

CIVILIZATION AND SOVERIGNTY: WHITE SETTLER
PATERNALISM AND THE CIVILIZATION POLICY

by

VERONICA JONES

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Approved: *Brett Rushforth, Ph.D.*
Primary Thesis Advisor

The civilization policy, or civilizing policy, defined the direction of the United States' Indian policy. Even today, the echoes of the civilization policy can be seen in modern Indian law. George Washington, the architect of the policy, believed it to be “honorable conquest” — a method of taking Indigenous land while forcing Indigenous people to assimilate Euro-American culture and spirituality.¹

In creating and applying the civilization policy, however, Washington and the other white statesmen ignored the realities of Indigenous sovereignty and Indigenous ways of life. They relied on baseless assumptions about how Indigenous Nations functioned when applying the policy. Further, the white statesmen assumed that Indigenous Nations would happily adopt Euro-American ways of life and abandon their own cultures.

Rather than being “victims” of the civilization policy, Indigenous Nations were, in many instances, able to use it to their benefit, whether that be for trade or for delaying removal. Despite the paternalism that coated the Choctaw and Chickasaw Nations' every interaction with the United States government, they were able to thrive in their homelands and ably manipulate the civilization policy.

¹ Theda Perdue and Michael D. Green, *The Columbia Guide to American Indians of the Southeast* (New York: Columbia University Press, 1983), 75.

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Introductory Note on Terminology

Before this paper begins, I want to address the terminology that I will be using. When using my own words, I intend to use “Indigenous Nations” to refer to Native American societies. I intend to properly treat Indigenous Nations as fully sovereign entities and as players in their own stories. They are deserving of such respect, especially with a topic that is so centered on their history. While this paper mainly focuses on the policy and policymakers of the early American Republic, it is important to note that this policy directly affected real people, whose descendants and Nations still exist to this day. To paint them as passively accepting policy would both be a disservice to complex Indigenous societies and a historical inaccuracy. Therefore, it is important that the terminology that is used is respectful of Indigenous Nations.

Following that rule of thumb, when I intend to refer to specific Indigenous Nations, I will use the names that they use today, specifically the Chickasaw Nation and the Choctaw Nation, whose history I will be referencing throughout this work. However, some early policy choices made by leaders of the early United States effected Indigenous Nations generally. Sometimes their treatment of Indigenous Nations whose homelands happened to be near each other was also deeply interrelated— thus, I will be using the term “southeastern Indigenous Nations”, referring to their original homelands in the geographical southeast of the modern contiguous United States, to refer collectively to the Cherokee Nation, the Chickasaw Nation, the Choctaw Nation, and the Muscogee Nation.

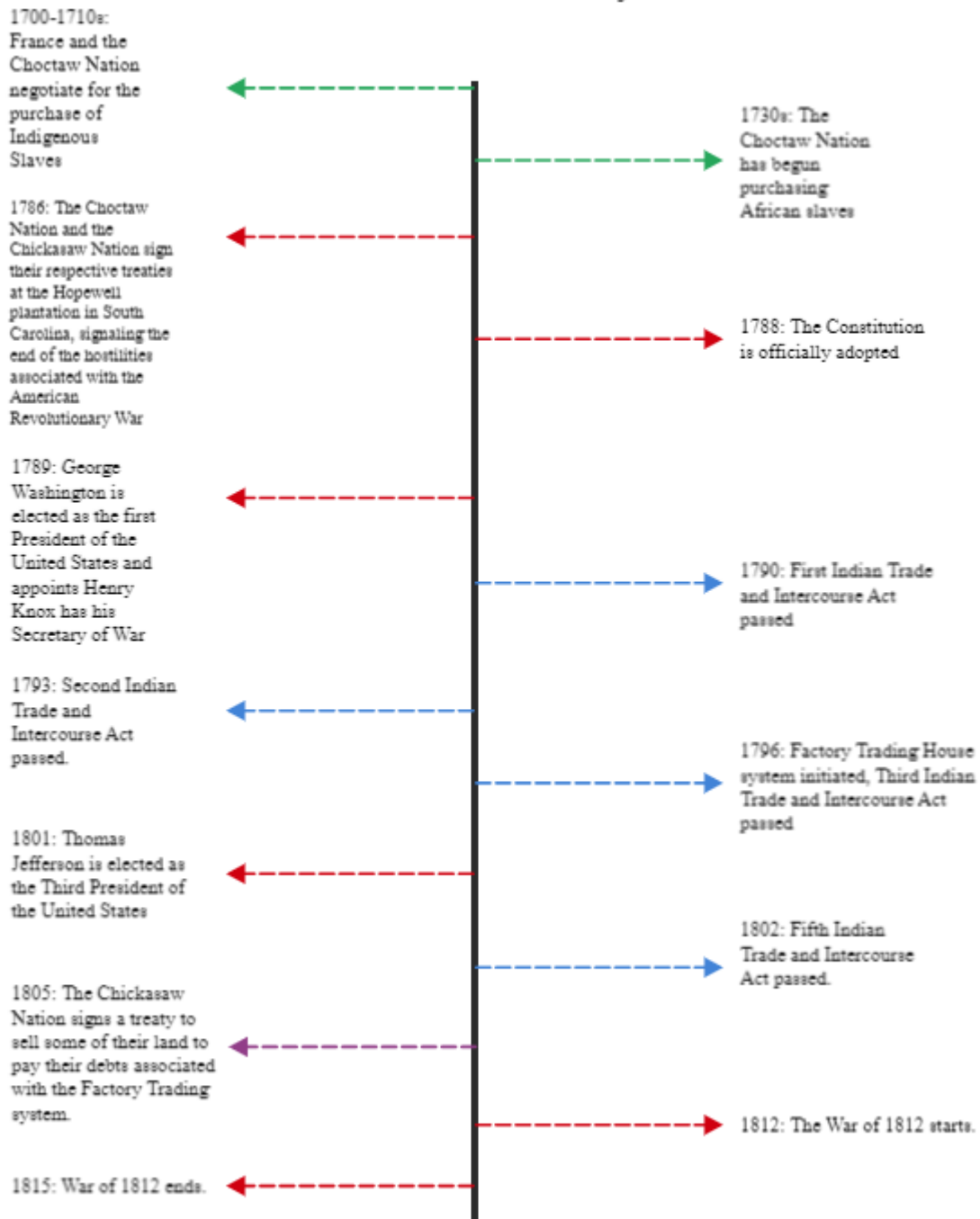
However, occasionally I will reference original documents written by white statesmen between 1785-1840. Thus, the language included in the references may not be consistent with the language that I outlined above. It is important that such language is still included in quotes,

because that language emphasizes the racist views the white statesmen who wrote it had, and thus is important to acknowledge.

I will, however, be using the term “Indian policy” because that term is widely understood and utilized in scholarly discussions of this topic, is consistent with historical text, and is still used today in modern American Indigenous legal practice.² Despite the history of the term “Indian”, it still exists today as a legal term in American jurisprudence. Thus, I will only be using the term “Indian” in accordance with that current definition, and intend to avoid it in all other cases.

² Robert T. Anderson, Sarah A. Krakoff, and Bethany Berger, *American Indian Law: Cases and Commentary*, Fourth Edition (St. Paul: West Publishing Corporation, 2010). 3.

The Civilization Policy



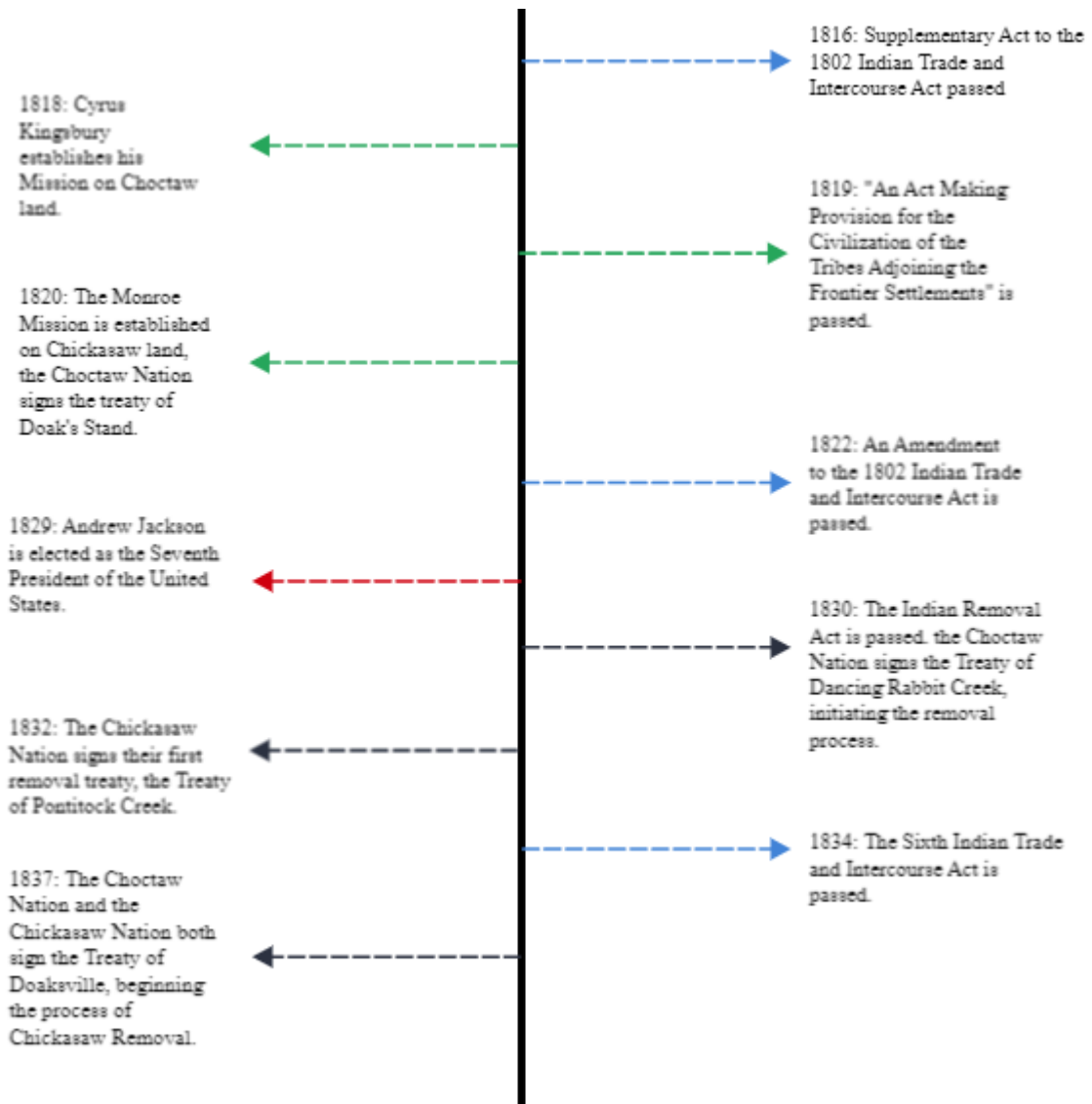


Figure 1: Overall Timeline of Key Events for the Civilization Policy

Introduction: the Euro-American Idea of Civilization

The idea of civilization to the Euro-Americans who created the young United States, referred to their ideas about the most “advanced” and “moral” ways a society could be ordered. It harkened back to the Enlightenment thinkers who inspired the Founding Fathers, but it held dark undertones.³ The white settler idea of civilization and all of its implied spiritual and cultural requirements served a philosophical purpose. It justified the white settlers’ belief in their own superiority, and therefore it justified everything the white settlers did in service of themselves—Indigenous dispossession chief among them. By painting Indigenous Nations as “uncivilized,” white settlers could then use a myriad of excuses to morally absolve themselves despite stealing Indigenous land. There was nothing as indicative of the purpose of the racial and cultural hierarchy that was the foundation for the Euro-American definition of civilization as the aptly-named “civilization policy.”

