owned only between 8 and 15 percent of the wealth." Saunt, *A New Order of Things: Property, Power, and the Transformation of the Creek Indians, 1733-1816* (New York: Cambridge University Press, 1999), 272.

vehicles to facilitate removal and make it legally binding. In 1824, federal commissioners met with several of the Creek Nation's chiefs, including William McIntosh, a leader among the Lower Creeks. McIntosh and the other chiefs told the U.S. government officials they had no interest in exchanging their land in the southeast for unfamiliar territory west of the Mississippi. In February of 1825, however, McIntosh, several chiefs, and other members of the Creek Nation entered into the Treaty of Indian Springs. The treaty gave up what remained of their homelands in Georgia and Alabama in exchange for land west of the Mississippi River. The Creek National Council did not approve of the treaty, and following an 1811 law that made it punishable by death to sign a treaty that relinquished the Nation's land without the Council's consent, gave a Creek leader named Menawa their approval to execute McIntosh and the other treaty signers. Menawa was not just an influential Creek leader. He was also among those who fought against Lower Creeks like McIntosh twenty years earlier in the Red Stick War. After Menawa and a group of supporters executed McIntosh, President Monroe postponed implementing the Treaty of Indian Springs until internal tensions in the Creek Nation subsided. In 1832, the last of the Nation's leaders in the southeast signed the Treaty of Washington and finalized the process of westward removal that had begun nearly a decade earlier.[10]

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[10] Removal to Indian Territory in the years following the Treaty of Washington resulted in severe hardships. Many Creeks died. Historian Mary Jane Warde writes that the harsh winter during the last passages of removal from 1836 to 1837, along with the absence of supplies that the Treaty promised upon their arrival in Indian Territory, caused a 40 percent reduction in population in the Creek Nation. Mary Jane Warde, *When the Wolf Came: The Civil War and the Indian Territory* (Fayetteville: University of Arkansas Press, 2013), 13-15.

The historical memory of removal among Creek Indians speaks to how the legacy of dispossession, and in particular episodes of displacement, reverberates for years. Elsie Edwards was the daughter of Tustenuggee Emathla, a prominent Creek political and military leader. A field worker with a Works Progress Administration initiative that interviewed thousands of Native people during the New Deal interviewed Edwards in 1937. At 84 years of age, Edwards began the story of her own life by telling a story about someone else's. "Somewhere upon the banks of the Grand River near Fort Gibson," she started, "lies an old grave of an old lady whose name was Sin-e-cha." Sin-e-cha traveled with her fellow towns peoples from Kechobadagee to unknown lands in Indian Territory west of the Mississippi River, during what Edwards termed "the events with never no more to live in the east." Sin-e-cha and about 4,000 other Creeks embarked on the forced voyage to Indian Territory. While en route from New Orleans to Arkansas in October 1837, a ship called the *Monmouth* that carried Sin-e-cha and 600 other Creeks collided with another ship, the *Trenton*. Over 300 people perished, including three of Edwards' siblings. Edwards recalled a song that Sin-e-cha sang during the shipwreck, a song that others on board sang along with her: "I have no more land, I am driven away from home, driven up the red waters, let us all go, let us all die together and somewhere up on the banks we will be there."[11]

[11] Elsie Edwards, September 17, 1937, Interview ID 7571, Volume 27, *IPP*. For more on the sinking of the *Monmouth* during Creek removal, see the entry on Tustenuggee Emathla in *Encyclopedia of American Indian Removal* Volume 1, eds. Daniel F. Littlefield, Jr. and James W. Parins (Santa Barbara, CA: Greenwood Press, 2011), 253-255.

Edwards and her family were refugees during the Civil War.[12] Edwards' story about Sin-e-cha and her fellow Creeks' experience during removal is a stark reminder that the displacement and persecution that turned Native peoples into refugees during the Civil War was not an isolated event. Oral histories with people like Edwards reveal how seemingly disparate moments of displacement were, in fact, not disparate at all. Edwards was not alone. Many Native people who participated in Works Progress Administration oral history projects told stories that spoke of generations of displacement. Wallace Thornton, a Cherokee man, was twelve years old when the Civil War caused his family to seek refuge in Choctaw Nation along the Red River. When recalling his own experience as a Civil War refugee, he began his story with that of his mother, Betsey Ratcliffe, who was born in Georgia and forced with her family to move to Indian Territory in 1838. Like Thornton, a Creek woman named Martha Gibson Walker recalled her family's experience of removal from Mississippi to Indian Territory in 1838. At one point during that journey they were crossing a river over a bridge when it collapsed, causing many to drown. Her family experienced displacement again when they sought refuge along the Red River in Choctaw Nation from hostile Union supporters.[13]

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[12] Edwards recalls camping out on the Red River, up on a hill where "people made shelter in any way and out of anything that could be used." For the most part, refugees "made their crude houses out of bark which was usually of hickory bark." Edwards and her family found refuge first in Texas before being moved to Fort Gibson, where they received rations from the U.S. military until they were allowed to return to their homes at the end of the war. Elsie Edwards, September 17, 1937, Interview ID 7571, Volume 27, *IPP*.

[13] Wallace Thornton, May 21, 1937, Interview ID 0000, Volume 90, *IPP;* Martha Gibson Ma-Toy-Walker, April 12, 1937, Interview ID 0000, Volume 94, *IPP*; For additional examples of interviews with Civil War refugees and their descendants that also discuss removal to Indian Territory in the 1830s, see the following: Mattie Bailey, January 11, 1937, Interview ID 0000, Volume 4, *IPP*; Tuxie Miller, March 15-17, 1937, Interview ID

The recurring episodes of displacement that occurred in the southeastern homelands of Native peoples and again in their adopted homes in Indian Territory in the mid-nineteenth century were both the result and cause of conflict within and between Indian nations, individual white settlers, and the U.S. government. The stories that Native peoples told about their multiple displacements, and the stories they retold decades after they occurred, distill how the experience of becoming a refugee in Indian Country is not reducible to any single event, but is a structural component of U.S.-Native relations. Indeed, when Cherokee woman Elinor Boudinot Meigs explained to a Works Progress Administration employee in 1937 that that the "renewal of persecutions" among the McIntosh and Opothleyhola bands of the Creek Nation created different streams of refugee migration during the Civil War, she alluded to how difficult it is in the arc of nineteenth century Indian history to identify when one instance of displacement ends, and when and another begins.[14]

The history of factionalism among the Creeks stirred further displacement at the start of the U.S. Civil War. On December 26, 1861, James McIntosh led a battalion of Lower Creeks and other Confederate sympathizers and drove the followers of Upper Creek leader Opothleyahola from their homes. Thousands of Union supporting Upper Creeks became refugees and sought haven in Union territory. The winter was unusually harsh

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0000, Volume 63, *IPP*; Judge J.T. Parks, January 26, 1937, Interview ID 0000, Volume 69, *IPP*; Felix Reece, January 4, 1937, Interview ID 0000, Volume 75, *IPP*; Ruth Myers, (no date), Interview ID 5111, Volume 65, *IPP*; Lizzie Wynn, November 29, 1937, Interview ID 12286, Volume 101, *IPP*.

[14] Elinor Boudinot Meigs, March 2-4, 1937, Interview ID 0000, Volume 62, *IPP*.

that year. At least one out of ten people died in their flight to Union-controlled refugee camps. Many of the horses that the Creeks brought with them perished. Creek refugees stayed in refugee camps through the end of the Civil War.[15]

Opothleyahola's flight garnered the attention of government officials working in the Bureau of Indian Affairs. William G. Coffin, the superintendent of the Bureau's southern branch, ordered all personnel under his charge to convene at Fort Roe along the Verdigris River in southeastern Kansas in preparation for the ongoing arrival of Indian refugees leaving Indian Territory and heading north. On January 9, 1862, about two weeks after the defeat that drove Opothleyahola's followers to seek refuge, Commissioner of Indian Affairs William P. Dole recounted the incident to Congress. He wrote that a band of "disloyal Indians in the territory west of Arkansas," along with Confederate troops from that state and Texas, attacked a group of "Union or loyal Indians" under the leadership of Opothleyahola.

Opothleyahola and his followers fought back against the band of Choctaws, Chickasaws, Texans, Creeks, and Seminoles that pursued him and his followers. After several battles, however, Opothleyahola's contingent "were defeated, and compelled to flee from the country with their families, leaving everything in the way of property that would impede their flight." That Commissioner Dole emphasized in his report to Congress that those who fought alongside "the renowned Opothleyoholo [sic]" were considered "loyal" is critical. Because of their actions against the Confederate troops and

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[15] Confer, "Hardship at Home," 49; Annie Heloise Abel, *The American Indian in the Civil War, 1862-1865* introduced by Theda Purdue and Michael D. Green (Cleveland: A.H. Clark Co., 1919; reprint, Lincoln: University of Nebraska Press, 1992), 81-82.

their allies, Dole observed that "these Indians stood firmly to their treaty obligations with the United States," signaling the commissioner's expectation that Creeks and other Indians would hold true to their treaties with the United States despite the fact that the U.S. Congress had voted to put a moratorium on all treaties with Native American nations whose members sided with the Confederacy.[16]

Dole estimated that approximately five to six thousand refugees fled into Union territory in southeastern Kansas following the battle. These refugees were "in a most deplorable condition — men, women, and children — naked, starving, and without shelter…The sick and feeble, the dead and dying, were scattered along their route for a hundred miles or more." In response to the devastating conditions that Opothleyahola and his followers confronted, Major General D. Hunter took it upon himself to "make provision for their necessities" until the Department of Indian Affairs could arrange more formal arrangements. At the time, Hunter noted that he "but fulfilled a duty due to our common humanity and the cause in which the Indians are suffering."[17]

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[16] 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. Laid on the table, and ordered to be printed,* June 16, 1862, 37th Cong., 2nd sess., 1862, H. Exec. Doc. 132, serial 1138, 2 [hereafter cited as *Relief to the Indian refugees in southern Kansas*]. According to Dole, "the Union Indians, as nearly as I could ascertain, were composed of 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 Chocktaws and Chickasaws, of whom very few, if any, adhered to the government." 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; Abel, *The American Indian in the Civil War*, 80-81.

[17] *Relief to the Indian refugees in southern Kansas,* 3.

One Creek man who recalled his experience as a refugee in an interview with the Works Progress Administration in the 1930s invoked the devastating removal to Indian Territory in the 1830s when he described the flight of Creek refugees as "almost another trail of tears." Others remembered the devastation, as well. James Scott was about 10 years old when the Creeks split in favor of the Union and the Confederacy at the start of the war. At the time he didn't understand why his family and neighbors were rushing to kill their cattle and prepare the meat for drying. Once the McIntosh Creeks began "ruthless raids and destroying of homes," however, he knew it was because they were planning to flee. On their trip to Kansas he remarks that they repeatedly had to stave off attacks from McIntosh's forces. He described the challenges they confronted along the way:

> We faced many hardships, we were often without food, the children cried from weariness and the cold, we fled and left our wagons with much needed provisions, clothing and other necessities, many of our friends, loved ones, perished from sickness and we all suffered from the cold as it was during the winter time that we were on our flight to a neutral country.[18]

McIntosh's troops attacked a supply envoy headed to Fort Gibson, destroyed all its supplies, and burned its wagons. Some resorted to eating horse flesh as supplies grew thin. Henry Johnson, meanwhile, recalled burying bodies during the flight of Creek refugees who supported the Union. When hundreds died in route to a refugee camp near Leroy, Kansas, the survivors buried them in "shallow graves, in hollow logs, with the ends of the logs closed with chunks of wood, anything to prove a hurried burial with an attempt to keep the bodies immune from the depredations of the wolves and other

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[18] Joseph Bruner, February 28, 1938, Interview ID 13105, Volume 12, *IPP;* James Scott, March 29, 1937, Interview ID 0000, Volume 81, *IPP*.

animals." Johnson noted that for years later, white settlers' ploughs turned up the bodies of Creek refugees, and one person, he claimed, reported that he dug up bones on his uncle's farm in Leroy.[19]

Some American officials did not think that Creek refugees would require shelter for much longer than a few days or weeks. But the number and frequency with which refugees arrived across Union lines suggested otherwise. John W. Turner, a "Captain and Commissary of Subsistence" working under Commissioner Dole, issued a report about the "loyal and destitute Indians" seeking refuge in Kansas. He predicted that because more and more refugees were coming to Kansas every single day, the total number of refugee Indians in Kansas might "swell to at least eight thousand, and probably ten thousand."

The Indian Office and the U.S. military may have sought to afford relief to this vast number of refugees. But the question of where officials should give shelter to refugees tempered that concern. The ideal location, noted Turner, was in a valley near the Neosho River, which had "the advantage" of being near the source of supplies to be provided for the refugees. But this area was "mostly owned and occupied by settlers." To allow the refugees to temporarily settle there, Turner explained, would "bring these Indians on to settlers' lands and in daily contact with them." According to Turner, "no farmer would look with complacency or quietude upon such a crowd of destitute people brought around them, and I apprehend serious difficulties would arise." The concern that trouble might arise if Indian refugees came into contact with settlers caused officials to

[19] Henry Johnson, (no date), Interview ID 5, Volume 48, *IPP*.

give temporary asylum to the refugees along the Verdigris River. According to Turner, this location was "on Indian lands, and sufficiently removed from the settlers to obviate the difficulties and disputes which would certainly arise if brought in closer contact."[20]

George W. Collamore, an employee of the Department of Indian Affairs, observed at the same time that the Indian refugees "have exhibited a courage and endurance beyond any in the United States," and that they "breathe but one spirit of fidelity to the Union."[21] Despite their large numbers, the extent of their destitution, and the esteem to which these "loyal Indians" were held, officials prioritized the concerns of settlers when determining where Opothleyahola and his followers might be secured refuge. Indeed, because the site near the Verdigris River was so remote compared to their previous encampment, the *Leavenworth Daily Conservative* ran advertisements in the newspaper asking for people with means to donate provisions to the refugees.[22] The accommodations afforded to Indian refugees were enmeshed in considerations that stemmed from the U.S. federal government's history of privileging settlers over Native people. Rather than place Indian refugees — whom American officials observed to be in need of considerable medical care and access to not just shelter but also food, clothing, and other provisions — at the Neosho River, where they'd have the greatest access to resources necessary for their survival, officials instead deferred to the comfort and desires of white settlers.

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[20] *Relief to the Indian refugees in southern Kansas,* 10.
[21] *Ibid.,* 14.
[22] Lela J. McBride, *Opothleyaholo and the Loyal Muskogee: Their Flight to Kansas in the Civil War* (Jefferson, NC and London: McFarland and Company, 2000), 182.

The years between Opothleyahola's flight to Kansas and the close of the Civil War saw thousands of members of the Five Nations displaced as a result of the conflict. By the end of 1863, for example, historian William McLoughlin observes that 6,000 refugees sought asylum at Fort Gibson, where they encamped with about 3,000 troops. Near the end of the war, meanwhile, principal chief of the Cherokee Nation John Ross lobbied the Lincoln administration in Washington for military protection and provisions for Cherokee refugees stuck in Kansas and others who were stranded at Fort Gibson.[23] The question of who would be responsible for paying for the care of Indian refugees had been unclear during the Civil War, with provisions being provided for in some instances by the military and in others by the Indian Office, often on credit, as Lincoln did not formally authorize funds for the care of Indian refugees until June 1864. While the costs of temporarily providing food, shelter, and clothing for refugees was an important matter that needed resolution, refugees themselves suffered great losses as a result of their displacement.[24] How and whether the United States government would accommodate displaced Creeks in the long term was a question that would take decades to resolve.

On June 14, 1866, over one year after the Confederacy surrendered at Appomattox Court House in Virginia, the U.S. entered into a treaty with the Creek Nation. Article Four dealt directly with the thousands of Union-supporting Creeks who were displaced by Confederate troops, Lower Creeks, and other Native peoples who joined the Confederacy. It called for a commission to investigate losses sustained by Creeks who

[23] McLoughlin, *After the Trail of Tears*, 213-216.
[24] Prucha, *The Great Father,* 425-426.

supported the Union or aligned with the Union's goal of abolishing slavery, including men who enlisted in the Federal Army, "loyal refugee Indians," and freedmen.[25]

Loyal Creeks were the first group of Native peoples whom government officials formally acknowledged as "refugees" with a claim to relief from the United States. This decision coincided with broader transformations in American citizenship and belonging after the end of the Civil War through the rise of the Jim Crow South in the 1890s. As U.S. federal Indian policy shifted from a focus on removal to assimilation, a more humane approach by the U.S. government in its relations with Native people seemed possible. The recognition of displaced Loyal Creeks as "refugees" would seem to follow that trajectory. But like federal assimilation policies that in practice undermined the sovereignty and independence of Native nations by pressuring them to adopt western understandings of property ownership and abandon their language, culture, and lifeways, the compensation promised to Creek refugees in their 1866 peace treaty with the U.S. failed to live up to the humanitarianism implied in refugee relief.

The treaty's preamble explained that it was made in part because the Creek Nation signed a treaty with the Confederate States of America in 1861, thus nullifying all previous treaty agreements that had been reached between the Creeks and the United States and requiring a new treaty to take its place. The Treaty of 1866 promised peace. Yet it was riddled with compromises. Article One pledged that the U.S. would protect the Creeks from the hostilities of other Indian nations and offer financial reparations in the event of an attack, but it also required that the Creeks allow military occupation

[25] Treaty with the Creeks, June 14, 1866, 14. Stats. 785, Ratified July 19, 1866.

whenever and for however long the U.S. government deemed it necessary. Article Two made former Creek slaves citizens of the Creek Nation, but did not guarantee them any special privileges to land ownership to compensate them for their unpaid labor. Above all, Article Three forced the Creeks to sell 3.25 million acres in the western half of their territory — amounting to nearly half of their land, which had already been greatly reduced over decades of cessions — to the U.S. government for $975,000, or thirty cents per acre. It also included provisions that threatened to compromise the sovereignty of the Creek Nation.[26]

The treaty's assembly of a commission to determine awards for the compensation of these three groups, "loyal refugee Indians" among them, so that they might receive compensation for their lost property seems, on the one hand, an action of the United States government to acknowledge and reward those among the Creeks who remained loyal to the Union. But even this silver lining in a treaty that otherwise punished the Creek Nation included limitations that compromised Creek sovereignty and indicated that the prospect of relief for refugees was not what it seemed. In a move that directly challenged Creek sovereignty, the treaty required that the Creek Nation use funds from the sale of over half its land to the United States to pay loyal Creek refugees for the value of their lost property.[27]

On February 14, 1870, Southern Superintendent of Indian Affairs W.B. Hazen and U.S. Agent for the Creek Nation F.A. Field released the findings of their commission to decide what the U.S. government owed Creek refugees. Hazen and Field valued the

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[26] *Ibid.*
[27] *Ibid.*

claims of loyal Creek refugees at $5,090,808.50. Rather than pay that amount in full, however, Hazen and Field suggested that the U.S. government pay the Loyal Creeks only $1,836,830.41. Although the Commissioner of Indian Affairs approved this amount, the Secretary of the Interior intervened and capped the award at $100,000.[28]

The Loyal Creeks believed they were being swindled. Acting in their capacity as delegates for the Creek Nation, David M. Hodge and Yar Teh Ka Harjo submitted a petition to Congress in 1878 in which they protested the U.S. government's decision to pay loyal Creek refugees only $100,000 for claims that the Hazen and Field commission valued at $1,836,830.41. Hodge and Yar Teh Ka Harjo observed that the Cherokees and Osages were also required to sell half their land to the U.S. after the Civil War, but noted that the Creeks were forced to accept nearly one-half of the amount of money for each acre of land compared to the rate of sale among neighboring nations. They claimed further that although the 1866 treaty specifically noted that the Loyal Creeks should be paid up to $100,000, nowhere in the treaty did it stipulate that amount as a maximum award for their losses. What's more, 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 lost property.[29]

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[28] 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. -- Recommitted to the Committee on Indian Affairs and ordered to be printed,* March 16, 1878, 45th Cong., 2nd sess., 1878, H. Misc. Doc. 38, serial 1817, 1-2.

[29] *Ibid.* Hodge and Yar Teh Ka Harjo also discussed how the Lower Creeks, who had the support of the United States during the Redstick War, had no trouble receiving payment from the U.S. for losses sustained during the war and expected that the Loyal Creeks during the Civil War ought to receive the same treatment.

About two years later, on March 10, 1880, fourteen years after the treaty between the U.S. and the Creek Nation was signed, Hodge presented a memorial to the Committee on Indian Affairs to support Senate Bill No. 1145. This bill approved a sum of $1.8 million to be paid from the U.S. Treasury to the Loyal Creeks or their heirs. In addition to being a substantial sum of money, the bill was an opportunity for the U.S. government to pay the full amount that Hazen and Field recommended for the Loyal Creeks in their 1870 report. Hodge made several arguments in favor of Senate Bill No. 1145. What's more, he expressed them in terms that resonated with the U.S. government's approach to treaty-making with Native peoples only if they adhered to American standards of modernity and economic progress. For example, throughout his memorial, Hodge 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 were destroyed.[30]

Yet Hodge's memorial was no easy embrace of American rhetoric about "civilization." Hodge minced no words in articulating how he understood the federal government's attitude and behavior toward the loyal Creek refugees. Rather than protect the Union supporting Creeks per the terms of an 1856 treaty with the Creek Nation that

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[30] 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.

guaranteed U.S. military support against attacks by white settlers or hostile Indians, he accused the U.S. government of using the Army "to ravage those very Indians whom it was designed to protect." According to Hodge, the U.S. government stole more than four million dollars of cattle and horses — among their most valuable assets — "leaving them destitute." For taking Creek property and violating its treaty obligations, Hodge emphasized that the U.S. federal government was responsible for any of the losses that the Creeks incurred as a result of their loyalty to the North during the Civil War. It was incomprehensible to Hodge that the U.S. government could fail on so many levels to honor its obligations to the Creeks.[31]

Hodge highlighted that because the $100,000 that the U.S. government had thus far paid to the Loyal Creeks was taken from Creek coffers, the compensation they received was not compensation at all. It was merely a re-appropriation of their own funds — funds that had been raised from the sale of their own lands, no less. Hodge also claimed that the funds were not even distributed to loyal Creek refugees, but were "paid to certain other Indians and refugees in the State of Kansas during the war." He claimed further that there was no way the $100,000 was meant to be the only award for all claims made by Creek refugees; if so, why would Article Four of the 1866 treaty have gone through the trouble of assembling a commission to determine the losses of individual Loyal Creeks? When the commission met, they not only included evidence of each claimant for the amount they lost, but "reduced their amount to a minimum, and certified to what they considered was clearly and justly due." Hodge claimed that the

[31] *Ibid.,* 4-5.

commission's conclusions about how much each individual loyal Creek refugee should be paid effectively took on the "nature of a certified debt." The $100,000 award, Hodge continued, was paid to the Creeks because they were utterly destitute after the war. It wasn't meant to compensate individual Loyal Creeks for their losses. It was merely an initial payment, one that was necessary as a stop-gap measure to guarantee their survival. The fact that the money came from the sale of Creek lands would seem to support that point, the funds acting almost as a loan against oneself to cover immediate, necessary costs.[32]

In his opposition to the U.S. government's failure to adequately compensate loyal Creek refugees, Hodge pointed to the guardian and ward relationship between the United States and American Indians. The intertwined concepts of guardianship and wardship were among the foundational tenets in the legal and political relationship of Native peoples and the United States federal government. As scholars of federal Indian law David E. Wilkins and K. Tsianina Lomawaima have explained, it is a fundamental principle of all legal interactions that the U.S. enters into with Native peoples that the U.S. has a "federal responsibility to protect or enhance tribal assets." This obligation, they explain, is not only morally binding but also legally binding. Wilkins and Lomawaima cite this legal obligation to the 1831 case *Cherokee Nation v. Georgia*, in which the Supreme Court ruled that tribes were domestic dependent nations and that their relationship with the United States was that between a guardian and a ward. They explain as well, that some legal scholars date the guardian and ward relationship — and the "trust

[32] *Ibid.,* 8.

doctrine" more broadly — to the Northwest Ordinance of 1787, when the U.S. government claimed it would always act in "good faith" in relation to Indians; that 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, crucially, laws "founded in justice and humanity" would occasionally be passed to make sure no wrongs are done to Indians and to preserve peaceful relations with them."[33]

When Hodge brought the guardian and ward relationship to bear on the Loyal Creeks and their claims as refugees, he suggested that if the U.S. was the "guardian" of the Creeks, then it was inconsistent with the nature of that relationship for the U.S. government to force the sale of half of 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 Creeks 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." Because the Creek Nation was not a state within the Union, it was the treaties the United States held with the Creeks as a sovereign nation, Hodge maintained, that made the decision of the U.S. not to defend Loyal Creeks and to not fully compensate them for their lost property both abhorrent *and* unlawful. According to Hodge, the Creeks held their treaty relationships with the United States in such high esteem that when the Civil War started, they sent delegates along with representatives of

[33] David E. Wilkins and K. Tsianina Lomawaima, *Uneven Ground: American Indian Sovereignty and Federal Law* (Norman: University of Oklahoma Press, 2002), 12-13; 68-72.

the other Five Nations to Washington DC. On their visit, they wished to remind President Lincoln of Article Eighteen of the Treaty of 1856, which guaranteed the U.S.'s protection against hostile Indians and white Americans. After the delegates returned to their respective Nations, however, they found that U.S. troops had abandoned them. When later in the war U.S. soldiers were based at Fort Gibson and Fort Smith, their fortifications "gave them entire military possession of the Creek country." The U.S. federal army was thus well situated to offer protection to Loyal Creeks. Instead, they stood by as Creek refugees fled for safety and as their property, cattle, horses, and other valuables were taken and destroyed.[34]

In concluding his memorial, Hodge appealed further to trust and fairness. When the able-bodied men among the Loyal Creeks volunteered to fight alongside Union soldiers, Hodge explained that their decision was rooted in trust. These men left their homes and their families. In so doing, they left "the protection of their country and homes to the care of the United States Government…relying upon the treaties wherein the protection had been so solemnly guaranteed." Rather than honor their treaty-held duty to protect the Creeks, Hodge claimed that the U.S. government "became their despoilers and oppressors." He noted that several U.S. officials, including Superintendent Sells, Lieutenant Williams, and Inspector General Marcy, admitted that the U.S. took Creek livestock and that the U.S. government "became speculators on the misfortunes of the Loyal Creeks." Making matters worse, Congress had already made appropriations for the

[34] 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.

payment of claims made by the Senacas, Shawnees, and Quapaws for losses they sustained during the war. Although those claims were similar, they differed in one fundamental respect: only the Loyal Creeks, by virtue of their 1866 treaty with the U.S. federal government that established a commission to hear all loyal Creek refugee claims, could say that the U.S. was bound to pay them by treaty.[35]

Hodge's efforts to push the Senate bill through Congress were unsuccessful. In fact, it would take seventeen years for Congress to revisit the question of compensating loyal Creek refugees, and only then as part of the Dawes Commission's efforts beginning in the late 1880s to dissolve the national governments and territorial sovereignty of the Five Nations by breaking up their lands into allotments for individual sale.[36] Following in the footsteps of Hodge and Yar Teh Ka Harjo, Isparhecher, the Principal Chief of the Creek Nation, submitted a petition to the U.S. Congress in 1897 in which he called it a "travesty of justice, reason, and common sense" for the U.S. to take such advantage of the Creeks. Instead, he hoped the U.S. government would "adopt that broader, more humane, more comprehensive, and more dignified policy which should be adopted by a great Government toward an inferior and wronged people, who, while owing it no allegiance, were second to none of your best citizens in loyalty, patriotism, and devotion to your government." Yet Isparhecher didn't just believe the U.S. government would come through with the full payment for loyal Creek refugees because it was the humane, moral thing to do. It was a matter of law and treaty, Isparhecher explained, that required

[35] *Ibid.,* 11.
[36] Warde, *When the Wolfe Came*, 306.

the U.S. government to honor Creek claims. "We further believe," he stated, that "you will deal with [Loyal Creeks] as you would deal with the rights of other persons, according to a reasonable, just, and fair interpretation of the contract made with them, constantly bearing in mind that your Government occupies to these claimants the relation of guardian to ward, and that you will carefully and jealously guard, adjust, settle, and pay the amount of the awards to these people made in conformity with solemn treaty stipulation."[37]

Isparhecher's appeal to a "broader, more humane, more comprehensive policy" was not rooted in some general sense of humanitarian or moral obligation, but in law. By referring to the United States as a "great Government" and to the Creeks as an "inferior and wronged people," Isparhecher evoked the guardian and ward relationship, as Hodge had in his own appeal to the U.S. government. By referring to a "reasonable, just, and fair interpretation of the contract" made with the Creeks, Isparhecher likewise invoked the "trust doctrine," a cornerstone of Native understandings of the legal relationship between American Indians and the U.S. federal government that relied equally on the United States government's legal obligation to honor Native sovereignty and protect the land and assets of Indian nations and tribes.[38]

From the 1870s through the 1890s, the Loyal Creeks presented their claim to several sessions of Congress. On March 1, 1901, Congress passed an act that ordered the

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[37] U.S. 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, serial 3562, 5-6.

[38] For a full legal analysis of the trust doctrine, see Wilkins and Lomawaima, *Uneven Ground*, 64-97.

Senate to hear all pending claims of Loyal Creek refugees and their descendants and make final determinations of the amount owed to them within a period of two years. At the same time, 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 Creeks, Congress stipulated that the Creek Nation had to allow their national territory to be allotted for individual resale. The U.S. government used its agreement to finally compensate loyal Creek refugees to achieve its broader objective of imposing allotment and breaking apart Native nations in Indian Territory. Second, the Creeks had to surrender their right to self-government. Third, the Creek Nation had to allow its lands to "be embraced with a state of the Union." This arrangement fell in line with the U.S. federal government's broader agenda to break up Indian lands and usher the assimilation of Native peoples into private land ownership and weaken Native sovereignty.[39]

Two years later, Congress offered $600,000 to loyal Creek refugees — or more likely their descendants, as the awards came nearly 40 years after the 1866 treaty. This amounted to only half the sum that the Hazen and Field commission concluded they ought to be paid according to the 1866 treaty. They reluctantly accepted the offer. Although the Loyal Creeks wished to continue pressing their claims against the U.S.

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[39] *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, National Archives and Records Administration, Washington, DC, 4.

government, the provision of the 1901 act that barred the Loyal Creeks from pursuing additional payments proved effective at limiting their pursuit of further compensation — at least for a time.[40]

This chapter has argued that the legacies of conflict, removal, and displacement in Indian Country and the various refugee flights during the U.S. Civil War were not isolated episodes of displacement, but were part and parcel with structural elements that defined the contours of power that guided the U.S. federal government's approach to U.S.-Native relations. The fact that the U.S. government initially pledged relief to loyal Creek refugees in 1866, and then only followed through on that pledge in 1901 and in 1903 with Congressional acts that compromised Creek sovereignty at the same time that it paid forward some of the compensation to which they were owed via treaty, is emblematic of

[40] 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 was 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. The Indian Citizenship Act of 1924 did indeed produce a flurry of new claims, but administrative delay and the U.S. government's general distrust of Indian claims made federal claims court an inhospitable venue for Native legal challenges against the U.S. government even after the Indian Citizenship Act of 1924 announced all American Indians as U.S. citizens. It would not be until the formation of the Indian Claims Commission in 1946, 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 would have a new avenue for asserting their demand that the U.S. government pay them the amount of money they believed they were owed. 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).

the contradictions embedded within policy for Native refugees under U.S. settler colonialism. The federal government hoped that the Act of 1903 would shutter Creek claims for refugee relief. But 1903 would eventually prove to be a turning point that caused the Creeks to pursue their case with greater fervor than before.

When the U.S. first called the Loyal Creeks "refugees," they did so to acknowledge their displacement by Confederate forces during the Civil War. But when viewed over the course of the U.S. government's decades-long process of distributing economic relief to loyal Creek refugees and within broader histories of Indian displacement and removal, the struggle for refugee relief was another venue in the ongoing effort for Native peoples to preserve their sovereignty against a government inclined toward their dispossession. The hard truth remains: if the U.S. Government was serious about supporting Indian refugees, they would not have offered them money. They would have addressed the root causes of their hardships — removal and displacement — and given them land.

This dissertation's next and fourth chapter explains a crucial shift in the relationship between land and American refugee policy beginning to take shape as the Act of 1903 temporarily stalled the claims of loyal Creek refugees. When decades of political instability and economic inequality sparked the Mexican Revolution in 1910, American immigration officials prepared for the arrival of thousands of Mexican refugees at the U.S.-Mexico border. Although immigration officials initially expressed a humanitarian interest in harboring Mexican refugees, their concerns about asserting U.S. territorial sovereignty and enforcing the border caused them to consider how exclusionary clauses in immigration law might permit them to exclude refugees whom

they believed were “undesirable” additions to the American populace. By privileging the nation-state’s right to define national membership over the rights of individuals to seek asylum, refugee regulation during the Mexican Revolution had broader consequences for the long-term development of federal U.S. refugee law. This emphasis on refugee selection coincided with the shift to a more rigid definition of “refugees” as international migrants fleeing persecution — a transformation that, when combined with the Indian Citizenship Act of 1924’s declaration of all Native people in the U.S. as American citizens, would prove to have a major impact on the Loyal Creeks’ pursuit of refugee relief when that case reached its resolution in 1951, as explained in Chapter Six.

Part III

"The Modern Policy of All Nations, Especially the Strong and Powerful Ones, Toward National Sovereignty:" Refugee Regulation and the Rise of American Gatekeeping on the World Stage

From the American Revolution through the Civil War, refugee regulation in the United States fueled the formation of the U.S. nation-state. The country's first refugee law inviting Canadians and Nova Scotian refugees to settle in the Northwest Territory bound refugee resettlement to westward expansion. The federal government's broader efforts to undermine the sovereignty of Native people and the legalization of slavery dispossessed whole groups of colonized and racialized Americans, and denied them any meaningful form of redress, let alone access to relief as "refugees." When the Civil War nearly ruptured the United States, American officials identified Native Americans and African Americans as refugees. In doing so, they used refugee regulation to assert the nation-state's fragile authority during the war, and to mark African Americans and Native Americans whom they identified as "refugees" as only partially belonging in the nation. From independence through emancipation, the earliest forms of refugee regulation in the United States were thus directed inward, and were among the forms of governance that helped the U.S. nation-state emerge and expand its authority over the people and places of North America. As the nation-state's authority consolidated around a more robust federal government after the Civil War, however, American refugee regulation soon expanded overseas.

