The United States secured its independence due to a number of factors including Britain’s preoccupation with its colonial/sectarian wars and internal strife such as the Jacobite Rebellion as well as having its former enemy, France, as an ally. Indeed, having France as an ally helped turn the often stalemated war into a success for the rebels. Furthermore, France helped America double its size with the Louisiana Purchase in 1803. Even then, much of the colonial structure remained unchanged making the American Revolution more a changing of the guard, what Pareto termed “the circulation of the elite.” What differed was the new republic’s view of Indian/White relations, a phenomenon the government termed its Indian Problem. The European standard, the Doctrine of Discovery, the justification of sovereignty and claims over territories and over Indigenous peoples, provided the United States sole authority over disputed Indian lands, much like the British Royal Proclamation of 1763. This policy was verified by the U.S. Supreme Court in 1823, in its Johnson v. M’Intosh ruling. This case involved a White man’s purchase of land from an Indian and as a consequence forced the issue of America’s Discovery Doctrine:

Conquest gives a title which the Courts of the conqueror cannot deny, whatever the private and speculative opinions of individuals may be, respecting the original justice of the claim which has been successfully asserted. The British government, which was then our government, and whose rights have passed to the United States, asserted a title to all the lands occupied by Indians, within the chartered limits of the British colonies. It asserts also a limited sovereignty over them, and the exclusive right of extinguishing the title which occupancy gave to them.

. . . But the tribes of Indians inhabiting this country were fierce savages, whose occupation was war, and whose subsistence was drawn chiefly from the forest. To leave them in possession of their country, was to leave the country a wilderness; to govern them as a distinct people, was impossible, because they were as brave and as high spirited as they were fierce, and were ready to repel by arms every attempt on their independence . . . That law which regulates, and ought to regulate in general, the relations between the conqueror and conquered, was incapable of application to a people under such circumstances. The resort to some new and different rule, better adapted to the actual state of things, was unavoidable. Every rule which can be suggested will be found to be attended with great difficulty.
... It has never been contended, that the Indian title amounted to nothing. Their right of possession has never been questioned. The claim of government extends to the complete ultimate title, charged with this right of possession, and to the exclusive power of acquiring that right ... 

The M’Intosh ruling merely formalized a practice already in place under the Washington administration where it was assumed that the federal government, notably the U.S. Congress, held exclusive authority to regulate Indian territory located within the boundaries of the United States. Treaties, ordinances, and reports soon emerged including the Treaty with the Six Nations (October 22, 1784); the Treaty of Fort McIntosh (January 21, 1785); the Treaty of Hopewell with the Cherokees (November 28, 1785); the Ordinance for the Regulation of Indian Affairs (August 7, 1786); and the Northwest Ordinance of July 13, 1787. From the outset, states questioned sole authority of Congress in dealing with Indian Country with some states skirting federal guidelines leading to the M’Intosh decision. In its efforts to assert it exclusive jurisdictional authority over Indian Country, the First Congress under the new Constitution established the War Department on August 7, 1789, making it the agency responsible for Indian affairs, a role it played until 1849 when this authority was transferred to the new Interior Department.

These federal actions were made not only for the purpose of establishing U.S. laws and policies, but also for international reasons including what later became known as the Monroe Doctrine. Yet, American Indians were placed at a disadvantage from the outset when the Washington administration accepted the notion that they were simple-minded savages promoting fear among White settlers. President Washington’s sentiments about American Indians was articulated in his September 7, 1783 correspondence to James Duane:

Sir: I have carefully perused the Papers which you put into my hands relative to Indian Affairs ... At first view, it may seem a little extraneous, when I am called upon to give an opinion upon the terms of a Peace proper to be made with the Indians, that I should go into the formation of New States; but the Settlement of the Western Country and making a Peace with the Indians are so analogous that there can be no definition of the one without involving considerations of the other, for I repeat it, again, and I am clear in my opinion, that policy and economy point very strongly to the expediency of being upon good terms with the Indians, and the propriety of purchasing their Lands in preference to attempting to drive them by force of arms out of their Country; which as we have already experienced is like driving the Wild Beasts of the Forest which will return as soon as the pursuit is at an end and fall perhaps on those that are left there; when the gradual extension of our Settlements will as certainly cause the Savage as the Wolf to retire; both being beasts of prey tho’ they differ in shape. In a word there is nothing to be obtained by an Indian War but the Soil they live on and this can be had by purchase at less expense, and without bloodshed, and those distresses which helpless Women and Children are made partakers of in all kinds of disputes with them ... .