The civilization policy offered a philosophical underpinning for Indian policy that defined the early Republics goals with regards to Indigenous Nations. Early American Indian policy was defined by the civilization policy. From the end of the Revolutionary War to the removal of the southeastern Indigenous Nations, the civilization policy was the underlying philosophical justification for most decisions made by white statesmen with regards to the early American Republic’s relations with Indigenous Nations generally. Heavily paternalistic, even its most genuine supporters utilized it to justify treating Indigenous Nations as lesser sovereigns, despite the reality of the complex governments and economies that made up each Indigenous

³ Bernard W. Sheehan, *Seeds of Extinction: Jeffersonian Philanthropy and the American Indian* (Chapel Hill: University of North Carolina Press, 1973), 19.

<http://ebookcentral.proquest.com/lib/uoregon/detail.action?docID=4322198>.

Emily Conroy-Krutz, *Christian Imperialism: Converting the World in the Early American Republic* (Ithaca: Cornell University Press, 2015), 20. <http://ebookcentral.proquest.com/lib/uoregon/detail.action?docID=4189237>.

Nation throughout the United States of America. It relied on a basic assumption of white Christian superiority that ignored the realities and sovereignty of the Indigenous Nations that it encountered.

The main goal of the policy was always to steal Indigenous land. Even despite the lofty “moral” goals of the architects of the civilization policy, they still wanted to create a “moral” method of stealing Indigenous land.⁴ To accomplish this, white statesmen took the policy into account when creating economic policy, notably through the Indian Trade and Intercourse Acts and through the Indian trading factory system. Further, the civilization policy was most directly expressed in the state-sponsored missionary efforts to the Choctaw Nation and Chickasaw Nation. Even treaties with the Choctaw Nation and the Chickasaw Nation imply the civilization policy throughout the period of Indian policy before removal.

The early civilization policy dealt heavily with economics—the factory system served both as a crucial point of trade with Indigenous Nations and as a focus of diplomatic relations. Therefore, it functioned as an agent of the civilization policy throughout the late 1700s to its death in the 1820s. It was a system of trading housing that the United States government sponsored, explicitly for the purpose of trading with Indigenous Nations. The factory system represented a white conception of civilization that tied intelligence and sophistication to western economics. As a result, the white statesmen who created the factory system believed that it was one of the ideal methods for the introduction of Euro-American civilization to Indigenous Nations.⁵ However, despite the widely-held assumption that Indigenous Nations were ignorant of

⁴ Colin G. Calloway, *The Indian World of George Washington: The First President, the First Americans, and the Birth of the Nation* (New York: Oxford University Press, 2018). 387.

⁵ David Andrew Nichols, *Engines of Diplomacy: Indian Trading Factories and the Negotiation of American Empire* (Chapel Hill, UNITED STATES: University of North Carolina Press, 2016), 8.
<http://ebookcentral.proquest.com/lib/uoregon/detail.action?docID=4443599>.

European trading practices, many Indigenous Nations throughout the contiguous United States, especially those in the southeast, had been trading with European powers since at least the late 1600s. The Chickasaw Nation had been involved in the slave trade beginning in the mid-1600s.⁶ By the time the factory system was established in 1796, southeastern Indigenous Nations were no strangers to European trade.

Throughout the 1810s and 1820s, however, the idea of “civilization” was changing. Less and less was successful European-style trade thought to be the real signifier of a “civilized” nation— the Choctaw Nation and the Chickasaw Nation had both long since passed that test. The Second Great Awakening had begun, and it changed the way that white settlers thought about civilization in general. The Second Great Awakening was a wave of Christian revivalism that swept through Euro-American society that caused mass social change. Protestant Christianity was changing to better fit Euro-American ideas of spirituality.⁷ As a result, because neither the Choctaw Nation nor the Chickasaw Nation had been Christianized, missionaries began to build missions on Choctaw and Chickasaw lands to attempt to spread the gospel.⁸

The Indigenous Nations that faced the civilization policy were not ignorant victims of white greed— in many cases, they were able to turn the paternalism and greed that they faced to their advantage. The Choctaw Nation and the Chickasaw Nation both were able to use mission schools to educate their children, pre-removal, to become leaders while maintaining their own

⁶ Robbie Ethridge, *From Chicaza to Chickasaw: The European Invasion and the Transformation of the Mississippian World, 1540-1715* (Chapel Hill, UNITED STATES: University of North Carolina Press, 2010), <http://ebookcentral.proquest.com/lib/uoregon/detail.action?docID=655809>.

⁷ Neil Meyer, “Falling for the Lord: Shame, Revivalism, and the Origins of the Second Great Awakening,” *Early American Studies* 9, no. 1 (2011): 142–66. 146.

⁸ Otis W. Pickett, “T. C. Stuart and the Monroe Mission among the Chickasaws in Mississippi, 1819-1834,” *Native South* 8 (2015): 63-88, 147. 63.

cultures. Further, the Choctaw Nation and the Chickasaw Nation were also able to resist removal and successfully delay it through playing into the white settler idea of “civilized.”

The white settler idea of civilization and the civilization policy itself did not exist in a vacuum. They each existed as tools of oppression in the hands of white settlers and as a means of resistance to Indigenous Nations. What the civilization policy and the paternalism that defined it attacked most fervently, through treaties, economics, and spirituality, was the Indigenous sovereignty that directly contradicted white settler conceptions of racial hierarchy and their own supposed “superiority.”

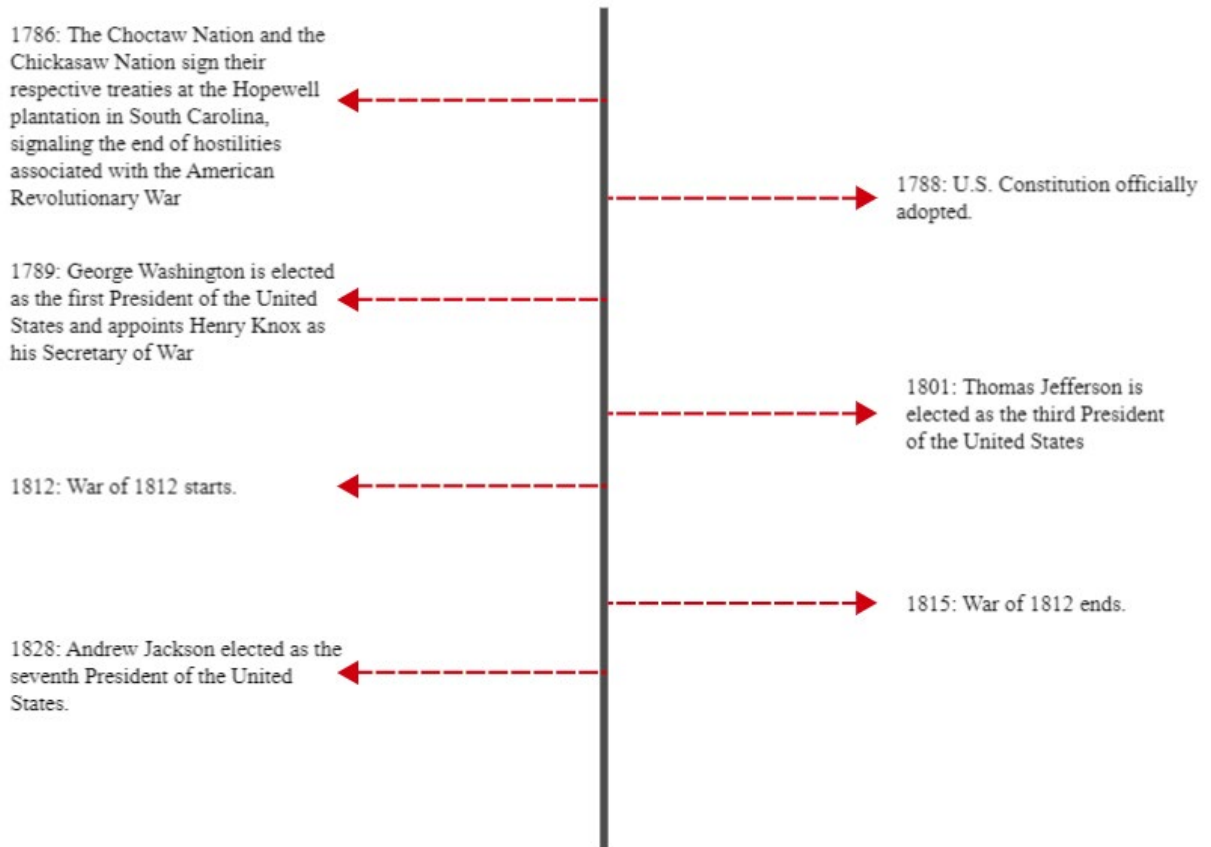


Figure 2: Overall Timeline of Key Events for the Creation and Growth of the Civilization Policy

The Creation of the Civilization Policy: Civilizationists, Removalists, and Anti-Civilizationists

The civilization policy was created soon after the election of the first President of the United States, George Washington. Washington, and his Secretary of War Henry Knox intended to define the way that the United States interacted with Indigenous Nations with this policy. The civilization policy directly affected the Indian policy of at least the first seven US presidents, even through the presidency of Andrew Jackson.⁹

Based upon fundamental misunderstandings about the culture, economy, and government of each individual Indigenous Nation with which the early United States interacted, the civilization policy functioned mainly as a tool of Indigenous dispossession and evidence of the United States' ignorance of their Indigenous neighbors. The Choctaw Nation and Chickasaw Nation were no exceptions. Despite the Chickasaw Nation's success with cattle ranching and cotton farming, and the Choctaw Nation's long history of sustainable agriculture, the United States insisted on creating missionary schools to "teach" the people of both nations agriculture, among other aspects of Euro-American culture.¹⁰ This policy affected all of the early United States' relationships with Indigenous Nations.

The civilization policy itself was a background philosophy that affected all subsequent decisions that went into the early United States' Indian policy. The main idea was as follows: through positive interaction with Euro-American Christianity, trade, and cultural practices, Indigenous Nations would willingly give up their own beliefs and practices and assimilate into

⁹ Theda Perdue and Michael D. Green, *The Columbia Guide to American Indians of the Southeast* (New York: Columbia University Press, 1983.). 89

¹⁰ Jeffrey Washburn, "Directing Their Own Change," *Native South* 13 (2020): 94–119. 95.; James Taylor Carson, "Native Americans, the Market Revolution, and Culture Change: The Choctaw Cattle Economy, 1690-1830," *Agricultural History* 71, no. 1 (1997): 1–18. 2.

Euro-American society. This way, proponents of the civilization policy believed, the United States could conquer Indigenous land without the military conquest usually necessary for such a goal.¹¹

The white statesmen who defined the early United States' Indian policy fell broadly into three different ideological "camps" with some overlap in between. There were the true proponents of civilization, who argued for assimilation rather than removal, and who truly believed that forced assimilation was the moral way to conquer Indigenous Nations. Henry Knox and George Washington, the architects of the civilization policy, fell into the civilizationist camp. The statesmen who supported this approach not only focused on the supposed moral aspect of the policy; they also saw the policy as militarily expedient and economically sound.¹²

Then, there were the removalists— those who advocated for the "civilization" of Indigenous Nations, but argued that it could only be achieved if they were removed from their homelands and from contact with white settlers. Thomas Jefferson was an early proponent of this ideology.¹³ Those who fell into this camp found themselves torn between truly believing that removal was the only way for Indigenous Nations to be able to properly "civilize" and in simply using the cloak of "encouraging civilization" to justify their designs on Indigenous land.

Finally, there are the anti-civilizationist statesmen, who did not bother with justifications for conquest such as the civilization policy. They advocated for removal, plain and simple, with little attention paid to how the Indigenous Nations were to re-establish themselves. Andrew Jackson falls into this final camp, as demonstrated by his actions in ignoring the Supreme Court

¹¹ Calloway, *The Indian World of George Washington*. 387.

¹² Sean Patrick Adams, *A Companion to the Era of Andrew Jackson* (Somerset: John Wiley & Sons, Incorporated, 2013), 43. <http://ebookcentral.proquest.com/lib/uoregon/detail.action?docID=1116954>.

