CERF/CERA REPORT

MEMBER UPDATE

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The problem our Founders had with British Sovereignty and how it relates to current Federal Indian Policy *Lana Marcussen*

CERA/CERF have written many times explaining that there is a loophole that allows federal government officials to avoid all of the limitations of the Constitution. We have referred time and again to this territorial loophole in amicus briefs that explain why our Founders had serious problems with the way the British interpreted sovereignty. Both political parties have been using this outdated British sovereign power to govern from the extremes and take away the liberty of all of us people. What follows is my attempt to explain what this power is for normal people to understand it. This is not a simple concept, but, I need your help to find the best way to explain this to normal people. Please read it and let me know at the CERA website what I can do to explain it better.

Sovereignty is a big word with more than one meaning. Generally, sovereignty "is a political concept that refers to a dominant power or supreme authority." How sovereignty is defined and applied varies by culture. In most monarchies, all of the sovereign powers were in the King as the supreme authority that could make laws and was owed obedience. In England, the monarchy had never been absolute. From early times the people of England started developing their own laws and customs in common with other towns and classes of people.

It was the business transactions and property transactions involving these free men that developed the practices that became known as the "common law" or "law of the land."

While there has been lots of speculation as to how and why this independent law developed, the simple answer was that from the beginning in England there were free men that were not subjugated to a nobleman. Most of these free men were skilled workers that lived in towns and were paid for their work. Many owned their own businesses and buildings they used in the towns. As England developed, this skilled labor class grew as the economy diversified. It was the business transactions and property transactions involving these free men that developed the practices that became known as the "common law" or "law of the land." These free men to protect their independent status had to be able to limit the power of the nobility and even the monarch against their property and right to be free. This created the contract and property law principles that bound even the sovereign. It also created the idea that the sovereignty of the monarch could be split up between necessary government functions and personal sovereignty to give more rights to the people over time. This was first used to separate the freemen from the nobles who owed a duty to the monarchy to keep their positions.

Nobles were subject to the personal whims of the monarch but the free men were not. Free men could become obligated for specific services by contract with the contract setting the full terms of the obligation. Wealthy freemen were also able to contract to purchase land without obligation to the monarch. This landed gentry class made up a significant portion of the persons who became Americans.

England had many confrontations between the monarch and nobles that developed this common law long before the establishment of the North American colonies. Starting with Magna Carta, the British nobility forced their King and sovereign to agree to a contractual arrangement of when and how they could be summoned by him for the national defense. Many centuries later, the English subjected the King to the laws passed by Parliament with the English Civil War. Our Founders followed these principles, expecting and demanding all the rights of free men.

After the discovery of the Americas in 1492, a new international law from the Catholic Pope was fashioned to colonize the Americas and other areas of the world that were not Christian. This Discovery Doctrine was granted from the Pope to the Christian Monarchs, including the British Monarchy. It was the Discovery Doctrine that gave unlimited territorial power to the Christian Monarchs as long as they agreed to spread the teachings of the Catholic Church to all native inhabitants. This grant of power from the Pope had the potential to wipe out all of the limitations that had been placed on the English monarch from the development of the common law no matter how or where they were born. The Pope was allowing the Monarchs unlimited authority to set the status of every person. In 1772, Lord Mansfield

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ruled in Somerset v. Stewart that African slavery could not be introduced into the British Isles because it could reverse all the gains the British people had gained against their sovereign as a matter of common law. The British King was denied this new power to reset the status of every person by the nobility in the British Isles.

In the same ruling, Lord Mansfield ruled that the British King using the unlimited territorial power granted under the Discovery Doctrine could require African slavery in the North American colonies. This meant that our Founders had no enforceable rights to maintain their status as free men against the King. In 1772, the freemen and landed gentry were protected in the rights they had won against the British monarch over the centuries in the British Isles. Because of the Doctrine of Discovery, the freemen and landed gentry that had moved to the American Colonies were informed that they had lost all of their rights as free Englishman and were now subject not only to the government of the monarch but also all of the personal sovereign whims of that monarch without any legal rights.