The reunification of the North and South and the end of slavery empowered the United States federal government to expand its governing authority. Immigration control

was one of the first areas of federal governance to take shape in the late nineteenth and early twentieth centuries. Prior to the Civil War, federal control over immigration was more or less out of the question. The southern slave states fiercely defended states' rights in order to maintain slavery and regulate free African Americans within their borders. The United States federal government's official stance on immigration was to permit the free and open entry of nearly anyone across America's expanding borders. Federal control over the national belonging of perceived outsiders stemmed largely from the Naturalization Act of 1790, which restricted citizenship to "any alien, being a free white person," while the institution of slavery and the government's settler colonial relationship with Native people restricted portions of the population from membership in the nation. The formal regulation of immigration was left to policymakers of individual state governments, whose beliefs regarding poverty, crime, race, and class informed their decisions about whether to let immigrants remain in their borders.[1]

The passing of the Anti-Coolie Act of 1862, the Page Act of 1875, the Immigration Act of 1882, and the Chinese Exclusion Act of 1882 together heralded a new era in the federal regulation of immigration. The first three laws were directed against Chinese immigrant men and women and restricted the entry of Chinese laborers and Chinese women coming for "immoral purposes" from entering the country. The

[1] Aristide R. Zolberg, *A Nation by Design: Immigration Policy in the Fashioning of America* (Cambridge: Harvard University Press, 1996), 3; Gerald L. Neuman, "The Lost Century of American Immigration Law (1776-1875)," *Columbia Law Review* 93, No. 8 (December 1993): 1833-1901; Kunal Parker, *Making Foreigners: Immigration and Citizenship Law in America, 1600-2000* (Cambridge: Cambridge University Press, 2015), 11; Hidetaka Hirota, *Expelling the Poor: Atlantic Seaboard States and the Nineteenth-Century Origins of American Immigration Policy* (New York: Oxford University Press, 2016).

Exclusion Act banned the immigration of a particular group of people because of their race and national origin for the first time in American history. The Immigration Act, in addition to excluding additional categories of migrants such as criminals and the insane, empowered officials at American ports to collect head taxes on arriving immigrants and set the groundwork for a national bureaucracy of immigration officers. That bureaucracy would have no shortage of work to do. The turn of the twentieth century saw a boom in immigration unlike any the nation had previously seen. The exponential rise of immigrant populations in the United States exacerbated longstanding racial prejudices among Americans and brought about a wave of xenophobia and exclusionary nationalism that made its way into the country's immigration law in the form of provisions that excluded immigrants based on their race, ethnicity, class, gender, political beliefs, sexual behavior, and ability. Meanwhile, Arizona's entry into the union as the 48th state in 1912 consolidated the borders of the continental United States, paving the way for a more robust enforcement of migration across the nation's land borders. In contrast to the federal government's relatively hands-off approach to the regulation of immigration prior to the Civil War, America's new immigration regime hinged on selection, exclusion, and gatekeeping.[2]

While the rise of a federal system for immigrant exclusion did not go unchallenged, the emergence of exclusionary immigration policy further empowered the

[2] The Page Act specifically excluded Chinese forced laborers and prostitutes, and was thus foundational, as well, for introducing laws that restricted immigration according to occupation, gender, and sexualized ideas about morality. Erika Lee, *At America's Gates: Chinese Immigration during the Exclusion Era, 1882-1943* (Chapel Hill: University of North Carolina Press, 2003); Aristide Zolberg, *A Nation by Design: Immigration Policy in the Fashioning of America* (Cambridge: Harvard University Press, 2006).

United States government's authority to turn people away from its borders. When immigrants turned to the courts to contest the U.S. government's practice of excluding and deporting immigrants, the Supreme Court ruled in *Chae Chan Ping v. U.S.* (1889) and *Nishimura Ekiu v. U.S.* (1892) that international law preserved it as the sovereign right of any national government to protect its national interests by defining membership through the exclusion and removal of foreign-born peoples. Though characterized as a right, the U.S. government's ability to exclude and remove foreigners from its borders, and to subject peoples' livelihoods to its will, was also a demonstration of the nation-state's power to shape and structure global society by influencing where the world's people had the ability to move and put down roots. The regulation of migrants to the U.S. was thus one mechanism in the broader systems of governance — along with foreign policy and military and economic intervention — that honed the American nation-state's authority in the broader world of nation-states and propelled the United States' imperial ambitions of wielding its authority on the world stage.[3]

The rise of American gatekeeping had serious implications for the development of American refugee regulation. In 1919, Sailendra Nath Ghose — the brother of Bengali novelist Sudhindra Nath Ghose — published an article in *The Dial*, a political and literary magazine based in Chicago and New York, debating the U.S. Bureau of Immigration's

[3] Torrie Hester, "'Protection, Not Punishment': Legislative and Judicial Formation of U.S. Deportation Policy, 1882-1904, *Journal of American Ethnic History* 30, No. 1 (Fall 2010): 18; Erika Lee, *At America's Gates*, 21-22. On exclusion as a right of sovereign nation-states, see Torrie Hester, *Deportation: The Origins of U.S. Policy* (Philadelphia: University of Pennsylvania Press, 2017); Nicholas De Genova and Nathalie Peutz, eds., *The Deportation Regime: Sovereignty, Space, and the Freedom of Movement* (Durham: Duke University Press, 2010); Mae M. Ngai, *Impossible Subjects: Illegal Aliens and the Making of Modern America* (Princeton: Princeton University Press, 2004).

efforts to deport Indian migrants in the United States who opposed British rule in East India. Ghose argued that Indian political dissidents were, in fact, political refugees. Removing them from the country, he claimed, would violate America's professed tradition of refuge and asylum. Though Ghose contested the morality of using exclusionary immigration laws to deport people whom he considered to be political refugees, he lamented that the U.S. government's efforts to deport them were a reflection of "the modern policy of all nations, especially the strong and powerful ones, toward national sovereignty."[4]

Ghose could not have been more prescient when he pointed to the consequences that the U.S. nation-state's preoccupation with its own sovereignty might have for the arrival of refugees in America. War, westward expansion, and various nation- and state-building projects that excluded foreigners from the United States and denied full membership to marginalized people within the nation's borders made nineteenth century North America a template for the production of refugees in new nation-states. By the turn of the twentieth century, the eruption of world wars, revolutions that toppled the Russian, Austro-Hungarian, and Ottoman empires, and state-sanctioned programs of persecution, genocide, and forced migration made the twentieth century what one historian has called a "century of refugees" — a moniker that, as previous chapters have shown, could arguably have been applied to the nineteenth century United States, as well.[5] With a

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[4] Sailendra Nath Ghose, "Deportation of Hindu Politicals," *The Dial* 67, No. 797 (August 23, 1919): 145-147, reprinted in Entry No. 53854/133, Box 2237, Subject and Policy Files, 1893-1957, Record Group 85, Records of the U.S. Immigration and Naturalization Service (National Archives, Washington, DC).

[5] Dirk Hoerder, *Cultures in Contact: World Migrations in the Second Millennium* (Durham: Duke University Press, 2002), 443

refugee crisis now brewing in Europe, the U.S. nation-state's growing power and renewed attention to controlling its borders resulted in American officials subjecting foreign refugees to the same kinds of xenophobic scrutiny that drove the creation and enforcement of exclusionary immigration laws. American officials established refugee regulation as a form of gatekeeping that prioritized the nation-state's right to define its membership over the ability of foreign-born refugees to seek protection across American borders. Refugee regulation began in the United States as a way to define the nation-state in relation to North America. By the early twentieth century, American refugee regulation looked outward, and emerged as a form of gatekeeping that shifted its focus toward displaced and persecuted people from beyond the nation's borders.

Chapter Four

"No Moral or Legal Obligation:" Regulating Refugees in the Shadow of Immigrant Exclusion during the Mexican Revolution, 1910-1917

The sky was red as a flaming train car crashed into the railway station in Agua Prieta, Sonora. On the fourteenth day in April, 1911, as revolutionaries and federal soldiers clashed over Mexico's future, American immigration officials looked out the windows of their offices in Douglas, Arizona and watched from less than one hundred yards away as the boundary line separating Mexico and the United States turned into a battlefield. Several thousand people, some of whom were "in a dazed and dying condition," rushed to the border in a hail of gunfire. The wounded were routed to a "hastily prepared" Red Cross hospital as American soldiers patrolled the border. Although the fighting lasted only a half-hour, stray bullets killed several civilians, railroad employees, and a horse. Immigration officials were eager to document the names of everyone crossing the border. But so many arrived in such a short span of time that most entered with no record of their arrival. With no formal laws or policies in place outlining how immigration officials should accommodate refugees, and no way of knowing when violence would again erupt along the border, the chances that individuals fleeing the Mexican Revolution might find refuge in the United States were, at best, uncertain.[1]

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[1] Will E. Soult, Inspector in Charge, Eagle Pass, TX, to Supervising Inspector, Immigration Service, El Paso, TX, April 14, 1911, Folder 53108/071, Box 1110, RG 85, NARA.

The above scene played out many times during the Mexican Revolution. From 1910 to the ratification of the Mexican Constitution in 1917, residents of Mexico fought for control over the country's political, economic, and social direction. Civilians were caught in the crossfire as the Revolution gradually turned into civil war. With political instability and violence at the country's doorstep, American immigration officials considered how the Revolution would impact their enforcement of immigration law at the border. Among the most pressing of their concerns, however, was whether and how to accommodate the thousands of displaced and persecuted peoples who sought refuge in the United States.

As previous chapters have shown, government bureaucrats and lawmakers in state and federal government improvised different ways to accommodate displaced peoples whom they identified as "refugees" from the nation's founding through the Civil War. After the end of the Civil War, the reunification of the North and South weakened states' rights and expanded federal authority. The Immigration Act of 1891 laid the groundwork for the federal oversight of international migration. Whereas American officials from the end of the eighteenth through the nineteenth century recognized a range of individuals within U.S. borders as refugees, including Creek Indians and emancipated slaves during the Civil War, the rise of federal immigration law shifted refugee regulation to focus exclusively on internationally displaced peoples. Although Congress had not passed any legislation outlining how officials should manage international refugee migration, by 1910, the country's immigration policy had become increasingly restrictionist. When immigration officers, military personnel, embassy officials, railway managers, Congressmen, and high-ranking officials in the Bureau of Immigration, the Department of Labor, and the State Department all worked together to determine how to

accommodate displaced peoples during the Mexican Revolution, they did so in the shadow of the country's exclusionary immigration laws. They crafted an *ad hoc*, improvised response to refugee migration at the border that both bent with conditions as they changed on the ground, and conformed with the design of federal immigration law to exclude and deport "undesirable" migrants based on prejudices that were engrained in American law, society, and politics.[2]

During the Revolution, immigration officials described themselves as arbiters of humanitarian aid to displaced peoples.[3] Yet throughout Mexico's revolutionary years, there was a looming tension between the humanitarian spirit of giving refuge and the exclusionary immigration laws that were the most immediate reference for officials tasked with regulating displaced peoples at the border. In the absence of formal guidelines for refugee regulation, officials could have welcomed displaced peoples however they wished. And indeed, the Revolution presented many opportunities for them to pursue an equitable and humane refugee policy. In practice, however, the implementation of refugee relief fell short of officials' humanitarian rhetoric. Although in many instances officials did allow displaced peoples to cross into the U.S. for temporary asylum, it was often with skepticism, and with an eye toward enforcing exclusionary

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[2] For general overviews of the history of immigrant exclusion, see Aristide R. Zolberg, *A Nation by Design: Immigration Policy in the Fashioning of America* (Cambridge: Harvard University Press, 2008) and Deirdre M. Moloney, *National Insecurities: Immigrants and U.S. Deportation Policy since 1882* (Chapel Hill: University of North Carolina Press, 2012).

[3] Linda B. Hall and Don M. Coerver, *Revolution on the Border: The United States and Mexico, 1910-1920* (Albuquerque: University of New Mexico Press, 1988), 130; Patrick Ettinger, *Imaginary Lines: Border Enforcement and the Origins of Undocumented Immigration* (Austin: University of Texas Press, 2009), 141.

immigration laws that barred particular groups from entering the country. Rather than simply give asylum to those who needed it, refugee admissions were informed by a complicated calculus that revolved around who officials believed were eligible for entry under the country's immigration laws.

This chapter argues that federal immigration laws that excluded migrants from entering the country based on their race, ethnicity, gender, economic class, health, and ability — not a moral imperative to give refuge to the displaced and persecuted — guided refugee regulation during the Mexican Revolution. Consulting border reports and correspondence between officials at various levels of the U.S. government, I show how officials responded as displaced peoples sought asylum on American soil. Administrative apathy and bureaucratic procedure curtailed refugee admissions. While people in Mexico feared for their lives, American officials across the international boundary line worried about how to secure the border. As refugees in overcrowded detention centers and ramshackle camps waited to return safely to their homes, locals expressed concerns about the impact of foreign refugees on "public health." While refugees mourned the deaths of their loved ones, officials argued about who was responsible for the costs of asylum. American officials at the border shaped refugee policy based on the infrastructure of immigrant law, aligning refugee regulation with the interests of the American state, rather than prioritizing asylum as a humanitarian obligation.

The impossibility of patrolling the full physical length of the border with Mexico meant many refugees likely crossed into the U.S. without officials ever knowing it. This chapter does not attempt to provide a comprehensive account of all refugee crossings during the Mexican Revolution. Instead, it outlines officials' primary concerns and

motivations as they responded to an emerging refugee crisis at a time when no formal refugee law and policy existed, in a place where migration had for many years been fluid. Although officials had pursued the exclusion of Chinese migrants at the country's southern border since the Chinese Exclusion Act of 1882, Mexicans moved across the border with little regulation before the 1910s. During the Revolution, by contrast, immigration officials began to apply exclusionary provisions of U.S. immigration law against Mexicans with greater frequency, upending the informal border crossings that had characterized the border for generations. The choices that officials made to give or deny asylum to refugees along the border during the Revolution not only immediately impacted the lives of displaced peoples, but also deepened the roots of migrant exclusion at the U.S.-Mexico border. Refugee regulation during the Mexican Revolution also paved the way for exclusionary immigration law to shape future refugee law and policies at the federal level, a trend that would continue with the Immigration Acts of 1921 and 1924.

Many years of imperial and economic intervention presaged the Mexican Revolution. Spain controlled much of Mexico from the sixteenth century to 1821, when Mexico achieved national independence. Mexico's colonial history of Spanish rule caused widespread economic and social inequality. After only twenty-five years of independence, U.S. President James K. Polk's war of aggression into northern Mexico from 1846 to 1848 ended when the Treaty of Guadalupe Hidalgo forced Mexico's government to cede half its territory — including the present-day states of Arizona, California, Colorado, Nevada, New Mexico, Texas, and Utah — to the United States. Hundreds of thousands of Mexicans and Indigenous peoples suddenly found themselves

in a different country. The gulf between wealthy landowners and rural poor in the U.S.-Mexico borderlands soon widened further. A series of reforms wrested swaths of property from the Catholic Church and Indian communities and made them available for purchase by wealthy Mexicans and foreigners, ultimately making agrarian opposition to oligarchy a mainstay of Mexican politics. President Porfirio Díaz, whose tenure lasted from 1876 to 1911, exacerbated economic and social inequality by enabling American and European capitalist entrepreneurs to purchase over 130 million acres of Mexican land and take control over the country's most valuable mining, agricultural, and timber resources. By 1910, many of Mexico's non-elite residents supported revolution. Francisco Madero, Emiliano Zapata, Venustiano Carranza, and Pancho Villa led a band of revolutionary factions that ousted Diaz from the presidency in 1911, and sparked the long fuse of revolution.[4]

Displaced peoples began arriving at the U.S.-Mexico border before the Mexican Revolution even began. On December 14, 1910, Immigrant Inspector Otto Meng, who worked for the Bureau of Immigration's office in Marfa, Texas, reported that the presence of "well-armed insurrectionists" near Ojinaga, Mexico caused a group of women and children to cross the Rio Grande in early December. They stayed in Texas temporarily, taking shelter in tents on the property of friends. According to Meng, these

[4] David Montejano, *Anglos and Mexicans in the Making of Texas, 1836-1986* (Austin: University of Texas Press, 1987); Andrés Reséndez, *Changing National Identities at the Frontier: Texas and New Mexico, 1800-1850* (New York: Cambridge University Press, 2004); Adolfo Gilly, *The Mexican Revolution* (New York: The New Press, 2005); Brian DeLay, *War of a Thousand Deserts: Indian Raids and the U.S.-Mexican War* (New Haven: Yale University Press, 2008); Rachel St. John, *Line in the Sand: A History of the Western U.S.-Mexico Border* (Princeton: Princeton University Press, 2011).

were “temporary refugees” who would return to Mexico before long. Meng may have been confident that refugees would return in their own time, but other officials were less certain. American diplomatic officials who worked in the Mexican consulate suggested that Meng begin a mounted patrol of the border at Presidio, and charged him with striking a balance in refugee regulation. He was to “prevent flagrant violations of the Immigration laws,” but not pursue a "strict enforcement of said laws."[5]

In a letter to Supervising Inspector of the Southern Border District F.W. Berkshire, Acting Commissioner General of Immigration T.K. Larned agreed that Meng should patrol the border. Additionally, he suggested that Berkshire submit occasional reports about conditions along the border to the Bureau of Immigration’s headquarters in Washington, DC. At first, the commissioner general's office issued no specific instructions about what points along the border Berkshire should cover in his reports, nor how often he should submit them. Immigrant inspectors on the border sent reports voluntarily, or when Berkshire instructed officers to do so. In March 1911, for example, Berkshire asked Immigrant Inspectors Clarence G. Gatley and William E. Walsh to investigate “the number and condition of Mexican refugees,” as well as the smuggling of Chinese migrants, along the fifty miles separating El Paso and Fort Hancock, Texas. Gatley and Walsh stopped in several towns. Along the way, they spoke with local judges, justices of the peace, doctors, merchants and storekeepers, railroad agents, law enforcement officers, and military officials. In some towns, they found no refugees at all.

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[5] F.W. Berkshire, Supervising Inspector, El Paso, TX, to Daniel J. Keefe, Commissioner General of Immigration, Washington, DC, December 14, 1910, Folder 53108/71, Box 1110, RG 85, NARA.

Yet Gatley and Walsh learned that other towns were prominent destinations for both rich and poor refugees. About ten families, for example, migrated 700 miles from Guadalupe and San Ignacio to Fabens, Texas, and were wealthy enough to buy property. Many poor refugees, meanwhile, set up campsites on the outskirts of different towns. Gatley and Walsh found several other groups of refugees along the way, but believed that most had returned to Mexico.[6]

With local newspapers publishing "many extravagant news stories" about the Revolution, Berkshire began submitting reports more often. In them, he drew on updates from immigrant inspectors stationed at offices along the border from California to Texas. For example, in Presidio, Texas, immigration officials allowed "numerous Mexican refugees" to enter the U.S. from Ojinaga, a town directly across the border in the Mexican state of Chihuahua. The refugees built "improvised huts" along the Rio Grande, where Berkshire speculated that "a majority, if not all" of them would stay only for as long as it was unsafe for them in Mexico. Around the same time, reports of a possible battle in Juarez caused nearly the city's entire population to flee to El Paso. There was no bloodshed in Juarez, and the refugees returned home. Nevertheless, Berkshire emphasized that immigration officials were justified in allowing displaced peoples to enter the U.S. temporarily. According to Berkshire, it was "the only reasonable and

[6] Gatley and Walsh reported finding several other refugees, as well, who were self-sufficient and working near the border. F.H. Larned, Acting Commissioner General of Immigration, Washington, DC, to Berkshire, El Paso, TX, December 23, 1910; Clarence G. Gatley and William E. Walsh, Immigrant Inspectors, El Paso, TX, to Berkshire, El Paso, TX, March 7, 1911, Folder 53018/71, Box 1110, RG 85, NARA.

humane course to adopt under the unusual circumstances." The refugees eventually returned home.[7]

Berkshire emphasized to the commissioner general in DC that the Bureau of Immigration had the situation along the border under control. The help of military personnel and customs officers on both sides of the border, he noted, made "the enforcement of the Immigration and Chinese laws…strengthened to a degree never before equaled." He pledged to submit reports about events along the border when necessary, and ensured the federal immigration office that "the law will be enforced as rigidly as may be possible, considering the unusual circumstances."[8]

Berkshire's expressions of confidence mirror the rising significance of the southern border itself. In 1907, the Bureau of Immigration created the Mexican Border District with the purpose of maintaining a more vigilant enforcement of American immigration laws. As the very first supervising inspector of the Mexican Border District, Berkshire was expected to draw on his experience overseeing the enforcement of Chinese exclusion on the U.S.-Canada border and at Ellis Island, NY, one of the most iconic and significant immigrant ports of entry in the country.[9] Berkshire knew that federal immigration officials were beginning to see the U.S.-Mexico border as a vital site of immigration enforcement, and must have been eager to demonstrate how effective he could be in his new position of authority. Yet he likely was also uncertain about how to

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[7] Berkshire, El Paso, TX, to Commissioner General, Washington, DC, March 9, 1911, Folder 53018/71, Box 1110, RG 85, NARA.
[8] Berkshire, El Paso, TX, to Commissioner General, Washington, DC, March 14, 1911, Folder 53108/71, Box 1110, RG 85, NARA.
[9] Erika Lee, *At America's Gates: Chinese Immigration During the Exclusion Era, 1882-1943* (Chapel Hill: University of North Carolina Press, 2003), 186-187.

balance border enforcement, Chinese exclusion, and refugee regulation. In a regime of immigration control largely influenced by the logic of Chinese exclusion, refugee admissions were uncharted territory for the immigration office. Beneath the veneer of Berkshire's confidence lay his tacit acknowledgement that the U.S.-Mexico border had become a laboratory where officials had to figure out whether and how to accommodate displaced peoples as they arrived, while also keeping out those whom U.S. immigration law restricted from entering the country.

In order to stay apprised of how refugee regulation was aligning with the enforcement of immigration law, Commissioner General of Immigration Daniel J. Keefe ordered Berkshire to submit daily reports about refugee crossings along the border, which he compiled from updates that chief inspectors at each border station sent to Berkshire's office in El Paso. These mandatory daily reports provide glimpses of the information that was important to local and federal immigration officials, and reveal their primary concerns in the regulation of displaced peoples.[10]

The economic class of incoming refugees was chief among those concerns. Berkshire and other immigrant inspectors were keen to know if refugees had enough money to feed and house themselves, or if they would require public assistance. When some of the former sought asylum in Del Rio, Texas, for example, they brought money and valuables with them from Mexico and deposited them in banks on the U.S. side of the line for safekeeping. When an "influx of refugees of the better classes" came to

[10] Keefe, Washington, DC, to Berkshire, El Paso, TX, March 15, 1911, Folder 53108/72, Box 1110, RG 85, NARA.

Nogales, they were "mostly prominent men of means, accompanied by large families and retinues of servants." Some families entered with as much as $5,000 to $15,000 in gold.[11] They had so much money that they drove up the town's rental market, offering "as much as $100 gold, per month…for a small house."[12]

Immigration officials also took note of poor refugees. After Federal forces surrendered Juarez in May 1911, for example, nearly the entire town took refuge in El Paso. Among them was "a considerable increase in the influx of refugees of the lower class." According to Berkshire, it was "undoubtedly true" that the refugees who were coming from Juarez were so poor that they would have been excluded from entering the country under usual circumstances. He was certain, however, that "a great majority" would soon return to Juarez, and so they were granted temporary asylum in the U.S. In the revolution's early years, officials often permitted displaced peoples of the so-called "peon class" to take temporary refuge across the border, but not without establishing practices for the surveillance of displaced peoples' economic status that they would later use to restrict the entry of poor refugees.[13]

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[11] According to the U.S. Bureau of Labor Statistics, this amounts to $120,000 to $360,500 when adjusted for inflation. "Consumer Price Index Inflation Calculator," *Bureau of Labor Statistics,* http://data.bls.gov/cgi-bin/cpicalc.pl (accessed March 25, 2018).

[12] Berkshire, El Paso, TX, to Keefe, Washington, DC, March 24, March 27, and April 4, 1911, Folder 53108/71, Box 1110, RG 85, NARA.

[13] Berkshire, El Paso, TX, to Keefe, Washington, DC, May 3 and May 11, 1911, Folder 53108/72A, Box 1110, RG 85, NARA. For an analysis of state actors' thinking about the government's responsibility to the poor as it evolved during the middle of the twentieth century, see Karen Tani, *States of Dependency: Welfare, Rights, and American Governance, 1935-1972* (New York: Cambridge University Press, 2016).

In addition to economic class, officials studiously monitored the race and ethnicity of incoming refugees. A highly diverse range of peoples sought asylum in the U.S. from Mexico. In addition to Mexican and American refugees, officials identified Austrian, British, Canadian, Chinese, Columbian, Cuban, English, French, German, Guatemalan, Hindu, Honduran, Italian, Japanese, Norwegian, Peruvian, Russian, Salvadorian, Scottish, Serbian, Sikh, Swiss, Syrian, Turkish, and Indigenous refugees. Officials often tried to exclude displaced peoples they viewed as racially inferior. Such was the case when officials permitted Syrian and Japanese refugees to take asylum in El Paso in March, 1912. Immigrant inspectors had previously excluded these groups from entering El Paso. On this occasion, however, so many people arrived at the border that it was impossible to conduct "a literal enforcement of the Immigration laws." Sometimes, refugees who otherwise would have been denied entry were able to cross the border with diplomatic support. A Japanese grocery owner in Juarez, for example, reported to the Japanese Embassy in Mexico City that bandits looted his store and threatened other Japanese residents. Embassy staff said they would notify the Japanese ambassador in Washington, DC of their trouble so that the Japanese in Juarez could "take refuge on [the] American side of the line."[14]

Other times, racially and ethnically defined groups of refugees faced not only immigration laws that barred particular groups from entry, but also the personal prejudices of immigration officials. Yaqui Indians, a nation of Native people with a long

[14] *Ibid.*; B.M. Moss, Immigrant Inspector, El Paso, TX, to Berkshire, El Paso, TX, March 12, 1912; Luther C. Steward, Acting Supervising Inspector, El Paso, TX, to Keefe, Washington, DC, March 12, 1912, Folder 53108/72C, Box 1110, RG 85, NARA.

history of cooperation and conflict in the U.S.-Mexico borderlands, faced a particularly uphill struggle when seeking refuge in the U.S.[15] When about 200 Yaquis went to an American military camp near San Antonio because they had a "reasonable fear of massacre by Mexican federals," American officials were reluctant to give them refuge. In particular, they feared that the Yaquis would drum support for the revolution. Despite knowing that the Mexican government harbored ill feelings toward the Yaquis, the Bureau of Immigration tried to encourage the Mexican government to "take these Indians under guarantee of humane treatment." Rather than return to Mexico, the Yaquis left for Naco, Arizona. One month later, about 125 Yaqui men, women, and children remained there. Immigration officials forced them to the outskirts of town and placed them under guard. The inspector in charge at Naco refused to let them leave. According to him, the women they brought with them were "highly undesirable characters," who "forage about, stealing practically anything that is movable."[16] Such assumptions constrained Yaquis' mobility, and limited their chances for refuge.

Racial prejudice was most apparent in the regulation of Chinese refugees along the border. Restricting the entry of Chinese migrants was no new phenomenon. Ever

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[15] For the history of Yaquis in the U.S.-Mexico borderlands, and their relationship with other Indian nations and U.S. and Mexico's federal governments, see Evelyn Hu-DeHart, *Yaqui Resistance and Survival: The Struggle for Land and Autonomy, 1821-1920* (Madison: University of Wisconsin Press, 1984); DeLay, *War of a Thousand Deserts;* Samuel Truett, *Fugitive Landscapes: The Forgotten History of the U.S.-Mexico Borderlands* (New Haven: Yale University Press, 2006).

[16] Lindley M. Garrison, Secretary of War, Washington, DC, to Secretary of Labor William B. Wilson, Washington, DC, forwarding telegram from Commanding General, Southern Department, San Antonio, TX, March 19, 1913; Berkshire, El Paso, TX, to Keefe, Washington, DC, April 10, 1913, Folder 53108/72F, Box 1110, RG 85, NARA.

since 1882, when the Chinese Exclusion Act formally inaugurated the explicit exclusion of Chinese migrants from the U.S., American officials set their sights on keeping Chinese from entering the country. It was not until the early 1900s, however, that the U.S.-Mexico and U.S.-Canada borders became hot spots for Chinese exclusion. Officials sharpened their focus on the southern border in part because the Chinese Exclusion Act encouraged the formation of strong communities of Chinese migrants in Mexico, where Chinese were free to immigrate without restriction. By the start of the revolution, thousands of Chinese lived in Mexico. In addition to being an integral part of the country's economic networks, they maintained family and kin relationships that transcended the U.S.-Mexico border. Because of the close proximity of so many Chinese migrants to the border, American officials at the turn of the twentieth century became increasingly vigilant in their efforts to enforce Chinese exclusion. Those efforts extended to Chinese refugees.[17]

A battle in April, 1911 between Federales and rebels in Bauche, about twelve miles south of Juarez, for example, caused "the usual influx of refugees" to move from Juarez to El Paso. Several of the refugees included Chinese residents, who contacted the United States Consul in Juarez. The Consul didn't believe there was enough room in his offices to care for refugees. Instead, he wrote to Berkshire to ask if he'd give them refuge. Berkshire agreed to give refuge to "as many of them as might wish…provided the Chinese would pay any expense incident to their maintenance at the station." He planned

[17] See Lee, *At America's Gates;* Robert Chao Romero, *The Chinese in Mexico, 1882-1940* (Tucson: University of Arizona Press, 2010); Grace Peña Delgado, *Making the Chinese Mexican: Global Migration, Localism, and Exclusion in the U.S.-Mexico Borderlands* (Philadelphia: University of Pennsylvania Press, 2012); Erika Lee, *The Making of Asian America: A History* (New York: Simon and Schuster, 2015).

to hold them in the office's detention quarters, and release them to Juarez when it was safe.[18] In May 1911, a deadly battle in Tijuana caused refugees to flee across the border for safety, about thirteen of whom were Chinese. They approached Inspector Gripper "for permission to enter the United States as refugees." Berkshire instructed Gripper to grant them entry, on the condition that “they would furnish and pay for their own guards, provide their own food and pay for their quarters while so guarded." Gripper let them in, after first taking their photos and writing a short biographical description of each one. Other refugees who entered the U.S. at this point during the revolution were not required to pay for their own refuge. Officials made it regular practice to note whether the Chinese seeking asylum in the U.S. had paid all the required expenses during their asylum — effectively excluding all but the wealthiest Chinese residents of Mexico from accessing asylum in the U.S.[19]

Immigration officials targeted not only Chinese border crossers, but also smugglers who helped Chinese migrants cross the border for a fee. U.S. efforts to combat smuggling during the Revolution were so concentrated that during a battle in Tijuana in which thirty-five people died, officials prioritized the identification of smugglers and restriction of Chinese refugees over ensuring the safety of Chinese fleeing Mexico. While overseeing refugee migration, officials surveilled activities of individuals who assisted Chinese migrants who hoped to make their way to the United States. Immigrant

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[18] Soult, Eagle Pass, TX to Berkshire, El Paso, TX, April 17, 1911, Folder 53108/71, Box 1110, RG 85, NARA.

[19] C.L. Keep, Acting Inspector in Charge, San Diego, CA to Berkshire, El Paso, TX, May 13, 1911, Folder 53108/72A, Box 1110, RG 85, NARA.

inspectors near San Diego took up "an especial watch for some of the renegades who were known to be in Tijuana," particularly a man named Lerdo Gonzales, "who have in the past given this Service much trouble by aiding and carrying on the smuggling of Chinese."[20]

Chinese refugees were not just fleeing revolutionary violence. Despite the fact that people of Chinese descent had long been a part of borderlands communities that spanned the boundary line separating the United States and Mexico, anti-Chinese prejudice was a mainstay in the region. Sinophobia gave way to violence before and during the revolution. The economic success of Chinese merchants disrupted peaceful relations among Chinese and Mexicans in Mexico. Chinese refugees thus not only fled revolutionary battles, but also explicit racial persecution. In the states of Sonora and Sinaloa, in western Mexico along the Gulf of California, officials noted that Chinese residents living there faced widespread racial violence because, they believed, "the policy of admitting indiscriminately hundreds of Chinese" embittered relations between Mexicans and Chinese. In Naco, Arizona, American immigration officials expected Chinese merchants to seek refuge there because they were subject to "depredations" across the border in Naco, Sonora.[21] These tensions boiled over in May 1911, when a group of bandits murdered eight Chinese in Imuria, Sonora and revolutionary soldiers

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[20] *Ibid*. See also Berkshire, El Paso, TX to Caminetti, Washington, DC, March 23, 1911, Folder 53107/71, Box 1110, RG 85, NARA.

[21] Berkshire, El Paso, TX to Caminetti, Washington, DC, General DC, March 24, 1911; Berkshire, El Paso, TX to Caminetti, Washington, DC, April 8, 1911; Berkshire, El Paso, TX to Caminetti, Washington, DC, April 12, 1911, Folder 53108/71, Box 1110, RG 85, NARA.

killed over 300 Chinese in Torreón, Coahuila. When Berkshire commented on the "unrest" in Sonora, rather than extend refuge to Chinese refugees, he asserted that his office was "increasing its vigilance with a view to meeting any move on the part of these aliens to affect entry into the United States."[22] In the moments of their most dire need for refuge, officials continued to exclude Chinese refugees. Facing deadly racial violence in Mexico, exclusion in the United States, and the general instability of the Revolution, Chinese refugees were stuck between two nations where they were persecuted in equal measure.[23]

The entrenchment of Chinese exclusion had ripple effects on refugee regulation throughout the Mexican Revolution. By 1910, the logic of Chinese exclusion had already gone on to influence federal immigration policy: in between the Chinese Exclusion Act of 1882 and the Immigration Act of 1907, exclusionary provisions barring those "likely to become a public charge," individuals suspected of "moral turpitude," who were engaged in prostitution, who were infected with contagious diseases, and political radicals further narrowed who was permitted to enter the country. Before and including

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[22] Berkshire, El Paso, TX to Caminetti, Washington, DC, May 23, 1911; Berkshire, El Paso, TX to Caminetti, Washington, DC May 25, 1911, Folder 53108/72A, Box 1110, RG 85, NARA.

