

Beyond Removal:  
Indians, States, and Sovereignities in the American  
South, 1812-1860

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## Short Abstract

In 1830, the US Congress passed the Indian Removal Act; within a decade, 65,000 of the South's original inhabitants had left the region. Two centuries later, historians still see removal as a pivot that transformed indigenous South into Cotton Kingdom. This dissertation tells a different story. Contrary to officials' hopes, thousands of indigenous Southerners remained. This dissertation provides the first account of non-removal as a massive cross-regional phenomenon which affected not only indigenous Southerners, but also American officials, local residents, and continental dynamics of sovereignty, state development, and empire.

Historians have tended to see an inescapable choice between assimilation and removal. This dissertation demonstrates that thousands of indigenous Southerners successfully carved out a third option, creating their own alternate routes to remain. By fleeing into impenetrable terrain or passing as white, many people avoided agents' attempts to see and control them. Others cooperated with American officials, subverting state policies to remain hidden in plain sight.

Because they sought to evade officials, many of these people simply do not appear in traditional archives, especially federal documents. This dissertation reinterprets these silences, reading them not as moments where nothing happened, but where indigenous Southerners took actions which statesmen could not see. In doing so, it reveals the world as officials saw it, but also the many blind spots that also marred their vision. This optic cautions against over-easy interpretations of the reach of the early nineteenth-century American state, demonstrating both its enormous capacities and its glaring weaknesses.

Ultimately, this dissertation challenges understandings of removal a transition to American control over the South, and demonstrates that the line between nineteenth-century American expansion and sovereignty was not always an automatic one. Behind slaveholders' illusion of a binary racial universe lay an enduring indigenous world, often illegible to outsiders.

# Long Abstract

On 28th May 1830, the United States Congress passed the Indian Removal Act. Statesmen envisaged removal as a radical spatial solution that would cement American power in the South and open one hundred million acres of land for cotton cultivation. In less than a decade, around 65,000 of the South's original inhabitants moved west of the Mississippi River. Nearly two centuries later, historians continue to see removal as a pivot that transformed the indigenous South into Cotton Kingdom and Confederacy. This dissertation tells a different story. Contrary to familiar trajectories, removal in the South was not as complete as officials had hoped. In fact, as many as 20 percent of the region's pre-removal indigenous population remained within the region after the mass removals of the 1830s. By telling their stories, this dissertation reorients the ways we think about removal, sovereignty, South, and state power in nineteenth-century America.

Historians are faintly familiar with the idea that Southern removal was incomplete. Scholars have produced tribal histories of the best known non-removed groups like the Eastern Cherokees, or focused on the racial implications of segregation for indigenous Southerners. But these alterations remain cosmetic: no single study has linked groups' experiences or explored the implications of non-removal for wider continental histories. Entire histories remain neglected: this dissertation seeks to recover them. By ranging across the region and its polities, it provides the first account of non-removal as a massive cross-regional phenomenon which affected not only indigenous Southerners but also American officials, local residents, and continental dynamics of sovereignty, state development, and empire.

In recent years, historians have interpreted removal as a key burst of growing American state power. They have tended to see only two undesirable options for indigenous groups facing this military and administrative might: assimilate or remove. This dissertation demonstrates that

thousands of indigenous Southerners successfully carved out a third option, creating their own alternate routes to remain. Some made themselves invisible to agents. By fleeing into impenetrable terrain, employing geographic knowledge, or passing as white, many people subverted or simply avoided agents' attempts to see and control them. Others sought to cooperate with American officials, seeking statuses of citizenship or land grants as a route to remain unmolested within the region. By making themselves visible, these people balanced outward appearances of assimilation or citizenship with their own communities or lifeways. In effect, they subverted state policies to remain hidden in plain sight.

Because they sought to evade state officials, many of these people simply do not appear in traditional source records, especially in federal documents. However, these archival silences speak of something: we need to learn how to listen. By drawing from glimpses across a range of other sources – including travellers' accounts, oral traditions, ethnographies, and archaeology – this dissertation reinterprets these silences, reading them not as moments where nothing happened, but where indigenous Southerners took actions which statesmen were unable to see. In doing so, it reveals important truths about the nature of the early American state: we see the world as officials saw and wanted to see it, but more importantly the many blind spots that also marred their vision. In short, this dissertation interrogates the colonial archive, weaving a long untold story as much from what it hides as what it reveals.

This optic cautions against over-easy interpretations of the reach of the early nineteenth-century American state: it demonstrates both its enormous capacities and its glaring weaknesses. Many indigenous Southerners managed to avoid removal by successfully turning state policies against themselves, or by simply avoiding officials' reach altogether. In doing so, they created alternate geographies of power, hidden in the cracks and shadows of the Cotton Kingdom.

Their stories challenge our understandings of removal as the dawn of American control over the South, and demonstrate that the line between nineteenth-century American expansion and

sovereignty was not always an automatic one. Behind slaveholders' illusion of a binary racial world lay numerous indigenous Southerners who would remain in the region for centuries, even if statesmen struggled to see and understand them.

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## A Note on Terms

This dissertation focuses on members of the South's largest pre-removal indigenous polities: the Choctaws, Cherokees, Chickasaws, Creeks, and Seminoles. Nineteenth-century American policymakers referred to these people as the 'Five Civilized Tribes', owing to their strategic adaptations following the 'civilization' policies of the turn of the century. Most modern-day historians and tribal members find this language offensive, preferring instead to use the term 'The Five Tribes'. I have followed this convention.

Throughout the dissertation, I generally refer to each indigenous polity by their most familiar English-language names. In practice, this means: Cherokees, Choctaws, Chickasaws, Creeks, and Seminoles. This choice is largely for the sake of clarity, as these are the most familiar and frequently used English-language names for these groups. As I am dealing with so many different groups, individuals, and sub-groups in this dissertation, I sought to make it as easy as possible for readers to follow the names of the people involved. These were also the names that federal officials used to describe, understand, and communicate with these groups as they negotiated removal and, by and large, the names that these groups themselves used to negotiate and protest removal treaties. However, it is important to note that this is an imperfect compromise, especially since all of these names were colonial, external impositions on these polities, and rarely do these names reflect the words that these people had historically used to describe themselves.

This dissertation seeks to centre indigenous perspectives and stories as much as those of the United States. As a result, I have used indigenous-language place names and personal names

where possible. Where I have done this, I have usually italicized indigenous language words, and coupled these with their most familiar English translations.

In the same vein, all non-English words are usually italicized. Where possible, I have highlighted any unconventional or contested orthography and nomenclature in the footnotes.

In referring to mixed-race members of the Five Tribes, I have preferred the term *mestizo*. This Spanish-language term could be used interchangeably with *métis*, its French counterpart.

However, for the sake of consistency, I have stuck to one term. I have chosen this term as it would have been familiar to, and often used by, contemporary indigenous and non-indigenous Southerners, yet it does not carry the modern-day pejorative and often highly offensive connotations of their British and American contemporary counterparts such as ‘half-blood’ or ‘half-breed’, which I have only used in direct quotations where absolutely necessary. I have taken the same attitude to other contested and historically problematic terms, such as ‘civilization’ and ‘civilized’ (I explain my usage of these terms in greater detail in the relevant footnotes to Chapter One).

I use the term ‘removal’ to refer to the federal policy of that name and officials’ efforts to implement it, alongside other terms such as ‘emigration’ and ‘deportation’. I use this term as it is the most familiar name to describe the process. However, readers should be aware that policymakers coined the term ‘removal’ precisely to sanitize a process of mass, lethal, and often forced deportation and to attempt to dismantle indigenous sovereignties. Despite the term’s neat connotations, there was nothing polite or straightforward about the process; in the words of scholar Scott Lyons, ‘removal is to migration what rape is to sex’.<sup>i</sup>

When collectively referring to indigenous people, I have preferred to use the term ‘indigenous Southerners’, sometimes accompanied by other terms such as ‘Indians’ for the sake of variety.

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<sup>i</sup> Scott Richard Lyons, *X-Marks: Native Signatures of Assent* (Minneapolis: University of Minnesota Press, 2010), 8.

Given the long history of language in dispossessing and dehumanizing indigenous people, I have sought to select terms preferred and widely used by indigenous people and scholars. In particular, I have coined the term ‘indigenous Southerners’ to deliberately reflect these people’s distinct identities while also reclaiming their identity as ‘Southerners’ and as much a part of Southern history as the slaveholders, Confederates, and enslaved people for whom we might usually use the term. Nonetheless, I recognize that many of these names, and the choices behind them, still maintain longer colonial and, sometimes, pejorative connotations; these are not intended in my usage.

## List of Abbreviations

*ANC*: Benjamin Homans (ed.), *Army and Navy Chronicle and Scientific Repository* (Washington DC: T. Barnard), 13 volumes: 1835-1842

*ARCLA*: United States Office of Indian Affairs, *Annual Report of the Commissioner of Indian Affairs* (Washington: Government Printing Office, vols 1826-1859)

*ASP*: *American State Papers* (Washington: Gales and Seaton, 1832-1861)

Dudley Papers: Governor Edward B. Dudley Papers, North Carolina State Archives, North Carolina Department of Archives and History, Raleigh, NC

Duke: David M. Rubenstein Rare Book and Manuscript Library, Duke University, Durham, NC

EBCI: Eastern Band of Cherokee Indians

*LALT*: Charles J. Kappler (ed.), *Indian Affairs: Laws and Treaties* (Washington: Government Printing Office, 1904). Volume II, *Treaties, 1778-1883*

NARA: National Archives and Records Administration, Washington DC

NARA M234: NARA RG75, NARA Microfilm publication M234: 'Letters Received by the Office of Indian Affairs, 1824-1880'<sup>ii</sup>

NARA M208: National Archives RG75, NARA microfilm publication M208: 'Records of the Cherokee Indian Agency in Tennessee, 1801-1835'

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<sup>ii</sup> All individual rolls are referenced with their full titles in the first instance, then cited in the short format of 'NARA M234-RXXX'. For full list of collections consulted, see primary source bibliography.

NCDAH: North Carolina State Archives, North Carolina Department of Archives and History,  
Raleigh, NC

ND: University of Notre Dame Archives, Notre Dame, IN

NL-C: Newberry Library, Chicago

OIA: Office of Indian Affairs (otherwise known as the Indian Office and, less often, Indian  
Bureau)

P-CB: John H. Peterson Jr., (ed.), *A Choctaw Source Book* (New York & London: Garland  
Publishing Inc., 1985)

RG75: NARA Record Group 75, Records of the Bureau of Indian Affairs

RQT Papers, ND: Adrien Emmanuel Rouquette Papers, University of Notre Dame Archives,  
Notre Dame, IN<sup>iii</sup>

TU: Tulane University, New Orleans, LA

TU-LaRC: Louisiana Research Collection, Howard-Tilton Memorial Library Special Collections,  
Tulane University, New Orleans, LA

WHT Papers: William Holland Thomas papers, David M. Rubenstein Rare Book and  
Manuscript Library, Duke University, Durham, NC

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<sup>iii</sup> Note: these are different to the Adrien Emmanuel Rouquette Papers at Tulane, which I have not abbreviated to avoid confusion.

# Introduction:

## Rethinking Removal

On 28 May 1830, the United States Congress passed the Indian Removal Act. Statesmen envisaged removal as a radical spatial solution that would cement American power across the continent; in the South, they hoped that it would break the dominance of the region's large, sovereign indigenous polities and open one hundred million acres of land for cotton cultivation.<sup>1</sup> Americans mobilised their bureaucratic and military power to enforce the act, dispatching hundreds of agents and soldiers to ensure indigenous assent. In less than a decade, around 65,000 of the South's original inhabitants moved to begin new lives west of the Mississippi River in lands carved from the Louisiana Purchase and designated as 'Indian Territory'.<sup>2</sup> Andrew Jackson proclaimed a new era in American history: by 'placing a dense and civilized population in large tracts of country...[previously] occupied by a few savage hunters', removal would transform the indigenous South into the Cotton Kingdom.<sup>3</sup>

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<sup>1</sup> For general histories of Indian Removal and the Indian Removal Act, see, eg: Grant Foreman, *Indian Removal: The Emigration of the Five Civilised Tribes* (Norman: University of Oklahoma Press, 1932); Theda Perdue and Michael D. Green (eds.), *The Cherokee Nation and the Trail of Tears* (New York: Penguin, 2007); Tim Alan Garrison, *The Legal Ideology of Removal: The Southern Judiciary and the Sovereignty of Native Americans*, (Athens: University of Georgia Press, 2002). These citations are not exhaustive: see bibliography for a fuller list. For removal as a radical spatial solution, tied to other racial relocation schemes, see Nicholas Guyatt, '“The Outskirts of our happiness”: Race and the lure of colonisation in the early Republic', *Journal of American History*, 95 (2009), 986-1010; Nicholas Guyatt, *Bind Us Apart: How Enlightened Americans Invented Racial Segregation* (New York: Basic Books, 2016); Samantha Seeley, 'Freedom, Race, and Forced Migration in the Early American Republic' (PhD Dissertation, New York University, 2014). Recent Southern histories see the opening of vast land tracts for cotton cultivation as a key motivator behind removal: Walter Johnson, *River of Dark Dreams: Slavery and Empire in the Cotton Kingdom* (Cambridge: Belknap, Harvard, 2013), 30; Edward E. Baptist, *The Half has never been told: Slavery and the Making of American Capitalism* (New York: Basic Books, 2014), 227. The figure of 100 million acres comes from Baptist; *ibid*, 227.

<sup>2</sup> Theda Perdue & Michael Green estimate that the federal government removed around 60-70,000 Southern Indians between 1830 and 1840. A large proportion of those (forcibly) removed died en route. Theda Perdue and Michael D. Green (eds.), *The Columbia Guide to American Indians of the Southeast* (New York: Columbia University Press, 2001), 97.

<sup>3</sup> President Jackson's message to Congress, 'On Indian Removal', 6 December 1830. Records of the United States Senate, 1789-1990, Record Group [RG] 46, NARA. Retrieved online at: <http://www.ourdocuments.gov/doc.php?doc=25> [accessed: 14/4/2015, 10:37]. Two-hundred years later, Southern historians now regard removal as a tragedy, but overwhelmingly still see this pivot. See below.

Yet travelling through the region in the decades following removal, visitors, soldiers, and neighbours caught glimpses of a very different South; a South which, according to the stories statesmen told about removal, should not have existed.

In spring 1848, American explorer and artist Charles Lanman set off on a journey through the Appalachian Mountains. Navigating his way through the rugged terrain with a local guide, Lanman encountered a settlement which was ‘mountainous from one extremity to the other’. Stepping out from the dense forests, Lanman could not hide his fascination to have stumbled upon a vast Cherokee society within the South long beyond removal.<sup>4</sup> Estimating a presence of a stunning ‘eight hundred Cherokee Indians’, Lanman spent several weeks chronicling their daily lives, including Cherokee traditions like ‘the manly game of *ball playing*...still practised after the ancient manner’, and dancing spectacles of ‘perhaps two hundred [people], all fantastically dressed’.<sup>5</sup> Although tending towards romanticised images of caricature Indians, Lanman also marvelled at the advances he perceived these Cherokees to have made towards ‘civilization’, documenting their participation in Christian services, ‘the science of agriculture and the mechanic arts’, law and literacy, as well as ‘dress[ing] after the white man’.<sup>6</sup> In fact, Lanman noted, some had even been ‘citizenised’ by Americans governments, who had also ‘acknowledged...[their] title to these lands’ and their right to stay where they were.<sup>7</sup>

Elsewhere, other visitors spied similar worlds at the edges of their sight. Travelling through Alabama in summer 1851, Swedish novelist and reformer Frederika Bremer experienced a booming region where everything was ‘sunny and peaceful’.<sup>8</sup> Weeks earlier, Bremer had picnicked in the shadow of an Indian mound in Georgia and lamented the demise of the region’s

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<sup>4</sup> Charles Lanman, *Letters from the Alleghany Mountains* (New York: Geo. P. Putnam, 1849). Letter XII, ‘The Cherokee of Carolina’, 93-95.

<sup>5</sup> *Ibid*, letter XIII, ‘Cherokee Customs’, 100, 104.

<sup>6</sup> *Ibid*, letter XIII, ‘Cherokee Customs’, 100 for ‘civilisation’; Letter XII, ‘The Cherokee of Carolina’, 94-99.

<sup>7</sup> *Ibid*, letter XIV, ‘Cherokee Characters’, 108-9.

<sup>8</sup> Frederika Bremer, *The Homes of the New World: Impressions of America [Hemmen i den Nya världen]*, (New York: 1853). Letter xxxi, 7-12 July 1851 (Mobile), 217-220.

original inhabitants.<sup>9</sup> Yet, walking just beyond the edges of Mobile, she was delighted to find ‘a camp of Choctaw Indians’, ‘a very lively scene’ of ‘those red people eating...splendid fruit on the edge of the splendid sunbright forest’. This burgeoning community enchanted Bremer as she observed its members, from ‘children, who sit in groups around the fire, or leap about the green-sward playing at ball’ to ‘an unusually handsome young man...[who] wears his hair in long locks falling on his shoulders’.<sup>10</sup>

If newcomers made romantic observations, others viewed indigenous endurance with a mixture of annoyance and hostility. In March 1850, a then relatively unknown Mississippi Senator named Jefferson Davis wrote directly to Orlando Brown, the newly-appointed Commissioner of Indian Affairs.<sup>11</sup> Enclosing a letter from a worried constituent, Davis alarmedly informed Brown that although ‘some twenty years have passed since the treaty was made with [the Choctaws] for Removal’, numerous ‘remaining Choctaws’ continued to reside in the state. Building on this local frustration, Davis urged that ‘it is a subject of great importance to us [Mississippians] that the Choctaws should be removed and prevented from returning’.<sup>12</sup>

Whether visitors travelling through the region or residents pondering their homelands, people like Lanman and Davis saw these indigenous Southerners as they had become conditioned to see them: as curios, relics of a long-superseded South, or an ongoing impediment to King Cotton’s progress. But, even if these outsiders misunderstood these communities, they *had* glimpsed an important truth: contrary to statesmen’s rhetoric, removal was not the end of the indigenous South.

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<sup>9</sup> Ibid, letter xv, 8 May (Macon, Georgia), 337-338.

<sup>10</sup> Ibid, letter xxxi, 218-19.

<sup>11</sup> Jefferson Davis to Orlando Brown, Commissioner of Indian Affairs, Senate Chamber, 27 March 1850, NARA M234 Roll 187 [hereafter cited as NARA M234-R187] ‘Choctaw Emigration, 1850-1859’. Enclosed by Davis in letter to Brown: D.M. Haly (?) to Jefferson Davis, Madison County MS, 8 March 1850. NARA M234-R187.

<sup>12</sup> Ibid.

Though piecemeal, these snapshots were not anomalies. Similar indigenous spaces could be found across the region, from Virginia to the Carolinas, from Mississippi to Alabama and Louisiana, and from the silty, riverine and coastal landscapes of the Chesapeake and the Gulf to the rugged mountains, woods, and swamps of the Appalachians and the Piedmonts.

Viewed from the plantations, roads, and towns of the Cotton Kingdom, contemporary observers could only see fragments of this world. Individually, most non-removed communities were small, ranging from a few thousand or several hundred people down to hundreds or tens. Yet cumulatively, these people mattered more than their individual numbers might suggest.

We can visualize this cross-regional significance by taking a different optic: if we imagine the South as the night sky and each non-removed community as a single star. Viewed on its own, each community would have seemed just a tiny glow. Many may even have been too small even to see at all with the naked eye. Like Lanman and Bremer, we might dismiss this small glow as simply too small to be significant and turn our gaze elsewhere in search of bigger, brighter stories.

However, if we shift our perspective, things look very different. If we expand the field of our telescope to encompass not just one group but the whole region, we would see not one small flickering star, but instead a night sky lit up by thousands of these small beams. Although each non-removed community was small, there were hundreds, even thousands, of them. Many are so obscure that it is almost impossible to trace their numbers, but perhaps up to twenty percent of the region's pre-removal population stayed behind.<sup>13</sup> If these communities were easy to dismiss

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<sup>13</sup> The figure of 20% comes from Geary Hobson et al (eds.), *The People Who Stayed: Southeastern Indians writing after Removal* (Norman: 2010), 6. It is almost impossible to accurately quantify non-removal. At minimum, four key splinter groups – which were large enough for federal officials to notice and record – contained around 10,000-12,000 members of the Five Tribes. This figure is based on federal observations of these key groups: 2133+ Eastern Cherokees: John R. Finger, *The Eastern Band of Cherokees, 1819-1900* (Knoxville: University of Tennessee Press, 1984), 50-53. 7,000+ Choctaws in Mississippi in 1844: Gaines to T. Hartley Crawford, 22 September 1844, NARA M234, roll 185 [hereafter NARA M234-R185], 'Choctaw Emigration 1826-1845'; 500-1000+ Seminoles in Florida in the late 1840s: Foreman, *Indian Removal*, 384-386; c.400 Creeks in Alabama: J. Anthony Paredes, 'Back From Disappearance: The Alabama Creek Indian Community', in Walter L. Williams (ed.), *Southeastern Indians since the Removal Era*, (Athens: University of Georgia Press, 1979), 126. However, these figures certainly underestimate. They

individually, the collective impact of their endurance is striking. If we look again at the region, this time discarding the highly-focused lens of our telescope for a much wider-ranging cross-regional vision of the darkness, we would see not just individual stars but whole constellations. Even the smallest of these groups would have cast enough flickering light to link to another, joining in a dotted chain of non-removal, reaching from the Appalachians down to the Gulf. Even if passers-by struggled to see them on the ground, groups of Choctaws, Cherokees, Creeks, Chickasaws, and Seminoles were actually individual components of a much wider alternative geography of indigenous survival, just feet away from the Cotton Kingdom's throbbing heart. How did this happen? How did these groups manage to avoid a policy which promised to solve the Southern "Indian problem" once and for all by relocating the Five Tribes to Indian Territory? And what consequences did their presence have for American policymakers, both in the 1830s and the decades beyond? These are the puzzles that this dissertation seeks to unravel.

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Historians are faintly familiar with the idea that removal was incomplete. Textbooks and national surveys note that the Seminole Wars raged into the 1850s or, less often, that some Cherokees stayed put as citizens in North Carolina.<sup>14</sup> Works of Southern literature, from short stories by

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only include these major groups, overlooking many smaller non-removed groups that officials did not see (including the Bayou LaCombe Choctaws). More importantly, they cannot include people who deliberately made themselves invisible to federal officials by evading or racially passing, nor do they account for the fact that federal officials struggled (or refused) to count many indigenous Southerners.

More importantly, as the paragraph above suggests, this dissertation seeks to make the case that non-removed groups matter less for their numbers and more for their wider significance, enduring where unexpected, challenging state power and wider conceptions of the c19th South, and, more often than not, successfully eluding state sight altogether.

<sup>14</sup> For quick mentions of groups like the Seminoles in wider nineteenth-century survey texts, see, eg: Steven Hahn, *A Nation Without Borders: The United States and its world in an age of Civil Wars, 1830-1910* (Viking: New York, 2016), 26-37. Hahn's book is typical in that the Seminoles promptly vanish out of the story after their resistance (indeed, Hahn sees removal as a foundational part of American expansion, as noted below). Similarly, historian David Silverman focuses just on the Seminoles to discuss violent resistance to removal in the context of his sweeping history of indigenous gun-use: David J. Silverman, *Thundersticks: Firearms and the Violent Transformation of Native America* (Cambridge: Belknap, Harvard University Press, 2016). For textbooks, see, eg: John M. Murrin, Pekka Hamalainen et al, *Liberty, Equality, Power: A History of the American People*, vol 1, 7<sup>th</sup> edn (Boston: Cengage, 2016), 308-310; Ethan Bennett et al, 'Manifest Destiny', Gregg Lightfoot, ed., in *The American Yawp*, Joseph Locke and Ben Wright, eds., last modified August 1, 2016, <http://www.AmericanYawp.com> [accessed: 22/11/2016, 14:16]. Both quickly mention the Seminoles' resistance (and limited survival), but offer no suggestion of any wider non-removal, especially on a permanent scale.

William Gilmore Simms and William Faulkner to novels by Toni Morrison, hint at the complicated tri-racial legacies of the region's past.<sup>15</sup> More strikingly, every year hundreds of tourists visit Indian reservations, museums, and casinos in places like Cherokee, North Carolina, or Atmore, Alabama, whose state- and federally-recognized inhabitants make their presence apparent, at least to those who travel to see them.<sup>16</sup>

To specialist scholars, the reality of non-removal is more obvious. In the wake of the Civil Rights and Red Power movements of the 1960s and 1970s, many of the South's indigenous groups fought to become visible within the region, alerting local government and communities to their ongoing presence.<sup>17</sup> In response, specialists in Southeastern indigenous history produced tribal histories of the best known non-removed groups, especially those with visible modern-day descendants such as the Eastern Cherokees, the Seminoles, and the Mississippi Band of Choctaws.<sup>18</sup> In the past decade, a new cadre of historians – including Theda Perdue, Katherine Osburn, Malinda Maynor Lowery, Denise Bates, Mikaela Adams, and Melanie Benson Taylor –

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<sup>15</sup> For William Gilmore Simms, see: Katherine M.B. Osburn, *Choctaw Resurgence in Mississippi: Race, Class, and Nation Building in the Jim Crow South, 1830-1877* (Lincoln: University of Nebraska Press, 2014), 15; Simms' 1845 short story 'Oakatibbee, or the Choctaw Samson' focused on the supposed degeneracy of non-removed Choctaws in Mississippi. Faulkner wrote several stories featuring indigenous characters, including 'Red Leaves', 'Lo!', and 'A Courtship', most of which feature Choctaw or Chickasaw characters and episodes of the indigenous past in Mississippi, sometimes featuring enduring indigenous characters as narrators or carriers of these tales. See, eg: Edmond Loris Volpe, *A Reader's Guide to William Faulkner: The Short Stories* (Syracuse: Syracuse University Press, 2004), 267-271. Toni Morrison, *Beloved* (New York: Knopf Doubleday, 1988, 2007), 29 (where the character Sixo recalls visiting buildings still haunted by the 'Redmen's presence').

<sup>16</sup> Many modern-day Southern indigenous polities operate tourist attractions, drawing visitors and vital income. Visitors to Western North Carolina and the lands of the Eastern Band of Cherokee Indians (EBCI), for instance, can visit the Museum of the Cherokee Indian, the Oconaluftee Indian Village (a recreation of an eighteenth-century style Cherokee settlement), and Harrah's Cherokee Casino Resort, one of the area's largest employers. See: Visit Cherokee, 'Attractions', <http://visitcherokeenc.com/play/attractions/> [accessed: 2/2/2017, 11:09].

<sup>17</sup> Mississippi Band of Choctaw Indians, *An Era of Change*, (Philadelphia, Miss: Mississippi Band of Choctaw Indians, 1972); Creek Nation, *Creek Nation East of the Mississippi: Yesterday, Today, and Tomorrow* (Atmore: Creek Nation East of the Mississippi, Inc., 1975). Prior to this, most interest in Southeastern Indians (pre- and post-removal) came from Smithsonian anthropologists: James Mooney, *Myths of the Cherokee: Extract from the nineteenth annual report of the Bureau of American Ethnology*, (Washington: Government Printing Office, 1902); John Swanton, 'The Indians of the Southeastern United States', *Bureau of American Ethnology Bulletin* 137 (Washington: Government Printing Office, 1946).

<sup>18</sup> See, for example: Finger, *Eastern Band*; John R. Finger, *Cherokee Americans: The Eastern Band of Cherokees in the Twentieth Century*, (Lincoln: University of Nebraska Press, 1991); Clara Sue Kidwell, *Choctaws and Missionaries in Mississippi, 1818-1918* (Norman: University of Oklahoma Press, 1995); Helen C. Rountree, *Pocahontas' People: The Powhatan Indians of Virginia through four centuries* (Norman: University of Oklahoma Press, 1990); James Merrell, *The Indians' New World: Catawbas and Their Neighbours From European Contact through the Era of Removal* (Chapel Hill: University of North Carolina Press, 1989); Williams, *Southeastern Indians*. See bibliography for a more comprehensive list of relevant tribal histories.

have also begun to probe the longer implications of removal by exploring the experiences of indigenous Southerners in the late nineteenth- and twentieth-century segregated South.<sup>19</sup> These works have begun to transform understandings of the region, challenging ideas of an exclusively black and white South in this period. As Daniel H. Usner has recently noted, thanks to these efforts, ‘the history of Jim Crow begins to appear...more and more “jagged”’.<sup>20</sup>

By telling tribal stories, these scholars have offered important insights into individual groups’ experiences of removal and the lives of indigenous communities across the region in the centuries beyond it. Yet ultimately this rich but piecemeal scholarship has scarcely dented the master-narrative of removal and its role in US history. Tribal histories have done important work, but their group-specific lens means that most stories about non-removal remain limited and tightly-focused, treating individual experiences of removal as just one episode in a longer, tribally-centered story. There has been little attempt to consider non-removal as a process in and of itself, or zoom in to the crucial decades of the mid-nineteenth century to tell a cross-regional story of the ways that indigenous Southerners across the region avoided removal.<sup>21</sup> Terminology

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<sup>19</sup> Most of these works remain tribally-centred, see: J.A. Paredes (ed.), *Indians of the Southeastern United States in the Late Twentieth Century* (Tuscaloosa: University of Alabama Press, 1992); Malinda Maynor Lowery, *Lumbee Indians in the Jim Crow South: Race, Identity and the Making of a Nation* (Chapel Hill: University of North Carolina Press, 2010); Osburn, *Choctaw Resurgence*; Melanie Benson Taylor, *Reconstructing the Native South: American Indian Literature and the Lost Cause* (Athens: University of Georgia Press, 2011); Theda Perdue, “Southern Indians and Jim Crow,” in Cole and Ring (eds.), *The Folly of Jim Crow: Rethinking the Segregated South* (Arlington, TX: The University of Texas at Arlington Press, 2012); Perdue, ‘The Legacy of Indian Removal’, *The Journal of Southern History*, 78:1 (February 2012), 3-36; Perdue, *Race and the Atlanta Cotton States Exposition of 1895* (Athens: University of Georgia Press, 2010); Christopher Arris Oakley, *Keeping the Circle: American Indian Identity in Eastern North Carolina, 1885-2004* (Lincoln: University of Nebraska Press, 2005); Theda Perdue and Christopher Arris Oakley, ‘Native Carolinians: The Indians of North Carolina’, (Raleigh: North Carolina Department of Cultural Resources, Office of Archives and History, 2010); Denise E. Bates, *The Other Movement: Indian Rights and Civil Rights in the Deep South* (Tuscaloosa: The University of Alabama Press, 2012); Daniel H. Usner Jr., *Weaving Alliances with Other Women: Chitimacha Indian Work in the New South* (Athens: University of Georgia Press, 2015); Daniel H. Usner Jr., “‘They don’t like Indian around here’: Chitimacha Struggles and Strategies for Survival in the New South’. *Native South* 9 (2016), 89-124; Mikaela M. Adams, *Who Belongs? Race, Resources, and Tribal Citizenship in the Native South* (Oxford: Oxford University Press, 2016). See bibliography for a more comprehensive list of relevant texts.

<sup>20</sup> Usner, “‘They don’t like Indian...’, 89.

<sup>21</sup> Two or three texts have attempted to place more than one tribal histories together, but still remain primarily tribal in their structure, focus, and storytelling. Most importantly, none of these zoom down to explore non-removal as a process in its own right, to look specifically at these mid-c19th decades. In the 1970s, anthropologist Walter Williams edited a collection of essays about various groups’ experiences across the region. The volume provided an unprecedented multi-polity survey of non-removed peoples, comprised of tribally-focused essays by group-specialists. Although an important book, Williams’ volume is not really a cross-regional history, simply placing individual tribal histories within the same cover and summarizing them in a final chapter, rather than consistently drawing cross-regional links and stories: Williams, *Southeastern Indians*. In the 1980s, anthropologist J. Anthony

also hampers this story. Even many specialists continue to refer to non-removed groups as ‘remnants’, a term that buttresses the sense that they are a less important part of the removal story and evokes older associations of vanishing Indian rhetoric.<sup>22</sup>

If specialists have not fully conceptualized non-removal, other historians have hardly noticed it at all. Beyond specialist accounts, the fact that thousands of indigenous Southerners survived in the South goes effectively ignored. During the past four decades, Southern historians have re-imagined the antebellum region as a hub of economic dynamism, imperial visions, boiling racial debates, and subaltern ‘reckonings’ with state authority.<sup>23</sup> Yet no account incorporates the region’s myriad indigenous peoples within these stories. Non-removal simply does not feature in the master-narrative of Southern history. Walter Johnson’s 2013 antebellum survey is typical in devoting just a few sentences in past-tense prologue to ‘the Native civilisations of the Southeast [who] had been destroyed, resettled in “Indian territory”’.<sup>24</sup>

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Paredes also produced a similar volume about the twentieth century: Paredes, *Indians of the Southeastern United States*. A (now-dated) synthesis chapter in a longer history of Southeastern Indians does something similar, in very brief fashion: Charles Hudson, *The Southeastern Indians* (Knoxville: 1976), ch8, esp 477+.

<sup>22</sup> For uses of term “remnants”, see: Williams, *Southeastern Indians*; Perdue and Green, *Columbia Guide*, 126; Katherine Osburn, ‘Tribal “remnants” or state citizens: Mississippi Choctaws in the post-removal South’, *American Nineteenth Century History* 17 (2016). Although he does not refer specifically to this term, James Taylor Carson talks about the prominence of removal narratives and the erasure of indigenous people from Southern history as a ‘model historiography of ethnic cleansing’. I believe the term ‘remnants’ performs a similar function. James Taylor Carson, ‘“The Obituary of Nations”: Ethnic Cleansing, Memory, and the Origins of the Old South’, *Southern Cultures* 14 (2008), 6-31.

<sup>23</sup> It is impossible to extensively cite four decades of Southern historiography. However, most of these trends are epitomised in overview works: L.D. Barnes, B. Schoen, and F. Towers (eds.), *The Old South’s Modern Worlds: Slavery, Region, and Nation in the Age of Progress* (Oxford: Oxford University Press, 2011). For ‘reckonings’, see: Stephanie McCurry, *Confederate Reckoning: Politics and Power in the Civil War South* (Cambridge, MA: Harvard, 2010).

<sup>24</sup> Johnson, *River of Dark Dreams*, 30. See also, eg: Baptist, *The Half*, 227: ‘And over the next eight years, Jackson’s administrations forced all the surviving Indian tribes across the Mississippi to free up more land for white --- and black --- settlement’; Sven Beckert, ‘Cotton and the US South: A Short History’, in Richard Follett, Sven Beckert, Peter Coclanis, and Barbara Hahn, *Plantation Kingdom: The American South and its Global Commodities* (Baltimore: Johns Hopkins University Press, 2016), 51. At least two other scholars have noted this split in “Southern” and Indian histories: John H. Peterson Jr, ‘The Indians in the Old South’ in Charles M. Hudson (ed.), *Red, White, and Black: Symposium on Indians in the Old South: Southern Anthropological Society Proceedings* 5 (Athens: 1971); Perdue, ‘Legacy of Indian Removal’. This oversight is part of a more general problem where “Southern history” more broadly tends to ignore or sideline indigenous stories, even in earlier periods. For discussion, see, eg: Carson, ‘Obituary of Nations’, who notes: ‘the history of the South’s First Peoples has remained on the margins of the mainstream antebellum narratives of westward migration, white freedom, and black slavery – narratives that also continue to reproduce, almost as asides, age-old assumptions about the conflict between whites and Indians’ (9).

Non-removal is even more invisible in national and continental narratives. No scholar has asked where stories of non-removal might fit into, or fundamentally challenge, the larger stories we tell about nineteenth-century America. Existing histories of the American West, even when focused on Indian Policy and the impact of removal, simply do not mention non-removal in the east.<sup>25</sup> Again, the tribal nature of existing accounts exacerbates this problem. Because many accounts concentrate on a particular group's story, state actors and policymakers recede into the role of background characters. By overlooking this governmental perspective, especially at a cross-regional scale, we simply do not know how state officials reacted to this process. New histories of American state power widen this oversight, emphasizing the enormous power of the early American state in areas of Indian policy and removal, without ever acknowledging that thousands of people stayed behind against statesmen's wishes.<sup>26</sup> In most stories of continental expansion and settler colonialism, removal continues to mark an inescapable pivot at which Americans achieved 'perfect settler sovereignty' by destroying indigenous claims and physically relocating Indian bodies.<sup>27</sup>

An entire history remains neglected: this dissertation seeks to recover it. By ranging across the South, its polities, and its policymakers, this dissertation will explore non-removal as a massive cross-regional phenomenon that affected not only indigenous Southerners but also local

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<sup>25</sup> See, eg: Hahn, *A Nation Without Borders*; Richard White, *"It's your misfortune and none of my own": A history of the American West* (Norman: University of Oklahoma Press, 1991); Brian DeLay, *War of a Thousand Deserts: Indian Raids and the US-Mexican War* (New Haven: 2008), esp. pt3; Lauren Brand, ' "Great Conceptions of their own power": Native and US Diplomacy in the Old Southwest', 47 (Autumn 2016), 261-281. As with Southern histories, exceptions to this pattern come in tribal histories of removed polities, which often note that some of their members did remain behind in the east. See, eg: Clara Sue Kidwell, *The Choctaws in Oklahoma: From Tribe to Nation, 1855-1970*, (Norman: University of Oklahoma Press, 2007).

<sup>26</sup> See, eg: Stephen J. Rockwell, *Indian Affairs and the Administrative State in the Nineteenth Century* (Cambridge: Cambridge University Press, 2010), ch7; Steven Hahn, "Slave Emancipation, Indian Peoples, and the Projects of a New American Nation-state", *Journal of the Civil War Era* 3 (2013), 307-330; Elliott West, 'Reconstructing Race', in *Western Historical Quarterly* 34 (2003); William J. Novak, 'The myth of the "weak" American State', *The American Historical Review* 113 (2008); Max Edling, *A Revolution in Favor of Government: origins of the US Constitution and the making of the American state* (Oxford: Oxford University Press, 2003). For more, see wider discussion of state sight in chapter 3.

<sup>27</sup> Lisa Ford, *Settler Sovereignty: Jurisdiction and Indigenous People in America and Australia, 1788-1836* (Cambridge: Harvard University Press, 2010), 2. For 'perfect settler sovereignty' in the South, achieved through a mixture of removal and legal manoeuvring, see ch8, esp. 183, 203.

residents, federal government officials, and continental dynamics of sovereignty, state development, and empire.

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In recent years, historians have interpreted removal as a critical moment of growing American state power, through which the federal government honed the skills that would propel it across the continent, sparking off a century in which ‘Big government won the West’.<sup>28</sup> As a result, scholars have tended to see only two dreadful options for indigenous groups facing this military and administrative might: assimilation or removal. Removal undeniably transformed the indigenous South. By forcibly deporting the Five Tribes and legally unravelling their sovereignty, the policy changed the face of the region and indigenous power within it forever. From Appalachia to the Gulf, indigenous Southerners fought and resisted, taking their case to the Supreme Court and pleading with agents, but as settlers stole their lands and soldiers threatened their children at gunpoint, many found themselves with little choice but to head west.

Yet if removal left indigenous Southerners with few choices, they never had none. This dissertation demonstrates that even in the face of enormous odds, many indigenous Southerners successfully carved out a third option, negotiating their way around the state’s expanding tentacles. This third option actually comprised a range of strategies, each of which involved assuming a different relationship to the federal government.

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<sup>28</sup> Rockwell, *Indian Affairs*, 1, 6; Brian Balogh, *A Government Out of Sight: The Mystery of National Authority in Nineteenth-Century America* (Cambridge: Cambridge University Press, 2009), esp. 205-211. Esp. 211: ‘When the states’ rights approach to Indian clearance failed, Jackson did not hesitate to use military force to remove Indians. There was little about states’ rights in this endeavour, and even less concern about the civil or political rights of the Indians themselves. This costly and prodigious federal effort eventually spawned the Bureau of Indian Affairs, which over time would become one of the more visible – and visibly corrupt – manifestations of the federal presence in the West’. Elliott West’s idea of ‘Greater Reconstruction’ specifically seeks to link Indian policy with wider state building aims, especially following 1840: West, ‘Reconstructing Race’, in *Western Historical Quarterly*, 34 (2003), 6-26; and Elliott West, *The Last Indian War: The Nez Perce Story* (Oxford: Oxford University Press, 2009). For wider links between Indian policy and state building, see also Bergmann, *American National State*, esp.chs5-6; Bethel Saler, *The Settlers’ Empire: Colonialism and State Formation in America’s Old Northwest* (Philadelphia: University of Pennsylvania Press, 2015); Lori J. Dagg, ‘The Mission Complex: Economic Development, “Civilization” and Empire in the Early Republic’, *Journal of the Early Republic* 36 (2016), 467-491.

Some of these strategies involved eschewing state sight altogether. Groups and individuals made themselves invisible to agents. By fleeing into seemingly impenetrable terrain, using geography to their advantage, or passing as white, many people subverted or simply avoided agents' attempts to see and control them. Yet not everything took place in the shadows. Other strategies involved manipulating agents' vision. Some groups sought to cooperate with American officials, seeking statuses of citizenship or land grants as a route to remain unmolested. By making themselves visible, these people balanced outward appearances of assimilation or citizenship with their own communities or lifeways. In effect, they subverted state policies to hide in plain sight.

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Non-removal unfolded in a shattering world where indigenous Southerners retreated into tough terrain, compromised, or remade their identities in their efforts to avoid colonial control. These actions left only fragmented, incomplete, and even deceptive source trails. In seeking to recapture their lives from the shattering world of removal, this dissertation turns to ethnohistory, a method that combines traditional documentary records with a range of techniques and evidence from disciplines such as archaeology and anthropology to uncover the stories of groups traditionally consigned to the margins of traditional archives.<sup>29</sup> In order to recapture the story of non-removal, this dissertation draws on a plethora of traditional and non-traditional sources, from federal and local state documents, personal papers and travellers' accounts to archaeological studies, ethnographies, and anthropological research. It also incorporates indigenous communities' own traditions, taken from both published works and oral interviews.

Beyond its varied source base, this dissertation also rethinks our approach to the archive and historical methodology more broadly. Because they sought to evade state officials, many of these people simply do not appear in traditional source records, especially in federal documents. The

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<sup>29</sup> For a basic introduction to ethnohistory, see: James Axtell, 'Ethnohistory: A Historian's Viewpoint', *Ethnohistory*, 26 (1979), 1-13.

few familiar stories of non-removal tend to be the few strategies that were highly visible to federal officials at the time, such as citizenship or land claims, but even these are patchy. In many cases, the traditional documentary record falls silent on the possibility of non-removal.

Traditionally, American policymakers and subsequent historians interpreted this silence as an absence of evidence: because non-removed groups rarely appear in the familiar historical record, many historians have assumed that they must scarcely have existed, or that non-removal was a small-scale, often anomalous process.

However, these archival silences do speak: we need to learn how to hear them. By drawing evidence of the history of non-removal from across a range of other ethnohistorical sources, this dissertation sets this fragmentary archive of non-removal in conversation with the federal one. By reading through the corpus of Indian Office correspondence as a whole, especially the letters received by each of the Five Tribes' agencies, I found many occasions on which officials mentioned – or, more often, simply did not talk about – episodes of non-removal.<sup>30</sup> I then compared these accounts with fragmentary evidence of indigenous actions found in other sources. By accessing this fuller archive of non-removal and re-reading the two accounts in tandem, this dissertation reinterprets these silences in the federal record, reading them not as moments where nothing happened but as instances where indigenous Southerners took actions statesmen were unable to see. In doing so, it reveals important truths about the nature of the early American state. We see the world as officials saw and wanted to see it, but more importantly we see the blind spots that also marred their vision. In short, this dissertation

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<sup>30</sup> I read all the relevant microfilm reels of letters received (NARA M234) in their entirety, from start to finish, looking for any references to non-removal, as well as specific collections of Indian Office papers relating to specific removal efforts (eg; Choctaw removal and the aftermath of article 14). In addition, I have also read all relevant the Commissioner of Indian Affairs' annual reports and removal treaties. I have dipped into other sources, such as various correspondence to and from agents held in private archival collections, and a limited selection of the American State Papers, alongside a wider range of local government and state level sources (see bibliography for full range).

interrogates the colonial archive, weaving a long untold story as much from what it hides as what it reveals.<sup>31</sup>

This optic uncovers the breadth of non-removal; it also cautions against over-easy interpretations of the reach of the early nineteenth-century American state, demonstrating both its enormous capacities and its glaring weaknesses. Many indigenous Southerners managed to avoid removal by successfully turning state policies against themselves or by simply subverting officials' power altogether. In doing so, they created alternate geographies of power, hidden in the cracks and shadows of the Cotton Kingdom. The tale of non-removal, therefore, is not just about indigenous action. It is also a story about state capacity and how it is built, implemented, and compromised, sometimes in ways that officials cannot even see or control.

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This story unfolds in four chapters, each focusing on a distinct strategy employed by indigenous Southerners and the ways that federal officials responded to it. It begins with the strategies open to the fewest indigenous Southerners and ends with those open to the largest number of indigenous Southerners, especially those beyond the more familiar Five Tribes elites.

The first half of this dissertation focuses on the strategies most visible to federal officials which, as a result, are probably among the most familiar stories of non-removal to the reader. Chapter One explores the various ways that a small number of indigenous Southerners sought to cooperate with federal and state officials to gain permission to avoid removal, focusing

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<sup>31</sup> My concept of state sight takes inspiration from James Scott and his study on 'seeing like a state': James C. Scott, *Seeing like a State: How Certain Schemes to Improve the Human Condition Have Failed* (New Haven: Yale University Press, 1998). See also: James C. Scott, *Domination and the Arts of Resistance: Hidden Transcripts* (New Haven: Yale University Press, 1990); James C. Scott, *The Art of Not Being Governed: An Anarchist History of Upland Southeast Asia* (New Haven: Yale University Press, 2009). My methodology also takes inspiration from the growing field of archival history, as well as broader methodologies for telling the histories of groups with fragmented or actively eradicated archives, such as slaves. This is a vast field, spanning a range of periods and continents. See, eg: Yael A. Sternhell, "The Afterlives of a Confederate Archive: Civil War Documents and the Making of Sectional Reconciliation." *Journal of American History* 102 (2016): 1025–1050; Liesbeth Corens, Alexandra Walsham, and Kate Peters (eds.), "The Social History of the Archive: Record Keeping in Early Modern Europe", *Past & Present Supplement* 11 (2016); Laura Helton, Justin Leroy, Max A. Mishler, Samantha Seeley, and Shauna Sweeney (eds.), "The Question of Recovery: Slavery, Freedom, and the Archive", *Social Text* Special Issue, 33 (2015).

particularly on claims to citizenship and reservations and the ways that groups fought to turn these into legally-enshrined exemptions from the policy. Chapter Two expands this story by examining the ways that thousands of non-elite indigenous Southerners seized on similar provisions, ultimately subverting federal permissions to remain *en masse* in ways that officials simply had not foreseen.

The second half of this dissertation turns to explore indigenous Southerners who rejected federal authority altogether and chose to make themselves invisible or illegible to agents. By and large, these tactics were undesirable and even invisible to federal officials, both in Washington DC and on the ground. Chapter Three traces strategies of evasion, exploring the ways that indigenous Southerners utilized some of the region's most inaccessible spaces in order to escape agents' attempts to locate and capture them. Finally, Chapter Four examines illegibility tactics, such as racial passing, which indigenous Southerners used to blend into the backdrop of the antebellum South. Unlike permitted or treaty-based routes to remain, these strategies had no formal class or eligibility requirements, meaning that thousands of indigenous Southerners were able to turn to them. Yet if these strategies were more open, they were also more dangerous: the choice to relocate to hostile terrain or to assume a new identity as a white man often came with significant risks to life and limb, on top of the enduring risks of punishment and westward deportation if agents managed to find them.

Although this dissertation explores these strategies in distinct chapters, this is not to suggest that they were discrete. The decision to pursue one path was not always permanent and families often strategically alternated between options, responding to the immediate situations that they faced, thinking ahead in spans of hours, days, and weeks, rather than years and decades.

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For American policymakers, Indian removal was a continental process. Viewed from the Indian Office in Washington DC, the "Indian problem" stretched across the eastern seaboard and

throughout the scattered territorial claims of the United States across the continent. Within this panoptic vision, however, federal officials always placed a particular focus on the South, especially as local white residents often clamoured loudest about the need for removal in states such as Georgia, Tennessee, and North Carolina, and indigenous Southerners such as the Cherokees were among the most vocal opponents of removal, especially at the highest American legal levels.<sup>32</sup> Following officials' optics, this dissertation also focuses on the South. It does not include episodes of non-removal in other regions such as the Northeast (the Old Northwest), but this is not to suggest that the process of non-removal did not take place beyond Southern borders.<sup>33</sup>

On the eve of removal, the region we know as the American South was home to a range of indigenous polities, from the Pamunkeys and Nottoways at the region's far northern tip, down to the Seminoles, Tunicas, and Biloxis at its southernmost shores along the Gulf.<sup>34</sup> Federal removal efforts, however, exclusively targeted the largest and most visible of these groups: the Cherokees, Choctaws, Chickasaws, Creeks, and Seminoles, whom they grouped under the racist epithet of the "Five Civilized Tribes". Because this dissertation seeks to tell the story of groups who avoided federal removal efforts, it focuses predominantly on the Five Tribes or, more precisely, individuals who were originally members of these groups but who splintered from them in response to the growing threat of removal. It does not tell the story of other, non-Five Tribes

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<sup>32</sup> For pro-removal clamour from local Southern states, and the particular focus on the South for the federal government, see: Foreman, *Indian Removal*; Prucha, *The Great Father*. For visible Cherokee resistance, see: Perdue and Green, *Cherokee Nation*; Garrison, *Legal Ideology*. Following officials, historians have historically tended to focus disproportionately on the South, too, comparatively neglecting Northern removal stories: this trend dates back to scholars such as Grant Foreman, and continues today. See removal histories cited in note 1. This has recently begun to change, thanks to several important works. See: David Silverman, *Red Brethren: The Brothertown and Stockbridge Indians and the Problem of Race in Early America* (Ithaca: Cornell University Press, 2010); John Bowes, *Land Too Good for Indians: Northern Indian Removal* (Norman: University of Oklahoma Press, 2016). Nonetheless, most members of the general public and high school curriculums continue to associate removal and the "trail of tears" with the South and the experiences of the Five Tribes. See, eg: Library of Congress Web Guides, 'Primary Documents in American History: The Indian Removal Act', Library of Congress website: <https://www.loc.gov/rr/program/bib/ourdocs/Indian.html> [accessed: 10/03/2017, 16:51].

<sup>33</sup> Despite regional differences in their experiences of removal, many of the patterns and strategies that I have found in the South also seem to find Northern parallels. In future, I plan to extend my study of non-removal to explore these areas, weaving a continental story of non-removal and its significance.

<sup>34</sup> For more on the indigenous South in general, see: Perdue and Green, *Columbia Guide*.

indigenous polities, such as the Lumbees, Catawbas, or Pamunkeys, because these groups were not targeted for formal federal removal policies, even though they faced frequent racial discrimination and *de facto* dispossession during this period.<sup>35</sup>

Seeking to view the South through a cross-regional telescope, highlighting new constellations and overlooked patterns, this story features many non-removed groups from across the South and across the Five Tribes. These range in size from small handfuls of individuals up to more visible polities comprising thousands of people. Some of these groups, such as North Carolina's Eastern Cherokees or Florida's Seminoles, will be familiar to readers. Others, such as the Bayou Lacombe Choctaws or other tiny family and kin groups were such effective evaders that they appear only as fragmentary sentences in the historical record. Since this dissertation seeks to tell an overall story of the process of non-removal, these groups act more as a wider cast of characters upon whom the spotlight will rise and fall. Groups will drop in and out, in service of wider stories of specific strategic choices, federal officials and their policies, and the availability of fragments of their stories. Some groups appear frequently, others just as passing glimmers, reflecting the reality of how agents and Washington officials saw them.

Chronologically, this dissertation ranges from the 1810s to 1860. Owing to their disproportionate focus on the Cherokees and the Trail of Tears, traditional removal narratives centre largely on the later 1830s, a period of escalation and intensity in the project that I term "High Removal".<sup>36</sup> This dissertation expands the chronology of removal beyond this narrow frame, exploring (non-)removal as a process that spanned five decades and continues to have longer-ranging implications which shape the South to the present-day. Building on recent works

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<sup>35</sup> Often, these groups were too small or peripherally located for federal officials to consider them a big enough threat deserving removal (or, in fact, for officials really to be aware of them at all). For some, longer histories of assimilation, agitation, and negotiation also ensured that local communities and officials often did not consider these groups "indian" enough to be removed. During the early-mid nineteenth century, many of these groups did face renewed dispossession attempts from local communities. See, eg: Rountree, *Pocahontas' People*; Merrell, *Indians New World*; Lowery, *Lumbee Indians*. Since these were not formal federal removal efforts, they are for now outside the scope of my dissertation; however, when I come to revise my dissertation into a manuscript, I hope to expand my research to include this different experience of avoiding removal, probably in the form of an extra thematic chapter.

<sup>36</sup> See, eg, Foreman, *Indian Removal*; Perdue and Green, *Cherokee Nation*.

by scholars such as John Bowes and Julie Reed, this dissertation especially foregrounds earlier moments of dispossession and tension before the removal act, particularly the events of the 1810s and 1820s which laid the foundations for non-removal across the region.<sup>37</sup>

The story of non-removal is a Southern and an American story. Nonetheless, in weaving this narrative, this dissertation builds on a much broader tapestry of literature centered on and beyond the Americas. These threads range from literature on terrain and sovereignty in European empires to the rich literatures on maroon communities, fugitive slaves, settler-colonialism, and racial passing throughout the colonial world.<sup>38</sup> In drawing on these varied global histories, the dissertation also seeks to contribute to them, telling a broader story about indigenous peoples' and persecuted minorities' resistance to the outward reach of the settler-colonial state.

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By exploring non-removal as a massive cross-regional phenomenon, this dissertation contests our understandings of removal as a turning point in American control over the South, and demonstrates that the line between nineteenth-century American expansion and sovereignty was not necessarily an automatic one. Behind slaveholders' assumption of a binary racial world lay numerous indigenous Southerners who would remain in the region for centuries. This world was not always legible to officials and outsiders. Some were visibly Indian; others appeared outwardly indistinguishable, but privately maintained indigenous identities, communities, and traditions. Amidst penetrating removal efforts that successfully relocated 65,000 indigenous people, there

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<sup>37</sup> Bowes and Reed have both recently called for expanded chronologies of removal, especially beyond the removal act. See: John P. Bowes, 'Indian Removal beyond the Removal Act', *Native American and Indigenous Studies* 1 (2014), 65-87; Bowes, *Land Too Good for Indians*, esp. 6-10, and chs 1&7; Julie L. Reed, *Serving the Nation: Cherokee Sovereignty and Social Welfare, 1800-1907* (Norman: University of Oklahoma Press, 2016).

<sup>38</sup> See, eg, among many: Scott, *The Art of Not Being Governed*; Lauren Benton, *A Search for Sovereignty: Law and Geography in European Empires, 1400-1900* (Cambridge: 2010); Stephanie M.H. Camp, *Closer to Freedom: Enslaved Women and Everyday Resistance in the Plantation South* (Chapel Hill: 2004); James H. Conrad and Thad Sitton, *Freedom Colonies: Independent Black Texans in the Time of Jim Crow* (Austin: 2005).

remained alternative geographies of indigenous persistence which officials failed to apprehend or even to see at all.

# Chapter One:

## Towards State Sight:

### Reservations, Citizenship, Civilization, and Permitted Non-Removal

In spring 1830, in the weeks following the passage of the Indian Removal Act, bureaucrats and agents got to work on their plans for the policy. Though Congressmen had only just given their assent to the controversial bill, policymakers had plotted their next moves for decades. The corridors of the Indian Office and the War Department hummed with life as officials discussed treaties, commissioned agents, and drew up plans to relocate tens of thousands of indigenous Southerners as quickly as possible.<sup>39</sup>

As they fleshed out their ideas for the process, policymakers certainly expected removal to be both swift and sweeping; but they did not necessarily expect it to be total. As they shepherded ideas from paper to policy, federal officials deliberately left room for individuals to remain behind. These loopholes took two forms. First, a series of older treaties gave indigenous individuals claims to remain permanently within the region through grants of citizenship status or private landholdings beyond the limits of their polities. Second, officials also negotiated new opportunities, both federally and locally, for individuals or families to assimilate into the United States.

These provisions laid the groundwork for indigenous Southerners to gain governmentally-approved exemption from the policy. Yet the officials who allowed these means of escape understood them not as a roadblock to widespread removal but instead as the means to actively facilitate it. Their ideas turned on the concept of “civilization”: a yardstick that policymakers had

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<sup>39</sup> For preparations for removal in the wake of the act, see, eg: Rockwell, *Indian Affairs*, ch6.

devised in the late-eighteenth century to assess indigenous capacity for assimilation into the United States, the concept required individuals to perform a mixture of Euro-American behaviours such as settled farming, private property-holding, and Christian religion.<sup>40</sup> As the concept required an outward rejection of many traditional indigenous practices and customs, policymakers deliberately anticipated that only a tiny proportion of indigenous Southerners were ever eligible to even be considered for these exemptions. Most were reserved to a small number of elite, often *mestizo*, individuals and their families with a history of loyalty to the United States. Officials believed that these people would complement, rather than jeopardize, their overall removal goals by merging into the United States and otherwise allowing the removal of the rest of their Nations to go ahead.

If these opportunities for non-removal were restrictive on paper, they were even harder to implement in practice. Federal and local enthusiasm for mass deportation meant that there was no straight line out of removal. Even the small number of eligible individuals had to fight to ensure that legal entitlements translated into tangible exemptions and, often, to ensure that officials remembered their presence at all.

This chapter tells the story of these routes to permitted non-removal. Ranging across the region, it focuses especially on the experiences of several groups who fought to secure exemption from deportation on the basis of previous treaty claims and, in some cases, through new agreements with local and federal officials. Unlike other removal strategies, these citizenship claims are some of the most familiar tales of non-removal, largely because they were undertaken by the ancestors of the Eastern Cherokees, the best known and most written about non-removed group.<sup>41</sup> In

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<sup>40</sup> Throughout this chapter, I use the term civilization to refer to (what officials termed) civilization policies, and the early nineteenth-century Euro-American concept of civilization, as befitted contemporary stadial theories of human development. For the sake of easier reading, I do not use quotation marks around this term, but this is by no means to normalize these dated, time and place specific ideas, or to suggest that the use of this term “civilization” in this context ought to be acceptable to modern readers. To this end, I do use quotation marks around the terms “civilized” and “civilizing”, reflecting that this state was a Euro-American perception of indigenous people, and/or an indigenous performance of this, rather than any objective (or inherently desirable) state.

<sup>41</sup> See, eg: Finger, *Eastern Band*; Finger, *Cherokee Americans*; John R. Finger, ‘The North Carolina Cherokees, 1836-1866: Traditionalism, Progressivism, and the Affirmation of State Citizenship’, *Journal of Cherokee Studies*, 5:1 (Spring

telling the story of these strategies, this chapter draws on existing tribal histories while also extending their horizons in significant interpretive ways. First, it sets several tribally-focused histories in conversation with each other, exploring strategies centred on citizenship and land claims in a cross-regional context, connecting the experiences of a range of groups across the region. Second, this chapter also focuses explicitly on the role of state officials in this process, examining how federal policymakers understood and influenced indigenous Southerners' attempts to use these strategies. The gaps in their understanding made many families' tasks harder, forcing them to fight to ensure that legal title would translate to tangible immunity.

### Part One:

#### Old Promises, Federal Perceptions: Prehistories of Permitted Non-Removal

In 1814, the region that would soon become Alabama reeled in the wake of several long and blood-soaked years. The deadly events of the Creek War shook many settlers to the bone but, as the year wound on, they could feel things changing. In March, US armies had unleashed a surprise attack on an encampment of sleeping Red Sticks Creeks at a place known as *Tohopeka*, tucked within a bend of the Tallapoosa River. Commanded by Major General Andrew Jackson, American forces attacked at dawn. The barrage of cannon did not daunt the Creeks, who jumped from their beds and fought back. Red Sticks and Americans jostled for a bloody five hours, but the victory lay with the American attackers. Defeat crushed the rebellious Creeks. Refusing to surrender, upwards of eight hundred warriors perished, in contrast to just fifty American dead.<sup>42</sup>

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1980), 17-29; Sharlotte Neely, *Snowbird Cherokees: People of Persistence* (Athens: University of Georgia Press, 1991); William L. Anderson (ed.), *Cherokee Removal: Before and After*, (Athens: University of Georgia Press, 1991); Duane H. King (ed.), *The Cherokee Indian Nation: A Troubled History* (Knoxville: The University of Tennessee Press, 1979); E. Stanly Godbold and Mattie U. Russell, *Confederate Colonel and Cherokee Chief: The Life of William Holland Thomas* (Knoxville: University of Tennessee Press, 1990). The Eastern Cherokees are disproportionately represented in scholarship on non-removed Indians, partly for their visibility to the federal government, partly also due to a previous generation of scholarly interest in their relationship with William Holland Thomas, their white agent.

<sup>42</sup> Kathryn Holland Braund, *Tohopeka: Rethinking the Creek War and the War of 1812* (Tuscaloosa: University of Alabama Press, 2012). For Creek War, see: Gregory Waselkov, *A Conquering Spirit: Fort Mims and the Redstick War of*

The Battle of Horseshoe Bend, as the American victors would call it, turned the course of the war and transformed Jackson from a rising star into a national hero. His reputation as an ‘Indian fighter’ would cast a long shadow over the indigenous South.<sup>43</sup> As the handful of remaining Creek rebels scattered to Florida or other evasive environments across the region, Jackson’s men took trophies of skin and clothing from their slain enemies. Some counted the corpses by cutting off the tips of their noses, working quickly before the crows set in. They mailed them back home to Tennessee as trophies.<sup>44</sup>

If Americans gloried in the grizzly defeat, they were just as pleased with the brutality of the peace. Within weeks of the battle, federal commissioners arrived in Creek country seeking to negotiate a peace treaty. On 9 August, US commissioners and Creeks signed the Treaty of Fort Jackson, marking their defeat and its price on paper. Headed by Andrew Jackson, the commissioners did not seem to mind that most Red Sticks Creeks had either fled or died in combat. They negotiated the treaty with loyal and disloyal Creeks alike.<sup>45</sup>

Both historians and contemporaries have tended to see the Treaty of Fort Jackson as unduly punitive. Hoping to crush the possibility of any further Creek uprisings, federal commissioners punished the entire Creek Nation with a twenty-three-million-acre land cession. Like post-war measures following the American Revolution, this display of colonial severity failed to distinguish action in favour of the United States from action against it, anguishing and alienating the many loyal Creeks who now lost their lands.<sup>46</sup> Yet for a small portion of eligible loyal Creeks, the Treaty of Fort Jackson offered an alternative strategy. Buried amidst a lengthy, page-long description of the lands to be ceded, its first article also offered a measure of promise. If the

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1813-14 (Tuscaloosa: University of Alabama Press, 2006); Claudio Saunt, *A New Order of Things: Property, Power, and the Transformation of the Creek Indians, 1733-1816* (Cambridge: Cambridge University Press, 1999), chs.11-12.

<sup>43</sup> For more on Jackson, his status as an ‘Indian fighter’, and the role of the Creek War in his reputation, see: Robert V. Remini, *Andrew Jackson* (New York: Palgrave MacMillan, 2008).

<sup>44</sup> Mrs Dunbar Rowland, ‘Mississippi Territory in the War of 1812’, in Dunbar Rowland (ed.), *Publications of the Mississippi Historical Society* IV (1921), 82.

<sup>45</sup> Treaty with the Creeks, 1814: Aug 9 1814: 7 Stat, 120: Proclamation, Feb 16, 1815, *LALT*.

<sup>46</sup> Ibid. For descriptions of the treaty as punitive, see, eg: Mary Jayne Ward, *George Washington Grayson and the Creek Nation, 1834-1920* (Norman: University of Oklahoma Press, 1999), 14.

lands of ‘any Chief or warrior of the Creek Nation, who shall have been friendly to the United States during the war, and taken an active part therein’, fell within the ceded tracts, the treaty vowed that ‘every such person will be entitled to a reservation of land, within the said territory of one square-mile’. Once granted, this would ‘inure to the said chief or warrior, and his descendants, so long as he or they shall continue to occupy the same’. The treaty stipulated that this reservation would be ‘protected by and subject to the laws of the United States’, at least until its Creek occupants were to voluntarily abandon it.<sup>47</sup>

Three years later, in spring 1817, a new set of federal commissioners arrived in Cherokee territory. The negotiation party comprised of Joseph McMinn, governor of Tennessee, US General David Merriweather, and – in common with the Fort Jackson agreement – Creek War hero Major General Andrew Jackson, who was not yet infamous amongst the Cherokees. These men travelled with a clear purpose. Following orders from Washington DC, they were to secure Cherokee recruits for a new policy of voluntary westward removal. More importantly, they sought to secure a large cession in the western edges of the Cherokee Nation, partially to resolve challenges to US sovereignty, but largely to settle outstanding disputes and payments with several groups of Cherokees who had already relocated to Arkansas from the district.<sup>48</sup> By the time the commissioners arrived, most Cherokees were well aware of their intentions. In 1817, the treaty lands were home to between 1000 and 1500 Cherokees, or around 10-15% of all Cherokees east of the Mississippi.<sup>49</sup> To many of these people, the agreements the commissioners offered must have seemed like the typical no-choice of federal expansion: should they cede lands in the east and move to new lands in the west, or move further into the interior of the Cherokee Nation?

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<sup>47</sup> Treaty with the Creeks, 1814.

<sup>48</sup> Treaty with the Cherokee, 1817: July 8, 1817, 7 Stat. 156, Proclamation, Dec 26 1817, *LALT*. The most thorough history of the treaty is William Martin Jurgelski, ‘A New Plow in Old Ground: Cherokees, Whites, and Land in Western North Carolina, 1819-1829’ (PhD dissertation: University of Georgia, 2004). For more, see also: Finger, *Eastern Band*, 10.

<sup>49</sup> Jurgelski, ‘New Plow’, 63. See also for more information about reserves’ identities.

Unusually, however, this treaty also proposed a third option. Beyond the uncertain fortunes of Indian Territory or the chance to remain at the mercy of further federal cessions in the Cherokee Nation, the eighth Article of the treaty offered individual headmen the opportunity to exchange their lands in return for a small reservation of land in the newly-ceded district, close to their existing homelands. The commissioners also promised these Cherokees citizenship of the United States in place of their formal membership of the Cherokee Nation.<sup>50</sup>

Jackson and the other commissioners authorised the signing of the Treaty at the Cherokee Agency, then located near Hiwasee, in modern-day Tennessee, on 8 July. Most of the Cherokee families and clans residing in the ceded district agreed to relocate within the boundaries of the newly-reduced Cherokee Nation.<sup>51</sup> However, Article 8 had not gone unnoticed. Making it through to the final treaty, 156 Cherokees took up this offer, registering as reservees from Tennessee to Alabama.<sup>52</sup>

### Citizenship, Civilization, and Policy

On paper, these treaties promised citizenship to any Cherokee or Creek willing to accept the provisions. In practice, Washington officials' plans were much more specific.

The idea of indigenous citizenship had a long prehistory. By necessity as much as desire, European colonial governments had recognized indigenous polities as sovereign, distinct nations for centuries prior to the American Revolution. Through a series of treaties and agreements, colonists had sought to use indigenous alliances to secure a foothold – and the illusion of control

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<sup>50</sup> Treaty with the Cherokee, 1817. For more about this treaty and Article 8 in general, see: William G. McLoughlin, 'Experiment in Cherokee Citizenship, 1817-1829', in William G. McLoughlin, *The Cherokee Ghost Dance: Essays on the Southeastern Indians, 1789-1861*, (Macon, GA: Mercer University Press, 1984). For unprecedented, see: Jurgelski, 'New Plow', 3-4.

<sup>51</sup> Jurgelski, 'New Plow'.

<sup>52</sup> David Keith Hampton (ed/compiled), *Cherokee Reservees* (Oklahoma City, OK: Baker Publishing Co, 1979), Edward E. Ayer Collection, NL-C, 1.

– in an uncertain, indigenous-dominated continent.<sup>53</sup> Alongside this necessary but reluctant recognition of sovereignty, debates about how indigenous people should relate to European empires had long circulated. In contrast to their French and Spanish counterparts, British policymakers decided to keep indigenous people separate, as subjects rather than members of the empire.<sup>54</sup> Following the Revolution, a new generation of American policymakers inherited British ideas, but began to seriously consider the idea of indigenous “improvement” and the possibility that indigenous people could be “civilized” and ultimately integrated within the United States. Although these ideas always ran parallel with debates about removal, eradication, or other solutions, this so-called civilization policy took the idea that indigenous people, or at least certain indigenous people, could ultimately ascend through the stages of human development to the level of citizenship within the United States. By and large, policymakers meant that this “civilization” would entail many of the trappings of life as a white yeoman farmer, including practising Christianity and settled agriculture.<sup>55</sup>

Civilization policies reached their heyday in the 1780s and 1790s, spurred by President George Washington and his Secretary of War Henry Knox. Officials implemented these policies with particular enthusiasm in the South. Knox and his immediate predecessors dispatched hundreds of missionaries to the region in the hope of encouraging members of the Five Tribes to “progress” in Christianity, education, and European-style lifeways. Through the very presence of these religious envoys, educators, and labourers, this ‘mission complex’ also stealthily extended

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<sup>53</sup> See, eg, Pekka Hamalainen, ‘The Shapes of Power: Indians, Europeans, and North American Worlds from the Seventeenth to the Nineteenth Century’, in Juliana Barr & Edward Countryman (eds.), *Contested Spaces of Early America* (Philadelphia: University of Pennsylvania Press, 2014); Daniel K. Richter, *Before the Revolution: America’s Ancient Pasts* (Cambridge: Harvard, Belknap, 2011); Kathleen DuVal, *The Native Ground: Indians and Colonists in the Heart of the Continent*, (Philadelphia: University of Pennsylvania Press, 2006).

<sup>54</sup> See: Deborah A. Rosen, *American Indians and State Law: Sovereignty, Race, and Citizenship, 1790-1880* (Lincoln: University of Nebraska Press, 2007), esp. ch1; Gregory Evans Dowd, *War Under Heaven: Pontiac, the Indian Nations, and the British Empire* (Baltimore: Johns Hopkins University Press, 2004).

<sup>55</sup> Ibid. For a summary of this vision, see: Thomas Jefferson, *Notes on the State of Virginia* (Chapel Hill: University of North Carolina Press, 1982), esp. query VI. For civilization policy, see: Francis Paul Prucha, *The Great Father: The United States Government and the American Indians* (Lincoln: University of Nebraska Press, revised edn, 1986), pt1, esp. ch5; Francis Paul Prucha, *American Indian Policy in the Formative Years: The Indian Trade and Intercourse Acts, 1790-1834* (Lincoln: University of Nebraska Press, 1962), esp. ch9; Saler, *The Settlers’ Empire*, esp. ch5.