It was no accident but direct application of British law that made our Founders demand back their rights as "Englishmen." Foolishly, the British nobility assumed that the great might of the British army and navy would prevent our Founders from challenging their authority. In 1776, the nascent United States with the Declaration of Independence responded legally to the British declaring our independence by declaring a war against our oppressors. When we won the Revolutionary War we defeated this sovereign power and established our own rules and sovereignty definitions in the Constitution. This is why our Framers had to create a new territorial land system. We had to be able to limit this British sovereign power to reset individual rights that are the basis of citizenship. We could not put an absolute line in the Constitution preventing the federal government from exercising this destructive sovereign power to change our individual status without slavery being banned. This is why it was such a big deal that we could not ban African slavery from the beginning under the Constitution.

In 1861, our Civil War began and African slavery was the main cause. President Lincoln was finally able to ban slavery in the Constitution with the 13th Amendment and added the principle of Equal Protection for every citizen in the 14th Amendment when the war ended. But, President Lincoln and we the people were betrayed by Secretary of War Edwin Stanton and a whole cadre of new fangled attorneys from Harvard University that figured out how to preserve this destructive British sovereign power by putting the Indians under it following the Civil War in the federal Indian policy of 1871. This deliberate betrayal of founding American principles by preserving this power of the Pope is the basis of what we now call Progressivism. Progressivism is based on the "elite" determining what rights and interests other racial and religious groups should have based on the interests of the elite. This elite pays lots of lip service telling minority groups and everyone else what we all should be doing without actually caring what happens when they apply their "rules and regulations." This has become particularly alarming in how these Progressives treat the rural farmers and ranchers who produce our necessities. Progressives don't hear us or the Indians that they placed under complete subjugation. This elite thinks they are "right" in telling us how we should be free and limiting our liberty to prevent change and new ideas.

Taking on federal Indian policy was the way to take on this wrong elitist power because it truly rests on the backs of Native Americans. It means defeating the power of this elite to decide what is best for each of us. This has become a real fight over what we Americans are going to accept from our government and how we are to be treated. I say we all must be free and equal citizens as our Framers and President Lincoln believed. Our fight is transitioning from being about federal Indian policy into being about how much power the federal government is supposed to have over all of us. Limiting the federal government to having to treat all of us equally is the way we defeat the elitists who believe they should have the power to tell us all how to live. Both political parties are guilty of treating us this way. We need your help to continue to fight for what America is supposed to be--all people free and equal.

A Victory Over Corruption? . . . . Without Winning In Court !

In May 2003 a small group of concerned citizens came together to oppose a proposed fee to trust for an Indian casino in Plymouth, California. We chose No Casino In Plymouth (NCIP) as our name. It took the BIA and DOI nine years to issue a Record of Decision (ROD) on May 24, 2012 approving the fee to trust application for the Ione Band's proposed casino using the "Cowlitz two part procedure". NCIP filed its challenge to the ROD in June 2012 and our twelve year sojourn in the Federal Courts began and is briefly explained below.

Our twelve year journey in the Federal Courts ended on April 15th 2024 when NCIP learned the Supreme Court denied our petition for certiorari. This was certainly disappointing but we take solace and pride in knowing that in the twelve years we were in federal court there is no record of any federal court conducting a hearing and issuing a decision based on the merits of our challenges, the facts of our challenges, or the federal laws related to our challenges. In the interest of full disclosure our initial 2012 challenge was decided in Federal District Court in 2015 but our appeal to the 9th Circuit Court of Appeals resulted in the 9th Circuit, in an unpublished 2017 memorandum, ordering the District Court to dismiss our challenge at the time of filing for lack of subject matter jurisdiction. The District Court complied and dismissed our case at the time of filing - (June 2012). Five years in federal court and no hearing and no decision based on the merits, on the

facts, or on the law.

On May 22, 2018 NCIP filed a second more comprehensive challenge to the Ione Band's 2012 ROD. This filing included a challenge to the National Indian Gaming Commission's February 2018 approval of an Ione Band gaming ordinance. After another five years without a hearing, our second challenge was determined in January 2023 to have been decided by Amador County's October 6, 2017 9th Circuit decision and dismissed our case. Why it took the Court 5+ years to decide this remains unknown. Not one federal judge or federal court was willing to hear our case based on the merits of our case, the facts of our case, or the federal laws related to our case.