With this report sent to Congress, President Washington set the stage for the “trickery by treaty” Indian policy, making it U.S. policy to deliberately dupe Indians into signing meaningless treaties, treaties meant to be broken. This policy, the establishment of official deceit, fostered the long-held U.S. double-standard regarding corporate/white collar crime whereby deceit and corruption were considered acceptable behaviors as long as you did not get caught. But if you did get caught, then the penalty would be a “cease and desist” order and perhaps a token fine, but rarely were these actions dealt with as serious offenses resulting in felony convictions and criminal record. This became America’s formal take on its form of exploitative capitalism.

The much lauded Bill of Rights (ratified December 15, 1791) provided equal rights for “White, free males” only. The status of “lesser-humans,” notably American Indians and Black slaves was
decided early in the Republic with the first U.S. census in 1790. The function of the census was to apportion seats in the U.S. House of Representatives and to assess federal taxes. Distinctions were made according to social and political status: free White men aged 16 or older, free White men under age 16, free White women, number of Black slaves, and all other persons regardless of race or gender. Slaves were counted as three-fifths of a human being for the sole purpose of placing greater weight on Congressional seats from slave states. This benefitted the wealthy landholders who owned slaves including Presidents Washington and Jefferson and 13 other U.S. presidents who served until emancipation. American Indians were largely excluded by the clause, “not taxed.” Black slaves were deemed “not U.S. Citizens” in the 1857 *Dred Scott v. Sanford* U.S. Supreme Court Decision, a status that remained until ratification of the 14th Amendment to the U.S. Constitution (Civil Rights, 1868) ended the factional count for Blacks: “All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside...”

It was not until 1940 that American Indians were removed from the “not taxed” status and counted as full members of U.S. society for federal purposes. American Indians were placed at a serious disadvantage in terms of legal status in the United States from 1776 until 1924 when they were formally recognized as U.S. Citizens. It was not until May 12, 1879, in the Standing Bear case that American Indians were declared by the U.S. Supreme Court to even be considered human beings. Until 1924 American Indians remained unprotected by any judicial due process offered other Americans. Even then many western states refused to recognize them as citizens of the states in which the tribes resided.

Coinciding with the first U.S. census and the establishment of the War Department, the first of many Trade and Intercourse Acts was passed on July 22, 1790. These acts were originally designed to maintain the conditions set forth in treaties as well as regulate Indian/White relations under the supervision of the War Department. They also established the foundation for federal Indian policy. Section 4 reinforced the U.S. Doctrine of Discovery mandate:

> And be it enacted and declared, That no sale of lands made by any Indians, or any nation or tribe of Indians within the United States, shall be valid to any person or persons, or to any state, whether having the right of pre-emption to such lands or not, unless the same shall be made and duly executed at some public treaty, held under the authority of the United States.

The Indian Problem was exacerbated by the colonial wars that forced those tribes that survived extermination, disease, and ethnic cleaning to intrude into tribal lands west of the 13 colonies. This forced migration ignited inter-tribal wars where local tribes, those not directly involved in the French and Indian Wars, were being forcefully displaced creating a domino effect west of the Mississippi River. The ensuing fight for survival, along with the Spanish introduction of the mustang horse to the southwestern tribes, notably the Apache, forever changed the dynamics of the Plains and Southwest Indians making them a formidable force to contend with when the United States expanded its boundaries with the 1803 Louisiana Purchase and later, the addition of Texas and the rest of the western United States following the war with Mexico (1848) and the Gadsden Purchase (1853).

The Sioux tribes were once woodland Indians but were forced into territory first occupied by the Cree, then the Arikara, and Crow tribes. By the late 1700s two of the seven Sioux tribes, the Oglalas and Brules, were entering the South Dakota prairie and adapting to hunting buffalo, albeit mainly on foot. Their interactions with the Pueblo tribes and the Apache introduced them to the mustang pony, a versatile animal that was quicker than the larger European steeds used by Whites, including the U.S. Army. With thousands of mustangs on the loose, other tribes adapted to this new phenomenon first used by the southwest Apache including the Wichitas, Kiowa, Pawnee, Ute, Cheyenne, Arapaho, Arikara, Blackfeet, and Crow. But it was the Sioux and Cheyenne who best adapted the mustang pony to hunting buffalo and fighting.
The Louisiana Purchase and the Plight of the Civilized Tribes