[23] Only on rare occasions during the Revolution did American officials allow the general entry of displaced Chinese. In some instances, Chinese diplomats intervened and secured temporary asylum for Chinese refugees, and in 1917, over 500 Chinese refugees, laborers and merchants from Mexico were given refuge in the U.S. Andrew Urban, "Asylum in the Midst of Chinese Exclusion: Pershing's Punitive Expedition and the Columbus Refugees from Mexico, 1916-1921," *Journal of Policy History* 23, no. 2 (2011): 204-229. The Bureau of Immigration's occasional exceptions to Chinese exclusion demonstrate that exclusionary immigration laws need not have constrained refugee regulation on the border. Even if laws as they were written on the books mandated that Chinese migrants be excluded, the absence of refugee laws at the time created a loophole through which officials at any moment could have halted exclusion and given refuge to those in need.

the early years of the Mexican Revolution, however, those provisions were typically not applied to Mexican migrants, who were generally permitted to come and go across the U.S.-Mexico border as they pleased in order to fulfill the labor needs of employers in the southwest.[24] As the Revolution proceeded and displacement became more frequent, officials shifted exclusion that was reserved largely for Chinese refugees onto displaced Mexicans at the border, and thus abandoned the possibility of instituting inclusive practices in the management of refugee migration at the border.

Concerns about the economic class and race of refugees coalesced in September 1913, when a train carrying forty American refugees, including women and children, was delayed by several hours when they tried to enter the United States. American immigration officials, including Commissioner General of Immigration Anthony Caminetti and F.W. Berkshire, the Supervising Inspector of the Southern Border District, as well as Acting Secretary of State John E. Osborne, were enraged that Americans were left waiting to enter the country.[25]

Medical examinations were at the heart of the delay. The train arrived after sunset, and the medical inspector at Laredo, Dr. H.J. Hamilton, did not wish to examine refugees in the evening. According to Hamilton, only natural light was sufficient to

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[24] For an overview of the transnational social and economic relationships that defined the U.S.-Mexico borderlands before the Revolution, see Samuel Truett and Elliott Young, eds., *Continental Crossroads: Remapping U.S.-Mexico Borderlands History* (Durham: Duke University Press, 2004) and St. John, *Line in the Sand.*

[25] Acting Secretary of State John E. Osborne, Washington, DC to Wilson, Washington, DC, September 6, 1913; Commissioner-General of Immigration Anthony Caminetti, Washington, DC, to Berkshire, El Paso, September 8, 1913; Wilson, Washington, DC to Secretary of State William Jennings Bryan, Washington, DC, September 8, 1913, Folder 53108/72F, Box 1110, RG 85, NARA.

screen incoming refugees for contagious illnesses and diseases. Berkshire and local Bureau of Immigration agents understood Hamilton's reasoning, particularly in regard to refugees who were on board as second-class and cabin steerage passengers. But Berkshire thought it was a "necessity" to make an exception for first-class passengers, especially Americans, and particularly in cases when the arriving refugees appeared to be free of disease. While officials were deeply concerned with getting American refugees into the United States as quickly as possible, they were not interested in extending the same degree of protection to refugees of other ethnicities, races, and classes. Establishing a "practice of examining these aliens by artificial light," they argued, would "seriously handicap this service in enforcing the law and may be a nuisance to public health." The Immigrant Inspector in Charge at Laredo, James E. Trout, believed that letting migrants in at night would "seriously interfere with a proper enforcement of the immigration act," but American refugees, by virtue of being American and arriving with more money, should be free from such scrutiny.[26]

Acting Supervising Inspector George Harris proposed that incoming trains cross the border and let American refugees disembark at any time. Meanwhile, non-American passengers would return to Mexico across a pedestrian foot-bridge, and return in the morning for inspection under natural light. This decision would have been unprecedented. Previously, migrants were allowed to cross the border at night only during emergencies. Alternatively, railway officials could let second-class passengers off

[26] Berkshire, El Paso, TX to James E. Trout, Inspector in Charge, Laredo, TX, November 23, 1912; Trout, Laredo, TX to Berkshire, El Paso, TX, September 5, 1913, Folder 53108/72G, Box 1111, RG 85, NARA.

the train in Mexico, and let American refugees go ahead. Yet Mexican National Railroad officials refused to let first-class and American refugee passengers off the train in the middle of the night while forcing everyone else to wait.[27]

Commissioner General Caminetti suggested that American refugees cross and be inspected by medical officers until 10:00pm at night, while others who required daylight inspection be held in a detention center until the next morning. But Inspector Trout at the Laredo office thought this was impractical. On average, about one hundred second class passengers arrived on every train. The detention station was sixteen blocks from the immigration office, and could only accommodate twenty people at any given time. Instead, Trout suggested that local immigration officials "appeal to patriotism," and try to convince railroad employees that it was their civic duty to hasten the admission of American refugees while at the same time preventing inadmissible migrants to enter. But W.P. Patton, the General Passenger Agent of the National Railways of Mexico, insisted that "separating first and second class would appear to discriminate against the Mexicans who practically all travel second class." M.W. Brennan, the Customs Agent of National Railways of Mexico, echoed Patton's sentiment. He explained that "practically ninety-five per cent" of Mexicans aboard the train were second-class passengers. Patton believed that if first-class American passengers were permitted to get off the train first, Mexican officials would perceive that choice as "not a distinction between first and second-class passengers but a discrimination between Americans and Mexicans." After several

[27] George Harris, Acting Supervising Immigrant Inspector, El Paso, TX to Caminetti, Washington, DC, September 8 and September 9, 1913, Folder 53108/72G, Box 1111, RG 85, NARA.

exchanges, officials agreed to cut off the second-class coaches of the train so American refugees could proceed across the border without delay.[28]

The fact that American officials would go out of their way to ensure the timely arrival of American refugees may not seem out of the ordinary. On the one hand, it is not surprising that the U.S. government would wish to accommodate displaced Americans living abroad as efficiently as possible. On the other, because these Americans could afford to travel first class aboard the train, they undoubtedly had enough money to feed and shelter themselves while seeking refuge, and thus posed little risk as far as the government using public funds to pay for the costs required to maintain their asylum. It is true that all citizens of any nation should be protected by their national government. This does not mean, however, that national governments are justified in discriminating against individuals born outside their borders, particularly in moments like the Mexican Revolution, when thousands of peoples' lives were repeatedly in danger. The Bureau of Immigration's efforts to facilitate refuge for Americans before displaced peoples of other ethnic and racial backgrounds evidences the tension at the heart of refugee regulation. Refugee policy is not just a way for nation-states to care for displaced peoples forced to

[28] Mexico's railway agents occupied the moral high ground in wanting to prevent discrimination in the treatment of different classes of refugees. But they likely also viewed passengers as cargo from which they could profit. For every passenger aboard the train that crossed into the United States via rail, the railway company made twenty-five cents (Mexican) from a toll that they charged each passenger for crossing the bridge. Caminetti, Washington, DC to Trout, Laredo, TX, September 13, 1913; Trout, Laredo, TX to Caminetti, Washington, DC, September 9, September 14, and September 18, 1913; Acting Secretary of Labor Louis F. Post, Washington, DC to Bryan, Washington, DC, September 15, 1913; Berkshire, El Paso, TX to Caminetti, Washington, DC, September 18, 1913, Folder 53108/72G, Box 1111, RG 85, NARA.

flee their homes. It is also a tool for nation-states to reinforce their claims to national sovereignty by enforcing their national borders and regulating who may and may not cross them.

American officials grappled with the sudden arrival of displaced peoples at the border during the revolution's early years. Officials paid close attention to whether refugees were self-sufficient, if they were wealthy or poor, where they came from, if they were single or had families, whether they were men, women, or children, and when they planned to return to Mexico. These were officials' primary concerns as they sought to enforce the country's immigration laws, while at the same time improvising *ad hoc* responses to individuals seeking asylum on American soil. The first several years of the Mexican Revolution were less volatile than the years that were to come. Despite the fact that the Bureau of Immigration already encountered many instances in which people from Mexico required refuge in the United States, officials were confident that they would maintain control over the border. They were so confident, in fact, that when O.B. Colquitt, the governor of Texas, offered for the Texas Rangers to help deport Mexican refugees, Berkshire turned down their assistance.[29] But as the Revolution intensified, so too did the Bureau's concerns about refugees. Before long, their confidence waned.

Several months after Porfirio Díaz was exiled and Francisco Madero assumed the presidency in October 1911, the revolutionaries that helped Madero accede to power began to doubt his leadership. Madero's assassination in February 1913 gave revolutionary general Victoriano Huerta a pathway to the presidency. But rather than

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[29] Berkshire, El Paso, TX to Caminetti, Washington, DC, February 24, 1912, Folder 53108/72B, Box 1110, RG 85, NARA.

bring order and stability to Mexico, Huerta's leadership met swift opposition. From 1912 until 1917, with such unpredictable conditions in Mexico, immigration officials grew increasingly concerned about refugee regulation.[30] In September 1912, for example, several battles broke out along the border. The situation was especially acute in Ojinaga, where 1,000 refugees fled to Presidio, Texas. Several people died trying to cross the river. Two days later, Mexican Federal soldiers occupied Ojinaga, and although several returned, many remained in Texas. Rebel forces ransacked homes, looted and burned all the stores in the town, and vandalized the local Catholic Church. Refugees crossed and re-crossed the border as battles swayed the tide of political influence and control of towns changed hands between provisional governments. In some cases, entire towns abandoned their homes for refuge in the United States, as when civilians, soldiers, and Mexican customs and immigration officials fled from Las Vacas to Del Rio, Texas. Hundreds of refugees continued to move back and forth across the border as rumors spread about possible attacks, while others traveled west, looking for work on the Southern Pacific Railway. As tensions between rival factions intensified, so too did threats against the lives of noncombatants who favored one side in a Revolution that had devolved into civil war.[31]

Few places along the border would prove as troublesome, however, as the three miles separating Piedras Negras from Eagle Pass, Texas. In late February, 1913, residents

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[30] Hall and Coerver, *Revolution on the Border*, 10-12, 128; St. John, *Line in the Sand*, 119-147.

[31] Berkshire, El Paso, TX to Caminetti, Washington, DC, September 18, 1912, Folder 53108/72E, Box 1110, RG 85, NARA; Berkshire, El Paso, TX to Caminetti, Washington, DC, March 14 and April 10, 1913, Folder 53108/72F, Box 1110, RG 85, NARA.

of Piedras Negras anticipated a battle between opposing forces, while Immigration officials anticipated "a stampede…at any time." Two thousand people sought asylum in Eagle Pass. Officials had rarely seen so many refugees at the border. Yet they followed the typical pattern of displacement and returned to their homes before long.[32]

Conditions at Eagle Pass became dire in late September and early October of 1913, in what officials described as the worst refugee crisis the Bureau of Immigration had ever faced. It started near Sabinas, a border town about 75 miles away from Piedras Negras and Eagle Pass. A group of rebel troops defeated a band of Carranza supporters and left behind a trail of destruction before they occupied the town. According to a group of American refugees who arrived via train from Sabinas to Piedras Negras on September 28, the rebels burned everything south of Sabinas, and were preparing to destroy the railroad bridges there, as well. Constitutionalist forces anticipated that Federal troops would soon arrive, and evacuated Piedras Negras in anticipation of further conflict. Two days later, on September 30, the residents of Piedras Negras fled to Eagle Pass.[33]

Inspector in Charge Will E. Soult estimated that by October 3, about 5,000 refugees fled to Eagle Pass, including "many of the poor classes who would have ordinarily been denied admission." Soult acknowledged that concerns over a clash between Constitutionalist and Federal forces were well founded. Yet he insisted the

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[32] Henry L. Stimson, Secretary of War, Washington, DC to Williams, Washington, DC, February 27 and February 28, 1913; Berkshire, El Paso, TX to Caminetti, Washington, DC, March 14, 1913, Folder 53108/72F, Box 1110, RG 85, NARA.
[33] U.S Department of Labor, *Annual Report of the Commissioner-General of Immigration, 1914* (Washington, DC: Government Printing Office, 1915), 339; Stimson, Washington DC to Bryan, Washington DC, September 29, 1913; Inspector in Charge Will E. Soult, Eagle Pass, TX to Berkshire, El Paso, TX, October 1, 1913, Folder 53108/72G, Box 1111, RG 85, NARA.

situation was under control, and that everyone would return to Mexico when fears of a battle subsided. His office tried to organize a committee of Mexicans living in Eagle Pass to give temporary relief to refugees. Additionally, increased demand for labor in the area meant that refugees could pay their way by working. As far as Soult was concerned, the situation was much like any other, if greater in scale. Refugees would arrive, and after a short time, willingly return to their homes.[34]

B.H. Schmidt, the mayor of Eagle Pass, and Henry V. King, a county judge in Eagle Pass, did not share Soult's confidence. The pair wrote Secretary of Labor William B. Wilson and complained that the Bureau of Immigration "have taken off all restrictions and are permitting every kind of Mexican refugee [to] come in on us here." According to Schmidt and King, refugees were "laying around on the streets and alleys," helpless in the cold, wet weather. They estimated that three-fourths of nearly eight thousand refugees in Eagle Pass were "without means of support." Bereft, they demanded that the Bureau of Immigration only allow "healthy" refugees, and those with "at least sufficient funds for temporary needs," to enter Texas. If the immigration officials didn't take some measure to stymie the flow of displaced peoples, Schmidt and King estimated that thousands more of the "destitute and sick from a radius of seventy-five miles" would show up in Eagle Pass, as well. When Commissioner General Caminetti heard about Mayor Schmidt and Judge King's concerns, he wrote to Berkshire and asked him to report on the situation at Eagle Pass as soon as possible.[35]

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[34] Soult, Eagle Pass, TX to Berkshire, El Paso, TX, October 3, 1913, Folder 53108/72G, Box 1111, RG 85, NARA.

[35] B.H. Schmidt, Mayor of Eagle Pass, and Henry V. King, Maverick County Judge, Eagle Pass, TX to Wilson, Washington, DC, October 2, 1913, Folder 53108/72G, Box

According to Berkshire, the situation in Piedras Negras was indeed dire. There was no government in the town, and only a few citizens volunteered to maintain order. What's more, refugees from the interior of Mexico had previously made their way to Piedras Negras, inflating the number of refugees by a significant margin. Despite this, Berkshire was sympathetic to the plight refugees faced. "Humanity certainly demands," Berkshire exclaimed, "that no discrimination shall be practiced." Berkshire then wrote to Inspector in Charge Soult at Eagle Pass, and asked him to speak with Mayor Schmidt, and convince him that "grave responsibility" would fall on them all "by refusal of asylum or any discrimination." Soult himself believed that Mayor Schmidt and Judge King were merely upset that he refused their request to completely close off the border to incoming refugees. According to Soult, the Bureau of Immigration had a history of upholding "the right of asylum," and immigration officials thus had no choice but to welcome displaced peoples. Berkshire and Soult anticipated that the refugees would soon return, and tried to convince Mayor Schmidt and Judge King of the same.[36]

Constitutionalist forces soon returned to Piedras Negras, and communicated to American immigration officials that they would protect the refugees if they returned. Berkshire estimated that about one thousand of the poorest refugees left late in the day on

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1111; Lindley M. Garrison, Secretary of War, Washington, DC to Bryan, Washington, DC, forwarding telegram of 2 October from Commanding General, Southern Department, Fort Sam Houston, TX, October 3, 1913, Folder 53108/72H, Box 1111; Caminetti, Washington, DC to Berkshire, El Paso, TX, October 3, 1913, Folder 53108/72G, Box 1111, RG 85, NARA.

[36] Berkshire, El Paso, TX to Caminetti, Washington, DC, October 3, 1913, Folder 53108/72G, Box 1111; Berkshire, El Paso, TX to Soult, Eagle Pass, TX, October 3, 1913, Folder 53108/72H, Box 1111; Soult, Eagle Pass, TX to Berkshire, El Paso, TX, October 5, 1913, Folder 53018/72G, Box 1111, RG 85, NARA.

October 3, and that about seventy percent of the remaining “refugee peons" would return before the end of the night on October 4. The "better class," meanwhile, gradually made their way across the border. Berkshire believed the crisis was over. Nevertheless, he made plans to visit Eagle Pass that evening to ensure everything was in order.[37]

Berkshire and Soult’s certainty that the situation would remain calm in Piedras Negras and Eagle Pass was misplaced. Hours after Berkshire declared the crisis over, panic arose again in Piedras Negras. "Streams of people" stormed toward the border. Refugees arrived at the footbridge connecting the two border towns so quickly that there was no opportunity for local, regional, and federal officials to discuss how to respond to the thousands of displaced people on the border. Mayor Schmidt and the Maverick County Commissioners declared quarantine on the footbridge to screen incoming refugees for smallpox. They later admitted that the quarantine was in fact a "subterfuge to keep out the destitute." Berkshire and Soult communicated to the commissioners just how dire the situation was. With the quarantine in place, refugees crowded the bridge from Mexico to the United States, "frantic to reach American soil." Many would die if the bridge wasn't cleared, not just because they'd be in the line of fire if a battle broke out, but because women and children would be "trampled to death in their frantic efforts to flee from what they appeared to believe to be death at the hands of the Federals." Nevertheless, local and county officials refused to lift the quarantine unless the Bureau of

[37] Berkshire, El Paso, TX to Caminetti, Washington, DC, October 7, 1913, Folder 53108/72G, Box 1111, RG 85, NARA.

Immigration or some other federal agency promised to cover the costs of providing refugees with food and shelter.[38]

Berkshire himself went to the bridge at 1:00pm. It was packed. Mere feet from the border monument marking the boundary line, about 5,000 people crowded the bridge. Berkshire, the immigrant inspectors, and the marine hospital surgeon slowly began allowing refugees who were admissible under the immigration laws to enter Eagle Pass. Refugees whom officials knew were wealthy enough to care for themselves, and those who had friends in Eagle Pass, were examined first by medical officials and allowed to enter. Those who did not — the most vulnerable — waited hours at the bridge, hoping to cross. By nightfall, about 2,500 refugees continued to wait. Immigrant inspectors convened with the County Commissioners. Acting outside of his authority, and with insufficient space in the Eagle Pass immigration office to house so many, Berkshire pledged funds his office did not have to provide for the refugees. Later that day, Berkshire wrote to the commissioner general and asked if it was "advisable to deny asylum." In the meantime, Berkshire ensured the county commissioners that immigration authorities would feed and shelter refugees, and promised to send them to the outskirts of town, where military personnel would guard them and "protect the health of the community." That evening, the commissioners agreed to Berkshire's plan, took down the quarantine, and committed to opening the bridge to those fleeing Piedras Negras the next morning.[39]

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[38] Berkshire, El Paso, TX to Caminetti, Washington, DC, October 7 and October 21, 1913, Folder 53108/72G, Box 1111, RG 85, NARA.

[39] *Ibid.*

By the time Berkshire returned at sunrise, between 5,000 and 6,000 refugees were on the footbridge, "all clamoring for asylum." At first, Berkshire allowed only refugees who were admissible under immigration laws to enter. But by 10:00am, the crowd became so large that officials opened the bridge and allowed everyone to cross. Berkshire claimed he had never in his life seen so many people struck with panic. Refugees crossed until 2:00pm, when Federal forces took control of Piedras Negras, and closed the bridge on the Mexican side of the border.[40]

About four thousand refugees stayed in Eagle Pass overnight. While awaiting the return of safety, refugees prepared corn flour and meat that immigration officials gave them. As of October 8, about two thousand refugees remained. Some of "the most influential people" in Eagle Pass tried to convince them that they wouldn't be harmed if they returned to Piedras Negras. But they would not return. The residents of Eagle Pass who were friends or related to some of the refugees had already "provided for all they can possibly accommodate," and according to Berkshire, it would have been "deplorable and dangerous to [the] health of [the] community to turn any more loose" in Eagle Pass. For the first time, Berkshire admitted that the situation was "critical." Overwhelmed, he asked the federal immigration office to approve the hiring of additional officers, and asked for a reply before the end of the evening.[41]

Commissioner General Caminetti replied the next day, but what he had to say was likely not what Berkshire was hoping to hear. Caminetti reminded Berkshire that "In

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[40] Berkshire, El Paso, TX to Caminetti, Washington, DC, October 21, 1913, Folder 53108/72G, Box 1111, RG 85, NARA.
[41] Berkshire, El Paso, TX to Caminetti, Washington, DC, October 8, 1913, Folder 53108/72G, Box 1111, RG 85, NARA.

dealing with the emergency now existing at Piedras Negras and similar emergencies which may arise on the Mexican border…the United States is under no moral or legal obligation to furnish an asylum to noncombatant aliens who may seek entrance into the United States." Caminetti emphasized that immigration officials should deny entry to displaced peoples who were "likely to become public charges," and exclude refugees who could be refused entry for "other statutory reasons." If officials discovered that excludable refugees had managed to cross the border, Caminetti claimed they "should be deported as rapidly as possible." In the meantime, officials should tell excludable refugees that they would not feed, clothe, or shelter them, "and then quietly furnish sustenance to those aliens absolutely in need of the same," before deporting them.[42]

Shortly after receiving Caminetti's memo, Berkshire and his colleagues stopped feeding refugees in Eagle Pass. Arturo Carranza, the nephew of General Carranza, leader of the Constitutionalists, heard that refugees on the American side of the border were no longer receiving food. He called Berkshire to ask if this was true. Berkshire confirmed that refusing food to refugees would encourage their return to Piedras Negras, where he believed it was now safe. Carranza warned that many refugees' lives were in grave danger because they sympathized with the Constitutionalists. Carranza himself offered to cover the costs of feeding the refugees, and did so until he ran out of funds two days later. At that point, Berkshire created a manifest of the remaining refugees in Eagle Pass. He

[42] Caminetti, Washington, DC to Berkshire and Soult, Eagle Pass, TX, October 9, 1913, Folder 53018/72G, Box 1111, RG 85 NARA. Secretary of Labor Wilson stamped his approval on Caminetti's memo, indicating that the Labor Department endorsed his position.

counted 2,800, and realized that "a considerable number belonged to the excluded classes." Prominent Spanish speaking locals in Eagle Pass talked with the remaining refugees and tried to convince them to leave. The refugees, however, were reluctant to return to Mexico, and claimed they would do so only if they were given weapons and ammunition. Without firearms to protect themselves, "they preferred to die of starvation on American soil rather than return to Piedras Negras and be shot," as one of them explained Bureau of Immigration officials then decided to begin deporting refugees from Eagle Pass. Per Caminetti's orders, they gave the "minimum amount of food" to refugees who were most in need until they could be expelled.[43]

Immigration officials deported 200 refugees on the morning of Saturday, October 11. The refugees protested their deportation, but officials did not "use any actual force" when removing them across the border. Medical inspections continued. Selected refugees who would have been allowed to enter according to the immigration laws were permitted to leave the refugee camp and "wander about," but they needed to have "more than ordinary assurances" about their ability to find work, or prove that friends in Eagle Pass could provide for them. Meanwhile, immigration inspectors kept trying to convince refugees to return to Piedras Negras, lest they be deported.[44]

On October 16, the number of refugees in the camp dropped to about 1,200. With the refugee population declining, Berkshire planned his return to El Paso. Before leaving, he told Soult that Eagle Pass officials could continue to feed starving families unwilling

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[43] Berkshire, El Paso, TX to Caminetti, Washington, DC, October 21, 1913, Folder 53108/72G, Box 1111, RG 85, NARA.
[44] *Ibid.*

to leave the town. At that time, however, officials had already deported or convinced those who were not admissible to return. Most of the remaining refugees were admissible and able to provide themselves with food. Yet returning was not so simple for all refugees. Many sympathized with Carranza and the Constitutionalists, and potentially faced persecution or death if they went back to Piedras Negras. Carranza suggested that he move the most politically vulnerable refugees from the camp to an undisclosed location, particularly women and children, who "would be very badly treated by the federal soldiers" if they returned to Piedras Negras. Berkshire agreed, and emphasized that he did not support Carranza or his cause, but "only dealt with him as a private citizen who expressed a desire to help his people in the name of humanity."[45]

The crisis at Eagle Pass marked a crucial shift in refugee regulation on the border. Throughout the Revolution, officials consistently expressed their interest in “humanity,” and the moral imperative to harbor displaced peoples. Although they were concerned about the economic class and race of incoming refugees, particularly in the case of displaced Chinese, officials were generally more lax in excluding Mexican refugees before Eagle Pass. But once faced with crisis, concerns about the costs of asylum, anxieties about whether refugees were "desirable," and racialized concerns about public health overshadowed their efforts to equitably and consistently accommodate refugees. When displaced peoples needed refuge the most, American officials turned to what they knew best: exclusion based on class and race.

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[45] *Ibid.*

During the Mexican Revolution, two possible futures for the United States — a gatekeeping nation closed off to the world's displaced and persecuted peoples, or a place of refuge on the world stage — were put to the test. With a bevy of exclusionary immigration laws on the books, yet no formal law or policy governing the admission of refugees, American officials could have made it standard procedure to exempt all refugees from exclusionary immigration policies. The fact that officials did occasionally open the borders to refugees, only to close them when conditions along the border became dire, not only shows that it was possible to make exceptions to exclusion. It also lays bare how low a priority it was for officials to give refuge to displaced peoples. It is here, in the middle ground between immigrant exclusion and the extension of asylum to refugees regardless of their "desirability," where the tension between the moral imperative to harbor refugees and the efforts of nation-states to control the borders of their territory and citizenry, is most apparent.

Commissioner General of Immigration Anthony Caminetti's emphasis that there was "no moral or legal obligation" to give asylum to refugees is illuminating about the constraints that limited refugee regulation at the turn of the twentieth century. Officials frequently referred to their moral and humanitarian motivation to harbor displaced peoples during the Mexican Revolution. Because no law actually required them to give refuge to anyone, however, officials reverted to exclusion when it was most important to practice their alleged humanitarianism.[46] Instead of giving equal forms of refuge to all

[46] This persists into the present. Although the United States has a federal framework for refugee admissions that adheres with international guidelines for the resettlement of displaced peoples, there is no actual "legal obligation" to give refuge. Instead, nation-states like the U.S. place annual ceilings on refugee admissions. That is, there is no

who required it, officials during the Mexican Revolution followed their predecessors in America's forgotten era in the history of refugee regulation and improvised responses to displacement that reinforced nation and state building efforts and marginalized vulnerable communities. Toward the end of the Mexican Revolution, officials' choices to extend or deny refuge to displaced peoples took on significance that extended beyond the limits of the nation's borders. With World War I underway, lawmakers, American citizens, social welfare organizations, and displaced peoples debated the responsibility of the U.S. to harbor globally displaced peoples. The trend toward exclusion that immigration officials put into motion during the Mexican Revolution set the stage for these debates.

In the next chapter, I examine the relationship between exclusionary immigration policy and refugee admissions in the context of World War I. As Congressmen discussed the possibility of creating formal mechanisms for refugee resettlement, they invoked the memory of the American Revolution and the image of the U.S. as an "asylum for mankind." Meanwhile, members of the general public voiced their support for displaced peoples. Ultimately, however, deeply seated exclusionary impulses won the day, resulting in the Immigration Acts of 1921 and 1924. Rather than pass a law that opened up U.S. borders to people displaced during World War I, these seminal pieces of legislation established numerical quotas that restricted the number of immigrants and refugees alike who could enter the U.S. according to their country of origin, and further enshrined the

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minimum number of refugees the U.S. must welcome, but there is a maximum number that may enter the country per year. The logic of refugee law and policy is such that the obligation is only ever moral. It could be legal, as well, if only nation-states were so willing.

logic of racial, ethnic, and economic exclusion into policies that would prove to have long-lasting repercussions for refugees around the world.

Chapter Five

"Dreams of Empire:" Refugee Repatriation, Relief, and Exclusion in the World War I Era, 1910-1924

Hundreds of miles from the U.S.-Mexico border, where American officials deliberated how to handle the arrival of refugees from the Mexican Revolution, lawmakers debated American refugee and immigration policy from the safety of the Senate floor in Washington, DC. At issue was whether the introduction of a literacy requirement for immigrants ought to include an exemption for refugees. Senator James A. Reed of Missouri was among the elected officials who believed that refugees' prospects for resettlement in the United States should not be limited by their ability to read and write. According to Reed, the United States owed its position of prominence on the world stage to refugees. The American people, he argued, were descended from European political refugees that came to the United States in pursuit of independence and liberty. Refugees from England, Scotland, Ireland, Germany, Poland, and Russia, Reed said, "were the supermen of their countries. The bravest of the brave; the pioneers of progress; the champions of independence." "When these refugees met" in the United States, he continued, they formed a "race commingling the best bloods of all the world." Refusing refuge to persecuted people, would thus "deprive our country in the future of men the like of whom in the past have helped to build us up and make us great." It was refugees, Reed claimed, who "laid the foundation of the temple of liberty so broad and so secure that the countless millions to come after them could find within its ample walls a place to dwell."[1]

[1] *Congressional Record,* 63rd Cong., 3rd Sess. (1915), 3006-3007.

Reed's romantic vision of the United States as a place of refuge for the world's oppressed peoples was moving, but it was also a highly selective and politicized vision. "Here gathered the oppressed of every land," Reed claimed,

> The man whose back had felt the oppressor's blow; whose arms had borne the manacles of tyranny; who, in his heart, felt the hot flame of protest against centuries of wrong; whose soul aspired for liberty; whose eyes were strained to catch the glorious light of hope's bright star. Beneath their ragged garments were thews of steel; within their brains the dreams of empire.[2]

Reed painted a picture of American refuge that purported to include political refugees "of every land," but ignored the world beyond Europe. Reed's support of a provision in immigration law one year later that excluded Asian immigrants from entering the U.S. would make his views all too clear. "No man not of the white race," Reed explained, "ought to be permitted to settle permanently in the United States of America."[3]

Refuge in the United States, Reed claimed, was limited to Europeans, and to those who shared the United States' government's "dreams of empire." And Reed was right. U.S. refugee policy, as previous chapters have shown, was bound with American "dreams of empire" since independence. When Congress gave thousands of acres of land in the northwest territory to Canadian and Nova Scotian refugees, refugee policy facilitated westward expansion and the dispossession of Native Americans. When political and military officials allowed refugee slaves to enter refugee camps during the Civil War but refused to give them land, refugee policy perpetuated domestic racial hierarchies and continued the marginalization of emancipated slaves to the benefit of white employers

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[2] *Ibid*.
[3] 64th Cong., 2nd sess., *Congressional Record* (December 12, 1916), 209.

who wished to exploit the labor of African Americans. When the federal government signed a treaty in 1866 that promised economic compensation to Creek refugees of the Civil War while also stripping the Creek Nation of half its land, refugee policy undermined Creek sovereignty. When border officials used exclusionary provisions of immigration law to turn away Mexican refugees during the Mexican Revolution, refugee policy bound American gatekeeping to borderlands that were once Mexican land. By making the case that refuge in the United States should only be available to those oppressed peoples whom American officials deemed worthy of belonging in the United States, Reed's remarks signaled an extension of the imperial work that refugee regulation had done for the development of the U.S. nation-state since the earliest days of American independence. The "dreams of empire" that refugee regulation had previously helped the United States achieve — securing the privilege of white Americans, expanding the nation's territorial footprint, projecting American power over the marginalized people of North America — were bound to extend across the globe.

Drawing on thousands of pages of State Department correspondence, congressional debates, and the records of the Bureau of Immigration, this chapter examines debates about international refugee relief and resettlement in American politics and society from 1910 to 1924. As war and revolutions spanned the globe, a growing cadre of rights advocates recognized the need for international consensus around the support of refugees. Nevertheless, well established practices of racialized immigrant exclusion in the United States, in addition to increased international recognition of sovereign nation-states as the de facto form of political organization around the world, helped shape how many Americans viewed the United States government's responsibility

to refugees. Debates about refugee policy were shaped not only by an emerging humanitarian commitment that called for all displaced and persecuted peoples to have access to refuge, but also by a logic of domestic xenophobia that prioritized the rights of sovereign nation-states to exclude migrants from their borders before the ability of individuals to seek refuge.[4]

After World War I, that xenophobia culminated with the passing of the Emergency Quota Act of 1921 and the Immigration Act of 1924, the first American laws to introduce numerical quotas that comprehensively restricted the arrival of immigrants according to their country of origin. Many scholars have analyzed how the quota laws were the product of a decades-in-the-making impulse toward racialized immigrant exclusion, beginning with the Page Act of 1875 and the Chinese Exclusion Act of 1882, and the subsequent proliferation of racial, economic, and gendered categories of "inadmissible" immigrants that lawmakers built into immigration laws at the turn of the twentieth century. In addition to limiting immigration from countries whose residents American officials believed were "undesirable," the 1921 and 1924 quota laws also had the effect of limiting refugee admissions from war-torn Europe.[5]

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[4] Aristide R. Zolberg, *A Nation by Design: Immigration Policy in the Fashioning of America* (Camridge: Harvard University Press, 2006), 11. For analyses of Westphalian sovereignty, see James Turner Johnson, *Sovereignty: Moral and Historical Perspectives* (Washington, DC: Georgetown University Press, 2014); Wendy Brown, *Walled States, Waning Sovereignty* (New York: Zone Books, 2010); *Sovereignty in Fragments: The Past, Present, and Future of a Contested Concept*, ed. Hent Kalmo and Quentin Skinner (Cambridge: Cambridge University Press, 2010).

