

REVIEWS



Arguments over Genocide: The War of Words in the Congress and the Supreme Court over Cherokee Removal. By Steven Schwartzberg. London: Ethics International Press Ltd., 2023. 346 pages. \$110.00 hardcover.

In recent years, scholars have increasingly reframed nineteenth-century US federal Indian policy within the analytical framework of genocide studies. Steven Schwartzberg's *Arguments over Genocide: The War of Words in the Congress and the Supreme Court over Cherokee Removal* enters this conversation by revisiting congressional and judicial debates surrounding the Indian Removal Act of 1830. Drawing from archival materials from the US House of Representatives, Senate, and Supreme Court, Schwartzberg argues that the Indian Removal Act and the subsequent forced displacement of the Cherokees constituted "a genocide, or rather a series of genocides" (xvii). Using Article 6 of the Rome Statute of the International Criminal Court (2002) as his interpretive lens, Schwartzberg contends that the State of Georgia and members in Congress acted with the intent to destroy the Cherokee Nation.

Schwartzberg makes three central claims. First, that the rhetoric of the 1820s and 1830s remains relevant to contemporary law and policy affecting Native nations. Second, he argues that US domination over Indigenous nations—the foundation of federal Indian law—derives its authority not from justice or truth but from a collective amnesia that erases the moral and political arguments made by those who resisted Indigenous genocide. Third, he asserts that recuperating the voices of early constitutional framers and nineteenth-century politicians can counteract this amnesia and foster dialogue between the United States and Native nations, a dialogue on which he believes "the emergence of the beloved community depends" (1).

While the scope of this archival undertaking is impressive, Schwartzberg's argument raises significant questions about audience and purpose. His invocation of "the beloved community," a term rooted in Christian theology, sits uneasily beside his critique of the Christian doctrines that structure American law and policy. Moreover, his goals and tone suggest an intended audience of non-Indigenous readers—those who still require persuasion that removal was genocidal or that federal Indian law rests on colonial foundations. For Indigenous readers, such insights are hardly revelations. The removal era, the paradoxical contentions of federal Indian law, and the chosen forgetfulness of those who benefit from colonial violence are daily realities for Indigenous peoples within the boundaries of the United States.

At its best, *Arguments over Genocide* is a creative and exhaustive archival work. The book's richest sections—particularly chapters two and three, which examine congressional debates—bring forward the moral and ethical struggles articulated by legislators who opposed removal. Schwartzberg's use of the archive illuminates how

white supremacist logics were justified, contested, and institutionalized, revealing rhetorical patterns that persist in US political life today.

Yet at its weakest, the book falls into what might be called “settler apologia”: a narrative structure that highlights the moral integrity of a few white men while obscuring the collective nature of colonial violence. Schwartzberg writes that “this book seeks to recuperate the arguments of those who truly opposed such doctrines—who were truly opposed to the genocide of the 1830s—who maintained that Native nations are sovereign and independent foreign states” (4). But this recovery project risks reproducing the same colonial dynamics it aims to critique. By focusing on exceptional moral actors—his “few good men”—Schwartzberg inadvertently centers settler virtue rather than Indigenous agency, endurance, and sovereignty.

This apologetic tendency is most evident in Schwartzberg’s treatment of culpability. He repeatedly identifies Georgia as “the driving force behind the genocide of the 1830s” (118), a claim that oversimplifies the collective machinery of federal power that enabled removal. While he correctly emphasizes Georgia’s aggression, he neglects the complicity of the broader US political system—the checks and balances that allowed removal to proceed, the legislators from other states who abstained or voted in favor, and the federal enforcement apparatus that made the Trail of Tears possible. The genocide of the 1830s was not a state aberration; it was a federal policy carried out with national consensus. As Representative Henry Storrs declared at the time, “Our country, too, must bear the crime and the shame” (34). Schwartzberg’s failure to confront this structural complicity weakens his analysis of US genocide as a systemic, rather than localized, phenomenon.

The book is organized into eight chapters. Chapters two and three cover congressional debates over removal; chapters four and five examine the Supreme Court cases under Chief Justice John Marshall, whose paradoxical rulings vacillated between recognition and denial of Native sovereignty. Chapter six, “Breaking Faith with the Cherokee Nation,” is the briefest, offering a nine-page overview of reactions to the removal policy. Chapters seven and eight turn to the constitutional foundations of removal, focusing on Article VI—the Treaty Supremacy Clause—as an overlooked safeguard of Native sovereignty. Here Schwartzberg attempts to recover the moral intentions of the framers, especially James Wilson, whom he portrays as a champion of democratic federalism. Yet this portrayal is unconvincing. While Wilson’s advocacy for strong federal authority may have limited state encroachment on Native affairs, Schwartzberg minimizes Wilson’s role in the Three-Fifths Compromise—a decision that entrenched racial hierarchy and amplified the political power of the slaveholding South. Ironically, that same enhanced southern power enabled passage of the Indian Removal Act. Schwartzberg’s idealization of Wilson exemplifies his broader tendency to seek moral clarity within a constitutional tradition built on racialized dispossession.

There is no shortage of scholarship on Cherokee removal, the Trail of Tears, or the Marshall trilogy. What remains unclear is Schwartzberg’s intervention in this crowded field. His application of the Rome Statute’s definition of genocide is an important methodological gesture, but his analysis remains tethered to the moral failings of individual actors rather than the structural persistence of settler colonialism. In

contrast, scholars such as Patrick Wolfe and Audra Simpson have demonstrated that colonial domination is not merely a historical event but an ongoing structure of power that continues to define US–Indigenous relations. By focusing on nineteenth-century lawmakers’ intentions and consciences, *Arguments over Genocide* risks reinscribing the same liberal humanism that obscures this structural continuity.

Schwartzberg’s desire to “dispel amnesia” through historical recovery is laudable, but his framework assumes that remembering the right arguments or moral exemplars can reconcile a relationship still defined by asymmetrical power. The result is a book that invites empathy but stops short of accountability. It asks readers to revisit the past without interrogating how the present is organized to perpetuate similar forms of dispossession.

Ultimately, *Arguments over Genocide* offers a meticulously researched and often illuminating examination of US political discourse on Indian removal. It will be of interest to scholars of US constitutional history and legal rhetoric. However, for those grounded in Indigenous studies, the book’s limitations are instructive: it reveals how even well-intentioned liberal scholarship can reproduce colonial logics by centering settler morality and redemption over Indigenous agency, sovereignty, and survivance. As Indigenous scholars continue to critique the epistemologies of US law and history, Schwartzberg’s work stands as a reminder that archival recovery alone cannot constitute decolonial analysis. The challenge, as ever, is not simply to remember the past but to dismantle the systems that continue to justify it.

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