American sovereignty claims and capitalist values over the region.<sup>56</sup> Federal policymakers found willing recipients among the Five Tribes. In a strategic calculation about the best ways to maintain their sovereignty in the long run, the polities' elites embraced these policies and rapid acculturation in these decades.<sup>57</sup> But as the 1790s turned into the 1800s, officials' commitment to the long-term civilization of the Five Tribes increasingly blended with doubts about their long-term suitability for life within the United States. These queries reflected the broader climate of the early nineteenth century, a period wracked with debates about the nature of the United States and the status of racial minorities within it. In this transitional period, Washington policymakers continued to experiment with large-scale civilization policies, while also introducing new initial plans for voluntary removals to the west and large-scale contractions of indigenous lands in the east.<sup>58</sup>

By the 1810s, policymakers advanced their vision of separation with plans for small-scale relocation of Cherokee volunteers to Arkansas.<sup>59</sup> Still, civilization policies and the ideas underpinning them maintained an enduring influence. Even as policies changed, many high-ranking Indian Office officials continued to believe in the eventual assimilability of at least some indigenous people and continued to work towards to this end. For instance, Benjamin Hawkins, superintendent of Indian Affairs until 1816, had been a staunch advocate of civilization policy. In his earlier service as Creek agent, he had served at the frontline of efforts to "civilize" the group.<sup>60</sup> Thomas McKenney – Hawkins' replacement and the first superintendent of the Office of Indian Affairs following its 1824 creation – was also a staunch advocate of these ideas,

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<sup>56</sup> Daggar, 'The Mission Complex'.

<sup>57</sup> Historians used to see these elite actions as submission to colonialism, but historians have recently reinterpreted them as strategic calculations on the Five Tribes' part: see, eg, James Taylor Carson, *Searching for the Bright Path: The Mississippi Choctaws from Prehistory to Removal* (Lincoln: University of Nebraska Press, 1999).

<sup>58</sup> See, eg: Ronald N. Satz, *American Indian Policy in the Jacksonian Era* (Lincoln: University of Nebraska Press, 1975). For Indian debates as part of wider racial questions in the US, see: Guyatt, *Bind Us Apart*.

<sup>59</sup> See, DuVal, *Native Ground*; Kathleen DuVal, 'Debating Identity, Sovereignty, and Civilization: The Arkansas Valley after the Louisiana Purchase', in *Journal of the Early Republic* 26:1 (Spring 2006), 25-58.

<sup>60</sup> Merritt B. Pound, *Benjamin Hawkins: Indian Agent* (Athens: University of Georgia Press, 1951, 2009).

arguing that ‘the *great object of the Govt* towards these unenlightened people...is not to keep these Indians hunters eternally. We want to make citizens out of them’.<sup>61</sup>

From this transitional world came the Creek and Cherokee treaties and their ‘experiments’ in indigenous citizenship.<sup>62</sup> At one level, policymakers hoped that these offers of small-scale citizenship and land would encourage the Cherokee or Creek elites to make further “progress” towards their conception of civilization, the key yardstick by which would-be reservee or citizenship claimants would be judged. As much as fulfilling the ends of “civilizing” indigenous people, the treaty commissioners and other Washington officials saw these policies as inherently compatible with longer-term solutions to the issues of competing indigenous sovereignties in the South. By separating a small handful of “civilized” elites from their polities, ultimately these treaty provisions would encourage these people to assimilate into the United States, with their children and grandchildren simply becoming Americans.<sup>63</sup> By incorporating these people as Americans, federal policymakers ultimately intended that this combination of land cessions and citizenship claims would extend American sovereignty over this section of Indian country.<sup>64</sup>

Promises of reservations had similar aims. When most historians and readers think of reservations, images of the late nineteenth-century West or modern-day Pine Ridge spring to mind. Following its common usage from the 1850s onwards, the word reservation now connotes large tracts of government appointed lands, on which indigenous polities were effectively contained, with the promise of semi-sovereignty.<sup>65</sup> Decades earlier, however, reservations did not

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<sup>61</sup> McKenney, cit. Prucha, *The Great Father*, 54. For more on McKenney, see: Herman J. Viola, *Thomas L. McKenney, Architect of America’s Early Indian Policy: 1816-1830* (Chicago: The Swallow Press, 1974).

<sup>62</sup> I borrow McLoughlin’s description of these treaties as an ‘experiment’. McLoughlin, ‘Experiment’.

<sup>63</sup> Ibid.

<sup>64</sup> Rosen, *American Indians and State Law*, esp.ch1.

<sup>65</sup> Today, the Bureau of Indian Affairs describes a reservation thus: ‘In the United States there are three types of reserved federal lands: military, public, and Indian. A federal Indian reservation is an area of land reserved for a tribe or tribes under treaty or other agreement with the United States, executive order, or federal statute or administrative action as permanent tribal homelands, and where the federal government holds title to the land in trust on behalf of the tribe’. Note the emphasis on the government holding title to the lands, as well as the fact that the lands belong to (or are held in trust for) a whole tribe, not an individual as a private parcel. US Department of the Interior, Indian Affairs Website, ‘FAQ: What is a federal Indian reservation?’: <https://www.bia.gov/FAQs/>

conjure this association. In the early-nineteenth century, reservation was a more literal term: a plot of land, reserved for a particular family or head of household, for private ownership. In the 1810s and 1820s, reservations meant not mass-indigenous surrender, but the opposite: a small-scale, individual transfer to private land, more akin to the later nineteenth-century vocabulary of allotment, and a further step along the road to the permanent assimilation and incorporation of these people.<sup>66</sup>

If this logic seemed in line with wider civilization policies, the aims of the 1810s treaties were even more specific: officials anticipated that only a tiny handful of people would take up these provisions. In fact, many did not even expect that most ordinary Cherokees or Creeks would even be aware of these provisions. Seen from Washington DC, therefore, these treaties served an important purpose: they would secure large-scale land cessions in the South, reducing both the power and the lands of the Five Tribes, while allowing a small number of elite individuals to permanently merge into American society. After all, what harm could come from a situation so obviously in favour of the United States?

### Expectation and Reality

In the months following the agreements, reality seemed to bear out these expectations. In Georgia and Alabama, most Creeks did not see the provisions for reservations as a viable or desirable choice. Most ceded their lands and moved their families into the newly-contracted

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[accessed: 28/2/2017, 16:30]. This concept shifted in the 1850s, when federal officials began creating reservations to house whole polities in the West.

<sup>66</sup> The policy of allotment (severing larger reservations into private tracts) is most associated with the 1887 Dawes Act, otherwise known as the General Allotment Act. It is important to note that allotment (in its post-Dawes form) and early c19th reservation-granting were not exactly the same. The process of allotment was slightly different to that of granting private reservations in the early c19th, but the process was similar: tribes were forced to cede their reservation lands, receiving private allotments to be held as private tracts in return. For more on later c19th allotment, see: Delos Sacket Otis, *The Dawes Act and the Allotment of Indian Lands* (Norman: University of Oklahoma Press, 1973); Emily Greenwald, *Reconfiguring the Reservation: the Nez Perces, Jicarilla Apaches, and the Dawes Act* (Albuquerque: University of New Mexico Press, 2002).

Creek Nation. Perhaps more still were, in the words of one historian, simply ‘unaware of the statute, for scarcely more than thirty people took advantage of its offer’.<sup>67</sup>

However, for the Creek heads of household who took them up, these passages remade their world. Most of them lived in a settlement at the convergence of the Tensaw and Alabama Rivers. In the North of the new state of Alabama, just beyond the Upper Towns at the far edges of the Creek Nation, the Tensaw settlement marked the point where ‘the populations converged...[in] a settlement of whites, Creeks, and their mestizo children’.<sup>68</sup> Founded by prominent *mestizo* Creek entrepreneurs and diplomats such as Samuel Mims and Alexander McGillivray in the late eighteenth-century, the Tensaw community had been geographically, socially, and culturally removed from the wider Creek Nation even prior to the war. In the wake of the conflict, these reservations allowed the Tensaw Creeks to create their own world, somewhere between Creek and Euro-American ones, as well as to formally distance themselves from the defeated, anti-American Redsticks.<sup>69</sup> In Washington, officials had no reason to object; such acculturated, diplomatic elites were precisely the type of people that they had in mind for these policies.

In Cherokee country, experiences were similar. Like in Alabama, most Cherokees grudgingly accepted the terms of the cession and moved their families from the ceded districts into the constricted Cherokee Nation. Unlike in Alabama, however, the Cherokees of the ceded district paid greater attention to Americans’ offers of citizenship and land. As federal agent to the Cherokees, Return J. Meigs, put it, ‘upwards of three hundred Cherokees [heads of families] in the honest simplicity of their souls, made an election to become American citizens’.<sup>70</sup>

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<sup>67</sup> Claudio Saunt, ‘Taking Account of Property: Stratification among the Creek Indians in the Early Nineteenth Century’, *The William and Mary Quarterly* 57 (2000), 742.

<sup>68</sup> *Ibid.*, 734.

<sup>69</sup> For more on the foundation and coalescing of a mixed-race Creek community around the Tensaw in the late c18th, see: Waselkov, *A Conquering Spirit*, ch1, esp.21-32. The Tensaw community had been key targets for American civilization policy in the later c18th and early c19th, before tensions grew up in the region following the Louisiana purchase and the coming of the Creek War. The Tensaw community pre-dated the reservations, but many of the people who took up these reservation claims were members of the community, and the reservations served to reinforce it.

<sup>70</sup> Meigs to Roane, 12 November 1822, NARA M208, roll 9.

While the Creek treaty held, the 1817 Cherokee treaty was contentious from the start. Almost as soon as the ink dried on the signatures, Cherokees complained about its course and outcomes.

These tensions were as much about internal Cherokee politics as the cession itself.

Disagreements over the growing pressure for voluntary westward removals shaped and fuelled the debates.<sup>71</sup> In 1819, tensions came to a head, forcing federal officials to supplement this agreement with a new treaty. Despite further diminishing the overall Cherokee domain to ‘a block encompassing western North Carolina, northern Georgia, southeastern Tennessee, and northeastern Alabama’, they left the original treaty’s promises of citizenship and reservations unchanged.<sup>72</sup> By the time the commissioners left the Nation, they had registered three hundred and forty-two heads of family under the new articles, promising them the lands and citizen status which they had requested two years earlier.<sup>73</sup>

Like the Creek reservees, most of these people were relatively acculturated elite or middling Cherokees, and men who held prominent places within their communities. In western North Carolina, two of the largest reservation claimants were *Yona Equa* (Big Bear), an important local leader and negotiator with white agents, and Richard Walker, a prominent bilingual Cherokee slaveholder and businessman, who later served as a Justice on the Cherokee Supreme Court.<sup>74</sup> Others were also prominent headmen or local community leaders. At least two of the reservees were so-called “Indian Countrymen”, white men married to Cherokee women who lived among the Cherokees, often by virtue of some formal or informal adoption into the tribe, while at least two others were *mestizo* Cherokees.<sup>75</sup> These North Carolina patterns echoed the make-up of

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<sup>71</sup> Jurgelski, ‘New Plow’, 108.

<sup>72</sup> Finger, *Eastern Band*, 10. Article two of the new treaty noted that ‘according to the stipulations’ of the previous treaty, ‘the United States agree to allow a reservation of six-hundred and forty acres to each head of any Indian family residing within the ceded territory, exempting those enrolled for Arkansas, who choose to become citizens of the United States’. Treaty with the Cherokee, 1819: Feb 27, 1819, 7 Stat., 195, Proclamation Mar 10 1819, *LALT*.

<sup>73</sup> Hampton, *Cherokee Reservees*, 1 (see also for full list); Jurgelski, ‘New Plow’, 147. This figure included 311 life estate reservees and 31 fee simple reservations.

<sup>74</sup> Jurgelski, ‘New Plow’, 147-151.

<sup>75</sup> Ibid, 151-152. For much more detail on the identities of these reservees, see Ibid, ch7, who offers the most-detailed discussion of North Carolina reservees. For a full list of all 1819 reservee claimants, see *ibid*, 146; for a map of the 51 Cherokee reservee claimants in the ceded districts, see *ibid*, 150. For more on “Indian Countrymen”, see:

reservées across the ceded lands: mainly the elite or most prominent local headmen, on paper, the reservées seemed to be exactly the people officials had wanted.<sup>76</sup>

From the perspective of Washington policymakers, the treaties had done their job. By exercising a combination of physical removal – in this case, from the ceded lands into the rest of the Cherokee or Creek Nations – and citizenship or assimilation, the government had secured long-sought land cessions and extended its sovereignty. Or so they thought.

### Uncertain Citizens

In reality, things were not so simple. Despite their long roots in colonial assimilation experiments and civilization policies, these promises of indigenous citizenship were, from an attorney's perspective, deeply complicated. Citizenship was a cornerstone of the legal imagination of the early Republic but it was, at best, an ambiguous and ill-defined concept in the 1810s and 1820s. Politicians and protestors invoked citizenship to discuss their relationship to their nation, usually in contrast to the idea of imperial subjecthood or, like the Cherokee and Creek treaty commissioners, held it up as an ideal to which indigenous actors and foreign immigrants could aspire. Informally, most white Americans agreed that when they spoke about citizenship, they meant a strictly gendered, racialized way of belonging to the nation. With deep roots in ideas of military service, citizenly duty, and suffrage, for early Americans the concept was predominantly white and male.<sup>77</sup>

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Andrew K. Frank, *Creeks and Southerners: Biculturalism on the Early American Frontier* (Lincoln: University of Nebraska Press, 2005).

<sup>76</sup> For more on general reservées, see McLoughlin, 'Experiment'.

<sup>77</sup> For more on these terms, the relationship to subjecthood, and their antebellum history, see Douglas Bradburn, *The Citizenship Revolution: Politics and the Creation of the American Union, 1774-1804* (Charlottesville: University of Virginia Press, 2009), 2-3. For more about the racial dimensions of citizenship, see next note. Early Republic Americans carved parallel gendered roles for women, while also debating women's eligibility for citizenship in their own right. See, eg: Linda Kerber, *Women of the Republic: Intellect and Ideology in Revolutionary America* (Chapel Hill:

If these elements of citizenship seemed obvious, however, they were actually legally uncertain. Prior to the Civil War, there was no strict legal definition of citizenship. Legislation such as the 1790 Naturalization Act had set rough parameters for who could and could not gain citizenship status, but the concept's wider ramifications remained ambiguous at best. With the idea 'tossed about rather loosely' across the early Republic, citizenship's legal rights and ramifications remained unclear. Jurists even debated whether citizenship and its associated rights had to be earned, in contrast to modern ideas of automatically conferred, rights-based citizenship.<sup>78</sup>

More problematically, for most people in the early Republic, citizenship was a local, not a federal, concept. By the turn of the nineteenth century, there had been some indications of a federal jurisdiction over citizenship, but these had mainly been highly specific manifestations of claiming, documenting, or asserting Americanness in contested spaces like oceans or borders, where the federal government's role had been to certificate (or deny) an individual's national membership rather than to grant or reject this membership in the first instance.<sup>79</sup> Instead, most claims to citizenship – as well as its benefits and obligations – remained locally-rooted, from service in local militias to voting. Prior to the 1857 *Dred Scott v Sandford* decision, most ideas of citizenship remained rooted in membership of the states rather than of the federal union; across the US, many jurists and local residents viewed citizenship as simply beyond the federal remit.<sup>80</sup>

This ambiguity made these treaty promises of Indian citizenship deeply problematic. In offering citizenship to indigenous Southerners who chose to abandon their Nations and accept

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University of North Carolina Press, 1980); Rosemarie Zagari, *Revolutionary Backlash: Women and Politics in the Early American Republic* (Philadelphia: University of Pennsylvania Press, 2007).

<sup>78</sup> For the history of early Republic citizenship, see: W.J. Novak, 'The Legal Transformation of Citizenship in Nineteenth Century America', in M. Jacobs, W.J. Novak, and J.E. Zeszler, *The Democratic Experiment: New Directions in American Political History* (Princeton: Princeton University Press, 2003), 88. See also: J.H. Kettner, *The Development of American Citizenship, 1608-1870* (Chapel Hill: University of North Carolina Press, 1978), esp.219-236; Christian G. Samito, *Becoming American Under Fire: Irish Americans, African Americans, and the Politics of Citizenship during the Civil War Era*, (Ithaca: Cornell University Press, 2009), 1. For more on contemporary definitions of citizenship in terms of primarily belonging to the nation, see: J.N. Shklar, *American Citizenship: The Quest for Inclusion* (Cambridge: Harvard University Press, 1991), esp.3-4.

<sup>79</sup> See: Nathan Perl-Rosenthal, *Citizen Sailors: Becoming American in the Age of Revolution* (Cambridge, MA: Harvard University Press, 2015).

<sup>80</sup> See, eg, Kettner, *Development of American Citizenship*, and other texts in note above.

reservations under these treaties, federal commissioners extended not a tangible, concrete, and easily conferrable status but a promise – and, more specifically, one that they had a dubious authority to make. In this contentious legal climate, the only citizenship that federal commissioners could actually grant was the verbal title, which they could only hope would be upheld by local states. This was a much less secure status than the treaties had appeared to guarantee. Besides, the treaty terms also controversially overstepped into the jurisdiction of the Five Tribes themselves since they promised to strip claimants of their membership of indigenous nations.<sup>81</sup>

In theory, promises of land were simpler: federal officials could allocate reservation plots from ceded lands and grant them to indigenous claimants before dividing them among private and local state buyers. Yet in practice, even these reservation offers sparked jurisdictional battles. Local enthusiasm for the ceded lands kindled tensions as the 1819 depression brought unprecedented demands for land. Settlers jumped on tracts in the newly-ceded treaty districts, including ones originally promised to reserves. If these lands remained indigenous homes, from a Euro-American perspective they merely appeared prime areas of cotton land in places like Georgia, Alabama, North Carolina, and Tennessee. Hungry for land and the opportunities it afforded, they pressured officials for a swift transfer of ownership.<sup>82</sup>

Legal complexities and local hostility swiftly undermined the agreements. Federal officials complained about how to solve these new problems, but the story looked only too familiar to the Cherokees and Creeks involved.<sup>83</sup> For land-hungry settlers, the problem was one of enduring Indians; many turned to centuries' old strategies to solve it. Within weeks, white emigrants

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<sup>81</sup> The history of indigenous polities' citizenship (within their own Nations, as opposed to within the US) is long and contentious: most ideas coalesced in the c19th, in response to colonial concerns over indigenous "blood" and indigenous fears of eradication. See, eg: Adams, *Who Belongs?* US claims to control – or strip – indigenous citizenship were controversial even in the 1810s, as the ability to decide on the membership of one's nation is a key part of many ideas of sovereignty. The idea that the United States can exercise jurisdiction over indigenous polities and claim who can and cannot be citizens remains controversial today.

<sup>82</sup> McLoughlin, 'Experiment'.

<sup>83</sup> Jurgelski, 'New Plow', 4.

flooded the ceded tracts, claiming land with both their words and their bodies. In Cherokee country, local officials embraced this clamour and sold ceded lands within months and, in most cases, before federal officials could survey these tracts and mark out allocations for the Cherokee reserves. Lands that officials had promised to Cherokee reserves changed hands, and many new owners were quick and unscrupulous in moving the inconvenient previous owners off their property. Some Cherokees even faced white squatters moving onto their lands before these hasty sales could take place. By federal law, those who had already settled on unsold “public” land were entitled to purchase it at the bargain rate of \$2 per acre.<sup>84</sup>

Things were just as bad in Alabama. In 1815, Washington policymakers formally opened the lands ceded under the Treaty of Fort Jackson to American settlement. Within weeks, settlers flooded the lands quicker than Creeks could vacate them. “Alabama fever” consumed the region. Just like in Cherokee country, their enthusiasm spelt trouble for the handful of Creek reserves. The details of the Tensaw community’s reservations were not widely circulated, but even if settlers knew about them, they did not pay much notice. The *mestizo* Creeks ‘who had sided with the Americans and had had their houses burned and their crops and livestock destroyed by hostile Creeks just a year earlier, were now having the same done to them by white American land grabbers’.<sup>85</sup>

In response, Creek reserves fought back. In May 1815, just two months after Congress opened the floodgates to waves of settlement, several of the most prominent Tensaw community leaders petitioned President Madison. Directly addressing the president, they asked for ‘a redress of grievances of the most serious nature that can happen [to] us’. The intruders had reached the areas ‘in which distance the greatest number of those of us who are called Halfbreeds were born and raised....[and] have taken forcible possession of our fields and houses and ordered us off at

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<sup>84</sup> McLoughlin, ‘Experiment’, 160.

<sup>85</sup> United States Department of the Interior, Bureau of Indian Affairs, Assistant Secretary of Indian Affairs, ‘Recommendation and Summary of evidence for proposed finding for Federal acknowledgement of the Poarch Band of Creeks of Alabama, pursuant to 25 CFR 83’, 29 Dec 1983, (hereafter: Poarch Proposed Finding), 15

the risk of our lives' and 'not content with that, they have even proceeded to blows and committed private injury'.<sup>86</sup> The eleven Creek headmen asked Madison whether the government was willing to remember the Creeks' sacrifice and the promises it had made them. They reminded him that the government had promised that 'natives and descendants of the Indians would be intitled [sic] to a lease of six hundred and forty acres of land'. The headmen signed off by noting that their faith in the government had 'encouraged [us] to remain on our farms which we have occupied for years before the war'.<sup>87</sup>

The letter had the intended effect. Their pleas of loyalty elicited enough sympathy from Madison for him to forward the letter to Benjamin Hawkins, former agent to the Creeks and, as Superintendent of Indian Affairs, a prime advocate of civilization policy.<sup>88</sup> Hawkins met the petition with concern. 'The situation of the half breeds', he wrote, 'has been particularly embarrassing. They embraced the pattern of civilization first and by their conduct merited the attention of the agent for Indian Affairs'. The federal government had not managed to honour its promises to them. He suggested further action should be sought immediately.<sup>89</sup>

While Hawkins made promises in Washington, violence continued on the ground. The next two years were difficult for the Tensaw community. Settlers harassed families, claiming their lands by force. In June 1816, they also lost one of their key lifelines to Washington when Hawkins died, replaced by Thomas McKenney, another Indian Office stalwart and civilization advocate, who lacked Hawkins' long connections to the Creeks.<sup>90</sup> Despite the myriad difficulties, the federal government eventually mandated relief. In April 1816, Congress appropriated funds to compensate individual losses; in March 1817, it issued a bill promising to issue all entitled reservees with fee simple patents for their Alabama lands.<sup>91</sup> By the end of the year, the War

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<sup>86</sup> Petition of Tensaw Creeks to President Madison, 29 May 1815, cit: Poarch Proposed Finding, 15-16.

<sup>87</sup> Ibid.

<sup>88</sup> For more on Hawkins, see: Pound, *Benjamin Hawkins*.

<sup>89</sup> Petition of Tensaw Creeks.

<sup>90</sup> Pound, *Benjamin Hawkins*, esp ch14.

<sup>91</sup> Poarch Proposed Finding, 16-18.

Department had dispatched an agent to survey and allocate the titles. The survey confirmed many of the reservations, but overlooked the claims of some of the headmen, who continued to campaign for their own plots. In March 1825, Congress passed another act granting three key reserves title to the reservations they were owed.<sup>92</sup> At least on paper, the Tensaw community's strategic co-operation with the Treaty of Fort Jackson had paid off, sustained through ongoing cooperation and performance of citizenship and loyalty to the United States. Yet on the ground, things remained precarious, especially for those whose claims lay unconfirmed, as settlers continued to eye Creek lands and openly called for vengeance for losses in the Creek war.

In Cherokee country, there were more reserves to worry about, and things were not so successful. As historian William McLoughlin has argued, 'all of these difficulties could have been overcome if the states and the frontier whites had shown any concern to cooperate with the government for the experiment in Cherokee citizenship'; but they had not. In the context of wider land-hunger, and the tangle of jurisdictional disputes that would soon lead them to push for full-scale Indian Removal, local officials 'instead...showed the utmost hostility toward...[the Cherokee citizenship experiments] and used every possible means to thwart it'.<sup>93</sup>

Settlers and local officials used a raft of means to disrupt Cherokees' claims. Across the South, white residents protested vocally, claiming that the idea of incorporating Cherokees as citizens was an injustice against them, and undermined the whole federal agreement that bound the Union together.<sup>94</sup> In Tennessee, state prosecutors artificially inflated the cost of the whole process in an effort to force federal officials to abandon it.<sup>95</sup> Citizens and lawmakers also vocally expressed their indignation elsewhere. In Alabama, local citizens felt compelled to write directly to the Office of Indian Affairs to inform them of the fact that they were likely being defrauded

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<sup>92</sup> Paredes, 'Back From Disappearance', 125; Poarch Proposed Finding, 20.

<sup>93</sup> McLoughlin, 'Experiment', 160.

<sup>94</sup> Petition from Georgia Legislature to Monroe, 11<sup>th</sup> December 1819, cit. McLoughlin, 'Experiment', 163.

<sup>95</sup> See McLoughlin, 'Experiment', 168.

by reservee claimants, and that they ought to abandon the whole scheme.<sup>96</sup> Others argued that Cherokee claimants were escaped slaves or free blacks attempting to cheat the system, citing only spurious evidence to support such claims.<sup>97</sup>

Cherokee claimants fought back. Many lost their lands, either through displacement or violence, and returned to live among the Cherokee Nation.<sup>98</sup> Others followed the Tensaw Creeks' lead and sued for their lands through petitions and lawsuits. This course was not easy: contemporaries and reservees testified that the North Carolina courts were often actively biased against Cherokee claimants, with judges and juries openly siding with the claims of white settlers even before the Cherokees had time to make their case.<sup>99</sup> Nonetheless, with the hired help of white lawyers and fellow "Indian Countrymen" reservees, such as one Gideon F. Morris, many reservees did find some help in the courts. Almost all cases that eventually came before the North Carolina courts in the 1820s found in favour of the reservees; the catch was that few of these decisions actually translated to recovery of the lost lands. Many cases collapsed into long appeals processes and most reservees concluded that it would be easier to take their chances in other lands, or simply to return to the Cherokee Nation.<sup>100</sup>

Two cases did make their way to the North Carolina supreme court during this decade. By far the more significant of these was the case of *Euchella v. Welch* in 1824. Several years earlier, a reservee named Euchella filed suit against Joseph Welch, a local white man who had bought part of the lands that Euchella had already claimed and registered as a reservation under the 1817 and 1819 treaties. The case trundled through the lower courts, finding in favour of Euchella only to be repeatedly re-challenged by Welch, until it reached the Supreme court in 1824. In June, the court decided in favour of Euchella, refusing to hear Welch's objections and denying the

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<sup>96</sup> H. Ross to George Graham, 28 November 1827, NARA M234, Roll 72, 'Cherokee Agency, 1824-1880: Cherokee Agency East, 1826-1828' [hereafter NARA M234-R72].

<sup>97</sup> McLoughlin, 'Experiment', 176-177. I have found no evidence to suggest that these claims had any basis in fact.

<sup>98</sup> Jurgelski, 'New Plow', 214.

<sup>99</sup> Ibid, 216-217.

<sup>100</sup> Ibid.

possibility of another retrial.<sup>101</sup> Elsewhere in North Carolina and the other states of the ceded district, lawmakers passed half-hearted legislation intended to protect the reservees' claims, but did little to enforce it.<sup>102</sup>

Although the decision won Euchella and his family the right to his reservation, it had less positive implications for many other Cherokee reservees in the long term. In contesting Euchella's claims, Welch and his attorneys had argued that the federal government had no right to grant reservations in the first place, but they had also cast doubt on the legality and accuracy of the specific surveys that had granted the reservees' plots. In the coming years, this would make it much harder for other reservees to even claim that their lands had been compromised: the simple paper claim to the land was not enough, unless accompanied by specific proof that the reservees had lived on and attempted to improve the lands and that these specific homes had been violated, something that was much harder to prove in the face of white incursions.<sup>103</sup> More problematically still, the decision also imperilled the Cherokee reservees' claims to citizenship, both within and beyond North Carolina. The decision appeared to recognize the reservees' right to their lands, but deliberately side-stepped the treaties' provisions of citizenship, refusing to confirm or deny the Cherokees' entitlement to the contentious status.<sup>104</sup>

Ambiguous at best, this outcome was enough to anger local white settlers, who called again for the swift settlement of these ceded lands. In the face of the fallout, officials scrambled to resolve the situation as quickly and neatly as possible, usually at the Cherokees' expense. Rather than fighting to protect the reservees' original claims, officials sent commissions into the ceded district, where they simply bought many of the Indians' reservation claims, especially in places

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<sup>101</sup> Jurgelski, 'New Plow', 220- 221.

<sup>102</sup> Ibid, 222-234. In North Carolina, there were a series of commissions, too, but ultimately little came of them, see 222-234.

<sup>103</sup> Ibid, 220-221.

<sup>104</sup> Finger, 'The North Carolina Cherokees'; Jane Dinwoodie, 'The Eastern Cherokee and the Negotiation of Nationalism in Appalachia during the American Civil War' (MPhil thesis: University of Cambridge, 2012), esp. ch2.

like Alabama and Georgia, where reservees had not enjoyed the success of people like Euchella in North Carolina.<sup>105</sup>

For many of the 342 Cherokee reservees, these tensions proved their undoing.<sup>106</sup> By the mid-1820s, many of the 1817 and 1819 Cherokee reservees had abandoned their reservations and claims to US citizenship and moved back into the legal boundaries of Cherokee country. Even Euchella and his family ultimately sold their reservation lands in the face of mounting pressure and relocated to the Cherokee Nation. As early as 1821, Cherokee agent Return J. Meigs estimated that ‘four-fifths, or about 250 of the life estate reservees had left their reservations’ for good.<sup>107</sup> By 1830, most of these earlier treaty provisions had fallen apart. Only a handful of Cherokee reservees retained the claims they had signed up for; in Alabama, only thirty or so Creeks benefitted from the provisions in the Treaty of Fort Jackson, and several of their claims still went unapproved.<sup>108</sup> As far as federal officials were concerned, the experiment was dead.<sup>109</sup>

### Seeing Failure like a State

As the 1820s waned, policymakers in the Indian Office and the War Department looked back on these experiments as having regrettable but, ultimately, largely expected results. Viewed from the safety of agencies or at the distance of DC, American agents blamed indigenous Southerners themselves and dismissed the whole experiment as a sorry affair. Cherokee agent Return J. Meigs was especially damning about the Cherokees who had chosen to cooperate with officials. By acting ‘on the recommendation of the United States commissioners’, he concluded, the cooperating Cherokees had ‘placed all their hopes and prospects for support of themselves’ in federal promises of citizenship and land. As a result, they had become disconnected from the

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<sup>105</sup> Jurgelski, ‘New Plow’, 5.

<sup>106</sup> Figure is from McLoughlin, ‘Experiment’, 157-9.

<sup>107</sup> McLoughlin, ‘Experiment’, 178.

<sup>108</sup> Poarch Proposed Finding.

<sup>109</sup> Jurgelski, ‘New Plow’, 5.

wider Cherokee Nation, foolishly leaving ‘their property... [as] their only hope, their Sheer Anchor to save the Ship in a storm’. In fact, Meigs pityingly complained that ‘by embracing the offer of the Commissioners’ the Cherokees had been even more naïve, and had ‘relinquished all their rights to and in their native country’, leaving them vulnerable to ‘be now deprived of the locations [on their reservations]...[and] become outcasts and beggars placed in a Country where [they would suffer] for the crime of wearing a complexion a shade a little darker than our own’.<sup>110</sup> For officials like Meigs, the reservees’ fate was their own fault and, as such, their own problem to navigate.

Yet even if officials did not see them or pay them much notice, a number of Cherokee and Creek reservees survived. Most lived out inconspicuous lives, trying to keep their lands without drawing undue attention to themselves. As they had been in the 1810s, most were precisely the sort of people that federal officials had wished to attract to the reservations in the first place: leading headmen of their districts, who were largely acculturated or willing in the long-term to live outside of the Cherokee Nation and within the United States.<sup>111</sup>

Not everyone perfectly fit this bill. In particular, some of the reservees were not quite the highly acculturated, “civilized” model individuals that officials had anticipated. For instance, a number of reservees who had settled in far western North Carolina, at the edges of the Cherokee Nation and the ceded district, might have surprised the original treaty commissioners had their paths crossed. Yonaguska (Drowning Bear), Wilnota, and Long Blanket were the leading headmen of their district, they and their families lived largely traditional lives in clan units, wore traditional dress, had low literacy rates, and eschewed intermarriage. Contemporary observers remarked that their settlements had a very high proportion of ‘fullblood’ Cherokees who were ‘at least twenty years behind the rest of their people’.<sup>112</sup> Of course, these perceptions were relative. By 1830, even

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<sup>110</sup> Return J. Meigs to Roane, 12 November 1822, cit. McLoughlin, ‘Experiment’, 178-9.

<sup>111</sup> Jurgelski, ‘New Plow’, ch11.

<sup>112</sup> Finger, *Eastern Band*, 12-13; George Barber Davis in 1808. Cit. Finger, *Eastern Band*, 13.

these liminal Cherokees had undergone years of cultural and social adaptation, including adopting Christianity, forging trading relationships with local settlements and factors, relationships with white neighbours and missionaries, and, on a very small scale, black slaveholding. Yet within the context of civilization policies and adaptation strategies of the 1810s and 1820s, these Cherokees were far from the highly acculturated reservees that officials had anticipated.<sup>113</sup> If officials had noticed them, they might have been shocked to discover that these people maintained claims to be citizens of the United States.

That was unlikely, however, since the reservees deliberately used these decades to keep themselves out of sight. By and large, these Cherokees – who came to be known as the Qualla Cherokees, in honour of their main settlement Quallatown, or less often as the Oconaluftee Cherokees in honour of the river they lived along – both sought and used their reservation lands as secluded pockets to live in the ways and societies that they wanted.<sup>114</sup> For now, they had kept their lands. High in the mountains, far away from close white settlement, they remained largely out of sight of those who could trouble them.

Elsewhere, others also challenged federal perceptions in different ways. In both Cherokee and Creek country, other reservees remained, more or less beyond the concern of state officials, with their reservation claims unconfirmed but not abandoned. Even if the federal government turned away from the experiment, dismissing it as a failure, the experiment itself had not vanished.

These people were small and their communities imperilled, but they would come to matter enormously when it came to removal and to some very visible ways of avoiding it.

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<sup>113</sup> For more on the community's traditionalism, see also ch.1, esp.13-16, and ch.4. See especially p.16 for more on slavery – the community largely eschewed slavery, though Yonaguska held at least one slave. See also: Russell and Godbold, *Confederate Colonel*, 3-8, 10-11. James Mooney also bore out this traditionalism in both his interviews and observations at the end of the century: Mooney, *Myths*, 157-81, esp.179-81.

<sup>114</sup> For terms, see: Dinwoodie, 'The Eastern Cherokee', 1. I have chosen to call them the Qualla Cherokees, for clarity. Tribal histories sometimes also refer to them as the Eastern Band, especially following removal, as these people would go on to become the ancestors of the modern-day Eastern Band of Cherokee Indians.

### Invisible Exemption Claims

As indigenous Southerners, settlers, and agents fought these battles in the South, policymakers in Washington designed much more ambitious and permanent solutions to the future of indigenous sovereignties in the region.

Even more than the 1810s, the 1820s were a decade of seismic shifts in Indian policy. By the middle of the decade, policymakers poured money into civilization schemes, such as missionary efforts and Indian schools, but they did so in the shadow of a new and mounting removal policy, intended to secure large-scale movements of *all* Southeastern Indians, who simply could not be “civilized” within the United States, rather than simply small-scale voluntary emigrations.<sup>115</sup> In 1824, President Monroe announced the new idea to Congress, suggesting that new lands carved from the Louisiana Purchase could be used to resettle whole indigenous polities, since ‘experience has shown that unless the tribes be civilized they can never be incorporated into our system in any form whatever’.<sup>116</sup> Long before Jackson put the question to a vote in Congress in 1830, Indian Office staff began making plans and scoping the ground, seeking to judge Indians’ enthusiasm as well as the form that any possible large-scale removals might take.<sup>117</sup> In this transitional period, not everyone was behind the new policy. In particular, Commissioner of Indian Affairs Thomas McKenney remained a vocal opponent, advocating only a policy of voluntary colonization in Indians’ own interests, but the climate in DC was changing so rapidly that even McKenney was forced to move ahead with removal negotiations.<sup>118</sup>

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<sup>115</sup> Nicholas Guyatt has characterized this decade as marking a shift from visions of voluntary colonization to those of forced removal: see Guyatt, *Bind Us Apart*, esp. ch11.

<sup>116</sup> Monroe to US Congress, Eighth Annual Message, 7 December 1824. Retrieved online at ‘Monroe’s speeches’, website of the Miller Centre, University of Virginia: <http://millercenter.org/president/monroe/speeches/speech-3606> [accessed: 11/09/2015, 13:16]. President Monroe to United States Congress: ‘Message of President Monroe on Indian Removal’, 27 January 1825, in Francis P. Prucha (ed.), *Documents of United States Indian Policy* (Lincoln: University of Nebraska Press, 2000, 3<sup>rd</sup> edn), 39.

<sup>117</sup> See Satz, *Indian Policy*, esp.ch1; Prucha, *The Great Father*, ch7.

<sup>118</sup> Viola, *McKenney*, ch11; Herman J. Viola, ‘Thomas L. McKenney, 1824-1830’, in Robert M. Kvasnicka and Herman J. Viola (eds.), *The Commissioners of Indian Affairs, 1824-1877* (Lincoln: University of Nebraska Press, 1979), esp.5-6.

In these early stages of planning, policymakers' ideas echoed those of earlier decades. By and large, many in the Indian Office still believed that the Five Tribes were composed of civilizable elites: the highly acculturated *mestizo* leaders with whom officials corresponded most frequently, and, as a result, knew to be largely opposed to removal.<sup>119</sup> By contrast, many Indian Office staff believed that the rest of these polities were made up uncivilized masses who were so unsuitable for permanent settlement within the US that they would accept or even welcome the prospect of relocation west of the Mississippi. As McKenney reported to Congress in 1829, 'The evidence furnished by the Department as to the disposition of both those tribes to remove, is demonstrative of their willingness to go; but they are held in check by their chiefs and others, whose interest it is to keep them where they are'.<sup>120</sup> With this in mind, officials began to anticipate that removal policy might have some exceptions. Officials began to wonder if a small number of acculturated elites would remain and merge into the United States, in order to ensure that the majority of indigenous Southerners would permanently vacate their lands and the region.<sup>121</sup>

Still, the longer history of these assumptions was largely lost on officials. As policymakers planned removal, they faced numerous concerns ranging from obstinate elites to spiralling budgets. But one thing that was almost totally absent from these worries was the question of previous claims to citizenship and reservations. As officials pencilled removal plans and dispatched agents from the halls of Washington, they were seldom aware that any such claims remained, let alone that they would have any bearing on the course of their removal plans.

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<sup>119</sup> These people were the federal government's key window into the South, and hence the basis for their understandings of it. The collections of letters received by the OIA during the 1820s reveal hundreds of letters from these Five Tribes elites: see NARA M234 for more. as one historian notes, they 'were the most prolific letter writers'. Viola, *McKenney*, 97. The Five Tribes also sent several delegations to Washington DC in the 1820s, including a delegation of Cherokees in 1824. See, eg: Cherokee Delegates to John C. Calhoun, February 1824, Washington DC, NARA M234, roll 71, 'Cherokee Agency East, 1824-1825' [hereafter NARA M234-R71].

<sup>120</sup> Head of Office of Indian Affairs, Thomas L. McKenney, to United States Congress: 'Report on Indian Affairs: 1829', *ARCLA*. As the next chapter demonstrates, this was not the case. Officials' focus on the elites distorted their understanding of the Five Tribes and their opinions on removal.

<sup>121</sup> Initial removal treaties, especially the Treaty of Dancing Rabbit Creek, proceeded with this assumption to disastrous effect, as the next chapter shows.

In the Indian Superintendency and, after its rebranding and restructuring in 1824, the Indian Office, Commissioner of Indian Affairs Thomas McKenney and his staff caught occasional reminders of these earlier treaty promises, assuming they read closely enough. Every year between 1826 and 1828, at least two or three letters relating to the 1817 and 1819 treaties passed through the Cherokee Agency. Most related to outstanding claims, urging government officials to pay out long-overlooked sums for emigrations and improvements, some of which had been promised as far back as 1804.<sup>122</sup> More typically, however, much of this correspondence reinforced officials' view of the 1810s citizenship experiments as something unfortunate and long since finished. Many petitions urged the Indian Office to help them secure payment for lands lost during the dispossessions of the 1810s or, even more encouraging to officials, payment for improvements made to lands from which the Cherokee inhabitants had since emigrated, either back into the Cherokee Nation or out to Arkansas.<sup>123</sup>

Just as importantly, these passing references blurred into insignificance amidst the Office's vast administrative network. Although these missives occasionally reminded officials of the legacy of the treaties, they were also not enough to convince them to consider the treaties as an ongoing, relevant template for future Indian policy. Besides, these years gave rise to new and urgent problems of their own, especially amidst the frequent reports of violent clashes between Indians and settlers, which looked increasingly likely to threaten war.<sup>124</sup> Nestled nearly a thousand miles away, in the mountains of North Carolina or the edges of white settlement in Alabama, the Cherokees and Creeks who had clung onto their claims to citizenship were effectively invisible to the Indian Office policymakers.

Changes of administration exacerbated this oversight. Thomas McKenney, Hawkins' replacement as Superintendent, had been a key figure in these efforts for decades. Yet in August

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<sup>122</sup> See, eg, Charles Hicks to Hugh Montgomery, Cherokee Agent, 31 January 1826. NARA M234-R72.

<sup>123</sup> See, eg, John Ross, Elijah Hicks, and A. McCoy to Hugh Montgomery, Agt of the United States, Rupeville (?) Cherokee Nation, 14 December 1825. NARA M234-R72.

<sup>124</sup> See Foreman, *Indian Removal*, ch18.

1830, Thomas McKenney's continued opposition to removal cost him his job; his replacement Samuel S. Hamilton was a staunch ally of Jackson, willing to implement the new policy swiftly and decisively. A 'career bureaucrat', Hamilton had served as McKenney's secretary between 1824 and 1830 and had even edited a list of all treaties signed prior to 1825.<sup>125</sup> Hamilton should have known about the treaties, but even if he did, it scarcely mattered. By 1831, he was out of office, replaced by Elbert Herring, a new commissioner who knew little about Indian Affairs and thought indigenous beliefs and practices 'extremely obnoxious', but was a strong Jacksonian and closely connected to Lewis Cass, the new Secretary of War.<sup>126</sup> Unlike McKenney, therefore, later commissioners simply did not have the long institutional memory of these citizenship claims, and their correspondence suggests that they paid them little heed in the 1830s.

When federal policymakers and bureaucrats began to lay the groundwork for implementing Indian Removal in the South, the treaties of 1814, 1817, and 1819 were effectively forgotten. Seeking to craft a robust, permanent solution to the problem of indigenous sovereignties in the South, they focused their energies on the Five Tribes elites and planned to dispatch agents to the largest and most visible indigenous settlements. Herring's strong Jacksonian credentials bolstered this intense focus on a swift removal.<sup>127</sup> As they dispatched agents to negotiate on the ground, few people in Washington had any real reason to dwell unduly on a long-dead policy. After all, as they saw it, most claimants had since been dispossessed and merged back into their nations. Why should these people be a major concern in their plans, especially when there were so many other matters demanding their attention?

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<sup>125</sup> Viola, *McKenney*, 223; R. David Edmunds, 'Samuel S. Hamilton, 1830-1831', in Kvasnicka and Viola, *Commissioners*, 9; Rockwell, *Indian Affairs*, 168.

<sup>126</sup> Ronald N. Satz, 'Elbert Herring, 1831-36', in Kvasnicka and Viola, *Commissioners*, 13-16.

<sup>127</sup> *Ibid.*

## Part Two:

### Negotiating Non-Removal

Up to the mid-1820s, this invisibility had suited many of the reservee communities. For the Qualla Cherokees especially, the decision to stay out of sight was a calculated one. Aside from a wish to simply live their own lives and preserve their own traditions unmolested, Yonaguska and the other leaders were acutely aware that their lives did not perfectly fit the model of civilization and, especially, assimilation that federal officials had anticipated for reservees who now technically lived in the United States, rather than Indian Country. As a result, the 1820s were a decade of deliberate isolation for the community.<sup>128</sup>

By and large, the other Cherokee and Creek reservees elsewhere in the South also stuck to the shadows. Unlike the Qualla Cherokees, these highly acculturated elite or middling reservees did not fear that they would be unmasked as insufficiently “civilized”, but this did not mean that they could rest easy. The years following the treaties had been a stark reminder of the fragility of their claims. As local land hunger and Indian resentment grew, many must have worried for their lands and their families, knowing only too well that even secure title did not guarantee permanent possession. As the dust settled on the agreements, many chose to keep to themselves, avoiding any attention that might lead to dispossession.

Unlike the richest Cherokee lands in Georgia or the remaining Creek nation lands in Alabama, most remaining reservees lived on lands ill-suited to cotton production, like the swampy Tensaw and the mountainous lands of western North Carolina.<sup>129</sup> As a result, they were largely undesirable to poor or middling yeomen seeking passage into Southern society through slave

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<sup>128</sup> Finger, *Eastern Band*, ch1.

<sup>129</sup> Western North Carolina had a very low proportion of slaveholders, though historians have shown local residents remained deeply committed to the institution: John C. Inscoe, *Mountain masters, slavery, and the sectional crisis in western North Carolina* (Knoxville: University of Tennessee Press, 1989); Martin Crawford, *Ashe County's Civil War: Community and Society in the Appalachian South* (Charlottesville: Virginia University Press, 2001), ch.4. Likewise, the Tensaw was surrounded by swampy ground and piney hills: see Waselkov, *A Conquering Spirit*, ch1.

ownership. This was no accident. When choosing their reservation plots in the 1810s and 1820s, many of the Cherokee and Creek headmen had knowingly selected lands at the edges of both white settlement and their own Nations. Their choices strategically combined sacred spaces with an awareness of the protective power of terrain.<sup>130</sup>

Still, as local hostility grew and removal approached, their isolation began to look more like vulnerability than security. In an era of economic growth following a difficult recession, even the remote mountains held attractions to white settlers. Interest peaked in 1828, when prospectors found a rich deposit of gold in the mountains of North Carolina and then Georgia, just some miles from Cherokee lands. These lands technically lay within the boundaries of the Cherokee Nation rather than the lands owned by the reservees, but the ensuing rush of prospectors and settlers offered a stark reminder of the seriousness of the situation. In Georgia and Alabama, growing clamours for violence and removal rattled remaining reservees.<sup>131</sup>

Alongside growing pressures for dispossession, local legislatures and communities in both North Carolina and Alabama grew openly hostile towards their indigenous populations in these years. If these calls were not as loud as those in Georgia, they were no less unsettling, not least because many local officials framed their objections to the Indians' presence in terms of civilization and citizenship. In 1828, the North Carolina General Assembly declared that indigenous people were unsuitable for continued residency in the state, since 'the red men are not within the pale of civilization; they are not under the restraints of morality, nor the influence of religion; and they are always disagreeable and dangerous neighbors to a civilized people'. The Legislature argued that removal was the only option to prevent 'subject[ing] the [white population]...to depredations and annoyance' in the face of such a lack of civilization.<sup>132</sup> There is little evidence that these lawmakers had the Cherokee citizens in mind when making these charges or, in fact,

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<sup>130</sup> Historian Charlotte Neely also makes this link: Charlotte Neely, 'Acculturation and Persistence among North Carolina's Eastern Cherokee Band of Indians', in Williams, *Southeastern Indians*, 156-8.

<sup>131</sup> Finger, *Eastern Band*, 14-15.

<sup>132</sup> *ASP*, Public Lands, V, 394.

that they were aware enough of their existence to complain about it. But these claims spelt danger, striking at the heart of their right to remain by suggesting that indigenous people simply could not exist within the United States.

By the early 1830s, the reservees knew their existence was uncertain. Many feared a repeat of the dispossession of the past two decades. For those who had managed to hold onto their lands, it looked increasingly likely that there would be no straight line between prior citizenship claims and an automatic exemption from removal. If the reservees wanted to turn prior claims into non-removal, they were going to have to work hard. Officials' sight was capricious; it would not be safe to assume they would keep their promises.

### Embracing Visibility

High in the mountains of western North Carolina, the Qualla community decided to fight, staking visible claims to the citizen status that they had already struggled to maintain. In 1829, Qualla Cherokee reservees hired a white attorney to negotiate with the federal government on their behalf. On 26<sup>th</sup> June, three prominent Cherokee reservee headmen – Yonaguska, his brother Wilnota, and Long Blanket – and fifty-seven other reservees entered a formal contract with a local attorney named John Dillard. Styling themselves 'citizen Indians' to stress their entitlements under the 1817 and 1819 treaties, they gave Dillard power of attorney. They accompanied their permission with a brief statement, explaining that their actions were necessary because 'we are totally ignorant of the English language, and as much of the laws and customs of this our adopted country by reason whereof we are so often imposed on, cheated, and defrauded by some of the people in this country who seem to...disregard the moral and natural rights of others'.<sup>133</sup>

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<sup>133</sup> Cherokee power of attorney statement to John L. Dillard, cit. Duane H. King, 'The Origins of the Eastern Cherokee as a Social and Political Entity', in King, *Cherokee Indian Nation*, 166-7.

For the Cherokees, Dillard offered an important compass to navigate an alien, Euro-American legal world, but his service was short-lived. Just months later, in early 1830, these Cherokees fired him and appointed a new attorney in his stead. Their choice was William Holland Thomas, a man much more intimately connected to and better positioned to serve the Qualla community and their own special interests. Unlike Dillard, these Cherokees had known Thomas for years. The son of two English immigrants, Thomas arrived in Cherokee Territory as a bound boy and store clerk in 1818 at the age of 13. He quickly struck up a relationship with local Cherokees who would later go on to become reserves. According to Thomas' later testimony to Smithsonian ethnographer James Mooney, Yonguska is said to have adopted Thomas into his clan. In the subsequent years, Thomas had continued to trade, remaining close to his Cherokee kin as he advanced a career as trader and lawyer along the Carolina frontier.<sup>134</sup>

For the first few years, Thomas' service as the Cherokees' official agent was relatively uneventful. However as other removals swept the South, agents arrived in the Cherokee Nation, desperate to secure an agreement for mass removal. John Ross and the leaders of the main Nation resisted, mounting extended opposition and two US Supreme court challenges, heard in 1831 and 1832. But plans for Cherokee removal continued apace, flanked by opposition and fiery political debates within the Nation.<sup>135</sup> Just a few years later, tensions came to a head. 1835 had been a fraught year for all Cherokees. In the dying days of winter, federal treaty commissioners General William Carroll and John F. Schermerhorn signed a treaty in New Echota. However, the treaty was not what it seemed. Since the Cherokee Nation remained divided, only a small handful of Cherokee leaders had agreed to meet the negotiating party. Under growing pressure from the agents, leaders of the so-called "Treaty Party" of Cherokees in favour of removal had eventually agreed to sign the agreement. Ross and the anti-removal leaders viciously opposed the deal. In

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<sup>134</sup> Russell and Godbold, *Confederate Colonel*, chs1-2; Finger, *Eastern Band*, 13.

<sup>135</sup> For wider Cherokee opposition, see: Foreman, *Indian Removal*, chs19, 20. Some emigration parties, comprised primarily of Cherokees who had agreed to cede their lands and leave Georgia, went west during these years, alongside this ongoing contest.

October, the Council rejected the agreement and proposed a delegation of Cherokee leaders to travel to Washington DC, seeking to resolve the question of Cherokee removal once and for all.<sup>136</sup>

By the time news of the situation reached the Qualla community, it was clear that the negotiations represented a crux in all Cherokees' future. This was the moment when the shape of Cherokee removal would finally be established on paper. Even from the distance of western North Carolina, Yonaguska and Thomas knew that this was the best chance to secure federal permission for the Qualla Cherokees to remain and to have their citizenship status enshrined within whatever legal form Cherokee removal would finally take. Yonaguska also knew that federal officials had ignored all North Carolina Cherokees in the early stages of negotiation. In the fall, John Schermerhorn had made a short visit to the Valley Towns, but had struggled to muster any enthusiasm for removal. Since federal officials barely knew of the presence of the Qualla and other reservees beyond the boundaries of the Cherokee Nation, Schermerhorn had made no attempt to solicit their opinions on the matter. No single Qualla Cherokee had actually signed the treaty.<sup>137</sup>

The treaty negotiations were their last chance. If their claims to remain rested in earlier legislation, they needed to force federal government to see and recognize these prior claims.<sup>138</sup> On 31 January 1836, Yonaguska and the other fifty-three Qualla headmen signed a contract with Thomas, 'binding him to go to the national capital, examine the treaty, and to sign it for them if he found that it provided for them "equal and unconditional rights"'. Thomas also agreed to

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<sup>136</sup> Ibid, ch.21.

<sup>137</sup> Russell and Godbold, *Confederate Colonel*, 22, 24.

<sup>138</sup> Again, earlier historians tend to attribute this strategy to Thomas: it is likely he had an influence, but it is also likely that Yonaguska and other Cherokee leaders were also aware of the stakes of and best way to affirm their claims, especially since they had been negotiating them for twenty years. See, eg, Ibid, 25.

represent other local Cherokee reserves, including those at Cheoah (Buffalo Town) and other smaller nearby settlements.<sup>139</sup>

In March 1836, William Holland Thomas began the long and arduous journey to Washington DC. When he arrived, he immediately found that negotiations between the two Cherokee delegations and the federal government were heated.<sup>140</sup> For the next month, he spent long hours engaged in discussions with each of the rival factions, as well as with federal policymakers and his own network of contacts and business associates in the city. Initially, Thomas set hope in Article 12 of the proposed Treaty of New Echota: a clause that promised that ‘Those individuals and families of the Cherokee nation that are averse to a removal to the Cherokee country west of the Mississippi and are desirous to become citizens of the states where they reside’ would be allowed to remain, while also receiving payment for claims *per capita*.<sup>141</sup> However, officials’ attitudes towards citizenship and permanent residence prospects were also deeply affected by events among the Choctaws, and their misunderstanding of citizenship provisions in Article 14 of their removal treaty (to be discussed in next chapter). Beginning to see the disastrous, unintended impact that any loopholes in removal treaties could have for federal policies, Washington officials refused to take another such chance. As a result, policymakers soon struck out Article 12 and the hope it held. Thomas recalibrated his tactics and turned again to the Qualla community’s 1817 and 1819 reservation and citizenship claims as the basis for their non-removal. Initially, officials scarcely noticed. Amid the hustle and bustle of the negotiations, policymakers had little interest in this lone voice.<sup>142</sup>

Throughout the following days and weeks, he fought on the Cherokees’ behalf to force officials and delegates to recognize their claims. This strategy took place over several fronts, lobbying during the formal negotiations over the treaty, as well as a range of informal meetings with key

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<sup>139</sup> Ibid, 24.

<sup>140</sup> Ibid, 25.

<sup>141</sup> Finger, *Eastern Band*, 17.

<sup>142</sup> Ibid. See also chapter 2.

players. In formal negotiations, Thomas continued to stress the Cherokees' case that they were citizens of the United States (or, at least, the state of North Carolina), and hence were exempt from removal. While these prior claims to citizenship were fundamental to the reservees' arguments, performances of civilization were just as important. As Thomas had correctly calculated, the community needed not only to demonstrate their legal claims to citizenship but their wider "civilized" nature and credentials to remain permanently within the United States. Thomas himself was an important part of this performance strategy and its success. By drawing on his legal knowledge and the privileges of his white skin, he could present the Cherokees' case in a way that they never could. Rather than finding themselves cast adrift in a Euro-American legal world, the Qualla community could rely on Thomas to negotiate their way through legal jargon, unfamiliar precedents, and lengthy discussions. Yonaguska and the other reservees surely knew this, and made a calculated strategic choice in choosing this man to represent them.<sup>143</sup>

The reservees also took advantage of Thomas' varied networks. In seeking to demonstrate the Qualla community's right to remain, Thomas drew on his wide circle of prominent relatives, friends and neighbours, both in DC and across the South. Most important were his connections with the main Cherokee delegations themselves. Thomas had a fraught relationship with John Ross, the principal Chief of the Cherokee Nation and a staunch opponent of both removal and the New Echota treaty, but got on well with his rival Major John Ridge, head of the pro-removal Treaty Party. While in Washington, Thomas approached Ridge and made the reservees' case. This move was rooted in tactical considerations as much as personal networks: both Thomas and the reservees knew that their best chance of securing a concession was to tie their cause to the pro-Treaty Cherokees, who could both push their case to federal officials as they negotiated

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<sup>143</sup> In previous decades, historians have tended to view Thomas as controlling the whole negotiation process, romanticizing his relationship with the Cherokees and uncritically repeating Thomas' own bombastic (and racially-charged) claims to have been their 'white chief'. See, eg: Russell and Godbold, *Confederate Colonel*, 21-22. However, in reality, it is much more likely that Yonaguska and the other reservees controlled and benefited from the relationship as much as Thomas did, and entered into it on their own terms. They knew that his social capital as a businessman, his extensive family connections, his legal training, his relative wealth, and after all his whiteness, offered them a route into spaces and audiences which would otherwise have been totally closed or unreceptive to them.

treaty terms, as well as to see that any promises would be upheld later. The alliance also helped boost the reserves' cause enormously in the eyes of federal officials, many of whom were disposed to regard Ridge positively.<sup>144</sup>

Combined with all these other tactics, Thomas' insistence on the reserves' exemption from removal soon stood out. On 29 December 1835, policymakers and Cherokee leaders signed the new removal agreement.<sup>145</sup> The treaty was highly contentious, owing to ongoing tensions among the two rival Cherokee political interests and resistance to removal among much of the Nation. Just one vote secured its ratification. The mood was sombre: for Ross and the other leaders that had bitterly opposed the agreement, the treaty marked the end of their long battle against removal policy.<sup>146</sup> By contrast, federal officials greeted the process with palpable relief, viewing the agreement as their long-hoped for route to a large-scale Cherokee removal. In relaying details of the agreement, officials barely mentioned the Qualla reserves and the exemptions that they had made. If they noticed them at all, officials viewed their exemption as a small compromise, ultimately conducive to the overall goals of removal since the reserves would merge into the United States, or suggested these Cherokees would eventually join their non-exempt cousins in moving to Indian Territory, once large-scale emigration began.<sup>147</sup> But policymakers could not dwell on this for long. Within weeks, Indian Office administrators had moved on to the next set of worries about how they would enforce the newly-signed treaty and how they should allocate western lands once the Cherokees got there.<sup>148</sup>

By contrast, the agreement was cause for celebration for the reserves. Having secured his agreements, Thomas left Washington and headed back to North Carolina with the promise that

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<sup>144</sup> Russell and Godbold, *Confederate Colonel*, 25.

<sup>145</sup> 'Treaty with the Cherokee, 1835 (Treaty of New Echota), 29 Dec 1835, 7 Stat., 478, Proclamation 23 May 1836', *LALT*.

<sup>146</sup> See Foreman, *Indian Removal*, ch21. For one vote, see: Finger, *Eastern Band*, 17.

<sup>147</sup> See, eg: C.A. Harris, 'Annual Report of the Commissioner of Indian Affairs, December 1<sup>st</sup> 1836', *ARCLIA*, whose discussion of the New Echota Treaty does not mention this exemption at all. For suggestions that officials hoped the agreement would be temporary, see: Russell and Godbold, *Confederate Colonel*, 26.

<sup>148</sup> 'Annual Report of the Commissioner of Indian Affairs, 1836', esp. 21-23.

the reservees ought not to be removed.<sup>149</sup> If this was a triumph for Thomas, it meant even more to the Cherokees whose rights the agreements enshrined. Their strategies had paid off. By using Thomas and the benefits of his whiteness and social capital, they had managed to convince officials not only that they were legally entitled to remain within the east, but also that, as Indians who could successfully perform the roles of citizenship and civilization to articulately state these claims, they deserved to do so. This was no insignificant achievement in negotiations where other highly acculturated, long-federally recognised and respected *mestizo* elite Cherokees like John Ross failed to secure a single concession.<sup>150</sup> When the community heard news of the decision, they celebrated. Yonaguska gave a speech declaring that ‘we wanted to become the children of North Carolina, and she has received us as such...we will continue to raise our corn in this very land’.<sup>151</sup> But questions still remained. If they could pull off this performance at a distance, could they present themselves as such convincing “civilized” citizens if agents came to negotiate face to face?

### From Paper to Ground

In courts and capitols, these newly-visible Cherokee citizens had won high-profile battles, which ought to have guaranteed their exemption from removal. Still, if their campaign in Washington had aimed to make them visible to the federal government, it also had unwanted effect of reminding white North Carolinians of their unpopular claims to citizenship and exemption, too. By highlighting their presence, the Cherokees secured important concessions from Washington

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<sup>149</sup> Russell and Godbold, *Confederate Colonel*, 26.

<sup>150</sup> Although the overall story of these negotiations is relatively well known to historians of non-removal, especially of the Eastern Cherokees, historians have paid remarkably little attention to this performative aspect, or to the importance of the roles of “civilization” in federal perceptions. See, eg: Russell and Godbold, *Confederate Colonel*, 21-27; Finger, *Eastern Band*, 16-19.

<sup>151</sup> Cit. Ibid, 22. This version of the speech was relayed to an outside visitor almost twenty years later, so it is unlikely that these are Yonaguska’s exact words. Still, these words do tell us something important about the memory of the negotiations among the community and their importance to them.

officials but inadvertently reopened themselves to new waves of local hostility from communities who feared their existence or simply wanted their lands.

Within months of Thomas' return, this vulnerability became apparent. Reminded of their existence, white neighbours began to grumble about the Cherokees' ongoing presence. In February 1837, North Carolina Congressman James Graham petitioned President Jackson directly to maintain American troops in Western North Carolina. Military removal was necessary, he argued, not just because there was 'some dissatisfaction among the Indians', but primarily because of the danger that the Qualla Cherokees' ongoing presence posed to white people who 'apprehended that... [the Cherokees] may and probably will commit some violent outrages whenever the troops are withdrawn'. More threatening to the Cherokees' long-term chances, Graham made it clear that even allegedly "citizen" communities were not to be trusted. 'No one knows better than yourself', he told the President, 'how many false prophets and false patriots are always clandestinely at work to excite and induce this savage race to unsheath the scalping knife, and crimson the tomahawk in the blood of innocent nations'.<sup>152</sup> For men like Graham and the constituents he represented, mass removal was the only way to guarantee white Carolinians' safety.

Graham was not alone. A trickle of local laments soon swelled into a tide of complaints about the legitimacy of the Qualla Cherokees' citizenship. Six months after Graham's protest to Jackson, another local resident wrote to Edward B. Dudley, state governor of North Carolina. M. Francis began by noting that he had 'been requested by many individuals residing in the west side of this county' to inform both the federal agents and the governor that western North Carolina was home to 'thirty or forty Cherokee families' who 'have, by some means or other, got a notion that they will be permitted to remain' within the region and were 'claiming some sort of

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<sup>152</sup> Hon. James Graham to 'His Excellency the President of the United States', 17 February 1837. NARA M234, Roll 114, 'Cherokee Agency 1824-1880, Cherokee Emigration, 1837' [hereafter NARA M234-R114].

citizenship'. Francis made it clear that he and other local citizens did not accept the situation. Although the 'Indians...seemed to have made some advances towards civilization', Francis wanted to tell Dudley 'the facts'. Rather than model citizens, the Cherokees remained everything white Americans had long feared about Indians: 'quite sullen', they had ceased all intercourse with their white neighbours and were ready to 'thrust...vengeance on the white inhabitants, in case the General Government should attempt to remove them'. Francis concluded his letter with an urgent plea: the governor should take 'some speedy precaution...to prevent serious consequences'.<sup>153</sup>

A note from Dr M. Killian, a local surgeon, followed Francis' letter. Killian described the community as 'debauched creatures' and urged Dudley to take action on behalf of the local white community, whom he argued lived in fear of 'those merciless savages bursting forth in fury, from those huge, rough mountains, like a mighty torrent...without leaving one weeping [sic] babe to relate that fatal transaction'.<sup>154</sup> In the next few months, Dudley received several more letters, begging for a military detachment to protect the far western reaches of the state against the threat of an enduring Cherokee presence.<sup>155</sup>

In 1837, against the backdrop of renewed waves of removal nationwide, these local protests were poisonous. As they dripped into the ears of the most powerful officials both local and national, these accusations stood to destroy the Qualla reservees' chances of remaining within the region. In complaining about the incomplete nature of removal and the Cherokees' ongoing presence to both federal and local officials, North Carolinians appealed to old stereotypes of indigenous savagery and violence in order to demonstrate necessity of removal and the Cherokees' unsuitability for both citizenship and permanent residence within the states.

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<sup>153</sup> M. Francis to Governor Edward B. Dudley, Waynesville, Haywood County, NC, 17 July 1837. Dudley Papers, volume 5: '1837, July 12-Sept 11' (GP LXXIX), NCDAH.

<sup>154</sup> Dr M. Killian to Governor Edward B. Dudley, 25 March 1838. Cit. Finger, *Eastern Band*, 20.

<sup>155</sup> Dudley's papers contain several such letters: See: Dudley Papers, NCDAH, esp. vols.3-5 (GP LXXVII- GP LXXIX).

The Cherokee community responded instantly. Seeking to deflect the damage of growing local hostilities, Thomas wrote immediately to the governor. He presented a potted-history of the community, noting that ‘they became citizens of the state agreeable to provisions of the treaty made and concluded between the United States and Cherokee Nation in the year of 1819’, and ‘since that time they have remained citizens of and subject to the laws of the state where they desire to remain’.<sup>156</sup> Thomas’ letter was firm but insistent: the Cherokees had a right to stay, regardless of libellous claims which might come from their neighbours. And, better yet, he argued that with the state’s continued ‘protection’, he could ‘in a few years present to the world an example of civilized Indians’.<sup>157</sup> In highlighting their loyalty to local communities and officials, the Qualla Cherokees’ claims to citizenship again hinged on their claims to “civilized” status.

Dudley was receptive to Thomas’ arguments, although the delays of getting post from the mountains to the other side of the state and the demands of governance meant that it took almost three months to tell him so. ‘I am glad to hear that the Indians are so inclined’, he wrote, ‘and thank you for the information’. He stated that he had never believed reports about Cherokee savagery, preferring instead to perceive the reservees as backward yet harmless ‘creatures’. Nonetheless, he closed his letter with a warning. Although he had ‘no doubt’ as to the Cherokees’ good character, had the reports met a less receptive audience ‘without being corrected, [they] might have possibly had an injurious influence against those poor creatures who have already been as greatly sinned against as sinning’.<sup>158</sup>

The Cherokees did not need the Governor’s caution; they were already well aware of the threats coming their way. As Thomas wrote in May, he and the Qualla community had watched removal unfold across the region; they knew the brutality that could come. Since, he noted, American

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<sup>156</sup> W.H. Thomas to Governor E.B. Dudley, 30 May 1837, Haywood County, NC. Dudley Papers, volume 3: ‘1837, April 10-June 5’ (GP LXXVII), NCDAH.

<sup>157</sup> Ibid.

<sup>158</sup> Edward B. Dudley to William Holland Thomas, 12 August 1837, Executive Department, Raleigh. WHT Papers, Duke: Box 1, ‘Correspondence and Papers, 1814-1842’, folder 3, ‘1837-1838’.

troops ‘pay but little attention to the rights of white citizens’, Thomas and the reserves knew that they ought to ‘fear to entrust them with those of the red’.<sup>159</sup>

### Soldiers & Citizens

Less than a year from these petitions, Dudley’s warning came true. In May 1838, federal troops arrived in the mountains, seeking to round up all remaining Cherokees by force under command of General Winfield Scott.<sup>160</sup> As soldiers neared western North Carolina, Thomas and the Cherokees introduced themselves and presented their credentials to stay put as American citizens and reminding officials of their role in the New Echota treaty proceedings. In June, just one month after Scott’s arrival in Cherokee country, Brigadier General Abraham Eustis reported back to his superior, Lieutenant Colonel Worth, Chief of Staff, that he and his men had collected ‘something more than 3000’ Cherokees in the mountains. Given this great rate of progress, he expected that removal would soon be complete, especially as there were ‘a number of families [who] have obtained permission from the Superintendent of Emigration, or his agents, to remain & become citizens of NC’.<sup>161</sup>

Their efforts clearly made an impression on the agents and officers. Many were sufficiently impressed by the Indians’ claims to citizenship that they wrote extensively about these credentials in their dispatches, but misinformation and misunderstanding abounded, even among agents willing to recognise the Cherokees as citizens. Over the course of 1838, agents traced the Qualla community’s citizenship claims back to an almost random collection of possible origins, ranging from a 1791 treaty with the Cherokees to the (correct) 1817 and 1819 treaties.<sup>162</sup> If they

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<sup>159</sup> Thomas to Dudley, 30 May 1837, as above.

<sup>160</sup> Foreman, *Indian Removal*, ch23.

<sup>161</sup> Brig. General Abm. Eustis to Lieut. Col. Worth, 24 June 1838, Fort Worth. Copy enclosed with Winfield Scott to Joel Poinsett, Cherokee Agency, 26(?) June 1838. NARA M234, Roll 115, ‘Cherokee Agency, 1824-1880: Cherokee Emigration, 1838’ [hereafter M234-R115].

<sup>162</sup> Nat. Smith to C.A. Harris, 14 Jan 1838, Cherokee Agency East, M234-R115.

appreciated the reserves' assistance at a hard time, they clearly did not understand the roots and nature of their claims to exemption.

If officials struggled to understand the roots of Cherokees' citizenship claims, they spent even more time doubting their validity. In January 1838, General Nathaniel Smith, Superintendent of Cherokee removal, informed Carey A. Harris, the outgoing commissioner of Indian Affairs, that 'between three and four hundred Cherokees who live in the county of Haywood in North Carolina...applied some time ago to the Cherokee committee for, and received, citizenship'. These Cherokees were not only highly visible to Smith and his men, but also the source of many long-running disputes: noting that 'as a difference of opinion exists here with the officers of government', Smith begged Harris to confirm whether these Cherokees actually counted as citizens and whether they were to be eligible for removal after all.<sup>163</sup>

Almost a month later, Harris drafted his reply, noting that claims to citizenship could perhaps be valid. The commission had indeed been allowed to create Cherokee citizens, while the Treaty of New Echota had also recognized that several Cherokees who already claimed citizenship could remain. Yet, just like Smith, Harris was much more interested in the prospect that even indigenous Southerners with claims to remain could be convinced to relocate. Aside from this two-sentence confirmation, he spent the rest of his two-page letter setting out the conditions under which such people could potentially go west, the subsistence and removal funding they would receive under the treaty, and the ways that agents could determine that these Cherokees had originally come from outside the Nation when registering them on enrolment paperwork.<sup>164</sup> Clearly, like Smith and his agents on the ground, the Indian Office was inclined to recognize citizenship claims, but it was just as likely that even the highest-ranked officials hoped to see all Cherokees rounded up and moved west.