You might now think that NCIP had failed and a casino has been built in Plymouth but you would be wrong. When NCIP was founded more than 20 years ago our objective was to not have a large Las Vegas style casino/hotel in Plymouth and we learned in January 2024 that our objective had been achieved. The original 1800-2000 machine casino / 5 story hotel proposed in Plymouth was suddenly downsized to a 349 machine casino with no hotel and relocated into the County. NCIP's objective of no casino in Plymouth had been achieved without ever having a hearing in federal court. Imagine what might have been if the merits, the facts, and the law related to our case had actually been heard.

While our 2018 challenge was in the District Federal Court other serious violations of federal law by the BIA related to the fee to trust for a casino for the Ione Band came to light. These obvious and serious violations will eventually be challenged in federal court by concerned citizens who do not want a third casino in Amador County, population 40,474, which includes about 4000 prisoners at Mule Creek State Prison. I doubt there is another California County with a casino for every 12,000 residents.

What would cause an alleged "restored" tribe with an approved fee to trust for a large Las Vegas style casino/hotel in Plymouth to suddenly downsize and move to the County? The answer begins with a Solicitor's opinion, M-37055, issued on March 9, 2020 which withdrew Solicitor Opinion M-37029, "The Meaning of 'Under Federal Jurisdiction' for Purposes of the Indian Reorganization Act". Within M-37055 the Solicitor provided the following:
On March 12,2014,the Solicitor issued M-37029 ("Sol. Op. M-37029") that interpreted certain phrases found in the first definition of "lndian" ("Category l ") at Section 19 ("Section 19") of the Indian Reorganization Act of 1934 ("lRA"). Sol. Op. M-37029 was published following the 2009 opinion of the United States Supreme Court ("Supreme Court") in Carcieri v Salazar, which concluded that the phrase "now under federal jurisdiction" requires tribal applicants for trust-land acquisitions to have been "under federal jurisdiction" in 1934. The Supreme Court did not, however, construe the meaning of the phrases "recognized Indian tribe" or "under federal jurisdiction."

In 2010. the Department of the Interior ("Department") interpreted these phrases and other aspects of Section 19 in a record of decision for a fee-to-trust application submitted by the Cowlitz Indian Tribe ("Cowlitz ROD). The Cowlitz ROD concluded that the phrase "under federal jurisdiction" was ambiguous and interpreted it to mean "an action or series of actions (...) that are sufficient to establish, or that generally reflect federal obligations, duties. responsibility for or authority over the tribe by the Federal Government." The Cowlitz ROD separately interpreted the phrase "recognized Indian tribe" and concluded it was not subject to the temporal limitation contained in "now under federal jurisdiction," meaning that an applicant tribe is "recognized" for purposes of Category I so long as it is "federally recognized" at the time the IRA is applied.

Sol. Op. M-37029 adopted the analysis and interpretive framework set forth in the Cowlitz ROD with little substantive change, including the Cowlitz ROD's two-part procedure for determining whether a tribe was *"under federal jurisdiction"* in 1934. (emphasis added)

To remove such uncertainties and to assist tribes in assessing eligibility, in 2018, the Solicitor's Office began a review of Sol. Op. M-37029's two-part procedure for determining eligibility under Category I, and the interpretation on which it relied. This review has led me to conclude that Sol. Op. M-37029's interpretation of Category I is not consistent with the ordinary meaning, statutory context, legislative history, or contemporary administrative understanding of the phrase *"recognized Indian tribe now under federal jurisdiction."* (emphasis added) Therefore, I hereby withdraw Sol. Op. M-37029.

With M-37055 the Solicitor withdrew the "Cowlitz ROD" criteria used to approve the Ione Band's fee to trust application on May 24, 2012 because it was WRONG. Wrong because it was not consistent with the ordinary meaning, statutory context, legislative history, or contemporary administrative understanding of the phrase "recognized Indian tribe now under federal jurisdiction." And since no land had been taken into trust for the Ione Band by March 9, 2020 based on the 2012 ROD the May 24, 2012 approval was null and void because it was not in compliance with federal law and WRONG.