¹³ Claudio Saunt, *Unworthy Republic: The Dispossession of Native Americans and the Road to Indian Territory* (New York: W. W. Norton & Company, Inc., 2021). 33.

decision in *Worcester v. Georgia*, when the Supreme Court ruled that Georgia could not expand its jurisdiction over Cherokee land. Jackson's disregard for the treaty-making process, despite his lip service to the idea of civilization, also showed his own disbelief in the idea of Indigenous sovereignty.¹⁴ Something all three camps could agree on, despite their differences in approach, however, was the final goal of stealing Indigenous land. The white statesmen simply disagreed on the method of conquest and what would happen to the dispossessed Indigenous people afterwards.¹⁵

George Washington and Henry Knox were the first President and the first Secretary of War, respectively. As such, they were the first to attempt to define the early Republic's Indian policy. They approached Indian policy with a kind of paternalistic idealism coupled with military pragmatism. If they directed the early United States into outright warfare with every Indigenous Nation that it encountered, the early Republic would not be able to withstand that kind of military campaign. The new country's military was simply not strong enough, as seen in the near-constant warfare with the Six Nations confederation in the Ohio valley.¹⁶

Neither was total warfare economically viable, with the newly independent United States still finding its economic footing. The only true way forward for the young Republic was to foster trade relationships with the many Indigenous Nations whose land intersected with and bordered the United States. This implicated the Choctaw Nation and the Chickasaw Nation, as well as the other southeastern Indigenous Nations, who had previously established trade

¹⁴ James F. Barnett, *Mississippi's American Indians* (Jackson: University Press of Mississippi, 2012), 148. <http://ebookcentral.proquest.com/lib/uoregon/detail.action?docID=881903>.

¹⁵ Calloway, *The Indian World of George Washington*. 384.; Christian B. Keller, "Philanthropy Betrayed: Thomas Jefferson, the Louisiana Purchase, and the Origins of Federal Indian Removal Policy," *Proceedings of the American Philosophical Society* 144, no. 1 (2000): 39–66.; Adams, *A Companion to the Era of Andrew Jackson*.

¹⁶ Jeffrey Ostler, *Surviving Genocide* (New Haven: Yale University Press, 2019), 87. <https://doi.org/10.2307/j.ctv9c629z>.

relationships with the British, the Spanish, and the French that they often relied on for European goods.

These practical considerations were counter-balanced by a true moral intent to “civilize” Indigenous people. George Washington saw it as “honorable conquest” that would avoid the mass death of Indigenous people.¹⁷ After Washington’s election in 1789, Washington and Knox seemed to fully believe in the paternalistic civilization policy as the most moral way forward with Indigenous Nations. Washington based his policy, in part, on international law, as Indigenous Nations were fully sovereign foreign nations to the early United States, despite white settlers’ refusal to accept that fact.¹⁸ Washington’s civilization policy allowed his administration to face the practical reality of Indigenous sovereignty while saving face ideologically for the white settlers who entirely ignored the idea of Indigenous sovereignty. Knox understood that realistically, the young Republic could not withstand a protracted war with any Indigenous Nation.¹⁹ War with Indigenous Nations, to Washington and Knox, was an absolute last resort. War was only to be considered when Indigenous Nations refused to accept Euro-American ways of life.²⁰

One of the first effects of the civilization policy can be seen in the text of the Hopewell Treaties. The Hopewell Treaties made with both the Choctaw Nation and the Chickasaw Nation in the aftermath of the American Revolution were similar for both Nations. In many ways, they were fundamentally the same documents, with many provisions copied whole-cloth into the text of both. The Choctaw Nation, as it had sided with the British, were forced to cede land to the

¹⁷ Perdue and Green, *The Columbia Guide to American Indians of the Southeast*. 75.

¹⁸ Calloway, *The Indian World of George Washington*. 380

¹⁹ *Ibid*, 382

²⁰ *Ibid*, 388

newly-independent colonies.²¹ While the treaty included an article that read that the Choctaw Nation was under the United States' protection, this was more of an attempted assertion of power than the actual truth of the situation. The rest of the treaty reads like a treaty between two independent nations after a war, despite the language of the protection article. For the Chickasaw Treaty of Hopewell in 1786, there were land cessions, as they had also allied with the British. While there was still language asserting that the United States was "receiving [the Chickasaw] into their protection," this was again an assertion of power rather than an enforceable truth.²² At first glance these protection articles in both the Choctaw and Chickasaw Hopewell treaties seem like true assertions of power over the two Nations, but they are actually more in line with how the Choctaw Nation and Chickasaw Nation had previously negotiated with other European powers.²³ Previously, the Choctaw Nation and the Chickasaw Nation had both used the language of kinship in their negotiations with European powers, so as to encourage positive relations.²⁴ Thus the protection articles, with their paternalistic language, were reflective of established negotiation language.

Despite the protection clauses in the Hopewell Treaties, the true beginning of the United States' attempt to force the Chickasaw Nation and Choctaw Nation into protectorate statuses was actually the United States' attempts at limiting the Choctaw Nation's and Chickasaw Nation's

²¹ Charles J. Kappler, "1786 Treaty with the Choctaw Nation at Hopewell," in *Indian Affairs: Laws and Treaties*, vol. 2 (Washington, D. C.: Washington, Gov. Print Office, 1904), 11–14, <https://heinonline.org/HOL/P?h=hein.ustreaties/ialt0002&i=1>.

²² Charles J. Kappler, "1786 Treaty with the Chickasaw Nation at Hopewell," in *Indian Affairs: Laws and Treaties*, vol. 2 (Washington, D. C.: Washington, Gov. Print Office, 1904), 14–16, <https://heinonline.org/HOL/P?h=hein.ustreaties/ialt0002&i=1>.

²³ Joseph M. Hall Jr., *Zamumo's Gifts: Indian-European Exchange in the Colonial Southeast* (Philadelphia: University of Pennsylvania Press, 2012), 157. <http://ebookcentral.proquest.com/lib/uoregon/detail.action?docID=3441618>.

²⁴ Colin G. Calloway, *Pen and Ink Witchcraft: Treaties and Treaty Making in American Indian History* (Oxford: Oxford University Press, Incorporated, 2013), 12. <http://ebookcentral.proquest.com/lib/uoregon/detail.action?docID=1183113>.

international trade with European powers.²⁵ For example, the Treaty of Fort Confederation in 1802, was made in response to the United States' growing fears of the Choctaw-Spanish alliance.²⁶ The United States hid its intentions behind the argument that they were attempting to curtail white squatting on Choctaw land. The United States' negotiators argued that without strict boundaries, the United States could not stop European-American settlers from encroaching on Choctaw land.²⁷ There was some truth to this claim, as the Regular Army was too small to properly police the length of the colonial border with Indigenous land, which was ill-defined. However, while the Choctaw Nation only agreed to a demarcation of boundaries in the Treaty of Fort Confederation, the United States, through the treaty, actually stole 50,000 acres of land from the Choctaw Nation.²⁸

President Jefferson saw removal as the only way to “save” the southeastern Indigenous Nations from “extinction.”²⁹ Jefferson believed that Indigenous populations were declining in the early 19th century, despite no real proof of a decline.³⁰ The early removal effort was justified similarly to the early abolitionist goal of colonizing land in Africa for the purpose of sending freed slaves there.³¹ Thus, when Jefferson made the Louisiana Purchase, he already had a use in mind for the land. While Jefferson and other white statesmen at the time discussed the land as if it was uninhabited, a large portion of the land was already Osage land.³²

Jefferson eventually came to believe that the white man was corrupting the “noble savage,” and thus for the civilization process of the southeastern Indigenous Nations to succeed,

²⁵ Nichols, *Engines of Diplomacy*. 35.

²⁶ Barnett, *Mississippi's American Indians*. 140.

²⁷ Ibid.

²⁸ Ibid. 141

²⁹ Claudio Saunt. *Unworthy Republic : the Dispossession of Native Americans and the Road to Indian Territory*. First edition. New York, NY: W.W. Norton & Company, Inc., 2021. 24

³⁰ Ibid.

³¹ Ibid. 26.

³²Keller, “Philanthropy Betrayed.” 58

they had to be removed. Whether or not he truly believed this line of reasoning, it was the reasoning that he used to justify his early support for Indigenous removal. Jefferson was the first president to advocate for removal, paving the way for President Jackson after him. Jefferson advocated for a different kind of removal than the removal that Jackson carried out. He wanted to use removal both as a method of stealing Indigenous land and as a method to teach the “noble savage” civilized habits. This entire process relied on the assumption that Indigenous Nations would happily give up their own cultures. If Indigenous societies did not happily give up their way of life, then Jefferson was quick to violence, in stark contrast to the “noble” ideals he espoused.³³

Removal as an idea gained traction throughout the 1810s and 1820s, eventually culminating in the election of Andrew Jackson in 1828. While removal as a concept was not President Jackson’s idea, he was the President that saw it to fruition. Relying on the work of his predecessors, Jackson was the president who pushed the 1830 Indian Removal Act through Congress and kickstarted the removal process. Jackson was never a proponent of the civilization policy, nor did he believe in the treaty-making process. Anything that recognized the sovereignty of Indigenous Nations— legal documents, economic systems, anything— Jackson rejected, especially after the War of 1812, as he gained political power.

Mississippi, Alabama, and Georgia had long argued that the states should have the right to regulate their own relationships with Indigenous Nations, as they dealt with “Indian problems” more directly than the federal government.³⁴ The federal government under both President Jackson and President John Quincy Adams, in response to and tacit support of this argument, therefore refused to assert the Constitutional authority of the federal government to regulate

³³ Sheehan, *Seeds of Extinction*. 274.

³⁴ Perdue and Green, *The Columbia Guide to American Indians of the Southeast*. 86.

relationships with the Indigenous Nations— Jackson more famously through his refusal to enforce *Worcester v. Georgia*.³⁵ In *Worcester v. Georgia*, the Supreme Court ruled that the state of Georgia could not extend its laws over the Cherokee land in Georgia. Despite this ruling in hesitant support of Indigenous sovereignty, Jackson, the President who had a duty to enforce the rulings of the Supreme Court, ignored the ruling and allowed Georgia to extend its own laws anyway.

Emboldened by Jackson's actions, Mississippi expanded state jurisdiction over the Choctaw people living in what the United States had defined as the land that made up the State of Mississippi, which, incidentally, included much of Choctaw land. The United States government under Andrew Jackson, despite countless treaty provisions promising that the federal government would restrain white squatters from squatting in the Choctaw Nation, refused to do anything about Mississippi's unconstitutional expansion of jurisdiction. Mississippi began to extend its laws over the Choctaw and Chickasaw in 1829. The process was completed in 1830. Removal was forced upon the Choctaw Nation and Chickasaw Nation through legal means in this way. Mississippi and Alabama's expansions of state jurisdiction over Choctaw and Chickasaw land, coupled with the passage of the Indian Removal Act, forced these Indigenous Nations into a corner. Their options had become either to accept removal or be absorbed by the United States.

Earlier in his life, Jackson had fought alongside Choctaw and Chickasaw warriors who had refused to ally with Tecumseh and his large coalition of Indigenous Nations against the United States and with the British.³⁶ Despite the contributions of the Choctaw Nation to the

³⁵ Perdue and Green. 95.

³⁶ D. L. Birchfield, *How the Choctaws Invented Civilization and Why Choctaws Will Conquer the World* (Albuquerque: University of New Mexico Press, 2007). 21

ultimate success of the United States during the War of 1812, Jackson decided to begin the process of southeastern indigenous removal with the Choctaw Nation. John Calhoun, one of his Secretaries of War, and others involved with the decision considered the Choctaw Nation to be the “most civilized” and therefore easiest to remove.³⁷

The cruel irony of this decision can be found in the broken promise of the civilization policy: assimilate into Euro-American culture and you can keep your land. The Choctaw Nation had been taking advantage of the civilization policy to use it as a method of resistance to removal. By Europeanizing some aspects of their government and culture, they had hoped to prove that there was no need to remove them from their homelands. The Chickasaw Nation had also attempted this method of resistance, albeit to a smaller extent than the Choctaw Nation.

Pre-removal, the Choctaw Nation functioned as a confederacy with three main districts, each with its own chief and subchiefs for specific subjects, such as war chiefs. A Choctaw “high chief” was not a powerful position outside of negotiation with white settlers.³⁸ Smaller kinship groups were where local and regional power dwelt, through matrilineal *iskas* that crossed the three Choctaw divisions and intertwined different Choctaw communities, with six larger regional *iskas* with smaller *iskas* within them.³⁹ Decisions were made on the local, divisional, and even “national” level through large meetings which were directed towards finding a widely-agreed upon solution.⁴⁰

The 1826 Choctaw Constitution only put this organization into writing, to make it digestible to their Euro-American neighbors.⁴¹ While they modeled their Constitution on the

³⁷ Valerie Lambert, *Choctaw Nation: A Story of American Indian Resurgence* (Lincoln: University of Nebraska Press, 2007).39.