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<sup>163</sup> Ibid.

<sup>164</sup> C.A. Harris to General N. Smith, 1 February 1838, Office of Indian Affairs. WHT Papers, Duke: Box 1, 'Correspondence and Papers, 1814-1842', folder 3, '1837-1838'.

Soldiers' scepticism went far beyond the rank and file. Indian Office agents had briefed General Winfield Scott that the Qualla community possessed a special legal status, but the General 'still believed they would be well advised to move west with their brethren'. Scott even hired the Reverend Jesse Bushyhead, a former Baptist missionary among the neighbouring Valley Town division of Cherokees, to go and convince them.<sup>165</sup> Clearly, efforts to alert agents to citizenship status could only get these Cherokees so far. They needed something more dramatic to capture federal attention.

### Performing Citizenship

In fall 1838, the Qualla Cherokees' best chance materialized in the form of an incident that even the most strategically-minded reserves could not have predicted. In late October, at the height of Cherokee military removal, a group of soldiers rounded up Cherokee detachments from the Appalachians, seeking to finalize removal in the farthest edges of the Nation. Mounted soldiers marched the Cherokees towards the removal stockades in western North Carolina and Tennessee to await their journeys further west. The marches were long and arduous, each step made harder by the autumn chill. After days of marching through dense and difficult terrain, one Cherokee man, Tsali (also known as Charley), and his family decided to make a last-ditch attempt at flight. They killed the soldiers who had guarded them and fled into the Appalachians, seeking refuge in the mountains' peaks, caves, and densely packed terrain.<sup>166</sup> This story is one of the best-known removal stories in North Carolina.<sup>167</sup> The murderers sparked national outrage and a huge

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<sup>165</sup> Finger, *Eastern Band*, 20-21; for Bushyhead, see 13-14.

<sup>166</sup> See Finger, *Eastern Band*, 21-29 for the best summary of this Tsali incident, its subsequent mythologizing, and Finger's reassessment of events.

<sup>167</sup> From the 1840s, white commentators mythologised Tsali's story as one of heroic resistance by a noble, "vanishing Indian". Until recent decades, scholarship and popular culture continued to mythologise Tsali as a heroic martyr, and the "father" of the modern Eastern Band of Cherokees – especially through the annual dramatic performance, *Unto these Hills*, performed in western North Carolina. Scholars now see Tsali as a less central figure. In recent years, the Eastern Band of Cherokees updated *Unto these Hills* to place less onus on Tsali, and more emphasis on a wider cast of ordinary Cherokee characters.

federal manhunt. Within hours of the incident, Thomas and the Cherokees immediately offered their services, often going out of their way to showcase their helpful and loyal nature. In the immediate wake of Tsali's murders, Winfield Scott reported to Joel Poinsett, the secretary of War, that 'every Cherokee in this neighbourhood who has heard of the recent outrage has expressed the utmost indignation + regret'. As the government struggled to round up the fugitives, they knew they needed to turn to Indian help, though officials were reluctant to admit it. In his report, Scott noted that although 'it would be easy to obtain from the emigrants on the road any number of warriors to march with the troops against the outlaws', he planned only to 'accept the services of a few warriors' and their 'invitations of kindness' towards the United States.<sup>168</sup>

Drawing on his connections, William Holland Thomas made sure that these 'few warriors' would be Qualla Cherokees.<sup>169</sup> On 6 November, just days after Tsali and his comrades murdered the soldiers, Scott informed his superiors in Washington that 'Colonel Foster will also have the use as runners, guides, and interpreters, of some of W. Thomas's Oconeelufly [sic] Indians, as well as the personal services of W. Thomas himself, who takes a lively interest in the success of the expedition'.<sup>170</sup> Scott and Foster could hardly have anticipated the Cherokees' enthusiasm. Before Scott had even begun his letter, the Qualla Cherokees were already busy rounding up the fugitives. Pausing at Fort Cass, Tennessee, Thomas wrote to a business associate, explaining that he had already spent several days in hot pursuit of Tsali's band and that he and his Cherokee detachment would soon set off again 'to the place where the murder was committed' in the hope of tracking them down once and for all.<sup>171</sup> The chase continued apace. Several days later,

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See: Finger, *Eastern Band*; King, 'The Origins of the Eastern Cherokees'; Perdue, *Race and the Atlanta Cotton States Exposition*, ch2.; Gregory D. Smithers, 'A Cherokee Epic: Kermit Hunter's *Unto these Hills* and the Mythologising of Cherokee History', *Native South* 8 (2015), 1-30.

<sup>168</sup> Winfield Scott to Joel Poinsett, Athens, TN, 6 November 1838. NARA M234-R115.

<sup>169</sup> Ibid.

<sup>170</sup> Ibid.

<sup>171</sup> William Holland Thomas to M. Russel [?], Fort Cass, TN, 5 November 1838, WHT Papers, Duke, box 1, 'Correspondence and Papers, 1814-1842', folder 3, '1837-1838'.

Thomas secured the help of Euchella and his band. A famous Cherokee leader and warrior, Euchella was also a former reservee, the very same man who had sued for his lands in the 1824 North Carolina Supreme Court case, but had since abandoned the reservation to move back to the Cherokee Nation.<sup>172</sup> With their intimate knowledge of the mountains, Euchella and his men hastened the chase. Within days, they caught up with Tsali and his band. Following federal orders, they swiftly executed Tsali and the men of his band. Scott and Foster gave permission for only the women and youngest children to escape with their lives, on condition that they moved west.<sup>173</sup>

As Foster and Scott relayed events to their superiors in Washington, they made it clear that it would have been difficult to round up Tsali and his band without the assistance of Thomas, Euchella, and the Qualla Cherokees. Writing to his commander in Chief, President Van Buren, shortly after Tsali's capture, Winfield Scott acknowledged that the task had been an enormous one, for which all involved 'deserve[d] the commendation of higher authority'.<sup>174</sup> The praise amounted to more than words. In their final reports, both Scott and Foster urged that not only these loyal Cherokees should be permanently allowed to remain within the region in return for their loyal service.<sup>175</sup> Their long fight had paid off; after years of negotiating, officials were finally willing to recognize them as different from the rest of the Cherokee Nation and exempt from removal.

The Cherokees' assistance in Tsali's capture clearly played a significant role in officials' decision to let them stay, but it was not the only factor.<sup>176</sup> In public notices affirming the Cherokees' citizenship, officials went to great lengths to demonstrate that the Cherokees' 'meritous service

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<sup>172</sup> See above.

<sup>173</sup> Finger, *Eastern Band*, 26.

<sup>174</sup> Winfield Scott to Commander in Chief (President Van Buren), 28 December 1838, New York. WHT Papers, Duke: box 1, 'Correspondence and Papers, 1814-1842', folder 3, '1837-1838'.

<sup>175</sup> Foster to Scott, 24 November 1838; Foster to Scott, 3<sup>rd</sup> December 1838, cit. Finger, *Eastern Band*, 26-27.

<sup>176</sup> This story is familiar to historians of the Eastern Cherokees, however they have largely neglected the importance of performing civilization to it. See, eg: Finger, *Eastern Band*, ch2; Russell and Godbold, *Confederate Colonel*, ch.3.

to the United States' had resulted in citizenship not just because of their success in this incident alone, but instead because it was based on a foundation of wider 'qualifications to become citizens'.<sup>177</sup>

In late November 1838, Colonel William Foster made a public announcement about Euchella and his band. Addressing the citizens of North Carolina, Foster wrote that he had given his permission for 'Euchella and his band...to live in this country as associates and brothers of the Ocon-ne-lufty [sic] Indians'.<sup>178</sup> Foster clearly anticipated that Carolina's white residents might balk at this, because he asked 'all citizens to respect...my permission in the strictest manner'. He also explained in detail the reasons behind the decision. Painting the Cherokees as the perfect candidates for assimilation into the United States, he explained that his decision had been made 'in consideration of the general good character, and peaceable, inoffensive, and useful conduct of Euchella and his band of about thirty souls, combined with his and their solemn pledges to me given of good and peaceable conduct – and obedience to the laws of North Carolina, as well as their promise to apprehend and deliver every offender of their tribe against such laws to the civil authority of the state'. Only in closing did Scott mention the Cherokees' 'recent good actions in pursuing, capturing, delivering and finally punishing the outlaws and murderers of Charley's [Tsali's] band'.<sup>179</sup> By focusing on the good, loyal, and citizen-like behaviour which Euchella and his band had showed, Scott's announcement played to traditional visions of civilization and loyalty, making the case that the Cherokees had ultimately gained permission to remain because they had proven their worth and earned their claims to citizenship.

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<sup>177</sup> Colonel William S. Foster to [?], Head Quarters 4<sup>th</sup> Infantry, Camp Scott on Little Tennessee River, North Carolina, 24 November 1838. WHT Papers, Duke, box 1, 'Correspondence and Papers, 1814-1842', folder 3, '1837-1838'.

<sup>178</sup> Ibid.

<sup>179</sup> Ibid.

### Negotiating Non-Removal in Creek Country

Hundreds of miles to the west, Creek reservees faced a similar struggle. Like their Cherokee counterparts, the Tensaw reservees were theoretically entitled, as landowners and reservation claimants, to remain in the region; the challenge was to convince officials of this fact. The Tensaw community's position was especially precarious. Locally, people knew about their community and their land grants, but on paper there was little to protect them from deportation alongside the wider Creek Nation, especially when facing newly-arrived soldiers and agents who did not know their complex history and legal status.

In 1825, the community came under threat when federal officials signed a removal treaty with one faction of the Creek Nation. For a while, it looked as though the agreement would trigger mass removal. Following Creek protests, federal officials annulled the agreement, but in 1826 replaced it with a new treaty, all but guaranteeing large-scale removal of Creeks from Georgia.<sup>180</sup> Watching from Alabama, the Tensaw community was immune to this removal, but the whole episode was a warning sign for the reservees. Knowing that their claims to land and civilization were their best chance to remain east of the Mississippi, they began to fight to ensure their recognition. Reservees worked to reinforce their titles, while those whose claims remained unconfirmed took to the courts. In autumn 1831, Lynn McGhee and Semioce, two of the unconfirmed claimants, swore affidavits before their local Justice of the Peace in Monroe County, 'reaffirming what had befallen them during the Creek War and what had happened since to prevent their possession of the land they claimed'.<sup>181</sup> Alongside this legal strategy, other members of the community tried a new tactic. Recognising that their best chance of avoiding removal depended on being recognized as "civilized" landholders, many began privately buying

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<sup>180</sup> See Michael D. Green, *The Politics of Indian Removal: Creek Government and Society in Crisis* (Lincoln: University of Nebraska Press, 1982), esp. chs 4-6. For the Treaties see: Treaty with the Creeks 1825 (The Treaty of Indian Springs), 12 Feb. 1825, 7 Stat. 237, Proclamation 7 March 1825, *LALT*; Treaty with the Creeks 1826 (The Treaty of Washington), 24 Jan 1826, 7 Stat. 286, Proclamation 22 Apr 1826, *LALT*.

<sup>181</sup> Poarch Proposed Finding, 21.

up tracts of land, seeking to replace those that they had struggled to successfully claim as reserves.<sup>182</sup>

While the reserves made their case in the courts, the situation on the ground rapidly deteriorated. Pressure for mass emigration and a new removal agreement grew, both federally and locally. Newly-arrived settlers began to grab Creek lands, forcibly claiming them as their own. In 1832, many reserves' worst fears came true when federal officials signed an agreement to secure Creek removal from Alabama. Many Creeks were outraged, responding with violent raids which soon escalated into full-scale conflict.<sup>183</sup> Still, the Tensaw reserves stayed their course. As their chances looked bleaker, they accelerated their legal negotiations, seeking to avoid removal by becoming visible to officials. In February 1832, a group of self-styled 'Creek Indians of mixed-blood' petitioned the Alabama state legislature, reminding them of their claims and urging the lawmakers to hurry along their affirmation. The Creeks were diligent: not content with just a local approval, they asked that they pass their demands directly on to the United States Congress to ensure its approval too. In Washington, officials largely received the claims positively. The Commissioner of Indian Affairs, Elbert Herring, assured the petitioners that their claims had not been forgotten, though he took little action beyond this.<sup>184</sup>

As both removal and fraudulent land claims accumulated, the reserves demanded a resolution to their cases. 1836 and 1837 were monumental years for the Creek Nation. Following local unrest and frustration, federal officials launched a new wave of mass removals. Meanwhile, officials had promised Creeks money for the lands they ceded, but struggled to pay as violent resistance and large-scale land frauds consumed the country.<sup>185</sup> Yet, if 1836 and 1837 saw the

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<sup>182</sup> Ibid, 21-22.

<sup>183</sup> Green, *The Politics of Indian Removal*, ch8, esp. 184-86; John T. Ellis, *The Second Creek War: Interethnic Conflict and Collusion on a Collapsing Frontier* (Lincoln: University of Nebraska Press, 2010). For more on the repercussions of this, see also ch3.

<sup>184</sup> Ibid, 23.

<sup>185</sup> For removal and violence, see Ellis, *Second Creek War*; Christopher D. Haveman, *Rivers of Sand: Creek Indian Emigration, Relocation, and Ethnic Cleansing in the American South* (Lincoln: University of Nebraska Press, 2016, esp. chs7-8. For land frauds, see: Mary Elizabeth Young, *Redskins, Ruffleshirts and Rednecks: Indian Allotments in Alabama and*

largest volume of Creek removal, they were also years of triumph for the reservees.<sup>186</sup> In summer 1836, Congress finally began to review the reservees' cases. In July, lawmakers passed not one but two acts, providing for the relief of four specifically-named claimants, including Lynn McGhee and Semioce. The acts promised that the claimants were 'entitled, under the treaty with the Creek nation of Indians...to reservations of six hundred and forty acres of land...to be held by them on the same terms and conditions as the reservations given by said treaty'.<sup>187</sup> The reservees set out immediately to find suitable lands but, amid rapid demand from white settlers and ongoing fraud complaints, struggled to locate suitable plots. In January 1837, they petitioned Congress again, asking for relief and assistance. Officials looked into the claims and, affirming the Creeks' claims to enduring loyalty to and civilization within the United States, decided to resolve them. In March, Congress passed a final act, specifically dealing with the problems encountered by the three named claimants, allowing them to choose new lands in the Tensaw area. The three reservees – Semioce, Lynn McGhee, and Susan Marlow – all chose lands in and around the Poarch area, near the head of the Perdido River, creating the foundation for a landholding on which their descendants remain to this day.<sup>188</sup>

By and large, the Tensaw reservees' strategies were hugely successful. Like their Qualla Cherokee counterparts, they had managed to secure exemption from removal by drawing on prior claims to land and civilization, and then relentlessly reminding officials of them. Nonetheless, at least one Creek claimant learnt that visibility to the government could be as damning as it could redeeming. Among the reservee claimants who petitioned for an update on their claims was one Sam Moniac, whose title had remained unconfirmed since the Fort Jackson Treaty and its aftermath. Like many other reservees, Sam wrote to federal officials, yet his attempts at visibility

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*Mississippi, 1830-1860* (Norman: University of Oklahoma Press, 1961). These frauds have much in common with the controversy over (real and presumed) Choctaw land frauds, discussed in the next chapter.

<sup>186</sup> Poarch Proposed Finding, 23-24.

<sup>187</sup> *Ibid.*

<sup>188</sup> *Ibid.*, 24.

backfired. In 1835, officials in the Indian Office and Land Office reopened the case, only to claim that they could find no trace of Sam's plot in their records. With nothing to protect him from further emigration, Sam joined an emigration party heading to Indian Territory and, tragically, died *en route* in a stockade at Pass Christian, Mississippi in 1837.<sup>189</sup> In the heat of removal, even apparent entitlement to exemption did not guarantee survival.

Outside the courts, the reservees also negotiated with agents and soldiers as they undertook their removal duties. Like the Qualla reservees, the Tensaw community's ability to perform to American standards of citizenship significantly aided their ability to negotiate with officials. Agents reported that members of the community assisted them, sometimes serving as interpreters during their negotiations with other members of the Nation.<sup>190</sup> Their appreciation of the reservees' bilingualism and civilization credentials is all the more obvious when compared to their attitudes to other, more ordinary Creeks: one party of emigrants removed from Kashita Town later complained that agents 'drove [them] off like wolves', and that they ought 'not to be drove off like dogs'.<sup>191</sup> Other observers noted that soldiers drove parties of would-be emigrants like animals going to the slaughter, with 'a platoon of soldiers walk[ing] before and behind, and a file of soldiers on each side, armed with all the common instruments of death'. The soldiers would 'often use the same language as if driving hogs, and goad them [indigenous Southerners] forward with their bayonets' in the same way that farmers might startle reluctant animals to keep moving.<sup>192</sup> Clearly, some agents made striking distinctions between those indigenous Southerners whom they considered to be civilized, and those whom they did not.

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<sup>189</sup> Ibid, 23.

<sup>190</sup> Ibid, 23.

<sup>191</sup> Kashita town Creek petition to removal conductor, 1836. Cit. Holátte Cypvkke (C.B. Clark), "'Drove off like Dogs" – Creek Removal', in John K. Mahon (ed.), *Indians of the Lower South: Past and Present* (Pensacola: Gulf Coast History and Humanities Conference, 1975), 120-121.

<sup>192</sup> 'The Journal of Rev. Daniel S. Butrick', 26 May 1838 and 1 July 1838, cit. Tim Alan Garrison, 'On the Trail of Tears: Daniel Butrick's record of the removal of the Cherokees', in Richard Bessel and Claudia B. Haake (eds.), *Removing Peoples: Forced Removal in the Modern World* (Oxford: Oxford University Press, 2009), 43. The group in this instance were Cherokees, but observers made similar comments about the removals of all of the Five Tribes.

By the end of 1837, the vast majority of Creeks had left Alabama, driven out in long removal trains.<sup>193</sup> Still, by and large, the Tensaw reservee community remained. Like their Cherokee counterparts, their position remained precarious, but they had managed what seemed impossible. Through a long process of performance and legal negotiations, they had reminded officials of their presence and their longstanding history of loyalty to the United States, turning their claims to reservations and civilization into a tangible exemption from removal.<sup>194</sup>

### New Non-removeable Citizens

The Qualla Cherokees and Tensaw Creeks managed to secure permission to stay by blending prior treaty benefits with deft performances of their own “civilization” credentials. Yet, more rarely, others who lacked initial reservations also secured similar guarantees by negotiating not with federal officials, but with their local states.

Along the Upper Chattahoochee River, in north-east Georgia, a small community of acculturated Cherokees watched removal policy accelerate with trepidation. The ‘tightly knit, supportive’ community centred around twenty-two families, almost all of *mestizo* English and Cherokee ancestry. Twelve of the families could trace their descent from the marriage of Thomas Cordery, an English trader, and Susannah Sonicooie Cordery, a Cherokee from the Blind Savannah Clan; the others seem to have gained membership of the community through a mixture of kinship and marriage ties to the Corderys.<sup>195</sup> Other prominent members included George Morgan Waters and William Rogers, descendants of prominent Cherokee women and so-called “Indian

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<sup>193</sup> See Haveman, *Rivers of Sand*, esp chs8-9.

<sup>194</sup> The Tensaw community would go on to form the ancestors of the modern-day Poarch Band of Creek Indians, who live on a federally-recognized reservation in Atmore, Alabama. Though the group had focused on negotiation with federal officials in the decades of removal, they also turned to other strategies, such as evasion and illegibility tactics, to ensure their survival in later decades. See: Poarch Proposed Finding.

<sup>195</sup> Sharon P. Flanagan, ‘The Georgia Cherokees who Remained: Race, Status, and Property in the Chattahoochee Community’, *The Georgia Historical Quarterly* 73 (1989), 584-609: 586-7.

Countrymen”, who went on to marry white women.<sup>196</sup> Following the 1817 treaty, most of the families chose not to take the United States up on their offers of citizenship, but the treaty still had important implications for their relationships to both the Cherokee Nation and the US.<sup>197</sup> Following the cessions that the treaty demanded, the Chattahoochee River became the boundary line, marking the southeastern limits of the Cherokees’ newly reduced territory, placing the family at the very fringes of the Nation.<sup>198</sup>

In practice, the community had much in common with the Cherokee and Creek reservees. Much like the Tensaw community and many of the original Cherokee reservee claimants, they occupied a highly acculturated space, blurring the boundaries between white and Cherokee cultures, at the geographical limits of Cherokee country. Members owned sizeable plantations, operated by black slave labour. Like many other elite Cherokee families of the early nineteenth century, the Chattahoochee community was effectively a bicultural product of a time and place where identities were fluid and evolving. They had extensive commercial, kin, cultural, and family ties with white society, but they also actively maintained roles and kin ties in the Cherokee Nation, especially to elite figures like John Ross. George Waters even served as a Cherokee district and Supreme Court judge.<sup>199</sup>

Faced with the growing threat of removal, the Chattahoochee community found themselves in a highly precarious position. They had no pre-existing legal claims to remain within the region. Acculturation and social ties were not enough to save them; other highly acculturated Cherokees had already gone west.<sup>200</sup> Their status became even more uncertain as Georgian legislators worked to systematically dismantle Cherokee rights within the state, including denying

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<sup>196</sup> Ibid, 588-589.

<sup>197</sup> At least one member chose to take a reservation, but it is unclear exactly what became of this claim. Ibid, 592-593.

<sup>198</sup> Ibid, 587.

<sup>199</sup> Ibid, 592.

<sup>200</sup> Many elite Cherokees such as John Ross and Joseph Vann moved – often reluctantly but voluntarily – in the wake of the New Echota Treaty. See, eg: Perdue & Green, *Trail of Tears*.

Cherokees' ability to testify in court and reclassifying Indians as "free people of colour" alongside their own black slaves.<sup>201</sup>

Facing deportation, they took action. Drawing on their longstanding connections with elite Cherokees, leading Chattahoochee Cherokees such as John Rogers and George Waters attempted to assist with wider Cherokee attempts to resist the policy. They hired elite lawyers and supported Ross's efforts to take the Nation's claims right to DC, including joining treaty negotiations in 1835, but ultimately their efforts faltered. Rogers even became a signatory to the Cherokee removal treaty, alongside Ross.<sup>202</sup>

In the wake of the New Echota treaty, they chose to refocus their efforts at the local level, pressing Georgia lawmakers to recognize their longstanding connections and contributions to the state. Rogers and Waters wrote directly to state Governor Wilson Lumpkin.<sup>203</sup> On 29 December 1838, as federal agents struggled to round up the remaining Cherokees resisting removal across the Nation, the Georgia Legislature rewarded the Chattahoochee community's patience and civilization credentials with the Cherokee Indian Citizenship Act. The act granted full state citizenship to twenty-two named Cherokee families and stated that their descendants would be entitled to 'enjoy all the rights and privileges that appertain and belong to the free citizens of this State; and that all disabilities heretofore imposed upon said persons of the Cherokee tribe of Indians, be, and the same are repealed'.<sup>204</sup> In effect, the legislature had accepted the community's argument that they were "civilized" Indians deserving of citizenship, suitable for permanent residence within the South.<sup>205</sup>

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<sup>201</sup> Flanagan, 'Georgia Cherokees', 594-597.

<sup>202</sup> Theda Perdue, *"Mixed Blood" Indians: Racial Construction in the Early South* (Athens: University of Georgia Press, 2003), 68.

<sup>203</sup> Flanagan, 'Georgia Cherokees', 605.

<sup>204</sup> 'Acts of the General Assembly of the State of Georgia, passed in Midgeville at an Annual Session in November and December 1838', cit. Flanagan, 'Georgia Cherokees', 585-586.

<sup>205</sup> *Ibid*, 606-607.

For Georgian policymakers, the Chattahoochee Cherokees were a one-off exception to the wider process of removal. Elsewhere across the state, officials boasted of the success and completeness of their efforts. Even General Charles R. Floyd, employed in May 1838 by Georgia's governor to finalise removal, felt confident enough to inform the state governor in July that his task was complete and that no Indians remained on Georgian soil.<sup>206</sup> Most officials were probably too busy to notice the community, but not every instance of this rhetoric testified to a blind spot. Like the policymakers who created the 1810s treaties, or other federal and local officials who had allowed indigenous individuals or communities to remain within the region, it is likely that officials such as Floyd came to see the Chattahoochee community as a legitimate exception to the general process of removal. By becoming citizens, they believed that these people would ultimately merge into the white Georgian community.

In allowing these small communities to remain, the Georgia lawmakers had echoed an important truth, also demonstrated by the officials who dealt with the Cherokee and Tensaw reserves: even in 1838, many policymakers still believed that allowing a handful of elite, *mestizo* individuals to remain was compatible with the ultimate aims of removal. Even at end of the 1830s, officials continued to believe that "civilized" indigenous Southerners could remain within the region, as long as they did so in small, exceptional groups that assimilated into local states as citizens.

### The Limits of Cooperation

Yet this was not the case for everyone. Lacking the tangle of previous legal claims, the distinction of elite connections, or a long history of American approved civilization credentials, other indigenous Southerners across the region soon learned the limits of performance and loyalty alone. In 1836, upwards of 776 Creek men, under their *Mico* Jim Boy, volunteered to serve with

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<sup>206</sup> Ibid, 584.

the United States army against the Seminoles. We cannot know what these men hoped to achieve through their service, but given the importance of performance and the historic links between citizenship and military service, it is highly likely that, if not outright citizenship, they probably hoped to negate their removal sentences.

Things did not work out. American officers thanked the Creeks for their service but did not offer them any territorial reward east of the Mississippi for their enlistment. Writing to the Secretary of War, General Jesup noted that he was grateful for their assistance and, as a reward for his gratitude, he had promised that they would be permitted to leave the army by the next spring, which would give them plenty of time to join their families for the journey westward. As a sign of his benevolence, or his sheer misunderstanding of attitudes to removal among the ordinary Creeks, Jesup even promised to make the turnaround from discharge to removal speedier, allowing the men to arrive sooner in Indian Territory, in time to plant the first crops of their new season in the west. In the meantime, their wives and children would wait for them in the removal stockades.<sup>207</sup>

To the Creek warriors, Jesup's benevolence must have looked unwelcoming indeed; their attempts to demonstrate their loyalty to the United States had been rewarded in the least attractive way possible. As they made their way to Florida to fight their Muscogee cousins, the 776 warriors no doubt pondered the high price that they had paid for so little gain. As they worried about their families' fate in the squalid stockades, or their own chances on the battlefield, many no doubt returned to the same question: if this was the United States' favour, what possible form might its wrath take? Either way, for Joe Boy and his men, the end result was the same. Their military service dragged on into 1837 as the United States struggled to defeat the Seminoles. Meanwhile, their families remained penned in the stockades, battling disease and white hostility as they awaited their return. Jesup finally discharged the men after more than a

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<sup>207</sup> Foreman, *Indian Removal*, 179-180.

year of service. Reunited with their families, the Creek warriors began the long journey west, perhaps never knowing exactly why some communities remained and why they, despite similar tactics, could not.<sup>208</sup>

If the lack of prior claims and visible civilization credentials barred many people from permitted exemptions, gender also limited these routes to non-removal. According to contemporary laws about citizenship and property, all grants of reservations and citizenship were initially conferred only to men. Of course, women could use these strategies to avoid removal if they had family members who had successfully claimed reservations or citizenship or, more rarely, if they inherited these claims as widows or female heirs.<sup>209</sup> Nonetheless, for indigenous Southerners seeking to avoid removal, this convention further constricted their options.

For indigenous Southerners who could adequately convince federal or local officials of their credentials to hold citizenship and remain permanently within the United States, citizenship could provide a successful, permitted means to escape removal. But this route was hard and narrow. Not everyone could make claims to citizenship and, just as importantly, many of those who did were not automatically or easily recognized by state officials, especially where officials judged that they did not meet the yardstick of “civilization”.

### Uncertain Endings

By the turn of the 1840s, removal was sputtering to an end throughout the South. Soldiers had long since quit Creek country and, in the Appalachians, most of the soldiers dispatched to the

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<sup>208</sup> Ibid, 180-81.

<sup>209</sup> There are not many instances of this happening. However, the Treaty of Fort Jackson did provide for such inheritance and at least one reservee (Susan Marlow, discussed above in the Tensaw section) did manage to successfully claim and uphold a reservation and exemption from the removal on the basis of a claim that she inherited from her father. See Poarch Proposed Finding, 21-22, 24; and discussion above.

Cherokees considered their tasks done.<sup>210</sup> In Washington, policymakers seemed content with the ways that their model of large-scale removal and small, permitted exemptions had played out. Newly-appointed Commissioner of Indian Affairs, T. Hartley Crawford, briefly expressed concern that slightly more Cherokees had remained in North Carolina than the administration would have liked, but did little to follow up the subject.<sup>211</sup> By and large, policymakers believed that these exemptions had been largely successful. Only a small number of groups had been allowed to remain as citizens or reservees and, more importantly, officials felt confident that they had seen and verified them all: after all, this was how they had gained permission to remain in the first place. This vision buoyed Presidents and policymakers as they claimed sovereignty over the East and set their horizons on new contests further westwards.<sup>212</sup> Still, as these stories of a complete removal travelled west, their narrators rarely noted that thousands of “civilized” Cherokees and Creeks had gained permission to remain in the east.

Seen from Washington DC, these small handfuls of permitted exceptions did not seem to challenge the overall aim of removal, even though officials suspected that more people had been allowed to remain than they had initially anticipated. For the reservees, the whole process had been much harder than officials realized. By and large, they did not share statesmen’s visions of their new status: though citizenship and reservations lay at the heart of their negotiations, both the Tensaw Creeks and the Qualla Cherokees had hoped to avoid removal and remain in the South more than they had hoped to become assimilated citizens or landholders. Still, in 1840, their cooperation seemed to have secured them that right. Within their legally sanctioned spaces, they continued their efforts to remain, blending outward appearances of “civilization” and

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<sup>210</sup> See: Foreman, *Indian Removal*, esp. chs12, 24 for Cherokee and Creek removal. See individual discussions in other chapters for more.

<sup>211</sup> T. Hartley Crawford to Congress, ‘Report on Indian Affairs: 1839’, *ARCLA*.

<sup>212</sup> For role of this presumed success of Southern removal in boosting settlers and policymakers’ westward ambitions and confidence, see: DeLay, *War of a Thousand Deserts*, esp. pt3.

cooperation with distinctly indigenous identities, social structures, and traditions. For now, their decades of negotiation seemed to have paid off.

## Chapter Two:

### Subverting State Sight:

# Permitted and Unexpected Choctaw Non-Removal in Mississippi

When granting the Creek or Cherokee reserves permission to remain, officials believed that these exemptions offered little threat to the overall removal process because they applied only to elites, allowing small, governmentally-approved groups to avoid mass removals.

They were wrong. If federal officials left only small loopholes for indigenous exemption from removal, this did not mean that they always controlled or understood the ways that these provisions played out. Invisible to Washington, thousands of more ordinary indigenous Southerners – the socially, geographically, and genealogically peripheral people disparagingly dismissed by agents as ‘full-bloods’ – actually managed to use federal officials’ provisions to their own ends. This chapter focuses on the biggest and most important instance of indigenous Southerners’ subversion strategies: the case of the thousands of Choctaws who made claims to remain under their removal treaty.

From the Indian Office’s perspective, the treaty of Dancing Rabbit Creek paved the way for the Choctaw Nation’s large-scale removal, but many Choctaws saw things differently. They seized two key articles of the treaty and used them in ways that statesmen had not expected. By turning to these provisions, Choctaws across Mississippi managed to invert statesmen’s expectations and, ultimately, to ensure that up to 10,000 Choctaws actually remained east of the Mississippi.

To date, historians have sketched a rough outline of the story of the Choctaws and these provisions in tribal histories, but they have not considered this story in the context of a wider process of non-removal, or asked how federal officials in Washington DC (mis)understood these

claims during the crucial decade of the 1830s.<sup>213</sup> This chapter seeks to tell this story, demonstrating the disconnect between officials' perceptions in Washington and the realities of the treaty's afterlife on the ground. By focusing equally on the perspectives of Choctaw claimants, ground-level officials, and Washington policymakers, it reveals new insights into the reality of administering removal, demonstrating that officials were largely oblivious to this large-scale subversion. Although this obliviousness initially aided the Choctaws' ability to avoid removal, allowing many more people to claim land under the treaty than imagined, in the long run gaps in federal sight repeatedly jeopardised indigenous Southerners' chances of remaining east of the Mississippi River.

### Part One:

#### The Road to Non-Removal

In mid-September 1830, federal commissioners John Eaton and John Coffee began the nine-hundred mile journey from Washington DC to Mississippi. They had called a meeting with delegates from the Choctaw Nation and they had been blunt about their intentions.<sup>214</sup> Just four months earlier, Congress had passed the Indian Removal Act; negotiating a treaty with the Choctaws would be one of the first tests for the new policy. Whatever the commissioners decided in these early months would set a precedent for future policies across the East, so Eaton, the newly appointed secretary of war, travelled south to negotiate the treaty himself. Eaton's colleagues in the Indian Office were optimistic. Agents reported that most Choctaws were eager

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<sup>213</sup> See, eg: Kidwell, *Choctaws and Missionaries*; Ronald N. Satz, 'The Mississippi Choctaw: From the Removal Treaty to the Federal Agency' in Samuel J. Wells and Roseanna Tubby, *After Removal: The Choctaw in Mississippi*, (Jackson: University Press of Mississippi, 1986), kindle edition; Clara Sue Kidwell, 'The Choctaw Struggle for Land and Identity in Mississippi, 1830-1918', in Wells and Tubby, *After Removal*; Osburn, *Choctaw Resurgence*; Osburn, 'Tribal "remnants" or state citizens'.

<sup>214</sup> See, eg, John Eaton to 'friends and brothers' among the Choctaws, 24 July 1830, Entry 267: 'RG75, Choctaw Removal Records: Miscellaneous Choctaw Removal Records, ca. 1825-1858', NARA, Washington DC [hereafter e267]. Box 2, 'Correspondence, 1824-1838'.

to move west, even if elite members of the Nation opposed the proposal. To prepare the ground for the Commissioners' arrival, President Jackson himself wrote directly to the Choctaw council. Reminding them of his friendship, he informed the council of the impending arrival of 'trustworthy and faithful friends, to you and me, to see, and to confer with you...as commissioners to speak my sentiments, and to advise you to your true interests'.<sup>215</sup>

Upon reaching Mississippi on 15 September, Eaton and Coffee called a council of sixty Choctaw Mingoes (chiefs) and headmen.<sup>216</sup> Two days later, the commissioners entered council ground and the talks began. After several days of preliminary business, the negotiation party gathered into a circle, sitting on the ground with seven prominent Choctaw women in the centre.<sup>217</sup> Facing them, the commissioners explained that they had 'come among [the Choctaws]...by the direction of your Great Father', seeking to obtain 'not your land but your happiness' through westward removal.<sup>218</sup> The room fell silent as they passed out copies of the draft treaty to the assembled delegates.<sup>219</sup>

Eaton and Coffee soon realized that the negotiations would not be as easy as they had expected. Most Choctaws had little desire to leave their homes, let alone take their chances in the unknown Indian Territory. Several elite Mingoes spoke in favour of the agreement, but many other Choctaws protested openly against removal.<sup>220</sup> As the talks wore on, it became obvious that the commissioners had miscalculated: while they hoped for a final settlement, most Choctaws had expected only provisional negotiations at best. Eventually, many Choctaws showed their displeasure with their feet, simply going home.<sup>221</sup> But even as the delegation diminished, Eaton

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<sup>215</sup> Andrew Jackson to 'Friends and brothers of the Choctaw Nation', 26 August 1830, in NARA RG75, e267, box 2.

<sup>216</sup> 'Copy of Journal of Commissioners who negotiated the Choctaw Treaty of Dancing Rabbit Creek, September 15-28 1830', handwritten copy in NARA RG75, e267, box 2.

<sup>217</sup> 'Journal of the Commissioners who negotiated the Choctaw Treaty...?'

<sup>218</sup> John Eaton and John Coffee to 'the chiefs, captains, and warriors of the Choctaw Nation', 18 September 1830, Treaty Grounds, Dancing Rabbit Creek, in NARA RG75, e267, box 3, 'miscellaneous correspondence, 1839-1845'.

<sup>219</sup> Robert B. Ferguson, 'Treaties between the United States and the Choctaw Nation', in Carolyn Keller Reeves (ed.), *The Choctaw Before Removal* (Jackson: Mississippi University Press, 2004), 221-222.

<sup>220</sup> 'Journal of the Commissioners who negotiated the Choctaw treaty...?'

<sup>221</sup> 'Journal of the Commissioners who negotiated the Choctaw treaty...?'; Ferguson, 'Treaties Between...', 223; Young, *Redskins*, 33-34.

and Coffee remained determined to see the agreement signed. On Tuesday 21 September, they ‘consented that they would offer these terms, such as they considered, would hopefully be considered liberal’, but still no agreement materialised. Three days later, after nine days of discussion, they asked Mingo Greenwood LeFlore for help in redrafting the treaty. At 11am on Saturday 25 September, the commissioners read the new treaty aloud to a handful of remaining delegates.<sup>222</sup> Couched among wider provisions for removal, subsistence, and land redistribution, the next draft offered two key provisions: Article 14 and Article 19.

Article 19 fell broadly in line with earlier provisions for permitted non-removal, discussed in the previous chapter. It offered a range of specific exemptions from removal, including named reservations to particular individuals who were largely prominent *mestizos* or Choctaws with a long history of cooperation with federal officials.<sup>223</sup> It also opened a door for Choctaws to keep lands that they could prove they had ‘had in actual cultivation’, varying in acreage and extent depending on the degree of the ‘improvement’ made to them.<sup>224</sup>

Article 14 was much more capacious. Rough drafted by LeFlore, it promised that ‘Each Choctaw head of a family being desirous to remain and become a citizen of the States, shall be permitted to do so’. In fact, ‘by signifying his intention to the Agent within six months from the ratification of this Treaty’, ‘he or she shall thereupon be entitled to a reservation of one section of six hundred and forty acres of land, to be bounded by sectional lines of survey’. Like the earlier agreements with the Cherokees and Creeks, the article provided that Choctaws could ‘become citizens of the United States’ if they ‘reside upon said lands...for five years after the treaty’, whilst also keeping hold of their original membership of the (removed) Choctaw Nation.<sup>225</sup>

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<sup>222</sup> ‘Journal of the Commissioners who negotiated the Choctaw treaty’.

<sup>223</sup> Article 19, Treaty with the Choctaws, 1830.

<sup>224</sup> Article 19, esp. sub-provisions 1, 2, 3, Treaty with the Choctaws, 1830. For a summary of these provisions, see also Young, *Redskins*, 48-49.

<sup>225</sup> Article 14 of Treaty with the Choctaws (The Treaty of Dancing Rabbit Creek), 1830: Sept 27 1830, 7 Stat. 333, Proclamation, Feb 24, 1831, *LALT*.

Much to the commissioners' chagrin, the negotiations dragged on for another two days. However, little by little, the commissioners finally managed to eke out a settlement. On Monday 27 September, Greenwood LeFlore, Nitakechi, and Mushulatubbee, Mingoes of the three major Choctaw Divisions, signed the Treaty of Dancing Rabbit Creek.<sup>226</sup> By the time the agreement was reached only fifty or so Choctaws remained to witness it. Missionary onlookers would later recall that 'a majority of those present opposed' the treaty but, for now, this did not matter to the commissioners.<sup>227</sup> After much wrangling, they accepted the signatures of those present – and the absence of those who had left – as proof enough of the Nation's consent.

#### The roots of Articles 14 & 19

As one of the first removal treaties signed in the wake of the Indian Removal Act, the Treaty of Dancing Rabbit Creek was a crucial test case for the Jackson administration. Unlike earlier removal negotiations, the agreement promised to relocate the Nation *en masse* and to exchange all Choctaw lands in the east for new lands in the west.<sup>228</sup> Yet behind the outward appearance of this massive shift in policy, the months immediately following the Indian Removal Act were an uncertain, transitional moment for the Indian Office. The bill had passed by only a narrow margin and the shape that removal as a process would take remained unclear. In the White House, President Jackson clamoured for decisive solutions, but in the Indian Office policymakers remained uncertain how to proceed. In particular, Commissioner of Indian Affairs

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<sup>226</sup> Treaty with the Choctaws, 1830; 'Journal of the Commissioners who negotiated the Choctaw treaty...?'

<sup>227</sup> Young, *Redskins*, 33-34.

<sup>228</sup> On 31 August 1830, Eaton and Coffee had signed a treaty with the Chickasaw nation: the treaty of Franklin. However, this was a very different agreement to the Treaty of Dancing Rabbit Creek. It did not make provisions for the Chickasaw nation to remove *en masse* and, importantly, it did not offer a direct exchange of eastern lands for western ones. Instead, it simply offered to buy Chickasaw lands in the east, providing tribal members with money that they could then use to purchase western lands later. Importantly, the agreement was also different from Dancing Rabbit Creek because it was contentious from the off, and fell apart within months. The treaty was never ratified by Congress, and did not result in removal. See chapter 4 (illegibility) for a longer discussion of this. See also: Amanda L. Paige, Fuller L. Bumpers, and Daniel F. Littlefield, *Chickasaw Removal* (Ada, OK: Chickasaw press, 2010), kindle edition, kindle location 722-832.

Thomas McKenney had expressed doubts about the legality and humanity of mass deportation. Long a staunch advocate of civilization policy, McKenney remained committed to the idea that removal could just be one possible solution to the “Indian problem”. These opinions did not sit well with Jackson. Just months later, these scruples cost McKenney his job.<sup>229</sup>

McKenney’s doubts captured a broader policy moment of the late 1820s and early 1830s which also created the conditions for the Cherokee and Creek reserves’ exemptions from removal.<sup>230</sup>

In many ways, the Dancing Rabbit Creek Treaty was a product of this changeable climate: ‘negotiated in a moment of crisis’, the treaty did not necessarily take the form officials had envisaged.<sup>231</sup> Just as in earlier citizenship experiments, when federal commissioners drafted the treaty, they did so on the understanding that civilization and physical separation remained interrelated means to the same end. Based on their wider understandings of the indigenous South and agents’ reports, Washington officials believed that the Choctaws were socially stratified, with anti-removal elites controlling the ordinary Choctaws and, as a result, also the obstinately anti-removal course that the Nation had pursued in federal negotiations. Beyond this, agents’ positive depictions of ground-level negotiations convinced policymakers that the majority of Choctaws were actually willing to move west, given the opportunity to do so.<sup>232</sup>

It was on this basis that Coffee and Eaton proposed Articles 14 and 19. In line with earlier treaties granting citizenship and wider provisions for permitted non-removal, officials intended that only educated and acculturated elite *mestizo* Choctaws would have any interest in these provisions. Indeed, the commissioners had initially proposed a cap of 150 Choctaw claimants for the two articles; they had only dropped this limit on the persuasion of Greenwood LeFlore, especially since it became clear that it would be difficult to get the treaty signed without doing

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<sup>229</sup> Viola, *McKenney*, ch12.

<sup>230</sup> See chapter one.

<sup>231</sup> Young, *Redskins*, 47.

<sup>232</sup> See chapter one.

so.<sup>233</sup> By providing opportunities for vocally anti-removal *mestizos* like LeFlore to stay, Coffee and Eaton believed that these articles would secure the successful removal of the rest of the Choctaw nation.<sup>234</sup> Eager to see Choctaw lands incorporated into the United States, American policymakers did not see these combinations of complete removal and limited exceptions as a contradiction.

### The View from Washington

As news of the agreement travelled back to Washington, federal officials declared the treaty a triumph. In his annual report of December 1830, Eaton enthusiastically apprised President Jackson of his success. 'In concluding a treaty with these people', Eaton relayed, 'candor and fairness were the only means resorted to by the commissioners', and 'in open council, where were present chiefs and warriors...Arguments addressed to their judgements were the means employed', until 'under these circumstances, a treaty was concluded and signed, more than 5000 Indians being in attendance at the time'.<sup>235</sup> Eaton's account exaggerated the extent of Choctaw consensus but his confidence soon spread. Congress promptly ratified the treaty and the Office of Indian Affairs prepared to dispatch a new contingent of agents and contractors to begin the Choctaws' movement west. Just a few months later, Elbert Herring, the new commissioner of Indian Affairs, informed Congress that 'the Indians of that tribe are now in motion. It is presumed that about 5000 will emigrate West of the Mississippi before the winter sets in'. Indeed, if the department's 'Sanguine expectations may...be indulged', 'the whole nation will be

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<sup>233</sup> Young, *Redskins*, 51. Young suggests that LeFlore encouraged the commissioners to drop the limit because he knew that there was widespread Choctaw opposition to removal and, perhaps, he wished to help other Choctaws who did not wish to remove remain in the east.

<sup>234</sup> Young, *Redskins*, 32-33; John Holbrook Peterson, Jr., 'The Mississippi band of Choctaw Indians: Their recent history and social relations', (PhD Diss: University of Georgia, 1970). Xeroxed copy from University Microfilms, Ann Arbor, Mich: 1971. Viewed in Edward E. Ayer Collection, NL-C, 18-19.

<sup>235</sup> John H. Eaton, Secretary of War, to President Andrew Jackson, 'Annual Report of the Secretary of War', 1 December 1830, *ARCL4*, 35.

moved within the time (three years) prescribed by the treaty'.<sup>236</sup> From the halls of Washington DC, Choctaw Removal looked set to happen quickly. The vast majority of the Choctaw Nation would vacate their lands, even if a few elite *mestizo* individuals were to remain behind.

A thousand miles to the south and west, Mississippi citizens shared the government's enthusiasm. Noting that 'citizens of our state are in great suspense on this important matter', local newspapers covered the passage of the removal treaty, but complained that officials had delayed in informing local citizens of its exact terms.<sup>237</sup> Despite uncertainty, local residents anticipated a swift removal. In early November, one aspiring Mississippi senator canvassed support by arguing that 'on these subjects [of the removal treaties]...there can be but one opinion among Mississippians', and promising that 'if honored with a seat in the senate...however liberal in their terms on the part of the Federal Government, [the treaties] will receive my unqualified approbation'.<sup>238</sup>

In December, the *Natchez Gazette* printed an extensive report detailing the expected progress of removal by one "Agricola", its anonymous correspondent. Agricola berated the fact that 'no official account of the terms contained in these pacts or agreements with the Indians for their removal has been received'. But, he continued, 'from the best information we are able to collect, the prominent features in these treaties regard first, *the choice of removal or citizenship* – second, those who choose to stay and reside as citizens'. In offering such benevolent options, Agricola opined, the United States had been unduly lenient: the treaty was so generous that 'no one of us will complain of a want of kindness manifested in these acts with the Indians'.<sup>239</sup> Yet, for all his complaints, Agricola ultimately seemed convinced that only a few Choctaws would choose to remain, since 'it is admitted on all hands that the time has arrived when the Indians must settle

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<sup>236</sup> Elbert Herring, Superintendent (head) of Indian Affairs, 'Annual Report of the Indian Bureau: 1831', *ARCLA*, 172.

<sup>237</sup> 'Choctaw Treaty', *Natchez Gazette*, 6 October 1830.

<sup>238</sup> Ch. B. Green, "To the members of the Senate and House of Representatives of the State of Mississippi", *Natchez Gazette*, 10 November 1830.

<sup>239</sup> "Agricola", 'Removal of the Indians West of the Mississippi', *Natchez Gazette* 29 December 1830.

off themselves for their own happiness, prosperity, and even existence’, for they could not be civilized or intermarried in the east. Agricola’s report ended in certainty. He was sure that federal promises of citizenship would only be suitable for a tiny handful of Choctaws. He urged his readers that they need not worry, since the regrettably liberal ‘choice’ offered by the treaty would come to nothing.<sup>240</sup>

### Enforcing and Ignoring the Treaty

Like other treaties before it, the Treaty of Dancing Rabbit Creek owed its existence to the highest-ranking officials, but once the treaty had been signed, these commissioners retired to Washington. In their place, they left their network of agents, soldiers, and citizens as the front-line of removal.<sup>241</sup> While Eaton and the Indian Office prepared to dispatch agents to enrol Mississippi’s Choctaws, immediate federal policy in Mississippi channelled through the existing Choctaw agent, William Ward. The Monroe administration had appointed Ward, a Tennessean by birth, to the Choctaw agency in 1821. As a long-serving official, he had been at the vanguard of federal “civilization” policy. While in charge of the Choctaw agency, he was deeply involved in the daily organization of the Choctaw Academy in Tennessee.<sup>242</sup> Founded in 1818, the Academy was a flagship of civilization efforts, a residential school run by Protestant missionaries assigned to train the sons of elite Five Tribes members in English language, science, and etiquette.<sup>243</sup> School officials had even renamed one of the newly-arrived Choctaw pupils after Ward.<sup>244</sup>

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<sup>240</sup> Ibid.

<sup>241</sup> See: Rockwell, *Indian Affairs*, 188. For more on this, see wider discussion of the dynamics of state sight and OIA administration in ch1.

<sup>242</sup> Carolyn Thomas Foreman, ‘The Choctaw Academy’, *Chronicles of Oklahoma* 6:4 (December 1928), esp. 454-5, 475.

<sup>243</sup> For more on the Choctaw academy, see: Guyatt, *Bind Us Apart*, esp.ch7; Christina Snyder, *Great Crossings: Indians, Settlers, and Slaves in the Age of Jackson* (Oxford: Oxford University Press, 2017); Kidwell, *Choctaws and Missionaries*, ch6; Valerie Lambert, *Choctaw Nation: A Story of American Indian Resurgence* (Lincoln: University of Nebraska Press, 2007), 36-7. Richard Mentor Johnson, the Academy’s founder, was Ward’s brother-in-law (Ward was his wife’s brother).

<sup>244</sup> Foreman, ‘The Choctaw Academy’, 472.

These experiences profoundly shaped the agent's attitudes toward Indian policy. As Washington DC's man on the ground, Ward became a key shaper of federal understanding of the Choctaws. Despite his personal associations with civilization policy, during his time as agent Ward became increasingly convinced that separation was the best course for the Choctaws, especially for the majority whom he called 'full-bloods' and branded incapable of civilization. By the 1820s he lamented that 'removal was being blocked by the half-bloods [*mestizos*] and that if their influence could be weakened, the full-bloods would emigrate west where they could continue their traditional life'.<sup>245</sup> Shortly after Mississippi extended its laws over the Choctaws, Ward instructed that if the federal government could persuade elite Choctaws to sign a removal agreement, 'the greater part of the full bloods would follow, and the half breeds could be made full citizens'.<sup>246</sup>

The Treaty of Dancing Rabbit Creek set a window of three years for the Choctaws to either move west or to register to remain under Articles 14 and 19.<sup>247</sup> The registration period began shortly after Congress proclaimed the treaty in February 1831 and officially lasted for six months.<sup>248</sup> In Mississippi, the tasks of both registration and enrolment fell to Ward. At first, Ward publicly kept up his faith in federal policy and the expectation that the Choctaws would soon be removed west. In October 1830, he issued a statement noting that a removal treaty had been agreed, but this did not mean that 'many unreformed persons may now rightfully enter and settle within their country'.<sup>249</sup>

Privately, however, he soon began to see a different side to the treaty. Just weeks after the commissioners' departure, Choctaw claims from across the corners of the Nation trickled in to Ward's office. Some registered their claims by post or sent them with kin or neighbours from nearby towns. Others arrived in person and massed around the door, urging Ward to register

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<sup>245</sup> Peterson, 'Mississippi Band', 18-19.

<sup>246</sup> W. Ward to Peter B. Porter, 6 February 1829, cit. Young, *Redskins*, 29.

<sup>247</sup> Treaty with the Choctaws 1830.

<sup>248</sup> For proclamation: Treaty with the Choctaws, 1830.

<sup>249</sup> W. Ward, 'Notice: Choctaw Agency' (dated 20 October 1830), *Natchez Gazette*, 17 November 1830. The paper reprinted the notice for several months.

them in his claims book. From the most distant and culturally traditionalist towns, Mingoes and headmen made long treks on foot. Lacking, or perhaps mistrusting, the ability of ink to record their intentions, some of the more socially conservative communities carried their claims as bundles of sticks, demarcating ‘a small stick...to represent each head of a family’ seeking to claim a reservation under the treaty, alongside smaller sticks for accompanying women and children.<sup>250</sup> After long and arduous journeys, they entered Ward’s office, explained the claims that they had carried and urged that he record them to his superiors.<sup>251</sup>

The Choctaws’ enthusiasm surprised Ward. Expecting just a handful of elite Choctaws to present themselves, it must have come as a shock to receive a bundle of sticks ‘longer than could be grasped with both hands’ from just one community. Just days later, sticks for 137 heads of families and their many wives and children arrived. One by one, registrants kept coming, even though such large-scale registration was totally unexpected and anathema to federal plans for the treaty.<sup>252</sup>

As the first port of call for registrants, Ward began to comprehend the unintended outcomes of Article 14. Watching from the agency’s window, he could but wonder how the government’s carefully planned policy had backfired so spectacularly. This distress shaped his response, accompanied, no doubt, by the fact that he was allegedly drunk for most of the proceedings.<sup>253</sup>

Faced with hundreds, even thousands, of would-be Choctaw registrants, Ward and his brother Samuel improvised. At best, they claimed that they did not understand or had rejected informal

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<sup>250</sup> ‘Choctaw claims, tabular statement, part 5: Capt Chishihoma’s company, the Six Towns Indians’, 1837-8? NARA RG75, Entry 269: ‘RG75, Records of the Bureau of Indian Affairs. Indian Removal Choctaw Removal Records, Pray, Murray, and Vroom: Docket of claims, 1837-1838’ [hereafter e269], box 1. Many other Choctaw depositions in 1830s and 1840s claims also mention using sticks to register. See, eg, ‘deposition of Bomah-Tubbee...’.

<sup>251</sup> Young, *Redskins*, 52.

<sup>252</sup> ‘Choctaw claims, tabular statement...Capt Chishihoma’s company’; ‘General deposition of Ta-pee-oon-chu-ah, Toh-tub-bee, and Mok-nu-lah, all full-blood Choctaws, taken before the Board of Commissioners on the 8<sup>th</sup> day of June 1844’, NARA RG75, e270, box 3.

<sup>253</sup> See, eg: James Tobla [James Toby], Deposition at Old Yazoo Village, 1843, in ‘The general deposition of Tobla-Chubbe, a Christian Choctaw, and a preacher attached to the methodist church, taken before the Board of Commissioners on the 10th day of April 1843...’, in NARA RG75 e270, box 3. Nb: Tobla-Chubbee is spelt inconsistently throughout the deposition, sometimes with one e, sometimes with 2. Many other Choctaws testified to this. Numerous tribal histories pick up on this too, eg: Satz, ‘Mississippi Choctaw’, kindle location 133.

registration methods like the stick-bundles. Sometimes, Ward and his brother pretended to register groups, encouraging them to go away believing that their names had been recorded and later denying all knowledge that they had ever come. At worst, they actively destroyed or refused claims. Many Choctaws later recalled that Ward turned several parties away without even hearing their accounts. Others remembered that, when handed the bundles of sticks or lists of registrants, he simply tossed them into the fire.<sup>254</sup> Sometimes, while drunk, he even used registration lists ‘as shaving paper’.<sup>255</sup>

If would-be citizens frustrated Ward at home, he came across yet more evidence of Article 14’s popularity in his field duties. Throughout autumn 1830, he visited several Choctaw settlements, but again found little enthusiasm for federal policy and lots for Article 14’s promises. In the face of opposition to his long-held assumptions, Ward continued his earlier course. According to sworn affidavits from both Choctaw and white observers, he threatened violence against full-blooded Choctaws who tried to register under Article 14 and ‘urged removal agents to whip anyone refusing to emigrate’.<sup>256</sup> In threatening or burning Choctaws’ attempts to claim the right to remain under the treaty, Ward attempted to make them disappear. He largely succeeded. As he destroyed their claims, he also dismantled many Choctaws’ hopes of successful cooperation with federal policies and legally sanctioned routes to non-removal. In total, over the three-year registration period, Ward only successfully forwarded 69 Choctaw claimants under Article 14 of the treaty to Washington.<sup>257</sup> The claims and hopes of all the others existed only as ashes.

Existing histories of the Mississippi Choctaws have focused on Ward’s drunkenness, often seeing him as a disastrous, even malevolent figure.<sup>258</sup> But drunk or not, for Ward the mass

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<sup>254</sup> For the destruction of sticks, see: ‘The general deposition of Tobla-Chubbee...’. For a range of Ward’s responses to Choctaw behaviour, see the full range of depositions made against him in later claims proceedings: NARA RG75, e270, box 3: ‘Evidence 1837-38’, as well as later depositions from the 1840s.

<sup>255</sup> Satz, ‘Mississippi Choctaw’, Kindle location 133.

<sup>256</sup> Ibid.

<sup>257</sup> William Ward, ‘Transmitting registers of 3 Choctaw Districts’ claims to reservations as allowed by the chiefs and F.W. Armstrong, spec. agent’, in NARA RG75, 267, box 10: ‘Lists of Choctaws’.

<sup>258</sup> See, eg, Adams, *Who Belongs?*, 97: ‘As it turned out, Ward was an incompetent alcoholic who had little regard for Indian Treaty rights’. Recent tribal histories feature Ward, but often as a brief cameo as part of a wider tribal story.

enthusiasm for Article 14 strikingly demonstrated an uncomfortable truth: his own policy instincts, and those of DC policymakers, had been massively misguided. Just as the 1810s Cherokee and Creek “experiments” in citizenship had demonstrated, it was not only the acculturated *mestizo* elites of the Five Tribes who wanted to escape removal.<sup>259</sup> It is likely that Ward acted on his own authority to close this unfortunate possibility as soon as he became aware of it. We cannot know whether he thought his actions had permanently solved the problem and would lead to the removal of the Choctaws he refused to register. Yet whatever we are to make of his motives, Ward’s response was to have a pivotal effect on the course of removal and thousands of Choctaws’ lives.

#### Article 14 from the Choctaw Perspective

Choctaws’ widespread enthusiasm for Articles 14 and 19 surprised Ward because officials had ultimately believed that the provisions would guarantee, rather than prevent, widespread removals. But away from Washington or Jackson, things could not have looked more different to Mississippi’s Choctaws in the wake of the treaty. Many had left the negotiation ground in frustration before the agreement had even been signed, but news of the generous opportunities spread rapidly through Choctaw country. In the late 1830s, Bomah-Tubbee, ‘a full-blood Choctaw’ living in the most socially and geographically liminal parts of the Choctaw Nation, recalled that when his community’s captain returned from the council, he ‘reported...that a treaty had been made and, that among other things, it was put in the treaty that each head of a family could remain, and hold their improvements and lands by signifying their intention to do

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See also, Satz, ‘Mississippi Choctaw’, kindle location 114-118: ‘Some Indian field service agents cared little about Indian treaty rights. Such certainly was the case with Ward’. Cf. Osburn, *Choctaw Resurgence*, 12-14. While it is certainly true that Ward was personally responsible for failing to register many of the Article 14 claimants, this chapter suggests the Article 14 situation (and its relationship to the federal government in DC) is much more complex than such dismissals allow.

<sup>259</sup> See chapter 3 for more.

so to the agent'.<sup>260</sup> Other Choctaws from other towns across the Nation echoed this sentiment.<sup>261</sup>

To the federal government, Article 14 was a tiny exception intended to reinforce rather than jeopardize the plan for large-scale removal promised in the treaty; yet to many of these unwilling Choctaws, the clause seemed to provide a way out of removal.<sup>262</sup>

The experiences of one Choctaw registrant named Tobla-Chubbee epitomize many Choctaws' belief in the importance of these provisions and the unexpected shock of Ward's denial of their claims. At the time of the treaty, Tobla-Chubbee was a member of a small community of Choctaws living around Leaf River in Smith County, in the middle of the state, just southeast of Jackson. 'In the summer next after the Treaty of Dancing Rabbit Creek', word reached Tobla-Chubbee and his community that a treaty had been signed and that Article 14 offered a route for those wishing to remain. Upon hearing the news, the community 'met together in general council...for the purpose of taking measures to get their names registered for the five years stay'. The council agreed that Tobla-Chubbee, along with 'such as could conveniently do so' should travel 'over to the missionary station in what is now called Jasper County, and get the names of those present written down on a piece of paper to be taken up to Ward, the Agent for registration'. Days later, the party set off for the missionary station, where a 'tall, elderly man' wrote down the names of those present. With no time to lose, Tobla-Chubbee and his son, James Toby (otherwise known as James Tobla), took the piece of paper and began the long journey to the Choctaw agency.<sup>263</sup>

Several days later, they arrived. After a long trip, Tobla-Chubbee was dismayed to find that William Ward 'was not at home', though his brother was present. Informally appointed as the

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<sup>260</sup> 'The deposition of Bomah-Tubbee, a full-blood Choctaw, in behalf of himself & certain other Choctaw heads of families hereafter named' (1837-8?), NARA Entry number 270: 'RG75, Indian Removal, Choctaw Removal Records, Pray, Murray, and Vroom. Evidence 1837-38' [hereafter e270], box 3.

<sup>261</sup> See, eg, 'The deposition of Pa-sham-ba (alias Com-ba-sha) a full-blood Choctaw...', n.d., NARA RG75 e270, box 3.

<sup>262</sup> See, Peterson, 'Mississippi band', 19.

<sup>263</sup> 'The General Deposition of Tobla-Chubbee...'

‘sub-agent’ to his sibling, Stephen Ward was well-known to many Choctaws for his work in the agency. Tobla-Chubbee recalled that ‘knowing that Stephen Ward was Agent under his brother and that he did business in the absence of the agent’, he turned to Stephen and stated ‘that he and James Toby had come to register their own names, and to give the names of all the rest living in the neighbourhood... [because] they all wanted to remain the five years + keep their lands’.<sup>264</sup> Tobla-Chubbee and his son had every reason to be hopeful: they had done exactly as Article 14 had instructed them. But Stephen Ward flatly ‘refused to register any of them’ and was so insistent that the Choctaws had little choice but to leave the agency. They went to the house of a nearby acquaintance, where they stayed for three nights. They then rushed back to the agency, hoping that William Ward had returned and would be more sympathetic to their claims. When they arrived, however, William Ward was still absent and Stephen again refused to countenance their claims. Tobla-Chubbee was despondent. He remained for some time and ‘called upon Stephen...and begged him in the most earnest manner he could to register the names’. Initially, this seemed hopeless. For a long time, Stephen ‘prodigiously refused to do so’, but eventually, Tobla-Chubbee’s patience reaped a small reward. ‘After much entreaty’, Stephen Ward ‘got his book and agreed to register [Tobla-Chubbee] and James Toby, but insisted that he would not register those who were absent’. Tobla-Chubbee and his son kept begging but the sub-agent was adamant. He only agreed to register a further two old men from the missionary’s list. Tobla-Chubbee had no choice but to give up. ‘Feeling greatly distressed at his failure to get the names of his friends registered’, he ‘returned home and gave the news to his people’. The community were anguished at the United States’ inability to uphold its promises. Tobla-Chubbee recalled how ‘they were much disheartened and distressed, but determined to remain on their lands any how [sic], still hoping that the government would not take it away from them’.<sup>265</sup>

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<sup>264</sup> Ibid.

<sup>265</sup> Ibid.

Tobla-Chubbee's story embodies the disconnect in federal understanding when it came to the realities of indigenous life and communities' real feelings towards removal.<sup>266</sup> In fact, many of the most enthusiastic responses to Article 14 came from the *Okle Hanali* (literally, 'People of the Six Towns'), or Six Towns division, traditionally home to the most culturally traditionalist, politically liminal, and geographically isolated communities of the Choctaw Nation.<sup>267</sup> Situated at the Nation's social and geographical edges, these people lay beyond federal reach. Agents and policymakers considered them insignificant, especially within a vision of the indigenous South which prioritized elites and the acculturated *mestizo* government. As a result, they had scarcely ventured down to gauge support among these people. If they had, they would have found their assumptions about the majority's zeal for the policy severely challenged. One missionary later estimated that of the Six Towns' 2600 Choctaws, only one man could be found to agree with the pro-removal clauses of the treaty.<sup>268</sup> In later decades, hundreds of Six Towns Choctaws claimed to have attempted to register under Article 14.<sup>269</sup>

The Six Towns were not alone. For thousands of Choctaws across Mississippi, the Treaty of Dancing Rabbit Creek had offered a unique lifeline out of a forced westward removal that they wanted to avoid. Yet Ward's actions had jeopardized the security that Article 14 had seemed to promise. Like Tobla-Chubbee, many Choctaw families did not know what Ward's obstinance might mean for their future. They did not even know if their names had been registered.

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<sup>266</sup> Anthropologist John Peterson notes: 'the government and its agents clearly did not expect that any significant number of full-blood Choctaws would take advantage of Article 14 and the Article would have probably not been accepted by the government if it had realized that it would encourage large numbers of full bloods to remain in Mississippi'. Peterson, 'Mississippi Band', 18-19.

<sup>267</sup> For the Choctaw term, see: Valerie Lambert, *Choctaw Nation*, 30-1. Historically, the Six Towns were one of the most distinctive Choctaw divisions: colonial observers noted that their styles of dress and behaviour differed from those of the wider Choctaw Nation, including a distinctive pattern of blue facial tattooing. There is even some suggestion that the Six Towns division had a separate origin to the rest of the Choctaw Nation, and had perhaps been incorporated into the polity through kinship ties at a later date. See Kidwell, *Choctaws and Missionaries*, 3-4.

<sup>268</sup> Cit. Young, *Redskins*, 33-34.

<sup>269</sup> 'Choctaw claims, tabular statement...Capt Chishihoma's company'.

### Blind Spots and State Sight

In Mississippi, Ward had unexpectedly encountered a world often hidden from state sight and his response had been to hide it. However, seated in Washington DC, his superiors remained blissfully ignorant of the realities of their policy and the vast extent of Choctaw enthusiasm for Article 14. Viewed from a distance of nearly a thousand miles, Mississippi receded to merely a nondescript place on a map. John Eaton had long since returned to the War Department, where he was inundated with responsibilities of removal, Indian policy, and conflict at a continental scale. In the Indian Office, Samuel Hamilton, the newly appointed Commissioner of Indian Affairs, had to rely entirely on his network of agents and bureaucrats to understand the ways that his policies played out on the ground.<sup>270</sup>

In early 1831, the world Hamilton and other officials saw in reports looked promising. The preliminary dispatches they had received from Mississippi had not challenged their removal plans. In fall 1830, Greenwood Leflore, Mingo of the *Okla Falaya* (Western Division), reported that there were a ‘great number [of people] who will be prepared to remove immediately on the receipt of the title to our country west’. In fact, he advised the Indian Office not to delay in implementing removal since many Choctaws ‘feel that they must emigrate and are unable to delay it’.<sup>271</sup> Just a few weeks later, another agent echoed these sentiments, suggesting that Nitakechi and Mushulatubbee, Mingoes of the other two main Choctaw divisions, were also preparing their people for emigration.<sup>272</sup> These reports reached the highest levels of federal government. In spring 1831, President Jackson received a petition from the ‘Chief, Captain, and

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<sup>270</sup> In all of the literature on the Mississippi Choctaws, historians have paid little to no attention to the links between Ward’s actions and those of the Indian Office in Washington DC. Most have simply assumed that OIA officials knew about or followed beyond Ward’s actions, or have simply not asked how the federal government in DC might (or might not) have seen them. See notes below, for more discussion.

<sup>271</sup> Greenwood LeFlore to Office of Indian Affairs, 5 October 1830. NARA M234-R185. For Western division, see Lambert, *Choctaw Nation*, 30-1.

<sup>272</sup> George S. Gaines to John H. Eaton, 14 October 1830. NARA M234, R185; Gaines to John Coffee, 29 November 1830, also NARA M234-R185.

head men' of the *Okla Tannan* (Eastern Division) stressing their enthusiasm for their movement to 'our new homes on the other side of the Mississippi'.<sup>273</sup>

In response, Indian Office personnel readied themselves. Officials compiled vast tables calculating the manpower, material goods, and financial outlay of removing the Choctaws.<sup>274</sup> On the ground, existing networks of agents and contacts prepared to implement them, seeking out contracts for individuals to help lead the Choctaws, and provisions and transport to sustain them on their journey west.<sup>275</sup> However, in these busy months, the one person that the Indian Office did not hear from was William Ward. The Office of Indian Affairs papers contain no report from him for 1830.<sup>276</sup> We cannot know whether Washington officials would have considered this silence unusual: amidst the bustle of removal, it seems unlikely that officials would have noticed the lack of a direct report. Agents sometimes wrote infrequently and, especially as removal got underway, Washington officials received a range of other reports from personnel on the ground in Choctaw country. Besides, Indian Office officials also knew that Ward had, at least on paper, another eighteen months to finish Choctaw removal under the treaty's terms.

In May 1831, Ward broke this temporary silence by writing directly to Eaton, sending his letter to the War Department via the Office of Indian Affairs. Despite overlapping with the period for Choctaw registration under Articles 14 and 19, Ward did not mention his involvement in the process. Instead, he reported about the progress of removal and the financial arrangements to move those Choctaws whom, he assured, 'are desirous to move this fall'.<sup>277</sup> A month later, Ward sent another report. Writing directly to Hamilton, this is the only letter in which he refers to

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<sup>273</sup> Mushulatubbee and 'Choctaw chiefs' to 'Our Great Father, the President of the United States', 24 March 1831. NARA M234-R185. For Eastern Division, see Lambert, *Choctaw Nation*, 30-1.

<sup>274</sup> 'Estimate of the funds that will be required to carry into effect the Treaty with the Choctaw Nation of Indians....', September? 1830, NARA M234-R185.

<sup>275</sup> See, eg: F.W. Armstrong to Lewis Cass, 29 January(?) 1832, NARA M234-R185; Indian Office chart of provisions and plans required to remove the Choctaws, September 1830, NARA M234-R185. Much of the OIA's correspondence in this period is in this vein.

<sup>276</sup> I have found no letter in the relevant OIA correspondence files. It is possible that such a report was sent and then lost, but this is unlikely as the OIA papers were meticulously catalogued and, since, have been thoroughly preserved. It is much more likely that no letter was ever sent.

<sup>277</sup> William Ward to John Eaton, 3 May 1831, Choctaw Agency. NARA M234-R185.