President Washington’s successor, John Adams (1797–1801), a staunch New England Puritan, maintained the anti-Indian furor. Change came about during Thomas Jefferson’s administration (1801–1809), who although a southern slaveholder like Washington, entertained the concept of civilizing some of the eastern tribes by encouraging them to adopt Euro-American lifestyles and governments. Jefferson sowed the seeds of assimilation of Indian tribes as long as they mimicked White American society. This change in Indian policy also gave false hope to the major tribes of the southeast who were constantly being harassed by the states in which they resided. President Jefferson had the difficult job of balancing the impact of new White immigrants flooding America and the need to deal humanely with the Indigenous population. His idea was to purchase lands west of the Mississippi for volunteer resettlement of the eastern tribes. His Indian policy resulted in the Louisiana Purchase in 1803. His pursuit of lands beyond the original 13 states also laid the foundation for the Monroe Doctrine expanding the Doctrine of Discovery to the forceful taking of property within the Americas deemed desirable to United States interests. Bernard Sheehan, in his book, Seeds of Extinction: Jeffersonian Philanthropy and the American Indian, noted that the Louisiana Purchase sowed the seeds of extinction for American Indian residing on their traditional territory. Sheehan contends that the primary reason for Jefferson’s insistence on getting the Louisiana Purchase was to resolve the Indian Problem by removing those tribes that did not subscribe to the Euro-American social/legal model, hence allowing the “civilized” tribes to continue residing on aboriginal lands.\(^8\)

The Louisiana Purchase doubled the size of the United States, with lands extending west of the Mississippi River, north to the Canadian border, and east of the Missouri River, setting the stage for the War of 1812, the War with Mexico in 1846, and the U.S. Civil War as well as the bloody Indian Wars of the 19th century. The moral justification for unabashed conquest was rooted in the New England Puritan concepts of Divine Provenance and Manifest Destiny. From this perspective America supported the concept of White Supremacy and the rights to conquer, occupy, and convert the “lesser humans” occupying these cherished lands and resources.

President Jefferson was also bound by previous treaties that recognized Indian tribes’ right of occupancy of their traditional lands. His assimilation plan was to reduce the size of traditional tribal lands while having these tribes adopt the Euro–American lifestyle so as to dilute their savage image. Yet, while the War of 1812 established the pitfalls of battling Britain for North American domination, focus was soon placed on the Spanish holdings to the south. Andrew Jackson was instrumental in pursuing Manifest Destiny within Spanish territories in Florida. Jackson made a name for himself as an Indian fighter earning the rank of general within the militia. In 1817–1818, Jackson ignited what became known as the First Seminole War where he unilaterally deposed the Spanish authorities and executed British subjects, actions that led to the U.S. acquisition of Spanish Florida in 1819. This action also set the stage for the acquisition of Texas in 1845 and the War with Mexico (1846–1848), and the 1853 Gadsden Purchase. Most significantly, Jackson came to personify anti-Indian sentiments that fueled the deadly Indian Wars of 1860–1890.\(^9\)

Indian Removal Act

The Indian Removal Act of 1830 put an end to any pretense of President Jefferson’s delusion that Indian groups would be welcomed as equals by their White neighbors once they adopted Euro-American ways. This is evident by the dramatic transformation of the Cherokees, the largest southeastern tribe and one of the so-called Five Civilized Tribes that greatly altered their traditional/aboriginal ways in order to conform to Jefferson’s assimilation model. In adopting the U.S. societal standard, the Cherokee had to disenfranchise adult women who held equal status, including voting rights, under their traditional matrilineal aboriginal system. They also had to adapt to a slaveholding society given that they resided in the South, purchasing black slaves for their plantations. They also
created a governmental style that conformed to that of the United States with a bicameral legislature and judiciary. Unfortunately, the seeds of destruction were being sowed as the Cherokee Nation emerged and as the southern states demanded the removal of all Indian tribes now that land was available with the Louisiana Purchase.

In ratifying the U.S. Constitution, the southern states disregarded the existence of Indian groups within their avowed state boundaries with Georgia, South Carolina, and Virginia doing so in 1788 followed by North Carolina in 1789, and Kentucky, Alabama, and Tennessee soon after. Ostensibly, President Jefferson played into this scheme when promising Georgia that he would remove all Indian tribes from the state in exchange for clear United States’ title to all western lands formerly claimed by Georgia allowing for a clear title to the lands acquired by the Louisiana Purchase in 1803. In the end, not even the U.S. Supreme Court could protect Indian tribes, civilized or not, from expulsion. This stark reality became evident with the Jackson administration (1829–1837). Jackson was a noted Indian fighter of Scot-Irish descent, a departure from the Virginia aristocracy of Washington and Jefferson and the New England Puritan elite (the Adams). Yet, he also was a pro-slavery and anti-Indian advocate.