³⁸ Lambert, 30.

³⁹ *Ibid.* 23.

⁴⁰ *Ibid.*

⁴¹ *Ibid.* 38

United States' Constitution, it is important to note that this constitution does not represent widespread governmental change; it is simply setting down in writing the policies and procedures that existed before-hand. Further, the Choctaw constitution was written as an attempt to curtail removal through appealing to the civilization policy. Indirectly, the Choctaw Nation argued that they had already been "civilized", and thus removal was unnecessary.

The first land that the United States intended for the Choctaw Nation to remove to was land that would become modern-day Arkansas; however, the white settlers in that area saw it as a "betrayal" by the federal government, so the land they were to be forced onto was demarcated in what is now Oklahoma, in the heart of Osage land, who were longtime enemies of the Choctaw Nation.⁴²

These differing stances on the civilization policy each changed how the policy was applied and which specific policies, with regards to Indigenous Nations, were effected. The civilizationists tried to push the policy toward assimilation, though some defected from the "moral" stance. Some statesmen, like Jefferson, became disillusioned with the idea of assimilation and began to believe that removal was truly the only way to ensure peaceful coexistence.

⁴² Kathleen DuVal, *The Native Ground: Indians and Colonists in the Heart of the Continent* (Philadelphia: University of Pennsylvania Press, 2007), 164.
<http://ebookcentral.proquest.com/lib/uoregon/detail.action?docID=3441510>.

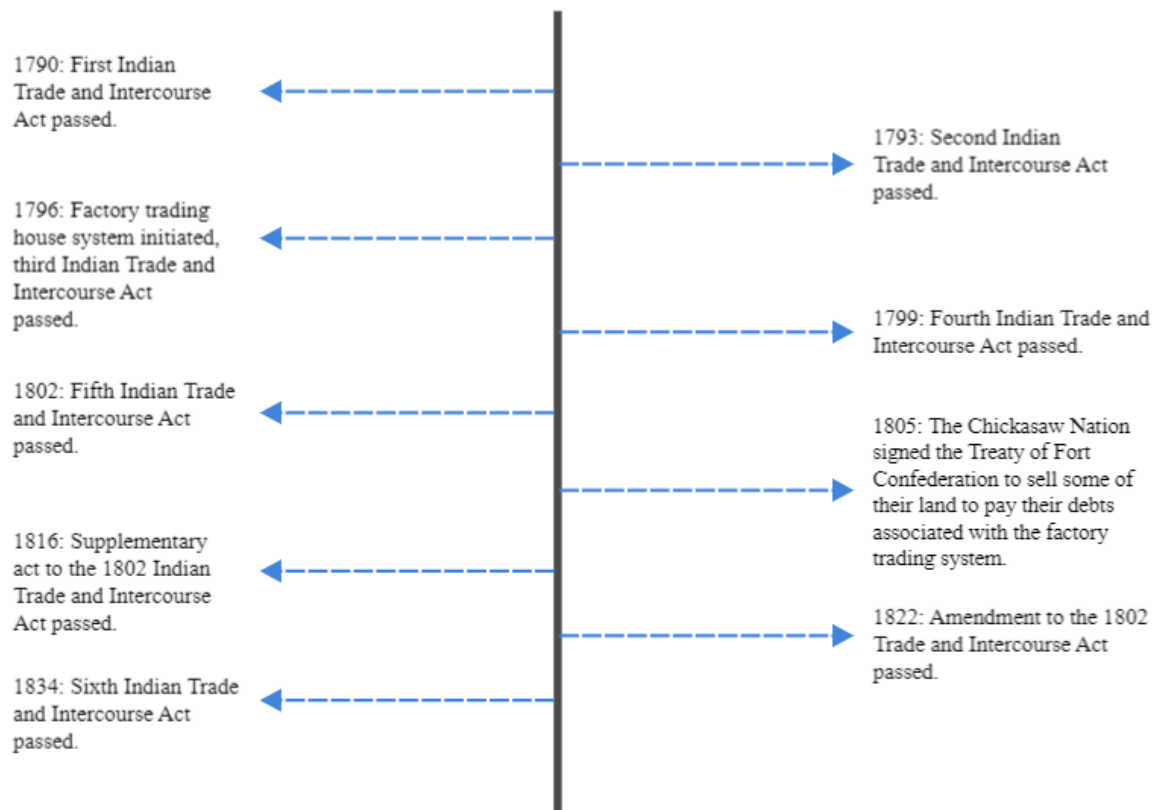


Figure 3: Timeline of Key Events in Economic Regulation

The Civilization Policy in Economic Regulation

One of the main causes of disillusionment among Civilizationists was the failure of early attempts to force assimilation through attempted economic control of Indigenous Nations. The early United States attempted to assert economic control over the Choctaw and the Chickasaw Nations through the factory system and the Indian Trade and Intercourse acts. Despite these attempts to control them economically, both the Chickasaw Nation and the Choctaw Nation were able to maintain relatively healthy agricultural economies pre-removal. The Chickasaw Nation in particular was a touch-stone for the early southern economy— much to the chagrin of southern white settlers.⁴³

Francis Paul Prucha's 1962 *American Indian Policy in the Formative Years*— a policy analysis of the Indian Trade and Intercourse Acts— or the Nonintercourse Acts— is an oft-referenced work on the subject. While it is in-depth and includes the necessary political context to understand the Nonintercourse Acts, it falls into some common traps associated with historical work concerning Indigenous Nations of its time. It is often paternalistic in its description of Indigenous Nations. Prucha often portrays Indigenous Nations as either hapless victims or uncontrollable drunkards. Especially in his description of the alcohol trade with various Indigenous Nations, Prucha characterizes Indigenous people as both unable to control themselves and too naive to avoid being swindled. The text is outdated; however it is still the most in-depth analysis of all six Nonintercourse Acts. Its paternalistic nature also lends itself to consideration— the same paternalism that motivated the original civilization policy rears its head in 20th-century research, albeit somewhat diluted by time.⁴⁴

⁴³ Washburn, "Directing Their Own Change." 111

⁴⁴ Francis Paul Prucha, *American Indian Policy in the Formative Years: The Indian Trade and Intercourse Acts, 1790-1834* (Lincoln: University of Nebraska Press, 1962).

In his 2016 book *Engines of Diplomacy: Trading Factories and the Negotiation of the American Empire*, David Andrew Nicols is much more successful in his portrayal of Indigenous Nations.⁴⁵ Nicols actually portrays Indigenous Nations as actors in their own history. Despite being centered on policy and its implementation and, therefore, being focused on white settlers, it still is a more accurate portrayal of various Indigenous Nations.

The factory system, first established through the enactment of the 1796 Factory Bill, was a system of trading houses managed by the United States government for the purposes of controlling trade and maintaining peaceful relationships with Indigenous Nations. Henry Knox had been campaigning for military outposts along the border with the west and the Indigenous Nations. Knox believed such outposts would be necessary both to protect the early United States from raids and to further diplomatic relations with Indigenous Nations.⁴⁶ The Choctaw and the Chickasaw Nations were no exceptions to this.

In section seven of the establishment bill, it is expressly outlawed for an agent running a factory to purchase “any instrument of husbandry, or cooking utensil, of the kind usually obtained by Indians in their intercourse with white people.”⁴⁷ This reflects one of the underlying purposes of the trading houses— to promote the “civilization” of Indigenous cultures. Because white statesmen saw European farming tools as hallmarks of “civilization”, forbidding government-appointed agents from buying them was intended to indirectly encourage Indigenous people to use European farming methods instead of their own traditional methods. Not only did the purpose of “encouraging civilization” underpin the act, but it was also present in the

⁴⁵ Nichols, *Engines of Diplomacy*.

⁴⁶ Prucha, *American Indian Policy in the Formative Years: The Indian Trade and Intercourse Acts, 1790-1834*. 44

⁴⁷ “An Act for Establishing Trading Houses with the Indian Tribes,” Pub. L. No. 9–13 (1796).

congressional discussions around its implementation. Representative John Swanwick of Pennsylvania goes so far as to directly conflate trade and civilization.⁴⁸

Despite Swanwick's paternalistic reasoning for supporting the Trading House Act, there were more practical reasons for the factory system, some diplomatic and some aimed at stealing land. The Choctaw Nation, even before the American Revolution, had a close diplomatic relationship with the Spanish.⁴⁹ The fur trade was vitally important to both the Spanish and the French.⁵⁰ Especially after the American Revolution, the United States government was nervous about European powers maintaining footholds on the continent. Through establishing trading houses and the factory system at large, the United States government intended to undercut other possible trading partners for Indigenous Nations and hopefully sway Indigenous Nations that fought with the British in the American Revolution, including both the Choctaw Nation and the Chickasaw Nation, away from their old European allies.⁵¹ The factory system's diplomatic purpose was demonstrated by its frequent monetary losses. The successful Choctaw factory, for example, ran at a high loss.⁵² The diplomatic nature of the factory system reveals another implication of early U.S. Indian policy— Indigenous Nations were used as pawns in a greater international game that no white statesman believed that Indigenous Nations could have an effect on, despite their pre-revolutionary ability to play European powers off of each other, and their complex intertribal networks of relationships.

The other side of the factory system's diplomatic purpose was conquest without war. This aligns with George Washington and Henry Knox's original idea with the civilization policy— to

⁴⁸ *Annals of Congress*, 4th cong., 1st sess., 230.

⁴⁹ Nichols, *Engines of Diplomacy*. 29.

⁵⁰ *Ibid.*

⁵¹ *Ibid*, 35.

⁵² *Ibid*, 95.

“conquer with honor”.⁵³ Through the factory system regulating trade, proponents of the civilization policy assumed that Euro-American culture and practices would be naturally accepted by the Choctaw Nation and the Chickasaw Nation.⁵⁴ The factory system was also intended to indebt many Indigenous Nations to the United States, thus creating a relationship of dependence. This relationship was intended to be similar to the relationship between a conquered people and their conquerors. Thomas Jefferson himself pointed out that the purpose of providing credit to Indigenous people through the factory system was to create debts that could only be paid through land cessions.⁵⁵ This was a successful method of stealing Indigenous land, as seen by a cession the Choctaw Nation made intended to pay for its debts to its local factory.⁵⁶ The Chickasaw Nation faced the same tactic in 1805, when it sold some of its land to pay its trading house debts as well.⁵⁷ The factory system then can be seen as a microcosm of the civilization policy— conquest and greed draped in paternalistic and “philanthropic” clothing. Through encouraging Indigenous Nations to run up debt at the trading factories, the U.S. government could all but force land cessions to pay for the debts.

However, despite the underhanded objectives of their trading partners, no Indigenous Nation was an ignorant victim of the factory system. In fact, many Indigenous Nations were able to take advantage of the factory system. The Choctaw Nation and the Chickasaw Nation both were able to continue participating in the highly lucrative fur trade through the factory system.⁵⁸ The fur trade was extremely profitable throughout the 1700s and early 1800s. It was the main driver of French and Spanish trade with the Choctaw Nation and the Chickasaw Nation pre-

⁵³ Perdue and Green, *The Columbia Guide to American Indians of the Southeast*. 89.

⁵⁴ *Annals of Congress*, 4th cong., 1st sess., 230.

⁵⁵ Nichols, *Engines of Diplomacy*. 10.

⁵⁶ *Ibid*, 96.

⁵⁷ *Ibid*, 51.

⁵⁸ *Ibid*, 94.

American Revolution. Though it became less profitable after the War of 1812, it served the purpose of helping keep the peace between both the Choctaw and the Chickasaw Nations and the United States.