Article 14. As the six-month Article 14 and 19 registration period closed, Ward perhaps felt compelled to send his superiors some word on his progress. Things, he wrote, had gone well and he had ‘opened a book for all those that wished to register their names under the provisions of this 19<sup>th</sup> article of the late treaty’. He noted that registration for Article 14 had closed a little earlier, but promised to forward his rolls to the department in due course.<sup>278</sup>

Alongside this positive picture, Ward did give some indication that the registration process had not gone as smoothly as he had hoped. ‘I will observe’, he added cautiously, ‘that there are many more who wish to stay five years than had been expected’ and, in fact, ‘there were upwards of two hundred persons from all sections of the country applied [sic] a few days since’. Ward hinted that he had not kept to the strict letter of the treaty and registered everyone who had asked, informing Hamilton that ‘I put them off’. He attributed the claims not to a lack of Choctaw enthusiasm for removal but to the efforts of ‘designing white men who were always opposed to the Treaty’. ‘I trust’, he concluded, ‘that this is the last effort they will be able to make to thwart the...government’.<sup>279</sup> Notably, Ward remained silent on his means and motives. He also neglected to give any indication of the scale of his actions.

Two hundred years later, we know that Ward’s silences hid actions, failures, and personal policies that he wished to conceal. However, read from Hamilton’s desk in Washington DC, this letter would not necessarily have given any indication that anything was amiss. After all, even Ward gave no particular reason to worry. He ended his letter by returning to familiar ground for federal expectations of Article 14. ‘I wish to be advised’, he wrote, ‘if white persons [who are] heads of Indian families has the benefits of the five year citizenship and one section of land’; he closed by enquiring precisely what improvements the Indian Office was willing to pay for.<sup>280</sup>

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<sup>278</sup> William Ward to Samuel Hamilton, 21 June 1831, Choctaw Agency. NARA M234-R185.

<sup>279</sup> Ibid. This could have been a reference to early fears about Choctaw exploitation by land speculators; however, ‘designing white men’ was also a phenomenon that Indian office agents widely blamed for moments when indigenous Southerners did not seem to behave as agents’ expected, especially during removal.

<sup>280</sup> Ward to Hamilton, 23 July 1831.

Having received only these obscuring, infrequent dispatches from Ward, officials in DC could not have known that their policy had been unpopular, or that several thousand Choctaws had bucked their expectations by turning to Article 14 as a route out of removal. They were not aware of their own information gap, created by Ward's own deliberate silences.<sup>281</sup>

### Shifting West

Over the next few years, little happened to dispel their perceptions. In Mississippi, federal officials focused on the process of Choctaw removal. Agents and representatives were consumed with enrolling ever greater numbers of Choctaws, whom they then guided on the treacherous passage downriver to Indian Territory.<sup>282</sup> Meanwhile, Ward kept up a sporadic correspondence with DC, writing two or three times a year. His reports focused on the progress of removal and his various tasks, but made no reference to Articles 14 and 19, never mind the fact that any unwanted Choctaws might have attempted to claim reservations under them.

Instead, from mid-1831, Ward's letters focused overwhelmingly on the bureaucratic challenges of removal. In July, he updated Hamilton on the progress of negotiations between the Choctaws and the Chickasaws over land allotments in Indian Territory. His next report two months later complained primarily about the death of a newly arrived agent and its negative impact on the progress of removal.<sup>283</sup> In fact, the topic which he most frequently referred to in his

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<sup>281</sup> By and large historians have simply not explored the ways that federal officials in DC actually understood Ward's actions, either assuming complicity, or simply ignoring the issue altogether. Clara Sue Kidwell, one of the few historians to explicitly address this issue, assumes that Ward's letter about "designing white men" served as informing the government: however, this chapter demonstrates that this simply was not the case, and the degree of mis-sight at the highest echelons of the Indian Office played a significant role in the course of Choctaw (non)removal and the Article 14 claims saga, and ensuing mass dispossessions. See: Kidwell, 'Choctaw Struggle', kindle location 872.

<sup>282</sup> Foreman, *Indian Removal*, chs3-6.

<sup>283</sup> William Ward to Samuel Hamilton, 23 July 1831, Choctaw Agency. NARA M234-R185; William Ward to Lewis Cass, 10 September 1831, Choctaw Agency. NARA-M234 R185.

correspondence with Washington DC was not Article 14 or even the ongoing progress of removal negotiations, but the sale of cattle owned by emigrating Choctaws.<sup>284</sup>

With little word from Ward, staff in Washington DC saw no reason to worry about Articles 14 and 19. From what they could see, Choctaw removal looked set to go off as planned. Besides, whether based in the field or the office, officials always had bigger worries to distract them. In Choctaw country, agents began to struggle with problems of evasive groups and reluctant emigrants. In DC, the panoptic concerns of continental policy and administration distracted officials.<sup>285</sup> Ignorant of the fact that thousands of Choctaws were preparing to avoid removal, they had no reason to assume that their plans would not go as they had hoped.

By the end of 1831, the first wave of agents had successfully enrolled and removed around 4,000 Choctaws to Indian Territory. The process was a steep learning curve. New staff had struggled not only with reluctant, fugitive, and hard-to-locate groups, but also with bureaucratic, administrative, and financial challenges.<sup>286</sup> But they had persevered and, pressured by their superiors, managed to secure another set of enrolments. Over the next eighteen months, thousands more Choctaws crossed the Mississippi.<sup>287</sup> Meanwhile, officials received reports that the sales of the newly-vacated Choctaw lands had moved briskly. As lands passed from Choctaws to planters, settlers, speculators, and land companies, a massive transfer of Southern sovereignty seemed to be underway.

The Treaty of Dancing Rabbit Creek had reserved a three-year window for Choctaw removal and registration. This expectation fell in line with officials' positive hopes for removal and their conviction that most Choctaws were predisposed to remove. In fall 1833, this allocated removal

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<sup>284</sup> William Ward to Lewis Cass, 10 September 1831, *ibid*; William Ward to Samuel Hamilton, 29 October 1831, Choctaw Agency, NARA M234-R185; William Ward to Elbert Herring, 23 July 1832, Choctaw Agency. NARA M234-R185.

<sup>285</sup> See other chapters for more information on other Indian Office concerns.

<sup>286</sup> See, Arthur DeRosier, *The Removal of the Choctaw Indians* (Knoxville: University of Tennessee Press, 1981), 148. For more on challenges, see other chapters of dissertation.

<sup>287</sup> See Foreman, *Indian Removal*, esp chs5-7.

period would end. On the ground and in DC, officials prepared to wrap things up. Practical concerns motivated this shift. Within only the first year, costs for Choctaw removal had sprawled to two to three times over budget.<sup>288</sup> In view of these developments and overspends, federal officials sought to finalise Choctaw removal as quickly and efficiently as possible. They were equally keen to divert their attentions to removal efforts and diffuse conflicts elsewhere in the south, north, and west. As early as summer 1832, Elbert Herring wrote to inform Ward that he must begin to reduce his staff at the agency. Ward wrote back to plead that he could not bear to lose his sub-agent and interpreter while removal still kept them occupied ‘day and night’, and offered to keep the men on at his personal expense.<sup>289</sup> Presumably, the fact that his sub-agent was his brother spurred his show of zeal; either way, his success was only temporary. The next fall, General Gibson, the army’s commissary general of subsistence, received an order from the secretary of war ordering him to complete Choctaw removal in accordance with the plans outlined in the treaty.<sup>290</sup> On 22 November 1833, General Gibson began enacting the order. He discharged the large force of agents and employees that the Indian Office had employed in Mississippi, dispatching others to negotiate with polities elsewhere in the region.<sup>291</sup>

As their horizons shifted westward, policymakers also ordered the closing of the Choctaw agency east of the Mississippi, relocating all its operations to a new agency in Indian Territory, headed by initial superintendent of removal, Francis Armstrong. These policies complemented wider westward-looking shifts in Indian policy. 1834 saw enormous administrative changes for federal policy across the continent. Following special congressional proceedings, the Indian Office underwent its first large-scale reorganization. The House passed three new bills, one of which drew up a revised Trade and Intercourse Act that relocated the official definition of ‘Indian country’ from the traditional eastern homelands of the South and Northeast to the ‘all that part

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<sup>288</sup> DeRosier, *Removal of Choctaw Indians*, 148-9.

<sup>289</sup> W. Ward to Elbert Herring, 2 August 1832, Choctaw Agency MS. NARA M234-R185.

<sup>290</sup> Prucha, *The Great Father*, 218.

<sup>291</sup> Foreman, *Indian Removal*, 102.

of the United States, west of the Mississippi' beyond the effective jurisdiction of American states or territories.<sup>292</sup> Buoyed by the same policy currents that influenced the closure of the Choctaw agency, each of these proceedings shifted both the Indian Office's horizons and its physical bureaucratic presence to the West. At least in terms of Indian Office bureaucracy, the removal of all eastern indigenous polities and the transition to American sovereignty seemed certain.<sup>293</sup>

The closure of the Choctaw agency was a momentous step in the transition from eastern to western visions.<sup>294</sup> A Choctaw agency had stood in the east since 1792 and, as a result, its closing marked a clear sign that the federal government regarded the Choctaw Nation's westward move to be effectively complete.<sup>295</sup> The agency's closure also meant the end of William Ward's employment by the Indian Office and his involvement with removal.<sup>296</sup> At the time of his departure, there is no evidence that Ward's superiors in DC had any real indicator of the scale of Choctaws' opposition to removal, enthusiasm for Article 14, or of Ward's unauthorized solutions to it.<sup>297</sup>

As they prepared to close their posts, federal agents reflected on their achievements. Writing to his superiors, William Armstrong expressed confidence in federal successes, noting that 'the country is fast settling with the whites...[and] I know that we have done all that could be done to get them [the Choctaws] off to Indian Territory. Half-way through, he paused to confess that 'I feel the disappointment...that there will be three thousand remaining after we leave'; but he was 'confident that...all those ...will emigrate on their own resources'.<sup>298</sup> Armstrong and the last few

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<sup>292</sup> Cit. Prucha, *The Great Father*, 104.

<sup>293</sup> Elbert Herring, 'Report from the Office of Indian Affairs, 1834', *ARCLIA* 237-266; 'Regulating the Indian Department', H. Rep. 23d Congress, 1<sup>st</sup> session, Rep. No. 474. See also Prucha, *The Great Father*, 103-105.

<sup>294</sup> The closure of the Choctaw agency was accompanied by a wider reorganisation of many other federal agencies: see, Elbert Herring, 'Report from the Office of Indian Affairs, 1834', *ARCLIA* esp. 259-261.

<sup>295</sup> The agency was originally established as a joint Chickasaw and Choctaw operation, before splitting. See: James R. Atkinson, *Splendid Land, Splendid People: The Chickasaw Indians to Removal* (Tuscaloosa: University of Alabama Press, 2003), 149.

<sup>296</sup> See Satz, 'Mississippi Choctaw', kindle location 133.

<sup>297</sup> Satz shares this opinion that officials did not dismiss Ward because of his 'scandalous conduct': *ibid*, kindle location 137.

<sup>298</sup> Armstrong, *cit. Foreman, Indian Removal*, 100.

agents crossed into Indian Territory just weeks later. By the end of the year, no permanent federal staff remained in Mississippi. For now, at least, Choctaw removal was over.

### Precarious Persistence

As federal officials marched out of Mississippi and on to new removal battles, they left an uncertain political legacy behind them. Although they had removed several thousand Choctaws, thousands more remained, often on a highly precarious legal basis. Some had experienced the agent's duplicity and its consequences, but many more were not immediately aware of Ward's sabotage. Returning to their homes, clutching promises or pieces of paper given to them by Ward or his brother, many Choctaws felt confident. They did not know that their claims would come to rest on Ward's word alone.

As he looked back at Mississippi from Indian Territory, Armstrong guessed that the government left behind three thousand Choctaws; in reality, the figure was probably two to three times higher. It is near impossible to accurately calculate the scale of non-removal, especially since federal officials so frequently misunderstood or simply did not see these people. However, on the basis of later estimates and Choctaw claims, it seems likely that somewhere between 4,000 and 10,000 Choctaws actually stayed behind after 1833-1834; as federal figures so unreliable, it is possible the number could be even higher.<sup>299</sup> Largely ignorant of Ward's actions, few Choctaw

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<sup>299</sup> Exact numbers are hard to estimate, as across this dissertation, as groups often made themselves hard to see, and the agents tasked with counting them often struggled to accurately see and locate these groups. However, agents consistently estimated that there were thousands of Choctaws behind. One agent estimated that there were at least 7,000+ Choctaws in Mississippi in 1844: Gaines to T. Hartley Crawford, 22 September 1844, NARA M234-R185. Despite the unreliability of agents' sight and estimates (as stressed throughout this dissertation), the fact that they consistently put the numbers in the 1000s – and continued to remove parties of hundreds of Choctaws in newer removal waves throughout the 1840s and beyond, something that I will explore in my expanded manuscript – suggests that Choctaws avoided removal in Mississippi in huge numbers at this time. Later removals from 1836 onwards, as discussed later in this chapter, obviously diminished this number, perhaps suggesting that there were even more Choctaws in the 1830s than agents supposed, and possibly giving good reason to favour a higher estimate at this stage. The fact that over 1300 heads of families later came out to make claims under the Murray Vroom commission (not to mention the thousands of others who made claims under later 1840s proceedings) also suggests that the overall number of people who remained was significant, with many of these claimants claiming on behalf of families or communities of sometimes tens of people. These figures come from the first proceedings of

claimants made any immediate effort to disguise themselves or to move beyond their original lands. Under the terms of Article 14, most believed that they had submitted claims to Ward, and that they could simply stay as they were.

As 1831 rolled into 1832, the scales fell from their eyes. Many families' situations grew precarious. After leaving Ward's office, for instance, things went from bad to worse for Tobla-Chubbee and his community.<sup>300</sup> Within months, settlers converged around their homes and agents threatened them with eviction. Many felt especially vulnerable at their lack of a formal certificate of landholding. The following spring, 'feeling uneasy about the situation', Tobla-Chubbee and three others 'went up to the Agency again to see if all was right and to get a paper from the Agent stating that they were entitled to their lands, having registered their names, so that they would not be disturbed by white men who began to move into the country very fast'. Things did not go well. The party announced themselves to William Ward – this time present at the Agency, along with his brother – 'and were told, to their great astonishment and dismay, that their names were not to be found in the Book'.<sup>301</sup>

In horror, Tobla-Chubbee recalled the events of the previous summer, trying to convince Ward and his brother that they had at least been registered, but the agent could not, or would not, turn up the name. Tobla-Chubbee and his companions could not check the book themselves as they were illiterate and spoke no English, so they called on two literate friends in the neighbourhood, one of whom was David Folsom, a prominent *mestizo* Choctaw. Both 'went with them and look[ed] all through the book, but with no better success than the others'.<sup>302</sup> The names had

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the Murray Vroom commission (see below for more discussion). Later commissions also found hundreds of other claimants – see discussion below. Existing tribal histories of the Mississippi Choctaws have also made similar estimates in the thousands, presumably drawing on the same source base; though, for reasons given above, I feel that many of these are a little low, tending to err on the side of caution. See, eg, Osburn, *Choctaw Resurgence*. 12: 'Estimates of the numbers of Choctaws remaining at the end of removal in 1833 ranged from four thousand to seven thousand people'; Kidwell, 'Choctaw Struggle', kindle location 886: 'By 1836, probably 5,000 Choctaw remained in Mississippi'.

<sup>300</sup> General Deposition of Tobla-Chubbee...'

<sup>301</sup> Ibid.

<sup>302</sup> Ibid.

simply not been recorded. Hovering in the background, Samuel Ward denied all knowledge of the case. Worse still, his brother, William was ‘drunk and seemed to be angry & cross’.<sup>303</sup> Increasingly irritated and keen to get the Choctaws to go away, William Ward appears to have agreed to give them a piece of paper. At the time, Tobla-Chubbee believed that this note proved their claims to remain in Mississippi under Article 14, but it does not appear to have been worth the paper it was written on. Several ‘whitemen’ to whom Tobla-Chubbee showed the paper struggled to remember its contents and later testified that it was of little significance.<sup>304</sup> For the little community, the next few years were very difficult indeed, as they sought to fend off settlers’ incursions into their lands and struggled to maintain their lives by the shady banks of the Leaf River.<sup>305</sup>

Tobla-Chubbee and his community were not alone. During later federal proceedings, almost two thousand Choctaw heads of families claimed to have registered with Ward the months immediately following the Treaty of Dancing Creek; these were just the people that came forward.<sup>306</sup> Almost all of their depositions tell the same basic stories of hope, betrayal, and ultimate rejection by Ward.<sup>307</sup> Just like the Leaf River community, many of those who had attempted to register with Ward believed that they had done so. Returning to their homes, they waited in good faith to avoid the first waves of removal but, within months, enrolling agents and white settlers arrived in their villages. Choctaws protested that they were exempt from removal and entitled to reservations, but without any proof they could not substantiate their claims. One

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<sup>303</sup> James Tobla [James Toby], Deposition at Old Yazoo Village, 1843, in ‘The General Deposition of Tobla-Chubbee’.

<sup>304</sup> ‘General Deposition of Tobla-Chubbee...?’.

<sup>305</sup> Tobla-Chubbee’s deposition suggests they had some success: they were still there in 1843, when they made their claims under the second wave of Choctaw commissions. Ibid. See final chapter for more.

<sup>306</sup> These figures come from the first proceedings of the Murray Vroom commission (see below for more discussion). Later commissions also found hundreds of other claimants – see discussion below.

<sup>307</sup> These depositions contain hundreds of different stories, but many have the same contours. See, eg: NARA RG75, e270, Box 3: ‘Evidence 1837-38’. Later commissions also took more depositions, as noted in the footnote above.

claimant returned to his 'little cabin' only to find a white man standing on the porch. With a gun in his hand, the white man said that the plot of land now belonged to him.<sup>308</sup>

Similar episodes occurred throughout Mississippi. One 'full-blood' Choctaw recalled that 'about two years after the treaty' and their registration with Ward, his family heard rumours that 'the emigrating agents of the United States' were in the vicinity, removing many Choctaws, including those with claims to remain under Article 14. Fearing that the agents 'would come in about a week with their waggons[sic] into the neighborhood...and take their women and children forcibly and remove them west of the Mississippi river', the family fled.<sup>309</sup> Others were not so lucky. In the coming months, agents removed many Choctaws, choosing to disregard their pleas that they had registered with Ward to remain, especially when their names could not be found on the register. As many Choctaws soon discovered, without proof, their claims meant nothing at all.

#### Limited Permissions

Owing to Ward's haphazard administration of the treaty provisions, only a handful of Choctaws had actually received a formal legally-approved permission to remain. Almost all of these were elite *mestizo* heads of household, who had been entitled to individual reservations under Article 19. In many cases, they were people who had some record of loyalty to the United States, often for service alongside Jackson's army during the Creek War. Of those who had sought claims under Article 14, only the 69 names that Ward had passed to his superiors in Washington DC even stood to be counted as official reservees.<sup>310</sup>

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<sup>308</sup> Ferguson, 'Treaties Between...', 225.

<sup>309</sup> 'Deposition of Bomah-Tubbee...?'

<sup>310</sup> See above.

A significant number of these approved claimants chose to use their new legal position to strategically assimilate into the United States or, at least, into its legal community as fully-fledged, highly acculturated citizens. Often in elite positions, and holding political offices within the Nation, many of these Choctaws chose to do as American officials had hoped: they accepted the reservations and American citizen status granted to them and then effectively assimilated into local Mississippi communities, embracing their newfound status as members of the United States, even while maintaining key aspects of their Choctaw identities.

One of the most prominent of these Choctaws was Greenwood LeFlore. Mingo of the Western Division, LeFlore was one of the best known and most acculturated members of the pre-removal Choctaw elite.<sup>311</sup> From September 1830, LeFlore and others took advantage of permission to stay on more or less the terms that American officials had imagined. In the aftermath of removal, LeFlore and his family balanced their identity as acculturated elite Choctaws with measured integration into Southern society, much as elite Choctaws had done in earlier decades.<sup>312</sup> He continued to live and hold slaves in his plantation, Malmaison, situated a little to the east of the modern-day city of Greenwood, Mississippi.<sup>313</sup> Over the next two decades, LeFlore was elected twice to the Mississippi House of Representatives and once to the senate, going down in local lore for his tendency to speak in Choctaw on the floor of the house in protest at other members' use of obsolete Latin phrases in debates.<sup>314</sup>

In previous decades, historians tended to see these elite Choctaws as sell-outs, but it is more accurate to see LeFlore and his companions as 'creoles', who benefited from a hybrid position in both Southern and Choctaw cultures, developed in line with pre-removal cultural adaptations.

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<sup>311</sup> R. Halliburton Jr., 'Chief Greenwood LeFlore and his Malmaison Plantation', in Wells and Tubby, *After Removal*; James Taylor Carson, 'Southern Creole, Choctaw Chief', in Greg O'Brien, *Pre-removal Choctaw history: Exploring new paths* (Norman: University of Oklahoma Press, 2015), 221-237.

<sup>312</sup> Halliburton, 'Chief Greenwood LeFlore'; Carson, 'Southern Creole'.

<sup>313</sup> See, Halliburton., 'Chief Greenwood LeFlore', 14; Lee J. Langley, 'Malmaison, A Place in the Wilderness, Home of General LeFlore, Mississippi's Remarkable Indian Statesman', *Chronicles of Oklahoma* 5:4 (November 1927), 371-380.

<sup>314</sup> Langley, 'Malmaison', 379.

Aligning with statesmen's visions of *mestizo*, bi-cultural elites suitable for citizenship, this position in turn enabled them to both avoid removal and to carve out a life beyond it.<sup>315</sup> These Choctaws had the advantage of being – or seeming to be – precisely the people that policymakers had anticipated remaining in the South. As a result, even the most reluctant agents like Ward were willing to recognize them as exempt from removal.

These people were a minority, both numerically and culturally. For the thousands of other would-be, non-elite Choctaw claimants, their legal and social situation became highly fragile. Many lost their lands to settlers. In the months immediately following the treaty, federal notices urged Mississippi residents to leave Choctaw lands unmolested.<sup>316</sup> Most fell on deaf ears. As land-hungry residents grew frustrated by delays in the richest cotton lands, they forced Choctaws from their homes. These white settlers' and aspiring plantation masters' assumptions were probably similar to those of federal officials: that once dispossessed, the Choctaws would gradually head westward, whether in ongoing removal parties, or simply of their own accord. Many settlers probably did not care where the Choctaws went, as long as they vacated their lands.

Across Mississippi, Choctaws who believed themselves to be landholders and citizens under Article 14 struggled to fend off dispossession and violence. As many families lost their lands to white settlers, those who managed to resist the entreaties of removing agents found themselves landless and lost in their own homelands. Yet they did not give up: despite the loss of their lands, many Choctaws refused to leave the region or to abandon what they continued to see as their legally-promised right to remain under the removal treaty. Sticking to the legitimacy of their claims, many Choctaws ended up as wanderers, effectively squatting on lands that their ancestors had called home for centuries.

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<sup>315</sup> Carson, 'Southern Creole'. Carson makes this wider argument about Choctaw elites elsewhere, see: Carson, *Searching For the Bright Path*. For more on 'creolization' as a complex category, see discussion in chapter 4.

<sup>316</sup> See: Ward, 'Notice: Choctaw Agency'.

### Unexpected Claimants

Elsewhere, hundreds of other Choctaws took advantage of Articles 14 and 19 in other ways that federal officials had never anticipated. Although Ward had ensured that officials only recognised a portion of the thousands of attempted registration claims, Choctaw communities drew on kinship ties to give these few legitimate claims a disproportionate influence. In many places, headmen whose claims had been recognized – and who had not chosen to assimilate into the United States – used their legally-acknowledged land claims to create *de facto* spaces of legal protection, gathering in tens or hundreds of Choctaws who had lost their own homes.

To the east of the state, in Kemper County, the home of one prominent Choctaw leader became an important gathering place. Hopia Isketena, or Little Leader, was a Choctaw headman and a vocal critic of removal. During negotiations at Dancing Rabbit Creek, he made an impassioned speech against the policy, stating his desire to remain in the lands of his ancestors.<sup>317</sup> Like the Cherokee and Choctaw reservees discussed in the previous chapter, Little Leader had advantages that others of his kin might have lacked: his service alongside Jackson in the Creek war had secured him a reservation under Article 19.<sup>318</sup> Better still, federal agents had confirmed his right to remain in Mississippi during the earlier wave of removal efforts, even if they did not like it. In fact, he was the only Choctaw headman in Mushulatubbee's district that William Armstrong could not convince to go west, much to Armstrong's annoyance.<sup>319</sup>

This legally confirmed right to stay set Little Leader apart from many of the other would-be Choctaw claimants, but Little Leader was willing to share his good fortune. He not only kept his own property, but also 'secured adjoining lands for fourteen families under his leadership' in his

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<sup>317</sup> Ferguson, 'Treaties between...', 222.

<sup>318</sup> Osburn, *Choctaw Resurgence*, 14-15.

<sup>319</sup> Foreman, *Indian Removal*, 100-101.

negotiations. His generosity did not end here. Through this especially difficult period for Article 14 reservees, Little Leader seems to have extended the benefits of his successful registration more widely. As many Choctaws faced dispossession, removal, and land loss, Little Leader ‘actively recruited followers, promising protection from removal and abuse’ for those Choctaws who joined him on his lands.<sup>320</sup> In these agonizing years, Little Leader’s lands quickly became a sanctuary for Choctaws who had been dispossessed by the disastrous Article 14 registration process and sought to avoid removal.

Little Leader’s willingness to share his recognized treaty claim in this way was not unique. In fact, many other Choctaws across the Nation also used their claims in a similar fashion. Throughout the state, Choctaws sustained communities – often unseen or unwanted by federal officials – on the lands of one of the few local captains, headmen, or kin members who had been able to stake a successful claim under the Treaty of Dancing Rabbit Creek.<sup>321</sup> In Neshoba County, a community of Choctaws gathered around the lands of Captain Bob, another reservee and headman. Like Little Leader’s group, the community more or less kept themselves to themselves. During removal efforts, officials attempted to evict Captain Bob and his band with little success. The Indians stood firm to their claims under Article 14, while others turned to evasive tactics to throw off agents. When faced with the threat of removal, Captain Bob’s claims to citizenship and legally-verifiable title to his lands provided the ultimate trump card. Following an attempt to round them up in 1832, the band simply scattered, regrouping on Captain Bob’s lands once the most enthusiastic agents had left the vicinity. Officials recorded Captain Bob’s presence in the region as late as the 1840s.<sup>322</sup>

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<sup>320</sup> Osburn, *Choctaw Resurgence*, 14-15.

<sup>321</sup> Captains are the heads of *Iksas*: a term originally given by missionaries, not Choctaws themselves. Lambert, *Choctaw Nation*, 25. Historians have recognized Little Leader’s efforts, but overlooked those of other headmen. See Osburn, *Choctaw Resurgence*, 14-15.

<sup>322</sup> William Woodward, deposition to the Choctaw claims commission, Neshoba County, Mississippi, 1844. NARA RG75, e270, box 3.

For these Choctaws, their Article 14 and Article 19 claims served strategic purposes. Although we do not have the sources to capture what they thought about their complicated legal status and identity, many outwardly exploited the blurry legal space they inhabited, especially after many of the removal efforts seemed to come to a halt in 1833-4. Little Leader, for instance, does not seem to have considered himself subject to local laws, continuing to live as a Choctaw Mingo while also staking a new legal identity as a Mississippi citizen, entitled to remain in the state under Article 14.<sup>323</sup> By combining these claims, Little Leader and many other Choctaws who remain invisible to the archive used these claims to legal status as citizens and landholders as a means to both avoid removal and to maintain traditional Choctaw communities and ways of life.<sup>324</sup>

Some Choctaws also turned to other legislation in order to negotiate their right to remain. In 1830, Mississippi state officials had passed a bill aimed at dissolving the Choctaw nation and to extend state sovereignty and jurisdiction over Choctaw lands. The bill had followed hand-to-hand combat and threats of full-scale frontier war; in fact, it had provided a catalyst to federal removal action in the first place. In 1832, amid policymakers' boasts about removal's growing successes, local lawmakers had reinforced their legal claims to sovereignty. In the fall, local delegates met in Jackson to draw up a new state constitution.<sup>325</sup> The revised document widened the state's electorate and reinforced the status of slavery. It also built on Mississippi's earlier claims to jurisdiction over former Choctaw and Chickasaw lands by granting the legislature the power to admit 'to all the rights and privileges of free white citizens of this state' any individual Choctaws and Chickasaws 'as shall to choose to remain within this state', according to lawmakers' own discretion.<sup>326</sup>

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<sup>323</sup> Osburn, *Choctaw Resurgence*, 17.

<sup>324</sup> See also, Osburn, "Tribal "remnants" or state citizens'.

<sup>325</sup> Winborne Magruder Drake, "The Mississippi Constitutional Convention of 1832", *The Journal of Southern History* 23 (1957), 354-370.

<sup>326</sup> "The Mississippi Constitution of 1832", Article 7, Section 18. Republished on *Mississippi History Now: An online publication of the Mississippi Historical Society* (August 2000):

Within the context of removal, state officials viewed these documents not as routes to indigenous inclusion but to eradication, hoping that the extension of state law over Choctaw lands would encourage even the most reluctant Indians to move westward in order to maintain their sovereignty.<sup>327</sup> Much like Articles 14 and 19, statesmen intended these provisions to quicken removal rather than prevent it but, for the beleaguered Choctaws, these bills looked like a lifeline. As many unrecognized and overlooked Article 14 claimants fought to avoid removal and to substantiate their claims, some turned to these acts as a way to maintain their position within the state, subverting policymakers' intentions. Just as they had used Article 14, individual Choctaws turned to the new constitution, citing the provisions for their citizenship in support of their right to remain within the state; after all, according to the state legislature's own admission, Choctaws could no longer exercise sovereignty or jurisdiction in Mississippi, save as members of the United States or state citizens, permanently entitled to remain.<sup>328</sup>

Unlike indigenous Southerners eligible to remain with officials' permission, many of these Choctaw communities deliberately subverted state provisions, calling for a much broader application than officials had intended and making themselves highly visible to state officials in order to highlight and negotiate their claims. Rather than living like the handful of assimilated, incorporated elite individuals envisaged by Eaton and Coffee in 1830, Little Leader and the Choctaws who lived with or nearby him used their claims under Articles 14, 19, or other legislation to create and sustain their own worlds. They recognized that legal visibility and approval were perhaps positive ways to secure non-removal within the strictures of a Euro-American legal world. Once holding these statuses, they sought to use them to their own ends,

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<http://mshistorynow.mdah.state.ms.us/articles/101/index.php?s=extra&id=268> [accessed: 11/04/2016, 16:22]; Drake, "The Mississippi Constitutional Convention of 1832".

<sup>327</sup> John Ray Skates, "The Mississippi Constitution of 1832", *Mississippi History Now: An online publication of the Mississippi Historical Society* (August 2000): <http://mshistorynow.mdah.state.ms.us/articles/101/the-mississippi-constitution-of-1832> [accessed: 05/02/2016, 11:14].

<sup>328</sup> For more about Choctaw uses of citizenship claims in general, see: Osburn, "Tribal "remnants" or state citizens'.

maintaining Choctaw communities, avoiding removal, and benefitting their kin and clansmen east of the Mississippi.

### Mississippi Lull, Limited Glimpses

From 1834, Indian Office bureaucrats in DC routed all of their correspondence concerning the Choctaws through the new agency in Indian Territory. The letters that agents sent and received dealt almost exclusively with the removed Choctaw Nation and the problems Indians and officials alike faced in the West. Armstrong was particularly busy. Newly-arrived Choctaws needed provisions, marauding western polities threatened Indian Territory, Chickasaws and Choctaws jostled over their land allotments, and the Choctaw council always had questions about the specifics of their new life in the west.<sup>329</sup> In both Washington and the new agency, federal officials scarcely mentioned the fact that several thousand members of the Choctaw nation had refused to join their kin in these early migrations to Indian Territory.<sup>330</sup>

In December 1834, amidst this bustle, Elbert Herring, the Commissioner of Indian Affairs, might have noticed the first reference to Mississippi's Choctaws for a while. The letter came from Francis Armstrong and the Western agency. For much of the winter, Armstrong had been occupied with the fate of the Choctaw Academy, the residential school set up decades earlier to educate the children of elite and mestizo Choctaws as a bastion of the civilization programme which had characterized pre-removal Indian policy.<sup>331</sup> In November, he had received a petition from the council of the removed Choctaw Nation, asking him to clarify the nature of the educational provision that the school would provide now that the Choctaws had relocated west

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<sup>329</sup> Correspondence passing through the Choctaw agency centres on all these issues: see: NARA M234 R185; NARA M234 Roll 184, 'Choctaw Agency West, 1825-1838' [hereafter NARA M234-R184]. See also: Kidwell, *The Choctaws in Oklahoma*, ch1.

<sup>330</sup> I have not seen references to this in the OIA documents.

<sup>331</sup> See citations above for Choctaw Academy.

of the Mississippi. In and of itself, this request came as no surprise. In previous years much of Armstrong's remit had involved this kind of re-establishing work.

More unexpectedly, the council's request had also touched on the issue of the citizen Choctaws who remained in Mississippi. The academy had been founded to educate and 'civilize' Choctaw boys, but what did this mean now that Treaty of Dancing Rabbit Creek had divided the Choctaw Nation? Since certain 'Choctaws...took citizenship in Mississippi' and, as a result, had been able to avoid removal and remain within the state, did they have 'a right to send their children to school at the expense of the Nation?', the council asked Armstrong. 'In fact, the council wondered, 'Are we as a Nation accountable for those Choctaws who took citizenship in Mississippi after the expiration of the period that we were to leave the old nation?'.<sup>332</sup> The Council was aware that this was a fundamental question of jurisdiction which would come to shape both their future and that of their un-removed kin. Noting the matter's importance, they headed their petition 'to be sent on to Washington city'.<sup>333</sup>

On the ground, however, the initial inquiry fell to Armstrong. He did not have a clear answer. Seated in his office in the new Indian Territory agency, he was far away from Mississippi and unsure of the situation given the Indian Office's uncertain understanding of the Article 14 and 19 citizens in the last few years. Upon receiving the letter, he did not answer the council but instead wrote directly to Herring. Since ground-level agents had rarely dealt with questions concerning the 14<sup>th</sup> and 19<sup>th</sup> articles, Armstrong wrote, 'before answering...I have thought it best to give you my views touching these several enquiries'.<sup>334</sup> It is not clear whether Armstrong took advice from anyone else before coming to his decision, but either way he ultimately decided in favour of the Choctaws' citizen status and, therefore, their distinction from the larger removed Choctaw Nation. 'Such as took citizenship', he suggested, 'were [from] then no way connected

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<sup>332</sup> Choctaw Council (headed by Nitaketchi) to Major F.W. Armstrong, 8 November 1834, Council Ground, Indian Territory. NARA M234-R185.

<sup>333</sup> Ibid.

<sup>334</sup> F.W. Armstrong to Elbert Herring, 9 December 1834, Choctaw Agency. NARA M234-R185, 0340-0344.

with the Choctaw nation, unless at some future time they should move west' and rejoin their removed kin. As a result, Armstrong judged, those who had avoided removal ought now to be considered distinct from the wider Choctaw polity, or at least those who had been formally registered and approved as citizens. Touching the matter at hand, he did not consider the removed nation eligible to fund the education of the children of Choctaw Mississippi citizens, nor did he 'consider this nation accountable for the conduct of those Indians who took citizenship in Mississippi'.<sup>335</sup>

Perhaps more importantly, this letter also forced Armstrong to deal with another question which the federal government had yet to come to terms with: the large numbers of Choctaws who remained in Mississippi, claiming land or citizen status under Article 14, but who had not been registered as such. Broadly ignorant of – or, for those on the ground, perhaps actively complicit in – Ward's registration debacle, federal officials had barely discussed this issue since 1830.

However, Armstrong's comments suggest that by late 1834 federal officials were at least becoming peripherally aware of these issues, even if they did not fully understand them. Indeed, Armstrong's verdict suggested that the Indian Office should regard unregistered claimants as having no real claim at all. 'Nor do I consider', he wrote, 'the nation as having anything to do with such as did not take citizenship, but foolishly remained until after the 30<sup>th</sup> of November 1833' [the date Armstrong drew as his cut-off point for registration for claims to citizenship under the 1830 treaty].<sup>336</sup> Armstrong's brusque attitude seemed to blame the Choctaws themselves for refusing to move while lacking proper registration. He was not aware of – or unwilling to countenance – the suggestion that thousands of Choctaws could have attempted to register under Article 14, only to be denied by Ward.

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<sup>335</sup> Ibid.

<sup>336</sup> Ibid.

We cannot know how Herring reacted as he read the letter or if these trundling questions over citizenship and ongoing non-removal came as a shock. As merely one letter amongst the hundreds of reports that the Indian Office received every year at the height of removal, we cannot even know if Herring took the letter seriously or paid any serious attention to the issues of ongoing citizenship claims and unremoved, unregistered Choctaws who remained in Mississippi. Nonetheless, even if Herring merely scanned the letter before passing onto the next one, it marked an important moment. Although they had previously paid little to no attention to the issues surrounding Choctaw citizens and, more importantly, the thousands of unregistered Article 14 claimants who remained within Mississippi, this letter at least flagged federal attention to these issues in both Indian Territory and Washington DC.

In the same period, if they looked closely enough, other federal officials received similar indications that everything was not neatly finished in Mississippi. A little over a year earlier, in June 1833, the Land Office dispatched George Martin to survey and allocate Choctaw lands in the region. Martin soon realized that his task would be much more complex than anyone had hoped. Tasked with confirming all Choctaw claims under the treaty, he concluded that Ward's register was ill-kept at best. The messy document made it impossible to register claims and, as he travelled through former Choctaw lands, Martin heard complaints from Choctaws that their claims had not been taken seriously in the first place. Martin reported back to the land office, and, in the winter of 1833-34, to Lewis Cass, but his concerns largely went unheeded.<sup>337</sup> The situation was easy to dismiss: the registrations had to be made quickly, after all, and officials believed that Choctaw removal was ending anyway. Besides, if Martin had glimpsed that Ward's register was problematic, he had not realized the full extent of the thousands of Choctaws whose claims had never made it onto the register in the first place.<sup>338</sup>

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<sup>337</sup> Kidwell, 'Choctaw Struggle', kindle location 846-872.

<sup>338</sup> Ibid.

Ultimately, these insights remained blips, penetrating but not yet disturbing the wider radar-screen of federal removal policy. In Washington DC, officials busied themselves implementing removal across the South, drawing up new treaties and plans amidst growing murmurs of discontent about the slow progress of migration.<sup>339</sup> Moreover, as federal policymakers looked ever-westward, they faced a whole host of new problems in expanding territories, all of which demanded their attention alongside the issues of removal in the South and the North. In this temporary lull, they had neither the time nor the inclination to pay attention to Mississippi. Separated by the Mississippi River and shrouded by the cacophony of removal efforts, busy government officials saw the incomplete nature of Choctaw removal only in fragments.

Still, on the ground, things looked very different. Washington DC might not have much interest in the aftermath of their campaigns a thousand miles to the south and west but soon enough, events in Mississippi would make officials pay attention.

## Part Two:

### The Afterlives of Article 14

For Mississippi's white community, 1835 dawned amidst a backdrop of prosperity and economic expansion. The prices of both cotton and slaves continued to rise. Cotton had climbed to eighteen cents per pound the previous summer, while in the New Orleans' market a 'prime male field hand' could go for \$1,150, the highest price of the decade so far.<sup>340</sup> Since 1830, successful Choctaw and Chickasaw removals had – at least in theory – opened millions of acres of land. In 1833, the land office sold over one million acres of land in Mississippi. Two years later, the state

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<sup>339</sup> See other chapters.

<sup>340</sup> Baptist, *The Half*, 272; Robert Evans Jr., 'The Economics of American Negro Slavery, 1830-1860', in Universities-National Bureau Committee for Economic Research (ed.), *Aspects of Labor Economics* (Princeton: Princeton University Press, 1962), 199.

sold more land than had been up for sale in the whole country just a few years previously.<sup>341</sup> Federal land agents dispensed vast tracts cheaply, allowing both new settlers and older landless families to set foot on the social ladder. In the nascent Cotton Kingdom, land meant property, mastery, and slavery, and these meant wealth, power, and gentleman status.<sup>342</sup> Planters embraced their new-found prominence. They asserted their authority by turning torture into slave productivity, and unleashed horseback militias, threats, and executions to quash spectres of slave insurrection that terrorized the state. As one historian has recently argued, ‘no part of the country was more flush in the flush times than...[the] southwestern frontier’; even in this world of prosperity, Mississippi was exceptional.<sup>343</sup>

To its white inhabitants, Mississippi looked like a transforming world of opportunity and mastery. One Natchez lawyer likened the state to ‘a new El Dorado’, where fortunes could be ‘made in a day, without enterprise or work’.<sup>344</sup> In his new year address to the state legislature, Mississippi Governor H.G. Runnells enthused that ‘on turning our attention to subjects...immediately connected with the internal concerns of the State, we find much cause to felicitate each other....While other countries have been scourged by the ravages of disease, we have been...blessed with general good health; our fellow citizens are enjoying the reward of their labors in abundant crops, and an enhanced value of both their real and personal estates’. In fact, Runnells proclaimed, ‘as a state, Mississippi presents a new era in her history’. All of this had been heralded by ‘the late acquisition of Territory from the...Indians’, which had ‘enlarg[ed]...the field for industry and enterprize [sic]’.<sup>345</sup> The local newspaper printed Runnells’s

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<sup>341</sup> Three million acres worth. Joshua D. Rothman, *Flush Times and Fever Dreams: A Story of Capitalism and Slavery in the Age of Jackson* (Athens: University of Georgia Press, 2012), 4.

<sup>342</sup> See: Johnson, *River of Dark Dreams*; Baptist, *The Half*.

<sup>343</sup> Rothman, *Flush Times and Fever Dreams*, esp. 3-4. For terror, productivity, capitalism, and slaveholders’ ambitions, see: Johnson, *River of Dark Dreams*; Baptist, *The Half*; Sven Beckert and Seth Rockman (eds.), *Slavery’s Capitalism: A New History of American Economic Development* (Philadelphia: University of Pennsylvania Press, 2016); Matthew Karp, *This Vast Southern Empire: Slaveholders at the Helm of American Foreign Policy* (Cambridge: Harvard University Press, 2016).

<sup>344</sup> W.H. Sparks, *Memoirs of Fifty Years* (Philadelphia, PA: Claxton, Remsen, and Haffelfinger, 1870), 364.

<sup>345</sup> H.G. Runnells, ‘Governor’s Message’, 21 January 1835, Jackson. Reprinted, *The Mississippian*, 23 January 1835.

vision of this halcyon future in full, carrying it from the halls of local government to the tables of planters, speculators, and settlers across the region.

By the time the paper hit the breakfast table, however, many Mississippi readers might have received its claims with scepticism, especially in the north and east of the state. For many white communities, planters, and settlers located near these traditional Choctaw settlements, 1835 was less a year defined by the success of removal but instead, ongoing, frustrating, and surprising evidence of its incompleteness.

### Uncovering Non-Removal

In the traditional Choctaw homelands to the north and east of the state, many Choctaws remained in the clusters and communities that they had formed through their successful efforts to avoid removal in the past few years. In many cases, thousands of people had simply not gone anywhere. Overwhelmingly, these people were not visible or important to the federal policymakers in Washington DC. Viewed from Washington or the new Choctaw agency in Indian Territory, Choctaw removal looked sufficiently complete for now. However, to the people who lived next to them, or who walked past them every day, these communities were both an eyesore and an annoyance. They provided a daily reminder of the incomplete, piecemeal realities of removal that lay behind the confident declarations they heard in Jackson or Washington.

In the previous few years, these white Mississippians had been largely silent. But as the years passed and little evidence of renewed removal efforts came, local communities grew increasingly vocal in their frustration. In March 1836, local newspaper *The Mississippian* reported an alleged murder and robbery by some twenty to thirty anonymous Choctaws who, according to eyewitnesses, entered and robbed a store in Tusahoma and kidnapped and beat the owner to

within an inch of his life. Others complained about Choctaw communities that continued to live close to white settlements.<sup>346</sup>

Even Governor Runnells was not immune. So many constituents had complained to him that he felt obliged to address these questions. Alongside his vision of Mississippi's progress, his governor's address informed state lawmakers that 'A large remnant of Choctaw Indians remaining within the territory recently ceded by the tribe to the United States have evinced a strong dis-inclination [sic] to emigrate west'. Since these people ought to have removed, Runnells argued that 'humanity requires that something should be done...to prevent them from becoming a nuisance to the country', and urged members of the Mississippi legislature 'to memorialise Congress to make a further appropriation for the purposes of removing such of them as may be induced to go to their new home'.<sup>347</sup> He showed some awareness of Article 14, noting that several of the remaining Choctaws 'have failed to secure for themselves lands to which they would have been entitled under the late treaty, and are now destitute and wretched'. However, his opinion replicated the Indian Office's blind spots when it came to the reality of the process. With Ward's deceptions still unknown, Runnells – like Armstrong and the others overseeing events in Indian Territory – seems to have assumed that these Choctaws had no legal claim to stay, dismissing them as the 'ignorant and indolent' portion of the Nation, whose misery was their own fault for refusing to remove earlier.<sup>348</sup>

Mississippi's congressmen did not need Runnells's encouragement to contact the federal government. Under growing pressure from their constituents, they complained vocally to federal officials. Many of these petitions circumvented the Indian Office and went straight to Congress, often carried there by Mississippi's own elected representatives. In January 1836, members of the state legislature petitioned Congress, complaining that land speculators were bringing Choctaws

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<sup>346</sup> 'Robbery and Murder by Choctaws', *The Mississippian*, 25 March 1836.

<sup>347</sup> Runnells, 'Governor's Message'.

<sup>348</sup> *Ibid.*

back from Indian territory. It is more likely that this fear of ‘returnees’ spoke to the fact that residents were only just beginning to notice that thousands of Choctaws had simply never gone anywhere; either way, their complaints conveyed locals’ shock and annoyance at hundreds of visibly unremoved Choctaws.<sup>349</sup> As Mississippians petitioned their local representatives who, in turn, petitioned their federal counterparts in Washington DC, they effectively sought to summon the administrative and military capacities of the American federal government to complete removal.<sup>350</sup>

Other concerns also mixed with this annoyance. Most importantly, local complaints about large-scale non-removal overlapped with wider local objections to the process. The local residents who complained about the thousands of unremoved Choctaws were often just as concerned about rumours of widespread fraud surrounding the ceded lands. Rumours had swirled for years. The sale of Choctaw lands and Chickasaw lands had been a chaotic process. Amid the fallout of Ward’s registration debacle, federal officials struggled to register Choctaw claims. In DC, officials could not see the full extent of the Ward debacle and the many Choctaws who believed they had registered under it. Unaware of these issues, Jackson authorized local officials to begin sales of the Choctaw lands in fall 1833, as soon as the registration process had closed.<sup>351</sup> Because the Jackson administration was keen to see a quick extension of American sovereignty over Choctaw country, they encouraged swift sales. The lands went fast and cheap. After Mississippi legislators convinced the US Congress that the cession should be ‘thrown open at the minimum price’, small landowners, would-be plantation owners, and newly-arrived settlers snapped up allotments for as little as \$1.25 per acre.<sup>352</sup> As we have already seen, neither these new owners nor the

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<sup>349</sup> U.S. House, ‘Petition of the Citizens’, H-Doc 89, 1-2. Cit. also Osburn, *Choctaw Resurgence*, 17.

<sup>350</sup> The phrase ‘summoning the state’ is borrowed from Ariel Ron. See: Ariel Ron, ‘Summoning the State: Northern Farmers and the Transformation of American Politics in the Mid-Nineteenth Century’, *Journal of American History* 103 (September 2016), 347-374.

<sup>351</sup> Young, *Redskins*, 52-3.

<sup>352</sup> M.F. Degrafenreid, A.M. Scott, ‘Application for the Sale of the Lands Acquired from the Choctaw Indians at the Minimum Price, Communicated to the House of Representatives, January 10 1832’, H. Doc 848, 22<sup>nd</sup> Congress, 1<sup>st</sup> Session, *ASP, Documents Legislative and Executive of the Congress of the United States*, VII, 32; Kidwell, ‘Choctaw Struggle’, kindle location 854.

federal government knew or cared that their Choctaw owners may have still staked claim to them.

Prowling land speculators clawed their way into the sales process. From the earliest announcements of land sales, individuals seeking a quick buck set up fraudulent land companies, seeking to acquire large amounts of land via dishonest means, including convincing Choctaws to sign away their rights. The presence of these speculators and land companies complicated the whole claims process, laying claim to Choctaw lands within months.<sup>353</sup> Worse for the Choctaws, some also claimed responsibility for Choctaws' claims under Articles 14 and 19. Some purchased claims to prime cotton land tracts from Article 14 or 19 claimants who had successfully registered under the treaty.<sup>354</sup> However, it was the fact that Ward had not registered most Article 14 claims that quickly turned the whole process into a tangle of competing and confused claims. Scheming white speculators laid public claims to unregistered tracts of land, often claiming that they were acting on behalf of Article 14 or 19 claimants. Some even sought out individual Choctaws who would be willing to sell part of their share in a given tract of land in exchange for the company's effort in prosecuting and claiming for those lands. Soon, Choctaw land claims became a raging local controversy, overlapping with crises over the sales of former Chickasaw lands elsewhere in Mississippi and Creek lands in Alabama and Georgia.<sup>355</sup>

By 1835 and 1836, these claims became increasingly visible to local residents and policymakers; the rumoured actions of illegal speculating companies become a state-wide scandal. Local press reports complained periodically, and even the high-ranking became implicated. In 1835, Franklin E. Plummer, Mississippi representative to the US House of Representatives, was accused of

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<sup>353</sup> Historian Mary Young provides the most detailed discussion of these land frauds and speculations. See, Young, *Redskins*, esp.ch3.

<sup>354</sup> *Ibid.*

<sup>355</sup> See Young, *Redskins*, esp.ch3. See chs4-7 for other groups, including the Chickasaws and the Creeks, whose claims were slightly different to those of the Choctaws owing to the different nature of their removal agreements. The 1830s saw many controversies over public lands, spurred by a growing public land hunger and shifts in Jacksonian land policies. See: Daniel Feller, *The Public Lands in Jacksonian Politics* (Madison: The University of Wisconsin Press, 1984).

charges of fraud. As one constituent complained in September, 'it is a matter of demonstration, capable of proof in a court of justice, that he has either practiced a fraud upon the Government by getting the claims of individuals, under the Choctaw Treaty, to which they had no legal right, confirmed; or that he has swindled his poor constituents by extorting from them *half their lands*'.<sup>356</sup> The Plummer saga dragged on for months. Public outrage ran so high that Plummer lost his Congressional seat within months of the accusations coming to light. The controversy aided the chances of Plummer's rival, J.F. Claiborne, who capitalized on Plummer's rumoured links to the frauds throughout the campaign.<sup>357</sup> On paper, the controversy over these land frauds was a separate matter to the problem of ongoing, visible, and large non-removed Choctaw communities in Mississippi. However, throughout these years, local residents increasingly came to see these two problems as one and the same.

Once talk of claims became insidious, the scale of Choctaw non-removal became obvious across Mississippi. Public dialogue centred on both the extent of the frauds and the extent of non-removal. As a result, the provisions and implications of Article 14 became apparent to many white Mississippians for the first time. In late 1835, a reporter from the *Columbus Democratic Press* offered his readers a primer on Article 14 and noted that the treaty had led to many pre-emption claims for Choctaws and widespread land speculation across the state. The reporter also acknowledged the sheer difficulty of interpreting the legal morass, since 'but few persons at a distance know the extent of these pre-emption claims, and fewer still know the abuses of the law'. The paper called for a full and immediate enquiry, noting that 'we have heard it said, and it is no doubt truly, that very great injustice has been done to most of the Choctaws who remained here under the treaty'. These rumours were widespread and persistent; they at least had some basis in fact since, without naming Ward explicitly, the reporter was inclined to blame the agents

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<sup>356</sup> 'Political', *The Mississippian*, 25 September 1835.

<sup>357</sup> For more, see: Edwin A. Miles, "Franklin E. Plummer: Piney Woods Spokesman of the Jackson Era." *Journal of Mississippi History* 14 (January 1952), 2-34.

rather than the government for the current mess. The piece concluded by urging that something ought to be done about the situation to help both Mississippi residents and the unfortunate Choctaws, though the reporter made it clear that “it is now almost impossible to do them full justice, or rather to make amends to them” since almost all of their lands were now occupied by new inhabitants.<sup>358</sup>

But beneath the polite veil of public correspondence, in the state’s coffee houses, saloons, sitting rooms, and taverns, many white Mississippians doubtless saw the alleged frauds as a reason – even an opportunity – to place all remaining Choctaws under scrutiny. It was just like the *Columbus Democratic Press* reporter had said: it was regrettable that some innocent Choctaws had suffered, but if Choctaw claims had been made by “designing white men”, perhaps all their claims were really suspicious and all their lands should be sold to white residents and new would-be planters?

#### Summoned State, Renewed Removal

As Mississippi residents grew anguished about the visible incompleteness of Choctaw removal, they directed their complaints at the federal government. Planters and citizens summoned the federal government to return to Mississippi and complete its unfinished work. Carried north in letters and petitions, their barrage of complaints arrived in Washington DC within weeks. In drawing federal attention to a problem, local complaints forced the piecemeal nature of removal in Mississippi straight to the heart of the Indian Office’s agenda. The Indian Office had long been aware of the growing controversies surrounding speculation and sales of the Choctaw lands, which they themselves had struggled to administer several years earlier. They also knew that they had left some Choctaws behind. They did not know that Ward’s registration debacle

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<sup>358</sup> ‘Land Sales’, *Columbus Democratic Press*, winter 1835, reprinted in ‘Miscellaneous News’, *The Mississippian*, 11 December 1835.

had made the whole process many times worse. However, the urgency and breadth of these complaints was new to many officials and seemed to demand action.

These Mississippian complaints chimed with a wider sense of frustration over the slow progress of removal across the South. In the Indian Office in Washington, new commissioner of Indian Affairs, Carey A. Harris, and the new Secretary of War, Joel Poinsett, slowly began to realize that removal plans had not been as quick or smooth as they had hoped. As they settled into the jobs freshly vacated by their predecessors, Lewis Cass and Elbert Herring, they faced pressure to act. Across the South, this growing annoyance ushered in a phase of new urgency in the removal process.<sup>359</sup> The fact that 1836 was an election year added extra impetus for federal action, especially from officials' superiors in the legislative and executive branches.<sup>360</sup> These transitions in personnel and policies had a similar effect on officials' attitudes towards Mississippi. Newly appointed to head the Indian Office and the War Department, Harris and Poinsett did not want to risk violence in Mississippi. With resources already stretched to breaking point by administering removal, never mind facing new Western threats like the Comanches, the last thing that the Indian Office wanted was another Indian war over removal in the South.<sup>361</sup> So they decided to give Mississippi representatives what they asked for: Harris authorized a renewed removal effort among the Choctaws in Mississippi.<sup>362</sup> On 2 July, Congress approved a payment to cover the emigration's projected costs amidst a bill predominantly focused on the removal of the Cherokees.<sup>363</sup>

From the perspective of the Indian Office, this new wave of removal would be challenging.

Having formally disbanded the Choctaw Agency in 1834 and virtually all its networks amongst

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<sup>359</sup> Elsewhere in this dissertation, I refer to this period as High Removal.

<sup>360</sup> For 1836 election, see: Daniel Walker Howe, *What Hath God Wrought: The Transformation of America, 1815-1848* (Oxford: Oxford University Press, 2007), ch13.

<sup>361</sup> See, eg, DeLay, *War of a Thousand Deserts*, pt3.

<sup>362</sup> The parallels between this decision and the US government's initial decision to pursue removal policy in the 1820s following local pressures, especially from Georgia, are striking.

<sup>363</sup> 'An Act Making Further Appropriations for Carrying into effect certain Indian Treaties', Public No.61, 2 July 1836, US Congress. Reported in 'Laws of the United States Passed at the Twenty-Forth Congress, First Session', in *Mississippi Free Trader and Natchez Gazette*, 26 August 1836.

the Choctaws in Mississippi, the Indian Office struggled to resurrect enough bureaucratic muscle to undertake the removal. All the while, they also had to coordinate the effort at a distance. Not only were Armstrong and the only formal Choctaw agency now based some six or seven hundred miles away in Indian Territory, they were also occupied on a full time basis with the demands and problems of overseeing the removed Choctaw Nation's transition to a new life in the west.<sup>364</sup> Moreover, for all the pressure they received, these renewed Choctaw removals were far from their only concern; faced with new High Removal efforts across the north and South, including among notoriously difficult polities such as the Cherokees, federal officials simply did not have much time, money, or enthusiasm for a renewed Mississippian removal.<sup>365</sup>

In the Indian Office, bureaucrats frantically attempted to salvage a jumble of soldiers and agents who could negotiate a new wave of large-scale removals in Mississippi and, importantly, who could do so under written orders, with limited bureaucratic and financial effort on the part of the federal government. Attempting to undertake a swift removal with minimal effort, they turned to the army for help. In summer 1836, DC officials pushed Major General J.J. Joseph, commander of the army of the South, to select an appropriate man for the job. In July, he wrote to one of his subordinates, one Captain J. Taylor. After reading just three short sentences informing him that Joseph had 'received orders to designate an officer to be employed in removing the Choctaw Indians...residing in the state of Mississippi', Taylor might have been surprised to hear that there were still any Choctaws remaining in Mississippi and requiring removal. He was probably even more surprised to find that the letter appointed him as the new superintendent of Choctaw emigration.<sup>366</sup>

As soon as he arrived in Mississippi, Taylor received clear instructions from his superiors to 'take necessary measures' to locate and enrol remaining Choctaws and then remove them with 'all

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<sup>364</sup> See general Choctaw agency correspondence, eg: NARA M234-R184.

<sup>365</sup> See other chapters for High Removal, esp ch3.

<sup>366</sup> J.J (?) Joseph to J.F. Taylor, 31 July 1836, Head Quarters, Army of the South, Tuskegee AL. NARA M234-R185.

your accustomed energy'.<sup>367</sup> On paper, the task seemed easy enough, but Taylor struggled immediately. He dispatched his soldiers across the state to gauge the locations and dispositions of the Choctaws. Contrary to the Indian Office's hopes, he found that many had no desire to go anywhere. Like agents across the South, Taylor and his men struggled with other indigenous Southerners' evasive strategies, spending weeks trying to locate 'Indians...dispersed over the course of the country'. Even more problematically, they also found large numbers of Choctaws who were simply unwilling to emigrate or were genuinely convinced that their rightful entitlements under Article 14 or other claims to state citizenship meant that they did not have to.<sup>368</sup> Blighted by difficulties, Taylor's tenure did not last long. In November, he wrote to inform the Indian Office that his duties would now be fulfilled by a new superintendent of Choctaw emigration, one Captain J. Phillips.<sup>369</sup> Upon reaching Mississippi, Phillips fared a little better. Like Taylor, Phillips struggled especially with reluctant and flighty Choctaws, but over the next two years, they managed to enrol small groups of Choctaws for removal.<sup>370</sup>

#### Local Choctaws vs Local Citizens

Back in Mississippi, planters and white communities cared little for federal policy shifts: they were too busy worrying about the government's broken promises. As they came to terms with the frustratingly slow progress of removal, local communities summoned federal officials to return to Mississippi and finish their work. However, when the realities of non-removal touched the edges of their towns or their plantations, communities were not always content to wait for federal action. In particularly contested spaces across Mississippi, residents took the unfinished

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<sup>367</sup> Ibid.

<sup>368</sup> Ibid.

<sup>369</sup> J.F. Taylor to C.A. Harris, Commissioner of Indian Affairs, 15 November 1836, Louisville. NARA M234-R185; J.F. Taylor to C.A. Harris, 21 November 1836, Louisville. NARA M234-R185.

<sup>370</sup> Ibid. See also, eg: Philips to C.A. Harris, 28 August 1837, Louisville, KY, NARA M234-R185; C.A. Harris to Philips, 2 November 1836, M234-R185.

business of Choctaw removal into their own hands. When it came to these face-to-face contests, local residents demonstrated that they cared more about Choctaws' threats to their sovereignty – and, indeed, their continued, unsolicited presence – than simply about the issue of rumoured land frauds.<sup>371</sup>

Situated along the young state's eastern boundary with Alabama, Kemper County was the setting for some particularly incendiary showdowns. American settlers formally created Kemper County in December 1833, renaming it for Mississippi planter and filibusterer Reuben Kemper and his brothers Nathan and Samuel. The first white settlers arrived in the 1810s; by the 1830s, the area housed a water-mill and a growing community.<sup>372</sup> Yet despite all their efforts, Mississippi's cotton barons had failed to tame Kemper. Settlers might have hoped that renaming Choctaw lands after notorious anti-Indian fighters would shore-up their claims to sovereignty over the area, but they could not unwrite centuries of Choctaw history, especially in the world of piecemeal removal which Article 14 had spawned.<sup>373</sup> By the mid-1830s the area around Sukanatcha Creek provided a refuge for Choctaw reservee Little Leader and the community of displaced Choctaws whom he had gathered to live there.<sup>374</sup>

Mississippi's white residents did not welcome their indigenous neighbours, especially as the Choctaw community continued to grow in number with the arrival of ever-more newly displaced kin from other parts of the state. This local anxiety led to efforts to legally disband the settlement. In 1835 Little Leader was arrested twice, accused of planning uprisings against the county.<sup>375</sup> Kemper County's residents turned on Little Leader amidst a wider climate of growing insecurity and terror. In Mississippi, the prosperity of 1835 mingled with slaveholders' growing

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<sup>371</sup> This interpretation contrasts existing historiography on this process, which tends to focus on the issue of the frauds as the central reason for public interest. See: Young, *Redskins*, ch3.

<sup>372</sup> Kemper Historical Association, *Kemper County Mississippi: A Pictorial History* (Humboldt, TN: Rose Publishing Company, 1999): text reproduced at Kemper County, Mississippi, Genealogy and History Network: <http://www.kemper.msgen.info/history/history.htm> [accessed: 12/04/2016, 10:44].

<sup>373</sup> For earlier Choctaw life in Mississippi and Louisiana, see: Lambert, *Choctaw Nation*, ch1.

<sup>374</sup> Sukanatcha Creek is also sometimes spelled Sukanchee.

<sup>375</sup> Osburn, *Choctaw Resurgence*, 15.

fear of rebellion. In June, rumours of an enormous slave uprising, orchestrated by petty criminal-come-rumoured ‘Great Western Land Pirate’ John Murrell, blazed through the region. With hindsight, the scheme was little more than hot air; Murrell’s ability to command slave loyalties was no more than a fiction, dreamt up by fevered minds in a climate of heat, humidity, and paranoia.<sup>376</sup> Yet the mere threat of a Caribbean-style revolution on American shores cast a long shadow. Slaveholders quashed the uprising with as much force as they could muster. Residents jailed the suspected leader and executed other participants. For now, state elites had reclaimed their power, but the spectre of insurrection remained.<sup>377</sup>

Amid this hysteria, Kemper County residents saw Little Leader and his band of unremoved, highly visible Choctaws as a threat that needed to be swiftly extinguished.<sup>378</sup> Though technically entitled to remain, Little Leader’s actions had repeatedly drawn neighbours’ attention and annoyance: according to local observers, he gained a reputation for killing his enemies.<sup>379</sup> In 1836, lawmakers accused Little Leader of murder. The crime brought him to trial in the state courts. Little Leader seems to have made the case that, as a Choctaw Mingo, he was simply not subject to the laws of Mississippi.<sup>380</sup> Ostensibly, these claims to sovereignty, or at least jurisdiction, were anathema to both removal policy and the 1832 Mississippi constitution, but they seem to have gone down without objection. The court and the jurors returned a guilty verdict, charging Little Leader with his crime but going on to request that he receive a pardon. In total, one hundred and twenty-four local residents signed a petition addressed to Charles Lynch,

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<sup>376</sup> Rothman, *Flush Times*.

<sup>377</sup> Ibid, esp. ch8; Johnson, *River of Dark Dreams*, esp.ch2.

<sup>378</sup> Other, smaller, non-Five Tribes communities elsewhere in the South also faced persecution under similar (imagined or feared) ties to slave insurrections during this period, especially the Pamunkeys in Virginia. See ch4 for a discussion of this episode.

<sup>379</sup> Osburn, *Choctaw Resurgence*, 15.

<sup>380</sup> Ibid, 15-16. The court records of Kemper County were lost in fire in 1912, making it difficult to know exactly what happened. However, historian Katherine Osburn has recently recaptured events, by using the memoirs of Reuben Davis, Kemper County’s district attorney at the time. My discussion is based on her interpretation and I am indebted to her efforts.

Mississippi's governor. Davis' autobiography suggests that the petition was ultimately successful: even President Jackson eventually put his name to the pardon, securing Little Leader's release.<sup>381</sup>

In her recent discussion of Little Leader's case, historian Katherine Osburn interprets the court's decision as evidence of 'nuanced practices of citizenship in the nineteenth century'. In upholding a pardon on the basis that Little Leader was a sovereign Choctaw chief, Davis, she writes, 'disregarded the 1830 law, the 1832 state constitution, and the Treaty of Dancing Rabbit Creek because he viewed the Choctaws as a separate group of people, still living under their own "peculiar system of government"'.<sup>382</sup> Little Leader's own claims to blend citizenship and sovereignty are significant. Like other Choctaw captains and headmen who maintained their claims under Articles 14 and 19, the very basis of his ongoing presence in Mississippi depended on his ability to uphold his claims to membership of that state. At the same time, like other communities in a similar situation, Little Leader interpreted these claims flexibly, providing a basis for ongoing Choctaw communities, traditions, and ways of living which distorted the realities of American sovereignty that policymakers and local communities claimed over his lands. In his defence during his trial, Little Leader expressed this view of a legally-complicated situation, making claims to both legal protection and – as he probably saw it – non-removal which countered prevailing white views of citizenship at the time. In interpreting the Kemper County lawmakers' decision, therefore, Osburn concludes that Little Leader's own complicated identity shaped the verdict; in Osburn's reading, Davis and other lawmakers chose to recognize that 'even though the Choctaws' legal status was [theoretically] equal to that of free whites, Little Leader's continued Indian identity signaled his neighbors to regard him as someone living outside state laws'.<sup>383</sup>

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<sup>381</sup> Ibid, 14-17.

<sup>382</sup> Ibid, 15; see also, Osburn, "Tribal "remnants" or State Citizens".

<sup>383</sup> Osburn, *Choctaw Resurgence*, 16-17.

However, situated within the wider context of non-removal and the fallout over Articles 14 and 19, the decision also takes on another significance. By seeming to acknowledge Little Leader's sovereignty, it is more likely that these Mississippi lawmakers and residents were not only refusing to acknowledge his claims to (state) citizenship on a racial basis, but also seeking to invalidate his claims to avoid removal. As we have seen, the claims of Little Leader and other Choctaws, whether registered or unregistered, to remain in Mississippi depended on an exemption as citizens or permanent residents of Mississippi, distinct from the wider Choctaw Nation which was to be removed. In effect, their claims rested on a legal denial of their sovereignty; although, as we have seen, many (including Little Leader) then used their claims to citizenship, land holding, or approved non-removal as a foundation on which to build *de facto* sovereign communities and to maintain religious traditions, traditional practices, and indigenous identities.

As a result, by refusing to recognize Little Leader as entitled to citizenship or state membership within Mississippi, lawmakers like Davis were not so much applauding his sovereignty as suggesting that he ought to be eligible for removal alongside the rest of the Choctaw Nation and the remaining Choctaws who also could not prove their claims to citizenship, state membership, and, by extension, entitlement to continued residence within the state. In fact, these actions were just as likely intended to nullify not only Little Leader's personal claims to remain but also those of the community of largely traditionalist, 'full-blood' Choctaws he had gathered around him. For Mississippi residents at mid-decade, visible non-removal was a threat to be swiftly extinguished by whatever means possible.

### Renewed Claims, New Challenges

As 1836 turned to 1837, agents continued their efforts to remove more Choctaws from Mississippi. The task was not an easy one. Most of the people they targeted were reluctant. The

treaty of Dancing Rabbit Creek had promised that Article 14 allotments and promises would convert into permanent landholdings and citizenship if Choctaw claimants merely managed to remain on their lands for five years.<sup>384</sup> On paper, at least, 1835 marked this momentous half-decade moment; Choctaw claimants who had already endured long years of discrimination simply refused to give up their rights. As federal agents struggled to convince Choctaws to move to Indian Territory, local residents became increasingly dissatisfied with the shape of the removal process.

In January, a number of Mississippi residents resumed their petitions to Congress about the remaining Choctaws.<sup>385</sup> A few months later, distant events brought a new urgency to these contests. The beat of the butterfly's wing began on the other side of the Atlantic. Poor wheat harvests in Britain encouraged the Bank of England to gradually raise interest rates. The ties of the global cotton economy and bond markets carried the new uncertainty to America. In the Mississippi valley, transatlantic anxieties combined with very American worries over Western land speculation, Jacksonian banking policies, and the westward flows of cash and specie. Fears grew, and rumours spread. In May, bankers in New York suspended specie payments, causing other banks across the US to follow suit. American businessmen panicked. Embroiled in the controversy over cash flows and their own expanding imperial infrastructure, many Americans laid the blame at Jackson's door.<sup>386</sup>

Traders' jitters soon unravelled into full-scale global financial panic. As paper currency plummeted, the United States descended into economic turmoil. Companies went bust, crop prices bottomed, and unemployment skyrocketed.<sup>387</sup> The crisis hit the South especially hard.

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<sup>384</sup> 'Treaty with the Choctaws'.

<sup>385</sup> Osburn, *Choctaw Resurgence*, 18; 223, fn 45.

<sup>386</sup> Jessica M. Lepler, *The Many Panics of 1837: People, Politics, and the Creation of a Transnational Financial Crisis* (Cambridge: Cambridge University Press, 2013); Johnson, *River of Dark Dreams*, esp. 281-282; Alasdair Roberts, *America's First Great Depression: Economic Crisis and Political Disorder after the Panic of 1837* (Ithaca: Cornell University Press, 2013); Reginald Charles McGrane, *The Panic of 1837: Some Financial Problems of the Jacksonian Era* (Chicago: University of Chicago Press, 1924). Note that Lepler argues that economic turmoil in the South & US began before the traditional May start date, viewing 'the panic in 1837' as one of 'the many panics of 1837': Lepler, 2.

