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--Newsletter Supplement--

- Items of Special Interest and News -
issued between printings of our bi-annual Newsletter

Fall 2006

Author's note: Within the myriad e-mails and commentaries I review weekly the term "sovereignty", especially as it relates to federally recognized tribes, is constantly used to describe a legal/political status. What is apparent is that many people who use the term simply do not understand its meaning and use it in a manner that is detrimental to their own political positions. The main thesis here is that "words do have meaning" and before a word is used its meaning should be clearly understood. In this case the continual non-critical use of sovereignty to describe recognized Indian tribes merely perpetuates a myth. The implications of this misuse/misunderstanding of sovereignty is apparent in the news article that follows this essay. Jim (ED: news articles referenced by Jim are not included here)

The Issue of Tribal Sovereignty: A Historical Perspective

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How many times have we heard tribal spokesmen proclaim that the Indian group they represent has "sovereignty" or is a "sovereign nation"? Words do have meaning. Combined with other words, a word such as sovereignty becomes rhetoric. But do these speakers know what the use of the word sovereignty implies? Is its use justified when one exclaims "we are a sovereign nation"? Let's take a look at this statement within a historical context.

In his 1832 Supreme Court opinion' Justice John Marshall defined the term Indian Nation simply as:

"a people distinct from others."[1][1]

In this same opinion Justice Marshall went on to say that:

The Indian nations have always been considered as distinct, independent political communities...

In its 1901 Supreme Court decision, *United States v. Montoya*, the Court added a further clarification to Justice Marshall's 1832 definition:

The word "nation" as ordinarily used presupposes or implies an independence of any other sovereign power more or less absolute, an organized government, recognized officials, a system of laws, definite boundaries, and the power to enter into negotiations with other nations.[2][2]

In defining the term "nation" a definition of sovereignty was also rendered by the Court, "an organized government", "recognized officials", "a system of laws", "definite boundaries", and most importantly "the power to enter into negotiations with other nations". As early as 1715 we find the term "sovereignty" denoting "A territory under the rule of a sovereign or existing as an independent state" [3][3] The most disturbing aspect of the *Montoya* definition was the ambiguous statement "...sovereign power more or less absolute,..." This statement seems to imply, without any foundational support the presence of degrees of sovereignty. *Montoya* erroneously postulated that:

The North American Indians do not, and never have, constituted "nations" as that word is used by writers upon international law, although in a great number of treaties they were designated as "nations" as well as tribes.

During the last quarter of the 18th century and during the first quarter of the 19th many of these independent tribes, recognized by the United States via treaty also simultaneously entered into treaty relationships with other sovereign countries such as Great Britain, France, and Spain. The Six Nations Iroquois being one such example. These 'treaty tribes' were, as Justice Marshall noted in *Worcester v. Georgia* "independent," as opposed to those who became subject to federal or state jurisdiction whom Justice Marshall described as "domestic dependent nations"[4][4]

The very term "sovereign" denotes "a supreme repository of power", "a political unit possessing or held to possess

One Nation United- Newsletter Supplement

sovereignty”. Sovereignty in turn denotes a “supreme power especially over a body politic”, a “controlling influence.”[5][5] Such sovereigns, as Montoya noted had “the power to enter into negotiations with other nations.” Yet in 1886, the U.S. Supreme Court noted in its United States v. Kagama decision that only two sovereigns existed within the borders of the United States:[6][6]

But these Indians are within the geographical limits of the United States. The soil and the people within these limits are under the political control of the government of the United States, or of the states of the Union. There exists within the broad domain of sovereignty but these two...