The factory system was not the only method through which the early United States government attempted to economically control Indigenous Nations. The Indian Trade and Intercourse Acts were intended to regulate trade with Indigenous Nations and to sabotage Indigenous Nations' relationships with other European actors.⁵⁹ While rarely and half-heartedly enforced, the Indian Trade and Intercourse Acts attempted to limit the people trading with Indigenous Nations to those who were granted licenses.⁶⁰ There were two types of traders that the United States government specifically wanted to block, or at least minimize. Foreign traders and whiskey traders both represented threats to the early American Republic and paternalistic moralism, respectively. Foreign traders represented outside nations' attempted formation of diplomatic relationships with Indigenous Nations. Spanish traders to the Choctaw Nation, for example, were subject to suspicion. British traders were specifically mentioned in the debates around the Indian Trade and Intercourse Act, as the early United States was still attempting to root out British footholds in North America.⁶¹ Whiskey traders, on the other hand, were seen by American statesmen to be a "negative influence" on Indigenous people and a threat to the assimilationist goals of the proponents of the civilization policy.⁶² While whiskey traders were often unscrupulous swindlers at the best of times, Indigenous Nations had a right to control their own trade, without an outside influence such as the United States attempting to limit what choices they could make.

⁵⁹ Prucha, *American Indian Policy in the Formative Years: The Indian Trade and Intercourse Acts, 1790-1834*. 48.

⁶⁰ *Ibid.*

⁶¹ *Ibid.*, 67.

⁶² *Ibid.*, 102.

There were six Indian Trade and Intercourse Acts, or Nonintercourse Acts as they are occasionally called, in total, each enacted in 1790, 1793, 1796, 1799, 1802, and 1834 respectively. The first three were written to only be in effect for two years, until the Act of 1799, which was in effect for three years. The Act of 1802 is the first Nonintercourse Act without a sunset provision.⁶³ The expansion from a limited-time act to an indefinite act shows a period of debate on early Indian policy goals, followed by a period of stabilization demonstrated by the more permanent act of 1802. The temporary nature of the first Indian Trade and Intercourse Acts shows the fight to define Congressional Indian policy throughout the late 1700s and into the early 1800s. The debate between the civilizationists, the removalists, and the anti-civilizationists played out, on a small scale, in the early Nonintercourse Acts.

Not only were the Indian Trade and Intercourse Acts attempts to regulate international trade with Indigenous Nations, but they also represented legal encroachment of the federal government into Indigenous issues. In the first Indian Trade and Intercourse Act, enacted July 22, 1790, section five expanded federal criminal jurisdiction over crimes committed by white people against Indigenous people or property on Indigenous land.⁶⁴ This expansion of criminal jurisdiction, hidden within what was ostensibly written as a trade bill, foreshadowed the expansion of state jurisdiction over the Choctaw Nation, the Chickasaw Nation, and the Cherokee Nation by Georgia, Mississippi, and Alabama in the 1830s. While in 1790 the federal government did not necessarily have the military power or infrastructure to enforce such a provision, it created precedent for further extensions of federal, and eventually state, power over Indigenous Nations.

⁶³ “An Act to Regulate Trade and Intercourse with the Indian Tribes, and to Preserve Peace on the Frontiers,” Pub. L. No. 15–13 (1802).

⁶⁴ “An Act to Regulate Trade and Intercourse with the Indian Tribes,” Pub. L. No. 2–33 (1790).

Further, the first Indian Trade and Intercourse Act, in section four, declared the sale of Indigenous land to people other than the United States government illegal.⁶⁵ This foreshadows the decision made in *Johnson v. M'Intosh* in 1823. By invalidating any sale of land made by Indigenous people to anyone who is not the United States government, the United States was asserting control over land that it did not own. The United States followed the doctrine of discovery and limited Indigenous title to their own land- in terminology that was, at best, ignorant of Indigenous conceptions of land ownership. Basically, the United States, through attempting to control the sale of Indigenous land, asserted European conceptions of land ownership onto land that it, again, did not own.

Chickasaw views of land “ownership” and non-personal property were based on the idea that the land was to be held in common by the Nation as a whole. When Chickasaw people began to rack up debt at the factory at Chickasaw Bluffs, specifically the Colbert family, the debt was spread throughout the Nation rather than being held by one person.⁶⁶ This method of land ownership was understood by the white statesmen of the United States to be “uncivilized” simply because it was different from how Europeans understood land ownership. This belief also fed into the stereotype that all Indigenous people were hunter-gathers and therefore less “civilized”. According to white settlers, Indigenous Nations were not properly taking care of their land and therefore had less of a right to it than the white settlers themselves, who would, in their minds, properly utilize it.⁶⁷

In the 1793 Indian Trade and Intercourse Act, the implied effort to “civilize” the Indigenous Nations through trade became an explicit goal of the act. In section nine, the act

⁶⁵ Ibid.

⁶⁶ Nichols, *Engines of Diplomacy*. 51.

⁶⁷ Calloway, *Pen and Ink Witchcraft*. 44.

authorized the president to “cause them to be furnished with useful domestic animals, and implements of husbandry”.⁶⁸ This provision was also included in every subsequent Indian Trade and Intercourse Act until 1834.⁶⁹ Not only was this text rife with paternalistic intent, but it reflected white ignorance of the actual practices of both the Choctaw Nation and the Chickasaw Nation. The Choctaw people had been herding cattle since at least the early 1700s and likely began earlier.⁷⁰ The Chickasaw people had joined them in this practice by the 1770s.⁷¹ Obviously, neither Nation needed instruction in animal husbandry. The assumption that they did, simply because they did not follow European herding practices specifically, was rooted again in settler paternalism and white ignorance. The 1793 Indian Trade and Intercourse Act also is the first instance of another repeating section— a section that prohibits white settlers from surveying and settling on Indigenous land. This was a politically important section that was largely intended to avoid war with Indigenous Nations due to white squatters on their land, a consistent problem for Indigenous Nations since before the American Revolution.

The 1793 Indian Trade and Intercourse Act also attempted to curtail horse thieving by outlawing purchasing horses from Indigenous people without a license.⁷² Indigenous people of several Nations, notably Osages and the Cherokees, would steal horses from white settlers and would sell the stolen horses to other white settlers.⁷³ Actually attempting to apprehend the thieves presented both logistical problems and curried conflict with Indigenous Nations, who would rightly have viewed such punishment as an infringement on their sovereignty. So, by attempting to stop white settlers from buying horses from Indigenous people, the federal

⁶⁸ “An Act to Regulate Trade and Intercourse with the Indian Tribes,” Pub. L. No. 5–19 (1793).

⁶⁹ “An Act to Regulate Trade and Intercourse with the Indian Tribes, and to Preserve Peace on the Frontiers,” Pub. L. No. 9–30 (1796).

⁷⁰ Carson, “Native Americans, the Market Revolution, and Culture Change.” 5.

⁷¹ Washburn, “Directing Their Own Change.” 103.

⁷² An Act to regulate trade and intercourse with the Indian tribes, 1793.

⁷³ Prucha, *American Indian Policy in the Formative Years: The Indian Trade and Intercourse Acts, 1790-1834*. 204.

government could indirectly attempt to control the stolen horse trade.⁷⁴ This provision was in each subsequent Nonintercourse Act until 1802.

The 1796 Indian Trade and Intercourse Act attempted to address the issue of horse thievery directly. Section fourteen, which outlined the process for a white settler to seek redress for a crime committed against them by an Indigenous person, directly mentions horse thievery as a possible crime for which a white settler could seek redress.⁷⁵

The 1796 Indian Trade and Intercourse Act was the first to add “and to preserve peace on the Frontiers” to the end of the title of the Act, reflecting the evolving complexity of the United States’ relationship with the Indigenous Nations of the east.⁷⁶ Accordingly, each Indian Trade and Intercourse Act became more specific than the last. Section one of the 1796 Indian Trade and Intercourse Act was very specific about borders between the United States and Indigenous land.⁷⁷ This specificity was required, as in the very next section, it was explicitly outlawed to range cattle on Indigenous land, lest the perpetrator be fined.⁷⁸ This provision was actually practical— it attempted to ensure that white settlers would not trespass on Indigenous land. However, like other provisions of the Indian Trade and Intercourse Acts that somewhat respected Indigenous sovereignty, it was poorly enforced. The 1796 Indian Trade and Intercourse Act also included recourse for white settlers who had been raided by the people of an Indigenous Nation to appeal to the Indian superintendent to discuss with the raiding Nation to satisfy the claim of the appealing settler.⁷⁹ This provision treated Indigenous Nations like protectorates rather than truly sovereign Nations— if the given Indigenous Nation were to refuse to pay for the alleged

⁷⁴ Ibid, 205.

⁷⁵ An Act to regulate trade and intercourse with the Indian tribes, and to preserve Peace on the Frontiers.

⁷⁶ Ibid.

⁷⁷ Ibid.

⁷⁸ Ibid.

⁷⁹ Ibid.

raiding, the President could deduct the cost of the alleged raid from a treaty annuity.⁸⁰ This allowed for treaty violations— treaty annuities were not gifts given by the United States to Indigenous Nations; they are consideration for the transfer of land from an Indigenous Nation to the United States. Treating an annuity as a privilege ignores the true nature of a treaty as a contract between two Nations, and shows the United States’ view of Indigenous Nations as “lesser” societies without sovereignty even in 1796.

Further, the 1796 Indian Trade and Intercourse Act, in section five, authorized the United States military force to apprehend any settler trespassing on Indigenous land.⁸¹ This was a section that was, again, largely political, and written for the sake of attempting to dissuade white squatters from trespassing on Indigenous land. It also created a legal purpose for the United States military to trespass on Indigenous lands itself. However, due to the logistical issues with enforcing the Indian Trade and Intercourse Acts, it was not utilized in such a way. As white squatters served the expansionist purposes of the federal government, it is doubtful this provision would have ever been acted on. However, it still represented another threat to Indigenous sovereignty.

The 1799 Indian Trade and Intercourse Act was much the same as the 1796 Indian Trade and Intercourse Act, with the exception of the 1799 Indian Trade and Intercourse Act being enacted for three years rather than the usual two.⁸² By this time, the United States government was settling on some of the provisions it had outlined in the previous acts, pointing to a stabilization of the early United States’ Indian policy. President Washington was satisfied that

⁸⁰ Ibid.

⁸¹ An Act to regulate trade and intercourse with the Indian tribes, and to preserve Peace on the Frontiers.

⁸² “An Act to Regulate Trade and Intercourse with the Indian Tribes, and to Preseve Peace on the Frontiers,” Pub. L. No. 12–46 (1799).

the Trade and Intercourse Acts were working to civilize Indigenous Nations.⁸³ The idea was that through controlling trade, the United States could spread Christianity and thus change what they perceived as Indigenous culture. The anti-squatting provisions remained, though they remained unenforced for a variety of reasons— including, importantly, judicial reluctance to punish squatters according to the provisions of the statute.⁸⁴

This judicial reluctance to enforce the Nonintercourse Acts was symptomatic of larger problems. Frontier unwillingness to actually treat Indigenous Nations as neighbors and the federal government refusing to back up its legislation with actual force were the main roadblocks to proper support for the Nonintercourse Acts. Put bluntly, local judges, as well as the federal government, refused to support the policy as written. In writing, squatters were to be fined and ejected— in reality, they were only occasionally ejected and rarely, if ever, fined.⁸⁵ Part of this uneven enforcement was definitely caused by logistical difficulties. Actually finding the squatters and keeping them off of Indigenous land was tedious at the best of times, and outright impossible at worst. When the military got involved, it was common for squatters to sue the officer who ejected them— and judges were often more inclined to support the squatters than the officer.⁸⁶

In 1800, Congress enacted a supplement to the 1799 Trade and Intercourse Act that was intended to deal with the issue of enforcement. The supplement outright authorized military officers to take ejected squatters directly to justices of the relevant state.⁸⁷ This was a half-

⁸³ Prucha, *American Indian Policy in the Formative Years: The Indian Trade and Intercourse Acts, 1790-1834*. 215.

⁸⁴ Prucha. 163.

⁸⁵ *Ibid.*

⁸⁶ *Ibid.*

⁸⁷ “An Act Supplementary to the Act to Regulate Trade and Intercourse with the Indian Tribes, and to Preserve Peace on the Frontier,” Pub. L. No. 13–30 (1800).

hearted stopgap that gave the officers statutory authority, but did not actually lay out procedures for properly processing and punishing the squatters. Therefore, it was functionally useless.