[5] These categories included but were not limited to including provisions barring those "likely to become a public charge," individuals suspected of "moral turpitude," alleged prostitutes, the ill and physically "unfit," and political radicals. Erika Lee, *At America's Gates: Chinese Immigration during the Exclusion Era, 1882-1943* (Chapel Hill: University of North Carolina Press, 2003); Mae M. Ngai, *Impossible Subjects: Illegal*

This chapter also further demonstrates how American officials used refugee regulation to expand American power over people, places, and resources at home and abroad. The previous chapter of this dissertation demonstrated how the comingling of exclusionary immigration laws with refugee regulation at the U.S.-Mexico border during the Revolution was an evolution of the U.S. government's drive for territorial expansion that defined refuge and American "dreams of empire" in the long nineteenth century. This chapter argues that the influence of exclusionary provisions of immigration law on discussions about U.S. refugee policy in the World War I era, and their culmination with the Immigration Acts of 1921 and 1924, prompted the beginning of a broader shift in American refugee regulation. By drawing on the xenophobia that drove immigrant exclusion in debates about refugee admissions, refugee regulation became, like immigration law, a venue for the United States government to wield its influence over and govern the lives of people around the world. In a world where the U.S. nation-state had an increasingly central role to play in global affairs, American officials saw refugee regulation in the years before, during, and after the First World War as a way to exert the nation-state's sovereignty on the world stage and realize American "dreams of empire."

Aliens and the Making of Modern America (Princeton: Princeton University Press, 2004); Aristide Zolberg, *A Nation by Design: Immigration Policy in the Fashioning of America* (Cambridge: Harvard University Press, 2008); Gerald L. Neuman, "The Lost Century of American Immigration Law (1776-1875)," *Columbia Law Review* 93.8 (1993): 1833-1901. See also John Higham, *Strangers in the Land: Patterns of American Nativism, 1860-1925* (New Brunswick: Rutgers University Press, 1955); Matthew Frye Jacobson, *Barbarian Virtues: The United States Encounters Foreign Peoples at Home and Abroad, 1876-1917* (New York: Hill and Wang, 2001); Gary Gerstle, *American Crucible: Race and Nation in the Twentieth Century* (Princeton: Princeton University Press, 2002); Minna Stern, *Eugenic Nation: Faults and Frontiers of Better Breeding in Modern America* (Berkeley: University of California Press, 2015).

The first section of this chapter examines the State Department's efforts to aid "American refugees" abroad during World War I. Most narratives of American refugee history have focused primarily on how the U.S. government has accommodated or refused relief to refugees from other countries. This is due in part to the fact that the legal definition of the term "refugee" depends on someone being outside the country of their citizenship because they are being persecuted or fear being persecuted by their own government. It is thus outside the parameters of modern terminology for a government to call its own citizens refugees and give them relief under that label. But when war broke out in Europe in the summer of 1914, American officials in the State Department, along with consular and embassy officials abroad, routinely referred to American citizens stranded in Europe as "refugees" who required the state's assistance. One of the U.S. State Department's primary responsibilities is to ensure the safety of American citizens abroad in war and peace. The State Department's recognition of Americans as "refugees," however, in the broader context of American refugee regulation, reveals the degree to which conceptions of national membership and allegiance underlay the distinctions that American officials make when they decide who is a refugee — and thus who is entitled to access state-sponsored resources, relief, and resettlement. As of the World War I-era, the United States lacked any federally codified definition of "refugee" as a legal category. The decision of State Department officials to identify American citizens abroad as "refugees," then, must be placed within the context of decisions made by other state actors who declined to acknowledge other populations within and outside

America as refugees — or who did acknowledge them as refugees, but stopped short of offering them state protection.[6]

The U.S. State Department calling Americans abroad "refugees" while actively sanctioning the marginalization of non-white Americans at home lays bare the hypocrisy at the crux of American refugee regulation. While American officials recognized Americans abroad during World War I as refugees, the United States government sanctioned the oppression of multiply marginalized communities throughout the United States. Americans abroad may have been "refugees," but Native Americans facing the allotment of their lands and relocation to reservations were not seen as "refugees." African Americans subject to segregation were not seen as "refugees." Mexican

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[6] Officials at every level of the State Department and the embassies and consulates throughout Europe used the term "refugee" to describe Americans abroad. Secretary of State William Jennings Bryan uses the word "refugees" when writing to American embassy in Berlin about finding a convenient route for Americans to get out of Berlin to neutral ports. The American Ambassador in London also used the term "refugees" to ask, on behalf of the Foreign Office, if British refugees could join American citizens proceeding to Trieste. A group of women in London banded together to form a branch of the "London Relief Committee for American refugees." The American Ambassador in London noted on August 27, 1914, that a man named Michael F. Doyle advertised his services with signs that read "Michael Francis Doyle, special commissioner of the United States to assist American refugees in Europe." William Jennings Bryan, Secretary of State, Washington, DC, to American Embassy, Berlin, August 12, 1914, Box 8679, General Records of the Department of State, Record Group 59, National Archives and Records Administration, College Park, MD [records hereafter cited as RG 59, NARA]; American Ambassador, London, to Bryan, August 12, 1914, Box 8679, RG 59, NARA; Bryan to American Ambassador, London, August 13 1914, Box 8679, RG 59, NARA; Bryan to American Embassy, France, August 14, 1914, Box 8679, RG 59, NARA; James M, Curley, Mayor of Boston, to Bryan, Aug 21, 1914, Box 8679, RG 59, NARA; American Ambassador, London to Secretary of State, Aug 27, 1914, Box 8680, RG 59, NARA.
It is worth noting, too, that officials also used the terms "tourists," "stranded Americans," and often, simply, "Americans" or "American citizens" when discussing American refugees of World War I.

Americans facing violence in the American southwest, their ancestral homelands, were not seen as "refugees." New immigrant communities who were marginalized as "outsiders" were not seen as "refugees."

Rather than focus on the domestic contradictions of American refuge, however, this chapter situates the State Department's aid to American refugees overseas during World War I in the broader context of U.S. relief efforts for international refugees. After discussing the State Department's relief efforts for American refugees, this chapter contrasts those efforts with several examples in which exclusionary immigration law shaped discussions about refugee regulation during and after World War I, including debates about whether a literacy test should exempt refugees; the deportation of Indian anti-colonialists, whom some Americans defended as political refugees; and the passing of immigration laws in 1921 and 1924 that all but eliminated immigration and refugee resettlement from outside northern and western Europe.

While war and persecution displaced countless numbers of people throughout Europe and around the world, the United States government made every effort to aid refugees — so long as those refugees were also American citizens. The State Department's practice of assisting "American refugees" may seem like an unusual chapter in the history of American refugee regulation. But giving aid to American refugees while shutting out non-American refugees is precisely what refugee policy looked like in the World War I-era. And in the grand sweep of the history of refugee regulation, the U.S. government's recognition of American refugees while opting to exclude "undesirable" foreign-born refugees crystallized the patterns of selection and exclusion that had animated American refugee regulation since independence.

In the first days of August 1914, less than a week after Europe erupted into war, American diplomats in London and across the European continent watched with alarm as tens of thousands of American citizens clamored to know how the coming conflict would affect their lives. The onset of hostilities immediately ruptured everyday life. Americans who were visiting European countries on business and leisure suddenly and without warning lost access to their bank accounts. Weeks earlier, a return voyage home might have meant simply buying a ticket and boarding a railcar or steamship. Now, it meant waiting for trains and vessels that might not arrive at all. Unsure of their responsibility to the sudden increase in people asking for their help, American consular agents and embassy officials shot hundreds of telegrams across the Atlantic to the United States' Secretary of State, seeking guidance on how to handle the crisis unfolding before them.

American citizens were among the people whom State Department officials called "refugees" and expressed their concern for during the start of the war. American military officials in London estimated that there were approximately 20,000 Americans in Great Britain and 50,000 Americans scattered across the rest of Europe. In Basel, Switzerland, for example, 4,000 Americans as well as French, German, and English subjects — the "people of all nations," as one consular agent put it — resorted to "sleeping in…hotel lobbies, public buildings, and railway stations" as they awaited news about how the U.S. government might help stranded Americans return to the states. The consulate general's office in Rotterdam, the Netherlands remarked that the "crowds of American 'refugees'" were so large that the additional work his office had to take on in order to care for them was "stupendous." Hundreds of Americans, he explained, were "hysterical and weeping"

in their eagerness to return home. The State Department in Washington, DC was besieged by similar communications from American diplomats throughout Europe seeking advice on how to assist the thousands of American refugees who required relief.[7]

Support for American refugees came not only from the State Department. The efforts of American officials in Washington, DC and throughout Europe coincided, as well, with congressional action. On August 3, 1914, Congress approved a bill titled "For the relief, protection, and transportation of American citizens in Europe" that initially pledged just $250,000 of Treasury funds to support Americans abroad. Two days later, however, Congress passed a joint resolution that allocated $2.5 million to aid Americans overseas, provided that Americans who received relief or were transported back to the States pay back the U.S. government for the expenses it spent on their behalf.[8]

Concerned members of the American public likewise committed themselves to helping Americans in Europe. In October 1914, the Dubuque, Iowa chapter of the Knights of Pythias, a fraternal order established in the 1860s, passed a resolution committing their members to pledging at least one dollar of relief for American refugees.

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[7] In the early days of the war, the State Department received communications from diplomatic and consular officials in Austria Hungary, Denmark, England, France, Germany, Italy, Norway, Russia, Spain, Switzerland, and Sweden. For the examples noted here, see Secretary of War, Washington, DC, to Secretary of State, Washington, DC, August 8, 1914, quoting August 7, 1914 cablegram from Squier, Military Attaché, London, England, Box 8679, RG 59, NARA; American Consulate, Basel, Switzerland, to Secretary of State, Washington, DC, September 25, 1914, Box 8681, RG 59, NARA; Consul General, Rotterdam, the Netherlands, to Secretary of State, Washington, DC, August 27, 1914, Box 8680, RG 59, NARA.

[8] H.J. Resolution 312, "For the relief, protection, and transportation of American citizens in Europe, and for other purposes," 63rd Cong., 2nd Sess., 1914; H.J. Resolution 314, "For the relief, protection, and transportation of American citizens in Europe, and for other purposes," 63rd Cong., 2nd sess., 1914.

The American Association of Tanners, meanwhile, sent a resolution to the State Department expressing their belief that the United States should aid Americans and other refugees, too, because of "its humanitarian purposes and its effect of creating deeper friendly relations with each of the nations at war." As late as April 1918, Wilbur J. Carr, the Director of the Consular Service, noted in a letter to the Presbyterian Board of Foreign Missionaries in New York that the State Department was constantly fielding questions from American citizens about how to send money to individuals abroad, especially Americans in Palestine and Turkey. Relief efforts for American refugees were not isolated to any one branch of government, or even to government at all. Rather, a variety of Americans in politics and everyday life wished to help American refugees.[9]

The State Department, diplomatic officials, members of Congress, along with individual and various organized groups of American citizens were primarily concerned with assisting Americans abroad who were on the brink of or already facing destitution in Europe. 500 Americans in Copenhagen, for example, were reportedly "in danger of becoming destitute through lack of banking facilities." American refugees who found themselves in this situation were unable to fend for themselves when they ran out of money. Embassy officials stressed the importance of aiding Americans abroad who were struggling financially. On August 8 1914, a diplomatic agent in Berne urged the Secretary of State that a system of general relief ought to be put in place for the

[9] Apollo-Orient Lodge, No. 41, Knights of Pythias, Dubuque, Iowa, to Woodrow Wilson, President of the United States, Washington, DC, October 14, 1914, Box 8679, RG 59, NARA; Oudworth Beye, Executive Secretary, The National Association of Tanners, Chicago, IL, to Hon. Wm. G. McAdoo, Washington, DC, August 26, 1914, Box 8680, RG 59, NARA; Wilbur J. Carr, Director of the Consular Service, to the Presbyterian Board of Foreign Missionaries, April 29, 1915, Box 8683, RG 59, NARA.

thousands of American arriving in Switzerland. Several days later, an American consular officer in Trieste, Austria, said that it would be "an act of humanity" for the U.S. government to do everything it could to provide for American citizens who were stuck in Europe.[10]

Groups of Americans also organized themselves to demand relief from their government. As early as August 4, 1914, an American citizen named Coldwell S. Johnston wrote on behalf of Americans in German to ask for an update about what the United States was going to do for Americans abroad as wartime conditions grew more critical. Two days later, a group of Americans in Goteburg, Sweden arranged a meeting to discuss a plan for returning to the United States. They pooled what little money they had to send a cablegram to the State Department to ask for assistance. On August 12, a group of American citizens who had successfully boarded the Royal Mail Steamer *Tunisian* wrote to President Woodrow Wilson to update him on the conditions Americans faced in Europe, and to demand that the U.S. government provide ships, funds, and passports for Americans who wished to return home but were unable to do so on their own.[11]

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[10] American Charge d'Affaires, Copenhagen, to Secretary of State, Box 8679, RG 59, NARA; Stovall, Berne, Switzerland, to Secretary of State, August 7, 1914, Box 8679, RG 59, NARA; Consulate of U.S.A in Trieste, Italy, to American Ambassador Vienna, Aug 12, 1914, Box 8680, RG 59, NARA.

[11] Coldwell S. Johnston, Berlin, Germany, to Bryan, Secretary of State, Washington, DC, August 4, 1914, Box 8679, RG 59, NARA; American Consul, Goteborg, Sweden, to Bryan, Secretary of State, August 6, 1914, Box 8680, RG 59, NARA; Bryan, Secretary of State, Washington, DC, to American Ambassador, Paris, France and forwarded to "all missions and consulates in Europe, including Russia, Turkey, and the Balkan States," and to London, Antwerp, the Hague, Copenhagen, Christiania, Stockholm, St. Petersburg, Madrid, Lisbon, Berne, Athens, Bucharest, Constantinople, Rome (who sends to Vienna and Berlin), August 24, 1914, Box 8680, RG 59, NARA.

Indeed, as the threat of war loomed, the biggest concern of Americans abroad and American officials alike was acquiring safe passage of American refugees across the Atlantic. Without access to their personal bank accounts, many American refugees also faced the troubling fact that they had no way of purchasing transportation back to the United States. On August 24, 1914, Secretary of State William Jennings Bryan issued a memorandum that was forwarded to "all missions and consulates in Europe." As the war heightened, Bryan urged all Americans to prepare themselves to leave Europe.[12]

Who, exactly, were these so-called American refugees? While the war brought economic hardship to American refugees in Europe, they were nevertheless individuals of significant means. When American officials described the urgency of getting American refugees back to the United States, they suggested that it was a matter of "humanity" to protect Americans. But they also placed their attention on the economic situation of American refugees. Secretary of State William Jennings Bryan noted, for example, that several of the American refugees stranded in Copenhagen were "important bankers and businessmen," and that one of the most prominent American businessmen in the oil industry was stuck with 15,000 Americans in Switzerland. The State Department emphasized the importance of securing the return of American refugees who served in other prominent professions, including judges and district attorneys. Secretary of State Bryan noted that it was important for American refugees to return to "their homes and vocations…for humanity's sake and most urgent business reasons." State Department officials were certainly concerned with ensuring the safety of Americans abroad.

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[12] *Ibid.*

However, they also placed the protection of American commerce on equal footing with the protection of American citizens.[13]

In an early indicator of the importance of economic class in accounting for American refugees, the American ambassador in London expressed interest in an August 10, 1914 telegram to the State Department in not just how many Americans in Europe needed relief, but whether they were eligible for first, second, or third class passage aboard steamships should the U.S. be able to help secure their return. The emphasis was not solely on wealthy people, however. On August 12, 1914, for example, an ambassador in Paris claimed that Americans in his jurisdiction who were teachers and "those without means" would get "first consideration" for boarding vessels back to the states. But the thrust of American relief was geared primarily toward those who could afford to pay the United States back for whatever aid was extended to them. A professor at the University of Michigan named CH Van Tyne even directly accused the State Department of favoring rich over poor Americans in their relief efforts abroad.[14]

Indeed, the Congressional resolutions that provided the funds for American refugee relief inherently favored wealthy Americans by making it a requirement that Americans abroad reimburse the U.S. Treasury for any money spent on their behalf. State

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[13] Bryan, Secretary of State, Washington, DC, to American Legation, Copenhagen, August 11, 1914, Box 8679, RG 59, NARA; Stovall, Berne, Switzerland, to Bryan, Secretary of State, August 11, 1914, Box 8679, RG 59, NARA; Bryan, Secretary of State, Washington, DC, to America Ambassador, Rome, Italy to forward to American Ambassador in Berlin, Germany, August 12, 1914, Box 8679, RG 59, NARA.

[14] American Ambassador, London to Bryan, Secretary of State, Washington, DC, August 10, 1914, Box 8679, RG 59, NARA; Herrick, Paris, France, to Bryan, Secretary of State, Washington, DC, August 12, 1914, Box 8679, RG 59, NARA; H.C. Hoover to Professor C.H. Van Tyne, University of Michigan, Ann Arbor, MI, September 16, 1914, Box 8680, RG 59, NARA.

Department officials did their best to follow that policy. William Jennings Bryan repeatedly told American officials overseas that American citizens who received relief, or whose passage to the U.S. was paid for by the State Department, needed to pay that money back. He encouraged U.S. foreign officials to issue receipts and record the permanent address of any American who received assistance. When a group of Americans in London expressed their anger over having to pay the United States government for relief after claiming they heard that such relief was free, State Department official Robert Lansing reiterated that Americans abroad needed to know that the only way they would secure assistance back to the states was to sign an agreement saying they would reimburse the U.S. Treasury. Even when American refugees arrived in North America, they were still expected to pay for their aid. Secretary of State Bryan, for example, told officials in Montreal that if the refugees who arrived there were "American and destitute," that their office could provide their transportation as long as they submitted a "written promise" to reimburse the government.[15]

While officials were concerned with the class of American refugees and their ability to pay back the state for relief, there was generally little other specific information available regarding who, exactly, were these Americans abroad.[16] Officials were

[15] Bryan, Secretary of State, Washington, DC, to American Legation, Berne, Switzerland, August 7, 1914, Box 8679, RG 59, NARA; Robert Lansing, Acting Secretary of State, Washington, DC, to American Ambassador, Rome, Italy and forward to Berlin, Germany, September 27, 1914, Box 8680, RG 59, NARA; Bryan, Secretary of State, to American Consul, Montreal, September 30, 1914, Box 8681, RG 59, NARA.

[16] There are several lists included throughout the 10,000 or so pages of State Department records I sifted through for this section of the chapter, but I was unable to sort through them for identifying information before submitting this dissertation. On some of them, I do recall seeing age listed, as well as addresses in some instances.

particularly silent about race. One incident in Barcelona, however, supports the likelihood that American refugees in Europe were overwhelmingly white. On Sept 4, 1914, the American minister in Barcelona wrote to the Secretary of State about repatriating Americans who were in Spain. When the steamship *Infanta Isabel* left Barcelona two weeks earlier on August 23, it carried 288 passengers of all ages, "three of whom were American negroes accommodated somewhere on the ship free of charge, being quite destitute." Meanwhile, a French woman who taught at a high school in Salt Lake City for "many years," but who was not an American citizen, was allowed aboard the *Infanta Isabel* to "accompany a highly nervous Puerto Rican woman." The fact that American refugees were likely almost exclusively white is further supported by the membership guidelines of a group calling themselves the American Refugee Society. The American Refugee Society was formed in November 1914 for "the purpose of recording and perpetuating the impressions and experiences of all those American citizens who were marooned in Europe at the beginning of hostilities in the great European war, July 28, 1914." This group of American refugees also had the aim of being an anti-war advocacy group that supported world peace. In a document outlining the "Objects and Aims of the Society" that they sent to Secretary of State Bryan, they noted that membership was open to "Any white person regardless of sex or age" who was an American refugee of the war.[17]

[17] American Consulate-General, Barcelona, Spain, to Bryan, Secretary of State, Washington, DC, September 4, 1914, Box 8681, RG 59, NARA; Acting Secretary, American Refugee Society, November 2, 1914, Box 8681, RG 59, NARA. The Embassy in London also noted one example of a "coloured" American named James Taylor, a photographer, who had been living in Europe since 1900 and was arrested in Germany "for no fault of his own" in 1915 and made his way to London seeking return to the

The patterns that dictated Americans' access to relief were simple in theory, yet more complex in practice. Congress and the State Department gave preference to Americans abroad who could afford to reimburse the United States government for the cost of their daily subsistence or travel back to the states as refugees. Those refugees were overwhelmingly white. Yet as the example of the three African Americans aboard the *Infanta Isabel* shows, there were at least a few instances when officials disregarded the rules and allowed destitute Americans to return to the states "free of charge." Nevertheless, the fact that relief for Americans abroad was by design reserved for Americans with means embroiled those relief efforts in a broader pattern of American refugee relief that, since the nation's founding, privileged white Americans. What's more, this economic hurdle for overseas Americans' access to relief was an example of how citizenship's protections were secured primarily for those citizens whom the state had a vested interest in defending. While the U.S. government's practice of giving aid to American refugees abroad was undoubtedly a significant help to those who received aid, it nevertheless was bound up in patterns of selection that gave preference to particular individuals over others.

The State Department's extension of relief to American refugees upheld American domestic hierarchies of race and class. By refusing relief to non-American refugees, however, the State Department also exported those hierarchies abroad. In particular, American officials embroiled in the refugee crisis of World War I drew on historic patterns of xenophobia and extended them across the Atlantic. When the

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United States. United States Embassy, London, England, to Bryan, Secretary of State, Washington, DC, March 12, 1915, Box 8683, RG 59, NARA.

American Ambassador at Berlin and the American Minister in Copenhagen fielded the pleas of non-Americans hoping to receive some relief from their offices, State Department officials emphasized that their responsibility was only to assist "bona fide American citizens."[18] American officials' practice of cutting off aid to non-American refugees when in the company of American refugees was not limited to World War I. American diplomats deciding how to accommodate American refugees during the war remembered the efforts that U.S. officials took to support American refugees during the Mexican Revolution. On August 5, 1914, an American ambassador named Dearing in San Sebastian, Spain wrote to the Secretary of State, and asked if boats carrying

[18] The need for information, and especially documentation, regarding refugees requesting relief came up repeatedly for non-Americans, American citizens, and foreign-born individuals who had previously lived in America and intended to return but were not yet naturalized citizens at the time of their request for American relief during the war. As of September 1914, William Jennings Bryan noted the State Department had not yet decided on a policy for non-naturalized American refugees, and said that he would need to know all the details of their naturalization proceedings, if they had begun them, in order to decide how to proceed. Over a year later, in October 1915, Acting Secretary of State Robert Lansing informed the American Minister at the Hague that a decision about giving aid to non-naturalized residents of the U.S. stuck in Europe was pending, and that until a decision was made, they ought to be denied subsistence and transportation to America. When destitute refugees began to "swamp" London, the American Ambassador there noted that his office couldn't do much for them because they couldn't verify their citizenship with documents. Individuals who claimed American citizenship but lacked documents to prove it were also turned away by U.S. State Department officials and the officials of other countries, too — the British government refused German and Austrian refugees who were claiming to be naturalized Americans from crossing their borders if they didn't have documentation to prove their relationship with the United States. See Bryan, Secretary of State, Washington, DC, to American Ambassador, Rome, Italy and forwarded to Berlin, Germany, September 12, 1914, Box 8680, RG 59, NARA; American Ambassador, London, to Bryan, Secretary of State, Washington, DC, September 8, 1914, Box 8680, RG 59, NARA; Bureau of Citizenship, Department of State, Washington, DC, to Lansing, Acting Secretary of State, Washington, DC, Sept 15, 1914, Box 8680, RG 59, NARA; Lansing, Acting Secretary of State, Washington, DC, to Henry Van Dyke, Esq., American Minister, The Hague, Netherlands, Box 8680, RG 59, NARA.

American refugees were permitted to board non-American refugees, some of whom might be unable to pay for their passage. "I recall," he wrote, "that relief ships sent to Mexico for American refugees were allowed to accommodate foreigners and even Mexicans after all Americans had been cared for." Dearing believed it would be "gracious and humanitarian" to follow that precedent in responding to the refugee crisis unfolding after the declaration of war in Europe.[19]

American refugee regulation at the onset of World War I was wrought with the tension that accompanied the need to provide aid to vulnerable people and the proclivities of nation-states to prioritize their borders over the needs of vulnerable people. As countless numbers of civilians sought protection from the coming conflict, the representatives of nation-states like the United States puzzled to determine who precisely was entitled to the government's protection. Officials puzzled, as well, over who might have access to resettlement in the United States among those for whom it was unsafe or untenable to return to their homes. This tension in refuge, of U.S. officials trying to accommodate American refugees while denying refuge to non-Americans, only intensified during World War I and in the years that followed.

The advantages that the U.S. government afforded to American refugees over non-American refugees become especially apparent when situated in the context of immigration enforcement. In August of 1914, the State Department managed to book

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[19] American Ambassador, Rome, Italy, to Bryan, Secretary of State, Washington, DC, September 4, 1914, Box 8680, RG 59, NARA; Bryan, Secretary of State, Washington, DC, to American Ambassador, Rome, Italy, and forwarded to Berlin, Germany, September 4, 1914, Box 8680, RG 59, NARA; Bryan, Secretary of State, Washington, DC, to American Embassy, San Sebastien, Spain, August 18, 1914, Box 8679, RG 59, NARA.

travel for a group of American refugees on a steamship heading from Denmark to New York. One of those passengers was George F. Cotterill, a U.S. senator from Seattle. Born in England, Cotterill himself was a naturalized American citizen. The American Minister in Christiania reported that several of the refugees who were slated to board the ship did not have citizenship papers. Though the State Department typically held reservations regarding American citizens without documents, they nevertheless did not wish to delay the return of Senator Cotterill. State Department officials contacted Bureau of Immigration representatives at Ellis Island and asked them to waive the usual inspections that would have been afforded to anyone entering the country from abroad. In contrast, the State Department instructed embassy officials in instances with lesser known refugee passengers not to offer any relief to anyone claiming to be an American unless they could be certain that they were "bona fide American citizens." The power and prestige that came with Senator Cotterill's position as a U.S. senator granted him special treatment in his return to the United States — even convincing immigration officials to ease their procedures for inspecting arrivals from abroad.[20]

American officials were especially wary of individuals attempting to seek entry into the U.S. under the guise of being American refugees. In October, 1914, an unmarried 27-year old English actress named Amy Bridget Fahey, who also went by the name Amy

[20] American Minister Schmedeman, Christiania, Denmark, to Bryan, Secretary of State, Washington, DC, August 11, 1914, Box 8679, RG 59, NARA. The only other example I have been able to find of immigration officials waiving the usual inspection proceedings was also in August 1914, when Louis F. Post of the Department of Labor informed the Acting Commissioner of Immigration at Ellis Island not to interfere with the arrival of a group of American citizens who had disembarked on a steamship from London and were traveling in the ship's steerage class. Acting Secretary of Labor, Washington, DC, to Bryan, Secretary of State, Washington, DC, October 17, 1914, Box 8681, RG 59, NARA.

Clinton, secured passage to the United States after she convinced members of the American Relief Committee that she was an American citizen. In truth, she had only ever spent two weeks in the United States, and was not a naturalized citizen. Upon her arrival in Montreal, U.S. immigration authorities refused her entry "as a person admitting the commission of a crime or misdemeanor involving moral turpitude, as likely to become a public charge, as a pauper, and as an assisted alien." Fahey was not alone. She came to the U.S. with "about forty alleged American refugees," and officials noted that hers was just one among several cases in which "undesirable persons in London" managed to make their way to the United States claiming to be American refugees.[21]

State Department officials articulated several concerns about the citizenship status of refugees claiming to be Americans. In particular, they did not wish to provide a pathway for enemy aliens and spies to enter the United States. They were wary, as well, about individuals carrying contraband into the U.S., and the effect that the crossing of contraband across American borders might have on U.S. neutrality before the country entered the fray in 1917. As suggested by the case of Amy Elizabeth Fahey, however, officials also did not wish for "undesirable" individuals in war-torn Europe to gain access to the United States because they claimed to be refugees. Particularly in cases where refugees abroad were claiming to be Americans but did not have the paperwork to prove

[21] I do not have any additional information regarding why, specifically, she was charged with admitting moral turpitude, though the memorandum cited here did note that Fahey "admitted that she has been the mistress of two different men." Acting Secretary of Labor, Washington, DC, to Bryan, Secretary of State, Oct 17, 1914, Box 8681, RG 59, NARA.

it, officials expressed concern that "abuses" might occur unless refugees presented evidence of their citizenship and a record of their home address in the United States.[22]

It was, of course, the purview of the U.S. State Department to aid Americans. However, the State Department's decision to recognize American citizens as "refugees" as if it were common sense cannot be divorced from the broader context of immigrant exclusion that pervaded American society and politics at the turn of the twentieth century. Debates about refugee admissions in the years before, during, and after World War I occurred within the backdrop of the exclusionary fervor that animated the era's immigration policy. American officials' decision to protect American refugees deepened the divide between American citizens and immigrants — and deepened the divide, as well, between American citizens and refugees.

Debates among lawmakers about international refugee admissions in the World War I-era took place within a broader context in which the nation-state wielded its authority on the world stage not only by protecting Americans abroad, but also by turning anti-immigrant feelings that pervaded American culture and policy debates into laws that excluded people from crossing the country's borders. The potential effects of U.S. state actors' determination to limit immigration on refugee resettlement were apparent in the case of Jewish people in Europe. Concern over how the war would impact European Jews began almost as soon as the war began. On October 7, 1914, the secretary of the New

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[22] American Consul, Nuremberg, Germany, to Bryan, Secretary of State, Washington, DC, Box 8681, RG 59, NARA; American Charge d'Affaires, Copenhagen, Denmark, to Bryan, Secretary of State, Washington, DC, August 11, 1914, Box 8679, RG 59, NARA; American Ambassador, Paris, France, to American Consul, Nice, France, August 14, 1914, Box 8680, RG 59, NARA.

York-based American Jewish Committee wrote to the Secretary of State to ask what the State Department might do to assist Jews in Europe who were affected by the war. Initial reports to the State Department indicated that the Jewish people in Europe faced no particular threat. The American consul general in Berlin, for example, explained in October 1914 that the situation of German Jews was no better or worse than any other group, and American Jews were safe, as well, because they were mostly "men of means, interested in foreign business." The American minister in Paris likewise wrote a month later that there was "no particular distress" among Jews in Europe. As the conflict wore on, however, reports that Jews were facing violent persecution began to reach the State Department. When Frank H. Schofield, the senior officer on the *U.S.S Chester* ported in Canea, Crete, noted that there were one thousand refugees in Syria, mostly Jews and Italians, in September 1915. He described the Jewish refugees there as "undesirable," offering an early indication of how American officials might respond to the needs of vulnerable Jews during the war and extending the logic that informed the racialized exclusion of immigrants to refugees. Indeed, in November 1919, when American Federation of Labor president Samuel Gompers expressed his concern about "destitute and suffering Jewish orphans" in Europe and inquired if they might be able to find a haven in the United States, the Acting Secretary of the Department of Labor informed him that the only way to determine if they could enter the U.S. was for them to face the standard procedures of immigrant inspection upon their arrival. He pointed to Section 3 of the Immigration Act of 1917, which included a host of exclusionary provisions that Jewish orphans might fall under, including clauses that barred the entry of unaccompanied minors under the age of sixteen, and that excluded those arriving to the

U.S. with any form of assistance. If Jewish orphans did make it to the U.S., the acting secretary noted that immigration officials would "construe the applicable provisions of the immigration law as liberally as possible," but said that he could not make any promises regarding their ability to enter the United States. Meanwhile, when a resident of New York City wrote to the State Department upon hearing about the possibility that Jewish orphans might be allowed entry into the U.S., he claimed they should be excluded because he believed Jews were undesirable and unable to assimilate into American society. Concerns that Jewish refugees were "undesirable" and reminders from American officials that the United States had the legal right to turn away any refugees they wished were recurring features in deliberations about whether Jewish refugees might find some reprieve.[23]

Despite the pulse of restrictionism that was present in deliberations among American officials about the U.S. government's responsibility to harbor vulnerable people abroad, many others held less exclusionary views about refuge and immigration. The arguments they made in support of refugee admissions reveal how deep immigrant exclusion influenced the U.S. government's stance on refugees. Many individuals, politicians, and activists addressed Congress about immigration reform in the 1910s.

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[23] Secretary, American Jewish Committee, New York, NY, to Bryan, Secretary of State, Washington, DC, October 7, 1914, Box 8681, RG 59, NARA; Julius G. Lay, Consul-General, Berlin, Germany, to Bryan, Secretary of State, Washington, DC, October 28, 1914, Box 8682, RG 59, NARA; Herrick, Paris, France, to Bryan, Secretary of State, Washington, DC, November 4, 1914, Box 8681, RG 59, NARA; Frank H. Schofield, Senior Officer, U.S.S. Chester, Canea, Crete, to Secretary of the Navy, Washington, DC, September 5, 1915, Box 8684, RG 59, NARA; Acting Secretary, Department of Labor, Washington, DC, to Bryan, Secretary of State, Washington, DC, November 4, 1919, Box 8686, RG 59, NARA; [first name illegible] Bryan, to Lansing, Secretary of State, September 26, 1919, Box 8686, RG 59, NARA.

Some organizations who came before Congress were generally opposed to immigration restriction. The American Jewish Committee, the Board of Delegates on Civil Rights of the Union of American Hebrew Congregations, and the Independent Order of B'Nai B'rith, for example, opposed a sweeping array of exclusionary provisions that Congress was debating in late 1910 and early 1911.[24]

It was a common theme for opponents of immigration restriction to warn that the structure and enforcement of immigration law would make it difficult for refugees to enter the United States. New York City social worker Cyrus Sulzberger, for example, staunchly supported policies to limit the discretion of officials to deport immigrants. When he spoke during a congressional hearing on immigration policy, Sulzberger shared the story of a young woman, a Russian refugee, who immigrant inspectors nearly deported. Officials first charged her with being "feeble minded." After a doctor confirmed she was of sound mind, officials then tried to deport her for being "likely to become a public charge." The Immigrant Aid Society of New York intervened and stopped her deportation. Sulzberger emphasized that most were not so lucky when faced with the whims of immigration officials who had the power to recommend deportation.