<sup>387</sup> *Ibid.*

Within a month, the price of cotton had tumbled some 25%.<sup>388</sup> Planters across the state fell into ruin; doorways of once prosperous plantation owners displayed signs lamenting ‘G.T.T. (Gone to Texas)’.<sup>389</sup> Collapsing capital caused ‘the most rancorous disputes over state debt’ and local banking to break out in Mississippi.<sup>390</sup> If this was not enough, slave rebellions erupted across the region in the wake of the crisis. Long afraid of the weak roots of their mastery, Mississippi’s planter elites quaked as the panic shook their authority at its foundations.<sup>391</sup>

Spurred by a new interest in the origins and nature of American capitalism, historians such as Walter Johnson, Sven Beckert, and Edward Baptist have turned new attention to the crisis. They argue that the 1837 panic forced Southern slaveholders to reassess their position in the wider world and rethink their connections not only to the federal government or northern states within the Union, but also the larger global economy. The panic also had consequences at home, forcing planters to turn to new modes of mastery, violence, and torture to enable them to turn slave energies into cotton, and cotton into capital.<sup>392</sup>

In focusing on the Cotton Kingdom, historians have overlooked the fact that the panic also forced Southerners and Mississippians to take a renewed interest in the course of Choctaw removal.<sup>393</sup> For would-be cotton planters or land speculators especially, the panic brought a new-found interest to the issues of removal. In May 1837, just two months after the crash, seven prominent Mississippi citizens wrote to C.A. Harris, Commissioner of Indian Affairs. Less a letter than a petition, the men noted that they had ‘heard with much satisfaction that an appropriation of 50,000\$ for the removal of the Choctaws still remaining in this state has been

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<sup>388</sup> L.H. Jenks, *The Migration of British Capital to 1875* (New York: Knopf, 1927), 87-93.

<sup>389</sup> Johnson, *River of Dark Dreams*, 282.

<sup>390</sup> Roberts, *America’s First Great Depression*, 61.

<sup>391</sup> Johnson, *River of Dark Dreams*, 31, ch2, ch10.

<sup>392</sup> Johnson, *River of Dark Dreams*, ch10; Baptist, *The Half*; ch8, esp.272-309; Beckert and Rothman, *Slavery’s Capitalism*, esp. intro; Edward E. Baptist, ‘Toxic Debt, Liar Loans, and Securitised Human Beings: The panic of 1837 and the fate of slavery’, *Common-Place* 10:3 (2010): <http://www.common-place-archives.org/vol-10/no-03/baptist/> [accessed: 05/02/2016, 12:11]; Beckert, *Empire of Cotton*; Lepler, *The Many Panics*.

<sup>393</sup> Historians have made links between Choctaw land claims controversies and 1837, but not directly with the Panic. In particular, historians have failed to draw this causal link between renewed removals, land speculation, and the panic: see Young, *Redskins*, esp.60-61, ch3, chs7-8.

made'. But recently things had changed. Worrying rumours suggested that the 'officer [in charge of the removal] had made an unfavourable report, strongly stating that the Indians were unwilling to emigrate & that the white population wished them to remain'. The petitioners were quick to correct this misapprehension. Countering swirling rumours that the federal government was happy to let the Choctaws remain permanently, the men 'beg[ged] leave...faithfully to say that the people we represent almost unanimously desire the removal of those Indians'.<sup>394</sup> They ended their letter with a complaint, veiled as advice. Perhaps, they noted, the Indian Office would have more success if they simply got better at their job, and that the Indians 'might be easily induced to go if an Agent who understood their character should be appointed'.<sup>395</sup> The men forwarded their petition on to DC through Mississippi Congressman J.F.H. Claiborne, whose covering note also complained about the government's slow progress and suggested that it might be wise to have 'the [Congressional] delegation from this state' help appoint more efficient agents in due course.<sup>396</sup>

As these petitions suggest, this crisis moment forced Mississippi residents to look anew at the ongoing realities of non-removal. In a world where property meant not only cotton but also wealth and social status, land was king; and at a moment where the Southern economy no longer seemed certain, or the value of existing landholdings seemed less secure, Mississippian planters, speculators, capitalists, or would-be masters looked to locate new lands across the state. It was in this quest for new land acquisitions that both the issue of Choctaw removal and the questions of fraud in the process suddenly became newly urgent.

For local residents, the prospect of renewed and intensified federal action against the Choctaws had two key appeals. First, by summoning the federal government to remove the remaining Choctaws, Mississippi residents hoped that they would actually free more land for white

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<sup>394</sup> James Gillis, John G. Thomas et al, to C.A. Harris, 5 May 1837, Jackson MS. NARA M234-R185.

<sup>395</sup> Ibid.

<sup>396</sup> J.F.H. Claiborne to C.A. Harris, 20 May 1837, Madisonville, Miss. NARA M234-R185.

settlement, thus fulfilling the vision of complete removal initially promised to them. Second, they also hoped that if they raised enough questions about the claims process, the federal government would launch an inquiry into the whole distribution of the Choctaw lands to date. Ideally, this would expose the fraudulent activities of the land companies, putting new lands back onto the market at an affordable price, just in time for cash-strapped, panic-hit residents to benefit from them. Just as they had before, Mississippi residents called on the federal government to fulfil its earlier promises and round out removal and transfer of land to local residents that they had foreseen. Amid the clamour, there is little evidence that local residents were even aware that the fate of thousands of Choctaws was also at stake.

#### Federal Action

Petitions reached the Indian Office and gained traction in Congress, forcing policymakers to reckon with the uncomfortable legacies of their choices. In February 1837, Congress launched a formal investigation, passing an act that ‘provided for the appointment of three commissioners’, who were to ‘constitute a board for the adjustment and decision of all claims of the Choctaw heads of families, for reservations of land, under the fourteenth article of the treaty concluded with the Choctaws at Dancing Rabbit Creek’.<sup>397</sup> Policymakers appointed three commissioners: James Murray, from Maryland, P.D. Vroom, from New Jersey, and Publius R.R. Pray, from Mississippi. The choice was immediately beset with difficulty, especially as Pray resigned his position before the other commissioners had even set off for the state. Officials replaced with him with Roger Barton, another Mississippian, but Barton’s role in proceedings remained limited, and his name scarcely appears on the formal correspondence or proceedings of the commission.<sup>398</sup>

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<sup>397</sup> Crawford, ‘Report on Indian Affairs: 1839’.

<sup>398</sup> It is not clear why he did not show up.

Almost two centuries later, it is easy to read the commission as a direct response to the ever-visible problem of the Choctaws' Article 14 claims and, ultimately, as an action that could have brought much relief to the lives of dispossessed Choctaws. In reality, nothing could have been further from Congress' intentions. Despite a growing awareness of local annoyance, little had happened to alert federal policymakers to the plight of Mississippi's thousands of remaining Choctaws, nor of Ward's actions to dispossess them on such a large scale. Instead, the federal commission intended to respond to Mississippi's white citizens' complaints, especially the idea that there had been widespread fraud in the claims process.<sup>399</sup> Rather than a pitched battle to uphold their promises to the Choctaws, the process became a moment where federal and local states battled over their allegiances and promises to each other.

As Mississippi residents kept petitioning and Washington officials keep prevaricating, federal agents and soldiers made regular journeys to known Choctaw settlements, where they encountered the many and various communities of remaining Choctaws. Sometimes, the threat of such visible state power helped agents convince small groups of Choctaws to abandon their claims to remain in Mississippi in favour of taking their chances in Indian Territory. The Indian Office received dispatches from various agents and sub-agents reporting that they had successfully enrolled and removed other parties of tens or, at most, hundreds of Choctaws in 1837.<sup>400</sup> One agent noted that 'as early as possible after hearing that a party of Choctaws were willing to come', he had made provisions for a removing party and, through his efforts, 'every Indian who started...arrived safe...two miles above the agency in good health and in good spirits, [with] the removal being accomplished in 19 days'.<sup>401</sup> These efforts were slow progress, but for now, officials seemed content that there was at least some progress, especially if it helped to soothe local residents' complaints.

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<sup>399</sup> Young, *Redskins*, 58.

<sup>400</sup> S.J. Cross to C.A. Harris, Commissioner of Indian Affairs, 4 January 1838. NARA M234-R185.

<sup>401</sup> Capt S.J. Cross to C.A. Harris, Commissioner of Indian Affairs, 18 July 1838, Madison, IN. NARA M234-R185.

Meanwhile, the commission's activities began. In spring 1837, commissioners Murray and Vroom set out for Mississippi. The Act of Congress which created it gave the commission just into the new year to undertake operations. As they left their native northeast to head south, the commissioners could not begin to imagine the world that would greet them, especially because their orders came from Congress, not the Indian Office.

From 22 June, beginning in Columbus and moving gradually westwards out across the state, the commissioners held daily sessions at which Choctaw deponents could present their own accounts of their dispossession by Ward and their rightful claims under Article 14. For the next eleven months, the commissioners held interviews, listening to and recording Choctaw testimonies.<sup>402</sup> Much to their astonishment, new waves of Choctaw claimants inundated them every day. From the perspective of the state's Choctaws, the commission seems to have presented a final, last-ditch attempt to make their cases before the federal government and to recover the claims that Ward had previously denied them. Just as they had in the registration attempts that Ward had denied or covered up, thousands of Choctaws came forward. Even more surprising to the commissioners, each of these Choctaws was willing to swear under oath that they had experienced dispossession and betrayal in their earlier attempts to register under the treaty.<sup>403</sup> Alongside these Choctaw testimonies, Murray and Vroom also heard depositions from local observers and witnesses, such as Justices of the Peace, who in turn testified to Ward's inept handling of proceedings and the widespread local distaste over allegedly fraudulent Choctaw land claims.<sup>404</sup> During the short span of the commission, over 1340 Choctaw heads of family, not including their dependents, wives, and children, came forward to stake their claims under Article

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<sup>402</sup> 'Journal of Proceedings of Choctaw Commissioners Pray, Murray, and Vroom, convened at Columbus, Miss, June 22<sup>nd</sup> 1837' (runs through to last entry on May 14<sup>th</sup> 1838), NARA Entry 268: 'RG75, Indian Removal Records, Pray, Murray, and Vroom, Journal 1837-1838' [hereafter e268].

<sup>403</sup> See, eg, range of depositions, NARA RG75, e268.

<sup>404</sup> See, eg, deposition of Eli Abbott, Acting Justice of the Peace, 30 November 1837. In NARA RG75 e268.

14.<sup>405</sup> Overwhelmed, Murray and Vroom had no choice but to request to extend the commission's lifespan. On 22 February 1838, Congress approved this plan, extending the commission for a further five and a half months until 1 August 1838.<sup>406</sup>

In Natchez and Jackson, frequent newspaper adverts explained the basis of the commission and called for potential claimants to present themselves. These kept the keenest local residents informed of the commission's activities, but more typically, local enthusiasm for the subject of claims seems to have diffused following the commission's appointment. Only the most interested readers would have spotted these postings, just a few columns long, nestled among the classifieds at the back of the paper. The subject of the Choctaw claims was no longer headline news. The commission did not report on their specific findings, but this did not produce a burst of annoyed local complains. Everyone else, it seemed, was content enough that the federal government seemed to have done something about the claims, to have listened to their complaints. Beyond that, the specifics did not interest them.<sup>407</sup>

### Accepting Incomplete Removal

In mid-1838, the commission underwent a sea-change. Thousands of visibly non-removed Choctaws had presented themselves to the commissioners; yet the Murray Vroom commission ground to a halt less than half-way into 1838. The commissioners had gained an extension until the summer, but as August loomed, they made no attempt to request another. Through the spring, they continued to hear testimonies, often at a challenging rate of three or four a day. On Monday 14 May, commissioners Murray and Vroom heard depositions from four Choctaw

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<sup>405</sup> NARA RG75 Entry 268a: 'Indian Removal Records, Pray, Murray, and Vroom, Index to Report of Commissioners'; NARA RG75, e268; 'A List of Choctaw heads of families claiming lands under the 14<sup>th</sup> article of the treaty', in NARA RG75 e268.

<sup>406</sup> NARA RG75 e268; NARA RG75 e268a.

<sup>407</sup> See, eg, 'Choctaw claims' advert posted by Murray and Vroom, 'Classified Advertisements', *The Mississippian*, 28 July 1837; 'Choctaw claims' advert, *The Mississippian*, 11 August 1837; 'Choctaw claims' advert, 'Classified Advertisements', *The Mississippian*, 24 November 1837.

claimants, whose names they recorded as William B. Billington, Tokahajo, Eliubbee, and Chanahajo.<sup>408</sup> As the last interview came to a close, the commissioners began to finish up. Their clerk drew a line in their journal of proceedings and noted that, as of that afternoon, the commission had ended and that ‘the board adjourned’. It would only meet again at Washington city, just over a month later on 15 June. The commissioners’ work in Mississippi was done.<sup>409</sup> They filed all the judgements that they had finalized – two-hundred and sixty-one in total – and arranged to forward to the Indian Office all the papers relating to the commission and the rest of the claims they had received but not formally adjudicated. On 31 July 1838, Commissioners Murray and Vroom made a final report on their opinions regarding the claims in Washington DC.<sup>410</sup> With their duties finished, they formally left their positions and returned to their lives. Still, if the commission was over, its task remained incomplete. The combination of the unexpectedly large scope of the Article 14 problem and the artificial, fixed end dates that the commission’s congressional appointments had granted ensured that the commissioners closed their books long before they had assessed the vast majority of claims they had received. The commission’s surviving records suggest that they only passed judgement on 261 of the 1349 claims it had recorded, which amounts to around nineteen per cent.<sup>411</sup> Of these 261 cases, the commissioners only found in favour of 194.<sup>412</sup> Even more problematically for the region’s Choctaws, these 1349 claims barely scratched the surface; in later years, hundreds more Choctaws would come forward with their own stories of Ward’s dispossession.<sup>413</sup>

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<sup>408</sup> ‘Journal of Proceedings of Choctaw Commissioners Pray, Murray, and Vroom, convened at Columbus, Miss, June 22<sup>nd</sup> 1837’ (runs through to last entry on 14 May 1838), NARA RG75 e268.

Names recorded using orthography in journal, which may have errors.

<sup>409</sup> ‘Journal of proceedings of Choctaw commissioners Pray, Murray, and Vroom...’.

<sup>410</sup> Crawford, ‘Report on Indian Affairs: 1839’.

<sup>411</sup> Ibid.

<sup>412</sup> Osburn, *Choctaw Resurgence*, 18.

<sup>413</sup> See, eg, NARA RG75 Entry 273: ‘RG75: Indian Removal, Choctaw Removal Records, Claiborne, Graves, Tyler, Gaines & Rush – Letters Sent, 1842-1845’; NARA RG75 Entry 274: ‘RG 5, Indian Removal, Choctaw Removal Records, Claiborne, Graves, Tyler, Gaines & Rush: Journals of Proceedings, 1842-1845’ and others in series. See also epilogue.

It is hard to explain the commission's early termination. The shock of realization that there were simply so many Choctaw claimants willing to come forward surely played a role. With only a few months for the commission's activities, it was legally difficult, not to mention potentially undesirable, to extend the claims process any further. Just as importantly, ongoing suspicions against the Choctaw claimants also shaped the desire to sweep the claims under the carpet once more. Many Mississippians, as well as their representatives in Congress, still held the sneaking suspicion that the Choctaws had not lived on or improved the lands for which they claimed and that the whole process remained at the mercy of the land speculators.<sup>414</sup> Finally, it is likely that federal officials simply struggled to come to terms with the realities of Choctaw removal. Much like Ward's actions nearly a decade earlier, perhaps Murray, Vroom and the Indian Office reeled at the prospect that they could have been so wrong in their interpretations of the indigenous South and of the realities of Choctaw removal. Perhaps it was just easier to question their findings, leaving open the possibility that this was all the product of speculation, rather than the very-real outgrowth of a world of widespread, semi-permitted, and increasingly visible Choctaw endurance that they had unwittingly helped to create.

Elsewhere in Mississippi, the Indian Office's efforts to remove the remaining Choctaws also sputtered out. Agents' efforts were often fruitless. From fall 1837, Washington received just a handful of dispatches reporting successful removals, and removal parties often consisted of no more than one or two hundred Choctaws at a time.<sup>415</sup> Even successful emigrations were tinged with frustration. 'I will avail myself of the occasion here to say', one agent wrote in the summer, 'that the party did not number as many as was anticipated, owing to several causes; some were prevented by the hand of their numerous creditors, others by sickness and high waters...and the greatest evil of all is the great influence exercised over the Indians to persuade them from moving by those swarms of speculators who are trading on their claims to land under the 14th

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<sup>414</sup> Kidwell, 'Choctaw Struggle', kindle location 931.

<sup>415</sup> See, eg, Cross to C.A. Harris, 4 Jan (?) 1838, NARA M234-R185.

article of the treaty'.<sup>416</sup> The claims debacle had cast a long shadow, serving to make newly-arrived agents' tasks even harder.

As the months dragged on, most agents left Mississippi altogether. Even Cross, the agent who reported the most and latest removals in 1838, was no longer permanently based within Mississippi at this time, instead commuting back and forth to the state for brief removals from his base in Madison, Indiana.<sup>417</sup> In fact, the few agents still writing to DC about ongoing Choctaw removals in Mississippi spent more time complaining about reimbursement for their expenses than they did reporting successful removals.<sup>418</sup> As summer drew to a close, all signs of the new wave of removal had effectively vanished in Mississippi.

### Sputtering Out

In Washington DC, policymakers' attitudes both reflected and influenced this general shift. In Congress, officials had begun to lose interest in the commission and the issue of claims. As local public opinion quietened in response to visible actions on the ground, representatives had fewer incentives to worry about either the state or the issue of claims. Just as importantly, other new concerns came from across the South and the country, replacing these issues in the legislature's immediate priorities. This was especially true as the economic depression sparked by the 1837 panic grew worse, sparking questions of national security and economic policy that began to dominate Congressional business.<sup>419</sup>

In the Indian Office, the situation was more ambiguous. Some officials who had seen the scale of Choctaw persistence found it hard to forget. Newly-appointed Commissioner of Indian

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<sup>416</sup> S.J. Cross to C.A. Harris, 18 July 1838, *ibid.*

<sup>417</sup> *Ibid.*

<sup>418</sup> See, eg, J.A. Phillips [?] to C.A. Harris, 28 August 1837, NARA M234-R185; Cross to C.A. Harris, 22 March 1838, NARA M234-R185; Cross to C.A. Harris, 19 April 1838, NARA M234-R185; Cross to C.A. Harris, 25 May 1838, NARA M234-R185.

<sup>419</sup> Roberts, *America's First Great Depression*.

Affairs T. Hartley Crawford was among those most troubled by the visibly messy loose ends of Mississippi Choctaw removal. Coming into office just as the commission returned to Washington, and as removal agents and troops once again left Mississippi, Crawford's 1839 annual report noted that 'Congress has determined to deal with' all remaining Article 14 claims, but had struggled to ascertain 'a correct knowledge of all the facts'. Crawford noted that the commissioners had 'made a report so far as they had progressed', but ended up 'leaving the work unfinished, because of the limitation put upon their official existence'.<sup>420</sup> Crawford did not press the matter, but he did add a final note, urging Congress and the president to appoint a new commission to resolve the issue more fully. He also took a few more lines to highlight the ongoing problem of the remaining unresolved Article 19 claimants, noting that the Indian Office believed that those it could not locate 'have...gone west, and...in most, if not all of these cases, the land occupied by them has been sold by the United States'.<sup>421</sup>

But if the presence of the Choctaws and the claims debacle gave reason for disquiet, it was only enough for a short paragraph. Viewed from the Indian Office in 1839, the problem of the unremoved Choctaws was just one worry among many. The rest of the report focused on more pressing and deadly expansions and conflicts in the west, or the fate of ongoing removals in the northeast.<sup>422</sup> After all, 1838 was an eventful year: the Indian Office had to devote much of its resources to finalizing removal in other difficult locations such as Cherokee county, not to mention negotiating with the groups in Indian Territory, and the western lands beyond.<sup>423</sup>

Meanwhile, in Mississippi, residents also grew tired of the Choctaw issue. In contrast to previous months, local writers and commentators reflected a growing sense that most of the region's Indians were gone. In 1838, only the most astute readers of local newspapers would have noticed

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<sup>420</sup> Crawford, 'Report on Indian Affairs: 1839', esp341-342.

<sup>421</sup> Ibid.

<sup>422</sup> Ibid.

<sup>423</sup> For removing other groups, see other chapters. For wider policy ambitions, see Prucha, *The Great Father*, esp. pt3. For Congressional interests & wider late 1830s preoccupations, see, eg, Howe, *What Hath God Wrought*, esp.chs9-17.

a handful of adverts informing readers of the federally-mandated postponement of Choctaw land sales. Beyond the small print of the classified adverts, the only other mention was a tiny poem lamenting the ‘song of the ancient Choctaws’, now vanished from the region.<sup>424</sup>

Still, even as they turned their back on the process, neither federal officials nor locals could rest too easy. For those who knew it, Mississippi was a sore spot. Even if they struggled to count them, they knew that many Choctaws remained; in fact, too many for them to rest content. And although attention had subsided, the issue of Choctaw land claims remained contentious. In the restless world of the nascent Cotton Kingdom and equally young American empire, who knew when that next fractious burst would come?

The problem would persist for decades. But whatever the longer implications, an important truth remained as the 1830s drew to a close: Article 14 had created a new and unexpected world.

Amidst rumours of a new land of Cotton and prosperity, thousands of Choctaws and their communities persisted in Mississippi. By turning federal policies to their own ends, they had subverted state power and sustained indigenous spaces within the region, however fragile. Many eked out precarious lives at the edges of the Cotton Kingdom, waiting for the government to fulfil promises that it had never intended to apply to them.<sup>425</sup>

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<sup>424</sup> “Seaborn”, ‘Song of the Ancient Choctaws’, *The Mississippian*, 5 October 1838; ‘Postponement of Public Sales and Private Entries of Land’, classified advertisements, *The Mississippian*, 21 September 1838. Advert also reprinted on and off into December 1838. Otherwise, Mississippi newspapers virtually cease to mention the topic at this point.

<sup>425</sup> The Choctaws’ fight for Article 14 claims in Mississippi would run across the 1840s and 1850s, with ongoing legacies well into the c20th. My manuscript will explore these later battles, part of a wider process of federal fears about and attempts to reckon with the legacies of non-removal throughout the nineteenth century.

# Chapter Three:

## Away from State Sight:

### Evasion, Terrain, and the Limits of Agents' Reach

Groups like North Carolina's Cherokees, the Tensaw Creeks, or Mississippi's Choctaws managed to avoid removal by negotiating with federal officials and creatively reinterpreting the terms of their policies. To pursue this kind of strategy, indigenous Southerners had to be eligible to remain under provision of a treaty or policy and willing to stake their claims under it, even when this process was as protracted and threatening as it was for the Choctaws. Ultimately, the success of these groups' claims to avoid removal depended on their ability to remain visible to officials, even if the results were variable.

Yet not everything took place in plain sight. When faced with the threat of removal, many indigenous Southerners sought to elude state control. Individuals or small kin groups physically distanced themselves from officials by retreating into inaccessible terrains across the South, negotiating by simply rejecting federal attempts to control them. By doing so, they stayed out of officials' sight and removal lists. Their actions may seem haphazard, but they were not. Whether a last-minute flight or a long-laid plan, strategic calculations underpinned almost all evasive acts.

Historians have paid only limited attention to fugitive groups. Since most histories focus on the tragedy of westward removal, few have devoted extensive time or consideration to the people who fled. In the mountains of Appalachia or the bayous of Louisiana, local lores tell shadowy stories of figures who fled removal.<sup>426</sup> Scholars have noted these tales, especially looking at the

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<sup>426</sup> See, eg, the "Tsali" myth surrounding the Eastern Cherokees' persistence. For summary see: John Finger, 'Cherokee Accommodation and Persistence in the Southern Appalachians', in Mary Beth Pudur et al, *Appalachia in the Making: The Mountain South in the Nineteenth Century* (Chapel Hill: University of North Carolina Press, 2000), esp. 30-31. See also, eg: board on 'The Trail of Tears', North Carolina history exhibition, North Carolina State Museum of History, Raleigh, NC (visited 17 March 2016). The text reads: 'Some North Carolina Cherokees hid to escape removal. A legal point spared others. An earlier treaty had made them citizens of the United States rather than the

Everglades and the Seminole wars. However, in other parts of the region, most have dismissed or overlooked evasive strategies because they played a comparatively small part in the non-removal of famous groups like the Eastern Band of Cherokees, or because fugitive groups' small size pales in comparison to the overall story of the 65,000 indigenous Southerners who were successfully removed.<sup>427</sup>

Undeniably, fewer indigenous Southerners turned to evasion strategies than were removed; yet on the ground, evasion mattered. Hundreds of indigenous Southerners fled officials' reach across the South, in response to removal or tensions with settlers that preceded it.<sup>428</sup> For indigenous Southerners, evasion offered a genuine alternative to the traditional Hobson's choice of assimilation or deportation. We need to take this strategy seriously. Ranging across the region, this chapter demonstrates the power of evasion in groups' responses to removal and their ability to avoid it.

Most interpretations of removal have relied heavily on sources produced by federal and state governments, treating them as a reliable reflection of removal as it took place on the ground. However, this chapter seeks to tell evasive groups' stories by taking a different approach to the documentary record. It will begin by providing an outline of these often-observed strategies. For indigenous Southerners, removal shattered the world as they knew it; this chapter seeks to pick up the shards this explosion created and expose them to scrutiny.<sup>429</sup> The stories of groups who

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Cherokee nation [sic]. These two groups became the ancestors of today's Eastern Band of Cherokee'. Author's own photo, 17 March 2016.

<sup>427</sup> For more on the Seminoles & evasion, see: Kevin Mulroy, *Freedom on the Border: the Seminole Maroons in Florida, the Indian Territory, Coahuila, and Texas* (Lubbock: Texas Tech University Press, 1993); W. Stephen Belko, *America's Hundred Years' War: US Expansion To the Gulf Coast and the Fate of the Seminole* (Gainesville: Florida University Press, 2011). For dismissal of evasion in other removal stories, see, eg: King, 'The Origins of the Eastern Cherokees', esp. 170-8. King argues that it is wrong to argue that the modern EBCI came into existence simply due to fugitives fleeing removal; however, in the process, he sidelines the idea of Cherokees using evasive tactics to avoid removal. Haveman, *Rivers of Sand*, 264; 268-294. Haveman also has a few isolated instances of evasion, but ultimately they are just a few paragraphs in his wider account of removal.

<sup>428</sup> Numerous scholars suggest links between terrain, inaccessible spaces, and sovereignty. My work draws on this literature, especially: Benton, *A Search for Sovereignty*; Scott, *Art of Not Being Governed*.

<sup>429</sup> The original world of fragments is the Middle Ground: Richard White, *The Middle Ground: Indians, Empires, and Republics in the Great Lakes Region* (Cambridge: Cambridge University Press, 1993), 2.

deliberately escaped officials are some of the smallest, most fractured, and elusive of them all. People who deliberately shunned the United States' gaze appear only faintly in source bases as we know them. Most exist only as sentences in state records; other stories may not have survived at all.

In seeking to tell these stories, this chapter draws from limited references in a wide range of evidence, seeking to capture glances of evasive groups in sources as diverse as travellers' accounts, oral traditions, local dispatches, visitor's diaries, ethnographic observations, and family recollections. As shards of a fractured world, these sources have many limits. Embracing their fragmented nature, this section will place a handful of these jagged pieces together, not as a complete puzzle, but more like pieces in a kaleidoscope. They will remain broken and mismatched but, for the first time, they will be in conversation with each other. By presenting them together, we will see something of these groups' evasive strategies, but our vision will be incomplete by nature.

The second half will then turn to look at the state itself. It will explore state sources, not as a record of what happened, but instead as a version of the world as federal and local officials saw it. Tracing agents' experiences, it seeks to explore precisely how state officials saw evasion and to demonstrate that there were many blind spots and gaps within the whirlwind of removal. This section will focus on moments where agents glimpsed or became frustrated with their limited glances at evasion. More importantly, it will also re-read silences in the historical record. By their nature, groups who actively sought to avoid state officials rarely appear in traditional source bases, especially in federal documents. However, these silences do not mean that they did not exist: on the contrary, this chapter will demonstrate that these gaps reveal moments where fugitive groups eschewed officials so effectively that they left little trace in their documents.

By focusing first on the ways indigenous Southerners escaped officials' reach, this chapter seeks to recreate two worlds: one which officials saw and historians have replicated, and another which existed, literally and metaphorically, in the corners of state vision.

### Part One:

#### Fugitive Fragments

At the peak of a sweltering Alabama day in August 1813, a party of Red Sticks Creeks launched a large-scale attack on Fort Mims, near Tensaw Lake on the lower Alabama River. Two black slaves sounded the alarm. Banging on the fort's door, they breathlessly alerted US commander Major Beasley to 'painted warriors...ready for battle' marching in the vicinity.<sup>430</sup> The slaves had rushed because they knew this to be a dangerous sign. Throughout the summer of 1813, tensions between local Muscogees (Creeks) and American settlers had reached boiling point.

Hundreds of miles to the North, a Shawnee prophet named Tecumseh had called for a pan-Indian coalition to overthrow colonial rule. When the news travelled South, it had divided the Creek Nation, splitting those who sought to overturn colonial rule against those who thought it best to pursue diplomatic strategies. American expansionism wrapped this Creek Civil War onto wider imperial conflicts with Great Britain, creating a series of violent and deadly clashes across Muscogee country from Florida to Alabama.<sup>431</sup> Against a backdrop of local fighting, American settlers and anti-Tecumseh Creeks had transformed the home of a local *mestizo* Creek, Samuel Mims, into a stockade. Seeking revenge for an American massacre of Creeks days earlier, hundreds of anti-US Creek warriors launched a full-scale attack on the fort within hours of the

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<sup>430</sup> H.S. Halbert and T.H. Ball, *The Creek War of 1813 and 1814* (Chicago: Donohue and Heneberry, 1895), 150

<sup>431</sup> Braund, *Tohopeka*; Waselkov, *A Conquering Spirit*; Saunt, *A New Order of Things*, chs.11-12; Kathryn Holland Braund, *Deerskins and Duffels: Creek Indian Trade with Anglo-America, 1685-1815* (Lincoln: University of Nebraska Press, 1993).

slaves' initial warnings. The violence escalated in the heat of the afternoon. By nightfall, flames streaked the sky as the timber fort began to burn.

Many people had gathered in Fort Mims that night, seeking protection in a violent borderland. Hundreds died, including Americans, loyal Creeks, and people of questionable allegiance.<sup>432</sup>

Amid the turmoil, most observers probably missed a small but important sight: a single indigenous woman jumping down from the burning fort with her baby strapped to her back.

According to the oral traditions of her descendants, she fled through the battleground to the Cut-Off, a well-known channel near the Tensaw Lake, not far from Fort Mims.<sup>433</sup> Reaching the water's edge, she jumped into the river and swam away. Her tiny baby still clung to her back.

Together, they fought the currents as they moved downstream.

Oral traditions suggest that the woman and her daughter came ashore further along the riverbank. Although powered by an unusually strong sense of urgency and threat to her life, her destination suggests that she did not flee haphazardly into the unknown. Instead, she seems to have made contact with a long-standing community of Choctaw refugees along swampy ground in Alabama, out of sight of American agents, settlers, and maybe even of her own people.

Together with her daughter, the woman settled into the community. They vanished into the marsh and stayed in Alabama even after the government removed the rest of the Creeks and Choctaws a decade later.<sup>434</sup>

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<sup>432</sup> Waselkov, *A Conquering Spirit*, 4.

<sup>433</sup> For more on the 'Cut-Off' and the geography of the Tensaw River, see: Ibid, esp.17-18.

<sup>434</sup> This story comes from a popular oral tradition amongst the woman's descendants, who are largely members of the (at the time of writing federally unrecognised) Mowa band of Choctaw Indians around Mobile and Washington Counties in Alabama. This version comes from oral interviews undertaken by historian Jacqueline Anderson Matte: Jacqueline Anderson Matte, *They Say the Wind is Red: The Alabama Choctaw Lost in their own land* (Montgomery, Ala.: New South Books, 2002), kindle edition, kindle location 436-453.

These descendants' stories identify the baby as Cecile Weatherford. As Matte notes: 'Some of Cecile Weatherford's many descendants, including Sancer Byrd, Ola Irene Rivers, Rosie Rivers, Emma Johnston and Ruth Shepherd relate the essential details of Cecile's mother's story: Her name was Nancy Fisher. Her baby's name was Cecile. Cecile's daddy was William Weatherford, a Creek warrior. Grandma Tiny was Cecile's daughter. Historians have been unable to document this tradition, although records do show a Nancy Fisher (alias Oaks) who was crudely identified by Colonel Gilbert C. Russell, a US officer who served in the Creek War, "as a half-breed strumpet entitled to not one tit"'. Ibid, kindle location 436-453.

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The Creek War fractured numerous communities and forced them to create fugitive worlds across the South. Local connections allowed one group of Choctaws to make a new home around Twenty-Seven Mile Bluff, in the Mobile River-Cedar Creek area of northern Alabama. Long a Choctaw hunting ground, European decrees granted this land to French settlers during the colonial era.<sup>435</sup> By the 1810s, the Bluff housed a Creole community, headed by doctor John Chastang and his wife, Louisa, legally ‘a free woman of colour’ rumoured to be of indigenous ancestry. Their home appears to have provided a hub for a small community of runaway Choctaws, at least until Dr Chastang’s death in 1813, when this island of refuge disappears from the traceable historical record.<sup>436</sup>

Farther west, another group of Choctaws drifted from Mississippi sometime in the late eighteenth century and settled along the Bayou Bonfouca in Louisiana.<sup>437</sup> In the 1810s, other refugees fleeing the Creek War joined them. The tiny community struck up a relationship with their neighbour, a French Creole named Terrance Carriere who lived close to the Bayou. In later decades, Carriere was known amongst his family for his ‘total acceptance by the Choctaws’.<sup>438</sup> In the 1820s, he asked a Choctaw man, whom he referred to as ‘Vincent of Bonfouca’, whether his community would not prefer to move nearer to the city ‘where there is so much happiness’.

“Vincent” instantly responded by asking, ‘Are there Americans up there?’. When told that there ‘doubtless’ would be, he answered, ‘then I do not want to go there’.<sup>439</sup>

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<sup>435</sup> For more on the Choctaws’ historic hunting in Louisiana, see: Jack D. Holmes, ‘Spanish Policy toward the Southern Indians in the 1790s’, in Charles M. Hudson (ed.), *Four Centuries of Southern Indians* (Athens: University of Georgia Press, 1975), 72; Arrell Morgan Gibson, *Oklahoma: A History of Five Centuries* (Norman: University of Oklahoma Press, 1981), 48.

<sup>436</sup> Matte, *They Say the wind is Red*, kindle location 418-436.

<sup>437</sup> The exact founding date of the Bonfouca community is ambiguous. Some sources suggest that the community was founded as early as the 1700s. See, eg, Daniel H. Usner, Jr., *American Indians in the Lower Mississippi Valley: Social and Economic Histories* (Lincoln: University of Nebraska Press), ch7.

<sup>438</sup> Blaise C. D’Antoni, ‘Chahta-Ima and St Tammany’s Choctaws’ *The St Tammany Historical Society Gazette*, volume 7 (Mandeville, LA: 1986), 31.

<sup>439</sup> Adrien Rouquette to John Dimitry, New Orleans, 12 December 1884, John Minor Wisdom Collection, box 26, folder 12, TU-LaRC. See also: Dominique Rouquette, ‘The Choctaws’, unpublished manuscript, Francois Dominique Rouquette Papers, 1839-1852, box 1, volume 1, TU-LaRC.

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In 1824, Mississippi doctor and Choctaw enthusiast Gideon Lincecum spoke with a group of ‘fugitive Chahta’ (Choctaws) living in swampland in Alabama, not far from Mobile. The community had arrived in Alabama in the late 1810s. During the Creek War, their ancestors had been members of some ‘forty-five [Choctaw] families’ who had followed Tecumseh and Tenskwatawa’s pan-Indian prophecies and ‘sent over and fought with the Muskogees [sic] against the whites’.<sup>440</sup> They had not made this decision lightly. In the Creek War, fighting against the United States also meant fighting against the rest of the Choctaw armies who had sided with Jackson’s troops. These families’ allegiances cost them dearly. Following the American victory, Mingo (chief) Pushmataha and a band of other Choctaw leaders ‘hunted up and put to the sword all he could of his traitor countrymen’.<sup>441</sup>

Faced with the wrath of both the US and the wider Choctaw Nation, these Choctaw families evaded both. They told Lincecum that ‘most of them escape[d]...running into the marshy country below Mobile’. By splintering, these sub-*ikesa* (clan) and kin groups had sought to avoid both the Choctaws and the United States. One of them proclaimed that ‘we shall never go back to the Chahta people again’.<sup>442</sup> Their swampland destination was not accidental. To outsiders, the swamp was ‘all marsh and water, except an occasional spot of elevated ground’, yet for the

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Carriere was well-known locally (and amongst his immediate family and descendants) for his close relationship with the often-reclusive Choctaws. Historian Blaise D’Antoni puts it: ‘In dedicating his translation of Bossu’s ‘The Arkansas’ to uncle Terrence Carriere, [his nephew] Dominique Rouquette referred to Terrence as ‘the white Logan who can appeal to any Red man’. The story is still told in the Cousin-Carriere families of how the Choctaws showed Francois Cousin, Sr, and his sons, including Terrence Carriere, how they could find clay in St. Tammany superior to that being used along Bayou St John for the production of bricks.’ D’Antoni, ‘Chahta-Ima’, 30-31.

<sup>440</sup> G. Lincecum, ‘Life of Apushmataha’ *Publications of the Mississippi Historical Society* 9 (1906). Reprinted in: G. Lincecum (ed. & intro. Greg O’Brien), *Pushmataha: A Choctaw Leader and His People* (Tuscaloosa: University of Alabama Press, 2004), 90-92.

Lincecum was not a perfect observer of Choctaw culture, but it is likely that his glimpses of this community were fairly accurate. He was a fluent Choctaw speaker, and well known amongst Choctaws in Mississippi and beyond. As historian Greg O’Brien summarises: ‘Although Lincecum’s two articles...should not be considered the final word on Choctaw mounds, history, or the life of Pushmataha, they are indispensable sources of information on all of those topics. Lincecum understood the Choctaw language and interacted with the Choctaw people to an extent unmatched by most subsequent non-Choctaw students of Choctaw culture and history. His command of written Choctaw and English impresses us and still commands our attention’, *ibid*, xvi.

<sup>441</sup> *Ibid*.

<sup>442</sup> *Ibid*, 92.

Choctaws ‘these little islands’ became places of refuge where ‘we have our houses and live very comfortably out of the way of the rest of the world’. When ‘asked whose land they lived on’, the leader of these Choctaws replied that ‘he could not tell’. Ownership was a moot point in land that both Americans and other indigenous Southerners found undesirable.<sup>443</sup>

In these watery worlds, the little Choctaw community carved a life beyond the dangers of American settlement and the wider Choctaw Nation. Relying on canoes, they paddled upriver to ‘fish and hunt for ducks and other water fowls’. Other times, ‘mov[ing] out of the marshy country [into] the pine woods between here and New Orleans’ provided respite from growing white settlement in the surrounding cotton-rich country.<sup>444</sup> These movements also served traditional social functions, substituting their ancestors’ seasonal hunting migrations.<sup>445</sup>

Most of the time, these Choctaws stayed hidden. Sometimes, however, they left the swamp to trade in town. Later in 1824, Gideon Lincecum ran into them in an Alabama marketplace where ‘the women carried fat pine and sold it’, while ‘the men hunted and sold a good deal of venison and a great many ducks and fish at good prices’. The leader even bragged ‘that he had made more money yesterday than he could have made in Chahta country in a lifetime’. Although we cannot know how frequently they made these trips, select town interactions allowed these Choctaws opportunities to gain material benefits, whilst allowing them to determine the degree of their interactions with white society.<sup>446</sup>

When officials came to enrol Choctaw candidates in the 1820s and 1830s, this group was so far apart from indigenous settlements that they did not figure on removal lists. Their swamp life had kept them east of the Mississippi where, Lincecum noted in 1906, ‘they remain to this day’.<sup>447</sup>

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<sup>443</sup> Ibid, 90-92.

<sup>444</sup> Ibid.

<sup>445</sup> See, eg, Reeves, *The Choctaws Before Removal*, 46-47.

<sup>446</sup> Lincecum, ‘Life of Apushimataha’.

<sup>447</sup> Ibid, 90.

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Already distinct from their own people, many of these Creek War splinter communities fought removal from the distance of their swamps, rivers, or bluffs. For the Five Tribes, however, removal arrived with overwhelming urgency in the 1820s. In their negotiations with the United States, the elites of the Choctaws, Chickasaws, Creeks and Cherokees had long suspected the prospect of mass relocation, but in March 1825, this shadowy threat became real. At Indian Springs, Georgia, federal commissioners convinced Lower Creek chief William McIntosh to sign a removal treaty without the consent of much of the Creek Nation. White hostility spurred the settlement. Georgia Governor George Troup was the treaty's biggest advocate; he was also McIntosh's first cousin. When news travelled to the Council, Creek leaders were appalled. They did their best to overturn the treaty, protesting that it was illegal. Others enacted their own justice by murdering McIntosh. A few months later the US Congress agreed with them, rendering the agreement void. This action ended the treaty, but Georgians' land hunger had gained too much momentum. Caught between dispossession and federal promises, Creek leaders signed the Treaty of Washington with commissioners in January 1826. During the next two years, most Creeks moved from Georgia. While some went west to Indian Territory, others massed on the remaining Creek lands in Alabama.<sup>448</sup>

As they moved from Georgia, some Creeks slipped off to places beyond officials' glare. In primarily small kin and clan units, perhaps several hundred Creeks travelled some four hundred miles, running until they reached the Appalachian Mountains. High in the peaks, they positioned themselves among the most remote of the Cherokees, hoping that they would escape future detection and, ideally, removal, especially since officials had yet to target the Cherokees *en masse*.<sup>449</sup> In the 'thinly settled, or barren' lands of the Cherokee territory, these Creek fugitives

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<sup>448</sup> See Green, *Politics of Indian Removal*, esp. chs 4-6. For the Treaties see: Treaty with the Creeks 1825 (The Treaty of Indian Springs), 12 Feb. 1825, 7 Stat. 237, Proclamation 7 March 1825, *LALT*; Treaty with the Creeks 1826 (The Treaty of Washington), Jan 24 1826, 7 Stat. 286, Proclamation 22 Apr 1826, *LALT*.

<sup>449</sup> Haveman, *Rivers of Sand*, 133. See also 243-5.

could only watch and wait to see how distant events would unfold.<sup>450</sup> These groups were now further away from officials' main targets, but we can only imagine how uneasy they must have continued to feel. As these fugitives held their breath, the rest of the Five Tribes shared their trepidation: they knew only too well that federal policy was uncertain and transitional, especially as local governments clamoured ever more impatiently for their lands. Across the South, thousands of its original inhabitants readied themselves to face an oncoming storm.

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To white eyes, antebellum Louisiana was the jewel of the Cotton Kingdom. The Mississippi River sustained the growing metropolis of New Orleans, which sat below Lake Pontchartrain. In neat, irrigated fields across the state, black hands grew cotton, indigo, and rice, which they then loaded into steamboats which transported the goods downstream. When the bales reached the Gulf of Mexico, capitalist masters connected the South to distant ports in the Atlantic, Pacific, and Caribbean.<sup>451</sup> Water was the region's lifeblood, sustaining cotton, slavery, society: in short, everything Americans associated with the South.

Behind the rows of cotton, however, water took on another form and meaning. In 1830, large swathes of Louisiana remained a tangle of sassafras and swamp, which both Americans and French Creoles considered unsuitable for settlement.<sup>452</sup> Typical among these places was St Tammany Parish, situated along the northern shore of Lake Pontchartrain, in the southeast of the new state. Despite being only miles from New Orleans, St Tammany's labyrinthine geography had repelled colonial expansion. By the end of the 1830s, American settlers had only built three major towns in the area. At the very edges of the lake, rich New Orleanians holidayed and took the 'healthy air' in the resorts of Covington and, from 1834, Mandeville. A little along

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<sup>450</sup> Ibid, 243.

<sup>451</sup> Johnson, *River of Dark Dreams*; Baptist, *The Half*; Sven Beckert, *Empire of Cotton: A Global History* (New York: Knopf, 2014).

<sup>452</sup> P.A. Keddy, D. Campbell, T. McFalls, G.P. Shaffer, R. Moreau, C. Dranguet, and R. Heleniak, 'The Wetlands of Lakes Pontchartrain and Maurepas: Past, Present, and Future', *Environmental Reviews* 15 (2007), 43-77.

the shoreline, a handful of Creoles worked the shipbuilding and sawmilling outpost of Madisonville.<sup>453</sup>

Beyond these shoreside enclaves lay a swampy, impenetrable environment, settled by a handful of white families and, in many places, by no-one at all.<sup>454</sup> Writing at the end of the century, one Smithsonian ethnographer characterised the area as a land of ‘extensive marshes and swamps...[and] bayous...where vast quantities of Spanish moss hang from the branches of many trees’, and ‘on slightly higher ground... one unbroken stretch of forests of longleaf pine’.<sup>455</sup> Another local resident compared the swamps along the Pearl River to ‘veritable ghost forests...[where] the observer standing on the banks of the stream feels as if real life has been left behind on the public road...[and] this facing one is the after life!’<sup>456</sup>

Into this morass, numerous Choctaws fled removal. When faced with enrolling agents in the early 1830s, several Choctaw communities turned to these swamps and rivers as an escape from King Cotton’s ‘river of dark dreams’.<sup>457</sup> In Kemper County, Mississippi, a group of around two hundred Choctaws heard ‘a rumor that white men were going to drive them from their lands’. Rather than waiting for the threat to materialise, they left their homes along Sukanchee Creek. They headed for the Gulf and did not stop running until they reached the Louisiana border. Miles beyond the main Choctaw settlements, they struck an alliance with a local Catholic man and lived on his lands, where ‘his daughter set up a school for them’. The few locals who knew they were there called them the ‘Bay Indians’, in honour of their shoreside sanctuary.<sup>458</sup>

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<sup>453</sup> Frederick S. Ellis, *St. Tammany Parish: L’Autre Côté du Lac* (Pelican Publishing: New Orleans, 1981); Robert W. Hastings, *The Lakes of Pontchartrain: their history and environments* (Jackson: Mississippi University Press, 2009), esp. chs4-5. For Mandeville, 53-4.

<sup>454</sup> Hastings, *The Lakes of Pontchartrain*, ch4.

<sup>455</sup> David I. Bushnell Jr., ‘The Choctaw of Bayou Lacombe, St Tammany Parish, Louisiana’, *Bureau of American Ethnology Bulletin* 48. Vol. 48. (Washington DC: Government Printing Office, 1909) , 7.

<sup>456</sup> C[ora] Bremer, *The Chata [sic] Indians of Pearl River* (New Orleans: Picayune Job Print, 1907), 10-11. P-CB.

<sup>457</sup> Johnson, *River of Dark Dreams*.

<sup>458</sup> Kidwell, *Choctaws and Missionaries*, 169. See also Matte, *They Say the Wind is Red*, kindle location 820.

Another group settled around the Bayou Lacombe to the north of Lake Pontchartrain and of St Tammany Parish. Between the shadows of the pine forests and the water's edge, they created a settlement known as *Butchu'wa* (squeezing), owing to the narrowness of the bayou. Along the shores, they made houses from palmetto and grasses, deliberately camouflaged against a vista of marsh and reeds.<sup>459</sup>

As Choctaw families plotted their escape, Louisiana may have seemed an obvious destination. Several days' walk from their homes in Mississippi, many Choctaws knew these areas not as the Gulf of Mexico, but as *Okachito*, or the Great Water.<sup>460</sup> American settlers had renamed these regions, but Choctaw ancestors had hunted in them for centuries. Although most members of the Five Tribes lived in sedentary agricultural communities by 1830, individual members of these groups still undertook hunting expeditions and seasonal migrations, especially in the socially and geographically liminal edges of the Nation.<sup>461</sup> Writing at the end of the nineteenth century, local resident John Watkins recalled seeing 'hunters...[on] an excursion to the Louisiana swamps', where 'in the winter they passed several weeks either on the Yazoo and its tributaries, or the swamps of Louisiana'.<sup>462</sup> Their choice was also a safe bet in other ways. Owing to their single-minded focus on the Five Tribes, federal removing agents did not officially target Louisiana in the 1820s or 1830s. We cannot know if the Choctaws knew this before they moved; if they did not, then luck favoured their choice.

Even if they did not know about the agents, the Choctaws certainly knew that the bayous lay within travelling distance of spiritually-important places. At the turn of the twentieth century, Louisiana Choctaw descendants told local official and amateur ethnographer Henry Halbert that

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<sup>459</sup> David I. Bushnell, 'Myths of the Louisiana Choctaw', *American Anthropologist* n.s. 12 (1910), 526. P-CB. The term is also sometimes spelled as 'Buchawa', including by Adrien Rouquette. See D'Antoni, 'Chahta-Ima' esp. Ch.5. For more about the Bayou Lacombe community's housing, see: Bushnell, 'The Choctaws of Bayou Lacombe', 40, plate 2.

<sup>460</sup> For Choctaw term *Okachito*, see H.S. Halbert, 'Nanih Waiya, the Sacred Mound of the Choctaws', *Mississippi Historical Society Publications* 2 (1899), 231. P-CB.

<sup>461</sup> See references to Choctaw hunting in LA, cited above.

<sup>462</sup> John Watkins, 'The Choctaws in Mississippi', *American Antiquarian and Oriental Journal* 16 (1894), 70. P-CB.

their ancestors had selected their new location for its continued proximity to *Nanib Waiya*, the historic Choctaw mound in modern-day Winston County, Mississippi, which some Choctaws believe was the birthplace of their people.<sup>463</sup> Some even told Halbert that it was their desire ‘not to abandon their mother’, *Nanib Waiya*, that motivated their decision to resist removal in the first place.<sup>464</sup>

Once in Louisiana, the Bayou Lacombe Choctaws shunned contact with outsiders. Few Americans or French Creoles even knew of their existence. One local resident later recalled that few people visited the area around the bayou, which was known as ‘a poor settlement, the only persons residing there besides the Indians being a few illiterate Germans and Negroes’.<sup>465</sup> The Germans did not come until the 1840s: prior to their arrival, not even penniless European immigrants braved Lacombe.<sup>466</sup> In the 1830, the bayou had curried such a wild reputation that one French Creole looked to it as the perfect location for a life of contemplative religious hermitage. The son of two French immigrants, Adrien Emmanuel Rouquette had grown up nearby.<sup>467</sup> By 1830, he had left Pontchartrain to work as a priest, but reminisced constantly about

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<sup>463</sup> H.S. Halbert, ‘Nanib Wayah, the Sacred Mound of the Choctaws’, *Mississippi Historical Society Publications* 2 (1899), 223-34. P-CB. Halbert uses the spelling *Nanib Wayah*. I have chosen the alternative spelling *Nanib Waiya*, as this is more commonly used by modern-day Choctaws. For more on Choctaw creation legends surrounding Nanib Waiya, see: Lambert, *Choctaw Nation*, ch2, esp.19-21.

<sup>464</sup> H.S. Halbert, ‘The Choctaw Creation Legend’, in *Mississippi Historical Society Publications* 4 (1901), 267. P-CB. See also: Halbert, ‘Nanib Wayah’.

<sup>465</sup> Marie L. Points, ‘Chinchuba: Some Reminiscences of Father Rouquette’, *New Orleans Daily Picayune*, 1 July 1888, 12.

<sup>466</sup> Hastings, *The Lakes of Pontchartrain*, 56.

<sup>467</sup> There is some confusion over the spelling of Rouquette (also seen as ‘Roquette’). I have followed the convention that Rouquette uses in his own letters. For more on Rouquette, see: D’Antoni, ‘Chahta-Ima’; LeBreton, Dagmar Renshaw, *Chahta-Ima: The Life of Adrien-Emmanuel Rouquette* (Baton Rouge: Louisiana State University Press, 1947); Mrs S.B. Elder, *The Life of Abbe Adrien Rouquette [sic]: Chahta-Ima* (New Orleans: Bienville Assembly, Knights of Columbus, 1913); Dominic Braud, ‘Pere Rouquette, Missionaire Extraordinaire: Father Adrien Rouquette’s Mission to the Choctaw’, in Glen R. Conrad et al (ed.), *Cross, Crozier, and Crucible: A Volume Celebrating the Bicentennial of a Catholic Diocese in Louisiana* (New Orleans: The Roman Catholic Church of the Archdiocese of New Orleans, 1993). LeBreton probably offers the best (and most accurate) biography of Rouquette’s general life – however, her account is weaker when it comes to his interactions with the Choctaws. D’Antoni’s is probably the richest overall account in this regard.

Lacombe as an empty place of ‘silence and solitude’, where he could ‘recommence the solitary life’, ‘alone with God’.<sup>468</sup>

When he finally returned to the Bayou in the 1840s, Rouquette encountered its Choctaw inhabitants. He found them flighty and highly suspicious of any Euro-American intrusion. As late as 1850, the Choctaws associated every unfamiliar white face with the threat of ejection and federal power. Rouquette later recalled that during his initial trips ‘the Indians took me for an agent of the Government in Washington’, ‘observ[ing] me and sp[ying] on me every hour of the night and day’.<sup>469</sup> This kind of behaviour continued for several years, even after he had decided to serve as a self-appointed Catholic missionary to the community in the 1850s.<sup>470</sup>

For these Choctaws, Bayou Lacombe offered respite from the United States’ expansion; they embraced its hostile environment precisely because it repelled outsiders. In 1910, Smithsonian ethnographer David Bushnell recorded accounts of mythology among the Bayou Lacombe Choctaws. Several of these stories deal with the community’s relationship to the Bayou’s unique environment. One, entitled ‘How the Snakes Acquired their Poison’, suggests that the Choctaws believed they had been able to survive here because the swamp itself had adapted to favour their presence within it. ‘Long ago’, Bushnell recorded, ‘a certain vine grew along the edge of the bayous’, which was ‘very poisonous’, and ‘often when the Choctaws would swim or bathe in the bayous, they would come into contact with the vine, and often become so badly poisoned that they would die as a result’. However, Bushnell’s 1910 Bayou Lacombe informers suggested that their ancestors had survived beside the swamp because the vine ‘was very kind and liked the Choctaws’, so it ‘decided’ to protect them and ‘to rid himself of the poison’.<sup>471</sup>

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<sup>468</sup> Adrien Emmanuel Rouquette to ‘mon cher et intime ami’, 16 August 1846, RQT papers, ND. Adrien Emmanuel Rouquette to ‘Monseigneur et pere’ (Ms. L. Evesgine?), 23 October 1845, RQT Papers, ND. Translations from original French are my own.

<sup>469</sup> Adrien Rouquette to John Dimitry, New Orleans, 12 December 12, John Minor Wisdom Collection, box 26, folder 12, TU-LaRC.

<sup>470</sup> See: D’Antoni, ‘Chahta-Ima’; Braud, ‘Pere Rouquette, Missionnaire Extraordinaire’.

<sup>471</sup> David I. Bushnell, ‘Myths of the Louisiana Choctaw’, *American Anthropologist*, n.s. 12 (1910), 533. P-CB.

Other Bayou Lacombe stories suggested that the Choctaws' believed the swamp still held unique dangers to outsiders, especially those unfamiliar with the local terrain and the spiritual figures who inhabited it. They cautioned Bushnell about the *Nalusa Faya*, or 'evil being', who 'lives in the densest woods, near swamps, away from the habitations of men' and 'bewitches' unfamiliar or unwary hunters or travellers. Similarly, the *Hashok okwa Hui'ga* (literally 'grass water drop') was 'a spirit that lives in marshy places...[like] the edges of swamps' which had the power to prevent the unwary traveller from 'arriv[ing] at his destination'.<sup>472</sup> Although sharing common characteristics with older Choctaw mythology, these characters became especially important to the community, and the specific content and local setting of these myths seems to be unique to the Bayou Lacombe Choctaws. They testify to the ways that the community came to view difficult terrains as protective environments, inaccessible to outsiders.

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To the north of Bayou Lacombe, another group of Choctaws resettled along the Pearl River, whose course blurred the boundary between Louisiana and Mississippi. Writing in 1907, local resident and amateur ethnographer Cora Bremer recalled a community of several hundred Choctaws 'who withstood the allurements of government agents, preferring the untrammelled life in their beloved swamp near to the Pearl Rivers...to the landed rights in Indian Territory under the protection of the United States'.<sup>473</sup> Settling on the boggy ground, they created their own world around 'little camps...generally situated near the edge of those wonderful swamps'.<sup>474</sup>

From their fragmentary presence in the historical record, we cannot know exactly from where these Choctaws began their journey to the Bayou. However, it is possible that their community merged with another Choctaw group that had fled to the area during the Creek War. Writing in the 1880s, a local Creole resident recalled that in 1820, 'there were almost more Indians in the

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<sup>472</sup> Ibid, 532.

<sup>473</sup> Bremer, *Chata Indians*, 15.

<sup>474</sup> Ibid, 10-11.

city [of New Orleans] than there were whites or negroes'; around the lake, several Bayous were 'lined with their encampments'.<sup>475</sup> Between 1810 and 1820, Louisiana's white population doubled.<sup>476</sup> Growth centred around New Orleans, leaving most evasive communities untouched, but threatening nearby Indian encampments like Bayou St John.<sup>477</sup> Like their counterparts fleeing removal, pre-existing Louisiana Choctaws relocated. By 1830, 'very few of them remained in the city', swapping white settlement for 'homes in Alabama...[or] Pearl River, which was the stream on which bordered the Choctaw country'.<sup>478</sup> Although we cannot fully fill these gaps in the documentary record, it is possible that these Choctaws created their own communities around the Pearl River as early as the 1810s. Later, it is likely that new fugitive Choctaws integrated themselves within these pre-existing networks as they fled Mississippi. Just as the woman who fled Fort Mims joined with an older Choctaw community in Alabama, this pattern of splintering and merging seems to have been common during removal.

Like their Bayou Lacombe counterparts, the Pearl River Choctaws quickly found ways to survive the inhospitable marsh and mud. Over time, they adapted to trapping and eating the animals found around the swamps. Theirs became a varied diet ranging from 'rabbit or squirrel stewed with coarsely pounded corn', to 'corncakes, berries, and tea brewed from pine needles, sweet herbs, or the dried root of the sassafras tree'.<sup>479</sup> These foodways used nothing from beyond the swamp, minimizing the need for unnecessary contact with the outside world.<sup>480</sup> Like many maroon communities throughout the colonial world, they turned to specific crops and dietary practices to help them remain invisible.<sup>481</sup>

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<sup>475</sup> Adrien Emmanuel Rouquette, 'The Choctaws of Louisiana', *The Daily Picayune* (New Orleans), 22 September 1882.

<sup>476</sup> Hastings, *The Lakes of Pontchartrain*, 49. Population went from 76,556 (1810) to 153,407 (1820).

<sup>477</sup> Hastings, *The Lakes of Pontchartrain*, 53, 55.

<sup>478</sup> Rouquette, 'Choctaws of Louisiana'.

<sup>479</sup> Bremer, *Chata Indians*, 7 for diet, and 10-12 for more on general hunting, subsistence etc.

<sup>480</sup> *Ibid*, 10-11.

<sup>481</sup> James Scott terms this phenomenon 'escape agriculture': Scott, *Art of Not Being Governed*, 187-207.

This adapted knowledge was fundamental to their ability to survive in an environment Euro-American agents or settlers could not. Choctaws managed to endure along the Bayou because they learned where to sleep, what to eat, or where to drink. They won this knowledge through a long apprenticeship of illness and persistence. For instance, the group guaranteed potable water by refusing to ‘drink from a spring near to which certain weeds are not found growing’. Once discovered, this fact was so fundamental to their ability to survive in the swampland that by 1900 ‘even small children...are taught very early in this lore’, and all ‘little men and women of four and five years know...the weeds at a glance’.<sup>482</sup>

Within this refuge, the community spent their days hunting, trapping, and ‘basket-making’, creating a life of near-total self-sufficiency from their marshy surroundings. In her account of Pearl River life, Bremer attributed these activities to the Choctaws’ ‘depend[ance] upon nature for their inspiration’, yet it is more likely that these fugitives favoured these economic activities because they kept contact with outsiders to a minimum.<sup>483</sup>

Repeated movement also allowed them to remain isolated and protected. Even during the height of removal, the Pearl River community moved across the Gulf, keeping up traditional seasonal migration and subsistence patterns, while warding off threats from officials.<sup>484</sup> They geared their constant dispersal to defy agents’ efforts to pin them down. Bremer observed that the community was ‘continually moving from one point of vantage to another’, whilst ‘always calculating the possible effect of time, tide, and supply of food attainable’.<sup>485</sup> Sometimes, these movements meant becoming visible. At least in later decades, Bremer noticed that the Pearl River Choctaws ‘on occasions...visit the nearest towns, and have dealings with the whites’, marketing baskets, buying whisky, and, more rarely, even selling ‘alligators [which] are hunted for

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<sup>482</sup> Bremer, *Chata Indians*, 2.

<sup>483</sup> Ibid, 10-11, 7; John H. Peterson Jr., ‘Louisiana Choctaw Life at the End of the Nineteenth Century’, in Hudson (ed.), *Four Centuries of Southern Indians*, 107.

<sup>484</sup> Ibid.

<sup>485</sup> Bremer, *Chata Indians*, 1.

sport and killed for profit'.<sup>486</sup> Temporarily moving into Euro-American towns, they remained elusive by retreating at will to their own isolated worlds. In the coming decades, when the Choctaws wanted to be invisible, white eyes simply could not find them.

Like their forerunners fleeing the Creek War, some groups distanced themselves from both settlers and their own polities. In the early twentieth century, Bremer recalled a story about another Choctaw community just beyond the Pearl River, which had splintered from their wider polity in an act of animosity. According to Bremer's recollection, 'John, a young buck...had excited the jealous enmity of the old chief of the tribe', because he had 'apprenticed himself to a [Euro-American] wheelwright and carpenter...[made] daily visits to the nearest town...spoke English fairly well, [and] was popular with the whites'. This hostility and political rivalry escalated to the point where "John" killed the headman. He then 'dressed in citizen's clothing', fled his Choctaw community, and went off into 'the swamp, where his old mother, brother, and sweetheart had followed him into exile'. Following the split, the family created a new community in the swampy ground along the Pearl River. Decades later, they still remained separated themselves from both the wider Choctaw nation and the United States.<sup>487</sup>

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In 1836, the Creeks again found themselves under attack. Following earlier treaties, almost all Creeks had left Georgia for Alabama by 1828. Consolidated on their remaining tribal lands, their presence in that state also became precarious within a few years. In response to pressures from

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<sup>486</sup> Ibid, 4-6, 11-12.

<sup>487</sup> Bremer, *Chata Indians*, 12-14.

The accuracy of Bremer's account is unclear. It's not clear where Bremer's original information comes from, although her account cites testimony from a Major John Earnest, a local resident who claims to have supported "John" in the experience. She is also imprecise on the dates, but suggests that these events took place around the time of Removal, noting that if it had been detected by the US, 'the act...would have gotten the whole crowd of men hanged, and the women and children driven off the land by the great United States government' (13-14). At one point, Bremer seems to suggest that "John" was 'one of Father Rouquette's converts' (12) - however, this seems to be an error on the author's part, as this story is not corroborated in the primary or secondary Rouquette sources. However, it is possible that these Choctaws had some sort of original, pre-splinter kin connection, and/or some knowledge of Rouquette and his band, especially as Rouquette suggested that the Choctaws around the Louisiana area continued to meet up for traditional ceremonies once the immediate threat of Removal had passed.

local and federal officials, Creek leaders agreed a new removal treaty in 1832. Five years later, they were at war. Many ordinary Creeks watched as settlers and land speculators surrounded their new homes. Some lost their lands. Others attempted to sell them and ended up entrapped by speculators and webs of debt. Settlers terrorised families and soldiers and agents came to enrol them at gunpoint.<sup>488</sup>

Creeks fought back, but the conditions were abominable. Even General Wool, one of the most senior military officials in the region, felt compelled to remind his men that Creeks ‘ought not to be hunted and dragged like...beasts into the emigrating camp’.<sup>489</sup> Things were little better inside the stockades. Within these supposed spaces of federal protection, ‘local bands of armed whites attacked the Creeks, stole their property, and raped...women’.<sup>490</sup> No-one stopped them. After all, Secretary of War Lewis Cass had ordered the soldiers to treat ‘the friendly part of them...with the kindest attention’, but not to be afraid to ‘send...[the rest] off as speedily as practicable...by military force if necessary’.<sup>491</sup>

Caught in the carnage, many individuals and small groups fled from under soldiers’ and settlers’ noses. Some left the stockades at gunpoint, darting into the swamps and woods at Alabama’s least settled, most impenetrable edges. Some of these acts of flight were momentary, but others were more permanent. In 1839, German traveller Clara von Gerstner made a journey through the South, accompanying her husband, a railroad engineer. Shortly after their arrival in Alabama, the young woman decided to wander into the woodland. Stepping off the beaten path, von Gerstner had hoped to find romantic views and quintessentially Southern vistas, but as she ventured deeper into the overhanging branches and swampy pathways, the landscape soon became eerier. ‘Deep in the woods’, with no-one else around, she came upon ‘a miserable hut’.

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<sup>488</sup> See: Green, *The Politics of Indian Removal*, ch8, esp. 184-86; Ellisor, *Second Creek War*. For legal struggles over land claims, see ch1 and ch2.

<sup>489</sup> General Wool to unnamed recipient, *ASP*, Military Affairs, VII, 557.

<sup>490</sup> Holátte Cypvkke, ‘Drove off like dogs’, 121.

<sup>491</sup> Lewis Cass, Secretary of War, to Brevet Major General Thomas S. Jesup, 19 May 1836, *ASP*, Military Affairs, VI, 622-23.

As she pushed the door open, she found a very elderly Creek man; it was not clear which of the two was more shocked by the discovery.

In this little hut, far beyond the bustle of Mobile or the cotton fields and plantation houses popping up across the state, the grey-headed fugitive had escaped agents' sight for some thirteen years. After more than a decade of silence, he dared not be too careful about this new intruder, even if her gender, accented English, and youth made her an unlikely government agent. Von Gerstner recalled that as she entered the hut, the gentleman became clearly distressed, and despite his obvious frailty, 'begged not to be driven away, because his final hour would come soon, as it already had for two of his comrades, who had stayed here with him and recently died'. Once it became clear that the twenty-six-year-old woman had not come to remove him, the man began to open up. 'Asked why he was hiding there', von Gerstner recalled, 'he answered in an outburst of the deepest unhappiness that the bones of his ancestors rested in this land, and he wanted to die here, too'.<sup>492</sup> Shortly after, von Gerstner left the hut, rushing home to report the incident in her diary. The old man remained, determined to live out of his days in the lands of his forebears, even if that meant a lonely life amid a morass of wood and weed.

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To the south and east, the Seminoles fought for Florida. The Seminole Wars had raged intermittently since the early-nineteenth century. In the mid-1830s, renewed efforts to complete removal across the east brought new assaults. In the fall and winter of 1836, American General Jesup deployed a new wave of 'several thousand troops'. The units quickly spread across the Florida Peninsula, burning towns, destroying Seminole food stores, and killing or capturing

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<sup>492</sup> Clara von Gerstner, *Beschreibung einer Reise durch die Vereinigten Staaten von Nordamerika in den Jahren 1838 bis 1840* [Description of a Journey through the United States of America, 1838-1840] (Leipzig: 1842), cit. Frederic Trautmann, 'Alabama through a German's Eyes: The Travels of Clara von Gerstner, 1839', *Alabama Review* 36 (1983), 129-42.

'hundreds of the cattle on which they subsisted'.<sup>493</sup> For Seminoles and officials alike, war now blurred with removal.

In response, the Seminoles attuned their tactics. At the peripheries, many ordinary Seminoles turned not to fighting, but disappeared into the swamps and marshes of the Everglades. Writing in 1839, one self-styled 'subaltern' Floridian recalled how the Seminoles chose to head 'into the swamps', rather than 'go to the...prairies of the west...and live like *white men*'. In order to avoid capture by the US and remain 'in the land of one's birth', the Seminoles were willing to brave the inhospitable terrains, and even the chance that they could 'die...from the effects of being constantly in the damp, low, and foggy ground'.<sup>494</sup>

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At its northernmost edges, the South's topography changes dramatically. Far beyond the waters of the Gulf, the Florida everglades, and the flat cotton fields of the interior, mountains start to dominate the landscape. The Appalachians wind through the continent, reaching from Georgia and the Carolinas up to Canada. In the seventeenth and eighteenth centuries, this rocky barrier had been the frontier, so impenetrable that it blocked vast swathes of the continent to Euro-American expansion.<sup>495</sup> By the 1830s, American settlers had long since traversed the boundary; but although they had found strategic gaps, they could not master Appalachia's mountain world. Difficult to navigate and unsuitable for cotton cultivation, white faces sparsely settled these lands. As slavery boomed, many pioneers moved their families further south and west in search of new opportunities. Though Americans claimed mastery, much of the mountains remained simply untouchable.<sup>496</sup>

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<sup>493</sup> Foreman, *Indian Removal*, 342.

<sup>494</sup> Report on 'The Florida War' by 'A Subaltern', Tampa, 26 February 1889, *ANC*, volume VIII: 1839, 219-220.

<sup>495</sup> See, eg, Francois Furstenberg, 'The Significance of the Trans-Appalachian Frontier in Atlantic History', *The American Historical Review*, 113:3 (June 2008), 647-677.

<sup>496</sup> For more on Appalachian society, see, eg: J.A. Williams, *Appalachia: A History* (Chapel Hill: University of North Carolina Press, 2003); Inscoc, *Mountain masters*; J.C. Inscoc and G. McKinney, *The heart of Confederate Appalachia*:

To capture of their variation, white settlers developed their own names for particular parts of the Appalachian range. In the Carolinas and Tennessee, the mountains became known as the Great Smokies; between Georgia and Southern Pennsylvania, as the Blue Ridge. The mountains themselves are vast, lined with spruce, hardwood, birch, and fir trees, stacked hundreds deep into impenetrable forests. Rivers wind through the rocks, cutting ravines and valleys which look like steep drops against the backdrop of peaks. In places, the mountains are so tall that they blur the line between earth and heavens. Shrouded with clouds, the land seems to vanish into thin air. For centuries, the Cherokees who inhabited these places believed them to be ‘the top of the whole world: the land of the Sky People’.<sup>497</sup>

Removal penetrated the land of the Sky People in 1837-1838. Even at these far outposts of the Nation, Cherokees heard tales of their leaders’ decade-long battles or news of distant kin who had already relocated to Indian Territory.<sup>498</sup> In 1838, these whispers became reality. In spring, military regiments arrived in the mountains, headed by Major General Winfield Scott.<sup>499</sup> Like their counterparts sent to the Creeks or Choctaws, the troops aimed to enrol Cherokees for ‘voluntary emigration’, but their dispatches made it clear that they were also willing to undertake ‘forcible emigration’ where progress was too slow.<sup>500</sup>

In the Cherokee homelands of Georgia, North Carolina, Tennessee, and Kentucky, many individuals, families, and clan groups heard word of approaching agents or met them in face-to-face clashes.<sup>501</sup> In response, they fled upwards; into mountains, caves, and winding pathways

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*Western North Carolina in the Civil War* (Chapel Hill: University of North Carolina Press, 2005); Martin Crawford, *Ashe County’s Civil War: Community and Society in the Appalachian South* (Charlottesville: Virginia University Press, 2001).