Supreme Court Chief Justice, John Marshall, Jackson’s nemesis, was instrumental in a number of significant cases articulating not only federal authority vis-à-vis states’ rights, but Indian/government relations as well, including the 1823 M’Intosh decision. Justice Marshall established the legal rights of Indian tribes to occupy their traditional lands, thus reinforcing the European colonial concept of aboriginal title or Indian title. However, matters deteriorated rapidly under the Jackson presidency when ethnic cleansing became the official doctrine of his administration’s Indian policy. Jackson’s anti-Indian sentiments were well known, fostering strong support for those calling for the forcible removal of all major tribes west of the Mississippi River into what was then designated Indian Territory – later the state of Oklahoma. With President Jackson’s endorsement of the 1830 Removal Act, Congress effectively overturned the decisions of Chief Justice Marshall and the U.S. Supreme Court.

The Removal Act represented one of the major internal battles at the federal level with the Executive Branch, Congress, and the Supreme Court often opposing each other in what became known as the Indian Problem. Between 1828 and 1830, the state of Georgia enacted laws that challenged the sovereignty of that part of the Cherokee Nation that fell within the state’s boundaries. This was due mainly due to the state’s frustration over the federal government’s promise to extinguish Indian title to these lands if Georgia gave up its claim to western lands. The Removal Act was initially designed as a volunteer process with the tribes freely agreeing to trade traditional lands east of the Mississippi River for new lands in Indian Territory west of the Mississippi River. The Cherokee Nation was the largest of the so-called civilized tribes and it was reluctant to move voluntarily hence leading to the 1831 Cherokee Nation v. Georgia decision and the subsequent 1832, Worcester v. Georgia case.

Dealing with this new reality surrounding the Removal Act, the federal government clearly showed that American Indians were not, and could not be considered, the equal of White Americans regardless of how well they adapted to the Euro-American lifestyle. The Supreme Court in its 1831 Cherokee Nation v. Georgia decision, established that Indian tribes were to be considered as domestic dependent nations, essentially wards of the federal government, hence subject to the whims and fancies of the President and the U.S. Congress. While sympathetic to the Cherokees plea, the High Court felt it could not order an injunction in that this was a domestic and not international situation:

This bill brought by the Cherokee nation, praying an injunction to restrain the state of Georgia from the execution of certain laws of that state, which, as is alleged, go directly to annihilate the Cherokees as a political society, and to seize, for the use of Georgia, the lands of the nation which have been assured to them by the United States in solemn treaties repeatedly made and still in force.
Laurence Armand French

If it be true that the Cherokee nation have rights, this is not the tribunal in which those rights are to be asserted. If it be true that wrongs have been inflicted, and that still greater are to be apprehended, this is not the tribunal which can redress the past or prevent the future. The motion for an injunction is denied...

In 1832, the U.S. Supreme Court heard the case of White missionaries who were arrested and incarcerated by the state of Georgia – *Worcester v. Georgia*. Samuel A. Worcester was one of several White missionaries who resided among the Cherokee and refused to either obtain a permit from or swear an oath of allegiance to the state of Georgia as was required by state law. Worcester was convicted and sentenced to four years hard labor in the Georgia penitentiary. He appealed his sentence to the U.S. Supreme Court. The Supreme Court’s decision maintained that the Cherokee tribe was indeed a nation independent of state jurisdiction. In his decision, Chief Justice Marshall noted that both federal treaties and the rules of trade and intercourse acts recognized several Indian tribes, including the Cherokee, as being distinct political entities with exclusive authority within their own traditional boundaries. This decision seems to address the issue brought before the Court in the *Cherokee Nation v. Georgia* case a year previous. Now the Court felt it had jurisdiction to clarify the nature of a dependent domestic nation. The U.S. Supreme Court overturned Worcester’s conviction.