[24] Among the provisions they opposed included proposals that would have increased the head tax for all arriving immigrants to $25; established a minimum income for all arriving immigrants; required that all immigrants secure a "moral certificate" testifying to their character before embarking for the U.S.; and created "economically undesirable persons" as an excludable class. Opponents of restriction noted that several of these provisions would have been particularly troubling for refugees. Migrants fleeing persecution likely would have had little in the way of economic security, for example, and it would have been difficult for a refugee to obtain paperwork from the government that was persecuting them. U.S. Congress, Senate, S. Doc. 23, 61st Cong., 3rd sess., 1910-1911, 156.

Sulzberger emphasized that this was especially problematic for refugees, whose claims of persecution, he believed, entitled them a special claim to enter the United States.[25]

Sulzberger and those who sympathized with his belief that a literacy provision in immigration law would have the side effect of excluding refugees also saw other instruments of immigrant exclusion at play in the 1910s and early 1920s — the "likely to become a public charge," the anti-anarchist provisions of immigration law and, after 1917, the literacy test — as especially problematic for the prospective entry of refugees. According to Sulzberger, "any restrictive measure should contain clear, direct, and all encompassing exemptions for refugees." Perhaps because of his awareness of the many excludable categories in immigration law, Sulzberger fought especially hard to keep the literacy test from becoming law, in one instance focusing his attention on the problems that a single word in a proposed literacy test bill would pose for refugees. In his testimony before Congress in 1911, Sulzberger presented his views against a draft of the literacy provision that exempted refugees coming to the U.S. "solely for the purpose of escaping religious persecution." Sulzberger was convinced that authorities would seize on the word "solely" to abuse their power and deport migrants who deserved refuge. According to Sulzberger, someone who was actually a religious refugee, but told officials that, for example, they wanted to come to the U.S. to seek economic opportunity, could

[25] U.S. Congress, House, Committee on Immigration and Naturalization, *Restriction of Immigration: Hearings Before the Committee on Immigration and Naturalization*, United States House of Representatives, 63rd Cong., 2nd sess., 1913, 117-119 [cited hereafter as *Restriction of Immigration*].

be excluded if the law only explicitly provided for those who specifically claimed to be fleeing religious persecution.[26]

Sulzberger was not alone in seeing the word "solely" as a formidable obstacle to refugees seeking entry to the United States. A.I. Elkus, who would later be appointed as the U.S. Ambassador to the Ottoman Empire in 1916, concurred with Sulzberger's suggestion that unsympathetic officials could press a refugee into admitting that she was coming to the U.S. in part for economic opportunity, and thus admit to not coming "solely" because of persecution — even if it were religious persecution that made it impossible for someone to find employment in their home country in the first place. Others opposed the literacy test on similar grounds. Even President Wilson, in the message he issued to Congress after he vetoed a 1914 immigration law that included a literacy test, emphasized that most migrants coming to the U.S. did so not only because they were fleeing persecution, but because they sought the kinds of opportunities that persecution in their home countries robbed from them. Access to education was likely one of those opportunities, Wilson noted. To keep the word "solely" in the language of the law would have in theory created an exemption for religious refugees. But it ignored the fact that refugees themselves might articulate their persecution in ways that focused more on what they hoped to gain in their country of asylum, rather than on what drove them from home.[27]

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[26] *Ibid*. For a legislative history of the literacy test in U.S. immigration law, see Zolberg, *Nation by Design*, 211-231.
[27] *Ibid.;* 64th Cong., 1st sess., *Congressional Record* (1916), 4802.

Elkus also pointed out that in many instances, religious persecution and political persecution were likely so intertwined that it made little sense for the law to exempt refugees for any one kind of persecution. Elkus noted that the language for this part of the law was a direct copy of the text from an English immigration law. When the British were considering that law, Prime Minister H.H. Asquith expressed similar objections to the limitations of the word 'solely': "We want words that are wider and more elastic if we are to carry out the common object — if it is that — which is that it is that these unfortunate persons, victims of social and political prejudice, shall in the future, as in the past, receive free admission to our shores." Asquith, with good reason, questioned whether exempting refugees from exclusion was actually a legitimate concern of the British state. The same question could have been asked of American officials as well. [28]

Elected officials who were concerned about the ability of refugees to enter the U.S. understood it was unlikely that they would be able to create wholesale exemptions for refugees from exclusionary immigration laws. They realized, too, that removing the literacy requirement from the law was an uphill battle. In order to broaden the range of refugees who might be able to find a haven in the United States, Senator Charles S. Thomas from Colorado came up with an alternative solution to merely throwing out the literacy test. To gain some goodwill with restrictionists, Thomas explained that he supported a literacy test, as long as Congress ensured that refugees were exempt from the test. Unlike many of his peers, however, Thomas didn't want to make an exception just for religious and political refugees. He proposed an amendment to existing immigration

[28] *Restriction of Immigration*, 207-208.

law in 1914 that would have exempted individuals fleeing "racial persecution," as well. The amendment failed when it came to a vote, with twenty-six in favor, thirty-four against, and thirty-six not voting.[29]

After the vote, long-time restrictionist Senator Henry Cabot Lodge of Massachusetts explained that he voted against it because he explicitly opposed the idea that the U.S. ought to make an exception for refugees fleeing racial persecution. Lodge opposed the amendment for the very same reason that Thomas endorsed it: because he thought it was too broad, and would allow anyone to enter the U.S. as a refugee. In particular, Lodge levied his concerns against East Indian political dissidents who opposed the British occupation of India — a group of refugees discussed in greater detail later in this chapter. Lodge dismissed the idea that Indian anti-colonialists had a valid claim to refuge. "It would not be difficult for the Hindus to show that they were subjected, some of them, as they think, to racial persecution and that they were discriminated against. The Senate wants to be extremely careful before it loosens the provision in that way."[30] Other representatives took their racial exclusionism a step further and argued that some groups of people were simply not fit for self-government. According to Congressman William Kent of California, "Democracy cannot be conferred upon the unripe and unfit; it is and must be inherent…we must ask ourselves whether these oppressed are all of them capable of ruling not only themselves, but of ruling us and our children."[31]

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[29] 63rd Cong., 3rd sess., *Congressional Record* (December 31, 1914), 788.
[30] 63rd Cong., 3rd sess., *Congressional Record*, (December 31, 1914), 788.
[31] Kent's ideas about racial difference and self-government also referred to the abolition of slavery in his remarks regarding immigrants, asylum, and self-government. "Bitter has been this Nation's experience in our Southern States, when by injudicious action we conferred upon an immature race responsibilities for which it was unequal; and even after

Ultimately, refugee advocates lost their bid to secure a wholesale exemption for refugees from the literacy test. The Immigration Act of 1917 became the first law to incorporate a literacy test in immigrant admissions. According to the law, immigrants must translate thirty to forty words in a language of their own choosing before an immigrant inspector. Several classes of immigrants were exempted from the test. Religious refugees were among them. The closest resemblance to an allowance for political refugees was an exception to the literacy test for "otherwise admissible persons convicted, or who admit the commission, or who teach or advocate the commission, of an offense purely political." Refugees fleeing from racial persecution were not protected in the law.[32]

The bill only came into law when the House and the Senate overrode President Wilson's veto. This wasn't the first time Wilson vetoed a literacy bill. Wilson also vetoed an immigration law that Congress passed in 1914. When he issued his statement regarding that veto on January 28, 1915, Wilson explained that he vetoed the law because

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that experience gentlemen talk as though all people that come to our shores should be cheerfully admitted and should participate not only in governing themselves but in governing the rest of us, who are born of ancestry capable of self-government." On the one hand, this is obviously problematic, but not surprising, given the explicit racism of the time. But it is especially discomfiting that Kent refers to emancipation when discussing refuge for international migrants, because it seems as if he is suggesting not only that there are entire groups of people who aren't "fit" to govern, but also that their alleged inability to govern is justification for their oppression. 64th Cong., 1st sess., *Congressional Record* (1916), 4782.

[32] The exemption for religious refugees extended to those who could "prove to the satisfaction of the proper immigration officer or to the Secretary of Labor that they are seeking admission to the United States to avoid religious persecution in the country of their last permanent residence, whether such persecution be evidenced by overt acts or by laws or government regulations that discriminate against the alien or the race to which he belongs because of his religious faith." Pub. L. No. 64-29, 39 Stat. 874 (1917).

"it seeks to all but close entirely the gates of asylum which have always been open to those who could find nowhere else the right and opportunity of constitutional agitation for what they conceived to be the natural and inalienable rights of men." Though Wilson argued that a literacy test would negatively impact refugees, the law's passing in 1917 without a broad provision exempting refugees promised only a dimly lit future for refugees hoping to find a haven in the United States.[33]

The literacy test was not the only exclusionary provision of immigration law that immigrant supporters found troublesome for refugees. Others also focused on sections of the law that provided for the deportation of political dissidents. Representative Victor L. Berger of Wisconsin, for example, who was himself a naturalized immigrant and a noted Socialist, opposed a 1912 proposal that would have made it a deportable offense for any immigrant to oppose not just the U.S. government, but any government whatsoever. Berger claimed that the Root Amendment "practically abolishes the right of asylum for political refugees in the United States. If it is to be construed literally, then any man or woman who has come to this country on account of political persecution, and in quest of freedom, is liable to be expelled." Berger reminded Congress that generally criminalizing resistance to organized government was antithetical to America's own political history of revolution. A policy that would enable officials to deport those working to overthrow an unjust government, Berger noted, was "just opposite to that which we practiced since this country was formed." Berger went on to cite the long list of refugees whose migrations to the U.S. played a foundational role in the country's history. From the pilgrims to the

[33] 64th Cong., 1st sess., *Congressional Record* (1916), 4802.

Huguenots, the Moravians to the Quakers, the German refugees of 1848 to Polish nationalists in the 1850s, and the Irish fleeing English persecution to Jewish refugees from Russia, Berger claimed that the original thirteen colonies and the nation itself "were virtually built up by religious and political refugees.[34]

Just as Sulzberger was concerned that immigration officials might exploit ungenerous provisions of immigration law to exclude refugees, Berger and his supporters feared that the Root Amendment would provide immigration officials with a blanket provision that could deport practically any refugee. According to Illinois Congressman Adolph J. Sabath, Senator Elihu Root of New York held a personal vendetta that might have inspired his legislation. When Root was the Secretary of War in the early 1900s, a Russian refugee sought asylum in the United States. The Russian government requested that the U.S. extradite him so he could be punished for his participation in the Russian Revolution. According to Sabath, Root "was only too willing" to have him deported. But Congress devoted "months to convince Mr. Root that he had no right and no power to grant the request of the Russian Government, because he was a refugee and did not commit any crime." Hearing this, Representative Garner was convinced that "the Government of the United States will take advantage of this amendment in order to deport people that it otherwise would have no authority to do; in other words, that it will abuse the law if Congress might pass it."[35]

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[34] U.S. Congress, House, Committee on Immigration and Naturalization, *Hearings Relative to the Dillingham Bill, S 3175, To Regulate the Immigration of Aliens to and the Residence of Aliens in the U.S., Part 8*, 62nd Cong., 2nd sess., 1912, 9-10 [hereafter cited as *Hearings Relative to the Dillingham Bill*].
[35] *Ibid*., 15-16.

Berger's concerns — and the responses of his detractors — also revolved around the relationship of refugee admissions and America's increasingly expansive role on the world stage, and in particular its standing in regard to other countries in international affairs. One congressman who challenged Berger's sentiment, for example, warned that accepting some political refugees might disturb relations with governments whom the United States otherwise had a friendly relationship. Congressman Caleb Powers of Kentucky shared the same concern that giving refuge to particular persecuted peoples might complicate U.S. foreign affairs. Berger replied that no one was worried how revolution and political dissent might have impacted the relationship of the U.S. with foreign governments when the United States intervened in Panama after that country achieved independence in 1903.[36] Congressman William Brown of West Virginia intervened to dismiss Berger's point, and said that U.S. involvement in Panama was "not written history," to which Berger replied, "No; it is not written history, but it is still real."[37]

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[36] On the imperial history of the United States and Panama, see Noel Maurer and Carlos Yu, *The Big Ditch: How America Took, Built, Ran, and Ultimately Gave Away the Panama Canal* (Princeton: Princeton University Press, 2010). On the role of U.S. intervention and the onset of empire in Latin America at the turn of the twentieth century more broadly, see Alfred W. McCoy and Francisco A. Scarano, eds., *Colonial Crucible: Empire in the Making of the Modern American State* (Madison: University of Wisconsin Press, 2009) and Laura Briggs, *Reproducing Empire: Race, Sex, Science, and U.S. Imperialism in Puerto Rico* (Berkeley: University of California Press, 2002); Kristin L. Hoganson, *Fighting for American Manhood: How Gender Politics Provoked the Spanish-American and Philippine-American Wars* (New Haven: Yale University Press, 2000).
[37] *Hearings Relative to the Dillingham Bill*, 13-15. On immigrant restriction as a response to American empire building, and more broadly on the relationship between immigration and U.S. foreign affairs, see Donna R. Gabaccia, *Foreign Relations: American Immigration in Global Perspective* (Princeton: Princeton University Press, 2012). pall

To those who claimed that giving asylum to refugees might sour foreign relations between the U.S. and other governments, Leon Sanders, a judge in New York City and a member of the Hebrew Sheltering and Immigrant Aid Society, an organization that advocated for Jewish refugees, reminded Congress that the success of the American Revolution was in no small part contingent upon aid from foreign governments. If France had a law like the Root Amendment in effect when Benjamin Franklin went to France to ask for support for the Revolution, the French could have deported Franklin to the custody of British authorities. According to Judge Sanders, "This law will practically make the United States a policeman for the monarchies of Europe, and for all other countries where dictators are in power, and put us in a position…to arrest and deport and turn over to them anyone who is likely to disturb their peace." Sanders reminded his colleagues that the U.S. resorted to violent revolution to achieve independence from Britain. It would only be a matter of time until the oppressed people of the world rose up and sought independence, too. If the U.S. government adopted the policy of deporting refugees, Sanders claimed that the U.S. would "establish itself as the protector to European monarchies, despotic, or otherwise, and despotic dictators," and thus turn its back against its own history and against oppressed peoples of the world. The Root Amendment's exclusion of political refugees, in other words, might result in collusion with oppressive governments that unjustly spread American power across the globe according to whatever officials deemed was most expedient for the political interests of the U.S. state.[38]

[38] *Hearings Relative to the Dillingham Bill,* 34-35.

Indeed, access to asylum in the United States for political refugees hinged in part on whether or not officials supported the aims and tactics of their political goals. The case of Indian political dissidents who opposed Britain's imperial occupation of India offers a compelling example of what was at stake in recognizing or refusing to recognize particular groups of people as political refugees. In 1915, after several Indian political dissidents were deported from the United States and Canada, the British government charged them with plotting to overthrow the British government and violating the so-called Defense of India Act. The court sentenced twenty-six individuals to life imprisonment and sentenced twenty others to death. Once news of the trial's verdict reached American shores, U.S. officials in the State Department and the Department of Justice were appalled to learn that a plot to overthrow the British government had been put into motion under their noses by a group of politically and racially "undesirable" migrants who made their way across American borders. Their concern spurred the Justice Department to indict dozens of Indians in the United States who were suspected of fomenting rebellion against the British, and thus violating U.S. neutrality laws that criminalized the material or moral support of nations engaged in World War I. The "Hindu Conspiracy Trial," which brought charges against 105 Indian migrants in the U.S. in November of 1917, was the most expensive trial of its time. The U.S. and British governments alike flushed cash into the trial, incorporating evidence and testimony from over one hundred witnesses from all over the world. The trial was a major event and caught the nation's attention from the start. On the last day of the trial, however, as the courtroom adjourned for its midday recess, one of the defendants shot and killed Ram

Chandra, a leader among Indian nationalists. Later that day, the jury found all the defendants guilty, save for one American citizen.[39]

Concerns about the violent tactics of some Indian anti-colonialists caused the Bureau of Immigration to enhance its surveillance of Hindu radicals. The commissioner of immigration in Montreal asked the commissioners and inspectors in charge at the ports of Baltimore, Boston, Ellis Island, Gloucester City, NJ, Jacksonville, FL, Norfolk, VA, San Francisco, and Seattle to summarizing the arrivals and departures of Indian migrants in their weekly reports to the federal office about surreptitious border crossings by Asian migrants. Officials at these same ports were also to determine if Indians arriving in the U.S. had plans to visit friends, and if they did, they were to produce a list of those friends so they could be questioned if necessary.[40] A May 1919 memo from the military intelligence branch of the War Department, meanwhile, furnished the Bureau of

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[39] Seema Sohi, "Race, Surveillance, and Indian Anticolonialism in the Transnational Western U.S. Canadian Borderlands," *Journal of American History* 98, no. 2 (2011): 434-436 and Giles T. Brown, "The Hindu Conspiracy, 1914-1917," *Pacific Historical Review* 17, no. 3 (1948): 299-310. For more on the "Hindu Conspiracy Trial," Indian political movements, and on the broader surveillance and criminalization of Asian migrants in the United States, see Seema Sohi, *Echoes of Mutiny: Race, Surveillance, and Indian Anticolonialism in North America* (New York: Oxford University Press, 2014); Joan M. Jensen, *Passage from India: Asian Indian Immigrants in North America* (New Haven: Yale University Press, 1988); Vivek Bald, Miabi Chatterji, Sujani Reddy, and Manu Vimalassery, eds., *The Sun Never Sets: South Asian Migrants in an Age of U.S. Power* (New York: New York University Press, 2013).

[40] From 1916 to 1919, in the event that there were no arrivals or departures of Indian migrants in any given week, Commissioners and Inspectors in Charge were nevertheless expected to submit a report of "No Transactions" to the immigration office in Montreal. In early 1919, the policy shifted so that officials could skip the weekly report if no one came through the port. See Commissioner of Immigration, District Headquarters, Montreal, Canada, to Commissioner General of Immigration, Washington, DC, February 11, 1919, Entry No. 53854/133, Box 2237, Records of the Immigration and Naturalization Service, Record Group 85, National Archives and Records Administration, Washington, DC [hereafter cited as RG 85, NARA].

Immigration with a description of alleged "Hindu-German activities," along with a list of suspects, to abet the efforts of immigration officials to exclude Indian migrants from moving freely throughout North America, and to deport those who the Bureau determined to be in the United States in violation of the country's immigration laws.[41]

It did not take long for Americans to voice their opposition to the Bureau of Immigration's targeting of Indian migrants on the grounds that they were political refugees. From June 9th to June 23rd, 1919, the American Federation of Labor held its thirty-ninth annual convention in Atlantic City, New Jersey. The AFL members who attended the convention discussed a wide range of issues. Among them was the status of the United States as an asylum for political refugees. They questioned anyone who claimed that the country was an "asylum for political offenders of the entire world." How could the U.S. be a viable asylum for political refugees, they asked, when U.S. neutrality laws and other laws such as the Espionage and Sedition Acts of 1917 and 1918 criminalized those who spoke out against the government?[42] Among the many resolutions

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[41] Chief, Military Intelligence Branch, Executive Division, to Labor Department, ATTN: Mr. Parker, May 3, 1918, Entry No. 53854/133, Box 2237, RG 85, NARA. These efforts were part of a rising global surveillance and regulatory regime for migrants that specifically targeted Asian migrants. See in particular Adam M. McKeown, *Melancholy Order: Asian Migration and the Globalization of Borders* (New York: Columbia University Press, 2011).

[42] The AFL were not alone in making connections between refuge and broader restrictions against the rights of American citizens. When William Marion Reedy, the editor of a magazine called "Reedy's Mirror," evoked the memory of George Washington, Thomas Jefferson, John Adams, and Benjamin Franklin, he didn't do so only to suggest that deporting political refugees was tantamount to deporting the founding fathers. The possibility of deportation for political refugees, noted Reedy, was happening at the very same time that the U.S. government was imprisoning American citizens for opposing the war and thus violating the Espionage and Sedition Acts. Reedy was adamant that backing away from "the old doctrine that the U.S. was established as a refuge for the oppressed of the earth" had implications for all people within American

passed at the convention was one concerning the deportation of Indian anti-colonialists. According to the AFL, deportation was an unjust punishment for "the efforts of certain Hindoos [sic] to gain for millions of their fellow countrymen a greater measure of freedom and democracy." As long as the political actions of Indians were directed against the British, and not against the United States government, the AFL saw no reason why they should not be permitted to stay in the country. The AFL urged President Woodrow Wilson to "exercise clemency in this matter and allow these men to remain in this country as political refugees."[43]

The American Federation of Labor was perhaps the most visible organization to come out in support of Indian anti-colonialists, but they were not alone. Many labor unions followed the AFL's lead, and adopted similar resolutions that demanded the end of deportations for Indian migrants, who they perceived as political refugees. The resolutions that labor unions and political organizations adopted and sent to the Bureau of Immigration focused on several major points to justify their position that the deportation attempts should come to an end. They often invoked the idea that the U.S. was historically a place of refuge for political dissidents. The Executive Committee of the

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borders, whether they were native born citizens, immigrants, or naturalized citizens. William Marion Barry, "Doing Britain's Dirty Work," *Reedy's Mirror,* reprinted in Entry No. 53854/133, Box 2237, RG 85, NARA.

[43] Samuel Gompers, President, American Federation of Labor, Washington, DC, to William B. Wilson, Secretary of Labor, Washington, DC, July 3, 1919, Entry No. 53854/133, Box 2237, RG 85, NARA. For a full account of the proceedings at the AFL's 1919 convention, see *Report of Proceedings of the Thirty-Ninth Annual Convention of the American Federation of Labor* (Washington, DC: The Law Reporter Printing Company, 1919), https://books.google.com/books?id=H4NEAQAAIAAJ&dq=thirty-ninth%20annual%20convention%20american%20federation%20of%20labor%201919&pg=PR1#v=onepage&q&f=false (accessed March 25, 2018).

Central Federated Union of Greater New York, for example, pointed out that the United States, since issuing the Declaration of Independence in 1776, "has extended the principle of political asylum to countless European patriots who fled from the wrath of tyrannical governments." If the U.S. failed to give refuge to Indian anti-colonialists, the Executive Committee observed, it would be a departure from the U.S. government's typical course of action, and a "violation of the established principle of political asylum."[44]

A great number of the individuals, unions, and organizations who wrote to the Bureau of Immigration in opposition to the deportation of political refugees expressed variations on this theme. Some drew explicit comparisons between the efforts of Indian anti-colonialists and the American Revolution. When Lucia Trent, from Westport, Connecticut, wrote to join the "thousands of American citizens in protesting against what seems to many of us to be a flagrant violation of American principles," she not only cited asylum for "all the oppressed peoples of the world" as one of the "proudest traditions of our country." She also saw Indian anti-colonialists in the same light as "our American ancestors…striving for national independence." Local No. 116 of the Ladies Auxiliary to the International Association of Machinists, meanwhile, cited political asylum as one of the major reasons for the American independence movement. They identified themselves as "citizens, imbued with the American spirit of 1776," who were "duty bound to carry out the aims for which our fore-fathers bled and died, one of these being to offer political asylum to political refugees, from other countries who have fled from the wrath of

[44] For the petitions, see Entry Nos. 53854/133 through 53854/133-B, Box 2237, RG 85, NARA. General Executive Committee, Central Federated Union of Greater New York and Vicinity, to William B. Wilson, Secretary of Labor, Washington, DC, August 2, 1919, Entry No. 53854/133, Box 2237, RG 85, NARA.

tyrannical governments." The actions of Indian anti-colonialists were parallel to those of America's forefathers, and Local No. 116 believed that it would have been "un-American" to deny them refuge. The notion that the U.S. government would unquestionably accept political refugees because of the country's revolutionary history was so influential that it spread across the Atlantic. When a so-called "colony" of Indian migrants living in Europe submitted a petition to the Bureau of Immigration, they also referred to America's revolutionary history, and said that it would be "inhumane" to deport Indian political refugees when they sought "national independence as your forefathers did." Indian anti-colonialists, according to Clara H. Minot, a civilian who wrote to the Department of Labor, were taking the same risks to achieve self-government as America's founding fathers. America's revolutionary forces succeeded in throwing off the yoke of British colonialism. If they hadn't, however, Minot notes that they would have been hanged for treason. If the U.S. government deported those seeking independence in India, they would likely experience that fate, robbing the world of "some of the best of mankind."[45]

[45] Lucia Trent, Westport, CT, to William B. Wilson, Secretary of Labor, Washington, DC, July 20, 1919, Entry No. 53854/133, Box 2237, RG 85, NARA; H.J. Toal, President, and Clara E. Knapps, Secretary, Bluebird Lodge No. 116, Ladies' Auxiliary to the International Association of Machinists, to William B. Wilson, Secretary of Labor, Washington, DC, November 22, 1919, Entry No. 53854/133, Box 2237, RG 85, NARA; Joseph Irwin France, U.S. Senate, to William B. Wilson, Secretary of Labor, Washington, DC, Submitting message of Mr. Bhupendrenath Dutta from Berlin, Germany, February 23, 1920, Entry No. 53854/133, Box 2237, RG 85, NARA. For his own part, France also claimed that "it is distinctly contrary to the principles of our own Government to deport refugees who are convicted under the laws of other countries." Clara M. Minot, New York, NY, to William B. Wilson, Secretary of Labor, Washington, DC, June 16, 1919, Entry No. 53854/133, Box 2237, RG 85, NARA.

Those who opposed the deportation of Indian political refugees did so because they believe it contradicted some idealistic vision of America's history as a place of refuge. Yet they also looked beyond American history and believed that asylum for political refugees was generally recognized as a right for all people around the world.[46] The fact remained that there was no law in the United States that legally required the government to protect refugees. Any formal legal provisions that touched on refugee admissions in the early twentieth century remained couched in immigration law. The claims that individuals made in favor of the U.S. accepting political refugees, then, came up against the idea that it was the U.S.'s sovereign right as a nation-state to deport and exclude migrants. As seen in the case of Indian migrants who opposed the British government's control of their land and political rule, individuals whom the American officials believed were outside the scope of democratic self-rule could expect little hope that they would receive support as refugees in the United States.

Even some who criticized the Bureau of Immigration's attempts to deport Indian anti-colonialists recognized that it was within the nation-state's rights to deport migrants. Among the many who opposed the deportations was Charles A. Beard. Beard, along with his wife, Mary Beard, was one of the most influential American historians of the early twentieth century. When he wrote to the Lewis F. Post on February 27, 1919, and expressed his concerns about attempts to deport Indian anti-colonialists, he established his authority by referring to his "old American stock," and his familiarity "with the long

[46] Representative Walsh of Montana, when discussing the deportation of Indians, noted that the nations of Europe "establish[ed] as a principle of international law the sanctity of the right of asylum in the case of political offenders." 66th Cong., 1st sess., *Congressional Record* (November 10, 1919), 8199.

history of the struggle of mankind for self-government and political liberty." Although he was concerned about the treatment of Indians up for deportation, particularly that those awaiting deportation hearings would not have a public hearing held in court, Beard was not so bold as to demand that immigration authorities release political dissidents. Rather, Beard noted that it was the "lawful power" of the United States to deport individuals from its borders. Sailendra Nath Ghose likewise invoked the U.S. government's sovereign right to define membership when he addressed the Bureau of Immigration's efforts to deport Indian anti-colonialists. In an essay titled "Deportation of Hindu Politicals" that appeared in *The Dial*, an influential political and literary magazine based in Chicago, IL and New York, Ghose opened the article's first paragraph by explaining that deportation was the sovereign right of nation-states. "The modern policy of all nations, especially the powerful and aggressive ones, toward national sovereignty, is to permit each nation to be its own judge as to whom it shall admit and exclude from the country," he wrote. Despite that right of deportation, Ghose went on to proclaim that the U.S. government's case to deport Indian migrants stood on morally thin ground. While migrants from other countries who sought self-determination and independence from oppressive governments were offered a safe haven in the United States, Ghose said it was an outrage that Indian migrants would be deported. "Why is the present administration," Ghose demanded to know, "so anxious to violate the sacred tradition of America—that of granting asylum to political refugees from oppressed and subject nationalities?"[47]

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[47] Charles A. Beard, Bureau of Municipal Research, Training School for Public Service, 261 Broadway, New York, NY to Lewis F. Post, Department of Labor, Washington, DC, February 27, 1919, Entry No. 53854/133, Box 2237, RG 85, NARA; Sailendra Nath Ghose, "Deportation of Hindu Politicals," *The Dial* 67, No. 797 (August 23, 1945): 145-

The stakes of Ghose's question couldn't have been more clear. When the U.S. deported Indian political dissidents back to Britain in 1915, nearly two dozen were sentenced to die. A bill that the British parliament passed in 1915, the Rowlatt Act, emboldened the Defense of India Act by giving British authorities the power to imprison any individual suspected of terrorist activity against the British Raj for up to two years without trial. Although British officials had in 1905 endorsed the arrival of Russian refugees in England who were fleeing the collapse of the Russian empire — causing J.D. Whelpley, the author of the 1905 British Alien Act, to refer several times to England's

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147, reprinted in Entry No. 53854/133, Box 2237, RG 85, NARA. The ability of nation-states to define national membership through the admission and exclusion of migrants from their borders was, and continues to be, widely recognized as a fundamental articulation of state sovereignty in the international political arena. In the case of deportation, the U.S. Supreme Court case *Fong Yue Ting v. U.S.* (1893) determined that deportation was a right of the U.S. government, as it was a right of any other national government, because all sovereign nations were entitled to preserve their national security. In their interpretation, the justices in the majority of *Fong Yue Ting* construed the immigration of foreigners into the U.S. as a matter that could potentially have ramifications for the nation's national security. The Court thus enshrined deportation not as a punishment against "undesirable" immigrants, but as a viable tool that the nation-state could use to defend itself. In practice, American officials had long assumed the right of deportation. Modern deportation practices found their precursors in various other forms of removal, including laws that governed the mobility of individuals in colonial and early America; attempts to remove political radicals via the Alien and Sedition Acts of 1798; the removal of American Indians; and the practice of returning freed African Americans to slave owners via the Fugitive Slave Act of 1850. On the legislative and judicial moorings of the U.S.'s sovereign right to exclude and deport immigrants, see Torrie Hester, "'Protection, Not Punishment': Legislative and Judicial Formation of U.S. Deportation Policy, 1882-1904," *Journal of American Ethnic History* 30, No. 1 (2010): 11-36. On the long history of deportation, see See Daniel Kanstroom, *Deportation Nation: Outsiders in American History* (Cambridge: Harvard University Press, 2010), especially Chapter Two. For historical perspective on the history of deportation in the U.S., see Deirdre M. Moloney, *National Insecurities: Immigrants and U.S. Deportation Policy since 1882* (Chapel Hill: University of North Carolina Press, 2012) and Nicholas De Genova and Nathalie Peutz, eds., *The Deportation Regime: Sovereignty, Space, and the Freedom of Movement* (Durham: Duke University Press, 2010).

"cherished right of asylum" — Parliament was quick to dismiss the claims of colonial subjects who they viewed as political enemies of the British empire, rather than political refugees. In a dynamic that paralleled the United States' years of subjecting Native Americans and slaves to dispossession without ever considering they might be "refugees," the British refused to acknowledge the legitimacy of Indian anti-colonialists' efforts for self-rule and their opposition to British empire.[48]

If American refugee regulation in the nineteenth century helped facilitate the formation of the U.S. nation-state by seizing Native land and African American labor, it is worth considering the multiple ways the United States government's hesitancy to acknowledge Indian anti-colonialists as "refugees" abetted the U.S. nation-state's global

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[48] Sohi, *Echoes of Mutiny,* 172. Herman Defrem, Organizer, Associated Teachers Union, N.Y.C., and Sailendra Nath Ghose, Friends of Freedom for India, "Brief of the Threatened Deportation of Hindu Political Prisoners and Refugees," Entry No. 53854/133, Box 2237, RG 85, NARA. "Report on British Aliens Act from J.D. Whelpley, Part V," February 6, 1906, Entry No. 52332/1, Immigration and British Alien bills, including investigation of effectiveness of Aliens Act, ports of entry, transmigrants, bonding of emigrant transportation companies, emigration of pauper children, text of 1905 Aliens Act, "Alien Passenger Traffic between U.K. and European and Mediterranean Ports Statistics and Expulsion Orders" reports, criminal aliens bill, Aliens Bill (1911), and emigration and immigration statistics, Records of the Immigration and Naturalization Service, Series A: Subject Correspondence Files, Part 4: European Investigations, 1898-1936, accessed via ProQuest History Vault. Immigration officials also used the "likely to become a public charge" to support their deportation charges against Indian political refugees — a clause of the immigration law that officials had a history of using to deport all manner of immigrants, including political dissidents and "immoral" women. On the varied uses of the "likely to become a public charge" clause to deport immigrants, see See William Preston, *Aliens and Dissenters: Federal Suppression of Radicals, 1903-1933* (1963; reprint, Urbana: University of Chicago Press, 1994), 178-179; Patricia Russell Evans, "'Likely to Become a Public Charge': Immigration in the Backwaters of Administrative Law, 1882–1933" (PhD diss., George Washington University, 1987); Deidre Moloney, "Women, Sexual Morality, and Economic Dependency in Early U.S. Deportation Policy," *Journal of Women's History* 18, no. 2 (2006): 95-122.

imperial ambitions. In addition to further bolstering the U.S. nation-state's sovereign right to exclude international migrants from its borders, refusing refuge to Indian political dissidents advanced the country's interests in foreign affairs by denying that its ally, the British government, was guilty of persecuting its colonial subjects. American citizens recognized this. When the Goddard family of Rochester, New York wrote to the Secretary of Labor and joined several Irish American organizations who submitted letters and petitions in defense of Indian anti-colonialists whom they believed "came to America as political refugees," but were now "political prisoners," they claimed that the U.S. government's refusal of refuge to Indians made America the "accomplice of foreign tyrants."[49]

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[49] According to the Friends of Freedom for India, as of October 1919, over fifty Irish nationalist organizations declared their solidarity with the Indian independence movement. This kind of interethnic solidarity between Indian and Irish political activists dated back to the early 1900s. See Sohi, *Echoes of Mutiny,* 49. See Timothy O'Leary, Permanent Secretary, Friends of Irish Freedom, San Francisco, CA, to William B. Wilson, Secretary of Labor, Washington, DC, July 17, 1919; M.J. O'Sullivan, President, and P.J. Dram, Secretary, Sons of Irish Freedom, Houtzdale, PA, to William B. Wilson, Secretary of Labor, Washington, DC; Executive Board, Friends of Freedom for India, New York, NY to Undisclosed Labor Unions, October 7, 1919, in Entry No. 53854/133, Box 2237, RG 85, NARA; John L. Goddard, Rochester, NY, to William B. Wilson, Secretary of Labor, Washington, DC, May 26, 1919, in Entry No. 53854/133, Box 2237, RG 85, NARA. While there were examples of cross-ethnic and racial solidarities between different groups of immigrants and refugees, it was not uncommon for them to turn against one another. Leo M. Mallek, who represented the Polish National Alliance of the United States of North America, for example, spoke before Congress in 1914 to advocate against the literacy test. The Polish people were being subject to "a terrible oppression," Mallek explained, and said that there simply were not enough opportunities for Poles to gain an adequate education in their own country. After making his statement, Congressmen Raker asked Mallek if he thought that any migrant should be able to come to the United States, to which Mallek replied that no, only "assimilable" immigrants should be granted entry. Mallek noted that Polish, Swiss, Russian, German, Irish, French, Italian, Norwegian, Swedish, Danish, and Scottish migrants should all be allowed to come to the United States, but East Indian, Chinese, and Japanese migrants should be excluded and barred from entry. The logic of assimilability and racial "stock" suffused

Whether or not the U.S. was complicit with helping the British persecute Indian nationalists was a legitimate question. When the Friends of Freedom for India described what they perceived to be the unfair treatment of Indian political refugees in the custody of U.S. immigration authorities, they emphasized that the British government actively pushed for them to be deported. They pointed to a newspaper article published in the *San Francisco Chronicle*, for example, that claimed the British government spent $2.5 million to secure the conviction of the Indians who were charged with conspiring against the U.S. government in the "Hindu conspiracy trial." They also alleged that British authorities paid off several Hindus from India, China, Siam, and Java to testify against the defendants in return for their own freedom. Additionally, British Secret Service agents allegedly helped to shape the case against the Hindus, and even sought out American citizens who knew the defendants for questioning. The U.S. government permitted British officials to carry out those activities within American borders. The most damning of the allegations came in a memo sent from A. Carnegie Ross, the British Consul in San Francisco. Ross promised that he could "supply the United States Immigration authorities with sufficient information to deport the Hindus in case the information which he had

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discussions about which refugees should be allowed to enter the country. Representative Church from California, meanwhile, offered an extended metaphor based on the idea of the "melting pot" to express his opposition to granting refuge to any and all comers. If "the gold of this country" were mixed with the "silver, the copper, the twin, the zinc, and the lead of all lands," Church suggested that "the crucible, when finally cooled, will remain a base metal without quality." 63rd Cong., 3rd sess., *Congressional Record* (1915), 3055.

already furnished was insufficient."[50] The British government thus actively sought to return the Indian anti-colonialists to India, and the U.S. seemed to comply.