Prior to 1871 the United States and its predecessor sovereign Great Britain recognized certain Indian tribes as sovereign nations via the establishment of treaty relationships. There was no question that the Federal Government recognized such tribes as sovereigns, that is, the Federal government recognized a political unit possessing its own independent government and possessing a non-ceded land base. Justice Marshall in the 1832 Worcester v. Georgia decision noted the conditions necessary for a tribe to be considered recognized as a sovereign:

...the several Indian nations as distinct political communities, having territorial boundaries, within which their authority is exclusive, and having a right to all the lands within those boundaries, which is not only acknowledged, but guaranteed by the United States

In fact Congress in 1830 declared:

...a State or nation cannot exist, except in connection with territory, the single consideration of the nature of the title under which the Indian tribes occupy their reservations, is decisive of the extent of their separate political privileges[7][7]

Both Congress and the judiciary recognized that the nature of a political relationship between these recognized ‘treaty tribes’ and the United States was not unchanging. Tribes that were once independent and sovereign transformed into dependent wards of a state, subject to its jurisdiction. That realization led Supreme Court Justice John Marshall to declare:

But if a contingency shall occur which shall render the Indians who reside in a State incapable of self government either by moral degradation or a reduction of their numbers, it would undoubtedly be in the power

of a State government to extend to them the aegis of its laws. Under such circumstances, the agency of government, of necessity must cease.[8][8]

By 1830 Congress noted this transitional process from sovereign to dependency was well under way:

This transition from the practice of conciliating by treaty, to that of controlling by regular laws, has taken place, it is believed, with all the tribes in the old States, except Georgia; and in some of the new, as in Maine...[9][9]

In 1871 Congress also recognized this change or transformation from sovereign nation to dependent ward was so pronounced that it concluded that to further recognize tribes as sovereign entities was unwarranted Representative Armstrong of Pennsylvania stated:

While I hold that all treaties duly made and ratified by the Senate to be inviolable, I believe it to be fully competent for Congress to declare that this Government will not in the future recognize any foreign State or Power whom they may choose to designate, and where further recognition is in their judgment inimical to the national interests. Much more may they withdraw our recognition of the national character of a people in the anomalous condition of an Indian tribe...

...that the relation of the Indian tribes to the United States and their condition is continuously changing, and nations of Indians might have been so recognized years ago may now be well regarded as having deteriorated to such an extent as to justify the adoption of this declaration on the part of Congress.[10][10]

Simply put, what Congress giveth, Congress can also take. It was this changing or evolving political relationship between many of these recognized treaty tribes and the Federal government that led Congress to cease the recognition of Indian tribes as sovereigns by simply denying itself the right to recognize such relationships:

that no tribe of Indians shall hereafter be acknowledged as an independent tribe, and treated with as such...[11][11]

The declaration Representative Armstrong was referring to was an amendment or proviso he sponsored that passed unopposed in both houses of Congress on March 3, 1871. It was attached to the 1872 Indian Appropriations Act[12][12]:

One Nation United- Newsletter Supplement

No Indian nation or tribe within the territory of the United States shall be acknowledged or recognized as an independent nation, tribe, or power with whom the United States may contract by treaty; but no obligation of any treaty lawfully made and ratified with any such Indian nation or tribe prior to March third, eighteen hundred and seventy-one, shall be hereby invalidated or impaired.[13][13]

For once and for all, the Federal government ceased to recognize Indian tribes as being sovereign. It did so by simply refusing to further recognize any Indian group as such. It also marked the beginning of Congress's "plenary" authority over Indian tribes and communities.

Prior to 1871 Congress did not exert any direct legislative control over recognized sovereign tribes. After the enactment of the 1871 amendment, Congress for the first time had the legal right to exert full plenary[14][14] powers over Indian tribes that came under Federal jurisdiction. In Charles Royce's 1896 Report on Indian land cessions, it was noted that:

The effect of this act was to bring under the immediate control of the Congress the transactions with the Indians...[15][15]

So where did Indian tribes stand in relation to this notion of sovereignty? First, there is nothing in the historical record from the Revolution to 1871 that indicates that the Federal government recognized anything but absolute sovereignty. Either an Indian tribe was sovereign according to the criteria set by the Federal government or it wasn't. In its *Cherokee Nation v. Georgia* decision[16][16] the US Supreme Court clearly did not recognize differing degrees of sovereignty when it noted that the Cherokee had some of the attributes of sovereignty, but were not sovereign and therefore lacked the standing as a sovereign as to sustain a suit before that Federal court. Second, after 1871 the political status of Indian tribes was in the words of the 1871 Amendments House sponsor:

as mere domestic communities, with whom we may contract, but only with the approval of Congress."[17][17]