<sup>497</sup> Traveller Bird (Tsisghwanai), *The Path to Snowbird Mountain: Cherokee Legends by Traveller Bird* (New York: Farrar, Straus and Giroux, 1972), 1.

<sup>498</sup> Cherokees had undertaken voluntary removals since the early c19th. Alongside leaders’ ongoing legal battles, other small parties had moved west across the 1830s. See Foreman, *Indian Removal*, esp. chs.21-22.

<sup>499</sup> Foreman, *Indian Removal*, 286-287.

<sup>500</sup> Major General Winfield Scott to Joel Poinsett, Secretary of War, 7 June 1838, Head Quarters Eastern Division, Cherokee Agency. NARA M234-R115.

<sup>501</sup> See Perdue and Green, *Cherokee Nation*; Foreman, *Indian Removal*, book 4, esp. chs.21-3.

masked in cloud.<sup>502</sup> Eastern Cherokee author Tsisghwanai (Traveller Bird) compiled his grandfather Sigigi's oral accounts of his family's flight into the Appalachians in fall 1838, when 'government troops began driving the Cherokees from their homes to the white man's stockades in North Carolina and Tennessee'. Facing the troops, 'Sigigi's grandfather Ogan and three others escaped from [enrolling efforts at] Fort Cass and fled to a cave in the Snowbird Mountains' bordering Graham County, North Carolina. They were not alone in their quick-thinking uses of local terrain. Sigigi recalled how 'hundreds of other panic-stricken Cherokees also managed to elude the soldiers, seeking refuge in other caves in the Smoky Mountains'.<sup>503</sup>

Like other fugitives, the Cherokees' chosen destination was not arbitrary. Caves were among the most familiar terrains, dotting the tribe's rocky, mountainous homelands. Indigenous neighbours had associated the Cherokees so closely with these spaces that they called them 'the people of the cave country'.<sup>504</sup> For many Cherokees, caves were sacred, otherworldly spaces, associated with a special kind of power. They feature prominently in Cherokee cosmology. Many Cherokee myths feature caves as spaces used to protect or preserve items of particular power, either for safekeeping or for the protection of Cherokee people in the land outside.<sup>505</sup> Elders even told how, long ago, a whole town had vanished into the mountains.<sup>506</sup> Importantly, Cherokees also strongly associated caves with the protection and spiritual power of the *Yûñmî Tsundi'*, or Little People, a kind and helpful 'race of spirits' who live in caves on the mountain side of Cherokee lands, who were known as 'great wonder workers' for their services to people who were lost or desperate among the mountains. For centuries, lost Cherokees had called on the Little People,

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<sup>502</sup> James Scott has also highlighted altitude and 'hilliness' as important to state evasion. Scott, *Art of Not Being Governed*, 128. See also ch1, ch5.

<sup>503</sup> Traveller Bird, *The Path to Snowbird Mountain*, 4-5. For more on Cherokees living in the Snowbird Mountains (where they remain to this day), see: Neely, *Snowbird Cherokees*; Charlotte Neely, 'Ethnicity in a Native American Community', (PhD Dissertation: University of North Carolina at Chapel Hill, 1976). Viewed in xeroxed microfilm copy, Edward E. Ayer Collection, NL-C.

<sup>504</sup> James Mooney suggests that this was the Mohawk name for the Cherokees. He also speculates that other names for the Cherokee came from their associations with caves. Mooney, *Myths*, 16-19, 183.

<sup>505</sup> See, eg: Mooney, *Myths*: 'How sin came into the world', 248-249, 262; 'The utenka and the Ulûñsû'ti', 297-298.

<sup>506</sup> Mooney, *Myths*, 335-336.

who were known to guide people into caves or other safe spaces; many attributed their safety to this assistance, though Cherokee tradition forbade anyone who had actually seen the Little People from speaking of it for seven years. But seeking their assistance came with risks. Cherokees knew never to call on the Little People lightly, because they were as mischievous as they were helpful, and hated to be seen by humans without consent. Those unfortunate enough to disturb them, or stumble into the Little People's own caves were often never heard from again.<sup>507</sup> In seeking solace in caverns, perhaps Ogan and his friends hoped to draw on some of this assistance, maybe even preferring the risks of permanent transportation from the mortal realm to the prospect of facing off with armed officers.

Beyond their spiritual associations, the mountains also held the appeal of familiarity: these were places they knew better than the soldiers pursuing them. Traveller Bird's ancestors had long lived near the Snowbird Mountains, just beyond the Out and Valley Towns at the far northwestern edges of the Cherokee Nation.<sup>508</sup> As the crow flies, this distance covered was mere miles from the cave in which they evaded federal agents. But in the glare of removal every movement became a risk. Ogan's flight through previously familiar places meant months of movement. Federal soldiers chased the group 'for weeks' through the mountains and forests. Ogan and his friends struggled to keep ahead of agents' unpredictable movements, and spent weeks where they were 'hunted like animals by men who used dogs to track them and fire to destroy the mountains and their food supply'. Yet by keeping moving, and keeping hidden in the densest parts of the region, they managed to elude control.<sup>509</sup> Successful evasion meant constant readjustment to officials' own movements, invoking both spiritual and geographical protection in the hope of staying one step beyond agents' reach.

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<sup>507</sup> Mooney, *Myths*, 333-335.

<sup>508</sup> Traveller Bird, *Path to Snowbird Mountain*, 4-7.

<sup>509</sup> *Ibid*, 5.

Just weeks later, other Out Towns Cherokees faced removal staring down the barrel of a gun. Eastern Cherokee storyteller Freeman Owle recalls how his great-grandfather lived in a log cabin near Murphy, North Carolina, with his young wife and baby. In the early hours of the morning, in fall 1838, ‘all of a sudden, someone was banging on the door’. Owle’s great-grandfather ‘looked out, and fifty Georgia soldiers were standing in the yard’. The soldiers ordered the young couple out of the house. Clinging to their weeks-old baby, they obeyed. Before the couple could catch a retreating glance at their home, the troops ‘burned the cabin to the ground’.<sup>510</sup>

As their old lives disappeared in clouds of smoke, the family scarcely had time to register the tragedy. The troops ordered the Cherokees to assemble; equipped with only the clothes they stood in, the Indians began an arduous march to a federal stockade in the nearby town of Murphy. Their six-week stay there was horrendous. The troops kept the Cherokees in pen-like structures with ‘no roof, only a line of poles, encircling the stockade’. The conditions could not have been worse for a newborn baby and a breast-feeding mother. ‘The mud was deep’, Owle remembers, ‘there wasn’t much food, [and] no one had anything to cover themselves with, but the baby survived because the mother was feeding it’.<sup>511</sup>

Days later, their ordeal worsened. ‘Early one morning’, amidst the frosts of October when ‘the ground was frozen hard enough for wagons to travel’, ‘General Winfield Scott began to march the people out of this fort...[and] across the frozen ground’ into Tennessee. The journey involved a trek of several days through the Appalachians and the Santeelah Mountains. In the winter, snow and ice line the passes; even today, temperatures regularly hit 0-20°F (-17.7 to -6.6°C), sometimes plummeting to as low as -20°F (-28.8°C).<sup>512</sup> In the near-arctic conditions, the

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<sup>510</sup> Freeman Owle, ‘The Trail of Tears’, in Barbara R. Duncan (ed. & comp.), *Living Stories of the Cherokee* (Chapel Hill: University of North Carolina Press, 1998), 221-226.

<sup>511</sup> Ibid.

<sup>512</sup> US National Park Service, ‘Great Smoky Mountains: Weather’: <http://www.nps.gov/grsm/planyourvisit/weather.htm> [accessed: 18/03/2016, 13:20]; Cherokee County Chamber of Commerce, ‘Seasonal Weather in Western North Carolina’: <http://www.cherokeecountychamber.com/visite-cherokee-county-north-carolina/weather-in-western-north-carolina-and-northern-georgia> [accessed: 18/03/2016, 13:21].

removal became a death march. Owle recalls that another woman in the party ‘heard a baby crying’ in the dead of night, when the rain was pouring like daggers. Amidst the freezing conditions, the woman ‘began to look, late that night...she went to the sound of the baby and found the child very cold, and wet’. After hours of exposure, the tiny baby was near-frozen and weak with pneumonia. Surrounded by troops, mountains, and darkness, the woman did what she could. ‘She covered the child with her coat’, Owle recalls, and resumed the march. The child did not make it. Just ‘two days later, the woman died of pneumonia herself’.<sup>513</sup>

Despite the atrocious conditions, the soldiers did not halt. After many weeks of long days on foot, the party neared the Mississippi River. Owle’s ancestors struggled. Both baby and mother had grown weak. Facing exposure and sheer desperation, the family made up their minds to flee the removing party, taking their chances in the hostile surroundings of unfamiliar terrain. Owle recalls how, as they neared the river, a soldier asked his great-grandfather ‘if he would count the Cherokees who crossed’. His grandfather agreed, sensing an opportunity to use the unfamiliar riverine terrain as their chance for escape. In a whisper, ‘he told his wife in Cherokee, “Go hide in the cane brake and take the baby with you. And I will tell them you’re here. And we’ll go back home”’. As his wife fled with their child, Owle’s great-grandfather lied to the officers that all Cherokees had been accounted for. However, perhaps noting the absence of the baby, they refused to believe him. One officer demanded that he ‘go back to the river and check again’. Owle’s great-grandfather took this as the moment for escape. ‘All of a sudden’, he leapt ‘into the water’. In astonishment, the troops came running. In a panic, they fired a halo of gunshot in the wake of the escapee. Staring into the rushing river, they waited for the Cherokee to surface. When no signs of life came, ‘they gave him up as being dead’, and moved on with their march.

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<sup>513</sup> Owle, ‘The Trail of Tears’.

Little did they know that quick-thinking had saved his life; he had been ‘breathing through a reed’ until the troops went away.<sup>514</sup>

Upon hearing the gunshots, his wife fled. ‘With the baby in her arms’, she ran ‘all night long’, sleeping in ‘a briar patch...in the daytime, or a farmer’s haystack’. After several weeks, she reached the familiar landscape of the Appalachians. With nowhere else to go, ‘she came back to the old-burned out cabin site’, perhaps calculating that the ruins would hide her, praying that the troops would have no reason to return to an area that they believed they had cleared weeks earlier. For weeks, she and the tiny baby waited for her husband to return. Owle recalls that the pair lived in constant fear of any noise or commotion, lest it turn out to be another round of soldiers or federal agents.

One year after her return, the signs and sounds of an intruder led her to take flight into nearby woodlands. The tightly-packed trees provided an especially useful refuge, muffling the talk of a tiny baby, who could not yet learn that any sound – whether laughter, babbling, or even tears of fear – would give them away to federal officials. However, this intruder was no agent: it was her husband, back from a year of evading agents through several hundred miles of hostile terrain. The pair returned to the cabin and built new lives at the edge of the woods. Though their ancestors ‘still live in the little place’, the family’s life was far from an easy one.<sup>515</sup> Their child’s early years were marked by the long-legacy of removal. Survival, the child learnt, meant knowing the value of difficult terrain. It also meant knowing the value of silence.<sup>516</sup>

### Fugitive Geographies

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<sup>514</sup> Ibid.

<sup>515</sup> Ibid.

<sup>516</sup> For more on the ‘sonic’ experiences of conquest and empire for indigenous peoples, see Sarah Keyes, “‘Like a Roaring Lion’: The Overland Trail as a Sonic Conquest”, *Journal of American History*, 96:1 (June 2009), 19-43.

During the early decades of the nineteenth-century, many indigenous Southerners actively evaded the growing threat of state power, both in the form of removal and the earlier military incursions and settlement expansions that preceded it.

Fugitive communities came from many different polities. Their attempts to elude control occurred at various times, in response to personal experiences of state pressures or, in some cases, the desire to distance themselves from their own wider polity not just the United States. Their choices took them to all corners of the South, where they learned to survive in many specific ways. Although historians have largely associated evasive strategies only with the Seminoles' campaigns against the United States in Florida, these tactics were actually much more widespread, allowing numerous small or invisible indigenous communities to avoid removal to Indian Territory during the 1820s and 1830s.

Their many stories share common strategic threads. Most splintered from the Five Tribes and their own polities. They did so in deliberately tiny, hard-to-spot units, often as individuals or kin and sub-clan groups. By slipping off with immediate family or friends, they maximised their chances of successful evasion while also establishing new communities from the most important day-to-day bonds of familiar kin or sub-clan levels. In responding to removal in this way, many of these small groups appear to have drawn on older, smaller units of social organization, such as the clan, the town, or kinship networks, even in an age of growing centralization and consolidation for the Five Tribes.<sup>517</sup> Though this description did not hold true of all evaders. Large bands of Florida's Seminoles, for instance, used evasive tactics in their efforts to avoid removal and federal violence during the Second Seminole War. Fleeing was not possible for everyone: for the elderly, disabled, or mothers with multiple young children, the prospect of evasion was substantially more difficult, if not outright impossible.<sup>518</sup> Yet these vignettes

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<sup>517</sup> For more on these units and their enduring importance among Five Tribes groups, see, eg: Joshua Piker, *Okfuskee: A Creek Indian Town in Colonial America* (Cambridge: Harvard University Press, 2006).

<sup>518</sup> These experiences have many parallels with those of slave women, and gendered realities of emancipation or escape from slavery. See, eg, Camp, *Closer to Freedom*.

demonstrate that, when faced with the desperate choice between removal and escape, indigenous Southerners of all ages and polities chose to evade federal officials.

Most people headed beyond officials' direct glare. For almost everyone, this decision meant strategic use of difficult environments. Facing state power, groups resettled in inaccessible locations, ranging from swamps, marshes, and bayous, to mountains, ravines, forests, and sea shores. These choices were not accidental. Such landscapes appealed to indigenous Southerners seeking to avoid removal precisely for their inaccessibility to Euro-American settlers or intruders. By choosing to relocate to inhospitable and remote places, indigenous groups exploited terrains that were largely impenetrable to outsiders, off the edges of federal removal plans, or simply unwanted by Euro-American settlers. Like fugitive slave or maroon communities elsewhere in the colonial world, indigenous Southerners utilized inaccessible or remote areas in an attempt to circumvent the limits of state sight and colonial reach.<sup>519</sup>

In these remote or difficult places, indigenous Southerners created alternate geographies of resistance, some of which lasted for days or months, others for years. In the shadows behind officials' sight, they nurtured their particular communities and avoided efforts to remove them to Indian Territory. The stories told here are fragments of indigenous experiences across the South. Only a handful of fugitive communities found themselves in situations where they could be seen by, or even tell their stories to, outsiders who would record them. Many more individuals or small groups must also have made their way to similarly inaccessible parts of the South, out of state sight.

We cannot know exactly what these people felt when faced in the 1810s with a warzone, or with the prospect of relocation at gunpoint in the 1830s. In most cases, their motives were lost in the very act of avoiding US forces and, as a result, the traditional documentary record. For some of

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<sup>519</sup> See, eg: Camp, *Closer to Freedom*; Conrad and Sitton, *Freedom Colonies*; Sylviane A. Diouf, *Slavery's Exiles: the story of the American Maroons* (New York: New York University Press, 2014); Scott, *Art of Not Being Governed*.

them, initial acts of flight led to long and calculated evasive strategies, spanning years or even decades. Some of these people must have looked to remote, hidden places as lifelines, new homes that could sustain their descendants for decades.

However, it is likely that many evaders saw these actions as a more temporary, immediate solution. Most people do not live their lives in spans of decades or years, but in units of weeks, days, and hours, especially in ever-changing conflict zones. When retreating to a swamp or cave, many indigenous Southerners did not necessarily envisage passing the rest of their days in these locations, but used them places where they could at least avoid immediate danger. Most of the groups who initially fled the Creek War could not have known at the time that their choices would help them to avoid removal decades later. Reacting to immediate pressures meant that some kept moving. Several relocated more than once in order to keep just ahead of agents' ever extending reach. In places and times of extreme danger, not every evasive calculation succeeded; even swamps, riverbeds, and mountains could not place them far enough or fast enough away. But for many fugitive groups, evasion meant success. Situated in inaccessible places, many of these groups avoided removal into the west. Their choices had not been easy and, in a world of removal, even the longest-standing groups could not have looked securely to the future. Calculating their next steps, they must have remained wary. Even if these blind spots had kept them safe so far, they had no way of knowing what the next weeks, months, or years would bring.

## Part Two:

### (Mis-)Seeing Evasion like a State

On the ground, indigenous Southerners responded to removal face to face. As they went about their daily lives in these precarious decades, state power was immediate and clearly visible to

them in the form of gun-toting soldiers, filthy stockades, and the faces of their weary kin as they marched westward in long columns or lay dead and dying at the roadside. However, in Washington DC and regional capitols, officials perceived acts of evasion indirectly, often with blurred understanding. During removal, federal power concentrated around field agents. Although Presidents and Commissioners of Indian Affairs pushed policy from their desks in Washington DC, it ‘would not be Andrew Jackson and Thomas McKenney who did the difficult and disturbing work of forcibly relocating entire communities of Native Americans’.<sup>520</sup> Instead, removal would succeed or fail through the strengths of its men on the ground. It was the ‘federal authorities, civilian and military, together with state officials, private contractors, and ordinary settlers and citizens [who] did the heavy lifting’.<sup>521</sup> As a result, even more than in the opening decades of the century, lawmakers in Washington DC would rely entirely on networks of agents and, later, military representatives to be their eyes and ears into the removal process.

This was especially true when it came to observing and understanding evading groups. Unlike groups pursuing other negotiation or war, evasive groups sought deliberately to place themselves beyond officials’ field of vision. They did not approach agents, and they certainly did not contact the Indian Office in Washington DC. As a result, the networks of agents, soldiers, or other officials on the ground were the Indian Office’s only lens onto this fugitive landscape. Only these ground-level representatives stood any chance at engaging these people, sending them westwards, and dispatching news of them back to Washington DC.

### Rethinking State Sight

In recent years, historians have envisioned removal as a key episode in a wider story of growing American state power. For a new cadre of scholars, the nineteenth century is defined by a long

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<sup>520</sup> Rockwell, *Indian Affairs*, 188.

<sup>521</sup> *Ibid.*

arc of imperialism that saw the United States moved ever-westwards to construct an empire, which it then ‘reconstructed’ into an ‘imperial nation-state’ in the wake of the Civil War.<sup>522</sup> In contrast to traditional assessments of corrupt, tragic, and inefficient statecraft, these historians have reassessed Indian policy as one facet of this growing leviathan. Removal marked an important transition. In undertaking the previously unthinkable spatial solution of physically relocating large and sovereign indigenous polities, federal policymakers learnt to combine military and administrative prowess, lessons that would lead them to conquer the rest of the continent in the coming decades.<sup>523</sup> In the words of one historian, removal was ‘tremendously and horribly effective’, precisely because it combined military strength with administrative strength on the ground.<sup>524</sup>

These images have a place. To Americans and indigenous peoples, removal undoubtedly demonstrated, with crushing force, the scale of power federal officials could command. By forcibly deporting tens of thousands of indigenous Southerners, Americans transformed continental geopolitics. They also successfully enacted the power to racially order their society and landscape in new ways, opening the door to the Cotton Kingdom.<sup>525</sup> The experiences of the thousands of indigenous Southerners who moved west also testified to the brutal efficiency that agents could enact when placed in the right places and targeting the right people. Seen from the

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<sup>522</sup> This trajectory is a version of new works on national consolidation. See, e.g.: Hahn, *A Nation Without Borders*; Hahn, ‘Slave Emancipation, Indian Peoples’; Steven Hahn, ‘Epilogue: The widest implications of disorienting the Civil War Era’, in Adam Arenson and Andrew Graybill, *Civil War Wests: Testing the Limits of the United States* (Oakland: University of California Press, 2015); West, ‘Reconstructing Race’; West, *The Last Indian War*. ‘Imperial nation-state’ is Hahn’s phrase. For wider interest in state building and the breadth of early American federal power, see, for example: Novak, ‘The myth of the “weak” American State’; Edling, *A Revolution in Favor of Government*; Max Edling, *A Hercules in the Cradle: War, Money, and the American State, 1783-1867* (Chicago: University of Chicago Press, 2014); Gary Gerstle, *Liberty and Coercion: The Paradox of American Government from the Founding to the Present* (Princeton: Princeton University Press, 2015); White, *It’s Your Misfortune and None of My own*; William H. Bergmann, *The American National State and the Early West* (Cambridge: Cambridge University Press, 2012), esp.chs5-6. For interest in the continental dimensions of c19th America, and the shift to viewing the nineteenth-century United States as an empire, see, e.g.: George Herring, *From Colony to Superpower: U.S. Foreign Relations since 1776* (Oxford: Oxford University Press, 2008); Walter Nugent, *Habits of Empire: A History of American Expansionism* (New York: Penguin, 2008).

<sup>523</sup> Rockwell, *Indian Affairs*, 1, 6; Balogh, *A Government Out of Sight*, esp. 205-211. See historiographical discussion in intro for more.

<sup>524</sup> Rockwell, *Indian Affairs*, 188, & ch7; Balogh, *A Government Out of Sight*, 210-211.

<sup>525</sup> For racial reordering, see: Guyatt, ‘The Outskirts of our happiness’; Guyatt, *Bind us Apart*.

outside as well as the inside, this was a moment when the American state looked enormous. As settlers stole their lands and agents threatened them at gunpoint, most indigenous Southerners would surely have agreed with modern historians' assessments that early American state power seemed biggest at its margins.<sup>526</sup>

These interpretations capture the immense weight of federal action at removal. However, because they are almost entirely drawn from the federal documentary record, they replicate a vision of the world as the state saw it – and wanted to see it. By nature, this picture erases histories that happened in the places and people that agents simply could not see, or which indigenous southerners simply did not want them to. Evasive strategies were a central part of this shadowy, partially visible world in the corner of agents' eyes.

The first half of this chapter opened up a vision of a fugitive world, in which runaway communities shook off agents and avoided removal. This second half seeks to explore exactly how state officials saw – and could not see – this world. By tracing state sources not as a record of what happened, but as a version of the world as officials were able to see it, this section attempts to understand where or how statesmen (and by extension, later historians) saw these evasive acts. It will also highlight many instances that appear only as silences in state records, drawing on these lacunae not as moments when nothing happened, but as instances where people hid so effectively that officials simply missed them altogether.

### Agents and Outsiders

Between 1824 and 1840, the War Department and the Office of Indian Affairs dispatched hundreds of Indian agents and soldiers to implement removal in the South: in the 1820s alone, the Indian Office commanded 'almost a hundred regular employees', including 'four

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<sup>526</sup> Novak, 'Myth of the "weak" American State'; Edling, *A Revolution in Favor of Government*; Rockwell, *Indian Affairs*.

superintendents, eighteen agents, twenty-two subagents, thirty-four interpreters'.<sup>527</sup> Although they worked relatively efficiently under the orders they received from Andrew Jackson, Thomas McKenney, Lewis Cass, Elbert Herring and other high-ranking officials in Washington DC, most of these men were unfamiliar with the areas or the people they needed to manage. Among the hundreds of agents and soldiers dispatched to remove the Five Tribes, most were not locals. In a political system where patronage determined appointments, many high-ranking agents gained their jobs through connections and favours, not their particular aptitude for the task.<sup>528</sup>

In April 1831, Lewis Cass, Jackson's new secretary of war, appointed Francis Armstrong to act as an enrolling agent for Choctaws in Mississippi. Born in Virginia and resident in Tennessee, Armstrong was a Southerner with a distinguished military career; it did not hurt that his brother was superintendent of removal and that he also knew Jackson personally. But Armstrong did not know Mississippi, and he certainly did not know the Choctaws.<sup>529</sup> As soon as he arrived in the field, his ignorance showed. George Gaines, a Mississippi trader and longstanding Choctaw agent, met Armstrong upon arrival and noted that he 'appeared to be entirely ignorant of the actual state of things' in Mississippi. He relied on asking Gaines 'to introduce him to some of the most influential chiefs, having been sent by the Secy [sic] of War to prepare them for Removal'.<sup>530</sup> Not only did Armstrong lack connections or the language skills to speak with these people himself, he did not even know that removal would require more than simply identifying and talking to the right people.

Agents' military counterparts were even more unprepared. Drafted from the regular army, there was no guarantee that soldiers sent to round up indigenous parties would even have been to the

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<sup>527</sup> Viola, *McKenney*, 98; see also Prucha, *The Great Father*, 59-60.

<sup>528</sup> Prucha, *The Great Father*. This was also true at the highest levels, too: Samuel Hamilton, Elbert Herring, and Carey A. Harris, Commissioners of Indian Affairs between 1830 and 1838, received their appointments entirely for political motives and their connections to the Jackson administration; none had real experience of Indian Affairs prior to appointment. See: Kvasnicka and Viola, *Commissioners of Indian Affairs, 1824-1877* (Lincoln: University of Nebraska Press, 1979), 9-21.

<sup>529</sup> Carolyn Thomas Foreman, 'The Armstrongs of Indian Territory', *Chronicles of Oklahoma* 30 (1952), 292-308.

<sup>530</sup> Cit. Foreman, 'Armstrongs of Indian Territory', 294-5.

South, let alone be familiar with indigenous groups, their political affiliations, or their languages. Once on the ground, many turned to local men like Gaines for assistance, but there was only so much these individuals could do. Outsiders could not learn the rules of the region overnight. Besides, allocating a local factor to every single agent or soldier would have required more local men than the Indian office could muster.

In themselves, these weaknesses might not have added up to an Achilles' heel, but they came to matter because indigenous Southerners recognised these problems. They knew that agents arrived on a steep learning curve, so they designed their strategies to exploit this chaos, turning state confusion into state evasion. Fugitive groups deliberately exploited agents' unfamiliarity with the region, terrain, and its people, leaving them all but rudderless when it came to locating or understanding their actions, especially in the earliest years. Despite all their efficiency at tackling problems like 'corruption' or 'inefficiencies' in the wider Indian Affairs, officials as outsiders were frequently unable even to see these fugitive groups, let alone rein them in.<sup>531</sup>

Worse still, invisible to policymakers and officials, federal removal plans had fatal flaws before many agents even left Washington. As they envisaged spatial solutions in the 1810s and 1820s, federal officials did not notice groups who splintered from the Five Tribes and retreated from state power in earlier decades. Some of these blind spots sprang from fundamental problems in their blueprints for removal and the ways officials understood the indigenous South. As shown in earlier chapters, federal understandings of the indigenous South focused overwhelmingly on the Five Tribes and their elites, whom officials believed to control wider polities. As a result, many officials remained more or less oblivious to the fact that communities could splinter off to form new groups, effectively distinct from their wider Nations, in these early decades. In fact, Indian Office dispatches show no awareness of the various tiny communities of Creeks,

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<sup>531</sup> Rockwell, *Indian Affairs*, ch7, esp.197-205.

Choctaws, and other groups who left their polities in the wake of the Creek War.<sup>532</sup> Many of these communities made themselves too small, too local, or too inaccessible for federal officials to notice them.

Since agents did not see these groups, they could not incorporate them into their understanding of the indigenous South or their removal plans. Fresh from DC, agents and commanders like Francis Armstrong set out to find elites who would hold the key to removing whole polities. They did not look for splintered offshoots already well established in hard to reach places.<sup>533</sup> This invisibility therefore continued to hold throughout the removal efforts of the 1820s and 1830s. Officials simply did not try to remove many groups who continued to confine themselves to remote areas, or places beyond agents' reach, such as the various Choctaw splinter communities in Alabama. As a result, many of these groups remained within the South. Alienated from their own polities, they hid within isolated places where officials did not detect them.

#### Administrative Prowess, Elusive Indians

In September 1830, federal commissioners signed a removal treaty with the Choctaws at *Bok Chukfi Abilba*, or Dancing Rabbit Creek, Mississippi.<sup>534</sup> Within weeks of its ratification, agents had returned to the ground, tasked to enrol thousands of Choctaws for emigration to Indian Territory.<sup>535</sup>

Zeal did not guarantee success. Upon arrival, federal weaknesses became apparent. In 1833, Francis Armstrong complained to Lewis Cass that even when agents had managed to gain Choctaws' consent, they still had to fight a losing battle with 'swamp', 'marsh', 'cholera' and

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<sup>532</sup> My reading across the letters received in NARA M234 and other state documents reveals no evidence of this.

<sup>533</sup> See above: Foreman, 'The Armstrongs of Indian Territory', 245.

<sup>534</sup> See: 'Treaty with the Choctaw, 1830: 27 Sept 1830, 7 Stat. 333, Proclamation, 24 Feb, 1831, *LALT*. Also: Foreman, *Indian Removal*, ch.3. See chapter 2 for an extended discussion of this treaty process.

<sup>535</sup> See Foreman, *Indian Removal*, chs2-3.

other local challenges.<sup>536</sup> One local observer recalled that ‘in the years 1832 and 1833...there was a great deal of anxiety manifested on the part of the agents’, as they struggled to get the Choctaws to emigrate as planned. Others scrambled to persuade unconvinced Indians. In October 1832, two agents met with a group of Choctaws in the hope of persuading them to move west. The meeting was not a success. One of the agents, Lieutenant Lane, ‘became very hostile toward the Indians and told them that if they did not emigrate that he would bring the United States soldiers, and force them to go’. Presumably, Lane hoped that this show of military might would frighten the Choctaws to submission; in reality, his frustrated threats had the opposite effect. Immediately, ‘the Indians broke up and ran to the woods’. The agents managed to capture some of them, including Captain Bob, a prominent Choctaw headman, but even this success was shortlived. Despite being tied up, Captain Bob ‘got loose and made his escape to the woods’. The agents immediately set foot to follow him, but after a long chase, they were forced to concede that both Bob and the rest of the party were lost. The difficult terrain and the Choctaws’ quick-thinking had got the better of the newly-arrived officials.<sup>537</sup>

Acutely aware of their loss, the incident rattled the agents greatly. Failure could have dire consequences: agents’ jobs had a reputation for good salaries, handsome benefits, and social prestige.<sup>538</sup> It was easy enough for officials in Washington to fire one agent and replace them with another, and the men on the front line knew it. When news of Captain Bob’s escape reached William Armstrong, he was furious. Lane and his colleague received a blasting approbation from their superior. The two agents tried to redeem their careers by promising that they would go into the woods and ‘force them (the Indians) to go’. However, Armstrong seems to have acknowledged the impossibility of the pursuit, and ‘on account of...[their] arbitrary

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<sup>536</sup> Col. F.W. Armstrong to Lewis Cass, Secretary of War, 10 March 1833. NARA M234-R185.

<sup>537</sup> William Woodward, deposition to the Choctaw claims commission, Neshoba County, Mississippi, 1844. NARA RG75, e270, box 3.

<sup>538</sup> See Prucha, *The Great Father*.

course', the rookie agents were 'dismissed and sent away'.<sup>539</sup> As agents and their superiors struggled to enact an increasingly difficult removal in an increasingly hostile landscape, the penalties for failure – and the sting of disappointment – grew ever more acute.

A few years later, the second wave of agents dispatched to Mississippi did not do much better. Charged with enrolling all remaining Choctaws, some struggled to simply locate them. When new agent Captain Phillips arrived in Natchez in summer 1836, he could not even find the Choctaws he was charged to liaise with and enrol. Forced to enquire around the unfamiliar area, he eventually heard rumour that 'a great many were abroad, employed in picking cotton and hunting'. We have no way of knowing whether these claims were true, or whether the Choctaws in question had simply chosen to vanish while the threat of enrolment loomed over them. Either way, the ultimate effect was the same. Phillips had no choice but to report that it would be 'expedient to postpone [the negotiations at] council until the middle of February', when they might be 'expected to return'. He could not even guarantee this estimate. The Indian Office had no choice but to leave the area empty-handed, hoping for more success next year.<sup>540</sup>

The next winter, agents' luck did not improve. Many successfully enrolled Choctaws from the main settlements, but they struggled to bring in people living in more isolated communities. Writing to their superiors, agents complained that some Choctaws simply vanished when they arrived. They could do little to locate them, especially when their neighbours insisted that 'little or nothing could be done as to the removal of the Indians whilst the cotton harvest continued'. Again, Choctaw evasion left these agents no choice but to retreat to more temperate climes, postponing their removal for at least another season.<sup>541</sup> As indigenous Southerners scattered and evaded, they maintained the upper hand, even in the face of large-scale ground presence and removal efforts. The War Department and Indian Office experienced near identical problems

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<sup>539</sup> Ibid.

<sup>540</sup> Captain Phillips, to Office of Indian Affairs (exact recipient unknown), 8 June (?) 1836. NARA M234-R185, (only preface survives in reel).

<sup>541</sup> Capt. J.P. Taylor to General Gibson (?), Louisville MS, 28 October 1836. NARA M234-R185.

when facing other groups throughout the South. Attempting to negotiate with various Cherokee leaders in 1836, immediately after the Treaty of New Echota, one Tennessean Colonel informed President Jackson that he was ‘very much alarmed’ to discover that ‘a number of [Cherokee] families have already fled [sic] across the river’ and beyond his reach.<sup>542</sup>

Alongside elusive Indians, agents also complained about the South’s difficult geography and its effect on the task in hand. These frustrations went all the way to the top. ‘Perhaps it may not be recollected’, Major General Winfield Scott reminded the Secretary of War, ‘that the country occupied by the Cherokees is about two hundred miles in length, and one hundred miles in width’. Within this huge area, Scott and his men simply could not find everyone. Clearly, he worried that his superiors in Washington could not understand.<sup>543</sup> After all, when groups could not be located, they could not be removed, especially by outsiders with limited knowledge of every pass, trail, or short cut.

Worse still, the region’s humid climate and uniquely virulent disease environment tormented officials. The unsanitary conditions of removal stockades bred sickness and filth. In August 1838 alone, medical staff at Camp Ross, a stockade near Gunstocker Creek, Tennessee, reported forty-nine deaths and an astounding 464 cases of disease, which ranged from measles, scabies and gonorrhoea, to three distinct types of fever and two of dysentery.<sup>544</sup> Even smaller stockades faced similarly gargantuan proportions of sickness. Just weeks later, the attending physician at another camp managed to cure eighteen Cherokees, but he was forced to report that a further

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<sup>542</sup> A.R. Turk to General A. Jackson, Calhoun TN, 13 June 1836, NARA M234, roll 76, ‘Cherokee Agency East, 1834-1836’ [hereafter NARA M234-R76].

<sup>543</sup> General Winfield Scott to Joel Poinsett, Secretary of War, Head Qtrs Eastern Division, Cherokee Agency, 7 June 1838. NARA M234-R115.

<sup>544</sup> ‘Report of the Disease and Death of the Cherokee Indians at Camp Ross from August 1838, B. Cottle [?], att[endant] phys[ician]’, ‘Internment Camp medical reports’, NARA, RG75, Entry 222: ‘RG75, Indian Removal, Cherokee Removal Records – Miscellaneous Cherokee Removal Records, ca.1820-1854’, box 3.

eleven had died and five remained sick. The stifling August heat, he lamented, made conditions even more unbearable.<sup>545</sup>

Raging epidemics frustrated agents and facilitated fugitives. Time and again, whole parties of indigenous emigrants became sick, unravelling agents' successes. In 1834, one lieutenant complained that 'this is the third season that the cholera has scattered desolation & dismay...and during its malignant influence no bodies of people have been able to move in any considerable numbers for any length of time'.<sup>546</sup> By the time his party of Cherokees did move westwards, it had been decimated. In the months that passed, healthy Cherokees also had plenty of opportunities to escape from their captors into mountains, ravines, and woods.<sup>547</sup>

Many agents and soldiers also became ill. Cholera ravaged the stockades. A disease of poor sanitation, cholera is caused by the bacteria *vibrio cholerae*, and mainly spread by drinking water or eating food contaminated by human faeces. Once an epidemic breaks out, the disease is especially difficult to contain as victims do not gain immunity but instead remain susceptible to contract it again and again.<sup>548</sup> Within the squalid stockades, the virus easily spread from captive to captor; unsurprising considering that in summer 1838 attending physicians recorded one camp of emigrant Cherokees where over 100 suffered from 'disentry' [sic] and another 65 from 'diarrhea [sic]' in a single month.<sup>549</sup> As outsiders, many agents were also especially susceptible to diseases like malaria, which passed over seasoned locals.<sup>550</sup> Confined to their beds, agents could barely notice evading individuals, let alone track them. At their most extreme, these afflictions

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<sup>545</sup> 'Monthly report of the sick Cherokee Indians on the Eastern Fork of Haisso (?) Creek, during the month of August 1838', 'Internment Camp Medical reports', NARA RG75, e222, box 3.

<sup>546</sup> Lieutenant Harris to Gibson, 5 June 1834, Cit: Foreman, *Indian Removal*, 252.

<sup>547</sup> Foreman, *Indian Removal*, 257-259.

<sup>548</sup> World Health Organisation, 'Cholera Vaccines: WHO Position Paper', *Weekly Epidemiological Record* 13 (2010), 118.

<sup>549</sup> 'Second Report of the [illegible] Emigrating Cherokee Indians in the Second Encampment on the Eastern Fork of Mous (?) Creek for the month of August 1838', 'Internment Camps: Medical Reports', NARA RG75, e222, box 3.

<sup>550</sup> The Deep South especially had a reputation for diseases like yellow fever and malaria, deadly to outsiders lacking immunity. The Gulf was especially notorious for regular epidemics of yellow fever and malaria: Jo Ann Carrigan, *The Saffron Scourge: A History of Yellow Fever in Louisiana, 1796-1905* (Lafayette: 1994); Kathryn Olivarius, 'Necropolis: Yellow Fever, Immunity, and Capitalism in the Deep South, 1800-1860' (DPhil Thesis: Oxford University, 2017).

halted agents' pursuit permanently. In September 1831, longstanding Mississippi Choctaw agent William Ward was frustrated to find that a new recruit, William Douglass, 'soon after his arrival...was taken very sick'. Ward noted that he went to great lengths, organising Douglass 'a carriage to Columbus where he could get medical aid', but 'he only survived two days [and]...died yesterday'. Fresh from DC, Douglass lacked the critical immunity that would ensure his survival, let alone allow him to complete his task. Rather than sympathy, Ward's letter expressed annoyance at the delays the death had caused and the difficulties of finding a replacement.<sup>551</sup>

Even the highest-ranking agents succumbed. In early 1837, Georgia politician Wilson Lumpkin complained to the Office of Indian Affairs that its agent, Benjamin Currey, had promptly died upon arrival. Currey's death was an inglorious end to a long removal career. In 1831, Lewis Cass had appointed Currey, a Tennessean, to serve as superintendent of Cherokee removal. Currey persevered in his negotiations with Cherokee leaders, but ultimately he had only managed to aggravate local Cherokees with his lack of knowledge and understanding of them. Although Cass had charged him with implementing removal, he could not ensure Currey's success, nor immunise him to the stress of his task, the strains of age, or to unfamiliar pathogens.<sup>552</sup> Currey battled these challenges to oversee successful emigrations, but by 1837 they had ended his life. Even worse for the Indian Office, they had also significantly impeded the cause of removal. As Lumpkin lamented, 'but for the death and affliction of Major Curry [sic], several thousand of the Cherokees would by this time be on their journey, or already in their new homes'.<sup>553</sup> As

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<sup>551</sup> William Ward to Lewis Cass, 10 September 1831, NARA M234-R185.

<sup>552</sup> For more on Benjamin Curry (sometimes spelled 'Currey') and his role in Removal, see: Kenneth L. Valliere, 'Benjamin Currey, Tennessean among the Cherokees: A Study of the Removal Policy of Andrew Jackson, Part 1', *Tennessee Historical Quarterly* 41 (1982), 140-158; Kenneth L. Valliere, 'Benjamin Currey, Tennessean among the Cherokees: A Study of the Removal Policy of Andrew Jackson, Part 2', *Tennessee Historical Quarterly* 41 (1982), 239-256.

<sup>553</sup> Wilson Lumpkin to C.A. Harris, Commissioner of Indian Affairs, New Echota, Georgia, 23 June (?) 1837. NARA M234-R114. See also: K.M. Hargrove (?) to Dr. Lillybridge, New Echota, July (?) 1837, 'physicians', in NARA RG75, e222, box 3. Currey's death also sparked an investigation into his attending physician, Dr Lillybridge, who was soon accused of being an alcoholic. See 'physicians', NARA RG75, e222, box 3.

indigenous groups took advantage of these weaknesses, they held off agents' attempts to enrol them. If agents lost track, or became sick, they lost the ability to even see fugitive groups at all. Contextualised within the wider removal effort, these groups were a blip; as wider histories of removal show, agents managed to enrol large numbers of Choctaws, Cherokees, Creeks and others during this period.<sup>554</sup> However, even if agents generally succeeded in their administrative efforts, the spectral Indians that they could not capture or enrol continued to frustrate them. It is likely that agents did not report every frustration to their superiors, but their correspondence suggests that when agents could see that they had been hoodwinked, they felt it bitterly. As outsiders coping with unfamiliar polities, foreign languages, and alien places, their task was hard enough. It became even harder when indigenous parties disappeared off into inaccessible or isolated areas, where outsiders like themselves simply could not follow.

### High Removal

In the early stages of removal, agents struggled even to glimpse fugitive groups, but as the decade wore on, the balance shifted. By the mid-1830s, agents and Americans grew increasingly impatient with slow progress. Locally, white settlers across the South complained vocally about the large numbers of Cherokees, Choctaws, Creeks, Chickasaws, and Seminoles still visibly present on lands they claimed as their own.<sup>555</sup> Seeking to prevent this cauldron of tensions from erupting into new Indian wars, Washington officials planned new and decisive waves of action. Offices changed hands at the top: Elbert Herring and Lewis Cass left their posts. Their enthusiastic replacements, Carey A. Harris, the new Commissioner of Indian Affairs, and Joel

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<sup>554</sup> See note 2, above.

<sup>555</sup> See, eg: J.F.W. Claiborne to C.A. Harris, Commissioner of Indian Affairs, NARA M234-R185. Claiborne includes a petition from the Mississippi legislature urging the OIA to swiftly complete the removal process.

Poinsett, the new Secretary of War, began commissioning large-scale military operations to assist with removal efforts, alongside the existing networks of enrolling agents.<sup>556</sup>

This context changed the shape of removal, especially in Georgia and Alabama against the Creeks and Cherokees. Alongside agents, troops became the front line. From 1838 on, military removal hit the Cherokees especially hard, as federal officials hoped to pacify Georgia with a quick and complete resolution to earlier delays.<sup>557</sup> Most importantly, this large-scale military presence had huge implications for officials' ability both to see and to apprehend would-be evasive groups. These shifts had little impact on groups who had already evaded, but they had enormous implications for indigenous Southerners seeking to turn to evasive strategies for the first time.

In 1837, officials moved to finalise Creek removal. In the wake of growing Creek violence and resistance now known to historians as the Second Creek War, newly-arrived soldiers contained Creek parties in stockades in Georgia and Alabama.<sup>558</sup> Officials dared to hope that they had finally pinned them down. They were frustrated to discover the Creeks were not so certain. Groups scattered and tried to flee; in earlier years, soldiers might not even have noticed they had gone, but in a country now saturated with officials, the fugitives struggled to break free. Agents pursued them with guns and horses. Many escapees found that they could not run fast or far enough. Soldiers rounded up hundreds of Creeks across Muscogee country. Sometimes federal frustrations erupted into large-scale acts of violence. In May 1837, a group of soldiers stumbled across a group of fugitive Creeks hiding in the swamps near Alaqua Creek in Florida. Almost without a second thought, the soldiers massacred the inhabitants. Eyewitness accounts recalled with horror that 'poor women with children upon their backs...were inhumanly butchered', and

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<sup>556</sup> High Removal is my own term for these events, but this sense of increased efforts to finalise removal has been noted by other historians, especially regarding Cherokee removal. See, eg, Foreman, *Indian Removal*, esp. chs22-24.

<sup>557</sup> See Foreman, *Indian Removal*, chs22-24.

<sup>558</sup> For 'Second Creek War', see: Ellis, *The Second Creek War*; Haveman, *Rivers of Sand*, 234-269.

as ‘the cries of children were distinctly heard’, ‘women’s ears were cut off, for the purpose of obtaining their Ear rings...and in several instances, scalp[s]’.<sup>559</sup>

Most actions were nowhere near as violent; nonetheless, by the end of 1837, army officers caught up with several hundred Creeks in total around the edges of Georgia and Alabama. One recalled how he located a small band heading for high terrain, ‘in a most destitute and wretched condition’. Others fared worse: one soldier noticed how ‘many of those captured by Colonel Byrd had subsisted for several days on the sap of the timber’.<sup>560</sup> Officials’ pity for the Creeks was mixed with relief at their own success. It had been long enough coming. They gladly reported that they had assembled the Creeks into emigrating parties, ready for their westward journey down the Tennessee, Ohio, and Mississippi Rivers.<sup>561</sup>

In Cherokee country, the story was similar. The Indian Office had originally fixed 23 May 1838 as the deadline for completing the polity’s removal, but only around two-thousand Cherokees had actually emigrated by this point.<sup>562</sup> In frustration, Washington DC sought to consolidate previous efforts with a final threat of force. In early 1838, the Indian Office dispatched troops to enrol Cherokees from across the Nation under the command of Major General Winfield Scott. They expected a fight; several years earlier, generals had flagged the Cherokees living in the mountainous parts of the Nation as the ‘most backward and recalcitrant of their tribe’, who were most likely to cause problems by resisting emigration.<sup>563</sup> Upon arrival in Georgia in May, Scott warned his troops of these risks.<sup>564</sup> He issued a proclamation to the Cherokees stating that ‘before another [full moon] shall have passed away, every man, woman, and child...must be in motion to join their brethren in the far west’. ‘Assistance and escape [are] alike hopeless’, he

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<sup>559</sup> Reynolds to Wilson, 30 March 1837, cit. Haveman, *Rivers of Sand*, 242.

<sup>560</sup> *ANC*, volume IV: 1837, 301.

<sup>561</sup> *Ibid.*

<sup>562</sup> Foreman, *Indian Removal*, 286.

<sup>563</sup> General John Wool to Maj. General A. Macomb, 12 October 1836, *Sen. Doc.* 120 (Serial 315), 48.

<sup>564</sup> General Winfield Scott, US Army, ‘Orders No.25, Head Quarters, Eastern Division, Cherokee Agency, TN, May 18, 1838’, Edward E. Ayer Manuscript Collection, NL-C.

reminded, since ‘my troops already occupy many positions...and thousands and thousands are approaching from every quarter’. Confident in the state’s ironclad military and administrative capacities, Scott left the Cherokees an ultimatum: ‘Will you, then, by resistance compel us to resort to arms? God forbid! Or will you by flight seek to hide yourself in mountains and forests and thus oblige us to hunt you down?’<sup>565</sup>

Scott meant the question to be rhetorical, but he and his men soon struggled as Cherokees took his suggestion literally. To officials’ great frustration, many small groups turned to impassable environments from Georgia through to North Carolina. In June 1838, Scott informed the Superintendent of Cherokee emigration, that whilst virtually ‘all the Georgia Indians...will...be in our hands’ in a matter of days, agents were still struggling to get their hands on ‘a few families and fugitives in the mountains’.<sup>566</sup> In the same month, another general reported identical problems in North Carolina, where ‘the whole number of Indians which have been collected at the several posts...is something more than 3000 [yet] A few are still in hiding in the recesses of the mountains’.<sup>567</sup> These actions were especially visible to officials due to their sheer volume: faced with a choice between flight and gunpoint removal, many Cherokees tried to flee. Officials missed most of them, but agents and soldiers fumed at the volume of runaways they did see.

As fugitive Cherokees continued to slip through their hands, individual officials decided to take action. Soldiers warned each other about possible flight and dedicated time to preventing any further runaways. In November 1838, Lieutenant Graham experienced a significant delay to his route when a party of around ‘fifty Indians (men, women + children)’ ‘broke off from a party of emigrants, in order to return to their native mountains in No. Carolina’. Prepared in advance by others’ warnings, Lieutenant Graham managed to halt some escape attempts. Patrolling around

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<sup>565</sup> Major General Winfield Scott, Proclamation to the Cherokees, 10<sup>th</sup> May 1838. Printed handbill in Dudley Papers, volume 10 (1838: 3 April-21 May), Governors’ Papers, State Series LXXXIV, NCDAH.

<sup>566</sup> General Winfield Scott to General N. Smith, Superintendent Cherokee Emigration, Head Quarters Eastern Division, Cherokee Agency, 6 June 1838. NARA M234-R115.

<sup>567</sup> Brig. General Abm. Eustis to Lt. Col. Worth, Chief of Staff, Fort Butler, 24 June 1838. NARA M234-R115.

the area 'with four men' on horseback, he managed to recapture some 'Twenty five of the fugitives', whom he 'brought to Fort Cass'. Officials revelled in the success. Writing back to Joel Poinsett, the Secretary of War, Scott explicitly praised Graham for his 'vigor and intelligence' in overcoming the obstacles of local terrain to apprehend the escapees.<sup>568</sup> For long-frustrated agents, worried about their jobs and their budgets, not to mention their own fragile health, this new-found ability to halt escapees was a source of cautiously guarded confidence. Like Scott, many were glad to have good news to report to their superiors. When officials received their letters in the offices of Washington, agents' enthusiasm probably gave them reason to hope too. It might just have seemed as if the tide of removal was finally going to turn in the government's favour.

#### "Ending" Removal

As agents like Graham caught up with runaway Cherokees, they envisaged the end of removal in sight, and wrote boastingly to their superiors of their success. However, not all of this success was as clear-cut a victory as their letters might have suggested. Instead, growing weary of futile chases and of the slow progress of removal itself, some officials took the initiative to create new and unauthorized solutions to these problems. In 1838-1839, under their own authority, individual agents and soldiers chose to overlook runaway groups and to let them stay in their inaccessible locations.

In June 1838, Winfield Scott informed Joel Poinsett that the Cherokee 'Indian lands' in Georgia 'were, by the state, long since surveyed, distributed, and granted', but had yet to be formally conveyed to Anglo-American 'grantees' due to delays in expelling the remaining Cherokees from

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<sup>568</sup> Incident recounted in report of Winfield Scott. Maj. Gen. Winfield Scott to Joel Poinsett, Secretary of War, Athens, Tennessee, 6 November 1838. NARA M234-R115.

them. Scott reported that these grantees were growing increasingly impatient, and that without ‘troops were at hand to remove the Indians promptly and universally’, things would descend to war as Georgians scrambled to claim ex-indigenous lands by force. In seeking to ensure removal ‘without one act of violence’, Scott told Poinsett that he had made the decision to permit groups who had evaded officials’ capture in the mountains to remain. As a result, ‘in a week...every grantee will be quietly in possession of his land; for at the end of that time, the few Georgia Indians, not in our hands, will have fled to mountainous places’.<sup>569</sup> Faced with the pressures of finalising removal before ground-level violence could break out, Scott decided that chasing Cherokees through treacherous mountains or remote areas would simply take too much effort and money. Even if he knew roughly where they had headed, officials did not always have the skills or the desire to chase them. Besides, he concluded, the ‘mountainous places’ where they had settled were ‘not granted [to] or not wanted’ by Anglo-American settlers.<sup>570</sup>

Elsewhere, lower-ranking officials came to similar conclusions. In October 1838, Lieutenant C.H. Larned reported from his post in Tennessee that ‘any further pursuit [of] the fugitives within the limits of our nation’ would be ‘perfectly impossible’, since ‘the whole region to which these Indians...confine themselves is...rugged and impracticable mountains with scarcely any available land’, or ‘valleys, which would more properly be termed ravines’. Since all of these terrains were ‘almost impenetrable to anything but a deer or an Indian’, he concluded that it would be better to simply leave evading Cherokees where they were and to cease trying to remove them. After all, ‘if...the small number of Indians who now occupy it are left undisturbed, the worst injury which can arise will be the loss of a few hogs and a little corn to the whites in the vicinity’.<sup>571</sup> Besides, Larned concluded, the mountains’ ‘only value to the white

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<sup>569</sup> Maj. Gen. Winfield Scott to Joel Poinsett, Secretary of War, Head Qtrs Eastern Division, Cherokee Agency, 7 June 1838. NARA M234-R115.

<sup>570</sup> Ibid. Historian Charlotte Neely has also argued that Cherokees who turned to mountainous areas had more success than others in cotton-rich areas, because ‘whites...did not want those marginal lands of western NC nearly so much as others wanted the valuable lands of north Georgia in 1838’. Neely, ‘Acculturation and Persistence’, 157-8.

<sup>571</sup> C.H. Larned to Maj. Gen. Winfield Scott, Fort Cass, Tennessee, 23 October 1838. NARA M234-R115.

settlers...is as a range for cattle and the country must become much more...inhabited before it will [even] be used for that'.<sup>572</sup> After years of chasing Cherokees through hostile landscapes, Larned was willing to let a few disappear, especially if it meant he could finish his posting sooner. Reporting back to DC, Larned took pains to stress the small size and strategic insignificance of the groups he had left. 'The whole number of fugitives now in the limits of the nation', he wrote, 'does not exceed one hundred, men, women, and children', or perhaps 'two hundred at the very largest estimate'. Since most were gathered in small bands of individuals, he was willing to take his chances that they would 'injure no-one'.<sup>573</sup> Larned was not alone. Officials seem to have particularly overlooked groups that they considered small and insignificant. Deeper in the Appalachians, a pair of soldiers encountered Cherokee hermit Sa-taw-ha (Hog Bite), who resolutely refused to leave his 'log hut among the mountains'. After lengthy negotiations in which Sa-taw-ha took out his gun and warned the soldiers that 'he would certainly kill them', they decided that 'the old man should be left alone'.<sup>574</sup> In difficult conditions, they concluded that such a tiny removal was not worth the effort.

For these agents on the ground, it seems that the decision to let a handful of evaders off did not appear out of line with their wider visions of removal and its aims, especially in 1838 and 1839 when they were at their most exhausted. Agents who refused to pursue tiny groups seem to have believed that their presence would not detract from the overall aim of the removal process. In line with wider justifications for removal, agents appear to have assumed that these groups would "vanish" if left among American civilisation. Larned even suggested that these groups were so small that they could 'safely be disregarded', as they would likely 'be brought in' in later

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<sup>572</sup> Ibid.

<sup>573</sup> Ibid.

<sup>574</sup> Lanman, *Letters from the Alleghany Mountains*, 79.

removals, 'all be found influenced by one or other of the causes of emigration', or simply vanish anyhow.<sup>575</sup>

Under increasing pressure from Washington DC and local state governments, these agents did what they could to draw a line under an already decade-long process in the least violent way possible. If they had any doubts about these groups' potential to jeopardise their complete removal process, growing pressure from their superiors may well have silenced them. For these agents, removal seemed complete enough. On their own initiatives, they took the decision to finalise removal by tacitly choosing to overlook the information they had gleaned. After all, what would be the use of expending precious resources chasing groups who weren't large, threatening, or even really visible? Especially when that chase would be through difficult, cold, and impenetrable mountain terrain.

#### The Limits of Agents' Reach

As 1839 turned to 1840, soldiers like Larned might have congratulated themselves on their ability to solve these dilemmas; however, this did not signal total success. The military prowess of High Removal had undoubtedly apprehended more runaways, but officials' stories of success masked ongoing indigenous escapes, some of which remained highly visible to officials.

In fact, even some of the best and most experienced soldiers still struggled to stop the highest-profile runaways in these years. In November 1838, a party of Cherokees on route to Indian Territory killed the federal soldiers who had been marshalling them, stole their horses, and fled into the Appalachians. Resulting in the death of soldiers and the obvious disappearance of an emigrating party, this incident could not have been more visible to federal officials. From North Carolina to Washington DC, federal representatives expressed outrage, urging that no expense

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<sup>575</sup> Larned to Scott, 23 October 1838.

be spared in apprehending the fugitives.<sup>576</sup> Historians have written and rewritten many stories about this famous episode and its leader Tsali; indeed, the first chapter of this dissertation explores the episode's significance to the Qualla Cherokee reserves' struggle to gain legal exemption from removal.<sup>577</sup> However, the degree to which federal representatives struggled to apprehend the perpetrators tells us much about the 'frictions' which difficult or unfamiliar terrain could cause for their sight and tracking ability.<sup>578</sup>

Once Tsali and his band fled the scene and disappeared off into the Appalachians, federal officials struggled to find them, even with all their numerical, military, and technical superiority. In the wake of the incident, Major General Winfield Scott reported to the Secretary of War, Joel Poinsett. Scott noted that although he had sent an 'expedition' out to apprehend 'the outlaws', 'The country to be searched...is very extensive, + in the greater part extremely difficult to traverse both for horse + foot'. Since the area 'abound[ed] in' obstacles such as 'wild beef cattle + hogs', Scott envisaged that the expedition 'may be out about four weeks' - long enough to 'regret(fully)...delay so much the longer' troop movements to remove other polities elsewhere in the South or Northeast.<sup>579</sup> Even if officials sometimes managed to see them, many evasive communities nonetheless maintained the skills to vanish like quicksilver as they neared their grasp.

Growing desperate, Scott dispatched some of the best men he had to undertake this mission. In mid-November, federal fortunes finally changed, when Colonel Foster, Scott's man on the ground, reported that Tsali and his party had finally been captured. The passive tense hinted that the capture not turn out exactly as officials had hoped: officials chased down the band, but the story was not quite a federal victory. As Foster admitted to Scott, this success came only

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<sup>576</sup> See: Finger, *Eastern Band*.

<sup>577</sup> See chapter one.

<sup>578</sup> For 'Frictions of terrain' see: Scott, *Art of Not Being Governed*, 47.

<sup>579</sup> Maj. Gen. Winfield Scott to Joel Poinsett, Secretary of War, Athens, Tennessee, 6 November 1838. NARA M234-R115.

‘through the exertions of...the O. co. ne lufty [sic: Oconaluftee] Indians, and Euchella’s band’ of Cherokees.<sup>580</sup> Scott had thrown his best men at the task, but they had not done enough.

Ultimately, the hard terrain and fugitive indigenous Southerners had beaten them again. It had taken other Cherokees, with intimate knowledge of the Appalachians, to successfully capture Tsali and his band.

In Tsali’s capture, Scott and his colleagues received an uncomfortable lesson about a broader but often hidden truth: within the uniquely difficult and unfamiliar geography of the South, indigenous Southerners could still exploit their local knowledge to gain the upper hand. Officials would not have welcomed this realisation at the best of times, but it must have struck especially hard against their self-perceived success at apprehending last-minute runaways in this period of High Removal. Although agents would not have willingly admitted it to their superiors in DC, evasive groups exposed the limits of state power by turning the region into an alternative geography that did not comply with American rules. By finding places it could not reach, indigenous Southerners could escape state power, even when extended to its biggest military and administrative capacities. Without turning to other indigenous fugitive groups themselves, officials could barely hope to overcome these gaping holes in their reach.

### Facing Florida

Several hundred miles South, agents in Florida came to similar conclusions. Removal was a very different process here: unlike the other four of the Five Tribes, the Seminoles had been at war with the United States on and off since the turn of the century. In the mid-1830s, these conflicts had merged with removal aims, as Washington policymakers decided not only to defeat the

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<sup>580</sup> Colonel Foster to Scott, 19 November 1838, cit. Finger, *Eastern Band*, p.25. These other NC Cherokees’ decision to help officials round up Tsali and his band was central to their own distinct strategies to negotiate their way around Removal. See ch3 for an explicit discussion of these. See also: Finger, *Eastern Band*, 21-29.

Seminoles but also to expel them to Indian Territory alongside their other eastern indigenous neighbours. Overlapping with High Removal, this campaign had turned into the Second Seminole War.<sup>581</sup>

Despite their ambitious aims, soldiers struggled as soon as they hit the ground in 1836. Although federal officials had been intermittently stationed in Florida for decades, they simply could not compete with the Seminoles' mastery of terrain. In 1839, officers at Fort Davenport managed to capture 'an Indian Negro' (a black Seminole) who 'had given himself up [and]...reported that he had just deserted a small party of Indians who were encamped in the Ok-al-wakee swamp, about four or five miles from that post'. The Captain in charge of the Fort 'immediately dispatched a small party of dragoons under the command of Lieut. Hardee, accompanied by Lt. Hayne'. In hot pursuit, they were 'to try if possible to capture the Indians'.<sup>582</sup> Things did not go well for the two lieutenants. Riding on horseback, they got lost as they struggled to navigate this difficult terrain in almost Caribbean heat. 'After riding around about four miles', they eventually 'with difficulty induced...the Indian Negro...[to] go into the swamp', and following him, 'they advanced about a mile into the morass'. As a party of unfamiliar men, dressed in unsuitable military uniforms and accompanied by horses, their incursion quickly turned into a disaster. Owing to 'the water, mud, and thick growth of vines and small trees', their attempts to wade even this short distance 'required about an hour'.<sup>583</sup>

Once in, the situation did not improve. They reached a 'small stream, called Hatchee-luste, which runs through the middle of the swamp, and was there about four feet deep'. Again, this encounter delayed the party, since 'it required some time to get across this stream'. Worse still, their tussle with this jungle of water and weeds created a clamour. Later, the officers defensively

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<sup>581</sup> Foreman, *Indian Removal*.

<sup>582</sup> Dispatch from Fort Cummings, relayed in 'A Subaltern', 'Florida War No.4', Tampa, 26 Feb 1839, *ANC*, volume VIII: 1842, 220.

<sup>583</sup> *Ibid.*

reminded their superiors, 'it is impossible not to make [a lot of noise] when crossing a stream of this kind'.<sup>584</sup> Impossible or not, their crashing entry alerted the Seminole camp to their presence. The Seminoles 'took the alarm, and plunged into a thick growth of palmettos and small trees immediately beyond their camp'. The dragoons tried their best to follow, splashing through the camp in a volley of mud and gunfire, but they were simply too late. The Seminoles had vanished. Lieutenants Hardee and Hayne were left only with 'three pots of compe and...palmetto cabbage boiling on the fire' and 'a rifle, bows and arrows...blankets, skins &c'. The remnants of their meal were the only signs that these ghost-like evaders had ever been there at all.<sup>585</sup>

As with Tsali, these troubles alerted officials on the ground to uncomfortable truths. Weeks later, officials had become so frustrated that they had even hired dogs to round up fugitive Seminoles. No ordinary animals, the thirty-three bloodhounds were renowned for their skill in tracking fugitive slaves on Caribbean plantations. Federal agents had them shipped direct from Cuba. Losing confidence in their own ability to locate every indigenous escapee, officials showed the reality of their struggle on the ground. Unable to chase Seminoles in their own domains, they banked on the hope that the animals' rumoured tracking prowess could compensate for their own failures.<sup>586</sup> It seems that their gamble did not pay off; since federal officials received no report of their success, it is likely that the dogs were as disadvantaged as horses in the morasses of Florida's swamps.

### Victory Enough

By 1840, most federal officials saw removal as coming to an end. Both in Washington DC and on the ground, officials lamented the ongoing problems with the Seminoles in Florida and a few

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<sup>584</sup> Ibid.

<sup>585</sup> Ibid.

<sup>586</sup> Foreman, *Indian Removal*, 374.

stragglers in the Northeast, but generally viewed the process as mainly complete. Official dispatches shifted their focus from the South to Indian Territory. With just a few exceptions, agents and statesmen felt confident that they had more or less achieved sovereignty over the South and successfully moved tens of thousands of indigenous people west of the Mississippi River. Even those in the Indian Office began to turn their eyes westward to the new battles, new lands, and new prizes that lay just over the horizon in places like Texas, Mexico, and beyond. However, agents' dispatches might have injected a note of discontent into the Indian Office's confident outlook. Alongside notes of triumph at the successful emigration of tens of thousands of indigenous Southerners, the Commissioner of Indian Affairs and other Washington bureaucrats still had to read accounts of how people like Scott or Hardee had struggled in Appalachia or Florida. If they read carefully enough, they might also have noticed agents' admissions that they had let an indeterminate number of people stay where they were. However, these notes of concern did not seem to particularly disturb them. Received in a panoptic vision spanning hundreds of polities and every agency from east to west, it seems the highest Indian Office officials hardly noticed these notes of disquiet. In his 1839 annual report to Congress, Commissioner of Indian Affairs T. Hartley Crawford focused almost exclusively on events in Indian Territory and the west, or the ongoing progress of removal in the northeast. As far as the federal government was concerned, save a few loose ends, all was quiet in the South.<sup>587</sup>

In situ, agents' worries were more palpable. Without the weeks of travel to Washington mediating their view, some officials had sensed that removal was not as complete as they had hoped or believed. Many expressed worries that they could not place a precise figure on the scale of evasion as they prepared to leave their stations in the late 1830s. In mid-1838, one exasperated agent complained to his superiors that although he had 'continued enrolling' indigenous

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<sup>587</sup> T. Hartley Crawford to Congress, 'Report on Indian Affairs: 1839', United States Office of Indian Affairs, *Annual Report of the Commissioner of Indian Affairs, for the years 1826-1839* (Washington: Government Printing Office, 1826-1839).

Southerners, 'and will endeavour to get a correct roll as is possible to do, I find it a very difficult job as they are so constantly coming in and moving about from one place to another'.<sup>588</sup> Even as they chased fugitives, or permitted select numbers to stay, officials remained aware of the imperfect nature of their own control. However, many of their postings were coming to an end. As they left the South for new tasks in the west, most agents or soldiers paid no more heed to these niggling concerns. Already, they had seen their efforts transform the South: they had seen the best part of 65,000 indigenous Southerners move westward and a new vista of cotton, enclosure, and white and black faces take their places.<sup>589</sup>

### Blind Spots

So far, we have focused on the world as statesmen saw it. However, there are significant limits to the worlds that following agents' accounts can allow us to see. Beyond the people they saw and chased, there were many evading groups who fled so effectively that officials could not even know they had missed them. Agents could not record what they did not know; however, we can see that this was the case by tracing silences in the historical record. By comparing what fragmentary shards of evidence suggest indigenous groups did with the records that state officials wrote, we can see a number of occasions where indigenous strategies became so effective that state officials did not even notice them at all.

Just as there were blind spots in federal plans from the start, many gaps remained in officials' sight throughout the 1830s. As the Indian Office dispatched agents and troops in the 1830s, federal focus lay on the Five Tribes. As a result, for all the effectiveness of its administrative prowess, the patterns of state reach could only follow this limited and oversimplified geography.

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<sup>588</sup> Captain John Page to C.A. Harris, Commissioner of Indian Affairs, Calhoun, Tennessee, 13 July 1838. NARA M234-R115.

<sup>589</sup> For changes in the South in the wake of removal, see, eg: Johnson, *River of Dark Dreams*.

In Washington DC, officials only dispatched agents to areas known to be these groups' main settlements. Charged to focus on the Cherokee, Creek, Choctaw, Chickasaw, and eventually Seminole heartlands earmarked as the main focus of removal efforts, officials missed other key areas of the region and overlooked the indigenous groups who fled to them.

Devoid of agents, large swathes of land lay unpoliced, especially to the westernmost parts of the region around Louisiana and along the Gulf. As we have seen, many groups turned to these labyrinthine watery landscapes, but federal officials were essentially oblivious to their presence once they crossed beyond these boundaries and out of their jurisdiction. As a result, most areas of Louisiana escaped the intensive scrutiny of on the ground agents. The Office of Indian Affairs does not appear to have made any attempt to trace fugitive Choctaws or others into Louisiana; it did not even receive any correspondence alerting them to the presence of enduring Indians in the area during the 1830s.<sup>590</sup> More often than not, federal agents were simply unaware of the presence of indigenous groups who sought locations beyond the immediate parameters of federal sight or removal blueprints. Indigenous Southerners who successfully exploited these blind spots remained in the South.

Even within visible places, swamps especially confounded officials. Although officials were well aware of their inability to prevent the Seminoles' flight into the Everglades, officials almost entirely missed groups who turned to swamps elsewhere. Throughout the removal efforts of the 1830s, the Office of Indian Affairs' correspondence makes only a handful of references to swamps outside of Florida. In their reports, agents usually invoked swampy terrain when complaining about the overall environmental and geographical difficulties they faced, rather than highlighting swamps as locations where indigenous Southerners could potentially escape their grasp.<sup>591</sup> En route to Indian Territory, several of the agents charged with transporting Creek

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<sup>590</sup> My extensive reading of federal documents reveals no such reference. Between 1824 and 1840, no agent was formally dispatched to Louisiana by the OIA.

<sup>591</sup> See, eg, Col. F.W. Armstrong to Lewis Cass, Secretary of War, 10 March 1833. NARA M234-R185.

emigrating parties westward occasionally noted that the Creeks chose to travel overground, and that those who chose to travel through swamps often came back slower and smaller than those who did not. The swamp detachments, one agent lamented, ‘were determined to take their time in coming’, and ‘evinced the most hostile feelings and cautioned the white men to keep away from them’. Yet even if they noticed this hostility in these places, agents still had little choice but to admit they were beaten: one Lieutenant Sprague was forced to conclude to his superior that ‘neither the Agents or myself had any means by which we could force them into proper measures’.<sup>592</sup> Elsewhere across the South, even these glimpses would have been exceptional. More often than not, agents simply missed most indigenous attempts to use swamps against them east of the Mississippi. As a result, indigenous Southerners who retreated into swamps in places like Alabama or Mississippi did so almost totally out of agents’ purview. People like Lincecum’s Alabama Choctaws or the Bay Indians never figured on the Indian Office’s radar in the 1820s and 30s.<sup>593</sup>

Finally, for every runaway that officials spotted or managed to pin down, there were many others who slipped away undetected, even in areas surrounded by agents. Many of the fragments outlined in the first half of this chapter cannot be traced into state sources simply because officials could not follow communities who fled beyond their sight. We can see them because other observers recorded their lives, or they survived long enough to pass their stories on to their descendants. Within the shadowy realms beyond state sight, we cannot know how many others also fled into terrain, but do not appear in even these fragmentary mentions.

By strategically retreating into swamps, down rivers, and up mountains, many small groups created fugitive places that officials simply could not survey, let alone control or clear out.

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<sup>592</sup> See Haveman, *Rivers of Sand*, 223-225. Haveman also concludes that ‘The Creeks’ decision to walk through the swamp was about more than opposition to water travel; it was about freedom from the presence of whites’ (225).

<sup>593</sup> I have found no reference to either of these groups (or any groups that could plausibly be them) in the Indian Office’s surviving correspondence for this decade.

Agents had some insights into evasive strategies but, more often than not, they did not realise they left behind a wider world of fugitive groups, hidden in places just beyond their reach. As the 1830s gave way to the 1840s, many agents and officials appeared to have given up on these people, or simply to have missed them altogether.