The British empire's ravaging of resources and exploitation of labor in India was indeed on the minds of deportation's detractors and even some American officials.[51] Many of the organizations and individuals who protested the deportation of Indian political refugees focused on The International Association of Iron Workers, based in Arizona, argued that deporting Indians from the United States would only serve to buttress Britain's continued economic exploitation of Indians.[52] As noted by the Socialist Party of Mexico, deporting Indians would be tantamount to "giv[ing] moral and material support to the worst autocracy that exists on the free earth."[53] Meanwhile, in Congress, Senator Robert La Follette of Wisconsin gave a report on November 18, 1919 on the "British Exploitation of Subject Peoples." In his remarks, La Follette noted that Britain's involvement in places like India, Egypt, and Mesopotamia was fundamentally different

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[50] Defrem and Ghose, "Brief of the Threatened Deportation of Hindu Political Prisoners and Refugees."

[51] On the British empire's expansion into and exploitation of India, see Bernard S. Cohn, *Colonialism and Its Forms of Knowledge* (Princeton: Princeton University Press, 1996); David Gilmour, *The Ruling Caste: Imperial Lives in the Victorian Raj* (New York: Farrar, Straus, and Giroux, 2007); Douglas M. Peers and Nandini Gooptu, *India and the British Empire* (New York: Oxford University Press, 2012).

[52] Office of the Commissioner, Angel Island, San Francisco, CA, to Commissioner General of Immigration, Washington, DC, July 28, 1916, Entry No. 53854/133, Box 2237, RG 85, NARA.

[53] The Mexican Socialist Party thought it was "a flagrant violation of international law and morality" to deport Indian refugees, and that to do so was to strip the rights of individuals "to seek asylum as political refugees in any free and sovereign country." In fact, the Socialist Party suggested that rather than deport Indians, the U.S. government ought to give them the option to migrate to Mexico and find asylum there. Secreteria General, Partido Socialista, Mexico City, Mexico, to William B. Wilson, Secretary of Labor, Washington, DC, August 25, 1919, Entry No. 53854/133, Box 2237, Subject and Policy Files, 1893-1957, RG 85, NARA.

from the British empire's colonization of Canada, Australia, and South Africa, where large numbers of British subjects moved and took up permanent residence. Britain's imperial goals, La Follette noted, revolved around "the sole object of exploitation." British officials may have publically touted their altruistic intentions, to "uplift" so-called "backwards peoples," but ultimately their agenda did more to "ruthlessly exploit the rich resources and vast populations of Africa and Asia." La Follette cited an unnamed man from India in his report. The man observed that Britain's exploitation of the land, resources, and people of India was inextricably linked with the political persecution he and his people were facing. He explained that British imperial authorities had destroyed their "self-governing, democratic village communities" as well as their schools and other educational opportunities for Indians. The goals of the British government in subjecting India to empire, he claimed, were nothing short of "revenue, easier economic subjection, easier political subjection, [and] racial and cultural destruction."[54]

The United States government was no stranger to subjecting people to the same kind of persecution that the British government levied against the people of India. As described in previous chapters of this dissertation, American refugee policy was entangled with the U.S. government's broader efforts to dispossess Native Americans and undermine their territorial and political sovereignty. It is illuminating, then, that Robert L. Owen, chairman of the Committee on Five Civilized Tribes of Indians, was among those who couched the movement for Indian independence in the context of British imperialism. "I remind you that India is controlled by the mechanism of government

[54] 66th Cong., 1st sess., *Congressional Record* (November 18, 1919), 8727.

which has diverted from the control of Parliament," Owen explained, "and put it under a council controlled by the tory elements of the Empire, and I am sure these people have been sorely exploited commercially and financially." The fact that a collective of Native American nations was among the groups who sided with Indian anti-colonialists who sought independence from Britain and self-government complicates the historical narratives of American refuge and asylum that so many peddled in their opposition to the deportation of Indian political refugees. The United States may have been founded in refuge and revolution. But just as the British empire exploited India's land, resources, and people, so, too, did the early United States government gain its foothold in North America by dispossessing Native Americans of their land and subjecting them to federal policies that legalized the forced removal of Indigenous peoples ever westward beyond the perpetually expanding borders of the United States. "Dreams of empire" may have loomed large in the imaginations of the refugees who constituted the American nation and the American people, as noted by Senator Reed. Those very same dreams haunted American Indians subject to American settler-colonialism, and continued to haunt Indian political refugees in their efforts to achieve self-government. [55]

Ultimately, the decisions that American officials made regarding refuge for Indian anti-colonialists depended upon whether they believed the people of India had a legitimate claim to self-government. Those views were complicated by established racial prejudices against Asian people in the United States. The exclusion of particular political

[55] Robert L. Owen, Chairman, Committee on Five Civilized Tribes of Indians, to William B. Wilson, Secretary of Labor, Washington, DC, September 24, 1919, Entry No. 53854/133, Box 2237, RG 85, NARA.

refugees, like the literacy test, the likely to become a public charge clause, and provisions that restricted the entry of people believed to have committed crimes of moral turpitude, all had the same effect: limiting the arrival of refugees thought to be "undesirable." The influence of exclusionary immigration law on refugee admissions thus made deliberations about the United States as a refuge for displaced and persecuted peoples an extension of United States' expanding practices of gatekeeping at home and abroad. The Immigration Act of 1917, for example, was arguably a limited win for refugees in the sense that it exempted religious refugees from the literacy requirement — though as discussed earlier in this chapter, it fell short of some lawmakers' vision that it ought to exempt all refugees. The Immigration Act of 1917 also extended racial exclusion's hold on immigration policy with the incorporation of an "Asiatic barred zone" that completely cut off immigration from the Pacific Ocean to Afghanistan.[56]

As the decade progressed and after World War I, in particular, conversations in Congress about refugee admissions cohered around a renewed commitment to exclusion that the Immigration Act of 1917 deepened and that materialized again with the Emergency Quota Act of 1921. Passed in the wake of the political, economic, and social upheaval wrought by World War I, the Emergency Quota Act severely limited the ability of Europe's war-torn people from entering the United States — a temporary measure that was made permanent when Congress passed the National Origins Act of 1924. Indeed,

[56] As Mae Ngai notes, Japan was exempted from the barred zone because of the country's diplomatic relationship with the United States, and the Philippines were exempted, as well, because by that time the Philippines were a U.S. territory. Ngai, *Impossible Subjects: Illegal Aliens and the Making of Modern America* (Princeton: Princeton University Press, 2004), 37.

these developments in the exclusionary character of immigration law occurred at the same time that conditions grew more serious for refugees in Europe. On February 2, 1921, three months before the Emergency Quota Act was passed, an American consular official based in Constantinople reported that "Disturbed political conditions are continually driving people from their homes to become refugees requiring charitable assistance." He estimated that 40,000 Bulgarian refugees, 130,000 Russian refugees, 10,000 Greek refugees, and 250,000 Armenian refugees across Europe who would soon make "pressing and legitimate calls for American charity." In the midst of the growing humanitarian crisis in Europe and in deliberations about the immigration laws of 1921 and 1924, members of Congress spent many days discussing the situation abroad and the role of the U.S. in granting relief to refugees. One of the recurring topics of conversation was whether the U.S. should primarily be involved in the disbursement of international aid to refugees, or creating pathways for refugee resettlement within American borders.[57]

For the most part, when officials discussed resettling refugees in the U.S., they were mostly preoccupied with justifying refugee restriction. First, they frequently evoked the idea that the reason why the U.S. could not admit refugees in any meaningful number was because of the simple fact that in doing so, they would need to be selective. By admitting some refugees and excluding others, they reasoned that untold numbers of the less fortunate refugees, upon hearing about selected refugees who *did* make it to the U.S., would lobby Congress so that they, too, could enter the country. Congressman Albert Johnson, for example — one of the main architects of the 1921 and 1924 quota laws —

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[57] High Commissioner, Consular Office, Constantinople, to Secretary of State, Washington, DC, February 2, 1921, Box 8688, RG 59 NARA.

expressed sympathy for the plight of refugees. Yet he also suggested that allowing some refugees to enter the U.S. while refusing others would be unjust. Rather than propose a more equitable way to mitigate the inherently selective process of offering relief to refugees, however, Johnson and his sympathizers leaned into exclusion.[58]

The solution, Johnson posited, was either to admit none at all, or only to admit as many refugees as would be allowed per each nation's quota. In terms of actual numbers of refugee admissions, this amounted to a drop in the bucket. Congress estimated there were about 2.5 million refugees in Greece, Armenia, and Syria in the early 1920s. The quota system per the 1921 law allowed a total of just 9,528 people from those countries to enter, amounting to just 0.38% of the refugees in Greece, Armenia, and Syria. In practice, however, the real number would have been much lower. The quota was neither specifically set for or even remotely concerned with refugee migration, but was instead meant for immigration. By not creating separate measures outside of the quota system for refugees to enter the U.S., Congress effectively shut down any meaningful avenue for refugee resettlement.[59]

The potential for "fraudulent" or "illegitimate" refugees was another explanation that Congress used to justify their limitation on refugee resettlement. When several congressmen indicated their concern that the quota restrictions disrupted what they described as America's tradition of granting asylum to political refugees, opponents of refugee resettlement dismissed their claims by suggesting that many of the refugees

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[58] U.S. Congress, House, Committee on Immigration and Naturalization, *Admission of Near East Refugees: Hearings Before the Committee on Immigration and Naturalization*, 66th Cong., 4th sess., 1922.
[59] 67th Cong., 4th sess., *Congressional Record* (1922), 890.

trying to make their way to the U.S. were actually not politically oppressed peoples, but were political agitators whose social, economic, and political vision had no place in America. In particular, lawmakers were leery about anarchists entering the U.S. posing as refugees. When Congressman John Rogers of Massachusetts warned that limiting refugee migration was a way to keep out anarchists who "seek to wreck the United States," his colleagues responded with cheers and applause.[60]

The most pernicious justification for refugee exclusion under the 1921 and 1924 quota laws, however, was the same kind of exclusionary logic based on race, ethnicity, and nationalism that sat at the heart of the national origins quota system. For example, ideas about racial and cultural inferiority informed debates in Congress about the Armenian genocide, one of the most dire refugee crises in the post-World War I years. When debate on the house floor turned to the likelihood of an independent Armenian nation-state forming out of the Ottoman Empire, for example, congressmen and senators peppered their remarks with statements that essentialized the Armenian people. They claimed that "the Armenian generally does not endear himself to those races with whom he comes in contact." They claimed that even though U.S. missionaries abroad made many sacrifices in the work they were doing for Armenian refugees, even risking their lives to ensure their safety, they "to a man" didn't care for Armenians, especially in comparison to "the more genial but indolent and pleasure-loving Turk," and that "There are very many who believe the best elements of the Armenian race have perished." These

[60] 66th Cong., 3rd sess., *Congressional Record,* (1921), 3813.

casual comments about Armenians as a racial group were par for the course in congressional debates about both refugee and immigrant admissions.[61]

Nevertheless, some congressmen did advocate for the resettlement of Armenian refugees, and proposed legislation that would have allowed Armenians to find asylum in the U.S. if they had family members in the country who would sponsor their migration and guarantee they wouldn't become public charges. Some congressmen, meanwhile, argued for greater refugee admissions based on the idea that political asylum was a founding feature of American democracy. One member of the house, for example, declared that he was

> opposed to any country in the world saying to any man in the world if he strikes the American shore and is shipwrecked, if he has not anything in the world except an ambition to become an American citizen, and he will satisfy the people of the country that he is in love with our principles, that he is a refugee, that he has been persecuted for religious and political duties, and he lands here and complies with the immigration law, that he shall not stay here. If we do otherwise we have violated the fundamental principles of the American Constitution.

Nevertheless, restrictionists in Congress drowned out most of the lawmakers who voiced their support for refugee admissions.[62]

While the resettlement of refugees in the U.S. was practically out of the question, house and senate members were keen on the idea of giving international aid to refugees abroad. Officials who supported relief for European refugees made their case on political grounds. In January 1919, for example, a consular official in Paris recommended that

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[61] It goes without saying, but it is nevertheless worth nothing here that the insensitivity of these remarks is especially striking, given the Armenian peoples' experience of mass persecution and genocide. 66th Cong., 2nd sess., *Congressional Record* (1920), 7882.
[62] 66th Cong., 3rd sess., *Congressional Record,* (1921), 3810.

Congress appropriate $100,000,000 to pay for supplies to people in need in Europe. Giving "the most liberal assistance to these destitute regions," he argued, would aid "the high mission of the American people to find a remedy [to] starvation and absolute anarchy." Giving food to refugees in Europe would not just "save human lives," he argued, but would also "stem the tide of Bolshevism in Europe." A representative of the American Mission in Paris, meanwhile, emphasized that the American people needed to understand that giving aid to European refugees was not simply a matter of "humanity and generosity." Giving aid to Europe would help stabilize political and economic conditions there, he argued, which was a matter of "almost immediate self-interest" to the United States. For all the merits that came with granting relief to refugees abroad, American officials nevertheless prioritized how international relief for the daily subsistence of refugees would benefit the United States.[63]

Congressmen frequently discussed how aiding refugees abroad, rather than allowing refugees to enter the U.S., was ideal, not only because it meant less international migration into the United States, but also because international aid was a vehicle for promoting the country's image and reputation in global affairs. Lawmakers noted that American relief efforts "brought the name of America to a height of sympathy and esteem it has never before enjoyed" throughout the Europe, the Mediterranean and the Middle East, and pointed to reports from American foreign aid workers who claimed they

[63] American Mission, Paris, France, to Secretary of State, Washington, DC, January 6, 1919, Box 8684, RG 59, NARA; American Mission, Paris, France, to Secretary of State, Washington, DC, May 29, 1919, Box 8685, RG 59, NARA.

heard refugees and international social workers boast about President Woodrow Wilson's fourteen points to the League of Nations and the principles of self-determination.[64]

When Major General James G. Harbord of the U.S. Army took to the House floor to report on "The American Military Mission to Armenia," meanwhile, he wondered at how difficult it would be for anyone who has not visited Armenia to understand the "respect, faith, and affection with which [the United States] is regarded throughout that region." Not just Armenian refugees, but all the world's refugees, Harbord suggested, believed in the U.S. as the "unanimous choice" and the "only hope" for bringing relief to refugees. According to Harbord, American relief efforts in Armenia constituted "the greatest humanitarian opportunity of the age — a duty for which the United States is better fitted than any other."[65]

Harbord's description of relief efforts for Armenian refugees as an "opportunity" is striking. Rather than discuss the human tragedy of displacement and persecution, or describe a sense of responsibility or a humanitarian imperative to help persecuted and displaced peoples, Harbord's emphasis on refugee relief as a foreign relations opportunity extended the exclusionary logic that informed the passage of the 1921 and 1924 quota laws and undercut support for refugee admissions. Limiting U.S. involvement in global refugee crises to financial aid and international social services permitted the American government to stake a claim as a humanitarian force in the global arena, doing commendable relief work for refugees, while at the same time making it nearly

[64] 66th Cong., 2nd sess., *Congressional Record* (1920): 2750.
[65] *Ibid.*

impossible for refugees who either desired or required resettlement to make their way across American borders.

One congressman did propose an amendment to the quota laws that would have allowed refugees to enter in unlimited numbers regardless of quota allotments. But the closest Congress came to permitting refugee resettlement outside of the quota system was to let refugees take loans, so to speak, on their allotted quotas for future years in the event of a pressing refugee crisis. For example, if 100 Armenians were allowed to enter in 1920, but 100 Armenians had already entered in 1920, Congress proposed that 50 additional Armenians could enter the country in that year on the condition that there would be 50 fewer spots available for Armenian migration into the U.S. in 1921, the following year. Any legislation that made additional entries for refugees or in any other way drew on quotas to let refugees enter the U.S. was out of the question. On these points, Congress generally echoed Representative Johnson's statement that he "would not agree to any bill that will throw open the gates of the United States to a great uncertain number of the refugees of the world." He explained that "Not one additional alien over the quota is to be admitted," and added that limiting refugee admissions would allow Congress to "save" the quota system.[66]

In the middle of acknowledging that millions of refugees worldwide faced severe hardship and threats to their livelihoods, Johnson's choice of words — that Congress ought to "save" the quota law— shows the degree to which officials prioritized American legal authority, and the U.S.'s sovereign right to define national membership through the

[66] 67th Cong., 4th sess., *Congressional Record* (1922), 890.

exclusion of immigrants and refugees over the needs of refugees. Johnson's remarks about "saving the law" are especially tragic when compared to the testimony on the house floor of Theodore Bortoli. Bortoli was a New York City resident and an Armenian refugee who managed to enter the United States. Bortoli praised U.S. relief efforts that had helped over 300,000 Armenian refugees relocate from Smyrna to Athens, and the Greek islands in the Mediterranean that served as temporary camps for refugees. But he emphasized that more needed to be done. Bortoli explained that if additional help was not given to these refugees, they "will die. They are dying every day." American lawmakers and political officials may have "saved" the quota system. But they turned their back on refugees.[67]

While Congress "saved" the quota system by refusing to give refugees a viable pathway into the United States, State Department officials ensured that American citizens – especially prominent business people and public servants — had access back to the states as "refugees." It was, of course, the State Department's charge to come to the aid of American citizens abroad. But simply explaining the State Department's care for American refugees as the responsibility of the United States government would be to normalize the operating assumption of the U.S. and other nation-states: that their responsibility is limited only to those whom they decide to protect, and that those

[67] U.S. Congress, House, Committee on Immigration and Naturalization, *Admission of Near East Refugees: Hearings Before the Committee on Immigration and Naturalization*, 66th Cong., 4th sess., 1922.

decisions are justified because nation-states have the sovereign right to determine membership within their borders.

This chapter has examined the U.S. State Department's granting of aid to American refugees stranded in Europe during World War I. It has also examined conversations in different channels of government about the relationship between immigrant exclusion and refugee admissions. In so doing, it has shown that broader patterns in American society and politics about who could and could not immigrate to the United States were ideas that also informed who could come to the U.S. as a refugee. It was not just the degree of their persecution, or what kinds of relief refugees had access to, that determined whether American officials supported refugees. Those choices were also about members of the United States government using their power to decide who they thought belonged in the country, and who did not.

Decisions about refugee relief in the World War I-era were also about the United States positioning itself as a political force globally and securing its interests in international affairs. By giving economic relief to refugees abroad, U.S. officials expressed their belief that doing so would demonstrate to the world that the American government was a benevolent force on the world stage. Giving aid to European refugees, officials hoped, would also restore economic and social order in Europe at a time when the United States wanted to fight back the growing influence of communism across the Atlantic.

Refugee admissions in the 1910s and early 1920s also reaffirmed American ideas about race, access to self-governance, and empire. It is true that some of the Indian anti-colonialists whom the United States government sought to remove from the United States

advocated the use of violent tactics to achieve their goal of self-rule. But by casting the lot of Indian dissidents as political radicals rather than political refugees, American officials wrote off their bid for self-determination and in doing so, abetted a British government that justified its colonial rule of India on the racialized notion that the people of India were incapable of self-government. By trying to deport Indian political dissidents and helping the British government punish Indian anti-colonialists, the U.S.'s refusal of political refuge to Indian nationalists abetted the goals of the British empire. The United States government may have formally pursued a policy of isolationism when Congress refused to ratify the country's participation in the League of Nations in 1919. Nevertheless, America's removal of Indian political dissidents and its broader practice of restricting the entry of refugees extended the U.S. government's own imperial ambitions by making policy choices that held consequences for the ability of people around the world to avoid persecution and rebuild their lives after displacement.

When Senator James A. Reed described the "dreams of empire" that European refugees brought with them to America, he argued that political asylum was a founding tradition of American democracy. That tradition hinged primarily on the U.S. nation-state's overriding interest in expanding the nation-state's authority over the people, places, and resources of North America. By the time the U.S. government made exclusion a cornerstone of federal immigration policy, the relationship between American refuge and the nation-state's interest in governing North America shifted to operate on a more global scale. But the "dreams of empire" that informed the evolution of American refugee policy were always imbricated in the U.S. nation-state's overarching interest to define which people and which places were within the bounds of the federal

government's authority. This dissertation's next and final chapter captures the overlapping domestic and international implications of American refugee regulation by resuming the story of the Loyal Creek refugees. As described in Chapter Three, the United States government recognized the Loyal Creeks as "refugees" in an 1866 peace treaty following the Civil War. The federal government promised the Loyal Creek refugees economic compensation, but as of the early 1900s, had failed to follow through on that promise. The formation of the Indian Claims Commission in 1946 gave the Creek Nation another chance to secure the relief promised to Loyal Creek refugees nearly a century earlier. While the Indian Claims Commission heard the Creek Nation's petition for relief, the United States and governments around the world cohered around a growing international commitment to refugees, embodied in the United Nations' Universal Declaration of Human Rights of 1948 and its Refugee Convention of 1951. Examining the Indian Claims Commission's consideration of the Creek Nation's claim for refugee relief in the context of an emerging international consensus around the universal human right to refuge, I argue, reveals how the broader imperial power dynamics at play in the federal government's relationship with the Creek Nation perpetuated the ongoing dispossession of Native Americans at home — effectively making them refugees in their own homelands — while expressing a commitment to the human rights of refugees abroad.

Part IV

"As Democracy Fails to Function in the Leading Democracy in the World, It Fails the World:" Refugee Regulation at Home and Abroad in the Moment of American Global Hegemony

In the late 1930s, an employee of the Works Progress Administration's Federal Writers' Project named Samuel S. Taylor traveled the state of Arkansas. With Franklin Delano Roosevelt's efforts to revitalize the United States economy through the New Deal underway, Taylor interviewed over one hundred African Americans who lived through slavery. Taylor — one of only two African Americans involved in the Arkansas branch of the Federal Writers' Project — also spoke to a man named Robert James. In his late sixties and working as a cook in Little Rock, James himself was born in 1878, after the 13th Amendment outlawed slavery in the United States. James' mother was a slave in Mississippi. In his interview with Taylor, James mentioned that his mother's master forced her to "refugee…to keep them from the Yankees." During their flight, they stayed in an abandoned home that was haunted. "She told a ghost tale on that," James said. "I guess it must have been true." James' story must have left an impression on Taylor. Known as one of the best interviewers and most careful note takers in the Federal Writers' Project, Taylor included James' anecdote about his mother's Civil War refugee experience on the first page of the narrative he compiled from the interview, and marked it with the subheading "Refugeeing — Ghosts."[1]

[1] Robert James, interviewed by Samuel S. Taylor, *Federal Writers' Project: Slave Narrative Project, Vol. 2,Arkansas, Part 4, Jackson-Lynch,* Federal Writers' Project, United States Works Projects Administration, Manuscript Division, Library of Congress, http://hdl.loc.gov/loc.mss/mesn.024 (accessed February 11, 2018); Linda Lovell,

Robert James was one of several dozen individuals who described their own and their family members' experiences as "refugees" to Federal Writers' Project employees in the 1930s. In addition to interviews with former slaves, the FWP interviewed members of Native American communities who likewise shared anecdotes about ancestors they described as "refugees" during the Civil War.[2] In the 1860s, war over slavery — and what supporters of the Confederate States of America perceived as their right to maintain the legal ownership of people as property — ruptured the nation and turned countless numbers of Americans from all walks of life into refugees. When those former refugees and their ancestors encountered Samuel S. Taylor and other Federal Writers' Project employees, they came face-to-face with an altogether different manifestation of the U.S. nation-state. In the wake of the Great Depression, President Roosevelt's New Deal

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"Samuel Shinkle Taylor (1886-1956)," *The Encyclopedia of Arkansas History & Culture,* July 31, 2009, http://www.encyclopediaofarkansas.net/encyclopedia/entry-detail.aspx?entryID=4030 (accessed February 11, 2018); On the history of Federal Writers Project, see Jerrold Hirsch, *Portrait of America: A Cultural History of the Federal Writers' Project* (Chapel Hill: University of North Carolina Press, 2003). Additional studies on the Federal Writers' Project include Catherine A. Stewart, *Long Past Slavery: Representing Race in the Federal Writers' Project* (Chapel Hill: University of North Carolina Press, 2016); Mindy J. Morgan, "Constructions and Contestations of the Authoritative Voice: Native American Communities and the Federal Writers' Project, 1935-1941," *The American Indian Quarterly* 29, no. 1/2 (2005): 56-83; and David A. Taylor, *Soul of a People: The WPA Writers' Project Uncovers Depression America* (Hoboken: Wiley, 2009). For a broader contextualization of the Federal Writers' Project and the Works Progress Administration within American culture and politics during the New Deal era, see Michael Denning, *The Cultural Front: The Laboring of American Culture in the Twentieth Century* (London: Verso, 1997).

[2] See, for example, Frank A. Patterson, interviewed by Samuel S. Taylor, *Slave Narrative Project Volume 2, Arkansas, Part 5, McClendon-Prayer,* Federal Writers' Project, United States Works Projects Administration, Manuscript Division, Library of Congress, http://hdl.loc.gov/loc.mss/mesn.025 (accessed February 12, 2018); Elsie Edwards, September 17, 1937, Interview ID 7571, Volume 27, *Indian-Pioneer Papers*. Western History Collections, University of Oklahoma.

represented an unprecedented expansion of the federal government and the bureaucracy, agencies, and personnel who supported it. The United States' entry into World War II several years later, and the mobilization of American industry that reinforced the country's military and its allies abroad, exploded the economic recovery begun by the New Deal and propelled the U.S. nation-state to a position of global dominance.

Wartime violence and Nazi Germany's campaign to exterminate Europe's Jewish population caused the death and displacement of millions of civilians by the end of the war. World War II's horrific toll on human life crystallized what the long history of refugee regulation in the United States had shown since American independence: individual nation-states, in moments their representatives perceived as presenting internal and external threats to their sovereignty, would produce refugees, not take responsibility for them, and deny relief to refugees whom they wished to exclude from their borders. By the end of World War II, the oft-proven tendencies of nation-states to war with one another, force their will over marginalized communities, and shirk their security shocked global leaders into laying down the scaffolding for an international organization that would protect vulnerable people in a world where nation-states, guided by the whims of their own interests, had fallen so tragically short.

The concept of human rights was central in the formation of the United Nations. Signed in San Francisco on June 26, 1945 during a meeting of representatives from fifty nations, the United Nations Charter announced its members' commitment to world peace. Human rights sat at the crux of that vision. The Charter's preamble announced the United Nations' goal to "reaffirm faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women of nations large and small." Its

first article announced support for the right of all people to self-determination, and for "promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion."[3] When the UN released its Universal Declaration of Human Rights three years later, on December 10, 1948, Article 14 identified the "right to asylum" as one of the rights to which it believed all people around the world were entitled. The UN's 1951 Convention Relating to the Status of Refugees further distilled the rising global consensus that the protection of refugees — and, in particular, refugees whose lived or feared persecution caused them to cross an international border — was a matter of human rights and international cooperation. With the world rattled by the overwhelming amount of global displacement that occurred during and after World War II, the international community — and the individual nation-states that constituted it — signaled their commitment to the world's unprecedented population of refugees.[4]

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[3] United Nations, Charter of the United Nations, June 26, 1945, http://www.un.org/en/charter-united-nations/index.html (accessed February 14, 2018). Debates about the actual interest in human rights form a significant part of human rights historiography. See, for example, Samuel Moyn's argument that international lawyers and diplomats did not genuinely pursue a human rights agenda until the 1970s in Moyn, *The Last Utopia: Human Rights in History* (Cambridge: Harvard University Press, 2010).

[4] United Nations, Universal Declaration of Human Rights, December 10, 1948, http://www.un.org/en/universal-declaration-human-rights/ (accessed February 14, 2018); United Nations, Convention Relating to the Status of Refugees, http://www.unhcr.org/en-us/3b66c2aa10 (accessed February 14, 2018). Peter Gatrell, *Free World?: The Campaign to Save the World's Refugees, 1956-1963* (New York: Cambridge University Press, 2011) and *The Making of the Modern Refugee* (Oxford: Oxford University Press, 2013); Alexander Betts and Paul Collier, *Refuge: Rethinking Refugee Policy in a Changing World* (New York: Oxford University Press, 2017); For a broad legal overview of refugee matters in international law, see Guy Goodwin-Gill and Jane McAdam, *The Refugee in International Law*, 3rd ed. (Oxford: Oxford University Press, 2007).

The United States' emergence after World War II as one of the most powerful nation-states across the globe emboldened the U.S. to undertake an invigorated position of authority in international affairs. With power came responsibility and opportunity. Americans — political leaders and laypeople alike — had at various times throughout history viewed the United States as a beacon of democracy. Yet the U.S. nation-state's rise to global prominence after World War II presented the federal government with an unprecedented chance to champion its view of human rights and equality while at the same time using its newfound influence to secure its global interests. American officials trumpeted the United States' role in securing freedom across the world, and in so doing cloaked their imperial aspirations to shape a world that served America's economic and political agenda.[5]

Individuals attuned to America's long history of injustice against racially marginalized groups quickly and publically took notice of the contradictions that loomed close behind the United States' emerging role as a world leader and its participation in the global movement for human rights and refugee relief. Civil rights activists focused their criticisms on the legacy of slavery on American race relations. In 1947, W.E.B. DuBois oversaw the publication of a National Association for the Advancement of Colored People document titled "An Appeal to the World: A Statement on the Denial of

[5] For analyses of the relationship between U.S. power and international affairs particularly as they relate to human rights and refugee policy, see Stephen R. Porter, *Benevolent Empire: U.S. Power, Humanitarianism, and the World's Dispossessed* (Philadelphia: University of Pennsylvania Press, 2017) and María Cristina García, *The Refugee Challenge in Post-Cold War America* (New York: Oxford University Press, 2017). For a broader overview of the relationship between U.S. immigration history and international affairs, see Donna R. Gabaccia, *Foreign Relations: American Immigration in Global Perspective* (Princeton: Princeton University Press, 2012).

Human Rights to Minorities in the Case of Citizens of Negro Descent in the United States of America and an Appeal to the United Nations for Redress." "A great nation, which today ought to be in the forefront of the march toward peace and democracy," DuBois wrote, "finds itself continuously making common cause with race-hate, prejudiced exploitation and oppression of the common man. Its high and noble words are turned against it, because they are contradicted in every syllable by the treatment of the American Negro for three hundred and twenty-eight years." According to DuBois, the failure of the U.S. government to secure "the minimum rights for self-protection and opportunity for progress" for African Americans "makes the functioning of all democracy in the nation difficult; and as democracy fails to function in the leading democracy in the world, it fails the world." If the world's leading nations had reached consensus that nation-states must be held accountable for persecuting civilians, DuBois offered a powerful reminder to that if the United States wished to defend justice, freedom, and equality, it might begin at home.[6]

[6] National Association for the Advancement of Colored People, *An Appeal to the World: A Statement on the Denial of Human Rights to Minorities in the Case of Citizens of Negro Descent in the United States of America and an Appeal to the United Nations for Redress*, ed. W.E.B. DuBois (New York: National Association for the Advancement of Colored People, 1947), 2, 6, 12; On African American civil rights activists and their international appeals for racial justice in the United States, see Jonathan Rosenberg, *How Far the Promised Land?: World Affairs and the American Civil Rights Movement from the First World War to Vietnam* (Princeton: Princeton University Press, 2006); Carol Anderson, *Eyes off the Prize: The United Nations and the African American Struggle for Human Rights, 1944-1955* (New York: Cambridge University Press, 2003); Robin D.G. Kelley, *Freedom Dreams: The Black Radical Imagination* (Boston: Beacon Press, 2002); Mary L. Dudziak, *Cold War Civil Rights: Race and the Image of American Democracy* (Princeton: Princeton University Press, 2000).