Politically, these tribes were placed on a level parallel to that of a community within a State. In this case instead of being a community subordinate to a state's jurisdiction, they became communities subordinate to the plenary powers of Congress. The political status of Washington D.C. is an analogous example to this new tribal standing. As with a

state community and Washington D.C., they had the political right to self-govern. Beyond that they exercised no other powers. The 1886 *US v. Kagama* decision[18][18] gave a context to the status of such "domestic communities":

But these Indians are within the geographical limits of the United States. The soil and the people within these limits are under the political control of the government of the United States, or of the states of the Union. There exists within the broad domain of sovereignty but these two. There may be cities, counties, and other organized bodies, with limited legislative functions, but they are all derived from, or exist in, subordination to one or the other of these.

As the Department of the Interior in 1890 noted:

...that hereafter no recognition by treaty or otherwise should be made by the United States of the claim of any Indian tribe as being an independent nation, tribe, or power[19][19]

By the time of the 1901 *Montoya* decision there remained no sovereign Indian tribes within the United States. All were subject to the jurisdiction of either the state or the Federal government. None of these tribes could "enter into negotiations with other nations" Treaty obligations made prior to 1871 were still honored by the Federal Government, but they were subject to the laws of Congress. Indian lands were placed in trust to the Federal Government as they were deemed incapable of protecting them. In this sense these former "Treaty" tribes were reduced to "protectorates" having surrendered their political sovereignty to a dominant state. A clear indication of sovereignty lost.

Felix Cohen, in his seminal 1941 Handbook of Federal Indian Law advanced the concept 'inherent sovereignty' which is synonymous with just being a 'little bit' pregnant. Either you are or you aren't. Here it appears that Cohen ignored the implication of the term sovereignty and its notions as stated by Justice Marshall of supreme or absolute authority. Cohen may have been misled by the erroneous "sovereign power more or less absolute" concept stated in *United States v. Montoya* and ignored the findings regarding the absolute nature of sovereignty found in *Cherokee v. Georgia*. He apparently did not fully understand the intent of Congress, the lawmaking body of the Federal government, when it enacted the 1871 amendment, most notably Congress's political reduction of tribes to the status of communities and the complete plenary power now exercised over these tribes

One Nation United- Newsletter Supplement

by Congress. Cohen also ignored the 1886 *US. v. Kagama* decision. If Cohen had framed his concept as inherent self-government he would have been right on the mark.

Where does this concept of tribal sovereignty stand today? As recently as 2004 Federal Appeal Court rulings have, as in the bankruptcy case of *Krystal Energy Company v. Navajo Nation*[20][20], declared that “*Indian tribes are domestic governments*” on a par with “*...a municipality*”[21][21]

Tribes today are certainly being urged towards “inherent” self-government. The Bureau of Indian Affairs purpose in its post 1978 acts of tribal recognition (which are not congressionally sanctioned) was to simply declare an Indian community as a tribe for purposes of receiving Federal benefits, not to bestow political power outside the tribal community. Yet when the political term government -to-government relationship began being used to describe federal-tribe relationships it began an erosion of the intent of the 1871 Amendment which stipulated that relations between Indian tribal communities and the Federal government was to be regulated only by contracts, not treaties, and only with the approval of Congress. The use of the term sovereign began appearing in describing tribal ‘community’ powers. Most notably its usage began creeping beyond Cohen’s incorrect concept of ‘inherent sovereignty’. Although there is no basis for this application it appears that a conscious act of promoting a ‘self-fulfilling prophecy’ is in play. In other words if you repeat something that is not true often enough it gains the aura of truth. The end game of all this has been clearly stated by the National Congress of American Indians (NCAI). This organization’s publicly stated goals are to have all recognized tribal governments sovereign on a par with the states despite the Supreme Court’s 1886 *US. v. Kagama* ruling. It is basically the same argument being used by advocates for congressional representation for Washington D.C. which is in reality under the plenary control of the entire Congress. Indeed within this organization (NCAI) there have been discussions as to the future nature of tribal representation in the U.S. Congress. Should there be tribal representation in Congress representing all the tribes, or should each recognized tribe have its own congressional delegation? Non Interior Executive Branch departments, most notably EPA, HUD, and the Department of Education have jumped onto the treating- the- tribes- as- states bandwagon. Recent amendments that were proposed for inclusion in the Homeland Security Bill would have given recognized tribes the same standing as states, including legal jurisdiction over non-Indians.