The 1802 Indian Trade and Intercourse Act was the first to not include a sundown clause.⁸⁸ It maintained the status quo of the Indian Trade and Intercourse Acts—reinforcing Congress’s treatment of Indigenous Nations as theoretical protectorates. The different “schools of thought” for white statesmen on the sovereignty of Indigenous Nations could agree on one thing. Indigenous Nations were not to be treated as completely sovereign, despite the realities of frontier life and Indigenous self-determination that Congress could not do anything about.

The reality was that Indigenous horse thieves could not be directly policed because the United States did not have the military power to contend with multiple, angry, allied Indigenous Nations in 1802.⁸⁹ White statesmen would not admit it, but they were forced to treat Indigenous Nations as sovereigns in their own right due to the military reality of the early Republic. The issue with military enforcement was especially apparent during the War of 1812. During the war, the alliance between the United States and the Southeastern Indigenous Nations, namely the Cherokee, the Choctaw, and the Chickasaw Nations, was central to the United States’ military success.⁹⁰

The 1816 supplement to the 1802 Indian Trade and Intercourse Act was largely concerned with non-American European traders attempting to trade with Indigenous Nations.⁹¹ This was not a new concept—like the international considerations that led, in part, to the creation of the Indian trading factories, white statesmen were still concerned with the possibility

⁸⁸ An Act to regulate trade and intercourse with the Indian Tribes, and to preserve peace on the frontiers.

⁸⁹ Prucha, *American Indian Policy in the Formative Years: The Indian Trade and Intercourse Acts, 1790-1834*. 44.

⁹⁰ Birchfield, *How the Choctaws Invented Civilization and Why Choctaws Will Conquer the World*. 21.

⁹¹ “An Act Supplementary to the Act Passed the Thirtieth of March, One Thousand Eight Hundred and Two, to Regulate Trade and Intercourse with the Indian Tribes, and to Preserve Peace on the Frontiers,” Pub. L. No. 31–165 (1816).

of Indigenous Nations allying with European Nations to overthrow the United States. This concern was especially strong in the wake of the War of 1812. However, this attempt to control which foreigners traded with Indigenous Nations also demonstrated the creep of the United States' assertion of control over Indigenous people. By limiting who could contract and create trade relationships with Indigenous Nations, the United States asserted control over Indigenous Nations.

The 1822 amendment to the 1802 Indian Trade and Intercourse Act was largely a reorganization of existing infrastructure dealing with Indigenous Nations. It resulted in a further loss of Indigenous sovereignty. It officially gave control of annuities to Indian agents and appointed an Indian superintendent. Through the 1822 amendment, the United States was solidifying infrastructure intended to overtly control Indigenous Nations.⁹² Some statesmen, largely those in the removalist camp, proposed the creation of a separate government for removed Indigenous Nations that was based on the existing Indian agent and Indian superintendent system. The proposal was for a single government that that was intended to combine and control every removed Nation, thus fully ignoring all existing distinctions.⁹³ This proposal was not supported by the other camps in Congress— it represented a costly investment in removal that was seen as unnecessary.

The Indian Trade and Intercourse Act of 1834, the final act in this series of six, represented the shift into the full removal era. The first section is notably shorter in its definition of boundaries between the United States and the so-called “Indian Country”.⁹⁴ It specifically

⁹²“An Act to Amend an Act, Entitled ‘An Act to Regulate Trade and Intercourse with the Indian Tribes, and to Preserve Peace on the Frontiers,’ Approved Thirtieth March, One Thousand Eight Hundred and Two,” Pub. L. No. 37–58 (1822).

⁹³ Prucha, *American Indian Policy in the Formative Years: The Indian Trade and Intercourse Acts, 1790-1834*. 229.

⁹⁴ “An Act to Regulate Trade and Intercourse with the Indian Tribes, and to Preserve Peace on the Frontiers,” Pub. L. No. 49–161 (1834).

calls the territory west of the Mississippi River “Indian Country” , officially endorsing the policy of removal. Despite the lack of the actual removal of the Chickasaw Nation, this act enshrined federal intent to dispossess the Chickasaw Nation of its land, along with all other southeastern Indigenous Nations, no matter the provisions of existing treaties.

The 1834 Indian Trade and Intercourse Act truly treated Indigenous Nations as subjugated and conquered people, rather than true nations in their own rights. Even in *Worcester v. Georgia*, when the Supreme Court ruled against the extension of Georgia’s laws over Cherokee land, Chief Justice John Marshall does not recognize Indigenous Nations as independent sovereigns, but rather as “domestic communit[ities].”⁹⁵ Sections thirteen and fourteen of the 1834 Nonintercourse Act directly control the communication of both citizens of the United States and foreigners with Indigenous Nations. Section thirteen directly outlaws communications sent by citizens of the United States that encourage the violation of a treaty.⁹⁶ The control of communication, even with citizens of the United States also represented an explicit assertion of control over Indigenous Nations. By controlling communications with outsiders, the United States government could attempt to heavily filter the information going into Indigenous Nations.

The thirteenth provision of the 1834 Nonintercourse Act further assumed that Indigenous Nations did not understand their treaties with the United States. By creating a fine for any United States citizen who “shall send any talk, speech, message, or letter to any Indian nation, tribe, chief, or individual, with an intent to produce a contravention or infraction of any treaty or other law of the United States,” the thirteenth provision assumed that any possible Indigenous resistance would be the result of white incitement, rather than a genuine intent to resist

⁹⁵ *Worcester v. State of Ga.*, 31 U.S. 515, 583 (1832).

⁹⁶ An Act to regulate trade and intercourse with the Indian tribes, and to preserve peace on the frontiers.

subjugation.⁹⁷ This assumption relied on the idea that Indigenous Nations would not understand the treaties they made with the United States for themselves and would, if left alone, blithely accept them.

Despite this assumption, by this point historically, Indigenous Nations were able to both completely understand treaties and negotiate ably with the United States. The Chickasaw Nation, for example, was able to stave off removal through intelligent negotiation. The Pontitock Creek Treaty specifically states that the leaders of the Chickasaw Nation have to approve of the land that they were to be removed to, which allowed them to delay removal through lengthy surveys and diplomatic non-commitment.⁹⁸

Section fourteen of the 1834 Indian Trade and Intercourse Act was a direct continuation of federal policy to limit European contact with Indigenous Nations. All communication, not just communication inciting treaty violations, was outlawed. The protectorate status that the United States had been attempting to force onto Indigenous Nations was slowly becoming a reality.

Section nineteen of the Indian Trade and Intercourse Act of 1834 directly expanded general federal criminal jurisdiction over Indigenous Nations.⁹⁹ Through giving Indian agents the responsibility of arresting and trying Indigenous people who had committed crimes against white settlers, the federal government directly expanded criminal jurisdiction over Indigenous Nations. The language used is also indicative of subjugation— instead of asking chiefs to turn over criminals, the Indian agents could demand Indigenous Nations to turn over criminals. If the Indigenous Nation refused, then the President was given the jurisdiction to allow the military

⁹⁷ An Act to regulate trade and intercourse with the Indian tribes, and to preserve peace on the frontiers. 781.

⁹⁸ Charles J. Kappler, “1832 Treaty with the Chickasaw Nation at Pontitock Creek,” in *Indian Affairs: Laws and Treaties*, vol. 2 (Washington, D. C.: Washington, Gov. Print Office, 1904), 356–62, <https://heinonline.org/HOL/P?h=hein.ustreaties/ialt0002&i=1>.

⁹⁹ An Act to regulate trade and intercourse with the Indian tribes, and to preserve peace on the frontiers.

itself to intervene to apprehend the accused Indigenous person. This was an outright threat to Indigenous sovereignty— if Indigenous Nations did not turn over accused criminals, statutorily, the United States could send in the military.

Sections twenty and twenty-one outlaw both the trade to and production of alcohol with Indigenous people in “Indian Country”. The focus on the horrible effects of spirits on Indigenous people— harkening back to the assumption that all Indigenous people are drunks— further subjugated Indigenous Nations.¹⁰⁰ This assumption tied back to paternalistic beliefs that Indigenous people could not control themselves when it came to alcohol, so it was the responsibility of the federal government to “protect” them from it.

By taking control over what could be traded to Indigenous Nations, the United States infringed upon a further element of Indigenous sovereignty— the regulation of their own trade. All of the Nonintercourse Acts had been slowly and indirectly chipping away at the right of Indigenous Nations to regulate their own trade, but the regulation of the alcohol trade was a direct infringement. The 1834 Nonintercourse Act was not the first act that attempted to regulate Indigenous trade with regards to alcohol, but it was the strictest in its regulation.¹⁰¹ The federal government was enacting what it had wanted to enact all along— direct, specific provisions dealing with the trade of alcohol to Indigenous Nations. Enforcement of these provisions, however, was impossible, especially considering the poor infrastructure of military outposts on the frontier. However, their creation still represented a direct threat to Indigenous sovereignty.

Section twenty-five explicitly gave the federal government the jurisdiction implied by section nineteen.¹⁰² This assertion of jurisdiction completed the attack on the sovereignty of

¹⁰⁰ An Act to regulate trade and intercourse with the Indian tribes, and to preserve peace on the frontiers.

¹⁰¹ Prucha, *American Indian Policy in the Formative Years: The Indian Trade and Intercourse Acts, 1790-1834*. 102.

¹⁰² An Act to regulate trade and intercourse with the Indian tribes, and to preserve peace on the frontiers.

Indigenous Nations that the Indian Trade and Intercourse Acts always represented. By extending federal jurisdiction over Indigenous Nations, the federal government revealed that it never intended to honor its removal treaties with Indigenous Nations. The removal treaties themselves each paint a picture of the Indigenous Nation being left to their own devices after the issue of removal— however, the expansion of federal criminal jurisdiction already infringed on that intended assumption.

The United States' trade with Indigenous Nations represented both the diplomatic and conquest-centered intentions of the United States towards Indigenous Nations. As early as Jefferson, and possibly earlier, the United States government intended to expand throughout continental North America, utilizing the civilization policy as an excuse and justification. This intended expansion was never shared with Indigenous Nations, but its existence was known by Indigenous Nations— including the Choctaw Nation and the Chickasaw Nation. This intention poisoned trade with Indigenous Nations. The civilization policy rationalized the control that the United States attempted to assert over Indigenous Nations with trade.

However, the failure of the factory system in the 1820s signaled a change to the Euro-American conception of civilization. Trade was becoming less favored, as it was associated with greed. The Euro-American concept of civilization began to evolve towards Christianity.

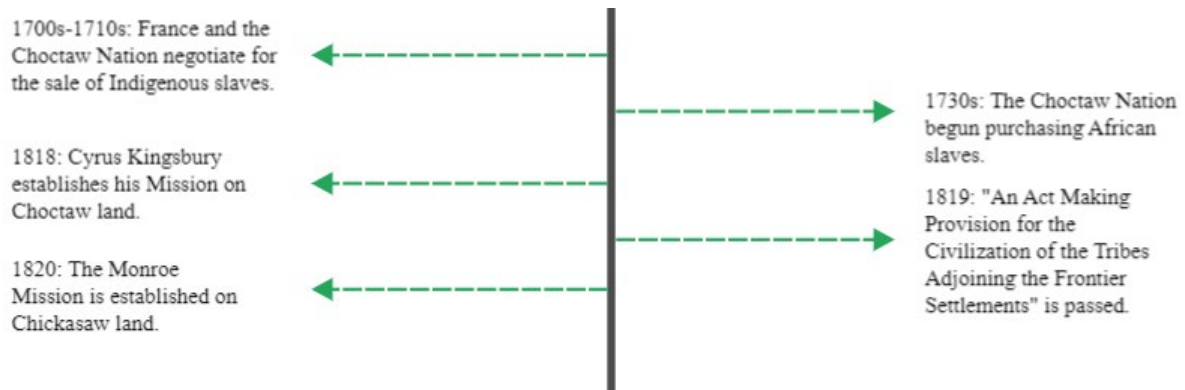


Figure 4: Timeline of Key Events for Missionaries on Choctaw and Chickasaw lands.