Activists contextualized their protests of racial oppression in the United States against two of the atrocities that inspired the formation of the United Nations: the production of refugees and genocide. An editorial published in the National Association for the Advancement of Colored People's flagship periodical *The Crisis* compared the plight of African Americans to the persecution experienced by European Jews in an editorial titled "Refugees and Citizens." The Civil Rights Congress, meanwhile, published a report that cited the United Nations' own definition of "genocide," as laid out in its December 1948 "Convention on the Prevention and Punishment of the Crime of Genocide, to charge that "the oppressed Negro citizens of the United States, segregated, discriminated against and long the target of violence, suffer from genocide as the result of the consistent, conscious, unified policies of every branch of government." DuBois did not use the words "refugee" or "genocide" in his introduction to "An Appeal to the World." However, he vociferously criticized the United States government's ongoing oppression of black Americans while that same government professed to stymy oppression overseas. "Internal injustice done to one's brothers," he claimed, "is far more dangerous than the aggression of strangers from abroad."[7]

While DuBois highlighted the contradiction of the U.S. nation-state claiming a role of moral leadership in global human rights while subjecting its own people to oppression, another group of historically marginalized Americans protested their treatment by the federal government. The ancestors of the Loyal Creek Refugees —

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[7] "Refugees and Citizens," *The Crisis* (September 1938): 301; Civil Rights Congress, *We Charge Genocide: The Historic Petition to the United Nations for Relief from a Crime of the United States Government Against the Negro People* (New York: Civil Rights Congress, 1951), xi; *An Appeal to the World*, 12.

whom the United States government formally recognized as “refugees” in an 1866 Civil War peace treaty — utilized the Indian Claims Commission, formed in 1946, to sue the U.S. federal government for unpaid economic compensation that the U.S. federal government pledged to pay Loyal Creek refugees for the persecution they endured during the U.S. Civil War as a result of their loyalty to the Union. However, the case as it was presented before the Indian Claims Commission practically erased any meaningful discussion of the Loyal Creeks as “refugees.” The Loyal Creek case underscores how the United States refused to acknowledge its history of persecuting Native Americans — and, as noted by DuBois and his peers, African Americans and other racially oppressed groups — while claiming to support human rights abroad. In a global political climate that engendered an international shift in the definition of “refugee” that hinged on persecuted peoples crossing international borders, and in a world where the U.S. nation-state had emerged as the most powerful nation on earth, the erasure of the Loyal Creeks as refugees in the Indian Claims Commission was an early indicator of how the internationalization of refugee policy obscured histories of refugee regulation that helped the U.S. nation-state rise to power in North America — and that now expanded its power across the globe, while marginalized Americans continued to experience inequality at home.

Chapter Six

Human Rights Abroad, Dispossession at Home: Loyal Creeks, the Indian Claims Commission, and the Disappearance of the American Refugee, 1946-1951

The Immigration Act of 1924 marked a major turning point in American immigration law. Exclusion had been written into the policies governing the entry of immigrants into the United States ever since the Page Act of 1875 and the Chinese Exclusion Act of 1882 barred Chinese immigrants from the country. The race-based restriction that began with Chinese exclusion proliferated into a range of provisions in immigration law that, by the end of the 1910s, limited the arrival of individuals based on their political beliefs, economic standing, physical and mental health, ability to read and write, and line of work. With the National Origins Act, those forms of exclusion coalesced into a regime of immigration policy that curtailed the ability of so-called "undesirable" immigrants to enter the United States based on their country of origin. Along with the formation of the U.S. Border Patrol, also in 1924, Congress sent a clear message: the United States was not just a gatekeeping nation, but a nation that had decided to close its gates and patrol its borders against anyone who did not fit the white, western European ideal of what it meant to be "American."

Although the Immigration Act of 1924 governed the entry of immigrants, it was a law that had implications for refugees, as well. As shown in the previous chapter, lawmakers extended their concerns about undesirable immigrants to refugees. With countless numbers of people displaced across Europe in the aftermath of World War I, and no federal refugee law that could facilitate their entry into the United States, American officials could have created a pathway for refugees to seek asylum within the

country's borders. Instead of opening America's gates to the world's vulnerable people, however, they allowed the exclusionary fervor that defined immigration policy to trump a more humane approach to offer displaced and persecuted people a haven in the United States.

The human cost of immigrant and refugee exclusion became apparent in 1939, when U.S. officials turned away over 900 Jewish refugees aboard the *S.S. St. Louis* from the United States. Fleeing the Third Reich and the racial, ethnic, and religious persecution spreading through Germany and Europe, many had applied for United States visas and journeyed to Cuba while they waited for their visas to be approved. When the *St. Louis* arrived in Cuba on May 29, the Cuban government allowed only 28 passengers to disembark. The ship and its remaining passengers waited in the waters off the coast of Miami for the United States to decide if they might enter as refugees. President Franklin Roosevelt, however, denied their entry; the quota for German immigrants had already been reached that year, and with a wait-list of several years already in place, promised to be full for the foreseeable future. The *St. Louis* was forced to sail back to Europe. By the end of World War II, about 250 of the 900 refugees perished during the Holocaust.

The catastrophic human toll of the Holocaust and the violence of war brought about a fundamental reorientation in refugee policy both domestically in the United States and internationally. In 1948, the United States passed the Displaced Persons Act, which allowed 200,000 displaced Europeans to enter the country and set in place a federal program for international refugee resettlement for the first time in American history. In the same year, the United Nations adopted its Universal Declaration of Human Rights. Among the list of rights that the United Nations agreed all people around the

world were entitled to was the right of refuge. According to Article 14, "Everyone has the right to seek and to enjoy in other countries asylum from persecution."[1] The post-war years thus ushered in an era in which, at least in theory, nation-states and international organizations indicated greater support for refugees seeking haven abroad than at any other time in modern history.

By the end of World War II, the tide for support of international refugees began to expand. While the United States passed the Displaced Persons Act of 1948 and indicated its support for universal human rights, however, the rights of Americans at home remained mired in inequality. Americans of many diverse backgrounds joined the Army and fought for the United States during World War II. While political officials celebrated the United States as a paragon of democracy and equality against fascism abroad, hundreds of thousands of Mexican Americans faced deportation while others were beaten by American sailors on the streets of Los Angeles in 1943. Japanese Americans were forcibly relocated in camps across the country. African Americans faced segregation and violence in the south and were largely barred from war-time jobs. Native Americans continued to face crushing poverty on reservations. While the United States touted its support for refugees and human rights abroad, racialized Americans at home continued to experience their marginalization from the mainstream of American society.

When the U.S. government recognized African Americans and Creek Indians as refugees who were entitled to support in the 1860s, their U.S. citizenship was in the balance. Though President Abraham Lincoln had passed the Emancipation Proclamation,

[1] United Nations, Universal Declaration of Human Rights, December 10, 1948, http://www.un.org/en/universal-declaration-human-rights/ (accessed February 14, 2018).

freeing African Americans from the bonds of slavery, African Americans would not become American citizens until 1868, when the 14th Amendment extended citizenship to all people born on American soil. Creek Indians and Native Americans as a whole, meanwhile, did not receive American citizenship until the Indian Citizenship Act of 1924. With the internationalization of the definition of "refugees" as people fleeing persecution and seeking shelter abroad, African Americans and Native Americans — along with other racially and otherwise marginalized groups in American society — were no longer legible as refugees in the United States, no matter the extent of their dispossession.

Indeed, in the same moment that the United States passed the Displaced Persons Act of 1948, and in the same moment that the United Nations passed the Universal Declaration of Human Rights, the descendants of Loyal Creek refugees renewed their claims for economic compensation from the United States government. As discussed in Chapter 3, the United States government recognized Loyal Creek as refugees in a treaty with the Creek Nation in 1866. After they received only a partial payment of the funds owed to them as for the property they lost as a result of their loyalty to the United States in the Civil War, they petitioned Congress several times, hoping to convince them to appropriate the remainder of the balance owed to them. In 1903, Congress passed an act that paid the Loyal Creeks $600,000 on the condition that each member of the Loyal Creeks sign a resolution saying that they would not make additional claims against the United States. The Loyal Creeks conceded. The formation of the Indian Claims Commission in 1946, however, opened up a new path for the Loyal Creek refugees — or,

their descendants and heirs — to seek the full amount of compensation promised to them in 1866.

First submitted in 1948, the Loyal Creeks' claim was initially rejected by the commissioners who heard their case and the arguments that the United States government made in its defense. Ultimately, the Indian Claims Commission reversed its decision and ruled in favor of the Loyal Creeks in 1951. Examining the legal arguments made by both the Loyal Creeks and the United States government reveals the degree to which the Loyal Creeks' claim was embedded within the broader power dynamics that defined the relationship of Native people with the United States federal government. The attorneys for both the Loyal Creeks and the United States acknowledged that the history of the Loyal Creeks' claim was rooted in the federal government's promise of economic compensation to members of the Creek Nation who supported the United States in the Civil War and faced displacement, persecution, and the loss of their property because of their loyalty. Yet by the 1940s, the term "refugee" — and indeed, any recognition of the Loyal Creeks as "refugees" during the Civil War — all but disappeared from the legal arguments on both sides of the case. Instead, the attorneys for the Loyal Creeks argued that the United States government had violated several foundational legal tenets of the relationship between Native people and the federal government in its treatment of the Loyal Creeks. Rather than make the case that Loyal Creeks were owed money because of their one-time treatment and identification as refugees, their attorneys made a broader argument that protested the colonial condition that shaped the relationship between Native people and the United States.

This chapter argues that the elision of the Loyal Creeks as "refugees" from their case before the Indian Claims Commission highlights the central paradox of American refugee regulation that emerged with the Displaced Persons Act of 1948 and the widespread recognition of refugees' rights in international affairs. While the United States government considered giving refuge to non-Americans abroad, it obscured its oppression of Americans who, by virtue of their American citizenship, were no longer perceived as refugees. The Loyal Creeks, who were once identified as refugees, argued before the Indian Claims Commission that they were subject to mistreatment by the United States — and yet any substantive discussion of their experience as "refugees" was altogether absent from their legal argumentation. The fact that this occurred at the same time that conversations about refugees and their rights to resettlement were occurring both in the United States and internationally, demonstrates how the internationalization of the concept of "refugees" obscured ongoing colonial relationships that arguably made non-white Americans refugees in experience, if not in legal standing.

The petition that the Loyal Creeks submitted to the Indian Claims Commission in 1948 was another iteration of a legal dispute with roots that stretched back to 1861. At the start of the Civil War, members of the Creek Nation who sided with the Confederacy and other southern sympathizers attacked a band of Creeks who remained loyal to the Union and impelled them to seek shelter in Union occupied Kansas. The United States government recognized this group of Union supporting Creeks as the "Loyal Creeks" in an 1866 peace treaty with the Creek Nation. Article 4 of that treaty established a commission to investigate how much property that Creek soldiers, freedmen, and "loyal

refugee Indians" lost due to their displacement and persecution by Confederate supporting Creeks and their allies during the war. The commission valued the losses of the Loyal Creeks at approximately five million dollars. But from 1866 to 1901, the United States government paid them only $100,000 — an amount that was not appropriated from the U.S. Treasury, but which was deducted from the amount of money the U.S. paid the Creek Nation for the sale of half its land. With the Treaty of 1866, the United States may have identified the Loyal Creeks as refugees. But it also forced the Creek Nation to relinquish half its land — a fundamental blow to Creek sovereignty — and withheld its promise of economic relief for the Loyal Creek refugees.

The Loyal Creeks petitioned Congress several times in the years following the signing of the 1866 treaty. But it was not until 1901 that Congress passed an act that called on the Senate to make a "final determination" of the amount owed to the Loyal Creeks. Like the Treaty of 1866, the 1901 act was not a simple measure of refugee relief. In fact, the provision that called on the Senate to make an award to the Loyal Creeks was just one part of a bill that subjected the Creek Nation's land to allotment, thus helping the United States achieve its goal of breaking apart communally owned Native land and transforming it into individual plots that could be bought and sold. Section 42 of the bill also mandated that the Creek Nation required the approval of the President of the United States before passing any law or resolution concerning the Creeks' land, money, and citizens. The 1901 act may have opened up a process for the Loyal Creeks' to continue seeking the money promised to Loyal Creek refugees in the 1860s. But by breaking part the Creek Nation's land into allotments and effectively giving the U.S. President veto

power over Creek governance, it also dealt yet another major challenge to Creek sovereignty.[2]

Two years later, the Senate concluded that the U.S. government should pay the Loyal Creeks $1.2 million. According to the Act of 1901, the Senate's decision should have been a "final determination." But members of the House opposed paying the Loyal Creeks that amount, and successfully mandated a much lower award of $600,000. When Congress passed an Indian Department appropriations bill in 1903, the amount it included for the Loyal Creeks was $600,000. Like the Treaty of 1866 and the Act of 1901, however, the Loyal Creeks' acceptance of this form of relief was not without its compromises. In addition to dropping the amount of their compensation by half, from $1.2 million to $600,000, Congress inserted a provision in the bill that prohibited the Loyal Creeks from ever pursuing the remaining amount of money they believed might be owed to them from their experience as refugees during the Civil War. If the Loyal Creeks accepted the $600,000, Congress maintained that that agreement would amount to a "full release of the government from any such claim or claims." In 1903, petitioning Congress was Native peoples' primary form of legal recourse if they wished to present a claim to the United States government. With no significant alternative for further pursuing their claims, each member of the Loyal Creeks signed a resolution accepting the $600,000 and agreeing not to pursue their claims stemming from the 1866 treaty any further.[3]

The Loyal Creeks may have reached an obstacle in pursuit of their claims. But their case did not die. Despite agreeing not to pursue any additional funds after the

[2] Pub. L. No. 56-676, 31 Stat. 861 (1901).
[3] Pub. L. No. 57-994, 32-982 (1903).

$600,000 set aside for them in 1903, the Loyal Creeks submitted another memorial to Congress in 1909 asking that the Committee on Indian Affairs revisit their case and submit their findings to the Senate for a final payment of the funds owed to the Loyal Creeks. Congress continued deliberating over the Loyal Creek case through the 1910s and 1920s.[4] In 1935, Congress considered bills in the House and the Senate to pay the remaining $600,000 from the 1903 agreement. Secretary of Interior Harold Ickes considered the proposal and noted that "the Government drove a hard bargain with the Indians" when Congress reduced the Senate award. "It is believed," he continued, "that the Indians have a strong moral claim for payment of the balance of the amount awarded by the Senate." Ickes even expressed his own personal support for the proposal to pay the Loyal Creeks. Nevertheless, he was unable to officially endorse behind the bill, because "this proposed legislation," he noted, "would not be in accord with the financial program of the President." When those bills failed to make any progress and Congress considered another bill granting $600,000 to the Loyal Creeks two years later, Ickes once again concluded that the bill was inconsistent with the interests of the federal government.[5]

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[4] U.S. Congress, Senate, *Memorial of Creek Indians asking for payment of claims*, 60th Cong., 2nd sess., 1909, S. Doc. 690, serial 5408. A keyword search for "Loyal Creek Claimant Committee" shows that after the 1903 decision, Congress discussed the Loyal Creek case in 1909, 1912, 1915-1917, 1920, and 1923.

[5] U.S. Congress, House, *Appropriation to Carry Out Provisions of Section 26 of Agreement with Muskogee or Creek Tribe of Indians, Approved March 1, 1901* 75th Cong., 1st sess., 1937, H. Rep. 488, 7-8, in Docket #1, Closed Docketed Case Files, Box 1, Records of the Indian Claims Commission, Record Group 279, National Archives and Records Administration, Washington, DC [hereafter cited as RG 279, NARA]. It is worth noting that while Ickes noted his personal support for the Loyal Creeks in the correspondence related to the 1935 bills, he made no indication that he personally supported the $600,000 payment when discussing the issue two years later in 1937.

The labyrinthine path of the Loyal Creeks' claims for the funds promised to Loyal Creek refugees in the Treaty of 1866 was not unique. It was symptomatic of a much broader problem in the access of Native people to redress against the United States government. Since 1855, American citizens had access to the United States Court of Claims if they wished to present a financial grievance to the United States. Native Americans, however, were barred access to the Court of Claims in 1863. Twenty years later, Congress granted Native Americans indirect access to the Court of Claims. Rather than petition the Court of Claims directly, however, Congress had to pass an individual act for each claim put forward by Native people; only with the approval of an act could any particular Native claim be forwarded to the Court of Claims. By the middle of the 1940s, Congress was juggling as many as 200 claims that Native people brought forward to be heard before the Court of Claims. In order to streamline the process of Native claims making, Congress approved the Indian Claims Commission Act on August 13, 1946.[6]

On December 30, 1947, one year after the Indian Claims Commission was established, the Loyal Creeks filed a petition with the ICC and once more brought their claim for relief to the United States Government. Twelve individual Loyal Creeks were named on the petition, each of whom were descendants and heirs of individuals who were

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[6] H.D. Rosenthal, *Their Day in Court: A History of the Indian Claims Commission* (New York: Garland Publishing, 1990), x. I would like to add another paragraph following this one that paints in very broad strokes the politics of the founding of the ICC. Rosenthal describes how members of Congress were split on whether the ICC should be founded, what the rights of Native people were, and whether the U.S. government even owed Native people anything — an issue that comes up in the Loyal Creek case when the U.S. government makes it part of its defense to say that the money the U.S. paid the Loyal Creeks was not a debt, but a "gift" or a "gratuity."

originally included in the group of Loyal Creeks who filed claims for relief under the Treaty of 1866. Though only twelve Loyal Creeks were named, the petition carefully noted that this claim before the ICC was not on behalf of those listed, but also for all other Creeks who were members of the Loyal Creek Claimants' Committee and who likewise continued to seek payment from the United States government for the losses their ancestors incurred when they were displaced during the Civil War.[7]

The Loyal Creeks made several arguments in their bid to secure the remaining funds they believed the U.S. government owed to them. First, they reminded the Indian Claims Commission that the Senate, acting as an arbitrator, pledged $1.2 million to the Loyal Creeks in 1903 – a pledge that the Loyal Creeks claimed was legally binding. They claimed that the House of Representatives' decision to cut the Senate's award in half was not just illegal, but "arbitrary, unfair, inequitable, and oppressive." Because the House ignored the Senate's decision and changed the amount due to the Loyal Creeks, they further argued that Congress "violated its duties and obligations as the fiduciary and trustee of plaintiffs." Two years later, in an amended version of their petition, the Loyal

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[7] *Docket No. 1, Before the Indian Claims Commission, Washington, DC, 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; Original Amended and Substituted Petition for Determination of the Balance Due on the Award Heretofore Made to the Loyal Creek Indians by the United States Senate Under the Authority of the Act of Congress, Approved March 1, 1901*, December 30, 1947, in Docket #1, Closed Docketed Case Files, Box 1, RG 279, NARA. Woodson E. Norvell of Washington DC is listed as the Attorney of Record, and SR Lewis and William N. Maben of Tulsa, OK along with George E. Norvell of Washington DC are also listed of counsel, p. 2. When the petitions detail the history of Creek displacement during the Civil War, they claim the Creeks "found refuge" in Kansas. But the term "refugee" is not used in the document.

Creeks claimed that Congress' "failure and refusal" to pay the Loyal Creeks the full $1.2 million rendered the federal government guilty of "unfair and dishonorable dealing" in its handling of the Loyal Creek claims.[8]

But the Loyal Creeks were not just asking for the remaining $600,000 of the $1.2 million that the Senate awarded them in 1903. In addition, they charged that as a matter of "equity and good conscience," the U.S. government should pay the fees the Loyal Creeks paid to S.W. Peel and David M. Hodge — the attorneys who represented the Creeks before Congress before the Senate decided on its award to the Loyal Creeks in 1903 — which amounted to an additional $90,000. The only reason they had to hire attorneys in the first place, the Loyal Creeks argued, was because the U.S. had since 1866 continuously failed to give them money which they were justly owed. The Loyal Creeks also demanded 5% interest on $690,000 from the period 1903 to January 1, 1947, bringing their total claim before the Indian Claims Commission to the amount of $2,190,750.[9]

The United States government replied to the Creek's case before the Indian Claims Commission several months later. On September 3, 1948, several U.S. attorneys filed a motion to altogether dismiss the Loyal Creek claim. They alleged that the Loyal Creeks had not followed the proper procedures in seeking approval from the Department of the Interior and the Bureau of Indian Affairs before hiring the attorneys they brought on as counsel. In addition, the U.S.'s attorneys alleged that the Loyal Creeks were not an

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[8] *Docket No. 1, Original Amended and Substituted Petition for Determination of the Balance Due on the Award Heretofore Made to the Loyal Creek Indians by the United States Senate*, Docket #1, Closed Docketed Case Files, Box 1, RG 279, NARA, 8.
[9] *Ibid.*, 8-9. The interest was calculated at $1,500,750.

"Indian tribe, band, or other identifiable group of American Indians," and that their claim was not one made on behalf of the entire Creek Nation, but was made in the interests of specific individuals within the Creek Nation. On these grounds, the United States argued that the Loyal Creek claim was outside the jurisdiction of the Indian Claims Commission.[10]

It may seem arbitrary that the United States' attorneys based their motion to dismiss the Loyal Creek case on the point that a member of their legal team was not properly accredited to argue their claim, and with the contention that the Loyal Creeks were not an "identifiable group of American Indians." These objections were not matters connected to the substantive details of the Loyal Creeks' claim. Nor did they have any grounding in the original context that brought the Loyal Creeks before the Indian Claims Commission in the first place. Any memory of the Loyal Creeks' experience as refugees of the Civil War, and the U.S. government's recognition of the Loyal Creeks as "refugees" in the Treaty of 1866, was absent from the U.S.'s motion to dismiss the case. Instead, the U.S.'s attorneys focused on administrative issues in their effort to jettison the

[10] Citing a case in the Court of Claims, *The Members of the Tlingit Nation v. The United States*, the defense said that both the Secretary of the Interior and the Commissioner of Indian Affairs must approve via contract any attorney working a case against the United States on behalf of an Indian nation. They claimed that S.R. Lewis, one of the attorneys for the Creeks, did not possess a contract approved by the Secretary of the Interior or the Commissioner of Indian Affairs and had no "legal authority" to represent the Loyal Creeks, thus rendering their case before the Indian Claims Commission void. *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, v. The United States of America, Defendant, Docket No. 1, Motion to Dismiss,* Filed September 3, 1948, Docket #1, Closed Docketed Case Files, Box 1, RG 279, NARA, 1-2.

Loyal Creeks' claim. The Indian Claims Commission had been established to provide Native Americans a form of legal recourse for their grievances against the federal government. But in this first case before the Commission — one that began nearly a century earlier — the United States government seemed to have little interest actually hearing the concerns that the Loyal Creeks presented to them. Indeed, as the case progressed, the U.S. attorneys' move to dismiss the claim were entangled with strategies to discredit the Loyal Creeks that paralleled broader efforts by the U.S. government to disposes Native people using the law.

On September 23, 1948, the Loyal Creeks submitted their response to the U.S. attorneys' motion to dismiss their claim. In response to the assertion that they had not secured the proper approval for the members of their legal team, the Loyal Creeks noted they first filed their case before the rules for presenting a case to the Indian Claims Commission had been set, and that they had since gotten the necessary contracts. They countered the claim that their petition constituted a claim for individuals, rather than for the entire Creek nation, by saying that the treaty of 1866 specifically acknowledged Loyal Creeks, and did not at that time or since mandate that the Creek Nation as a whole represent them in pursuit of their claims. They also cast doubt on the intentions of the government's claim that the Loyal Creeks were not an "identifiable" tribe or group of Native Americans. In all the years the Loyal Creeks had debated with the United States government the economic relief owed to them, the United States had not ever before questioned whether the ancestors of the Loyal Creeks "were a band of Indians under

recognized leadership." What's more, the name "Loyal Creeks" dated back to the 1866 treaty that the U.S. signed and that stood at the heart of the entire claim. [11]

The Loyal Creeks were so intent on disproving the U.S. attorneys' claim that they were not an "identifiable group" that they submitted another response to supplement their first reply to the U.S. government's motion to dismiss their claim. The Loyal Creeks noted that independent scholars and university professors had joined U.S. government officials in recognizing them as an "identifiable group of American Indians." They cited the 1934 history entitled *The Five Civilized Tribes,* by prominent Oklahoma historian Grant Foreman, who wrote that Opothleyahola was further described as the fearless leader of the Loyal Creeks in *Oklahoma Historical Chart and Geographic Handbook for Students of Oklahoma History*, by Frank S. Wyatt, a Professor of History at Northwestern State Normal School in Alva, Oklahoma, and George Rainey. Wyatt and Rainey describe how despite his bitter opposition to Indian removal, Opothleyahola led the Loyal Creeks in their exile in Kansas, where he died in a Creek refugee camp near the Sac and Fox Agency in Quenemo, Kansas in 1862.[12]

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[11] *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 Seaborn Smith, Plaintiffs, vs. The United States of America, Defendant, Response to Motion to Dismiss,* September 23, 1948, Docket #1, Closed Docketed Case Files, Box 1, RG 279, NARA, 4-6.

[12] *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, v. The United States of America, Defendant, Supplemental Response to Motion to Dismiss,* Oct 6, 1948, Docket #1, Closed Docketed Case Files, Box 1, RG 279, NAR, 2-4.

Most importantly, the claim showed that even the U.S. government had consistently identified the Loyal Creeks as an identifiable group. In 1837, the Commissioner of Indian Affairs recognized Opothleyahola as the leader of the Loyal Creeks in his annual report of the same year. The U.S. government further acknowledged the "Loyal Creek Band or Group of Creek Indians" in each document at the heart of the Loyal Creek claim: The Treaty of 1866, the roll of individuals that had been produced during the Hazen and Field Commission to document the individual claims of the Loyal Creeks, and the Act of Congress of 1901. They Loyal Creek petitioners noted the 1901 Congressional act. Congress's recognition of the Loyal Creeks in the 1901 Act, they argued, "constitute[d] another definite, distinct legislative and Congressional recognition of the identity and existence of the 'Loyal Creek Band' as being a definite 'band' and as being a definite 'identifiable group.'"[13]

The attorneys for the U.S. government countered the Loyal Creek arguments with evidence of their own. They cited a 1948 letter from Mastin G. White, solicitor for the Department of the Interior, to A. Devitt Vanech, Assistant Attorney General in the Department of Justice, explaining that an "identifiable group" had to either mirror the same kind of political recognition that the U.S. granted tribes, or they had to show "a de facto collective existence" that "carries on a type of group life characteristic of the Indians in the United States or Alaska." White contended that there was no reason to believe the Loyal Creeks "have ever acted in concert except for their attempts to secure

[13] *Ibid.*

further allowances on their claims."[14] Ralph A. Barney, an attorney in the U.S. Department of Justice, echoed White's conclusion and suggested that the Loyal Creeks were in no way politically distinct from the greater Creek Nation; that the U.S. never recognized the Loyal Creeks as such; that they never at any point took "action independent" from the Creek Nation; and that they had neither supported nor opposed the United States in any formal capacity. If the Loyal Creeks did have any formal relationship with the U.S. government, Barney contended, it was "purely a social one or, at best, a business one" by virtue of their coming together to issue their claims. As far as Barney was concerned, the descriptor "Loyal" had no bearing whatsoever on the political status of the Creeks as an identifiable tribe or band, but rather was merely a descriptive word that distinguished Creeks who supported the Union from Creeks who supported the Confederacy during the Civil War.[15]

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[14] *Mastin G. White, Solicitor, Department of the Interior, Washington DC, to A. Devitt Vanech, Assistant Attorney General, Department of Justice, Washington, DC, Exhibit A,* May 24, 1948*,* Docket #1, Closed Docketed Case Files, Box 1, RG 279, NARA, 3.

[15] *Affidavit of Ralph A. Barney, Exhibit B,* August 31, 1948*,* Docket #1, Closed Docketed Case Files, Box 1, RG 279, NARA, 16-18. White's and Barney's contention that the Loyal Creeks had never acted apart from the Creek Nation contradicts the history of factionalism in Creek country. The roots of the Loyal Creeks who banded together under the leadership of Opothleyahola during the Civil War could be traced back to the Upper Creeks, who had demonstrated their independence from the greater Creek Nation several times since the Redstick War in 1813, when longstanding social and economic divisions between slaveholding and non-slaveholding Creeks erupted the nation into civil war. Furthermore, as the attorneys for the Loyal Creeks noted in their response to the U.S.'s motion to dismiss their claim, the U.S. government had itself acknowledged the Loyal Creeks as a separate group from the Creek Nation at large when they acknowledged their suffering as refugees and promised them economic relief in the Treaty of 1866 — not to mention the fact that the United States materially benefitted from the Loyal Creeks' break from the Creek Nation when members of the Loyal Creeks fought for the Union during the Civil War.

In their motion to dismiss the Loyal Creeks' petition before the Indian Claims Commission, the United States government willfully overlooked the long history of the Creek nation and its own history of interaction with and acknowledgement of the Loyal Creeks. Their interest in doing so was clear: The U.S. government did not wish to acknowledge the Loyal Creeks' claim to the money they believed they were owed. But the significance of the U.S.'s motion to dismiss the Loyal Creek case reverberate beyond the particulars of the case itself. Every step of the Loyal Creeks' pursuit of refugee relief — the Treaty of 1866, the Act of 1901, and the Act of 1903 — had presented a compromise to Creek sovereignty. By denying that the Loyal Creeks even had a valid claim before the Indian Claims Commission, the U.S.'s attorneys participated in another iteration of the U.S. federal government's broader efforts to undermine Creek sovereignty by attempting to maintain control over their identity and political status, on the one hand, and by limiting the Loyal Creeks' access to the Indian Claims Commission — an institution that the U.S. government had allegedly established to enable, not limit, Native peoples' access to legal recourse.

The Indian Claims Commission refused the U.S. government's motion to dismiss the Loyal Creek claim on May 6, 1949. The commissioners found that all the Loyal Creeks required to be counted as an "identifiable group" was that members of the Creek Nation had a common claim against the U.S. government, which they demonstrated they had and which Congress itself acknowledged in 1903 when they agreed to pay the Loyal Creeks $600,000.[16] With the motion to dismiss their case overturned, the Loyal Creeks

[16] *Opinion of Commission on Defendant's motion to dismiss*, May 6, 1949, Docket #1, Closed Docketed Case Files, Box 1, RG 279, NARA.

moved forward with their claim. Just as the U.S. government's motion to dismiss the claim was part of a broader challenge to the identity and political status of Native peoples, the Loyal Creeks' attorneys claimed that the U.S. was in violation of several major underpinnings of the U.S. federal government's relationship with Native Americans: the concepts of consent and duress; fair and honorable dealings; and guardianship and wardship.

First, the attorneys for the Loyal Creeks pointed to the stipulation that Congress wove into its agreement to pay the Loyal Creeks $600,000 in 1903. Congress mandated that the Creeks could only accept those funds if they agreed to never pursue any additional amount of money from the U.S. government for the losses that Loyal Creek refugees endured during the Civil War. The Loyal Creeks argued that this stipulation was not binding because the Loyal Creeks did not fully consent to those agreements, but rather conceded to them under duress. They were "in a position of helplessness and at the mercy of Congress," and thus had no choice but to accept the $600,000 despite the fact that it was not even half the amount originally pledged to Loyal Creeks per the commission put together after the 1866 treaty, and despite the fact that the Senate had concluded it wanted to pay them $1.2 million.[17]

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[17] *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*, January 26, 1950, Docket #1, Closed Docketed Case Files, Box 1, RG 279, NARA, 6.

Indeed, the Creeks' attorneys argued that Congress knew exactly what they were doing when they required the Loyal Creeks to accept $600,000 as a full payment for their losses. According to their attorney Wilfred Hearn:

> The Congress was aware of the fact that the Indians had no other recourse than to accept the money in accordance with the terms proposed in the Act. The Indians knew that they were at their road's end; that the doors of the courts were closed to them; that the Congress alone had the authority to afford them the right to go into court, and that this right had been denied them time and time again. Consequently, the form of duress employed by Congress was effective, and the Indians accepted the money offered and gave the releases as required by the administrative officers of the Government.

Hearn may have conceded that by taking the $600,000 according to the terms laid out by Congress, the Loyal Creeks effectively agreed that they were accepting a payment in full for their claims. He argued, however, that the Loyal Creeks only made that agreement because they had no other choice. Furthermore, Hearn claimed that because the Senate was acting as a court of arbitration when it decided on a payment of $1.2 million, the Loyal Creeks were allowed by law to pursue the balance owed to them regardless of what provisions Congress included in the bill regarding the Loyal Creeks' ability to pursue additional claims. Hearn noted that the case *Swift and Co. V. United States* held that if the government owes any person or persons funds as laid out in an arbitration, the plaintiffs cannot be barred from pursuing the rest of the money to which they are owed in the initial agreement, if that agreement was made under duress.[18]

Even if the Indian Claims Commission did not agree that the Loyal Creeks' acceptance of the $600,000 was made under duress, Hearn claimed that the Act of 1903 was not made in the spirit of "fair and honorable dealings," a principle that was central to

[18] *Ibid.*, 14-15.

Indian legal interactions with the United States. Hearn said the U.S. government behaved "unfairly and dishonorably" first by failing to pay the $1.2 million that the Senate first awarded to the Loyal Creeks, and second by not only claiming that accepting the $600,000 constituted a release of the Creeks on their claims, but also by requiring the Creek Nation and the individual Loyal Creeks to sign a document saying they would not pursue additional payment. While law was certainly at the heart of Hearn's arguments, in this instance his plea went beyond whether or not it was legal for Congress to bar the Loyal Creeks from pursuing their $600,000. By not behaving fairly and honorably, there was also the question of whether the United States government "observed the standards of morality" when interacting with the Loyal Creeks, and whether or not Congress engaged in "the kind of dealing employed by one who does the right and just thing because that is the ethical thing to do."[19]

Whether the agreements between the Loyal Creeks and the U.S. government were made under duress, or whether the U.S. had the consent of the Loyal Creeks in all of their agreements, did not only hinge upon the question of whether or not the U.S. had engaged in "fair and honorable dealings." The Loyal Creeks also alleged that the United States had violated the relationship of "guardian and ward" that the U.S. had with Native peoples and that was central to legal disputes between them. The Loyal Creeks alleged that the U.S. government ought not only pay the remainder of the money owed to them, but that they should be paid interest on top of that sum to account for the excessive amount of time between the treaty of 1866 and their present claim in the 1940s.