A recent magazine article[22][22] stated, “The debate over Indian sovereignty may seem abstract, but it gets very concrete when a state suddenly loses authority over a major portion of its lands.” But it is not the concept of sovereignty that is at work here. It is one of tension between states rights and those of the Federal government. On the basis of the preceding arguments, by recognizing a tribe, the Federal government is not declaring a tribe sovereign. It is merely removing this recognized Indian community and its lands from state jurisdiction and placing it under the plenary authority and control of Congress. No sovereign nation has been created. So we come back to the statement or rhetoric, “we are a sovereign nation.”

Really?

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[1][1] United States Supreme Court, *Worcester v. Georgia*, 1832, 31 US. (6 Pet.) 515. Justice Marshal’s opinion.

[2][2] United States Supreme Court, *United States v. Montoya*, 180 US 261, February 1901.

[3][3] *The Shorter Oxford English Dictionary on Historical Principles*, Vol. II, Third Edition, Oxford, 1950, The Clarendon Press.

[4][4] *Cherokee Nation v. Georgia*, 1831, 31 US. (5 Pet.) 1.

[5][5] *Webster’s Third New International Dictionary*, 1986, Merriam-Webster Inc, Springfield, Massachusetts.

[6][6] 118 US 375 (1886)

[7][7] Report of the Committee on Indian Affairs, February 24, 1830; Removal of Indians *U.S. House of Representatives, 21st Congress, 1st Session; Report #227.*

[8][8] *Worcester v. Georgia*, 1832, 31 US. (6 Pet.) 515. Justice Marshal’s opinion.

One Nation United- Newsletter Supplement

[9][9] U.S. House of Representatives, 21st Congress, 1st Session; Report #227. Report of the Committee on Indian Affairs, February 24, 1830; Removal of Indians.

[10][10] Congressional Globe, Senate Debates, Third Session, Forty-First Congress, Part III. Senate Debate, Indian Appropriation Bill, Armstrong Amendment, March 1, 1871.

[11][11] Congressional Globe, Senate Debates, Third Session, Forty-First Congress, Part III. Senate Debate, Indian Appropriation Bill, Armstrong Amendment, March 1, 1871

[12][12] US. Congress. An Act making appropriations for the current and contingent Expenses of the Indian Department, and for fulfilling Treaty Stipulations with various Indian Tribes, for the year ending June thirty, eighteen hundred and seventy-two, and for other Purposes:...41st Congress, 3rd sess. March 3, 1871.)

[13][13] currently codified under 25 USC 71, sec. 2079.

[14][14] “Plenary”: “Of full scope or extent; complete or absolute in force or effect”. The Shorter Oxford Dictionary on Historical Principles, Third Edition, Vol. II, 1950, Oxford, Clarendon Press.

[15][15] Eighteenth Annual Report of the Bureau of American Ethnology to the Secretary of the Smithsonian Institution; 1896-97 Indian Land Cessions in the United States compiled by Charles C. Royce :641.

[16][16] 31 US 515 (6 Peters) 1832

[17][17] The Congressional Globe containing The Debates and Proceedings of the Third Session Forty First Congress Embracing the Laws passed at that Session 1871. Debate on House of Representatives Resolution 502: To Restrain the making of Treaties with Indian Tribes, March 1, 1871.

[18][18] United States v. Kagama 118 US. 375 (1886)

[19][19] Department of the Interior, Census Office, Census Reports, V.17 1894. Report on Indians Taxed and Indians Not Taxed in the United States (except Alaska) at the Eleventh Census: 1890:663-664

[20][20] 357 F.3d 1055 (9th Cir.2004) :4299

[21][21] *ibid* :4292

[22][22] Jan Golab, The Festering Problem of Indian “Sovereignty”, *The American Enterprise*, September 2004.