## Chapter Four:

### Through State Sight:

# Illegibility Tactics and Passing out of Removal

Evasion was not the only way to become ghost-like. Throughout the South, indigenous Southerners found another way to make themselves indecipherable to agents: a strategy that this chapter terms “illegibility” tactics. Unlike evasive groups, they did not seek to physically distance themselves from officials but, instead, to obscure their identities in order to hide in plain sight. Some of these actions involved claiming a different racial identity – a phenomenon scholars call passing – but illegibility was much broader than claiming whiteness. Facing removal, indigenous Southerners devised a whole host of tactics to escape. Some sought to confound agents by speaking English; others sought out racially ambiguous communities or urban spaces and simply blended into them. By positioning themselves in places where agents did not expect to find them, thousands of indigenous Southerners managed to escape deportation. Unlike traditional acts of “passing”, many of the people in this chapter sought less to assume the benefits or position that a particular racial identity could afford, than to simply render their indianness and their eligibility for removal illegible to outsiders.

While this broadened concept of illegibility is unique to this dissertation, the phenomenon of racial passing looms large throughout Southern history. For antebellum slaveholders, passing served as a constant reminder about the mutability of their constructions of race and the constant spectre of their destruction. Historians have paid much attention to the concept, though the majority of this focus has been black-and-white, centred on histories of slaves passing into freedom and African-Americans passing out of Jim Crow.<sup>594</sup> Some accounts have explored

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<sup>594</sup> See, eg: Allyson Hobbs, *A Chosen Exile: A History of Racial Passing in American Life* (Cambridge: Harvard University Press, 2014); Gayle Wald, *Crossing the Line: Racial Passing in twentieth-century U.S. Literature and Culture* (Durham: Duke

the ways that indigenous people across the Americas assumed strategic racial identities, or white citizens bucked the boundaries of race to ‘play Indian’.<sup>595</sup> But within this broad focus, scholars have almost totally overlooked the links between passing and (non-)removal. Several tribal histories have included brief sentences suggesting that indigenous Southerners passed as white to avoid removal but attention has been scant.<sup>596</sup> Moreover, many other routes to illegibility have been almost totally ignored. Scholars have simply not reckoned with the ways that indigenous Southerners sought to employ different racial identities to deliberately divert agents’ tactics. As with evasion, these strategies pale into the footnotes of stories centred on the broader process of removal, aided by the enduring assumption that the alternative option was assimilation, rather than a strategic manipulation of indigenous identities.

Despite the lack of attention they have received, these strategies were significant. Faced with the threat of eviction, hundreds of indigenous Southerners sought to make themselves illegible to

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University Press, 2000); Daniel J. Sharfstein, *The Invisible Line: Three American Families and the Secret Journey from Black to White* (New York: Penguin, 2011); Marcia Alesan Dawkins, *Clearly Invisible: Racial Passing and the Color of Cultural Identity* (Waco, TX: Baylor University Press, 2012). Recently, scholars have paid more attention to people who passed in other ways, such as from white to black identities, or from black to Hispanic. See: Baz Dreisinger, *Near Black: White-to-Black Passing in American Culture* (Amherst: University of Massachusetts Press, 2008); Martha A. Sandweiss, *Passing Strange: A Gilded Age Tale of Love and Deception across the Color Line* (New York: Penguin, 2009); Karl Jacoby, *The Strange Career of William Ellis, the Texas Slave who became a Mexican Millionaire* (New York: W.W. Norton, 2016). Interest in passing is connected to a wider literature stressing the complicated history of American racial categories and the status of mixed race people. See, eg: Peggy Pascoe, *What Comes Naturally: Miscegenation Law and the Making of Race in America* (Oxford: Oxford University Press, 2010).

<sup>595</sup> Philip Joseph Deloria, *Playing Indian* (New Haven: Yale University Press, 1998). For more on racial passing in indigenous history, see, eg: Angela Pulley Hudson, *Real Native Genius: How an Ex-Slave and a White Mormon became famous Indians* (Chapel Hill: University of North Carolina Press, 2015); Bill Anthes, *Native Moderns: American Indian Painting, 1940-1960* (Durham: Duke University Press, 2006), esp ch5, ‘Becoming Indian: The Self-Invention of Yeffe Kimball’. This literature is surprisingly scant. Note also many of these texts explore the phenomenon of assuming indigenous racial identities, rather than indigenous people assuming others. I suspect this is because historians have tended to stick to a binary of assimilation/rejection of Euro-American cultures, rather than to discuss indigenous strategies as passing. As above, this literature ties to a wider interest in categories of race and mixed race indigenous people, and about wider questions of identity and assimilation. See, eg: Perdue, “Mixed Blood” Indians. Questions of race and passing also intersect with issues of the commercialization and appropriation of indigenous identities. See: Gretchen M. Bataille (ed.), *Native American Representations: First Encounters, Distorted Images, and Literary Appropriations* (Lincoln: University of Nebraska Press, 2001), as well as discussion below.

<sup>596</sup> See, eg: Haveman, *Rivers of Sand*, 266-269. Haveman hints at the possibility, but offers no further discussion or any supporting evidence in his footnotes. Geary Hobson *et al* also discuss a wider reality of indigenous passing into Southern society in the context of their introduction to their literary anthology, citing various high-profile claimants to Indian descent, but without offering a thorough discussion of this phenomenon and its relationship to removal: Hobson *et al*, *The People Who Stayed*, introduction. By contrast, scholars have recently paid more attention to a parallel phenomenon: the attempts of local officials and communities during the Jim Crow era to legally reclass indigenous people as white or black, in order to legally eradicate their indigenous identities, and indigenous groups’ wider attempts to navigate this period. For more on this literature, see, eg: Lowery, *Lumbee Indians*, and wider literature cited in introduction.

officials. In doing so, they successfully slipped off agents' radar and remained within the region. Some of these actions were long-term endeavours; others were temporary and chameleon-like split-second reactions to difficult circumstances, performed by people for whom the need to remain unseen and unreadable had become a way of life.

Because these people rendered themselves difficult to read and categorize, their journey through the traditional documentary record is faint. Much like their evasive counterparts, indigenous Southerners who chose illegibility tactics scarcely appear in agents' dispatches or official reports. In seeking to reconstruct the lives and strategies of these people, this chapter echoes the structure of the one before it. The first half seeks to reinterpret the illegible by capturing snapshots of indigenous action and fragmentary glimpses of people as they faded from officials' eyes. It seeks to illuminate key points on a much broader spectrum of illegible actions, ranging from long-term passing for white through to momentary acts of aural illegibility, temporary claims, and longer-term attempts to become illegible by simply blending into the backdrop of a diverse or non-Indian space, without necessarily ever denying indigenous identities. Because illegibility tactics were, by nature, deceptive, this is not a comprehensive account; some strategies and actions remain blurred and difficult to decipher. Still, by placing these various actions in dialogue, this chapter seeks to demonstrate the myriad ways in which indigenous Southerners deliberately confused agents and avoided attempts to remove them west, maintaining a conscious – if hidden – indigenous South for decades to come.

After reconstructing a vision of this elusive world, the second half of this chapter turns to the state itself. By following the world as agents saw it, this section seeks to explore the ways that federal officials and local communities read these people or, more often, simply struggled to see them in the first place.

## Part One:

### Re-reading the illegible

In 1836, at the height of removal, the Creek Nation faced the onslaught of federal troops in Alabama. The soldiers' arrival marked the culmination of decades of tension in the state; after over ten years of failed attempts to remove the Creek Nation *en masse*, both sides had grown angry. By the arrival of the blazing summer heat, long-brewing tensions exploded into a violent storm, engulfing Creek country. Agents and soldiers made no attempt to hide their fury as they herded men, women, and children into stockades, preparing them for expulsion.<sup>597</sup> In the face of the violence, many Creeks fought or fled. Yet one young man took a different course: he decided to drop out of officials' crosshairs. Travelling through the hazardous region, he ran until he reached a white settlement. In the town, he made himself anew, shedding his Creek identity. He 'took the one name *Moses*' – his great-granddaughter, the poet and scholar Janet McAdams, writes – since that name 'most conjures up the laws by which they could not live'.<sup>598</sup>

Like many people who passed for white, Moses leaves little trace in the historical record, his identity and his story known only through the hushed whispers of family secrets and descendants' legends. Under the veil of whiteness, Moses lived as a white man; like many others who passed out of removal, his children and grandchildren went on become legally and socially recognized as white people. Indeed, Moses passed so effectively that his Creek identity came as a shock to his own descendants, especially those who remained in the South and shared many of its later nineteenth- and twentieth-century fears about miscegenation and racial purity. In a poem, McAdams reminisces about Moses' granddaughter who, upon being told the truth about her ancestors, 'leaves the room whispering, *Not true, / not true*, at the thought of Indian

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<sup>597</sup> See: Ellisor, *Second Creek War*; Haveman, *Rivers of Sand*, esp chs5, 7-9.

<sup>598</sup> Janet McAdams, 'A Map of the Twentieth Century', in Janet McAdams, *The Island of Lost Luggage* (Tucson: University of Arizona Press, 2000), 43-45.

skin/against the white skin of her grandmother'.<sup>599</sup> Elsewhere, McAdams also wryly observes the 'very Southern phenomenon' of her own grandfather, 'who had one Creek grandfather and one who, according to family lore, kept his Klan robes hidden under the mattress'.<sup>600</sup> 'Three generations later', McAdams ruminates, 'we are pale as sand'; but the truth remained that Moses' 'indian skin' was as much a part of the family's heritage as the grandmothers' familiar ivory face.<sup>601</sup>

For indigenous Southerners like Moses, claiming a white racial identity provided an important means to avoid removal and to remain within the South. However, this was not a clear-cut process of assimilation; whiteness was not an end in itself, but merely a means of escape. In antebellum America, 'white skin functioned as a cloak' that could mask one's racial origins or status, allowing the wearer to walk unimpeded through spaces, borders, and legal statuses otherwise blocked to them. For runaway slaves, whiteness was a means to an end; one historian argues that passing runaways 'never imagined nor desired to begin new lives as white; they simply wanted to be free'.<sup>602</sup> The same was true of indigenous Southerners fleeing removal. Moses survived east of the Mississippi because he assumed the mask of whiteness permanently, even if this meant such a denial of his indigenous identity that his own grandchildren were horrified to discover it.

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Several days' journey west from Creek Country, another man prepared to gamble all that he had known on 'a white man's chance'.<sup>603</sup> His choice to hide himself was so effective that two-

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<sup>599</sup> Ibid.

<sup>600</sup> Janet McAdams, Excerpt from 'Betty Creek: Writing the Indigenous Deep South', in Hobson et al, *The People Who Stayed*, 255.

<sup>601</sup> Ibid.

<sup>602</sup> Hobbs, *A Chosen Exile*, 29.

<sup>603</sup> Ibid, 71.

hundred years later his origins are virtually untraceable. We only know that he was named Two-Moons.

Under the threat of removal, 'Two-Moons became 'Thomas'.<sup>604</sup> This new identity not only allowed him to escape enrolment lists, but also offered the key to a new life within the booming world of antebellum Mississippi. Cloaked in whiteness, Thomas benefitted from hundreds of opportunities for not only bare survival, but a prosperous life in the post-removal South which would have been barred to him as an Indian. As Thomas, Two-Moons could borrow money and enjoy the bonds of allegiance, honour, and reputation that bound Southern society. Thomas could also advance in the same way as other white yeomen. In addition to the loan for livestock from his neighbour, the local bank 'gave John Thomas a loan for a farm', and he went on to earn enough money for a mule. In time, the next step along the ladder might have been money for a slave. Eventually, Thomas could have advanced further up the rungs to a world of mastery, plantations, and speculation dreams that characterized the Cotton Kingdom.<sup>605</sup> Indeed, Two-Moons passed into whiteness so effectively that his original tribal affiliation is unknown.<sup>606</sup>

This was the upside of passing, but for most indigenous Southerners the experience mingled with risk. In the nineteenth-century South, the ability to successfully pass for white depended not only on skin colour, but also the ability to mimic a whole host of other behavioural characteristics, mannerisms, and social ties that served as the everyday, spoken and unspoken, hallmarks of whiteness. In antebellum courts, judges presiding over trials designed to assess individuals' racial origins considered a whole range of factors beyond phenotypical features,

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<sup>604</sup> Cynthia Gaillard, 'Shards', in Hobson et al, *The People Who Stayed*, 262-264. Gaillard's account suggests in several places that she is talking about her own ancestor, though there remains some ambiguity whether the story is a direct recollection of her own family member or a more composite character built from someone else's narrative, or even from a range of experiences. Nonetheless, Two-Moons' story, especially its fragmented nature, reveals important truths about passing, illegibility strategies, and the indigenous experience of non-removal.

<sup>605</sup> Recent work on slave racial capitalism in the South suggests the sheer possibilities open to white men in the region, especially those willing to create powerful new identities for themselves. See: Johnson, *River of Dark Dreams*; Baptist, *The Half*; Rothman, *Flush Times and Fever Dreams*.

<sup>606</sup> Or at least unmentioned in Gaillard's account. See Gaillard, 'Shards'.

ranging from voting behaviour to eating habits.<sup>607</sup> In fact, ‘at times, passing had very little to do with skin colour...[since] looking white is, in many ways, contingent on *doing* white’.<sup>608</sup>

For indigenous Southerners seeking to pass, this performance became the centre of their new lives. John Thomas, or Two-Moons, presumably played his new role as a yeoman farmer adeptly enough to convince the local bank manager to give him a loan. Similarly, his neighbours accepted him into their social and financial networks not only because he looked convincingly white, but because his behaviours, language, accent, speech patterns, and dress could all convincingly fit his new identity as well. Yet, at the same time, these criteria also meant that permanent or long-term passing as a route out of removal was simply not an option open to everyone. As much as phenotypical features like hair or eye colour and skin tone, the limits of ‘doing white’ could also rule out passing as a viable strategy for many indigenous Southerners who could not confidently or convincingly mimic white behaviour.<sup>609</sup>

If the need to master every aspect of this performance limited who could successfully pass, it also entailed constant danger. In a world where passing as white required a complete performance, every minute of every day required a flawless repertoire, with no room for rehearsal or errors. Even just the smallest sign could reveal the secret and once the secret was out, the consequences could be lethal. When non-removed people became legibly Indian, all the benefits of the mask of whiteness wore off. Racial hostility became outright, violence common, and law-enforcers and law-makers left little protections open for people whom they refused to believe could even remain east of the Mississippi at all.

For Two-Moons, these consequences came like a flood once word was out that he was not all he claimed to be. Stripped of the cloak of whiteness and the social capital that it afforded, his

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<sup>607</sup> Ariela J. Gross, *What Blood Won't Tell: A History of Race on Trial in America* (Cambridge: Harvard University Press, 2008), esp ch2, ‘performing whiteness’.

<sup>608</sup> Hobbs, *A Chosen Exile*, 45 (italics her emphasis).

<sup>609</sup> Ibid.

fortunes suddenly plummeted. Unveiled as Two-Moons, Thomas became – in his great-great-granddaughter’s words – ‘an Indian shot over twelve dollars and fifty cents owed to some white man from town’.<sup>610</sup> Two-Moons’ story highlights the stakes of passing and the gamble that indigenous Southerners took when they chose to assume whiteness in order to avoid removal. Whiteness could, after all, keep you east of the Mississippi, and afford some degree of protection within Southern society. However, once that whiteness wore off, non-removed people found themselves in a uniquely vulnerable position, at the heart of a white society deeply entrenched in ideas of racial purity and hostile to their very existence.

The reality is stark: without the protections of white identity, ‘a white man murdered John Thomas because he owed twelve dollars and fifty cents for a pig’. As his daughter recalled her father’s story decades later, ‘spittle forming at the edges of her mouth’, the bitter truth was obvious: for all the advantages of passing, the strategy remained a Russian roulette in a region ‘a white man can shoot injuns when he has cause’, especially in the wake of removal, when white Southerners were especially hostile to the prospect of unexpected Indians within the South. Rather than living the prosperous dreams of boom times, upcoming landholder and farmer John Thomas became the easily killed and even more easily forgotten Two-Moons, whose ‘grave is lost to us, somewhere in Union County, Mississippi’.<sup>611</sup>

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For many indigenous Southerners, the decision to pass as white catapulted them into a world of unfamiliarity and, in many cases, deprivation. As Two-Moons/Thomas’s story shows, becoming truly illegible as Indian meant not only adapting to standards of white Southern behaviour, dress, and accent, but also erasure of some of the most fundamental elements of personal and cultural identity. It meant denying one’s indianness and tribal heritage to the outside world.

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<sup>610</sup> Gaillard, ‘Shards’, 263.

<sup>611</sup> Ibid.

This total rebirth also meant renouncing of the one of the most fundamental parts of personal identity: one's name. In becoming Moses or Thomas, both Two-Moons and the Creek young man made themselves anew, shedding their names as a necessary but presumably wrenching part of their transformations. Loss of name struck at the heart of personal identity for passers of all backgrounds, signifying the death of a past life, actively renouncing a personal and cultural identity, while also impeding further contact with family members; a particularly acute form of 'social death' in the intimately connected, kinship-centred worlds that comprised the indigenous South.<sup>612</sup>

This loss would have been especially poignant for indigenous Southerners. As Kiowa poet N. Scott Momaday has noted, 'names are especially important in Native American culture...[since] names and being are thought to be indivisible. One who bears no name cannot truly be said to exist, for one has being in his name'.<sup>613</sup> For the Five Tribes, names held similar power. In Cherokee tradition, for instance, revered clan elders bestowed names on new-born babies, signifying a mark of kinship, clan ties, and descent.<sup>614</sup> Later in life, individuals could earn new names, often through daring exploits in battle, or everyday shows of bravery: Cherokee leader *Tsiyu Gansini*, or Dragging Canoe, is said to have won his name as a boy, disproving his father's claims that he was not ready to go to war by pulling his heavy canoe behind him.<sup>615</sup> Similarly, Chickasaw parents traditionally chose names for their children based on clan tradition and the

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<sup>612</sup> For 'social death', see: Stephanie Smallwood, *Saltwater Slavery: A Middle Passage from Africa to American Diaspora* (Cambridge: Harvard University Press, 2007); Orlando Patterson, *Slavery and Social Death* (Cambridge: Harvard University Press, 1982). For the centrality of kinship ties to life in the indigenous South, see: Snyder, *Slavery in Indian Country*; Piker, *Okefuskee*; Tyler Boulware, *Deconstructing the Cherokee Nation: Town, Region, and Nation among eighteenth-century Cherokees* (Gainesville: University of Florida Press, 2011).

<sup>613</sup> N. Scott Momaday, 'The Stones at Carlisle', in Jacqueline Fear-Segal and Susan D. Rose (eds.), *Carlisle Indian Industrial School: Indigenous Histories, Memories, and Reclamations* (Lincoln: University of Nebraska Press, 2016), 43.

<sup>614</sup> 'The Traditional Naming Process', Cherokee Nation Website, <http://www.cherokee.org/AboutTheNation/Culture/General/TheTraditionalNamingProcess.aspx> [accessed: 24/10/16, 10:31].

<sup>615</sup> See Robert J. Conley, *A Cherokee Encyclopedia* (Albuquerque: University of New Mexico Press, 2007), 162-163. Note that in the early nineteenth century, many elite Cherokees also began consciously assuming Euro-American sounding names, often derived from their original Cherokee ones (eg: Gunundalegi, literally 'one who follows the ridge', became known as John Ridge). A strategic decision related to a wider process of strategic acculturation among the tribe – and without a wider denial of indigenous identities and kinship – this is somewhat different to the cultural and social dislocation experienced by passing individuals.

memories of kinsmen gone before them. According to anthropologist Frank Speck, nineteenth-century mothers would often adorn their children with tokens, such as handkerchiefs or beads, as a symbol of their name and its importance. In later life, just like the Cherokees, Chickasaw children could then earn new names in war, monikers that also conveyed enormous cultural and personal significance as a record of bravery or prowess.<sup>616</sup> Names, therefore, celebrated personal achievements, ties to clan, kin, and ancestors, and tribal traditions; they could change for symbolic reasons, but they were not lightly abandoned.<sup>617</sup> For many passing individuals, the decision to take a white-sounding name surely encompassed the stakes of their choices, embodying actions necessary to survive but also an outward denial of their identities and ancestors forever.

Dislocation did not only come in abandoning names. For many indigenous Southerners, passing entailed a state of ‘chosen exile’; by assuming white identities, individuals found themselves cut off from families, friends, and wider kin networks.<sup>618</sup> Beyond this severing of kinship ties, the choice to live as white frequently meant disconnection from, and even denial of, indigenous cultures and traditions. Some of this could be lessened in the bonds of marriage, where some secrets could be shared, or where a pre-existing interracial relationship may have provided the impetus to choose passing as a viable strategy in the first place. Yet even those who found genuine happiness and loving relationships in their new lives could not escape the need to deny their origins in order to survive. Even if their husbands or wives knew their identities, people like Moses still had to deny their former lives to their in-laws, friends, and even their children, to the extent that Moses’ own granddaughter was both shocked and disgusted by his racial origins.<sup>619</sup> It

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<sup>616</sup> John Reed Swanton, *Chickasaw Society and Religion* (Lincoln: University of Nebraska Press, 1928), 15-18.

Swanton notes that these traditions are very similar to those among the Creeks and other Five Tribes groups.

<sup>617</sup> For symbolic changes of name, see Snyder, *Great Crossings*, 78.

<sup>618</sup> For ‘chosen exile’ and more on the experience of passing as one of dislocation, see: Hobbs, *Chosen Exile*.

<sup>619</sup> For marriage, see the cases of both Moses and Two-Moons above. For more on indigenous-white interracial marriage in the South in general, see: Perdue, *“Mixed-Blood” Indians*. In the 1820s and 1830s, it would have still been possible for a member of the Five Tribes to legally marry someone legally classed as “white”; however, this was rapidly changing. Where publicly visible, many such partnerships caused local hostility and by the mid-century, ideas of miscegenation and laws explicitly forbidding the marriage of indigenous and white individuals had crystallized

is impossible to imagine how difficult this process must have been, though the fate of people like Two-Moons/Thomas stood as the reminder of the consequences should one's mask of whiteness slip, even for a moment. This was the ultimate price of passing: people like Moses knew that they had used white identities to subvert removal claims and maintain a secret indigenous South, though their continued survival depended on the fact that they could never speak openly about their sacrifices.

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For many indigenous Southerners the decision to pass as white was a permanent, or at least a very long-term, strategy. Even if they did not consider themselves fully assimilated, passing individuals often lived and acted as white people for many years. For others, however, whiteness was merely a temporary guise. Seeking to avoid a particular agents' glare or neighbours' suspicion, individuals or small groups performed whiteness for short bursts, from days and weeks, to hours and moments, while others only partially assumed elements of white identity.

By the 1820s, the *Okla Hanali* – the “Six Towns” Choctaws who lived around Alabama, at the far western edges of the Choctaw Nation – had become accustomed to displacement.<sup>620</sup> America's relentless expansion had forced them to respond for the best part of a century, but tensions came to a head in 1803, when US leaders encouraged the Choctaw Nation to sign to large land cession treaties, cumulatively ceding nearly five million acres of land within the area the US claimed as the Alabama territory.<sup>621</sup> Following the cession, most Choctaws moved further into the Nation's remaining lands, largely located within the areas the US claimed as the state of

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across the United States. See: Guyatt, *Bind Us Apart*, esp. pt2; Pascoe, *What Comes Naturally*, 27-30; Elise Lemire, *Miscegenation: Making Race in America* (Philadelphia: University of Pennsylvania Press, 2012).

<sup>620</sup> For more on the Six Towns, a division within the wider Nation with distinct cultural traditions, see note in chapter two. For more, also: Kidwell, *Choctaws and Missionaries*, 3-4; Lambert, *Choctaw Nation*, 30-1.

<sup>621</sup> These cessions took place in two main treaties: the 1803 treaty of Hobuckintopa (St Stephens), which ceded over 800,000 acres of land above Mobile, and the 1805 treaty of Mount Dexter, which ceded some four million acres. See: ‘Treaty with the Choctaw, 1803’, 31 Aug 1803, 7 Stat., 80, Proclamation 26 Dec 1803, *LALT*; ‘Treaty with the Choctaw, 1805’, 16 Nov 1805, 7 Stat. 98, Proclamation 25 Feb 1808, *LALT*. See also Jacqueline Anderson Matte, *They Say the Wind is Red: The Alabama Choctaw Lost in their own land*, (Montgomery, Ala.: New South Books, 2002), kindle location 291.

Mississippi. However, many of the Six Towns Choctaws decided to remain on and around their traditional lands. In the next two decades, the situation markedly deteriorated. As settlers called for their eviction, these Alabama Choctaws faced another choice: should they abandon their homes or accede to the government's wishes? The decision was all the more fraught as they looked around them. As the Creeks resisted their own removal efforts in violence and war, much of Alabama began to burn. The stakes could not have been higher or more visible.

Enveloped by this warzone, one married couple made a different choice: Rose and Daniel Gaines decided to buy a plot of land and disappear into it. Sometime in the 1820s or 1830s, the couple purchased a small farmstead that they called *Okatibbaha*, or "Tibby", close to the Choctaws' traditional Alabama lands, in modern-day Washington county. According to the testimonies of their descendants, the little farm was unremarkable from the outside, comprising a small homestead and some cow pens.<sup>622</sup> The unassuming nature of the settlement was the key to its survival. Among the cows and the ordinary looking farmstead, the couple were able to move out of the firing line of removal, blending into the background of frontier homesteads and Jeffersonian agrarian visions. As far as evidence allows us to see, the couple did not totally pass for white. Their descendants' recalled that Rose and Daniel carefully cultivated their Choctaw identity at home, kindling traditional beliefs and raising their children to think of themselves as Choctaws.<sup>623</sup> Yet by outwardly assuming enough of the trappings of whiteness, including landholding, the couple managed to move out of settlers' glare and off the radars of agents who may otherwise have looked to resettle them.

Like many of the indigenous Southerners who chose to permanently pass as white, class factors enabled the couple to realize this illegibility: Rose was the daughter of Young Gaines, a white interpreter among the Choctaws, whose signature appears as a witness to the 1803 cession treaty,

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<sup>622</sup> Ibid, kindle location 1326.

<sup>623</sup> Ibid, kindle location 1326 onwards.

and Kalioka, a Choctaw woman.<sup>624</sup> Gaines' connections to a prominent member of local white society probably helped her to acquire the land; she may also have drawn on other facets of her biracial *mestizo* identity, from skin tone and accent to social ties, connections, and dress.<sup>625</sup> Rose's kinship and blood ties also might have helped in other ways. Her father was both uncle and father-in-law to George S. Gaines, one of the most important federal agents and interpreters on the ground during Choctaw removal. Surviving documents do not trace the transaction directly, but perhaps Rose and Daniel drew on her cousin's name in acquiring their little tract of land and blending into the background.<sup>626</sup>

In later decades, their children followed their lead, setting up their own homesteads on similar tracts of land and maintaining a distinct sense of Choctaw identity and community in private for decades. These places went virtually undetected by white neighbours but, silently and illegibly, they became the focal points of a little, self-consciously Choctaw community. Indeed, the community remained so effectively hidden that it is almost impossible to trace their history in written records, beyond their descendants' own oral testimonies of their actions. Landholding allowed them to maintain a long-term façade of whiteness, camouflaging them within a white community. In just a few years, they had passed out of the glare of removal and the hostility of white society, effectively becoming both visible and invisible at the same time.<sup>627</sup>

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<sup>624</sup> Ibid, kindle location 291. Matte suggests that the pair had four children, of which Rose was one. Unfortunately, we do not know more about Kalioka. For more on Young Gaines, see: Matte, *They Say the Wind is Red*, kindle location 291, 326.

<sup>625</sup> For more on biracial, *mestizo* members of the Five Tribes and their status within the South, see: Perdue, "*Mixed-Blood*" Indians.

<sup>626</sup> For relationship between Young Gaines and George Gaines, see: See: Ibid, kindle location 326.

<sup>627</sup> For more on their descendants, see Ibid, kindle location 1326 onwards. Matte chronicles how the couples' son, George Reed, founded his own chapel, and became a patriarch of the little community, especially since he had two wives and eleven sons. Reed, Matte notes, became an important figure in sustaining the community and its distinctiveness, 'exercis[ing] both spiritual and cultural leadership here'.

Like many other Alabama Choctaws, this community were so effective at making themselves illegible to federal and state officials and other white neighbours that it is virtually impossible to trace their history in written records. In line with the rest of my dissertation, I see this as evidence of their effectiveness in making themselves invisible and/or illegible: however, this has proved a problem for their modern-day descendants, who have struggled to gain federal recognition as Indians, being rejected several times. The MOWA band of Choctaw Indians, however, do have state-level recognition, granted in 1979. See Matte, *They Say the Wind is Red*, ch8. See also general discussion of indigenous Southerners' recognition problems below.

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For the Gaines family, Rose's relatively elite, bicultural background probably helped them to secure lands and make their transition into antebellum society. But for many of those seeking to make themselves momentarily or partially illegible, factors such as class, acculturation, and kinship ties mattered less than for those permanently assuming whiteness. In fact, many groups sought to make themselves illegible without explicitly passing at all. Some looked to strategically assume some of the benefits of whiteness by allying themselves with white neighbours or friends for protection, but did not explicitly seek to pass as white or to deny their Indian identity to those around them.

In late 1830, Bomah-Tubbee, a self-described 'full-blood Choctaw', joined members of his *ikva* (clan) and community in attempting 'to make known to the agent their intention to remain in the ceded country and hold their lands and improvements, and live among white people' by registering under Article 14 of the Treaty of Dancing Rabbit Creek. Like thousands of other Choctaws across the region, Bomah-Tubbee's attempts to remain did not work out, scuppered in the immediate term by agents' obstinacy and federal blind spots.<sup>628</sup> Like many other Choctaws, this led to the community's swift dispossession and renewed pressures to relocate.<sup>629</sup>

However, unlike other Choctaws who chose strategies of evading, squatting, or coalescing on the lands of other approved Choctaw citizens, Bomah-Tubbee and his community chose a different route to remain within the region. Speaking to federal commissioners over a decade later, Bomah-Tubbee recalled that, when faced with rumours that white men were going to deprive them of their lands and force his family to move west, the community took a calculated risk, choosing to relocate closer to – rather than further from – white settlements. Bomah-Tubbee recounted how he 'and the above named heads of families...took their wives and children +

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<sup>628</sup> See chapter two.

<sup>629</sup> The deposition of Bomah-Tubbee, a full-blood Choctaw, in behalf of himself & certain other Choctaw heads of families hereafter named' (1837-8?), NARA RG75 e270, box 3.

escaped to the white settlements in Hancock County, Mississippi, for protection'. In recording the account, the clerk noted that 'they have remained [there] ever since, waiting in hope that the government on hearing of the bad conducts of its agents would restore them to their houses and country, from which they had escaped for the reasons above stated'.<sup>630</sup>

Because the clerk and board of interviewers were primarily interested in the community's experiences of registration under the Choctaw removal treaty, most of the details of their life in Hancock county have been lost to the historical record. Nonetheless, Bomah-Tubbee's deposition gives important insights into a world in which it seemed better to cast your lot with a local white community than federal agents. It is not clear how the community presented their racial identity to outsiders, but it does not seem that Bomah-Tubbee sought to deny his indianness or even to "pass" explicitly as white. Indeed, Bomah-Tubbee recalled that the group were so visibly Indian that they had to flee to Hancock county in a rush; since 'there were no white men among them', they feared that people would notice them and 'the government agents would take off their children'.<sup>631</sup>

Rather than pretending to be white, Bomah-Tubbee and his family seem to have survived by making alliances with white friends and simply living close enough to them to position themselves beyond agents' sight and reach. By moving to white settlements, Bomah-Tubbee and his family cloaked themselves by proxy in some of the privileges of their whiteness, not least that agents would not come to look for them among these white settlements and private lands, far from the main Choctaw settlements. By finding white allies and safer lands, Bomah-Tubbee sought to blend into the background, safely beyond removal's grasp.<sup>632</sup>

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<sup>630</sup> Ibid.

<sup>631</sup> Ibid.

<sup>632</sup> It is worth noting that Bomah-Tubbee did not depend entirely on this illegibility strategy to make himself safe from removal. Like many Choctaws, Bomah-Tubbee had also attempted to stake a claim to remain permanently within the region under Article 14 of the Treaty of Dancing Rabbit Creek: a precarious and difficult process, but nonetheless something else that he believed reinforced his ability to remain within the region. This process is discussed at greater length in chapter two.

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In Alabama, a small community of Choctaws chose a similar course. Facing growing pressure to relocate as agents neared, a group of seven Choctaws chose to ally themselves with local white neighbours. Their descendant, Sancer Byrd recalled that his 'Pappy said, seven came from west of Citronelle', destitute with no means of support. Soon, they encountered a local farm owner named Chastang. 'Chastang had a big farm', Byrd noted, 'and Indians had to go in to chop corn to get something to eat. They were so hungry; they would just come there, go to cutting and eat the raw corn'. From the original seven fugitive Choctaws, word spread and 'just a world of them came'. Eventually, the Indians made a pact with the farmer who 'took them in'.<sup>633</sup>

It is not clear if these Choctaws' alliance with the farmer entailed their passing as white, although their descendants' recollections suggest that they made little attempt to initially mask their Indian identities, arriving at Chastang's farm having literally just fled removal. Either way, the alliance was productive. By allying themselves with the white farmer, the Choctaws blended into the backdrop of Southern society. Although it does not seem that they actively denied their racial identity and passed as white, they certainly gained a degree of illegibility through their alliance, standing out less as people who ought to have been removed through their life and work on the farm. Indeed, Byrd recalled that the Choctaws even took the farmer's name, a decision taken both for reasons of practicality – 'since they didn't have no name' – but also for camouflage within a white society.<sup>634</sup>

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If some temporary acts of illegibility depended on physical appearance, many others did not. Seeking to avoid or escape agents' glare, indigenous Southerners devised a whole spectrum of ways to disappear. As much as appearance or behaviour, language was an important part of these

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<sup>633</sup> Sancer Byrd interview, cit. Matte, *They Say the Wind is Red*, kindle location 1222.

<sup>634</sup> Ibid.

survival strategies for many groups. Within the aural landscape of an indigenous settlement, a rural area, or even a predominantly English-speaking town, the words that individuals spoke to their friends or that children enthusiastically babbled to their mothers could mean the line between continuing unmolested and being clearly identified as Indian.<sup>635</sup>

Those who sought illegibility were acutely aware of the stakes of their speech. Oral testimonies suggest that communities deliberately encouraged their children to speak English in order to blend into Southern society. In the 1970s, members of Alabama's Poarch Creek community told anthropologists that only the eldest members, born in the late nineteenth century, could remember a time when there had been any fluent speakers of Muscogee among the group.<sup>636</sup> Alongside a gradual decline of their native tongue, older members of the community remembered decades of warnings against speaking Creek. One elderly woman recalled how, as a child, she remembered adults referring to Muscogee as 'that crazy talk'. She also remembered asking her first husband, also a member of the Poarch Creek community, if he could or his family could speak it, only to receive the reply 'get away from here with your foolishness'. Others recalled elders speaking or trying to teach the language but receiving little interest. In discussing the decline of their language, many of the community pointed to the long shadow of removal and the strategic uses of speaking English in avoiding further scrutiny. One interviewee even suggested that their ancestors actively 'refrained from speaking the native language out of fear that to do so would clearly identify them as Indians and thus increase the risk that they might still be exported to Oklahoma'.<sup>637</sup>

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<sup>635</sup> For more on the importance of soundscapes and silence during removal, see evasion chapter.

<sup>636</sup> Muscogee (sometimes spelt Muskogee) is also known by several alternate names, including Creek language, Seminole language, and *Mvskoke* (in the language itself). I have chosen "Muscogee" as it is probably more familiar to English speakers.

<sup>637</sup> J. Anthony Paredes, 'The Folk Culture of the Eastern Creek Indians: Synthesis and Change', in Mahon (ed.), *Indians of the Lower South*, 96-97. These instances form part of a longer history of indigenous groups across the South and the US deliberately tricking white observers with acts of oral evasion and aural illegibility up to the present day. Historian James Merrell, for instance, suggests that twentieth century Catawbas deliberately lied about their linguistic heritage when visited by anthropologists: James Merrell, *Indians' New World*, 259-262.

Because this aural illegibility often required the ability to speak English or, less often, French and Spanish, the odds of success were stacked in favour of the more acculturated, elite members of the Five Tribes. To remain undetectable within a colonial soundscape, indigenous Southerners had to have the skills not only to speak European languages, but also to do so confidently and convincingly and, if it came to a face-to-face confrontation with agents, under extreme pressure. If the Poarch Creek gentleman's ancestors, for instance, had not been able to convincingly and confidently transition to speaking English amongst themselves, it seems unlikely that their deception would have worked.

Nonetheless, it does seem that perfection was not always required. For isolated, discrete, and largely evasive communities, an hard-to-place accent might have been enough to throw off suspicion, perhaps leading agents to mistake them as a non-local or European immigrant.<sup>638</sup>

Others even less adept at European tongues could turn to the powers of silence, at least temporarily, and remain illegible by simply refusing to speak when in agents' hearing, especially if otherwise racially ambiguous or among other white people.<sup>639</sup> As late as 1875, Choctaw missionary Adrien Rouquette noted that many Louisiana Choctaws were 'silent' in and around New Orleans, 'but around the camp fire, they...babble freely'.<sup>640</sup> That even small children knew to be silent in public spaces provides testament to the intimate link between safety and sound for non-removed indigenous Southerners.

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<sup>638</sup> Allyson Hobbs notes a similar phenomenon in her history of African American passing, writing about a black family who switched to pretending to speak French (and pretending to be French when speaking English) when confronted with hostility at a segregated rest stop in the mid-twentieth century South. Hobbs, *A Chosen Exile*, 154.

<sup>639</sup> For more on the importance of silence in avoiding removal, see ch3.

<sup>640</sup> "Whitman", 'In Search of A Word: A Visit to Pere Rouquette', *New Orleans Bulletin*, 6 August 1875, Adrien Emmanuel Rouquette Papers, box 1, folder 3, TU-LaRC.

In the antebellum South, whiteness was the key to power and social acceptance. Yet for indigenous Southerners fleeing removal, successful illegibility did not just mean claiming facets of whiteness.

Some indigenous Southerners utilized capacious racial categories, blurring the boundaries between black, white, and Indian, to confound agents. Seminole Country offered unique potential for confusion. Originally Muscogee-speaking members of the Creek Nation, the Seminoles had come into being in the late eighteenth-century when they had splintered from the wider Creek polity and the United States, forming their own fugitive communities in Spanish-controlled Florida. Over the next few decades, the group had continued to resist American incursions, engaging in several violent wars and taking local lands and captives by force. In their struggle to establish their own sense of people and place, the Seminoles had allied with several communities of free black people and runaway slaves. They incorporated them into a unique social system that blended older schemes of tributary and vassalage with traditional Seminole models of captive-taking and social incorporation, which were significantly different to the nineteenth-century models of racially-based slavery adopted elsewhere in the Five Tribes. The relationships between Florida's Seminoles and their black allies was a complex one, sometimes resulting in close kin ties while elsewhere remaining more distinct and subordinate.<sup>641</sup>

Whatever an individual's position on this racial spectrum, proximity created unique opportunities for confusion and racial blurring during removal, as agents struggled to distinguish between Seminoles, black Seminoles, allies, and newly-taken captives, and to understand the relationship between them. For those unfortunate enough to be removed, this meant transportation westwards for all, black and Indian alike. However, utilizing this confusion, as well as their violent resistance and geographic mastery of the Everglades, hundreds of Seminoles of all

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<sup>641</sup> See, eg: Christina Snyder, *Slavery in Indian Country: The Changing Face of Captivity in Early America* (Cambridge, MA: Harvard University Press, 2010), ch8; Mulroy, *Freedom on the Border*. The relationship between Seminoles and their black allies has been much discussed but remains a controversial topic for the modern-day tribe. See: Susan Miller, *Coacoochee's Bones: A Seminole Saga* (Lawrence: Kansas University Press, 2003).

ethnicities managed to remain East of the Mississippi, maintaining racially ambiguous communities that continued to confound agents across the nineteenth century.

For example, deep in the Everglades, most of the Fish-Eating Creek band of Seminoles managed to remain where they were following the upheaval of the Second Seminole War and waves of removal attempts. Many were Muscogee-speaking descendants of Creek fugitives, but others occupied complex categories from black vassals and slaves to the biracial offspring of black and Indian Seminoles. Among them was a black Seminole woman named Hannah (also known as Chi-ha-ne and, later, Funko), who appears to have been born into the group as a vassal slave and then adopted into the band as a young girl. Following the Second Seminole War, Hannah lived out her life East of the Mississippi, occupying an ambiguous and fluctuating racial and legal status among both the non-removed Seminole Nation and the wider American South. Along with her 'half-Seminole' children, she and the Fish-Creek band remained in Florida as late as 1921, almost a century after federal efforts to displace them.<sup>642</sup>

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In 1850, Dominique Rouquette, a Louisiana Creole, and the son of French *émigrés* to the region, authored a manuscript that recorded his interactions with a group of Choctaws who lived just out beyond New Orleans.<sup>643</sup> Over the preceding decades, Rouquette had taken a great interest in the stories about local Choctaws, and had regularly visited several communities, one of whom he called the "Flat Head" Choctaws. During his interactions with this group, Rouquette was struck by the fact that they did not integrate themselves formally into the Southern labour market.

When he asked the Choctaws why they did not do so, one respondent replied 'Am I a *iouca*, a

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<sup>642</sup> Bethany Montagano, 'Keeping Hannah: Restoring the Life of "America's Last Slave"', *The Public Historian* 35 (May 2013), 72-98. As Montagano notes, early-twentieth century tourists and commentators marvelled at Hannah as 'America's last slave', a status that failed to recognise the complexity of her racial history.

<sup>643</sup> Dominique Rouquette was the brother of Adrien Emmanuel Rouquette, the Jesuit priest who went to live among the community of evasive Choctaws along the Bayou Lacombe. See ch3.

slave?'. The Choctaw informant continued to explain that he did not seek further labour because he 'fear[ed] that in handling the axe or the pickaxe he lowers himself to the level of the Negro'.<sup>644</sup>

Rouquette interpreted the Choctaws' rejection of labour as evidence of their laziness, but this statement actually revealed a deeper reality of post-removal life: the community shunned greater integration into the Southern economy because they knew that being misclassified as black in Southern society could have had much worse repercussions than the perils of a life at society's edges. At best, this could mean a life of limited social chances; at worst, even running the risks of being captured as fugitives, especially without any documents to prove otherwise. Having gone to pains to remain in their homelands, the community was especially cautious to avoid anything that could throw away their freedom. To pass into blackness, meant that outsiders would no longer see them as "Indian". If this was a momentary victory in terms of avoiding removal, it was a huge risk for their future in a region where blackness connoted social inferiority and a life of forced labour.<sup>645</sup>

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<sup>644</sup> Dominique Rouquette, "The Choctaws," Unpublished MS, Box 1 (Journals and Translations, 1850) François Dominique Rouquette papers, Manuscripts Collection 508, TU-LaRC.

<sup>645</sup> This situation continues to burden many indigenous Southerners' modern-day descendants, many of whom still struggle to gain official recognition of their indigenous identities and heritage. Though traditionally separated, many historians now acknowledge that black and Indian histories are (in the words of a recent edited collection) 'indivisible'. Gabrielle Tayac (ed.), *IndiVisible: African-Native American lives in the Americas* (Washington DC: Smithsonian Institution, National Museum of the American Indian, 2009). Despite this longstanding reality, blackness has traditionally been an enormous source of contention when it comes to outwardly recognizing Indian identities. Many indigenous groups who associated with or intermarried with black families, both in the South and elsewhere across the US, have had their indianness called into question. Earlier generations of anthropologists saw blackness as incompatible with (what they considered) "indianness", and termed many of these communities 'tri-racial isolates' in a way to deny their Indian identities. See: W. Frank Porter III (ed.), *Strategies for Survival: American Indians in the Eastern United States* (New York: Greenwood Press, 1986), 4-6. This bias dates back to the late nineteenth- and early-twentieth century origins of recognition rules and Indian policies, and the genesis of "blood quantum" among indigenous groups, as a way to historically prove and maintain their distinct ethnic identity within a world of aggressive settler-colonialism and, in the South, Jim Crow. During Jim Crow, many indigenous Southerners fought for distinct "Indian" identities, even despite local efforts to reclassify them as black. For more, see: Adams, *Who Belongs?* Today, these colonial legacies and associations of blackness continue to prevent many groups from receiving federal recognition as Indians, despite much scholarship demonstrating that indianness and indigenous identity simply does not depend entirely on c19th colonial amalgams of strict race and "blood", and that indigenous groups that have maintained distinct communities and indigenous identities are as "Indian" as any others. See: Lowery, *Lumbee Indians*; Brian Klopotek, *Recognition Odysseys: Indigeneity, Race, and Federal Tribal Recognition Policy in Three Louisiana Indian Communities* (Durham: Duke University Press, 2011); Renee Ann Cramer, *Cash, Color and Colonialism: The politics of tribal acknowledgement* (Norman: University of Oklahoma Press, 2005).

This community's efforts reflected many non-removed groups' actions across the South. If some indigenous Southerners turned to black identities or black allies, others calculated that assuming a black identity was a strategy too dangerous to pursue even in the desperation of removal. Like Rouquette's Choctaws, indigenous Southerners were acutely aware of the inferior status of African Americans and slaves within Southern society. By the 1820s and 1830s, all of the Five Tribes had adopted a Euro-American model of racial slavery and many of the racially coded prejudices and hierarchies that came with it, although there were obviously personal exceptions to this prejudice and, as noted, the situation was a little more complicated for the Seminoles.<sup>646</sup> Although almost all of the Five Tribes' slaveholding remained restricted to its elite and middling members of society, many missionaries to indigenous groups owned slaves, meaning that most members of the Five Tribes living in the heart of their nations would have been exposed to slavery, even if they did not personally own them.<sup>647</sup> Even at the farthest edges of the Five Tribes, members could not have failed to overlook the fact that blackness in the antebellum South meant a life of bondage, torture, and forcible disconnection from most of the benefits of Southern society.<sup>648</sup>

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<sup>646</sup> See: Theda Perdue, *Slavery and the Evolution of Cherokee Society, 1540-1866* (Knoxville: University of Tennessee Press, 1979); Tiya Miles, *Ties that Bind: The story of an Afro-Cherokee Family in Slavery and in Freedom* (Berkeley: University of California Press, 2005); Tiya Miles, *The House on Diamond Hill: A Cherokee Plantation Story*, (Chapel Hill: University of North Carolina Press, 2010); Snyder, *Slavery in Indian Country*; Fay A. Yarbrough, *Race and the Cherokee Nation: Sovereignty in the Nineteenth Century* (Philadelphia: University of Pennsylvania Press, 2007). For possible personal exceptions to racial prejudice, and the range of Cherokee racial attitudes, see Miles, *Ties that Bind*. Among the Five Tribes, the Seminoles had a unique relationship with the concept of race, incorporating many black slaves and runaways into their polity, although not without a longstanding contention over their status within the tribe. See: Snyder, *Slavery in Indian Country*, ch8, and discussion above.

<sup>647</sup> See, eg: Perdue, *Slavery*; Kidwell, *Choctaws and Missionaries*, 41, 69-92.

<sup>648</sup> As noted in previous chapters, many of the people who sought to flee agents' sight and reach were from among the most geographically liminal and socially conservative members of the Five Tribes. These groups often had the lowest rates of slaveholding; nonetheless, even these peripheral people were far from untouched by slavery. Scholars have insufficiently studied the spread of racial attitudes at the edges of the Five Tribes, but it is likely that, by removal, even these peripheral people would have shared the sense of racial hierarchy infused. Indigenous Southerners had long experiences of captivity and slavery as practices, though these did not become racialized until European arrivals. See: Snyder, *Slavery in Indian Country*. Slaveholding was conspicuous among the Five Tribes elites, many of whom owned large plantations. Moreover, many missionaries based among the Five Tribes had slaves, and at least some of the most peripheral Five Tribes individuals also had ties to slave-owning, or even owned slaves themselves. Eg: Yonaguska, a headman of a peripheral band of Cherokees who splintered from the main Cherokee nation under 1817 and 1819 treaties, owned at least one slave, Cudjo, whom he is rumoured to have treated him as a member of his kin unit, though it is difficult to corroborate this suggestion, especially as the idea that indigenous masters were more benevolent than white ones is a long-running (and now debunked) myth of indigenous slavery. See Mooney, *Myths*, 163. Similarly, scholars have shown that anti-black prejudice and strong support for slavery

These fears were not simply abstract. During the decades of removal, allegations of blackness or sustained contact with runaway slaves had demonstrably dire consequences for indigenous communities across the South, especially those outside the Five Tribes. As early as the 1780s, for instance, white inhabitants of Virginia petitioned their colonial legislature complaining that indigenous communities in the state were unlawfully harbouring runaway slaves; some even insinuated that the community was really a group of runaway slaves pretending to be Indians. The legislature denied the petitions, but the complaints continued to plague the state's Indians throughout the first half of the nineteenth century. In 1831, in the wake of Nat Turner's rebellion, the old allegations resurfaced to see the Gingaskins formally deprived of their lands.<sup>649</sup> Elsewhere across the South, antebellum lawmakers also sought to legally deconstruct indigenous identities and rights within the boundaries of the United States as part of their efforts to restrict and police blackness. In the middle decades of the nineteenth century, numerous local state legislatures passed laws reclassifying indigenous people within the status of free people of colour, often prohibiting them exercising rights such as voting or, in some cases, property holding.<sup>650</sup> Alongside a context of anti-black sentiment, these events obviously owed much to the same 1820s and 1830s anti-Indian impulses that provoked removal among the Five Tribes. In a state where the federal government had no interest in targeting local Indians and their small, marginal lands, accusations of blackness allowed a way to grab the Gingaskins' lands. Nonetheless, they served as an important reminder of the risks of associations with blackness in a society predicated on black inferiority.<sup>651</sup>

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infused all areas of (white) Southern society, even in areas where there was very little slaveholding. It is, therefore, likely that even the more remote of indigenous Southerners would have been aware of this social prejudice and the dire nature of African American chances in this period. See: Stephanie McCurry, *Masters of Small Worlds: Yeomen Households, Gender Relations, and the Political Culture of the Antebellum South Carolina Low Country* (Oxford: Oxford University Press, 1995).

<sup>649</sup> Rountree, *Pocahontas' People*, 179-186.

<sup>650</sup> See: Ariela Gross, *What Blood Won't Tell*, ch4.

<sup>651</sup> This threat would only accelerate in later decades, especially as indigenous Southerners fought to find a place among the segregated, biracial world of Jim Crow. In later generations, this pattern would continue, with numerous white officials (and later ethnographers and anthropologists, too) using allegations of blackness to legally eliminate indianness and to re-class indigenous Southerners as legally 'black' or 'tri-racial isolates'. This phenomenon has been chronicled by scholars working on indigenous experiences of Southern segregation. I do not see such extreme

If Virginia was far away, members of the Five Tribes could also see the risks of these associations much closer to home. In the mid-1830s, when Creeks challenged removal and Alabama descended into a warzone, several Creek families found themselves targeted not for deportation but for bondage, carted into slavery alongside other black slaves. In the 1840s, several removed Creeks in Indian Territory complained that up to one hundred of their brethren had been captured and taken as (black) slaves by prominent Alabama planters: ‘a man by the name of Dickerson in Coosa county has one family, a woman and her children, 7 in number. A Mr Floyd and Rev Mr Hays both of Autauga County have each a number of Creeks’. Kept ‘in a deplorable condition’, most appear to have found themselves in the heart of a world of black labour, serving alongside other black slaves, apparently without obvious racial distinction or even awareness that these people were Creeks.<sup>652</sup>

Because the historical record is scant, we know very little about these people: where they came from, who they were, or how came to be in the apparent possession of prominent regional slaveholders. Perhaps some of these people had connections to escaped slaves or black ancestry, or perhaps their efforts to make themselves racially illegible or to hide in dense terrain backfired, and slavecatchers came to round them up, either believing them to actually be black or simply believing them to be racially ambiguous enough to not care.<sup>653</sup> Whatever the case, it is surely important that these people were predominantly Creek women and their children: among the

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practises as happening during removal, nonetheless, the broad threat of classification as black remained. See, eg: Adams, *Who Belongs?*, and other texts listed in introduction literature summary.

<sup>652</sup> See: Foreman, *Indian Removal*, 190 (esp n.135). Note that the account of these people’s bondage was made in 1848, amidst waves of second removal, by groups coming back East from Indian Territory, so it is not clear how reliable their estimates were – nor, indeed, is it possible to corroborate exact reports of this situation or the scale of it.

<sup>653</sup> Historian Theda Perdue suggests that these Creeks might have been deliberately rounded up and re-classed as black, in a wider Southern effort to finalize a biracial society following removal. See: Perdue, *Legacy of Indian Removal*, 4-5. This is perfectly possible; however, it would depend on them being visible to outsiders as Indians, and then the outsiders deciding that they ought to be actively re-classed as black. Given the picture of pockets of invisible and little understood non-removal suggested across this dissertation, it seem that Perdue’s explanation might be more fitting with later-nineteenth century Jim Crow-era officials’ actions – especially since in the 1830s, many people still expected there to be Indians within the region, even if they believed that they were on their way out. It is also important to note that we do not know for sure that these people were actually ethnically Creek, and/or did not have any black ancestry or social ties that might have led to their situation of bondage.

most vulnerable members of society, and presumably the easiest for slaveholders or slave hunters to prey upon. To their brethren in Indian Territory, this story seemed to be both a tragedy and a warning. These people were living proof of the risks of being racially ambiguous in a world where suspected blackness (or even unprovable whiteness) meant bondage.<sup>654</sup>

We have no way of knowing whether the news of such episodes travelled fast or far, but for members of the Five Tribes even the possibilities of such repercussions would have been haunting. During the 1830s, the Five Tribes remained visible – and visibly Indian – to most white Southerners and federal officials. As a result, at least during removal, most members of the Five Tribes were at little risk of being accused of being black, and certainly not at the scale of whole polities like the Chickasaws. Still, the mere spectre of bondage was enough to serve as a warning to many. As the little party of Choctaws told Dominique Rouquette, in a slave society, predicated on the forced subjugation and bound labour of its black members, assuming a black identity was a gamble. There was no guarantee that it would offer indigenous Southerners a better life than taking their chances along the Trail of Tears.

Beyond its associations with bondage, recognition as black also offered little assurance of avoiding removal in the first place. As agents rounded up emigrating parties across the South, they ensured that slaves – or people within Indian Country that agents believed to be slaves – joined their masters. Accompanying one Cherokee removing party, American Missionary Daniel Butrick observed that black slaves marched and laboured alongside the Indians, ‘cut[ting] wood’ and ‘wash[ing] and dr[y]ing...clothes’, and even dying ‘in the camps’ alongside their masters. For some, their fate could be even more precarious. Following the death of his enslaved mother en

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<sup>654</sup> In the antebellum United States, it was common for non-white or racially ambiguous people to be picked up by slave catchers if they could not prove their free status, especially following the introduction of the Fugitive Slave law. Many roamed the North, but border states and areas around Southern plantations were also targeted. See, eg: Stanley W. Campbell, *The Slave Catchers: Enforcement of the Fugitive Slave Law, 1850-1860* (Chapel Hill: University of North Carolina Press, 1970); Lucy Maddox, *The Parker Sisters: A Border Kidnapping* (Philadelphia: Temple University Press, 2016).

route to Oklahoma, federal agents sold one man and his wife on to slave speculators.<sup>655</sup> In these places where the values of the Cotton Kingdom blended with the brutality of removal, it could be just as damning to be identified as black as it could to be identified as a member of the Five Tribes.

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Illegibility usually depended on individuals' behaviour: saying the right words, appearing the right way, or performing the right actions to prevent suspicion. But, for some people, becoming illegible to agents meant going to particular places instead of doing particular things. For indigenous Southerners seeking to pass out of removal, the map of the South was weighted with uneven chances for some locations offered more tantalising opportunities than others.

New Orleans, German traveller Friedrich Gerstäcker enthused in 1838, 'justly deserves its sobriquet of Queen [of the South]'. The visitor marvelled at the metropolis, christening it 'the marketplace of countless plantations and farms in all parts of the Union, the crossroads from the cold, northerly climate to the pleasant, mild tropical world...[and] the El dorado and grave of millions'.<sup>656</sup> As they faced the gathering storm of removal, most indigenous Southerners probably failed to notice the charms that visitors like Gerstäcker praised. But if they lost interest in cotton prices, trading hubs, and naval showcases, numerous indigenous Southerners from across the region *did* notice something of value in New Orleans: its unique possibilities for urban evasion and blending into the background.

New Orleans was a city of contradictions. It was both the nerve centre of the most brutal edges of slave racial capitalism and home to a strikingly varied racial landscape.<sup>657</sup> As the foremost port and nerve centre of the region's cotton trade, the city played host to people from myriad

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<sup>655</sup> Daniel Butrick, cit. Miles, *The Ties that Bind*, 139.

<sup>656</sup> Friedrich Gerstäcker, 'New Orleans', in *Pictures of the Mississippi: Light and Dark Sides of Transatlantic Life*. Translation: Irene S. DeMaio (ed./trans.), *Gerstäcker's Louisiana: Fiction and Travel Sketches from antebellum times through Reconstruction* (Baton Rouge: LSU Press, 2006), 54.

<sup>657</sup> For 'slave racial capitalism': Johnson, *River of Dark Dreams*, 14.

countries, and speakers of myriad languages. The diversity often baffled newcomers. As Gerstäcker observed, ‘In the city itself one hears people speaking in all imaginable tongues... There is no country in the world that is not represented here. A wild whirl of Spanish, English, French, and German sounds like the ancient Tower of Babel to the newcomer who has not yet become accustomed to all the comings and goings’.<sup>658</sup> Visitors regularly noted that the city displayed an enormous racial and ethnic diversity: one visitor marvelled how ‘the varied and numerous skin colors of the inhabitants of New Orleans make a particular impression on visitors, especially those from Europe... One encounters thirty different people in a row, and there are no two who have the same color face’.<sup>659</sup> A decade earlier, surveyor William Darby echoed this wonder, noting that ‘No city perhaps on the globe, in an equal number of human beings, presents a greater contrast of national manners, language, and complexion, than does New Orleans’.<sup>660</sup>

For indigenous Southerners fleeing removal, this ethnic medley held a unique potential to cloak them and their children, especially as New Orleans did not just display racial diversity but socially and legally codified it. A hangover from the colony’s French and Spanish colonial roots, Louisiana was renowned for its multifaceted social system of white people, Creoles – for contemporaries a capacious category referring to mixed race individuals, as well as legally “white” people born in and around Louisiana – *gens de couleur libres*, and black slaves.<sup>661</sup> A disjointed legal concept unique to the state, the broad umbrella of *gens de couleur libres* gave those who fell into it ‘an unusually privileged position compared with free people of African descent in the rest of the United States’, allowing greater opportunities for land and property holding, education, and a

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<sup>658</sup> Gerstäcker, ‘New Orleans’, 54-58.

<sup>659</sup> Ibid, 59.

<sup>660</sup> William Darby, *A Geographical Description of the State of Louisiana: with an account of the Character and Manners of the Inhabitants* (Philadelphia: Printed for the Author and published by John Melish, 1816), 75.

<sup>661</sup> Nathalie Dessens, *Creole City: A Chronicle of Early American New Orleans* (Gainesville: University of Florida Press, 2016); Kimberly Hanger, *Bounded Lives, Bounded Places: Free Black Society in Colonial New Orleans* (Durham: Duke University Press, 1997); Sybil Klein (ed.), *Creole: The History and Legacy of Louisiana’s Free People of Color* (Baton Rouge: Louisiana State University Press, 2000); Arnold R. Hirsch and Joseph Logsdon (eds.), *Creole New Orleans: Race and Americanization* (Baton Rouge: Louisiana State University Press, 1992).

range of jobs as artisans, business owners, and artists.<sup>662</sup> This legal flexibility fuelled a social fluidity. Within the city, residents and visitors took it as given that one's ethnic origins were not always immediately discernible and that not all racially ambiguous or non-white faces were automatically those of slaves. Travellers' accounts offered an exotic, romanticized vision of the city, but spoke an important truth: as a city that 'would drive to despair anyone desiring to inquire more closely and thoroughly about their origins', New Orleans was the perfect place to become racially illegible.<sup>663</sup>

Alongside these ambiguous racial categories, New Orleans also left unique room for publicly displaying Indian identities. Long before it was home to the bustling metropolis, Louisiana had housed hundreds of indigenous polities, including those such as the Chitimachas, Tunicas, and Biloxis whom French colonists came to group collectively as the *Petites Nations*.<sup>664</sup> By the 1820s these polities had adapted to colonial power shifts within the region, moving away from the growing city or adapting to life under American rule, yet they had not disappeared from the region. Even as Americans spun myths about their disappearance, hundreds, even thousands, of these people remained in and around New Orleans. Locals and visitors gleefully noted their presence, and both legally and socially, Orleanians were willing to recognize indigenous peoples as another facet of the city's varied colour hierarchy; although in practice, this meant as much disenfranchisement and a denial of indigenous claims to sovereign space within the region, as much as it spelt a legal blurring into the category of *gens de couleur libres*.<sup>665</sup>

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<sup>662</sup> Kenneth R. Aslakson, *Making Race in the Courtroom: The Legal Construction of Three Races in Early New Orleans* (New York: New York University Press, 2014), 5. Despite opportunities open to them, *gens de couleur libres* were still restricted from various professions, including practising medicine.

<sup>663</sup> Gerstäcker, 'New Orleans', 59.

<sup>664</sup> For more, see: Elizabeth N. Ellis, 'The Many Ties of the Petites Nations: Relationships, Power, and Diplomacy in the Lower Mississippi Valley, 1685-1785' (PhD dissertation: University of North Carolina Chapel Hill, 2015).

<sup>665</sup> In 1810, the Louisiana state Supreme Court updated the definition of free people of colour to include not only 'descended... from a white parent, or mulatto parents in possession of their freedom', but also people 'descended from Indians on both sides'. Andrew J. Jolivéte, *Louisiana Creoles: Cultural Recovery and Mixed-Race Native American Identity* (Lexington books/Rowman and Littlefield: Lanham, 2007), 31. For the negatives of this status, see: Aslakson, *Making Race*. French colonial Louisiana also had a long history of intermarriage and *métissage* that contributed to these categories. See: Kathleen DuVal, 'Indian Intermarriage and Métissage in Colonial Louisiana', *William and Mary Quarterly* 65 (2008), 267-304.

Although white Orleanians emphasized indigenous peoples' racial inferiority, by the eve of removal locals and visitors alike accepted the presence of such Indians as part of the city's unique racial character. In 1827, one visitor noted that the presence of 'occasional groups of wild and savage looking Indians' were as much an expected part of the city as 'the large proportions of blacks seen in the streets...the grace and beauty of the elegant quadroons...[and] the huge and turbid river'.<sup>666</sup> Yet if these Indians were ever-present, few Orleanians called for their removal. Many believed them to already be vanishing and, unlike the Five Tribes, few of these groups owned sufficient lands (or, more accurately, titles that American policymakers would acknowledge in the first place) to be worth the effort of rounding up and deporting them.<sup>667</sup>

Indigenous Southerners from across the Five Tribes journeyed into the city to embrace these opportunities. Travellers and local officials recorded the presence of numerous Choctaws, Creeks, and other members of the Five Tribes who – at least according to the visions of American policymakers – had no legal right to be there, and ought to have relocated to Indian Territory.

In 1850, Louisiana resident and poet Dominique Rouquette recorded several decades of observations of the city, noting that 'the Choctaws who did not want to migrate west of the Mississippi' engaged in myriad different trades, producing goods ranging from baskets and sieves to medicinal plants and turtles. These people, Rouquette stressed, were part and parcel of the backdrop of the city, maintaining openly Indian identities as they both traded and simply inhabited its streets. 'Nothing is more interesting to the tourists', he suggested, 'than to see them wandering along the streets of *La Reine du Sud* (the Queen of the South), *La cite du Croissant* (the Crescent City), with their *pauvres pacotilles* (cheap small wares), in their picturesque costumes, half

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<sup>666</sup> Mrs Francis Trollope, 1827 observation, cit. Liliane Crété, *Daily Life in Louisiana, 1815-1830*, trans. Patrick Gregory, (Baton Rouge: Louisiana State University Press, 1978, 1981), 61.

<sup>667</sup> See Usner, *American Indians in the Lower Mississippi Valley*, 117-119. Despite occasional calls for removal, neither local nor federal officials seriously considered these claims in the 1820s and 1830s. This situation echoed that of many smaller, non-Five Tribes indigenous groups across the South, who were not formally targeted for removal for similar reasons. See: Rountree, *Pocahontas' People*, 187.

savage and half civilized, followed by a number of children of all ages, half naked, carrying on their backs a papoose snugly wrapped in a blanket'.<sup>668</sup> These people were not simply present in New Orleans: they were there in large numbers, and with visibly indigenous identities, speaking their own languages and wearing their own distinctive styles of clothing. Even their behaviour could be distinctive. Rouquette recalled that 'sometimes, they squat in a circle, at the big market place, on the banks of the old river, patiently waiting with chaste downcast eyes, for the chalands (customers) who buy what they offer'.<sup>669</sup> Unlike indigenous Southerners forced to evade in the shadows, or to pass and live permanently as white, they were a visible, everyday presence in the city, even if outsiders could not always easily position their racial groupings or origins.

For many Choctaws or other indigenous Southerners who moved into the urban spaces and marketplaces of New Orleans, passing was not even necessary. By simply being present in these complicated, multi-racial spaces they became automatically illegible, blending into the metropolis' ambiguous and multifaceted racial backdrop to become, to all intents and purposes, hidden in plain sight. In New Orleans, indigenous people could walk through the city in groups, which observers supposed to be Choctaws, Chitimachas, or others. If they chose to walk less conspicuously as individuals or tiny family groups, they could simply blend into the hubbub as just another hard-to-place face. After all, as Gerstäcker had warned, in the city's bustling markets or streets who was to say that a racially ambiguous individual was definitely Choctaw, "Indian", black, white, foreign, or any manner of other racial labels?<sup>670</sup> In bustling streets or marketplaces, many individual indigenous people might have caught the eyes of passers-by, but cloaked in white clothing or distinct from other Indians, remained undetectable as members of the Choctaw, Cherokee, or Creek Nation who had escaped officials' glare and run away to avoid

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<sup>668</sup> Dominique Rouquette, "The Choctaws", TU-LaRC.

<sup>669</sup> Ibid.

<sup>670</sup> See above.

removal. Their safety was further assured by the fact that federal removing agents did not formally target the Bayou state, never mind the Crescent City, during this period.<sup>671</sup>

While the city's diversity surprised foreign visitors, it was no surprise to many indigenous Southerners, especially to groups like the Choctaws who had long encompassed Louisiana within their hunting and trading orbits.<sup>672</sup> Indeed, Choctaws had recognized New Orleans' linguistic diversity for centuries: since the arrival of French, Spanish, Caribbean, and American colonisers, they had called the city *Balbancha*, literally 'a place of foreign languages'.<sup>673</sup> When faced with the dilemma of removal, for many indigenous Southerners – especially those peripheral to their wider polities – it might have seemed an obvious choice to vanish into this Babel, with a soundscape so varied that prying ears would not necessarily have been able to discern speakers of Choctaw or Cherokee from those speaking French, Spanish, German, Caribbean dialects, local Creole terms, or many unique mixtures of the various tongues.<sup>674</sup>

As well as camouflage, the city also offered tantalizing chances for market interactions. By the 1820s and 1830s, even the most peripheral of indigenous Southerners had experienced some connections to American goods and the experience of trading in American marketplaces.<sup>675</sup> For individuals and communities insufficiently acculturated to pass temporarily as white but sufficiently desirous of European goods, the markets of New Orleans offered a unique space in which to openly conduct trade in distinctly Indian foodways and wares, allowing indigenous

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<sup>671</sup> See discussion in evasion chapter. Agents did come to New Orleans in later decades, but only in a piecemeal fashion, in response to later developments that I will discuss in my extended manuscript. No agents formally targeted the state in the 1820s and 1830s.

<sup>672</sup> See evasion chapter for discussion.

<sup>673</sup> 'Reponses aux questions', esp. section: 'what do the Chahtas call New Orleans?', not dated, Adrien Emmanuel Rouquette Papers, Box 1, folder 1, TU-LaRC; Usner, *American Indians in the Lower Mississippi Valley*, 112; William A. Read, *Louisiana Place Names of Indian Origin: A Collection of Words* (Tuscaloosa: University of Alabama Press, 2008), 43. Read suggests that the etymology is a combination of two Choctaw words, *balbaba* (one that speaks a foreign language) and *asha* (to be there). He also notes that Choctaws used the word to refer to the Mississippi river before they used it to refer to New Orleans.

<sup>674</sup> For linguistic diversity and the existence of mixed languages unique to New Orleans, see: Gerstäcker, 'New Orleans', 54, 58.

<sup>675</sup> For a long-ranging history of indigenous interactions with Euro-American goods and markets, see: Alexandra Harmon, *Rich Indians: Native People and the Problem of Wealth in American History* (Chapel Hill: University of North Carolina Press, 2010).

peoples – both non-removed members of the Five Tribes and local Louisiana groups alike – to ‘find...a social niche compatible with their own customs and needs’ and to ‘participate...in the larger nineteenth-century society without losing their separateness’.<sup>676</sup>

For all its opportunities, however, New Orleans was no utopia. Even if cloaked from the immediate dangers of removal, indigenous groups still encountered prejudice on the city’s streets. If tourists marvelled at Indians, local residents were more likely to view them with disdain or even active hostility. Local presses regularly commented on the drunken, degraded condition of the Native peoples to be found in and around the city, directing much of their ire towards (people they believed to be) Choctaws, whom they condemned as a ‘de-Indianized’ nuisance.<sup>677</sup> For some, verbal abuse became physical. People thought to be visibly “Indian” often suffered violence and taunting, such as finding their hair tied to that of others who were sleeping or drunk on the streets and levees.<sup>678</sup> Besides anti-Indian prejudice, life in the city also came with other risks. During its hot, humid summers, New Orleans festered with yellow fever, jeopardizing the very lives that indigenous fugitives had sought to protect. At the same time, prejudice towards newly-arrived Irish immigrants also raised the risks of passing as white, creating opportunities for additional mistreatment and undesirable labour if mistakenly identified as the wrong kind of white person.<sup>679</sup> These were high-stakes gambles but, for many indigenous Southerners fleeing removal, they were risks worth taking. After all, living in New Orleans meant remaining close to ancestral homelands, spiritually important places, and off removal lists.

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<sup>676</sup> Usner, *American Indians in the Lower Mississippi Valley*, 117.

<sup>677</sup> Ibid, 118-119.

<sup>678</sup> Ibid.

<sup>679</sup> For yellow fever: Olivarius, ‘Necropolis’. For anti-Irish and anti-immigrant sentiment and its position in Southern labour hierarchies, see: David T. Glesson, *The Irish in the South, 1815-1877* (Chapel Hill: University of North Carolina Press, 2001); David R. Roediger and Elizabeth D. Esch, *Production of Difference: Race and the Management of Labor in U.S. History* (Oxford: Oxford University Press, 2012), ch1.