Christianity, Missionaries, and the Culture of Civilization

Christian missionaries were also central to the United States government's efforts to "civilize" Indigenous Nations. These missionaries intended to spread Christianity throughout different Indigenous Nations, entirely ignoring the existing culture and religion. Christian missionaries believed themselves to have a responsibility to spread the gospel to the Indigenous Nations of North America.¹⁰³ The fundamental purpose of proselytization dovetailed well with the more genuine motives of some supporters of the civilization policy. If the Indigenous people could be Christianized, then they could be civilized. This was the belief that supported funding missions in Indigenous lands. Missionaries to the Choctaw Nation and to the Chickasaw Nation both fall into the category of genuine civilizationists—they did not support removal, as it interfered with their ultimate goal of Indigenous assimilation into white society.¹⁰⁴

Plenty of research around missionaries in the Choctaw and Chickasaw Nations has successfully managed to re-center the experiences of Indigenous people in the discussion, and some has even incorporated the enslaved people in the Choctaw and Chickasaw Nations as part of the story.¹⁰⁵ Jefferey Washburn casts the Chickasaw people's experience of the Monroe mission in the context of the economic change they were actively encouraging among themselves, and the mission was a tool for them to advance instead of simply an engine of white settlement.¹⁰⁶ His research builds on Clara Sue Kidwell's work in *Choctaw and Missionaries in Mississippi, 1818-1918*, which centered the Choctaw people as political players in the mission

¹⁰³ Michael Pasquier et al., *Gods of the Mississippi* (Bloomington: Indiana University Press, 2013), 38. <http://ebookcentral.proquest.com/lib/uoregon/detail.action?docID=1119797>.

¹⁰⁴ George E. Lankford, "Trouble at Dancing Rabbit Creek: Missionaries and Choctaw Removal," *Journal of Presbyterian History* (1962-1985) 62, no. 1 (1984): 51–66. 59.

¹⁰⁵ Washburn, "Directing Their Own Change."; Pickett, "T. C. Stuart and the Monroe Mission among the Chickasaws in Mississippi, 1819-1834."

¹⁰⁶ Washburn, "Directing Their Own Change."

system that they allowed to be built by Cyrus Kingsbury.¹⁰⁷ However, while the civilization policy is a background to each of these works, it is not the main focus— these works are much more focused on the Indigenous experience, which is equally as important as investigating the civilization policy itself.

American missionaries did not start establishing themselves permanently within either the Choctaw Nation or the Chickasaw Nation until after the War of 1812, wherein the Choctaw Nation and Chickasaw Nation had allied with the United States and were pivotal to the early Republic's victory. Before the War of 1812, the Choctaw Nation had been allied with the Spanish and had previously fought against the United States during the American Revolution. Further, the Chickasaw Nation had an extensive history of war with the French.

The United States had established trading factories for both the Choctaw Nation and the Chickasaw Nation, and both factories were fairly active. Missionaries simply did not establish missions until after the War of 1812, possibly due to a lack of white public thought about the Choctaw Nation and the Chickasaw Nation. Cyrus Kingsbury, the first American Protestant to establish a mission in the Choctaw Nation, did not establish his mission until 1818, with the support of the American Board of Commissioners for Foreign Missions.¹⁰⁸ The Monroe Mission similarly was not established until 1820.¹⁰⁹

The missionaries represented a new wave in the United States' attempt to push the civilization policy. Trading houses had fallen out of fashion in common thought as a “civilizing force”— the idea of civilization had become more closely related to Christianity than trade;

¹⁰⁷ Clara Sue Kidwell, *Choctaw and Missionaries in Mississippi, 1818-1918* (Norman, OK: University of Oklahoma Press, 1995).

¹⁰⁸ Lankford, “Trouble at Dancing Rabbit Creek.” 53.

¹⁰⁹ Pickett, “T. C. Stuart and the Monroe Mission among the Chickasaws in Mississippi, 1819-1834.” 68.

however the intent to “introduce and encourage” agriculture remained.¹¹⁰ Congress passed “an act making provision for the civilization of the tribes adjoining the frontier settlements” in March of 1819. This act appropriated a fund to create schools to teach Indigenous people habits and skills that white statesmen believed that they had not already adopted.¹¹¹ Often, these white statesmen were wrong. Most glaringly, they were wrong about the agricultural practices of the Indigenous Nations that they condescended to help. The Choctaw Nation and the Chickasaw Nation both had been agricultural long before contact with Europeans. The act explicitly named “capable persons of good moral character” as the class of people to be employed as teachers.¹¹² Often, this meant Christian missionaries, such as those from the American Board of Commissioners for Foreign Missions, who sponsored the first American protestant mission in Choctaw land.¹¹³

However, before removal, missionaries had mixed luck in converting Indigenous people, who were not eager to abandon their long-held cultural traditions. Despite the assimilationist and paternalistic goals of the missions, Indigenous Nations, such as the Choctaw Nation and the Chickasaw Nation, were able to use these missions to their own advantage pre-removal. Mission schools, though intended to divorce Indigenous children from their culture, were funded by Congress, and both the Choctaw people and the Chickasaw people wanted their children to receive both a western education and a traditional education. Both Nations knew that the United States was not a problem that was going to go away anytime soon. They needed people who

¹¹⁰ Nichols, *Engines of Diplomacy*. 151.

¹¹¹ “An Act Making Provision for the Civilization of the Indian Tribes Adjoining the Frontier Settlements,” Pub. L. No. 32–85 (1819).

¹¹² An Act making provision for the civilization of the Indian tribes adjoining the frontier settlements.

¹¹³ Lankford, “Trouble at Dancing Rabbit Creek.” 55.

deeply understood western culture but were still loyal citizens of their respective Nations to negotiate with their increasingly hostile neighbors.¹¹⁴

Before the American Revolution, there was a high degree of intermarriage between white traders and both Chickasaw and Choctaw people, so Christianity was already interacting with both Chickasaw and Choctaw culture.¹¹⁵ As a result of these intermarriages, gender dynamics were changing in Choctaw society.¹¹⁶ Missionaries themselves were not nearly as influential as intermarried white men were in spreading Christianity to either the Choctaw Nation or the Chickasaw Nation.¹¹⁷

In the case of the Choctaw Nation, this failure can be attributed, in part, to a fundamental misunderstanding of Choctaw gender dynamics. Missionaries saw the Choctaw men as the de-facto leaders in Choctaw culture and believed women to be “enslaved” by the men.¹¹⁸ They simply were not. While Choctaw women were the primary farmers and Choctaw men were the primary hunters, both men and women participated in each activity.¹¹⁹ Women were active participants in Choctaw culture— they were heavily involved in the ritual cycle and in council gatherings.¹²⁰ Due to the relative equality of men and women in Choctaw culture, white missionaries who focused on men as leaders of a community ignored the important position that women held in Choctaw culture. This can also be seen in the records kept by white treaty-makers with the Choctaw Nation— they did not see women as important, and thus did not bother to record their political participation.¹²¹ However, because missionaries largely ignored women-led

¹¹⁴ Barnett, *Mississippi's American Indians*. 152.

¹¹⁵ Perdue and Green, *The Columbia Guide to American Indians of the Southeast*. 61.

¹¹⁶ Michelene E. Pesantubbee, “Beyond Domesticity: Choctaw Women Negotiating the Tension between Choctaw Culture and Protestantism,” *Journal of the American Academy of Religion* 67, no. 2 (1999): 387–409. 389.

¹¹⁷ Pickett, “T. C. Stuart and the Monroe Mission among the Chickasaws in Mississippi, 1819-1834.” 78.

¹¹⁸ Pesantubbee, “Beyond Domesticity.” 389.

¹¹⁹ *Ibid*, 391.

¹²⁰ *Ibid*.

¹²¹ *Ibid*, 392.

traditions, believing them to be non-threatening to their purpose, women were able to maintain Choctaw religious practices.¹²²

It was common for white missionaries to cross-apply their own cultural assumptions onto both the Choctaw Nation and the Chickasaw Nation. In the Choctaw Nation, missionaries assumed that domestic work such as sewing was a woman's job, rather than a chore that anyone could do.¹²³ Through assumptions of western gender roles, the missionaries ignored the realities of everyday culture that they were faced with, leading to their poor success pre-removal. However, despite their somewhat limited success with adult Choctaw people, they were more successful within their missionary schools.¹²⁴

Both the Choctaw Nation and the Chickasaw Nation were interested in having missionaries establish schools on their lands, though not due to a "calling to Christianity" as the missionaries would have hoped.¹²⁵ Choctaw Leaders and Chickasaw leaders both were primarily interested in the western education that the mission schools could provide. Mission schools also helped both Nations maintain the image that they were "civilizing" themselves, and thus did not need to be removed. This was a resistance strategy favored by the mixed-blood faction in the Choctaw Nation specifically, who were the first to welcome missionaries and to help them adjust to life in Choctaw society.¹²⁶

In the years leading up to removal, a protestant mission school was established, with the help of government funding, on Choctaw land.¹²⁷ It was a boarding school, despite protests of

¹²² Ibid, 394.

¹²³ Pesantubbee, "Beyond Domesticity." 396.

¹²⁴ U.S. Congress. House. Committee on Indian Affairs. Message from the President of the United States, Transmitting a report of the Secretary of War, of the measures heretofore devised and pursued for the civilization of the several Indian tribes, within the United States. 17th Cong., 1st sess., 1822. H. Doc. 59, serial 66.

¹²⁵ Kidwell, *Choctaw and Missionaries in Mississippi, 1818-1918*. 28.

¹²⁶ Ibid, 29.

¹²⁷ Barnett, *Mississippi's American Indians*. 151.

Choctaw parents, who preferred the idea of a day school.¹²⁸ Some future Choctaw leaders went to this school. This mission school, created by Cyrus Kingsbury, was fully civilizationist— its intent was to completely assimilate Choctaw children into white culture, not just Christianity.¹²⁹ However, the Choctaw Nation was still able to use it to their own advantage. Another missionary, Cyrus Byington, moved the mission school from English-only instruction to including instruction in the Choctaw language. Byington and another missionary went so far as to publish and distribute the gospel and some hymns in the Choctaw language. Thus, the Choctaw Nation was able to encourage literacy in the Choctaw language through the use of the missionaries.

While this was all in furtherance of Christianization, it allowed for Choctaw children to get an education that would be necessary for the generation of leaders who would face removal and who needed to understand the white settlers that they would face in the future.¹³⁰ This was absolutely not the intended effect of the school— in fact, Kingsbury himself intended the school to be an outright “civilizing” experience.¹³¹ Despite the Choctaw people wanting their children to benefit from the education, the mission schools also inspired criticism. The use of physical labor and discipline was heavily looked down upon by the Choctaw Nation, and Robert Cole, a Choctaw leader, spoke out against its use.¹³²

The three leaders of each Choctaw district, Mushulatubbee, Puckshanubbee, and Pushmataha, clashed with the missionaries. They, as head chiefs of each of the three Choctaw Districts, lobbied for Choctaw interests regarding the mission schools. They wanted to ensure

¹²⁸ Ibid, 152.

¹²⁹ Lankford, “Trouble at Dancing Rabbit Creek.”, 54

¹³⁰ Lankford. 55.

¹³¹ Ibid, 62.

¹³² Kidwell, *Choctaw and Missionaries in Mississippi, 1818-1918.*, 54

that the schools were being run appropriately and that they were teaching the Choctaw children useful trades, as well as the agriculture that they could have learned from their families. Further, the Choctaw chiefs had committed some of their own treaty annuities to pay for these schools. The three head chiefs wanted to make sure that they were actually paying for the education that they wanted Choctaw children to receive.¹³³

The Mission in the Choctaw Nation led by Kingsbury did not succeed in drawing many Choctaw converts to Christianity.¹³⁴ There were some converts, but not many, and they were mainly among the descendants of white traders, who had already been exposed to Christianity growing up through their families.¹³⁵ The Monroe mission did not have much success converting the Chickasaw people either. White missionaries were simply not effective at convincing Choctaw people and Chickasaw people to give up their traditional religions in favor of Christianity.

Despite there being the Presbyterian Monroe mission on Chickasaw land in 1820, Chickasaw people did not truly attend church services or join the church until 1827. Mostly, they were able to take advantage of the mission as a school for their children. The Chickasaw Nation saw missionaries as an economic opportunity.¹³⁶ The Chickasaw people intended to use the mission as a buffer to prove their work towards “civilization” in the interest of fending off the United States government from encroaching on their land.¹³⁷ At the same time however, the mission still directly intended to impose European settler culture onto the Chickasaw people, in the interest of “civilizing” them.