Coalition Challenges Indian Claims to Sovereignty over Casino San Pablo & Seeks State Challenge to “Reservation Shopping”

A diverse Coalition including **California Coalition Against Gambling Expansion**; **One Nation United**, representing individuals, businesses and local governments; and **Artichoke Joe’s**, a cardroom in San Bruno, has called on the Governor, the Attorney General, the Gambling Control Commission, and the Contra Costa County District Attorney to put a stop to the operation of slot-type machines by the Lytton Indians in San Pablo, California.

The Coalition asserts that the land is not sovereign Indian land. In October 2000, Congressman George Miller (D-Martinez) inserted an amendment into the Omnibus Indian Advancement Act ordering the government to accept title to the land, to declare the land held in trust for the Lytton, and to declare the site an Indian reservation. The amendment also backdated the purchase to 1988, thereby exempting it from IGRA’s requirements of review to ensure that a casino would not be detrimental to the surrounding community. Last August, the Lyttons began operation the of slot-type machines, acting outside California law.

The Coalition asserts that despite those actions, the State of California retains sovereignty over the site. It asserts four prerequisites to a finding of Indian sovereignty: (1) historic retention of sovereignty, (2) continuity of exercise, (3) separate and distinct political community, and (4) lack of violation of the State’s sovereignty under the Constitution.

Historic Retention: Sovereignty must have a historic origin. The Lytton have no history. The residents of the rancheria were two families who never organized as a tribe. Further, rancherias were not trust lands.

Continuity: The Supreme Court ruled in 2005 that land which was sold by a tribe 200 years ago and then recently repurchased was no longer a reservation because of the settled expectations of residents and governments. More so here where the land never was a reservation.

Continued on page 6

One Nation United- Newsletter Supplement

Separateness: When Indian sovereignty was first recognized, Indian tribes were distinct separate political communities in unsettled rural areas. Casino San Pablo does not form a separate political community, but just one parcel in the business district of the urban Bay Area. No one lives there. It is an integrated part of the city. To assert Indian sovereignty is to engage in a sham simply to evade State law.

Constitutional: The state exercised sovereignty over this site for 150 years, and can lose sovereignty only by ceding it back to the federal government. The Legislature has not ceded the land back and it remains under State jurisdiction.

Elected Officials and Courts have already expressed doubts about Lytton assertions of sovereignty over Casino San Pablo. In 1991, the Attorney General proclaimed that “consent of the State Legislature will have to be obtained.” In 2003, the Ninth Circuit Court wrote: “We...do not decide whether lands purchased specifically for the purpose of conducting Class III gaming purposes are ‘Indian lands’ within the meaning of IGRA.”

They say the world has become too complex for simple answers. They are wrong. There are no easy answers, but there are simple answers. We must have the courage to do what we know is morally right. Winston Churchill said that “the destiny of man is not measured by material computation. When great forces are on the move in the world, we learn we are spirits — not animals.” And he said, “There is something going on in time and space, and beyond time and space, which, whether we like it or not, spells duty.”

President Ronald Reagan, Notre Dame University, May 17, 1981

ALTHOUGH GETTING A MAJORITY IN THE HOUSE, BILL TO CURB INDIAN CASINOS FAILS

Zachary Coile, San Francisco Chronicle Washington Bureau September 14, 2006

Washington — The House, despite majority approval, failed to pass a bill Wednesday that would have limited efforts by more than two dozen California Indian tribes to build new casinos outside their current reservation lands.

House Speaker Dennis Hastert, R-Ill., made a major miscalculation by assuming he had the votes to pass the bill by House Resources Committee Chairman Richard Pombo, R-Tracy, under a suspension of the rules, which requires a two-thirds vote.

GOP leaders believed the bill to curb off-reservation gambling was a slam dunk because it was approved on a lopsided 27-9 vote in the Resources Committee in July and was co-sponsored by the panel’s ranking Democrat, Rep. Nick Rahall of West Virginia.