A short steamboat ride from New Orleans lay another bustling Southern metropolis: the city of Mobile, Alabama.<sup>680</sup> Like its Crescent cousin, Mobile owed its origins to the French colonists of *La Louisiane*. In 1702, four years into a flailing attempt to found a settlement among the watery edges of Biloxi bay, Jean-Baptiste Le Moyne de Bienville took the decision to travel further along the Mobile river. After an arduous journey, twenty-seven miles upstream, he found the perfect spot: a site of around 120 acres, nestled along the Gulf and close enough to indigenous settlements to facilitate easy trade. The settlement boomed. In 1711, residents relocated a few miles along the river to the city's present-day location. Le Moyne de Bienville christened the city 'Fort Louis de la Louisiana', but it would be the corrupted name of 'Fort Louis de la Mobile' that stuck, Mobile being a Francophone interpretation of the name of the nearby indigenous settlement, *Mawila*.<sup>681</sup>

Just over a century later, much had changed in Mobile. The British had claimed the city as the spoils of war in 1763. Following the Revolution, it transitioned to American control. By the turn of the nineteenth-century, Mobile had experienced rapid growth, morphing from a colonial outpost into a bustling conurbation of over twenty thousand inhabitants. Perched at the edge of the Gulf, riverine and maritime threads tied the city in a knot of trade and communication links stretching out across the South and US to the North and, to the South, out into the Caribbean, South America, and the wider world. Indeed, Mobile had become such an important hub for communication and trade that visitors informally christened it 'the Port City'.<sup>682</sup>

Like New Orleans, Mobile's trading prowess invited a remarkable diversity of people and visitors to its wharves, streets, and boarding houses. Unlike Louisiana, Alabama did not legally enshrine

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<sup>680</sup> For steamboat ride, see: Robert O. Mellown, 'Steamboats of Alabama' (last updated 2013), in *Encyclopedia of Alabama*: <http://www.encyclopediaofalabama.org/article/h-1803> [accessed: 29/09/2016, 12:11].

<sup>681</sup> Michael Thomason, *Historic Mobile: An Illustrated History of the Mobile Bay Region* (San Antonio: HPN Books, 2010), 11-13.

<sup>682</sup> *Ibid*, 14; Virginia Van Der Veer Hamilton, *Alabama: A History* (New York: W.W. Norton, 1994), 157-158.

racial diversity in a Caribbean-style racial hierarchy.<sup>683</sup> However, Mobile's streets told a less clear-cut story. Alongside the thousands of slaves held in bondage on plantations in and around the city, the area also housed one of the largest free black communities in the region: in 1860, Mobile county was home to around one thousand free black people, over half of the entire free black population of Alabama.<sup>684</sup> Travellers frequently remarked on a vision of a diversity, in which multiple languages could be heard, a wide spectrum of phenotypical features could be seen, and tales about far-flung countries could be shared. One noted that Mobile had 'a certain something of a foreign appearance', while a reporter for *Harper's Weekly* found the city's inhabitants to be the most 'varied in nationality and descent' in the whole United States.<sup>685</sup> The statistics backed up their perceptions: in the 1850s, as many as sixty-three percent of Alabama's foreign-born residents lived in Mobile.<sup>686</sup>

As removal policies gathered momentum, this bustling urban space drew numerous indigenous Southerners, just as similar considerations had pulled others to New Orleans. Throughout the 1820s and 1830s, travellers and local residents recorded the presence of visibly indigenous people in and around the city. In the 1850s, Northern librarian, author, and self-styled explorer Charles Lanman published a volume recalling his 'winter in the South' some years earlier. Recalling his visit to Mobile, Lanman enthused that 'with the market of this city I have been particularly pleased', since it was 'a congregating place for queer characters', from 'negroes of every age and shade of color' to 'an occasional group of Choctaw Indians'. 'The number of Indians who spend much of their time in Mobile, but who live in the neighbouring pine woods', Lanman recorded, 'is estimated at one thousand'. He marvelled that they were a frequent sight in the city, doing 'a little hunting for the market' and then 'deck[ing] themselves in bright colors and hang[ing] about

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<sup>683</sup> See: Jeffery Strickland, 'Review Essay: Race and Ethnicity in Nineteenth-Century Mobile, Alabama', *Journal of Urban History* 33 (2006), 130-139.

<sup>684</sup> Hamilton, *Alabama*, 158.

<sup>685</sup> *Ibid*, 155, 158.

<sup>686</sup> *Ibid*, 158.

the market or the hotels, very much after the manner of their brother snobs in our Northern cities who loiter about the church doors on Sunday'.<sup>687</sup>

As in New Orleans, observers often assumed these people to be Choctaws, yet there is no way to prove that they did not misidentify indigenous Southerners who sought to blur their ethnic origins in the first place. Still, it mattered that Indians were there at all. Although Alabama lacked the flexible racial categories of the Crescent city, it still provided an important space in which indigenous communities could come to seek trade or exchange, while still maintaining their distinction from wider white society. Like New Orleans, Mobile was never completely safe, but many desperate people calculated that it was better than taking your chances in a swamp or moving westward to unknown lands at gunpoint.

#### Clouded Vision, Blurred Archives

Just like evasive acts, illegibility strategies are almost untraceable within the traditional historical record. People who successfully passed for white, or who made themselves effectively invisible to agents do not show up in records as discernibly “Indian” or as identifiably different to the wider white or black population. However, beyond the usual challenges of locating evasive people, illegibility strategies also pose a unique type of methodological challenge: the complex political realities that separate the past from the present.

If the nineteenth-century South was a society which privileged white identity as the key to power and social standing, the decades following the Civil Rights Movement have seen a seismic shift in the American racial landscape. In a world bordered by myths of a ‘post-racial’ America, claims to indianness or indigenous heritage do not carry the stigma that they did in the mid-nineteenth

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<sup>687</sup> Charles Lanman, ‘A Jaunt into Mississippi’ from ‘A winter in the South’, in Charles Lanman, *Adventures in the Wilds: the US and British America* (Philadelphia: J.W. Moore, 1856), 189-190.

century.<sup>688</sup> For many, claims of indigenous identity which would have spelt forcible deportation, dispossession or even death during removal now have connotations of peaceful, vanishing, or environmental Indians, sovereign casino owners, and even Disney Princesses.<sup>689</sup> This climate has led to a burst of claims to indigenous heritage. In a telephone poll in the late 1990s, sociologist John Shelton Reed found that up to 40% of Southern respondents claimed to have “Indian” ancestry. Demonstrating the politicised nature of the response, more Southern respondents claimed indigenous forebears than Confederate ones.<sup>690</sup>

These claims are problematic at many levels. Some are genuine, but many more are misguided, if generally well-intentioned, attempts at embracing a more varied genealogy and the new positive connotations of indianness. Others have been more malicious. Especially in the wake of the 1988 Indian Gaming Regulatory Act, the Bureau of Indian Affairs has seen a steep rise in the number of claims from individuals and groups staking claims for tribal enrolment under the mistaken belief that this will entitle them to federal funds.<sup>691</sup> Overwhelmingly, indigenous polities have reacted to both kinds of claims with understandable disdain. As scholar and activist Rayna

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<sup>688</sup> For ‘post-racial America’, see: Anna Holmes, ‘America’s “postracial” fantasy’, *New York Times Magazine*, 30 June 2015: <https://www.nytimes.com/2015/07/05/magazine/americas-postracial-fantasy.html> [accessed: 13/02/2017, 11:48].

<sup>689</sup> For positive associations, appropriation, and commercialization of indigenous identities, see: Lisa Aldred, ‘Plastic Shamans and Astroturf Sun Dances: New Age Commercialization of Native American Spirituality’, *American Indian Quarterly* 24 (2003), 329-352; Bataille, *Native American Representations*; James Mackay and David Stirrup (eds.), *Tribal Fantasies: Native Americans in the European Imaginary, 1900-2010* (New York: Palgrave, 2013).

<sup>690</sup> Reed, John Shelton, ‘The Cherokee Princess in the Family Tree’, *Southern Cultures* 3:1 (1997), 111-113. Of course, there is a long American tradition of claiming and/or appropriating indigenous identities. See Deloria, *Playing Indian*. Despite this shift in perceptions, it is also worth noting the ongoing disconnect between these stereotypes and reality. As current events, particularly the Standing Rock Sioux’s ongoing protest against the Dakota Access Pipeline, demonstrate, there remains very real and negative consequences for indigenous people visibly and unabashedly displaying their own identities. People claiming Indian identities but otherwise able to identify as white rarely experience these prejudices and consequences.

<sup>691</sup> See: Cramer, *Cash, Color and Colonialism*. As Cramer argues, much as it has encouraged exploitation by dubious claimants, the IGRA has actually made the recognition process much harder for legitimate indigenous claimants, who often come under significant local opposition from communities who believe that newly-recognized groups will open casinos immediately, even if they argue that they will not. For recent examples of this, see the recognition process of Virginia’s Pamunkey Indians, approved in 2015, especially: ‘Third-Party Comments on the January 16, 2014 Proposed Finding for Acknowledgement of the Pamunkey Indian Tribe’, Bureau of Indian Affairs Website, [https://www.bia.gov/cs/groups/xofa/documents/text/323\\_pf\\_third\\_party\\_comments.pdf](https://www.bia.gov/cs/groups/xofa/documents/text/323_pf_third_party_comments.pdf) [accessed: 13/02/2017, 11:52]. See also the Cherokee freedmen controversy: Gregory D. Smithers, *The Cherokee Diaspora: An Indigenous History of Migration, Resettlement, and Identity* (New Haven: Yale University Press, 2015), 264. Many of these regulations for Indian citizenship, especially in the South, spring from segregation and the need for tribes to protect their own racial identities with blood quantum. See: Adams, *Who Belongs?*

Green summarizes, this “tribe” of ‘wannabee Indians’ – because they ‘want to be Indian’ – pose a unique threat to indigenous sovereignties and the claims to distinctive identities on which they rest. They create ‘a fictional mixed-blood world, where those making the claim want to be rewarded in some way for their claim, even though they reject implicitly any resultant negative treatment because of that status’.<sup>692</sup>

Many of those claiming indigenous identities – especially in the South – tend to claim those of the Five Tribes, most commonly the Cherokees. In the 2000 federal census, 729,533 respondents self-identified as ‘Cherokee’. This trend shows no sign of waning: in 2010, 819,105 respondents claimed Cherokee ancestry.<sup>693</sup> ‘The Cherokee princess in the family tree’ is such a widespread claim that the idea of a ‘Cherokee Princess tribe’ has become an in-joke among indigenous groups.<sup>694</sup> In fact, the wealth of claims for Cherokee identity has become so problematic that the modern-day Eastern Band of Cherokees (EBCI), the largest, federally-recognised polity of non-removed Cherokees, based in North Carolina, has created a “fraud list” and, in 2011, established a special committee for Cherokee Identity Protection.<sup>695</sup> In some cases, these stories perhaps do point to hidden family histories, obscured by the historical record; realistically, many more may tell us about the brand recognition of the Cherokees as one of the most visible Southern indigenous tribes and, as a result, the polity with whom it is statistically easiest to claim affiliation.<sup>696</sup> Many of these claims may be true, but many are dubious and at best unprovable,

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<sup>692</sup> Rayna Green, ‘The Tribe Called Wannabee: Playing Indian in America and Europe’, *Folklore* 99 (1988), 46-7. ‘Pretendian’ is another popular term for this kind of claim. See, eg: Ruth Hopkins, ‘My Native Identity isn’t your plaything. Stop with the mascots and “pocahotties”’, *The Guardian*, 19 June 2015: <https://www.theguardian.com/commentisfree/2015/jun/19/my-native-identity-isnt-your-plaything-mascots-pocahotties> [accessed: 3/10/2016, 10:02]; Stephen A. Crockett Jr., ‘“Pretendian”: Meet Susan Taffe Reed, the “Native American” Rachel Dolzeal’, *The Root*, 2 October 2015: <http://www.theroot.com/articles/news/2015/10/pretendian-meet-susan-taffe-reed-the-native-american-rachel-dolzeal/> [accessed: 3/10/2016, 10:05].

<sup>693</sup> Gregory D. Smithers, ‘Why do so many Americans think they have Cherokee blood? The history of a myth’, *Slate* 1 October 2015: [http://www.slate.com/articles/news\\_and\\_politics/history/2015/10/ Cherokee\\_blood\\_why\\_do\\_so\\_many\\_american\\_s\\_believe\\_they\\_have\\_cherokee\\_ancestry.html](http://www.slate.com/articles/news_and_politics/history/2015/10/ Cherokee_blood_why_do_so_many_american_s_believe_they_have_cherokee_ancestry.html) [accessed: 23/4/2016, 15:35].

<sup>694</sup> Green, ‘The Tribe called Wannabee’, 48.

<sup>695</sup> Smithers, *Cherokee Diaspora*, 265.

<sup>696</sup> Smithers, ‘Why do so many Americans...?’.

such as Senator Elizabeth Warren's contentious claims to a Cherokee great-great-great Grandmother.<sup>697</sup>

This ambiguity clouds any attempt to accurately trace histories of illegibility as a route out of removal. Since passing was by nature a strategy of silence and deliberate obfuscation, in most cases it is impossible to know whose family legends of a passing Cherokee or Creek grandmother are to be believed, especially if that ancestor deliberately obscured all documentary trace of their indigenous inheritance. As this chapter demonstrates, family stories allow us a unique window into a world that passing indigenous Southerners' survival depended on remaining obscured. We can catch fragmentary glimpses of the actions of someone like Two-Moons or Moses because of the legends and stories about their actions passed down as family lore. However, in a world where many people readily claim indigenous ancestors and indigenous identities, the reality of stories of racial passing can be especially difficult to detect.

In understanding and tracing illegibility strategies, therefore, we must acknowledge complicating, palimpsest-like nature of the past. The debris and collected layers of later years complicate and obscure our ability to see and understand indigenous actions at removal, especially when those actions were themselves deliberately elusive in the first place. In attempting to recover the history of non-removal, we must consider the potential for obfuscation and confusion, yet this does not mean that acts of passing, urban evasion, and strategically claiming or lying about racial identities are not fundamental parts of a complete history of non-removal. Although not every story can be taken at face value, this chapter demonstrates that there are enough documented, provable stories of illegibility – and explanations for their invisibility in traditional state sources – to demand that these strategies be taken seriously, even if we can only ever see them in imperfect and incomplete fragments. Like many of the stories in this dissertation, these imperfect archival

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<sup>697</sup> See, eg, Garence Franke-Ruta, 'Is Elizabeth Warren Native American or What?', *The Atlantic*, 20 May 2012: <http://www.theatlantic.com/politics/archive/2012/05/is-elizabeth-warren-native-american-or-what/257415/> [accessed: 24/03/2016, 14:41].

shards highlight the ways that the past can be obscured, and its ongoing, tangled relationship to the present.

## Part Two:

### Passing Through State Sight

If complex political claims distort the historical record, questions of state sight also obscure illegibility strategies. As with evasion, the archive of illegibility is the product of a world in which indigenous Southerners fought to remain invisible and, as a result, largely reproduces the ways in which officials simply struggled to see them.

In November 1833, Commissioner of Indian Affairs Elbert Herring made his annual report to Lewis Cass, the Secretary of War. The closing year had been an eventful one for the Indian Office. Across the South, removal negotiations had continued apace. ‘The Treaty concluded with the Chickasaw nation’, Herring noted, had been ratified by Congress and now ‘has been put in the course of execution’. Similarly, the Commissioner recorded that the Seminoles had signed a treaty that had been presented to the Senate, ‘and will be obligatory on its ratification by that body’. Yet for all this progress, Herring had to report that his year had also been beset with difficulties. ‘The Cherokees’, he lamented, ‘continue, in the midst of increasing embarrassments, to evince the same pertinaciousness [sic] on the subject of removal that has hitherto...warred with their best interests’. Elsewhere, he reported, agents continued to struggle with the ‘unfortunate circumstance’ of intruders on Creek lands, who had committed ‘gross injustice and cruel treatment towards the Creeks’, not to mention ongoing ‘difficulties in the location of the lands of emigrating Indians’, spiralling budgets, and ‘the proneness of the Indian to the excessive use of ardent spirits’, all of which hampered removal efforts.<sup>698</sup> From the perspective of the

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<sup>698</sup> Elbert Herring to Lewis Cass, ‘Report from the Office of Indian Affairs’, 28 November 1833. *ARCLIA*.

Indian Office's highest echelons, 1833 was a mixed bag: removal had begun with gusto, but there was still much to worry about and much to be done.

From Washington DC, Herring viewed the South in a sweeping birds' eye view, as one part of a bigger, busy continent. Filtered through the lens of thousands of letters and regular reports, penned by hundreds of agents dispatched across the South, processed and summarized by yet more staff, the Commissioner watched removal negotiations as they unfolded on the ground. Despite the usual, inescapable antebellum delays of a slow post or delays in writing, Herring sat atop a highly efficient bureaucratic chain, linking agents and administrators stretched across the South, North, East, and West.<sup>699</sup>

Yet within their wide spectrum of success, frustration, and fear over removal that the Indian Office experienced in 1833, one indigenous strategy remained virtually invisible to officials: illegibility. Within this broad picture, Herring received no reports noting that indigenous Southerners had sought to cloak themselves in whiteness or blackness to escape removal, nor that they had attempted to render themselves illegible in other ways. Indeed, there is no evidence that most agents even suspected that it was possible for indigenous Southerners to deceive them in this way, especially in the early years of removal.<sup>700</sup>

### Crowded Sight

If illegibility strategies did not concern those at the top of the administrative pyramid, this was because they were often just as obscure to the hundreds of agents that they dispatched South to negotiate removal. In summer 1830, Secretary of War John Eaton and Commissioner John Coffee signed a removal treaty with Chickasaw leaders at Franklin, Tennessee. Indian Office officials were highly confident about the agreement. Although it did not promise immediate

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<sup>699</sup> For bureaucratic sophistication, see: Rockwell, *Indian Affairs*, and chapters above.

<sup>700</sup> I have found no such evidence in my study of the Indian Office correspondence.

mass removal, like the Choctaw treaty signed just weeks later, it did provide for the mass allotment of Chickasaw lands, with a view to the tribe selling these parcels to fund their own movement westward.<sup>701</sup> In Washington, the Indian Office was quietly confident about the prospect of removal. When Coffee and Eaton signed an agreement with the Choctaws just weeks later, officials outwardly nourished hopes of setting a precedent for swift, effective removal across the region.<sup>702</sup>

However, within months, it became clear that Chickasaw removal would also not go as smoothly as officials had hoped. Many Chickasaws were reluctant to move but others expressed doubts about the legitimacy and the content of the proposal. The agreement fell apart; the treaty went unratified and removal efforts stalled. Shaken but not deterred, agents tried again. In mid-1832, John Coffee returned to Chickasaw lands, desperate to negotiate another treaty. Jackson had dispatched the commissioner with clear orders to get an agreement, but the negotiations were hard. Coffee and his aides had to contend with growing tensions within the Chickasaw Nation over the fate of the Treaty of Franklin, and the course that removal would take. Once more, the negotiations stalled, as neither the Chickasaw representatives nor the Commissioners could agree on how Chickasaw lands ought to be allocated into reservations. The impasse ran on long enough for autumn to turn to winter. At the negotiating camp, provisions ran low, many Chickasaw leaders left. Levi Colbert – one of the groups' Principal Chiefs, or *Itte-wamba Mingo* – became so unwell that he had to leave the treaty grounds.<sup>703</sup>

As days turned to weeks, and weeks to months, Coffee and the other agents channelled their frustrations into devious actions. Gathering the remaining leaders, Coffee berated them 'as ignorant, duplicitous, and mean?'; after the threats, he followed with deception, encouraging them to sign agreements on the basis that Levi Colbert, absent in his sick bed, had already signed. By

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<sup>701</sup> 'Treaty with the Chickasaw, 1830', otherwise known as the Treaty of Franklin, 31 August 1830, Unratified, 'Indian Office, Box 1, Treaties 1802-1853', *LALT*.

<sup>702</sup> See chapter 2.

<sup>703</sup> Paige et al, *Chickasaw Removal*, kindle location 722-832.

and large, the threats seemed to work.<sup>704</sup> Coffee was exhausted and frustrated, but the government felt confident enough to assume victory was in sight. On 20 October, Chickasaw leaders signed an agreement promising that they ‘hereby cede, to the United States, all the land which they own on the east side of the Mississippi river, including all the country where they at present live and occupy’. Two days later, Coffee supplemented the treaty with an addendum, stipulating the plans for allotment and sale of reservations, as well as the provisions for movement West.<sup>705</sup>

The following March, Congress formally proclaimed the treaty in Washington DC.<sup>706</sup> But on the ground in Mississippi, all was already unravelling again, much to agents’ distress. Less than a month after the treaty had been signed, in November 1832, prominent Chickasaw leaders began to claim that the treaty had been falsely agreed: even though his name appears on both the treaty and the supplement, Levi Colbert claimed not to have even signed it at all, and that his signature had been forged.<sup>707</sup> Colbert and other prominent Headmen petitioned Jackson and the Indian Office; others formed a delegation and headed to Washington themselves for the winter of 1832 and spring of 1833. In the meantime, removal ground to a halt. Agents on the ground in Chickasaw country could not begin the process of removal while the issue of Chickasaw funds and land ownership remained unresolved; in the meantime, an influx of white settlers flooded the Nation, simply taking lands that the agents had not yet convinced Chickasaws to vacate.<sup>708</sup>

Eventually, the ground agents, Indian Office staff in DC, and Chickasaw leaders had all grown frustrated at the fraught proceedings. In March 1834, a new Chickasaw delegation headed to Washington, seeking to negotiate amendments to the Treaty of Pontotoc. On 24 May, the parties

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<sup>704</sup> Ibid, kindle location 184.

<sup>705</sup> ‘Treaty with the Chickasaw, 1832’, otherwise known as the Treaty of Pontotoc, ‘20 Oct, 1832, 7 Stat., 381, Proclamation, 1 Mar 1833’, *LALT*. ‘Treaty with the Chickasaw, 1832: 22 Oct 1832, 7 Stat., 388’, *LALT*. For wider frustrations, see: NARA M234 Roll 136, ‘Chickasaw Agency, 1830-1835’; Roll 143, ‘Chickasaw Agency Emigration, 1837-38’.

<sup>706</sup> ‘Treaty with the Chickasaw, 1832’.

<sup>707</sup> Paige et al, *Chickasaw Removal*, location 886.

<sup>708</sup> Ibid, location 986-1003.

finally came to an agreement and signed a new treaty, promising more generous land allotments for Chickasaw families, as well as a general fund to protect and manage the money earned from sales of land, and a commission to direct the sale of lands in the east, the purchase of new lands from among the Choctaw allocation in the West, and the practicalities of relocating the Chickasaws to Indian Territory.<sup>709</sup> But even this new agreement did not spell a clear path ahead. In Chickasaw country, agents struggled to implement the initial treaty and, worse still, the government had not allocated any western lands for the group. As a result, no Chickasaw could move west until the government successfully managed to convince newly-emigrated Choctaw leaders to sell the Chickasaws some of their lands in Indian Territory.<sup>710</sup> Both in Washington and Mississippi, the early 1830s were long and arduous years in the process of Chickasaw removal, with frustration abounding even before the deportations had begun.

If the process of negotiating Chickasaw removal was exceedingly difficult, it was not unique. Elsewhere across the South, agents dispatched to negotiate with other polities experienced similar difficulties in the first years of removal. In Cherokee country, agents experienced some success with voluntary migrations during the 1820s and early 1830s, but spent much more time lamenting their inability to get Cherokee leaders to agree to even the prospect of removal, let alone the form that a possible mass migration might take.<sup>711</sup> In Mississippi, Choctaw agent William Ward struggled with the unanticipated consequences of Article 14, which kept him fully occupied.<sup>712</sup> For agents negotiating among the Creeks and Seminoles things were just as protracted and violent.<sup>713</sup>

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<sup>709</sup> 'Treaty with the Chickasaw, 1834, 24 May, 1834, 7 Stat., 450, Proclamation, 1 July 1834', *LALT*. Paige et al, *Chickasaw Removal*, location 1091-1113. Unlike earlier removal treaties, the revised Treaty of Pontotoc did not promise large benefits for the negotiators – perhaps marking the fact that federal officials had been burned by previous mis-sight and mistaken expectations of negotiation by this point. See chapter 2. For content of treaty, see Paige et al, location 1128.

<sup>710</sup> See Foreman, *Indian Removal*, ch15.

<sup>711</sup> For Cherokee reluctance, see, eg: Letter from S. Cain (Cherokee, Alabama) explaining his reasons for not wanting to remove West: S. Cain to Secretary of War, 22 August 1834. NARA M234-R76.

<sup>712</sup> See chapter 2.

<sup>713</sup> See earlier chapters.

As agents battled constant obstacles and frustrations, they struggled to notice the almost invisible actions of illegible groups; in fact, illegibility was even more invisible to most agents than evasion. While agents complained about glimpses of fugitive groups or other suspected routes out of removal, in the first half of the 1830s, agents did not make a single reference to the possibility that individuals or families could have tricked them about their identities, or passed out of removal into white society.<sup>714</sup>

For the agents to the Chickasaws and their counterparts across the South, these early years of removal were filled with constant tasks, frustrations, and negotiations. Amidst their ever-expanding duties and growing failures, these deliberately tiny actions of illegibility were little more than virtually undetectable speck, so small among a wider sea of problems that they did not even know they had missed it.

### The Geographies of State Sight

Geographies – both real and imagined – also created blind spots in state sight that helped to obscure illegible individuals. On 3 July 1827, Major General John Cocke, a distinguished veteran of the 1812 war, arrived in New Echota accompanied by his personal secretary. Some months earlier, he had received a summons to serve as a commissioner to the Cherokee Nation, charged with encouraging them to begin negotiations with the United States over plans for massive land cessions of all Cherokee lands in North Carolina.<sup>715</sup> Following orders from Washington DC, within hours of setting foot in the region, Cocke had observed a Cherokee Council meeting. The engagement was the first of a long tour of negotiations with Cherokee leaders. Cocke's initial

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<sup>714</sup> I have found no reference in the OIA correspondence I have read.

<sup>715</sup> Negotiations opened following a Congressional act on 2 March 1827, authorizing them. See: Charles C. Royce, 'The Cherokee Nation of Indians', *Fifth Annual Report of the Bureau of Ethnology to the Secretary of the Smithsonian Institution 1883-1884* (Washington: Government Printing Office, 1887), 241.

appointment was supposed to run to August, but the sheer number of reluctant Cherokees to negotiate with meant that the appointment dragged on until the fall.<sup>716</sup>

Although the Commissioner's main negotiations centred on the leaders of the newly-appointed Cherokee Republic in its capital of New Echota, Cocke and his fellow commissioners clocked up many miles during their time in Cherokee country, seeking to convince local leaders and headmen of their plans, and to call them to come to a council in New Echota. Over the course of the summer, Cocke – or, more often, his sub-agents and Cherokee-speaking translators – undertook a series of trips to most of the major towns across the Nation, as well as to the plantations and homes of key Cherokee figures. One September journey was representative, seeing Cherokee messenger Isaac Bushyhead travelling from New Echota up to Savannah Valley, various settlements of the Valley Town Cherokees, passing through the homes of numerous prominent figures, and then finally down to Chattanooga and the Brainerd Mission, before finally returning to New Echota. This excursion – one of several recorded in the commissioners' journal for these months – took some nine and a half-days, and covered a distance of at least one hundred and twenty miles.<sup>717</sup>

In 1827, Cocke was officially negotiating initial land cessions rather than seeking to convince Cherokees of the sagacity of removal *en masse*. Nonetheless, his route mattered: it reflected the Indian Office's understanding of the geography of the Cherokee Nation. As the 1820s turned into the 1830s and the removal process became increasingly formalised, the Indian Office dispatched more men to the South, tasked with implementing removal. As agents paraded across Indian Country, seeking to enrol unenthusiastic indigenous Southerners for emigration, they expanded their reach. Yet even as the number of boots on the ground grew, Indian Office officials overwhelmingly stuck to long-established familiar geographies of indigenous settlement,

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<sup>716</sup> Commissioners John Cocke, Geo. S. Davidson, Alexander Gray, to the Hon. James Barbour, Secretary to the Department of War, not dated, NARA M234-R72; Journal of the Commissioners beginning 3 July 1827, M234-R72.

<sup>717</sup> Ibid, see esp. entry for 17 September 1827, pp.8-9 of journal.

based on their pre-existing mental maps of the indigenous South. Initial Cherokee removal negotiation expeditions saw agents repeatedly neglect the far Western reaches of the Cherokee Nation, especially the areas traditionally known as the Out Towns. Similarly, during the Cherokee removal negotiations of 1835 and 1836, officials also made no attempt to target the very edges of the Nation, overlooking groups at or beyond the boundaries, including many of the 1817 and 1819 reservee groups.<sup>718</sup> Agents dispatched to negotiate with other groups followed similar patterns. For instance, when negotiating Choctaw removal in the early 1830s, the Indian Office all but ignored the Nation's most liminal communities, such as the Six Towns.<sup>719</sup> By concentrating on the largest and most familiar indigenous settlements, agents inadvertently created blind spots, places beyond the effective limits of their control.

If agents did not extend their reach to the edges of the Five Tribes, they also overlooked many places beyond the reaches of indigenous space, especially the rural edges of white farmsteads and settlements just beyond the formal boundaries of Cherokee, Choctaw, Creek, or Chickasaw lands. By and large, agents did not seek candidates for removal beyond Indian Country, because it hardly occurred to them that people eligible for removal could be present in these places, whether as hidden presences, property holders, or even ostensibly "white" people within American spaces. As a result, agents did not notice people who held land but lived Indian lives, like Rose and Daniel Gaines, or who lived in or around white settlements with white allies like Bomah-Tubbee. Officials' vision fell into a series of concentric circles, sharpest at the centre and weakest at the periphery. By placing themselves beyond the edges of the geographies of removal, indigenous Southerners slipped beyond the corners of agents' sight.

### Urban Evasion

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<sup>718</sup> See discussion of New Echota negotiations in ch1.

<sup>719</sup> See discussion in chapter 2.

If agents scarcely ventured into rural settlements or landholdings beyond Indian country, they frequently entered urban areas across the South. At the peak of Cherokee removal, almost all agents made their reports from within the Cherokee Nation, though in the course of their duties, almost all agents also travelled through many Southern towns and cities.<sup>720</sup>

The town of Athens, Tennessee, for instance, lay barely beyond the edges of Cherokee removal efforts; indeed, the town had been part of the Cherokee nation until the 1810s. Following the Cherokee land cessions of 1819, white settlers had acquired the lands, and created the new town in 1822. Named for its supposed resemblance to its Grecian counterpart, Athens had grown steadily. In 1830, census-takers recorded 500 inhabitants, and the city also boasted a newspaper, a tavern, four lawyers, four doctors, four ministers, a printing office, a painter, and ten stores (three more than nearby Knoxville).<sup>721</sup> Yet Athens remained just miles from the Cherokee Nation and, as a result, during removal thronged with agents. In 1836, General John Wool arrived in the region seeking to begin the process of military removal, and initially divided his time between the Nation's Capital of New Echota and Athens, receiving much of his correspondence addressed direct to the town.<sup>722</sup> Even after Wool had left, Athens remained an important hub for agents' scrutiny. Several agents sent reports from the town in 1838, including Major General Winfield Scott.<sup>723</sup>

In towns like Athens, agents may have been close, both geographically and mentally, to removal duties. Nonetheless, most agents seem to have regarded their times in urban spaces as distinct from their ordinary work. They went into town to fulfil Indian office business, such as meeting contacts and picking up new colleagues, collecting money, travelling and resting overnight, or

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<sup>720</sup> See, eg: NARA M234, Roll 113, 'Cherokee Emigration: 1828-1836' [hereafter NARA M234-R113]; NARA M234-R114; NARA M234-R115.

<sup>721</sup> Bill Akins, County Historian, 'City of Athens, TN, History', City of Athens official Website: <http://www.cityofathensTN.com/history.html> [accessed: 20/10/2016, 10:39].

<sup>722</sup> See, eg: B.F. Butler, Secretary of War ad. interim, to Brigadier General John E. Wool (Athens, TN), War Department, 24 December 1836. *ASP*, Military Affairs, VII, 563.

<sup>723</sup> See, eg: Maj. Gen. Winfield Scott to Joel Poinsett, Athens, Tennessee, 7 September 1838, M234-R115.

sending dispatches; they did not go into town expecting to continue the actual process of enrolment and removal itself.<sup>724</sup> Testifying to this perceived geographical split between Indian and American space, agents rarely reported on the details of their time in urban spaces, other than to offer cursory details about their arrival, departure, official business, or, if appropriate, details of illnesses or rumours experienced in town. Not one agent reported that he had seen Indians during these visits to urban spaces, or that he felt that agents ought to target these settlements in the hope of completing removal. Indeed, there is little evidence that agents even expected to see Indians at all when they went into town.<sup>725</sup>

In some distant cities, federal sight was even patchier. While agents were present in towns like Athens, they simply did not extend their reach to other urban spaces further afield. Following broader geographies of state sight, Washington officials simply did not target the westernmost areas of the South, beyond the formal boundaries of the Five Tribes' lands.<sup>726</sup> During removal, agents did not enter places such as New Orleans – at least, not on official business – creating a significant gap in state sight, but also enhancing the already attractive cloaking potential of the Crescent City for indigenous Southerners.<sup>727</sup>

Following blueprints set out in Washington DC, agents never received orders to explicitly hunt for removeable Indians in Southern towns or cities.<sup>728</sup> Besides, people hidden in towns had probably worked hard to vanish into the background long before officials arrived. In order to remain illegible in town, indigenous Southerners had to have the right credentials, from phenotype and dress to behaviour and language, to avoid detection from local communities as well as from agents. Even if agents did not know it, these geographies of state sight created notable blind spots. For indigenous Southerners seeking to avoid removal, these urban spaces

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<sup>724</sup> See, eg: William Ward to Lewis Cass, 10 September 1831, NARA M234-R185 (which discusses arrangements for the death of an agent, without any sense that Ward ought to look for Indians while in town).

<sup>725</sup> To date, I have seen no such report, or a comment that it was unusual not to see Indians in town.

<sup>726</sup> See discussion in previous chapter.

<sup>727</sup> See above and evasion chapter.

<sup>728</sup> I have found no direct order.

constituted a gaping hole in the sight and reach of state power that they were only too willing to exploit.<sup>729</sup>

Nonetheless, if towns were free of agents, they still came with their own risks. By crossing into urban Americanised spaces, indigenous Southerners exposed themselves to another kind of scrutiny: that of local communities and white populations. Many certainly passed undetected even by their neighbours, but the experiences of the Indians racially abused and harassed in New Orleans, or beaten and killed like Two-Moons, testify to the ongoing and even deadly risks that any kind of illegibility could pose, even when safe from federal agents.<sup>730</sup>

### The Ambiguities of “Indian” Space

If officials most often missed people beyond the boundaries of Indian Country, acts of passing and illegibility still confounded them right beneath their noses. Although it lay at the heart of officials’ mental geography of Indian space, Indian Country actually offered fugitive Indians many chances to confound agents. Chief among these was these places’ diversity. Although newly-arrived agents perceived demarcated spaces of “Creek”, “Cherokee”, or “Chickasaw” country apart from wider Southern society, in reality these places were never racially monolithic, nor were their boundaries clear cut.

For centuries, a range of non-indigenous peoples had been present on and around the Five Tribes’ lands. From the dawn of European colonialism, non-Indian traders, missionaries, diplomats, agents, and slaves milled around indigenous lands. By the American Revolution, the

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<sup>729</sup> In later periods, when the legacies of non-removal became more contentious, small numbers of indigenous Southerners (or, more accurately, groups that agents working at a per head rate claimed were indigenous Southerners) were sometimes picked up from towns, such as Mobile. For instance, in 1850, federal and state officials removed a group of Choctaws from Alabama as ‘vagrants’ for ‘squatting’ on public land: OIA Agent Scott to Orlando Brown, Commissioner of Indian Affairs, 10 February 1850, NARA M234-R187. However, I believe this is part of a very specific phenomenon and reaction to non-removal that took place in the later 1840s and 1850s: I will discuss this in greater detail in my manuscript. I have found no comparable examples for this earlier period.

<sup>730</sup> See above.

Five Tribes' rapid acculturation and ongoing diplomacy had only increased this volume. Many of the Nations' elites intermarried with white traders and diplomats, creating a new class of *mestizo* leaders, such as Creek Alexander McGillivray, who forced British officials to rethink their ideas of blood and posed tough questions for American policymakers about the nature of future American and Indian relationships.<sup>731</sup> Following the federal civilization programmes and indigenous responses, a whole range of newcomers also came to live on Creek, Cherokee, Chickasaw, and Choctaw lands, in missionary outposts, Indian schools, trading posts, and permanent agencies. Traders, with permission to broker agreements in Indian country, also came back and forth from the Nations' edges, often accompanied by travellers and businessmen who sought to make passage through the various roads, turnpikes, and riverways controlled by the Five Tribes, not to mention the growing volume of slaves working in and travelling across Indian Country.<sup>732</sup>

Although Indian Office officials were well aware of this diversity – and themselves a part of it – it posed problems for them as they began to implement removal policy. As removal efforts accelerated, the boundaries between Indian country and American spaces only continued to blur. As pressure for rapid relocation grew, the presence of white faces increased. Aside from the growing numbers of agents and officials, large numbers of white settlers made frequent intrusions onto indigenous lands, many of them unsolicited and even illegal. Some came to trade or missionize, but many more raided homes, stole livestock, inflicted violence, and even stole lands from their inhabitants. From Cherokee lands to the north to Creek and Choctaw lands to the south and west, these raids spanned the indigenous South. Arriving with a sense of entitlement to Indian land and property, intruders made life hell for many indigenous

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<sup>731</sup> See, eg: Perdue, *"Mixed-Blood" Indians*; Guyatt, *Bind Us Apart*.

<sup>732</sup> See: Kidwell, *Choctaws and Missionaries*; William G. McLoughlin, *Cherokees and Missionaries, 1789-1839* (New Haven: Yale University Press, 1984); William G. McLoughlin, *Cherokee Renaissance in the New Republic* (Princeton, N.J.: Princeton University Press, 1986); Angela Pulley Hudson, *Creek Paths and Federal Roads: Indians, Settlers, and Slaves and the Making of the American South* (Chapel Hill: University of North Carolina Press, 2010).

inhabitants. Families lost property, homes, and land with alarming regularity.<sup>733</sup> Writing in 1831, one missionary to the Chickasaws summed up feeling across the Five Tribes by noting that although ‘the expectation of removal beyond the river seems to have concentrated every thought’, the acceleration of intrusion and violence was so great that ‘even those who are determined to remain...are far from enjoying peace of mind’.<sup>734</sup>

If these intrusions tormented indigenous communities, they also created problems for agents. Facing an onslaught of new arrivals, officials struggled to balance the interests of increasingly frustrated hostile white neighbours with increasingly annoyed indigenous communities, who demanded the recourse and US protection promised under their treaty agreements. Intrusions from robbers, traders, and all manner of others frustrated agents, hampering their ability to swiftly complete delicate removal negotiations, and stirring up disorder and lawlessness within their jurisdictions.

Even seemingly innocuous visitors could cause outsized problems. In October 1830, Chickasaw agent Benjamin Reynolds and sub-agent John Allen made a short trip away from the agency to negotiate plans for upcoming emigration. When they returned, they found uproar had broken out at the agency. In their absence, two traders had arrived on Chickasaw lands, seeking to trade dry goods with the Chickasaws. The agents’ wives had encouraged the traders to await the agents’ return, but the impatient traders had sought permission from John McLish, Secretary for the Chickasaw nation, to begin trade. McLish had given them permission to trade only among white and black people within the Nation; whether by design or accident, the traders had disobeyed his orders, selling a pair of stockings to an elite Chickasaw woman.<sup>735</sup>

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<sup>733</sup> See, eg: Hugh Montgomery to Elbert Herring, 5 April 1834, Cherokee Agency. NARA M234-R76. Like the petitioners in this document, many Indians also urged agents and Indian Office officials to reimburse them for their lost property, and to restore order owed to them under treaty terms.

<sup>734</sup> James Holmes, *Missionary Herald* (1832), cit. Paige et al, *Chickasaw Removal*, kindle location 702.

<sup>735</sup> For summary of incident, see: Paige et al, *Chickasaw Removal*, kindle location 614-633.

This oversight was the tinder-box for an already fraught situation. When Allen returned to the agency little over a month after his departure, he found a guarding party of fifteen to twenty Chickasaws barricading the traders' wagon, banning them from further trade, and accusing them of breaching the terms of the Chickasaw trade treaty. Allen attempted to regain order by confiscating the merchandise and writing to the war department, but things soon descended to anarchy. Spurred by the traders, a mob of white settlers arrived at the agency, stirring up violence. Some threatened to break into the agency and steal goods; others, the agent wrote, even 'engaged in a combat with me'. The situation became so bad that Allen contemplated calling for troops. In the end, the violence was only resolved when senior US officials intervened on behalf of the traders, eventually convincing the Chickasaw leaders that treaty law had not been violated, but the violence and hostile atmosphere took weeks to subside.<sup>736</sup>

As agents like Allen struggled to regain order over these white intrusions, they became distracted; in turn, these preoccupations slowed not only their ability to implement removal but also to notice those trying to subvert it. Even those in Washington DC became frustrated that such matters were taking them away from more valuable pursuits. In June 1830, Cherokee agent Colonel Hugh Montgomery received a strict note from Commissioner of Indian Affairs Thomas McKenney, noting in emphatic underlining that such matters were 'the business of the agent' to resolve, and that 'it is not profitable for the department to carry on a correspondence with every body; and without intending the slightest disrespect to the applicant in this instance, I inform you that you are the organ both in law usage for those having business with the Department, and which is in any manner connected with your agency'.<sup>737</sup> By 1834, Cherokee agent Benjamin Currey had become convinced that even the presence of missionaries and "civilization" programme schools were also facilitating this unhelpful climate, or, as he put it,

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<sup>736</sup> Ibid.

<sup>737</sup> Thomas McKinney to Col. Hugh Montgomery, Cherokee Agent, 4 June 1830. NARA M234, Roll 74: 'Cherokee Agency East, 1830-1831' [hereafter NARA M234-R74].

‘procur[ing]...for...agitators a permit in this country to commit deeds at which humanity shudders in their contemplation’ and preventing ‘enrolled emigrants in their passage to the agency’.<sup>738</sup> As much as these intrusions distracted agents and impeded removal, they also confused agents, creating a backdrop not only of distraction but also of racial ambiguity which indigenous Southerners could seize to pass beyond the borders of the Nation.

If Indians did take this opportunity to become illegible, they did so with such effectiveness that agents did not notice them; throughout the 1820s and 1830s, no agent noted or complained about groups doing so.<sup>739</sup> Still, there are certainly examples of white people passing *into* indigenous polities in this way, which suggests that agents’ sense of confusion and distraction was very real. In the midst of initial removal discussions, for instance, an English, Shakespearean actor named Charles Johnson passed into the Chickasaw Nation. Johnson had arrived in America some years previously, touring the South with his theatre company. Unlike many of the more familiar traders who married into the Five Tribes and their middling and elite families, Johnson had few connections and little money to his name. However, once among the company of Chickasaws – the masses, rather than the elites – Johnson found it easy to blend in. He removed to Indian Territory with the Nation and, at many points on the westward journey, explicitly hid his white identity, successfully ‘playing Indian’ as he put it.<sup>740</sup>

Against these episodes and backdrops of confusion and racial ambiguity, therefore, the barriers of agents’ sight weakened. With a range of white people coming and going into the Cherokee, Choctaw, Creek, or Chickasaw Nations, what was to say that they would have noticed one Indigenous Southerner hoping to pass out of them?

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<sup>738</sup> Ben. F. Currey to Elbert Herring, 10 July 1834, Hyatt’s Store, NC. NARA M234-R76.

<sup>739</sup> I have found no reference to such a complaint.

<sup>740</sup> See Paige et al, *Chickasaw Removal*, kindle location 2725-2827.

### High Removal, High Stakes

In the mid-1830s, as removal efforts intensified across the South, agents grew increasingly suspicious that indigenous Southerners were scheming to remain within the region by nefarious means.<sup>741</sup> By and large, this did not mean that agents suddenly suspected all illegible individuals. In fact, most agents continued to be as oblivious to the possibility of racial passing and other illegibility strategies as they had been for years.<sup>742</sup> Even at the peak of removal efforts, no report voiced suspicion that any Indian had avoided removal by attempting to pass as a white person, or even suggested that this kind of passing strategy was possible.<sup>743</sup>

However, if agents remained oblivious to some passing strategies during High Removal, some officials did begin to voice suspicions that not all indigenous Southerners were as they claimed to be. In May 1838, as Cherokee removal reached a climax, Major General Winfield Scott and his troops arrived in the Nation, seeking to finalize the enrolment of all Cherokees in the region. Increased efforts spelt a long, hard summer for both Cherokees and agents. In many places, the extra force paid off. In July, Scott received several reports suggesting that soldiers had successfully rounded hundreds of Cherokees, despite small difficulties such as sickness halting the process.<sup>744</sup> In many corners of Cherokee country, however, Indians continued to resist and evade. As summer turned to fall, agents and soldiers grew increasingly weary of the whole process.<sup>745</sup>

Exhaustion bred suspicion. In early September, Scott reported back to Joel Poinsett, Secretary of War, that although removal was making generally good progress, there had been some small obstacles. He had, he noted, been ‘in court...the whole day, engaged in arguing a case under the

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<sup>741</sup> For High Removal and acceleration of efforts, see previous chapters.

<sup>742</sup> As above, most reports continue to offer no suspicion or note that groups had passed for white or tricked agents.

<sup>743</sup> I have found no such report.

<sup>744</sup> See, eg, Brigadier General Abraham Eustis to Maj. Gen. Scott, Head Quarters Upper District, Cherokee Agency, 21 July 1838. NARA M234-R115.

<sup>745</sup> See chs1 & 3.

writ of habeas corpus'. The case was certainly not the kind of removal story Poinsett usually read about in reports. Agents, Scott noted, had detected 'A full blooded Cherokee...seducing other Indians to flee to the mountains of N. Carolina in order to avoid emigration'. In the context of High Removal and broader suspicion over the several thousand Cherokees who had successfully claimed ineligibility for removal on grounds of citizenship, this was not necessarily an unusual claim (as chapter one demonstrates), but what followed was certainly atypical. Rather than dwelling on the legality of citizenship claims in general, the case seemed to turn on the basis of the man's claims themselves. When apprehended by agents, the man claimed that he was ineligible for removal 'on the ground that he had been made a citizen of the state by a reservation granted by his father in the treaties of 1817 and 1819', but the agents did not believe him and accused him of really being a 'fullblood' in disguise, falsely passing as a non-removeable Cherokee in order to remain east of the Mississippi.<sup>746</sup>

Officials felt so strongly about the deception that they took the man to court. Government representatives made their case, claiming that the man had attempted to illegally dupe them out of removing him, and of inducing others to follow his example of deception. Under scrutiny of interrogation, things became too much for the defendant. Whether out of fear for his position, hope of leniency, or simply realizing that his disguise had been undone, the man seemed to admit that he had simply passed as a Cherokee with claims to citizenship. At least in Scott's recollection, as the man and his counsel made their case before the judge, they ultimately gave up on the premise that he had any provable claims to citizenship, and instead resorted to simply arguing that 'no Cherokee could be emigrated against his wishes!'.<sup>747</sup>

For Scott, the case was an unnecessary distraction at a busy time: his report mainly lamented that the proceedings had taken up much of his day, preventing him from overseeing other pressing

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<sup>746</sup> Maj. Gen. Winfield Scott to Joel Poinsett, 7 September 1838, as above; See also: Maj. Gen. Winfield Scott to The Honorable C.F. (?) Keith, Judge of the Circuit Court of Law in the State of Tennessee, 7 September 1838, Athens, Tennessee, NARA M234-R115.

<sup>747</sup> Scott to Poinsett, 7 September 1838.

removal efforts elsewhere in Cherokee country.<sup>748</sup> Yet, if this episode annoyed Scott, it did demonstrate an important shift: as removal wound on, agents felt in a position to question indigenous Southerners' identity claims, both to citizenship but also to wider tribal identity. Nonetheless, both their fear and their successes remained small-scale. In the case of the condemned false reservee, Scott might have got lucky; this is the only incident in which federal officials pulled an indigenous Southerner before a court, accusing him of deceiving officials about his identity, and certainly the only time in which someone appeared to confess to strategically assuming a different identity in order to avoid removal.<sup>749</sup> If the case troubled Scott for a day, his concerns remained limited, and he did not complain about the issue again in other letters. Perhaps this climate of suspicion spelt trouble for illegible Indians in Cherokee country, but agents' worries did not spread much beyond this. Even in 1838, no other agent attempted to bring a similar case to court, or voiced any broader fear that indigenous Southerners might have been passing and deceiving them *en masse* across the South. Beyond wider fears about the fragility of removal efforts and wider issues with state sight, agents remained remarkably blind to wider possibilities of indigenous deception and illegible action, even at the height of removal.

### Overlooking Illegible Indians

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<sup>748</sup> Ibid. Owing to a dearth of records, it is difficult to know more about the Cherokee in question: whether he really was someone seeking to make himself illegible (and, more importantly, non-removeable) by passing as a Cherokee citizen, or whether he actually had actual claims to that status. Indeed, it is as impossible to prove that he was a Cherokee at all, as much as it is to prove the agents' suspicions that he was a plant of Cherokee leaders such as John Ross, designed to frustrate the federal government and their removal efforts. The agents' suspicions might have told us as much about their simplistic views of the Cherokees – not least their suspicion that a 'full blood' could not have a legitimate claim to citizenship. Again, see chapter one for more for the debates and misunderstandings over citizenship and non-removal.

<sup>749</sup> Amid a wider range of suspicion about Cherokee claims to remain in 1838-39, and in the more general history of removal, this is the only reference that I have found in a federal document in which an indigenous Southerner seems to have been actively suspected of falsely claiming a different identity to avoid removal, and then goes on to (seemingly) admit to their illegibility tactics. As noted above, the only account I have of the incident at the moment comes from Scott himself, making it hard to read too much into this. There are a range of other reasons that the Cherokee man might have seemed to change his argument without necessarily admitting to being a fake.

By the early 1840s, after almost twenty years of negotiating removal, officials on the ground and in Washington DC were exhausted and frustrated. As other chapters demonstrate, agents sounded warning notes about other types of removal, expressing concern that Indians had evaded removal, or remained unexpectedly as citizens. But among these notes of disquiet, illegible individuals remained a general lacuna in agents' perceptions. Even at the eve of removal efforts, agents simply did not notice these passing and illegibility strategies, or even voice suspicions about them. In at least one case, agents had worried briefly about the possibility of Cherokees claiming identities that they did not possess, but this had been a brief and localized fear. Viewed from the birds' eye perspective of Washington DC, illegibility was simply invisible: a blind spot that did not worry officials because they did not know that they had missed it.

As ambiguous Indians positioned themselves at the farthest edges of agents' awareness, they allowed themselves to slip beyond their vision. As agents struggled to marshal the final reluctant emigrants, to round up evaders hiding in the mountains, and to garner sufficient provisions and timetables for final removing parties to begin their journeys west, illegible individuals easily dropped out of their field of vision altogether. Almost all had gone undetected by federal officials. Still, for groups who passed as white, or claimed other indigenous identities, every day remained a risk, even after weeks, months, and years of masking their indigeneity. As people like Thomas/Two-Moons and his widow would attest, local communities and white neighbours could be just as threatening to passing individuals as government agents. For many illegible individuals, avoiding removal marked merely the continuation of a longer struggle for land, community, and identity in the South.

## Epilogue:

### The Enduring Indigenous South

Just as it had begun in fits and starts, removal also stumbled to a close in the South. The vast majority of agents and soldiers had left the region by end of 1840; others would remain for longer, dealing with loose ends and final emigration parties, especially in uncertain, contested places such as Florida. Yet the new decade marked a symbolic turning point for federal officials and many ordinary white American citizens. As the 1840s began, policymakers in Washington DC and expansionists across the country turned their horizons decisively towards the West.<sup>750</sup> The stories that they told about removal anchored their ambitions. Proclaiming the success of the project in the South, they turned their gaze to new targets, like Mexico, the Plains, and the Pacific. For a generation of expansionists, the success of removal in the South gave them the license to head farther across the continent, believing themselves capable of crushing ever-larger indigenous challenges, including the infamous Comanches.<sup>751</sup>

For all these men's confidence, however, the story of removal was never as black-and-white as such bluster suggested. In the 1840s and 1850s, as expansionists looked confidently down the Rio Grande or unleashed new waves of violence against indigenous people in California,

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<sup>750</sup> See, eg: T. Hartley Crawford, 'Report of the Commissioner of Indian Affairs for the year 1840', *ARCIA*. This discussion refers specifically to removal in the South; the process of removal in the North would take longer to complete, as the report for 1840 suggest. Removal, of course, would have much longer legacies as a policy and an event than this main burst itself. See discussion of chronology in introduction. The government would also have to spend a long time reckoning with the phenomenon of non-removal across the region; part of this effort would take the form of renewed removal attempts, at small scales. See discussion below.

<sup>751</sup> Brian DeLay, *War of a Thousand Deserts: Indian Raids and the US-Mexican War* (New Haven: 2008), esp. prologue and pt3; Pekka Hamalainen, *The Comanche Empire* (New Haven: 2008); Hahn, *A Nation Without Borders*, esp. ch1. For wider histories of distinctively Southern westward expansion during this period, see: Johnson, *River of Dark Dreams*; Karp, *This Vast Southern Empire*.

thousands of indigenous Southerners remained east of the Mississippi: living proof that removal was not as complete as officials had hoped.

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For the people who stayed, resistance had spelt extreme hardship and fear. Whether officials noticed them or not, most routes to non-removal were arduous and often dangerous. These threats continued even after agents left the region. In swamps, mountains, and isolated woodlands, evasive groups underwent a trial by terrain. Fugitives' descendants recalled injuries, even deaths, as groups learned through experimentation what was safe to eat and drink. Others experienced diseases and ailments at the hands of filthy swamp water, or the mosquitoes that silently buzzed and bit in watery areas.<sup>752</sup> Illegibility and racial passing were hardly better. For someone passing as white or seeking to blend into an urban backdrop, just one momentary slip could spell danger, not to mention the pain of outward denials of indigenous identities. Cooperation with – or subversion of – federal policies also came with its own trials. As the many Choctaws who sought to remain under Article 14 learned, and as the Cherokee and Creek reserves could also attest, an unfortunate mixture of government inaction and local hostility could leave groups destitute and their lives a constant struggle to survive.

Ultimately however, much like maroon communities, indigenous Southerners tolerated the hardships of life in these inhospitable situations because they provided pockets of resistance and refuge.<sup>753</sup> In inaccessible, invisible, and subversive places, indigenous Southerners created enduring indigenous homes which allowed them to escape the states' tentacles. Some of these actions were merely temporary, intended to protect families for days or weeks until officials

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<sup>752</sup> See, eg, Bremer, *Chata Indians*, 7 for diet, and 10-12 for more on general hunting, subsistence etc. For disease, see: D'Antoni, 'Chahta-Ima', 76-77.

<sup>753</sup> See, eg: Diouf, *Slavery's Exiles*, esp conclusion.

moved on, but many others became long-term commitments, shielding groups for decades, even centuries.

From a twenty-first century standpoint, aware of the tragedies of the removal process, it is easy to view these groups as victims of state power, and as losers in the ultimate game of colonialism. Undoubtedly, many non-removed lives were hard. However, in a very real sense, many non-removed people might have seen themselves as much as victors as victims. It is impossible to recreate their motives, yet many people may well have seen such actions as the best way to maintain kin ties, connections to spiritually important places, ancestors, traditions, and, at a basic level, to keep their families and children safe from designing white settlers, untrustworthy government officials, and an undesirable relocation to a place many called 'the Land of Death'.<sup>754</sup> In short, they made the best of a set of bad choices that removal offered them. In enduring great hardships and threats, they successfully subverted state power and held onto the worlds and traditions that meant most to them, creating worlds of resistance where they could rebuild shattered communities and nurture long-cherished traditions. Because of their success and their fortitude, many of their descendants remain within the South to this day.

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Over the coming decades, American policymakers caught sight of this world in occasional flashes. As Southern settlement expanded in the 1840s and the 1850s, some non-removed groups became visible. Where annoyed local residents stumbled across unremoved Indians, they summoned federal officials to action.

Just as they had been in the 1830s, the thousands of Choctaws who clung to Article 14 claims would be the among most visible and most frustrating to officials. Following the collapse of the Murray Vroom commission, officials appointed another inquiry into the claims. Again, many

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<sup>754</sup> This was a Choctaw term for Indian Territory: Donna L. Akers, *Living in the Land of Death: the Choctaw Nation, 1830-1860* (East Lansing: Michigan State University Press, 2004).

Choctaws came forwards. Local pressure forced new waves of action. Some of this came in the form of issuing scrip – deeds supporting their original treaty claims – to Choctaws who could prove their claims when Congress sent new commissioners later in the 1840s. Yet new waves of removal also accompanied these tacit acceptances of their rights. Indeed, throughout the 1840s, at the exact same time American troops faced new stand-offs with indigenous peoples from Comanchería to California, the Indian Office also spent hours coordinating several, smaller-scale renewed removal efforts among the remaining Choctaws in Mississippi.<sup>755</sup> By the 1850s, however, the effort had all but sputtered out. After years of fighting, most Choctaws simply stayed put: informally-employed agents only managed to sign up single or double figure enlistment lists. As the Civil War loomed, local interest waned and federal officials had better things to worry about. The Choctaw question lapsed again. As they flitted in and out of state sight, most Choctaws refused to go anywhere. Officials would be forced to reckon with their presence for many decades.<sup>756</sup>

From time to time, other groups also attracted officials' attention. In the early 1840s, for instance, pressure from removed Nations in Indian Territory encouraged some new waves of removal attempts against large and visible groups of Cherokees, Choctaws, and Chickasaws who remained in the east, often spurred as much by removed groups' desire to reunite lost kin as by officials' particular concern or awareness of unremoved Indians.<sup>757</sup> At the same time, many of

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<sup>755</sup> Such attempts took place over several occasions during these decades, including, eg, in 1843, 1847, and 1851. Many of these were very small-scale and sporadic, latterly undertaken by individuals who had not been directly appointed by the OIA, but who instead removed (often tiny) parties of Choctaws at their own expense and sought later reimbursement from the office. See: NARA M234-R186, NARA M234-R187 for fuller correspondence relating to these efforts. There is no existing historiographical treatment of these renewed policies as events in their own right. I hope to study these renewed removal attempts in more detail, as well as to create a comprehensive estimate of the number and scale of these renewed removals in future. For wider federal efforts in the West, see, eg: Hamalainen, *Comanche Empire*; Madley, *American Genocide*.

<sup>756</sup> The Choctaws' ongoing presence would continue to be a source of local tension, on and off, for many years. Most notably, this resulted in a renewed removal attempt in 1898, which some scholars have mistakenly called the 'second' Choctaw removal (neglecting to appreciate the distinct and renewed waves of removal that took place during the 1840s and 1850s). See: Osburn, *Choctaw Resurgence*, ch2. The descendants of many of the Article 14 claimants remain in Mississippi to this day, as members of the federally-recognized Mississippi Band of Choctaw Indians.

<sup>757</sup> For Choctaws, see above. Limited Cherokee removal attempts took place during the first half of the 1840s, especially in 1842-1844. See: NARA M234 Roll 116, 'Cherokee Emigration 1839-1854' (hereafter NARA M234-

the Qualla Cherokee reserves again drew officials' attention, seeking to make themselves newly visible in order to renew their claims to citizenship, as they knew these formed the basis of their right to remain in the east. As they had during removal, officials refused to confirm their claims to citizen status, seeking to avoid conferring federal citizenship to hundreds of Indians *en masse*, but continued to indirectly affirm their right to remain, alongside ongoing removal attempts.<sup>758</sup>

In the 1850s, ongoing concerns over perhaps the most visible and, for many in the Indian Office, the most frustrating non-removed group, the Seminoles, also led to another full-scale conflict with US troops. Officials removed several emigrating parties of defeated Seminoles following the end of the Third Seminole War in 1858; still, hundreds of Seminoles remained in Florida.<sup>759</sup>

Compared to its concerns in the West, however, these always remained small-scale efforts for the Indian Office, with its diverted attention and stretched purse-strings. Usually, they restricted their efforts to sending a new agent to the region, signing up a small number of volunteer Indians to remove to Indian Territory, and allocating a small but regular amount in the Indian Office budget to give the impression of conciliatory action at times of particular strife.<sup>760</sup> When they saw it, the incomplete nature of Southern removal bothered officials but, ultimately, the problem remained an inconvenient distraction from bigger problems unfolding west of the Mississippi River.

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R116), and John R. Finger, 'The Abortive Second Cherokee Removal, 1841-1844', *The Journal of Southern History*, 47:2 (May 1981), 207-226. For limited Chickasaw attempts, largely centred in 1842-1846, see: Paige et al, *Chickasaw Removal*, ch7. Neither group saw large-scale formal removals continue into the 1850s. Much like the Choctaw later removals, these were sporadic, and have received only limited coverage in secondary literature, much of which often plays down their significance and their distinction from earlier efforts. I hope to explore this period and these renewed removals further in future.

<sup>758</sup> See NARA M234-R116. Local NC residents complained about the Cherokees to the OIA as late as 1850: Petitions of Citizens of North Carolina to Indian Office, August 1850, NARA M234-R116. For a longer discussion of Cherokee strategies in this period and their negotiations to remain as citizens, see: Finger, *Eastern Band*; Dinwoodie, 'Eastern Cherokee'; Jane Dinwoodie, 'The Long War: Remaking Indigenous Sovereignties in the Civil War South', in Frank Towers and Jewel Spangler (eds.), *Remaking North American Sovereignty: Towards a Continental History of State Transformation in the 1860s* (New York: Fordham University Press, forthcoming).

<sup>759</sup> See: Mulroy, *Freedom on the Border*; Belko, *America's Hundred Years' War*.

<sup>760</sup> See discussion of individual renewed removals above.

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If officials could have understood the true extent of non-removal, they might have worried more, but the world that they saw was only the tip of the iceberg. Although some indigenous groups became visible in these decades, the vast majority of non-removed people remained at the edges of officials' sight, or simply out of their field of vision altogether. By and large, everyone that the Indian Office had struggled to see during the 1820s and 1830s remained off their radar in the 1840s and 1850s. Most evasive groups, such as Louisiana's Bayou Lacombe and Pearl River Choctaws, largely remained invisible or inaccessible in their morasses, passes, and swamps.<sup>761</sup> Illegible individuals also maintained similar strategies, continuing to blend into the background of urban spaces, homesteads, and white settlements.<sup>762</sup> In fact, as white settlement and plantation agriculture extended their reach over the South in the decades immediately following removal, other non-removed communities also chose to shift their strategies and retreat from white sight. In Alabama, several of the Tensaw Creek reservees joined together around the lands that they had fought so hard to maintain, then effectively vanished. Blending illegibility and evasive tactics, they created an isolated community, deliberately invisible to both officials and local white neighbours. Along with many other evasive and illegible groups, officials effectively ceased to notice them.<sup>763</sup>

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<sup>761</sup> The Bayou Lacombe Choctaws and Pearl River Choctaws would remain in these areas until at least the turn of the twentieth century, when they were chronicled by Smithsonian ethnographer David Bushnell and amateur ethnographer C[ora?] Bremer respectively. See: Bushnell, 'The Choctaws of Bayou Lacombe'; Bremer, *Chata Indians*.

<sup>762</sup> As above, as far as they are traceable, most of the people discussed in chapter four seem to have continued with illegibility strategies (unless very temporary), largely successfully. See, eg, later history of Rose and Daniel Gaines and the MOWA Choctaws in Matte, *They Say the Wind is Red*.

<sup>763</sup> This community would go on to form the modern-day Poarch Band of Creeks, based in Atmore, Alabama. See: Poarch Proposed Finding; Paredes, 'Back From Disappearance'. More broadly, as far as I can tell, no renewed effort to tackle the problem of non-removal ever explicitly targeted evasive or illegible groups, just as officials had overlooked them during removal. Some, however, might have been caught up in these efforts by accident. For instance, in 1850, federal and state officials removed a group of Choctaws from Alabama as 'vagrants' for 'squatting' on public land: OIA Agent Scott to Orlando Brown, Commissioner of Indian Affairs, 10 February 1850, NARA M234-R187. It is likely that this group had tried to use urban space in some kind of illegibility strategy, resulting in their accidental capture during a wider renewed Choctaw removal effort.

On the eve of the Civil War, the myth of a complete removal continued to grow. In the late 1850s, as sectional tensions came to dominate policymakers' visions, Indian removal and its incompleteness faded out of officials' list of urgent priorities for the South. Most renewed removal attempts ceased by the end of the decade, and even the Seminole Wars reached a long-awaited finale in 1858. As administrations changed and new problems mounted daily in the West, the incompleteness of removal slipped farther and farther to the edges of official vision.<sup>764</sup>

Beyond the corridors of the Indian Office, policymakers and citizens paid the question even less attention. As Americans argued about the fate of the South and its long-term position in the Union, they never questioned their control over the region. As tensions accelerated, federal policymakers worked on the assumption that any challenge over the shape of the South would come from unruly slaveholders, rather than unexpected Indians. The stories that they told about removal, as they misunderstood and wanted to see it, would be robust and long-lasting, nourishing visions of slavery, cotton, and Confederacy that still dominate modern historiography and popular memory.

Yet even if officials did not see it, the indigenous South had survived. From Appalachia to the Gulf, hundreds of indigenous individuals, families, and communities continued their decades' long fight to remain within the region and to carve a political, legal place within it. As America hurtled towards secession, even the smallest of these communities continued to nurture their stake of power and place within the South.<sup>765</sup> Many of these small groups did not necessarily

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<sup>764</sup> Renewed removal efforts among the Cherokees, Choctaws, and other groups were long finished by the end of the decade and OIA officials largely did not discuss non-removal anymore. See discussion above, as well as: NARA M234-R116; NARA M234-R187. Removal as a general concept, however, remained on the minds of officials as they moved westwards in the 1860s and beyond, drawing up plans for future "solutions" to newly-conquered nations, and negotiating their relationships with the Five Tribes in Indian Territory during the Civil War. See, eg: Troy D. Smith, 'Nations colliding: The Civil War comes to Indian Territory', *Civil War History* 59:3 (September 2013), 279-319; Jeff Fortney, 'Lest We Remember: Civil War Memory and Commemoration among the Five Tribes', *American Indian Quarterly* 36 (2012), 525-544; Jeff Fortney, 'Serving the Choctaw Cause: Robert M. Jones, Sovereignty, and Pragmatic Diplomacy during the American Civil War', *American Nineteenth Century History* 17 (2016), 215-233; Ari Kelman, 'Deadly Currents: John Ross's decision of 1861 Sheds Light on Race and Sovereignty in the Cherokee Nation', *Chronicles of Oklahoma* LXII (1995), 80-103.

<sup>765</sup> For histories treating indigenous Southerners' struggles under Jim Crow, see historiographical discussion in introduction, especially Lowery, *Lumbee Indians*; Adams, *Who Belongs?* For individual tribal histories narrating the later

know of each other's existence; yet they spanned the region, each dotted as an individual star in a massive constellation comprised of hundreds of smaller polities. Many hid so effectively that their existence leaves only a ghost-like trail in the historical record; the fragmentary snatches that this dissertation has illuminated are only a snapshot of this much larger world. Still, even if we trace only the fragments, there is no doubt that these people spanned the South.

Their existence changes the ways that we think about the region in this period, challenging the enduring myths of removal as a complete process that produced a solid biracial South, and its lived implications for the region's modern-day indigenous peoples. Their experience is as much a part of Southern history as stories of plantations and Confederates; as much a part of the story of the nineteenth-century United States as the Civil War or tales of Western Indian policy.

Contrary to the stories statesmen told about their own power, American sovereignty did not blanket the South in the wake of Indian Removal. Instead, this power was filled with gaps, as indigenous communities fought to create a world of contested and plural power that continued to co-exist with the emerging Cotton Kingdom and rapid imperial extension. Unlike traditional models of sovereignty, centred in formally-recognized jurisdiction or claims to land, many non-removed groups' claims to power lay not in ambitions to topple the United States, but instead to live unmolested in the legal and physical gaps of its reach. For some people, this meant the South's most liminal places or the hidden corners of urban and rural settlements; for others, it meant the legal loopholes of policymakers' provisions and the claims to ambiguous land and citizenship claims that these entailed.

Although nineteenth-century statesmen refused to recognize it, this type of interstitial sovereignty transformed the nineteenth-century South, subverting policymakers' and settlers'

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experiences of various non-removed groups from a tribal perspective, see tribal history footnotes in introduction and longer list in bibliography. For a specific discussion of indigenous Southerners' struggles for sovereignty during the Civil War, see: Dinwoodie, "The Long War".

claims to exercise ‘perfect settler sovereignty’ over it.<sup>766</sup> From its cracks and shadows, these people exercised power and jurisdiction over their daily lives, nurtured their identities and traditions, and sustained an enduring indigenous South which refused to disappear. Their jagged, piecemeal, and contested sovereignties speak not only to the complexities of colonized indigenous sovereignties in general, but also to the plural and multiple shapes of power possible within nineteenth-century North America. Facing westwards, it is easy to interpret the mid-century as a period of growing state power and imperial expansion, a ‘Greater Reconstruction’, in which the American empire expanded and the shape of the American nation-state was decided.<sup>767</sup> But seen from the enduring indigenous South, the nature of continental imperial struggles looks a lot broader and more contested, and the line between American expansion and national incorporation looks much more ambiguous than many historians have imagined.

Their endurance also forces us to rethink our understandings of state capacity, the ways that it is made and implemented, and its effects on the historical records and the ways that historians approach them. During removal, the military-administrative power of the American nation state was indeed massive, but the story of non-removal demonstrates that this leviathan was far from omnipotent. Indeed, for all their military and administrative prowess, American policymakers still could not understand or even see everything that went on within domains that they claimed to master.

To understand the true face of the nineteenth-century South, we must look beyond the stories that statesmen told about their own power, and to the interstices of officials’ reach, where indigenous Southerners fought off federal attempts to deport and destroy them. Only by looking

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<sup>766</sup> For ‘perfect settler sovereignty’, see: Ford, *Settler Sovereignty*, ch8, esp. 183, 203. See also discussion in introduction.

<sup>767</sup> For ‘Greater Reconstruction’, see: West, ‘Reconstructing Race’; Hahn, *A Nation Without Borders*; and wider discussion in introduction.

beyond removal can we begin to see the extent and scale of the enduring indigenous South, as well as the myriad gaps and cracks that distorted agents' sight.

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