¹³³ Ibid.

¹³⁴ Barnett, *Mississippi's American Indians*. 152.

¹³⁵ Kidwell, *Choctaw and Missionaries in Mississippi, 1818-1918*. 72.

¹³⁶ Washburn, “Directing Their Own Change.” 102.

¹³⁷ Pickett, “T. C. Stuart and the Monroe Mission among the Chickasaws in Mississippi, 1819-1834.” 82.

The missionaries were much more successful in converting the enslaved people in the Choctaw and Chickasaw Nations. Choctaw and Chickasaw slaveholders would allow their slaves to worship at the missions throughout the 1820s.¹³⁸ This led to further tensions between the Choctaw and the Chickasaw Nations and the missionaries. Many missionaries were abolitionist northerners who believed in a racial hierarchy that placed Christian enslaved people above non-Christian Indigenous people.¹³⁹ The Choctaw Nation and Chickasaw Nation, on their part, did not see the missionaries as spiritual figures—rather, they saw them as opportunities for their children to be able to learn how to deal with their unruly neighbors.

Ironically, the thing missionaries and the Choctaw and the Chickasaw Nations tended to clash about was slave ownership.¹⁴⁰ The missionaries saw slavery among the Choctaw and Chickasaw Nations as evidence of being uncivilized, despite the prevalence of slavery among white settlers throughout the southern United States. The missionary to the Choctaw Nation, Cyrus Kingsbury, called slavery “one of the greatest obstacles to the progress of the Gospel [and] civilization.”¹⁴¹ As a result, there was a sense of cognitive dissonance among the missionaries, as they tried to reconcile the racial hierarchy by which they justified their paternalism with their mission to bring as many Indigenous people into the church as possible, including slaveholders.¹⁴²

Among the missionaries that did support removal, the idea of an “Indian Canaan” was popular. To these missionaries, it justified support for Indigenous removal.¹⁴³ Many northern

¹³⁸Barbra Krauthamer, *Black Slaves, Indian Masters: Slavery, Emancipation, and Citizenship in the Native American South*, vol. 1 (Chapel Hill, United States: University of North Carolina Press, 2013), <https://heinonline.org/HOL/P?h=hein.slavery/uncaaal0001&i=1>. 47.

¹³⁹ Ibid, 52.

¹⁴⁰ Krauthamer, *Black Slaves, Indian Masters: Slavery, Emancipation, and Citizenship in the Native American South*. 52.

¹⁴¹ Ibid.

¹⁴² Ibid, 53.

¹⁴³ Saunt, *Unworthy Republic: The Dispossession of Native Americans and the Road to Indian Territory*. 18.

proponents of removal utilized this idea as a justification for their support as well. It also fed into the belief that Indigenous Nations could not prosper next to settler society, as was believed by Thomas Jefferson. Removal was then considered to be a “more humane” method of civilizing Indigenous Nations. According to removalist logic, if Indigenous Nations were removed to a place where they could live away from the United States and Euro-American society, their societies could flourish and eventually become civilized themselves.¹⁴⁴ Obviously, such a justification was little more than a “moral” coat of paint over less savory reasons for removal—taking control of local economies through stealing land being the most obvious.

Missionaries served as the cultural prong of the civilization policy. While they were somewhat of a later introduction, they were fully intended to serve as “civilizing” influences, and provide Indigenous people with what white statesmen believed to be a prerequisite to humanity—the belief in the Christian religion. However, despite the paternalistic intent of these missions, the Choctaw Nation and the Chickasaw Nation both were able to utilize the missionaries to their advantage to augment the education of their children and further expand their local economies. Further, they could express control over these missions through the treaty annuity money that they provided for their funding. Thus, the missions on Choctaw and Chickasaw land functioned at the convivence of the Choctaw and Chickasaw leaders who allowed them to be established in the first place.

¹⁴⁴ Ibid, 24.

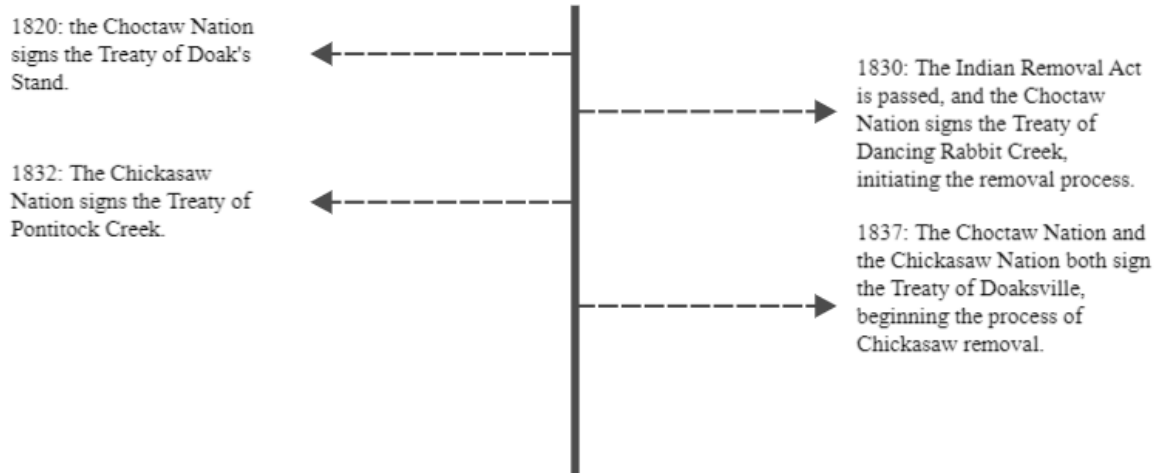


Figure 5: Timeline of Key Events in the Removal of the Choctaw Nation and the Chickasaw Nation

Conclusion: The Removals of the Choctaw Nation and the Chickasaw Nation

The civilization policy directly led to Indigenous removal, whether its earliest proponents intended it or not. It created a “moral” cloak to justify stealing Indigenous land and renegeing on promises made in treaties with Indigenous Nations throughout the United States. That paternalism seeped into the foundations of Indian policy. However, incremental movements have been made away from that foundational paternalism. These movements should be encouraged, so as to properly recognize the elephant in the room of American legitimacy: the sovereignty of Indigenous Nations.

Jackson began the removal process with the Choctaw Nation, and intended to continue it with the Chickasaw Nation. The 1830 Treaty of Dancing Rabbit Creek was the removal treaty that the Choctaw Nation faced and signed. While the 1820 Treaty of Doak’s Stand was the first removal treaty that they had signed, the Treaty of Dancing Rabbit Creek was the treaty that eventually forced the Choctaw Nation to remove.¹⁴⁵ Its preamble directly referenced Mississippi’s expansion of state jurisdiction over Choctaw land. The only thing the preamble had to say about the United States’ broken promises to the Choctaw Nation was that “the President of the United States has said that he cannot protect the Choctaw people from the operation of [Mississippi’s] laws”.¹⁴⁶ With this language, it politely glossed over Jackson’s complete refusal to both honor the treaties with the Choctaw Nation and to properly enforce the Constitution. The Treaty, in alignment with the beliefs of Jackson and the anti-civilizationists, did not acknowledge the Choctaw Nation as fully sovereign.

¹⁴⁵ Calloway, *Pen and Ink Witchcraft*. 118.

¹⁴⁶ Charles J. Kappler, “1830 Treaty with the Choctaw and Dancing Rabbit Creek,” in *Indian Affairs: Laws and Treaties*, vol. 2, 7 vols. (Washington, D. C.: Washington, Gov. Print Office, 1904), 310–11. 310-311.

Article four of the removal treaty, on its face, “allowed” the Choctaw Nation to create their own laws— so long as they did not conflict with the United States’ Constitution.¹⁴⁷ This represented an intention to entirely force the Choctaw Nation into a subordinate position relative to the United States. By requiring that its laws be constitutional by the standards of the United States, the treaty structurally subordinated the Choctaw Nation to the United States.

Article five is a protection provision, reflecting the earlier protection provision in the Choctaw Hopewell Treaty. However, this protection provision went so far as to ban the Choctaw Nation from declaring war without the consent of the United States— fully treating the Choctaw Nation as a protectorate. While the Choctaw Nation was never directly called a protectorate, functionally the concept can be applied when considering the United States’ treatment of the Choctaw Nation.

In article twelve, the Treaty of Dancing Rabbit Creek again promises, as other treaties between the Choctaw Nation and the United States had, that the United States would keep squatters off of Choctaw land. As this provision had never been enforced in the context of the Nonintercourse Acts, it was doubtful, even then, that the United States would keep this promise. The Treaty of Dancing Rabbit Creek was forced upon the Choctaw Nation. The “choice” was between being forced to abandon their sovereignty or being forced to abandon their homeland.¹⁴⁸ Many people in the Choctaw Nation chose removal, as it was seen as the only way to preserve the vestiges of their sovereignty in the face of the expansion of the United States.

The Chickasaw Nation faced a similar dilemma in 1832 with the Treaty of Pontitock Creek. The preamble to this treaty is longer: it painted the Chickasaw Nation as ignorant and

¹⁴⁷ Ibid, 311.

¹⁴⁸ Calloway, *Pen and Ink Witchcraft*. 118.

incapable of understanding the laws of the United States.¹⁴⁹ However, despite the belief that the Chickasaw Nation was ignorant of the practices of the United States, Chickasaw negotiators were able to ensure both that their land was sold for a fair price and that they had the right to choose the land that they would remove to.¹⁵⁰ By ensuring they had the right to choose the land that they would remove to, the Chickasaw Nation was able to delay its eventual removal.

In the 1837 treaty with the Choctaw and the Chickasaw at Doaksville, however, the Chickasaw Nation could not avoid removal any longer. As a result, the United States negotiated that the Chickasaw Nation would be removed to a portion of the Choctaw Nation's reservation. As outlined in article one of the Treaty of Doaksville, the Chickasaw Nation was to become merely a district within the Choctaw Nation.¹⁵¹ The Chickasaw Nation essentially lost its independence— while the Chickasaw Nation was to have equal representation within the Choctaw government, it was still within the Choctaw government and not under a government of their own.

The 1837 Treaty of Doaksville further subordinated both the Choctaw Nation and the Chickasaw Nation to the United States in article four. It outlined that if there was a dispute between the Choctaw Nation and the Chickasaw Nation, it would be adjudicated by the Choctaw agent, and the President of the United States would have the final say in the matter. This treaty essentially erased the distinction, in the United States' eyes, between the Choctaw Nation and the Chickasaw Nation. By forcing the two Nations together, the United States treated them as a unit, and ignored all cultural distinctions. What mattered to the United States was that it was easier to

¹⁴⁹Kappler, "1832 Treaty with the Chickasaw Nation at Pontitock Creek.", 356

¹⁵⁰ Kappler., 357

¹⁵¹Charles J. Kappler, "1837 Treaty with the Choctaw Nation and the Chickasaw Nation at Doaksville," in *Indian Affairs: Laws and Treaties*, vol. 2, 7 vols. (Washington, D. C.: Washington, Gov. Print Office, 1904), 486–88., 486

deal with both Nations if it treated the Choctaw Nation and the Chickasaw Nation as a unit, further degrading the sovereignty of both Nations.

The paternalism that was rife in these removal treaties stemmed from the civilization policy. That first decision to attempt to force Indigenous Nations to give up their own cultures, governments, and identities because white settlers believed themselves to be superior, enabled opportunistic white squatters to slowly steal Indigenous land. That paternalism has seeped into the foundations of Indian policy. Even today, with the recent Supreme Court cases *Brackeen v. Haaland* and *Oklahoma v. Castro-Huerta*, the very fact that the Supreme Court is deciding these cases based on constitutional grounds ties directly to the old paternalistic believe in Euro-American superiority.

However, Indigenous Nations are still here. They have survived through the United States' attempts to silence, absorb, and kill them. With Indigenous people reasserting their rights to their land through the LandBack movement, paternalistic patterns with regards to Indigenous Nations that have been baked into the bedrock of the United States are finally being properly challenged. Maybe, with the knowledge of its previous mistakes, the United States can finally begin to properly recognize the sovereignty of Indigenous Nations.

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