With the Solicitor's issue of M-3705, Ione Band Investor, Salvatore Rubino, and the Sacramento Regional BIA Officials reacted immediately to the withdrawal of the "Cowlitz ROD" criteria. The investor suddenly transferred ten parcels to the United States for the Ione Band on March 17, 2020. The Acting Regional Director of the Sacramento Office accepted the parcels in trust for the Ione Band on March 20, 2020 claiming authority from the Secretary of Interior to use 25 U.S.C. 2202 to acquire the parcels in trust. The Acting Regional Director had to take the action because the Sacramento Regional Office Director, Amy Dutschke, is a member of the Ione Band.

25 U.S.C.§2202 is the section of the Indian Land Consolidation Act (ILCA) which provides the Secretary authority to acquire land in trust for all tribes including those that voted against

the Indian Reorganization Act. A review of definitions for the ILCA at 25 U.S.C.§2201 reveals that "tribe" for the purposes of the ILCA is defined as; "Indian tribe" or "tribe" means any Indian tribe, band, group, pueblo, or community for which, or for the members of which, the United States holds lands in trust;..It is important to know the Ione Band is LANDLESS. The Ione Band in its 2006 FTT Application clearly stated it was LANDLESS – no fee land and no trust land.

Based on documents provided by the "landless" Ione Band and the BIA/DOI it is clear beyond any doubt that the United States NEVER held any land in trust for the "landless" Ione Band prior to March 20,2020. As a LANDLESS tribe the Ione Band cannot be eligible for the ILCA. The March 20, 2020 action by corrupt officials at the Sacramento Regional Office of the BIA was a desperate last minute action to acquire trust land for the Ione Band. Action precipitated by the Solicitor's withdrawal of the "Cowlitz ROD" criteria used to approve the Ione Band's FTT Application.

More importantly, the Solicitor's withdrawal of the "Cowlitz ROD" criteria was the Department's validation of the veracity of the legal challenges NCIP had been raising in Federal Courts since 2012 based on federal law, the 2009 landmark Supreme Court decision in Carcieri v. Salazar 55 U.S.C. 379, and the U.S. Constitution.

None of this would have been possible without NCIP's association with CERF/CERA and I invite and encourage you to support and donate to CERF & CERA.

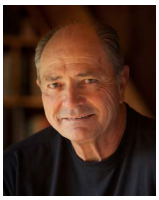
It took an incompetent unqualified federal district court judge another three years to conclude that the 2017 Amador decision had decided NCIP's 2018 challenge to the ROD. A ridiculous decision because NCIP's 2018 challenge included a challenge to the NIGC's 2018 approval of the Ione Band's gaming ordinance – it was simply impossible for the 2017 Amador decision to have decided a challenge to an approval which did not exist in 2017. The NIGC was not a defendant in the 2017 Amador case and of course there was no challenge to the then non-existent NIGC approval. But anything is possible with unethical federal judges, unethical federal attorneys, and an unethical and corrupt BIA/DOI. The 9th Circuit denied our appeal and our petition to the Supreme Court was denied. Apparently, it is within the ability of federal judges and federal courts to believe and conclude a 2017 decision decided NCIP's challenge to an improper 2018 NIGC approval of a gaming ordinance.

The Ione Band wasted no time after the Acting Regional Director allegedly acquired ten parcels in trust on March 20, 2020 using the ILCA and quickly negotiated a Compact with the unethical Governor of California. The Compact was approved by an unethical California legislature – no questions asked – just show them the money. The Compact received a 45 day deemed approved approval by the Secretary of the Interior. Only the portions of the Compact in compliance with federal law are deemed approved but there is nothing to indicate what sections of the Compact are in compliance with federal law – if any.

It looked like there would finally be a casino in Plymouth in 2021. But no casino in 2021, 2022, or 2023. In January 2024 the Ione Band suddenly issued a Mitigated Negative Declaration in January 2024 informing the County and public that the Ione Band was downsizing the proposed casino/ 5 story hotel from 2000 machines to 349 machines and no hotel. Most importantly this new proposed casino would be located NOT IN Plymouth but in the County.