But the 247-171 vote Wednesday fell short of the necessary two-thirds majority.

Pombo, who has been working on the bill for two years, blamed tribes lobbying to build off-reservation casinos and Democrats for the defeat. Of the 171 votes against the bill, 154 were Democrats, 16 were Republicans, and one was an independent.

“I’m surprised,” Pombo said after the vote. “I know that lobbyists representing the tribes were running around the hallways. I think it had an impact.”

But Democrats said they opposed the bill because it wasn’t considered under the regular order that would have allowed them to offer amendments, which GOP leaders refused. Some Democrats also said they were alarmed by a new requirement in the bill that tribes must negotiate with local officials to mitigate the impacts of a proposed casino.

Major tribal groups, including the National Congress of American Indians, the National Indian Gaming Association

One Nation United- Newsletter Supplement

and the California Nations Indian Gaming Association, objected to the provision, saying it would weaken tribal sovereignty. Currently tribes are required to negotiate only with state and federal officials.

“We are all concerned about the proliferation of off-reservation gaming, but this bill goes far beyond this issue,” said Rep. Dale Kildee, D-Mich., who claimed the bill “undermines our long-standing policy of protecting tribal sovereignty.”

California is seen as the epicenter of off-reservation gaming, with 30 separate proposals for casinos outside of reservation lands — many near urban areas, according to the Coalition Against Reservation Shopping, a group of gaming opponents.

Pombo’s measure would have revised the 1988 Indian Gaming Regulatory Act, which spurred the \$23 billion-a-year Indian casino industry, by blocking any tribe that has land in federal trust from acquiring any new land for gaming unless it’s adjacent to their original reservation.

The bill also requires tribes seeking new casinos to enter into an agreement with local communities to address the impacts of their projects on traffic, public safety and other city services.

“Ninety percent of the tribes do it anyway,” Pombo said. “If you have a casino that goes in and you need a new off-ramp, why should the county have to pay for that? If it was a private developer, they would have to pay for it.”

Rep. George Miller, D-Martinez, who was criticized for helping the Lytton Band of Pomo Indians acquire a card club in San Pablo to open the Bay Area’s first major urban casino, voted for the bill in committee, but opposed it Wednesday.

“He didn’t support bringing it up under suspension,” said Danny Weiss, Miller’s chief of staff. “It’s a controversial piece of legislation ... and it’s not the type of thing the suspension calendar was intended for.”

Weiss added that Hastert and Pombo had the votes and could have passed the bill easily if they brought it up under

regular rules. “The only people to blame for this bill not passing are Republican leaders,” he said.

Most Bay Area Democrats opposed the bill, including House Minority Leader Nancy Pelosi of San Francisco and Reps. Barbara Lee of Oakland, Tom Lantos of San Mateo, Pete Stark of Hayward, Lynn Woolsey of Petaluma, Anna Eshoo of Atherton, and Zoe Lofgren and Mike Honda, both of San Jose. The only local Democrats to support the bill were Reps. Ellen Tauscher of Walnut Creek and Mike Thompson of St. Helena.

The bill is highly controversial in Indian country. While some tribes with casinos support restrictions to block other tribes from building new casinos close to urban centers, most Indian leaders fear that any changes to the current law could endanger the fast-growing industry.

Tribes have been among the biggest donors to congressional campaigns, giving \$18.4 million to Democrats and \$8.6 million to Republicans since 1990, according to the Center for Responsive Politics.

Pombo warned that if his bill is not passed, tribes should expect opponents of gaming to push for even tougher restrictions, including possibly a moratorium on any new Indian casinos. “Ultimately, if we don’t do something to regulate this, we may end up with an attempt to stop it,” he said.

My Kingdom for a Casino

Walter Olson

If you thought Jack Abramoff was suspect, look at the latest land claims filed by Indian tribes.

As everyone now knows, courtesy of Jack Abramoff, sleazy tactics abound in the fight over where and whether Indian tribes build casinos. Too bad more attention hasn’t been paid to one of the worst abuses: tribes’ filing of massive land-claim lawsuits against property owners, to be traded off in settlement in exchange for casino rights.