President Jackson defied the U.S. Supreme Court’s decision proceeded with removal despite the Court’s decision. Georgia immediately set about confiscating Cherokee property including schools, council houses, and printing plants while condoning vigilante raids on Cherokee villages, towns, and plantations by groups known as *Pony Clubs* – the forerunner of the Ku Klux Klan. The irony of the whole affair is that the Cherokee, long thought of as savages, were seeking diplomatic, rational solutions to this issue, while the so-called civilized Whites acted quite the opposite. A common practice since the beginning of the Republic was to dupe or coerce members of Indian tribes, often those not delegated to do so, into signing removal treaties. The Cherokee removal is an early example of this process. The forceful removal of the majority of Cherokees in 1838 also reflects the duplicity of federal policy in its clandestine attempts to cause dissension within tribes by often legitimizing their people and authorizing them to sign away tribal lands. This practice violated the federal role of *parens patriae* for political or monetary gain is still being adjudicated in federal courts in cases relating to Individual Indian Money (IIM) trusts.

Weary of continued abuses and attacks, a group of Cherokees known as the Treaty Party, signed the Treaty of New Echota (also known as Schermerhorn’s Treaty) in 1835. This action reflected the wide divide within the tribal leadership resulting in two rival delegations petitioning Washington on behalf of the Cherokee Nation. The larger faction wanted to remain in their traditional homes while the other group, the Ridge party, felt that the best solution was to start again in Indian Territory. It was no secret that President Jackson favored the removal party having the Principle Chief, John Ross jailed while final arrangements were being forged by Schermerhorn and the Ridge party. The Treaty of New Echota ceded all Cherokee territory east of the Mississippi River, an area that included western North Carolina, north Georgia, and portions of Virginia, and South Carolina, to the United States for approximately seven million acres in Indian Territory (aka Oklahoma) along with a settlement of five million dollars. The Treaty was signed by only 20 Cherokees, all members of the Ridge faction. This dealt with the last major obstacle to the removal of all the southeastern tribes. Most of the tribes went peacefully; only the Cherokee and a contingent of Seminole resisted removal. Most of the other tribes made it to Indian Territory, although some found other areas to settle. Among these groups were a band of Choctaw residing in Louisiana known as the Jena Band of Choctaw Indians and a group of Cherokees, under Chief Bowles, who migrated to Spanish Mexico (now Texas). Under the Treaty of New Echota, the Cherokees had two years to move to Indian Territory or the U.S. Army would forcefully remove them. Two months following the treaty’s ratification by the U.S. Senate the U.S. Army was dispatched to disarm the Cherokees. Even
then, only one-eighth of the Cherokee Nation elected to move voluntarily to Indian Territory. The 20,000 that remained pinned their hopes on the mercy of the incoming administration of President Van Buren (1837–1841). Van Buren refused to rescind the Removal Act despite receiving a petition signed by 15,665 Cherokees.

On May 23, 1838, two years to the day from the signing of the New Echota Treaty, the detainment of the Cherokees began. They were forced to leave their homes with only those possessions they could carry and placed into stockades. By the end of June, General Winfield Scott’s men had rounded up more than 10,000 Cherokees. As soon as the Cherokees were forced from their homes, farms, plantations, and businesses, thousands of Whites, primarily Georgia lottery holders, confiscated Cherokee property. Some Cherokees sought refuge in the Appalachian Mountains, led by a local leader, Tsali. Tsali, a member of the National Council, finally surrendered to end the Army’s pursuit into the mountains. He was summarily executed along with his brother and two elder sons on the order of the U.S. Army. Those that evaded the Trail of Tears by hiding in the mountains emerged as the Eastern Band of Cherokee Indians, also known as the Qualla Cherokees.

After witnessing the hardships and brutality associated with forced removal, the remaining Cherokees consented to move west without military assistance. This last detachment of 13,000 left in October 1838, in a caravan of more than 600 wagons. Former President Jackson protested when he heard that Principal Chief John Ross was designated Superintendent of Cherokee Removal and Subsistence and tried to have him arrested but U.S. Attorney General Felix Grundy refused. Nonetheless, the cost of the Cherokee removal was great in terms of human lives and suffering. More than 4,000 Cherokees died on the trek, about one-fifth of the entire Cherokee population. Others died in the stockades under Army guard while hundreds more died upon arrival in Indian Territory as a result of illnesses and exposure during the 1,000-mile trek. Once the removal was concluded, President Van Buren, in a message to both houses of Congress, praised the Cherokee removal as a positive event for America. The Cherokees expressed their own sentiments, in line with aboriginal blood vengeance, in June 1839, when The Ridge, his sons, John and Elias Boudinot, all signatories of the New Echota Treaty, were executed for their role in the destroying of the original Cherokee Nation.

Notes