NCIP and the citizens of Plymouth and Amador County have prevailed in our decades long fight to defeat a proposed casino/hotel in Plymouth. However, we now face a proposed casino adjacent to Plymouth in the County. The skills, knowledge, and experiences we used to defeat the proposed casino/hotel in Plymouth will now be used to rid Amador County of another illegal casino approved by unethical, corrupt officials at the BIA Sacramento Regional Office and DOI. We will continue to fight for our community.

As I have written in past articles none of this would have been possible without NCIP's association with CERA and I invite and encourage you to support and donate to CERA.



D. W. Cranford

War Powers or Constitutional Rights?

I was shocked recently when someone compared overdose deaths (primarily from fentanyl) to combat war deaths. About 127,000 Americans died from drug overdoses in 2020 and 2021 while about 65,278 U.S. military personnel died in Iraq, Afghanistan and Vietnam. Over multiple years overdose deaths are greater than our deaths in World War II. Almost all these overdose deaths are self-inflicted, but our government has a responsibility and has failed, to protect its citizens.

Many people think our response to Covid 19 did more damage than the virus itself and a growing number of people are losing trust in our medical establishment. Others are concerned that we have selective, or non-effective, law enforcement. We've had tens of millions of immigrants even though Durant's "Lessons of History" says that demographics is as powerful as war. Rassmussen Polling finds that almost one-half of Americans are concerned about election integrity. Few things are more import-

ant in a republic than election integrity. More and more people are losing trust in our managerial elites. and these managerial elites are also doubting the political capability of the average American citizen.

CERA/CERFs knows that Federal Indian Policy is an example of the misuse of federal power harming and destroying lives while it destroys most reservation economies. The federal government claims to have plenary (complete and absolute) power over tribes and reservations while also claiming that tribes are sovereign (supreme, permanent authority). How can the government have plenary power and tribes have sovereignty? With all this power controlled by different governments where is the freedom and authority for Indians on reservations and the many non-Indians that live next to them to thrive.

For about forty years CERA/CERF have filed over thirty Amicus Briefs with the US Supreme Court challenging the constitutional authority for these policies. While the arguments are much too complex to include in this article, we think we are making significant progress, but we are now dealing with a very significant government authority. When the country and government are threatened by an outside military threat, War Powers are necessary to protect our country. Unfortunately, War Powers are extensive and powerful and those in power desire to continue using these powers.

The Biden administration claimed to be using War Powers to deal with the threat of global warming. Other administrations have used War Powers for many reasons over the years. Effectively, War Powers override constitutional protections and are a threat to our rights as citizens. We do not think that War Powers should be used to justify Federal Indian Policy or other domestic matters.

We thank you for your past support that has allowed us to file over thirty briefs over many decades. We probably need your support now more than in the past to continue to destroy unconstitutional Federal Indian Policy and protect freedom and civil rights for all American citizens.

Darrel Smith

Thinking About Giving

The majority of gifts to CERF and CERA are in the form of cash. Writing a check is certainly convenient, but for many there may be a better way to give. If you own stocks or mutual funds, have you ever considered giving on unrealized gains from these investments? The stock market has risen almost 60% over the past five years.

By donating a portion of unrealized gains, you will avoid paying tax on the appreciated value of your investment and you may be able to deduct the full value of your gift while preserving cash reserve. It may also mean you can give a larger gift than if you donated cash.

If you are older (70 1/2+) and your investments are in an IRA, you can make a very significant tax-free qualified charitable distribution (QCD). A QCD reduces your required minimum distribution (also known as an RMD–the amount you are required to withdraw from your Ira) and can significantly reduce the amount of income tax you must pay.

Giving appreciated assets to CERF is relatively easy, whether it be a gift of appreciated shares of stock or a mutual fund, or a Qualified Charitable Distribution from an IRA. If you are unsure how to convert unrealized gains on investments into a charitable gift speak with your financial advisors.

CERA Membership Dues - $35/year
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YOUR SUPPORT WITH ANY AMOUNT IS VERY MUCH APPRECIATED!

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