The new wave of Indian land litigation began in the Northeast but has now spread around the country. Claims by the Miami Indians spill over large portions of Illinois and Indiana. The Eastern Shawnee want 4 million mislaid acres

One Nation United- Newsletter Supplement

in Ohio. New York's Onondaga, Oneida and Cayuga have claimed the land under such cities as Syracuse and Binghamton. In Colorado the Cheyenne-Arapaho managed to top that with a filing for 27 million acres including Denver. Near Allentown, Pa. the Delaware Indians failed in a bid for a tract that includes Binney & Smith's famed Crayola factory.

In virtually all these cases tribes have made clear that they would settle for a casino permit.

Occasionally one of these suits will make national news, typically when it impinges on a playground of media folks, as with last summer's claim by the Shinnecock to be the rightful owners of large tracts in the Hamptons. More often the claims drag on in obscurity—many of the upstate New York claims have been pending since the 1970s and 1980s—posing hardship to farm families and other innocents whose title to the land had rested undisturbed for 100 or even 200 years. While major disruptions to mortgage and title-insurance markets have been reported in extreme cases, many owners are convinced that the cloud on title plays a subtler role in scaring off potential buyers.

How could this have happened? Until lately Anglo-American law sought a careful balance between the goal of restoring wrongfully taken property to its rightful owners, on the one hand, and the equally valid goal of securing everyone's property against the danger that a claimant will show up some day to assert a speculative defect in title. Hence doctrines aimed at preventing old disputes from staying alive indefinitely: statutes of limitation, adverse possession, "acquiescence" in unchallenged political boundaries.

In a series of rulings over the past 30 years, however, the U.S. Supreme Court has decided that Indians are wholly different from other land claimants. Law professors have cheered: What cause is more romantic than that of dispossessed Indians? (Somehow owners of small farms in upstate New York never seem to merit the underdog label.) The rulings also constitute a stunning victory for a scrappy cadre of Legal Services lawyers; a few of these antiestablishment types have found themselves, over the arc of a career, gradually transmuted through their tribal connections into highly paid casino promoters, in a transformation worthy of a Balzac or Stendhal novel.

By now, with fortunes at stake, big law firms are lining up to help with the claim suits; among those that have assisted tribes are Philadelphia's Cozen O'Connor and New Jersey's Lowenstein Sandler. Far more disturbing is the role of the wealthy backers, including Rochester mall developer Thomas Wilmot and Detroit pizza magnate Marian Ilitch, who bankroll the would-be land grabs in exchange for a share of the resulting settlements or casino action. Financing others' litigation—"champerty"—was long illegal at common law, and you can kind of see why.

Congress, deeply entangled with Indian gambling money, isn't rushing to fix things. Last summer, in a stunning ruling of potentially broad significance, a panel of the Second Circuit Court of Appeals threw out the Cayugas' suit and suggested that the time had come to bring down the legal curtain on claims that tribes waited a century or more to press. So who's asking the Supreme Court to review and reverse that decision? The Bush Justice Department, that's who.

Before we lecture Venezuela or Russia yet again on the evils of a system in which property rights are a matter of whim, maybe we should clean up the mess we've made of them at home.

Walter Olson is a senior fellow at the Manhattan Institute.

A COMMENTARY ON THE STATE OF THINGS IN CALIFORNIA:

"I suppose the only moral redemption in this story has a multicultural tinge — that Indians can be as greedy and ruthless as anyone else, given the opportunity. That in reality, there's never really enough garbage to go around. But on the more practical level, (Agua Caliente Tribal Chairman Richard) Milanovich's performance this past week should remind us that the \$20 billion a year Indian gaming industry is one of the great scams of the past two decades. And that it's not just the Jack Abramoffs and the Richard Scanlons who need to be more closely scrutinized, but also those who were oh so willing to hire them. The State already made one grievous mistake in granting the Agua Caliente and other casino tribes platinum privileges based solely on racial criteria. The error is compounded if we let DNA stand in the way of holding accountable what is now one of the most powerful and arrogant of political lobbies." -Marc Cooper. Los Angeles Weekly, July 6, 2006