[19] *Ibid.,* 15-16.

According to their attorney, because the U.S. government had recognized that the relationship between the United States and "the Indians" was that of guardian and ward, Congress had to commit to making up for its failures to "perform the duties of that relationship."

The plaintiffs applied the same logic of the guardian and ward relationship to the question of attorney's fees. If the U.S. had met its obligations as the guardians of the Loyal Creeks, and honored the treaties that the U.S. had made with the Creek Nation regarding protecting them from hostile actions, the Loyal Creeks wouldn't have needed attorneys in the first place. Rather, it was "by reason of their guardian's failure and refusal to make a settlement with them," Hearn noted, that the Loyal Creeks had no choice but to seek legal counsel and hire S.W. Peel and David M. Hodge to introduce their claim to Congress and subsequently hire additional attorneys to continue their case. It was "by reason of a failure of defendant to observe the rules of law and equity with respect to the settlement of a guardian's account" that the Loyal Creeks had to pursue a legal claim, amounting to $90,000 in legal fees that the Loyal Creeks owed to Peel and Hodge. The Loyal Creeks argued that the United States paying them interest was both a question of law and morality. Even if the Indian Claims Commission did not agree with the Loyal Creeks' legal argument that they ought to be paid interest, their attorneys claimed they ought to receive interest because the Loyal Creeks were subject to "unfair and dishonorable dealings at the hands of their guardians, the Government of the United States."[20]

[20] *Ibid.,* 16-21.

The legal and moral frameworks within which the Loyal Creeks made their case before the Indian Claims Commission — including the concepts of consent and duress, fair and honorable dealings, and guardianship and wardship — reveal the degree to which the Loyal Creek's pursuit of economic relief shifted over time from its original context of relieving refugees for their displacement and persecution. The Loyal Creeks' legal argument focused primarily on the broader characteristics of the United States federal government's relationship with Native peoples. Their claim evolved from its focus of relief for refugees to a focus on the broader power dynamics that informed the U.S. government's efforts to marginalize and dispossess Native Americans. The Indian Claims Commission may have been founded to give Indigenous people an avenue of legal recourse to challenge abuses of power by the United States. But both the Loyal Creeks' arguments for their claims and the arguments that the U.S. government issued against them show how colonial logic was actually reproduced in the Indian Claims Commission, and show how law may be an agent of colonization.

The attorneys for the United States denied the Loyal Creeks' assertions that the U.S. had violated any legal or moral standard in their handling of the Loyal Creeks' claim. They denied that the U.S. violated the Treaty of 1866, in which the U.S. pledged to compensate Loyal Creek refugees for the property they lost as a result of their attachment to the Union.[21] They denied that the Senate was acting as a court of arbitration when it

[21] Among the first points the U.S. refuted in its defense is an 1856 treaty that the Loyal Creeks referred to multiple times in their case. The Loyal Creeks claimed that the U.S. pledged in the treaty to protect the Creek Nation from hostilities, and alleged that the U.S. violated the treaty by failing to protect the Loyal Creeks from displacement by the McIntosh-led crew during the Civil War. The U.S. in its defense denied that it violated the treaty during the Civil War, because the Creek Nation signed a treaty with the

decided to pay the Loyal Creeks $1.2 million in 1903.They maintained that the U.S. had no treaty obligation or any other legal obligation to pay the Loyal Creeks anything at all, and claimed instead that the U.S. giving money to the Loyal Creeks was "an act of grace." They also denied that the U.S. coerced the Loyal Creeks into accepting $600,000 as a payment in 1903 because they claimed that the U.S. was not legally obligated to give them any money, and that the money they gave was a "bounty or gift." They denied that the U.S. acted unfairly or dishonorably by claiming the United States, by giving anything to the Loyal Creeks, went above and beyond any legal or moral obligation they had to compensate anyone for their losses during the Civil War. "The United States did not pay loyal white citizens for the loss or destruction of their property during the war," the U.S. attorneys noted. "On what theory should it make good the losses of Indians?" And to the Loyal Creeks' request that the U.S. government pay for their attorneys' fees, also on the grounds of fair and honorable dealings, the U.S. attorneys dismissed this as "the height of absurdity." Altogether, they tried to persuade the Indian Claims Commission that the Loyal Creeks were "merely trying to take advantage of a situation," and that they had "no legal claim against the United States, and they have no more moral claim against the United States than any other person who lost property as the result of the Civil War."[22]

Confederacy – even though the Loyal Creeks did not support the confederacy, and fought against confederate supporting Creeks, and even enlisted in the Union.

[22] *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, v. The United States of America, Defendant, Defendant's Objections to Findings of Fact Requested by the Plaintiffs, Request for Findings of Fact, and Brief,* Docket #1, Closed Docketed Case Files, Box 1, RG 279, NARA, 16-37.

On July 14, 1950, the Indian Claims Commission filed their opinion. Commissioners O'Marr and Holt, two of the three members of the Indian Claims Commission, ruled that while the United States was treaty bound to assess the financial cost of the property that the Loyal Creeks lost during the Civil War, the U.S. government was under no treaty obligation to pay the full amount of their losses. The commissioners also dismissed the idea that the U.S. was responsible for protecting the Loyal Creeks and preventing their displacement during the Civil War, because any treaty that may have bound the U.S. to protect them was voided when the Creek Nation as a whole pledged its allegiance to the Confederacy. [23]

The heart of the case, the Commissioners noted, was whether $1.2 million or $600,000 was the final amount of the award determined by Congress in 1903. The Indian Claims Commission acknowledged that the Senate spent several days deliberating the amount of the award, and that once they decided on a figure of $1.2 million they held to that decision "until the last." But because the Senate agreed to the House amendment claiming that the Loyal Creeks must accept $600,000 as their final payment, Commissioners O'Marr and Holt believed the Senate changed its mind and conceded to the House's proposal to change the amount of the award. They decided, as well, that the Loyal Creeks did not have "any vested right in the first amount fixed by the Senate."

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[23] *Before the Indian Claims Commission, 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, v. The United States of America, Defendant, Opinion of the Commission,* July 14, 1950, Docket #1, Closed Docketed Case Files, Box 1, RG 279, NARA.

They thus not only rejected the Loyal Creeks' argument that the actual amount of the award was $1.2 million, but also denied that they had the right to pursue the balance of that amount from the U.S. government.[24]

In addressing the Loyal Creeks' claim that the United States government did not engage them in "fair and honorable dealings," the commission acknowledged that the provision in the Treaty of 1866 that required the Creek Nation to use funds from the sale of its land for the compensation of Loyal Creek refugees might well have represented "the nature of a penalty imposed upon the Creek Nation for its disloyalty to the Union." Nevertheless, despite acknowledging that the Loyal Creeks were being punished for the decision made by the Creek Nation's leadership to side with the Confederacy, O'Marr and Holt agreed with U.S. Attorney Ralph Barney's view that the United States was under "no legal or moral obligation" to pay the Loyal Creeks anything in the first place.[25]

In response to the Loyal Creeks' claim that they had only agreed to accept a payment of $600,000 in 1903 because they were under duress, the Commission further argued it was a moot point. They had already concluded that the Senate's final award was not $1,200,000, but $600,000. Therefore, the Commission claimed there could have been no duress because there was never any money on the table beyond $600,000 — and, they once again explained, the U.S. government had no "legal or moral obligation" to pay the

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[24] *Ibid.,* 8-11.

[25] *Ibid.*, 12. Anthony Caminetti used the same phrase, "no legal or moral obligation," when he explained to Bureau of Immigration officials that they were not bound to admit refugees during the Mexican Revolution. Though it is highly improbable that O'Marr, Holt, and Barney deliberately used Caminetti's phrase, it is worth delving deeper into discourses among American officials about the U.S. government's lack of obligation to assist refugees and other people in need, or to redress grievances against the state more broadly.

Loyal Creeks. They agreed with the United States' attorney's defense in his view that the payment of $600,000 to the Loyal Creeks was not a legally binding compensation, but rather a "gratuity," and thus a reflection of the benevolence of the United States government rather than a formal debt. This same logic — that the U.S. had no legal obligation to pay the Loyal Creeks beyond the $100,000 from the funds of the Creek Nation per the Treaty of 1866 — informed the Commission's ruling that the Loyal Creeks should not be compensated for attorney's fees. Those fees, the Commission decided, were accrued by the Loyal Creeks in a claim "to obtain compensation for an obligation which did not exist."[26]

In concluding their decision, the Commission questioned the guardian and ward relationship between the Creek Nation and the United States, and in particular asked whether it applied in the case of the Loyal Creeks. According to the Commission, the burden of proof for demonstrating that the United States and the Loyal Creeks had the relationship of guardian and ward rested on the shoulders of their attorneys, who had made, according to O'Marr and Holt, "No attempt…to show where the relationship of guardian and ward arose." They concluded that the Loyal Creeks had no basis to claim that the guardian and ward relationship that characterized the U.S. government's relationships with other groups of Native peoples applied to them.[27]

Commissioners O'Marr and Holt may have dismissed the Loyal Creeks' claim. But Chief Commissioner Edgar E. Witt was not convinced that the Loyal Creeks were not entitled to the funds they pursued. In his dissenting opinion, Witt agreed with the

[26] *Ibid.,* 13.
[27] *Ibid.,* 13.

Loyal Creeks in their contention that the Senate's final award was actually $1.2 million, "and that said award created a legal and liquidated claim in favor of the Indians for that amount." Furthermore, Witt claimed that neither the House revision of the award nor the Creeks' acceptance of the $600,000 payment "constitute[d] a legal and binding release of the United States from liability for the balance of the $1,200,000."[28] By taking the Loyal Creeks' side on these issues, Witt challenged the two most fundamental conclusions of Commissioners O'Marr and Holt in their decision to deny the Loyal Creeks their claim.

In his dissent, Witt also addressed the question of whether or not the Senate was acting as a legal arbitrator when it decided to pay the Loyal Creeks $1,200,000, and thus whether that amount or $600,000 was the final award. Witt cited Wisconsin Senator Joseph Quarles' announcement before the Senate in 1903 that in making an award for the Loyal Creeks the Senate was actually convened "as a court of arbitration," as well as Quarles' reminder to the Senate that the amount of property lost by the Loyal Creeks was actually valued at a much greater sum than that which they were actually paid. Quarles himself may have claimed that there was "no legal foundation" for the Loyal Creeks' claim. Nevertheless, in his address to his colleagues on the Senate floor, he suggested that Congress should justify paying the Loyal Creeks "upon the ground of gratitude or sympathy." It was Quarles' several reminders to the Senate that they were acting as

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[28] *Chief Commissioner Witt dissenting*, in *Before the Indian Claims Commission, 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, v. The United States of America, Defendant, Opinion of the Commission,* July 14, 1950, Docket #1, Closed Docketed Case Files, Box 1, RG 279, NARA, 1.

arbitrators that convinced Witt that the Senate knew it was arbitrating, and thus that the award for $1,200,000 was the final award for the Creeks. What's more, Witt was convinced that because the Loyal Creeks had not yet received that amount of money, they had a legal right to pursue it. Witt pointed to the language of the Act of 1901, and stated that the act clearly stipulated that the Senate's decision of the award was final and binding, while only the appropriation for payment of the award was to be considered by both the Senate and the House.[29] In other words, Witt's interpretation was that the Senate's initial decision to pay the Loyal Creeks $1.2 million was binding, while Congress's decision to appropriate $600,000 out of the budget to pay the Loyal Creeks was just the first part of a larger payment that the government would eventually pay the Loyal Creeks.

The Indian Claims Commission's decision to rule against the Loyal Creeks might have put a halt to their efforts to receive compensation for these refugees who lost their property during the Civil War. Whether it was the fact that they had been pursuing the full payment of the relief promised to Loyal Creek refugees for nearly one hundred years, or because Witt's dissent inspired them, the Loyal Creeks did not give up. Several months after the Indian Claims Commission ruled against them, the Loyal Creeks appealed the Commission's decision to the United States Court of Claims. They argued that the Indian Claims Commission fundamentally erred when they decided that the Senate's final award was $600,000 instead of $1,200,000; that the Loyal Creeks were not

[29] *Ibid.,* 4-6.

permitted to pursue the rest of the payment; and that they were not entitled to interest on the $600,000 they hadn't yet received.[30]

In February 1951, the United States Court of Claims revisited the Loyal Creeks' claim. First, they addressed the question of whether the Senate was acting as an arbitrator or in its legislative capacity when deciding how much money was owed to the Loyal Creeks in 1903. Because Senator Quarles explicitly stated on the floor of Congress that the Senate was acting as an arbitrator, the Court of Claims did not imagine there could have been any confusion about the Senate's role in the process of determining payments for Loyal Creek refugees. Although the Court of Claims acknowledged that it was not a worthwhile endeavor to delve into the legislative intent of Congressmen or to place too much confidence in the statements they made on the floor, they nevertheless confided that there was no question that Congress must have at least been aware of the Senate's legal responsibility to arbitrate the Loyal Creeks' claims — especially because the Act of 1901 that set Congress in motion to consider the Loyal Creek claims and assigned the Senate as a court of arbitration had been passed just two years before the Act of 1903 that appropriated $600,000 for the Loyal Creeks. According to the Court of Claims, the House's decision to change the sum was a "calculated" move to revise the Senate's wishes. What's more, the Court of Claims agreed with the Loyal Creeks' contention that they had a legal right to pursue the additional $600,000 due to "The soundness of the generally accepted doctrine that once an arbitrator has made his award, the rights of the

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[30] *The Loyal Creek Band or Group of Creek Indians and the Loyal Creek Claimants' Committee, on the Relation of Joseph Bruner, et al, Plaintiffs, v. The United States of America, Defendant, Plaintiffs' Amended Notice of Appeal,* Aug 2, 1950, Docket #1, Closed Docketed Case Files, Box 1, RG 279, NARA, 1.

parties to that award are vested and cannot be destroyed by a later attempted modification of his award."[31]

Citing several legal cases establishing that the federal government need not pay interest on a debt, Judge Howell and Judge Whitaker did dismiss the Loyal Creeks' efforts to receive interest on the money owed to them. Yet they noted that legal precedent was the only reason why the U.S. government was not obligated to add interest to their payments to the Loyal Creeks. According to Howell and Whitaker, "The Government's failure, for some forty-seven years, to pay a definite sum which it had agreed to pay," certainly would have justified the payment of interest. Howell and Whitaker added that the "inequality of status" between the U.S. government and American Indians only would have supported the Loyal Creeks' claim that they were owed interest. Howell and Whitaker thusly ruled that the decision against the Loyal Creeks in the Indian Claims Commission ought to be reversed.[32]

Chief Judge Jones agreed with Howell and Whitaker's decision, but he did clarify that he disagreed with their assessment that the Senate's final decision as arbitrator was in their initial choice to award the Loyal Creeks $1,200,000. According to Jones, the Senate could have issued a resolution if they wished to make a quick, final decision about the

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[31] *In the United States Court of Claims, Appeals Docket No. 7 (Decided February 6, 1951), The Loyal 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, Thomas King, and Seborn Smith v. The United States, Appeals from the Indian Claims Commission, Mr. Wilfred Hearn, for the appellants. Mr. George E. Norvell was on the brief. Mr. Ralph A. Barney, with whom was Mr. Assistant Attorney General A. Devitt Vanech, for the appellee*, Docket #1, Closed Docketed Case Files, Box 1, RG 279, NARA, 7-8.

[32] *Ibid.,* 9.

award without bringing it to the House for their consideration. Nevertheless, even if the Senate ultimately yielded to the House and their demands to reduce the award, Jones believed that it was clear that if the Senate had "exercised its unhindered judgment" it would have given the Loyal Creeks $1,200,000. Because the Senate clearly intended to give the Loyal Creeks an award equal to double what they actually received in 1903, Jones disagreed with the Indian Claims Commission's ruling that the United States had not violated the "equity and fair dealings" provisions that were central to the very mission of the Indian Claims Commission. The Senate was made arbitrator of the claim. For this reason, "The plaintiffs had a right to expect the Senate to exercise its own judgement." Jones concluded:

> By every rule of fair dealing that I have known from my youth up, and in equity, the plaintiff Indians are entitled to the $600,000 for which this suit is brought. Prior to 1946 they were prevented from receiving it by the terms of the law as it then existed. I think the primary purpose of the equity and fair dealing provisions of the act of 1946 was to take care of just such cases as this. It was to relieve from the harsh provisions of law that equity was born.

With Howell and Whitaker's conclusion that the Senate's final award as an arbitrator was $1,200,000, and with Jones' conclusion that the failure to pay the full $1,200,000 was a violation of equity and fair dealings, the Judges of the Court of Claims' decision was the same even if they differed in their reasoning. They overturned the decision of the Indian Claims Commission and ruled in favor of the Loyal Creeks on February 6, 1951.[33]

After the Court of Claims reversed the Indian Claims Commission's ruling, the attorneys for the U.S. Government attempted to appeal that ruling to the United States Supreme Court. They made the same arguments they had before the Indian Claims

[33] *Ibid.*, 10-11.

Commission and the Court of Claims, and emphasized their stance that "There was *no* sum *legally* due the Loyal Creeks" (emphasis in original). They reasserted, as well, the other side of that argument: that because the U.S. was never under any legal obligation to compensate Loyal Creek refugees for their lost property, any form of relief the U.S. government gave to them was akin to a gift or a gratuity.

In closing, the defense suggested that the Loyal Creek claim was not only not a legal claim, but that it was "not even a moral claim." According to the defense, if the United States honored the claims of the Loyal Creeks, they would be obligated to also pay "loyal white citizens for the loss or destruction of their property during the war." There was no theory, they claimed, upon which it would be fair for the United States to compensate Loyal Creek refugees while not doing the same for "loyal white citizens" — despite the fact that the United States had entered into a treaty that promised Loyal Creek refugees compensation for their losses during the Civil War. The defense acknowledged the "fair and honorable dealings" concept as the cornerstone of the Indian Claims Commission. They denied, however, that the standard of "fair and honorable dealings" was grounds to "set up two standards of conduct for the Government growing out of the same facts—one for the Indian and another for the white man." Indians should be treated fairly; but according to the defense, "certainly they are not entitled to better treatment."[34]

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[34] *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, v the United States of America, Defendant, Defendant's Objections to Findings of Fact Requested by the Plaintiffs, Request for Findings of Fact, and Brief, A. Devitt, Vanech, Assistant Attorney General, Ralph A. Barney*, *Attorney*, March 31, 1950, Docket #1, Closed Docketed Case Files, Box 1, RG 279, NARA, 30. The defense also countered

By suggesting that the U.S. federal government ought to treat Indians and white Americans in the same manner, the defense overlooked the unique relationship between Native peoples and the United States. In theory, all people should be treated equally. But the United States government had never treated Native Americans as the equals of white Americans. The history of treaty making between the U.S. and Indian nations bestowed Native people with unique rights compared to other ethnically and racially defined groups within the nation's borders. As domestic dependent nations, Native nations were sovereign entities that also had the right to extra protections — not because they were more deserving, but because treaties legally obligated the U.S. federal government to treat Native nations with fairness and equity. The reasons why such legal protection and safeguards were in place are made clear by the very statements of the U.S. government's defense in this case. The defense was so intent on arguing that the Loyal Creeks had no legal claim against the U.S. that they refused to even entertain the possibility that the United States had a moral obligation to pay the Loyal Creeks an amount of money that was promised to them in 1866 and that they only received in 1951.

The defense's denial that the Loyal Creeks had even a moral claim against the U.S. federal government denies the very heart of the case — that it had been nearly one hundred years since the Loyal Creeks lost their property because they allied with the Union; that they had made continued attempts to recover their losses; and that they were

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Loyal Creek claims for interest and coverage of attorney's fees. As for interest, they stated that there was no legal basis whatsoever for the U.S. paying interest on a debt unless it was so specified by Congress. Meanwhile, they described the claim for payment of attorney's fees as "the height of absurdity." According to the defense, the Loyal Creeks were in no way obligated to pursue their claim. They did so of their own volition, and thus were responsible for legal fees. *Ibid.,* 35-37.

at several moments coerced into making agreements with the U.S. federal government because they lacked sufficient access to effective legal recourse; and that each time the United States seemed to make a concession and move forward with compensating the Loyal Creeks, they did so on the condition that the Creek Nation agree to some limitation of their sovereignty. To claim that the Loyal Creeks had no moral claim to receive damages from the U.S. government was not only a challenge to the ability of the Loyal Creeks to direct legal and political challenges against the United States. It was also a reflection of U.S. officials' efforts to define the terms of interaction and parameters of governance between Native peoples and the U.S. federal government, and thus to affect the dispossession of Native Americans.

In this instance, however, those efforts would fail. The U.S. Supreme Court refused to hear the U.S. government's appeal. On October 19, 1951, eleven days after the Supreme Court denied the United States' *writ of certiorari* for an appeal and eighty-five years after the Treaty of 1866 first promised economic compensation to loyal Creek refugees, Chief Commissioner Witt, Commissioner Marr, and Commissioner Holt of the Indian Claims Commission accepted the Court of Claims' reversal of their decision, and issued their final determination and judgment in favor of the Loyal Creeks.[35]

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[35] *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, SW Brown, Jesse McDermott, Lasley Haynes, Ben Johnson, Robert Severs, Hosa Holley, Noley Buck, John H. Jones Elmer Hill, Thompson King, and Seborn Smith, Plaintiffs, v. The United States of America Defendant, Final Determination and Judgement, Docket No. 1*, Oct 19, 1951, Docket #1, Closed Docketed Case Files, Box 1, RG 279, NARA, 1.

On the other side of the world and in the same year that the Indian Claims Committee ruled in favor of the Loyal Creeks and their claim against the United States government — a claim that began as a form of relief for a group of people whom the U.S. identified as "refugees" nearly a century earlier — representatives of the United States and over twenty-five other nations drafted a document that fundamentally changed the face of refugee regulation on the world stage. The United Nations Convention on the Status of Refugees for the first time in history presented a formal definition of "refugee" as a status that nation-states and international organizations were legally required to oblige. According to the convention, a refugee was someone who:

> Owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it.

In addition to identifying "refugees" specifically as displaced and persecuted people who have been driven from the borders of their home nations — or who were stateless — the UN Convention on Refugees recognized that its definition of a new international standard for the definition of "refugees" was rooted in the principle laid out in the Universal Declaration of Human Rights that "human beings shall enjoy fundamental rights and freedoms without discrimination." According to the UN Convention of 1951, all people around the world deserved freedom from persecution. But only those whose persecution drove them from beyond their nation's borders were recognizable as "refugees."[36]

[36] United Nations, "Convention Relating to the Status of Refugees," July 25, 1951, http://www.unhcr.org/3b66c2aa10.pdf (accessed March 25, 2018). This definition as written in 1951 only applied to refugees who were displaced before January 1, 1951, and

In 1866, long before the United States reached an internationally agreed upon definition of "refugee," long before Native Americans were recognized as American citizens via the Indian Citizenship Act of 1924, and long before the Indian Claims Commission ruled in favor of the Loyal Creeks, American officials recognized members of the Creek Nation as "refugees" who had a claim to economic relief from the federal government. That recognition was not only imperfect. It was punitive. The Treaty of 1866 that recognized Loyal Creeks as "refugees" set aside money to compensate a group of people who were persecuted and displaced for their loyalty to the Confederacy. But as a condition for refugee relief, that same treaty bound the Creek Nation to cede half their land to the United States, and bound them, as well, to acquiesce to the U.S. government's broader agenda of dispossessing Native people in North America. It may have been persecution by Confederate sympathizers that caused the U.S. to recognize Loyal Creeks as refugees in the Treaty of 1866. That same treaty perpetuated the U.S. government's own persecution of Creeks when it mandated that they abandoned half their homeland to the United States. Even recognition and relief for Native American refugees was entangled with the settler colonial dispossession of Indigenous people. The patterns of coercion, removal, and dispossession that defined the American government's relationship with Native Americans likewise informed its offer of relief to Loyal Creek refugees.

It took nearly 100 years for the United States to follow through on its promise to pay Loyal Creek refugees for the property they lost during the Civil War. In 1951, when

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was thus designed primarily with European refugees of World War II in mind. It was amended in 1967 to apply to all people everywhere.

the Indian Claims Commission ruled in favor of the Loyal Creeks and forced the reluctant United States government to pay them the balance of their claims, American officials were involved in the creation of an international system of refugee relief that was guided by principles of human rights and universal equality. At home, however, Native people and other marginalized Americans — including, like the Loyal Creeks, those who at one time were acknowledged as "refugees" — continued to bear the brunt of structural inequality. While the United States government endorsed human rights abroad and advocated for new international standards for refugees around the world, its legal representatives actively worked to refuse the claims of a group of Native refugees whom it had forced to wait nearly a century for the relief that was promised to them.

In 1951, the United Nations and the individual nation-states who participated in its discussions about refugees paved the way for a new international system of refugee regulation that promised to provide relief and resettlement opportunities to displaced and persecuted peoples as their human right. Ever since independence, America's leading political thinkers, members of elected office, and legal officials described the United States as a beacon of democracy and equality that offered refuge to the world's oppressed people. And ever since independence, American officials designed forms of refugee regulation that granted unequal access and unequal forms of relief for different groups of displaced and persecuted people, and actively participated in the persecution of individuals who were exiled to the margins of American society. Rather than fulfill its promise of making the United States an "asylum for mankind," American officials at every turn used refugee policy to achieve the goals of a nation-state that was selective and exclusionary in defining its membership. By shifting the purview of refugee policy to

encompass only the needs of internationally displaced peoples, the histories of persecution that multiply marginalized communities faced within the United States were subsumed under the guise of the U.S. government's participation in humanitarian efforts abroad. The U.S. government had not only failed to fulfill its commitments to refuge in North America since independence. Time and again, it used refugee policy primarily to secure its own interests. Would American refuge be similarly compromised on the world stage?

Conclusion

"America is proud of our immigrant heritage and our long-standing moral leadership in providing support to migrant and refugee populations across the globe. No country has done more than the United States, and our generosity will continue. But our decisions on immigration policies must always be made by Americans and Americans alone. We will decide how best to control our borders. The global approach in the New York Declaration is simply not compatible with U.S. sovereignty."

- *Nikki Haley, U.S. Ambassador to the United Nations, 2017* [1]

On December 3, 2017, the day before the United Nations planned to convene an international meeting to mobilize its member states across the world toward the creation of more humane global migration policies, the Trump administration announced that the United States would have no part in such a plan. The UN's "global compact on migration" dated back to 2016, when each of the 193 nation-states that comprise the United Nations — including the United States, under the leadership of then-president Barack Obama — unanimously approved a non-binding resolution titled "the New York Declaration for Refugees and Migrants." The New York Declaration, according to UN High Commissioner for Refugees Filippo Grandi, "marks a political commitment of unprecedented force and resonance. It fills what has been a perennial gap in the international protection system — that of truly sharing responsibility for refugees." [2]

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[1] Nikki Haley, quoted in United States Mission to the United Nations press release, "United States Ends Participation in Global Compact on Migration," December 2, 2017, https://usun.state.gov/remarks/8197 (accessed January 29, 2018).

[2] Patrick Wintour, "Donald Trump pulls U.S. out of UN global compact on migration," *The Guardian*, December 3, 2017, https://www.theguardian.com/world/2017/dec/03/donald-trump-pulls-us-out-of-un-global-compact-on-migration (accessed January 29, 2018); United Nations High Commissioner for Refugees: The UN Refugee Agency, "New York Declaration for Refugees and Migrants," http://www.unhcr.org/en-us/new-york-declaration-for-refugees-and-migrants.html (accessed January 29, 2018).

Yet "truly sharing responsibility for refugees" was something for which the United States government under President Trump expressed little sympathy. Speaking on behalf of the administration, the country's top diplomatic officials explained why the United States was stepping away from the UN's push for more equitable and humane global refugee policies. U.S. Secretary of State Rex Tillerson framed the decision as a matter of sovereignty. Although the United States was committed to cooperating with the United Nations on different initiatives, Tillerson explained, "we simply cannot in good faith support a process that could undermine the sovereign right of the United States to enforce our immigration laws and secure our borders." "It is the primary responsibility of sovereign states," Tillerson continued, "to help ensure that migration is safe, orderly, and legal." Nikki Haley, the U.S. Ambassador to the United Nations, likewise cited U.S. sovereignty as the reason why the United States would not participate in any global strategy to assist refugees. Haley and Tillerson's statements — made in the wake of the president's racist remarks about Mexican Americans, an inflammatory plan to build a border wall separating Mexico and the United States, and two executive orders that banned individuals from Sudan, Somalia, Iran, Libya, Syria, Yemen, and Iraq from entering the country and barred all refugees from entering the U.S. for 120 days — painted a clear picture for the prospects of refugee and migrants from war-torn and unstable countries under the Trump administration. The sovereign right of the United States to define its membership through the exclusion of foreigners would take

precedence over the needs of refugees and other migrants seeking protection, resources, or opportunity abroad.[3]

Tempting as it may be to direct consternation about the current state of migration politics in the United States at the Trump administration's feet, his policies and the remarks of his cabinet members are only the most recent crystallization of America's long history of exclusionary refugee regulation.[4] Since its earliest days as an independent nation, American political thinkers portrayed the United States as a global haven for all 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 passed in 1798 encouraged Anglo Americans to resettle on tens of thousands of acres of land in the Northwest Territory, and thus advanced the removal of

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[3] Rex Tillerson, quoted in U.S. Department of State Press Statement, Dec 3 2017, http://www.state.gov/secretary/remarks/2017/12/276190.htm (accessed January 29, 2018); Iraq was included among the banned nations in Trump's first executive order passed during his first week in office, but was removed from the list of banned countries in the second executive order he signed in March. See Rachel Gotbaum, "Trump implements a new immigration and travel ban — but gives Iraq a pass," *Public Radio International*, March 6, 2017, https://www.pri.org/stories/2017-03-06/trump-implements-new-immigration-and-travel-ban-gives-iraq-pass (accessed January 29, 2018)

[4] Indeed, President Barack Obama may have expressed concern for the world's refugees, especially those from Syria — but he also deported more migrants than the combined total deported under every other president in the history of the United States combined. See Peter Beinart, "Why Obama is Standing by the Syrian Refugees," *The Atlantic* November 23, 2015, https://www.theatlantic.com/politics/archive/2015/11/obama-syrian-refugees/417222/ (accessed January 29, 2018); Serena Marshall, "Obama Has Deported More People Than Any Other President," *ABC News* August 29, 2016, https://abcnews.go.com/Politics/obamas-deportation-policy-numbers/story?id+41715661 (accessed January 29, 2018).

Indigenous peoples from their ancestral homelands and undermined 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 unequal position — somewhere between citizenship and alienage — and their membership in American society. During the expansion of federal immigration control from the end of the nineteenth through the twentieth century, American officials enforced the U.S. nation-state's sovereign right to define its membership through the exclusion of refugees from American borders and the ongoing marginalization of racialized Americans whom American officials subjected to oppression yet refused to acknowledge as "refugees."

Taking a long view on the history of American refugee regulation allows scholars to see in new ways the interests that have shaped decisions about which displaced and persecuted peoples might find refuge in the United States. After the Displaced Persons Act of 1948 put the U.S. on the path towards establishing its first permanent, federal refugee resettlement system, and after the 1951 United Nations' Convention on the Status of Refugees reflected international consensus around the question of who specifically was a "refugee" for the first time, American officials drew on humanitarian rhetoric while instituting forms of refugee policy that advanced the U.S. government's foreign policy agenda during the Cold War. Since the fall of the Berlin Wall brought about the putative end of the Cold War in 1989, a range of other considerations, including increased numbers of asylum seekers seeking recognition as "refugees," the waxing and waning of

the country's economy, and after 2001, increased concerns about Islamic terrorism, have driven U.S. policies concerning the admission of refugees.[5]

There is no doubt that a range of motivations have inspired American officials to pursue different refugee policies at different moments in American history. From the dawn of American independence through the end of World War II, those motivations reflected the interests of the developing U.S. nation-state to expand its territory, establish its capacity to govern individuals whom it welcomed and excluded from its citizenry, and enforce the nation's borders. Refugee regulation in the long nineteenth century served the needs of a state that had yet to come of age. The laws, policies, treaties, and on-the-ground decisions that American officials made when deciding whether and how to accommodate refugees cohered into the formation of a broad system of American refugee regulation that first emerged in collusion with state-sanctioned structures of oppression — settler colonialism and slavery — that were directed against populations who were inside and along the nation's borders, but were not believed to "belong" in the nation. It evolved alongside exclusionary immigration law to focus primarily on the exclusion of international refugees from beyond the continental United States. Wielded first against the populations of North America and then extended to populations across the globe, refugee regulation emerged as part of U.S. settler colonialism, helped give rise to an American empire, and continues today as a force that maintains global inequality by shaping the ability of refugees around the world to access resources, resettle in countries that are not inclined toward their persecution, and live their lives.

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[5] María Cristina García, *The Refugee Challenge in Post-Cold War America* (New York: Oxford University Press, 2017).

The particular interests that underlay American refugee policy since World War II, through the Cold War, and into the so-called "War on Terror" reflect and extend from an era in the trajectory of the American state in which the state's power is not seen as being in a process of becoming, but is assumed. Nevertheless, the recent statements of the Trump administration in regard to refugee and migration policies underscore the fact that from the country's earliest days as an independent nation and into the present, the priority of U.S. refugee regulation has been to establish, maintain, and project the sovereign right of the U.S. state to define its membership and protect its national interests. UN Ambassador Nikki Haley's claim that "no country has done more than the United States" to accept refugees, and her invocation of the U.S. government's "long-standing moral leadership" in the arena of international refugee resettlement, may be standard rhetoric in the longstanding mythos that humanitarian motivations have guided United States' history as a place of refuge for the world's oppressed peoples. But the long history of American refugee regulation's production, selection, and exclusion of refugees suggests otherwise: that the United States is not now, nor has it ever been, a true "asylum for mankind."

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