THE MAINE INDIAN LAND CLAIMS CASE: PRO AND CON

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PREFACE

This is a collection of articles taken from The Church World dealing with the Maine Indian Land Claim issue.

These articles reflect differing views on the issue; who if anyone owes a moral debt to the Indians.

These articles include: a study of the history of the territorial loss; an investigation of the attempts to reclaim lands; the Indian's moral and legal justification to claim ancestorial lands; the government leaders' moral and legal basis for rejecting these claims.

I hope this material will be useful to you in preparing your students for a better understanding of the land claims issue.

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Table of Contents

The Indian Land Claims Revisited

The Penobscot and Passamaquoddy Indian tribes claim that Maine, and its predecessor state (Massachusetts), acquired about 12,500,000 acres of land (about two-thirds of the State of Maine) from the Tribes after 1790 without the Congressional approval that was required under the terms of the Indian Non-Intercourse Act. In 1972, the Indians initiated a series of lawsuits which culminated in the request for $300 million in monetary damages. President Carter asked Judge William B. Gunther to investigate the case, and to make recommendations for a negotiated settlement. His proposal was rejected by the state, the landowners and the Indians. The President then appointed a three-man task force, headed by Eliot Cutler of Bangor, to try to work out an agreement. The task force proposal (the text was published in last week's CW) was accepted by the Indians - and the State and 14 major private landholders have until mid-April to respond. In order to provide more background on the issue, pages 4 and 5 contain the text of Attorney General Joseph Brennan's analysis of the claims and the reasons for his continued assertion that the legal issues should be settled in a court of law; page 6 contains an updated report by Steve Cartwright on the mixed reaction of some Penobscot Indians to the proposed settlement; and pages 16 and 17 contain a thesis by Bro. Lawrence Smith, S.J. (who has ministered to the Passamaquoddy Indians at Pleasant Point) entitled: "The Church, the State, and the American Indian." This is part of a continuing effort by the Church World to provide the readers as much background information as possible in order to develop a Christian moral position on the sensitive issue.

Taken From The
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March 2, 1978

The Indian Land Claims Revisited

A few years ago, when Joseph Nicholas (cover photo), a Passamaquoddy Indian Representative to the Maine Legislature, introduced himself at a Cursillo at St. Paul's Center as "part-owner of two-thirds of the State of Maine," his comment drew gales of laughter.

The same comment today would perhaps elicit a few nervous smiles, but probably little laughter.

Even most of the Indians agree that chances of recovering two-thirds of the State of Maine are extremely remote. In fact, they don't seriously want that. All they want is redress for injustices that were inflicted upon their people over the past two centuries.

One young Indian summed it up fairly well when he said: "If we could ever get back some of what we have been cheated out of, we wouldn't need the white man's gratuity or his programs. We'd build our own houses, our own businesses, and be self-sufficient as we once were before the white man became our benefactor." When one looks at what the white man has created in his "regenerating of the Indian race," one has to agree that the Indian, left to himself to shape his own destiny, could do no worse.

Our state officials are pursuing the legal aspect of the Indian land claims case - maintaining that the moral question is wholly separate from the legal issues. But are they, really?

I am in no position to argue that the moral and legal aspects are inseparable - but I do believe that in dealing with the legal aspect of the case, the moral question should be examined. Ever since the first article on the Indian land claims was published in the Church World on July 9, 1971 (an article by Donald E. Field which reportedly was rejected by other publications because of the sensitivity of the Indian claims), our pages have been open to a frank and open discussion of the issue.

Attorney General Joseph E. Brennan maintains that the claim being asserted by the Tribes involves two significantly different issues: the legal claim against the State of Maine and its residents, and the question of whether or not this nation owes a moral debt to its Native Americans regardless of any legal claim that they might have.

"I believe that it would be perfectly proper for the United States Congress and the nation as a whole to resolve once and for all the question of whether or not there is some longstanding unpaid national debt to the Native Americans, including the Tribes of Maine," maintains the Attorney General. But, he adds, "the moral question is a wholly separate one from the legal issues posed by the pending litigation. I firmly believe that it would be wrong for the State of Maine to give in to the pressures of the litigation and to give state lands or monies to the Tribes to settle these suits. I believe the legal issues should be settled in a court of law."

Since Mr. Brennan issued this statement a year ago, the proposed settlement by Presidential negotiator William Gunter (which called for giving the tribes 100,000 acres of timberland from the state, either from public or private lots, along with $25 million) was rejected by the parties concerned.

A three-membered presidential task force, which was formulated by the President in November, recommended a federal payment of $25 million; the selling of 300,000 acres of land owned by 14 land-owners (each owning 50,000 acres or more) at bargain prices (reportedly about $5 an acre); and giving the Indians the option to buy another 200,000 acres at market prices.

The Attorney General called the task force recommendations "irresponsible and indefensible".

On the next two pages, we are printing the text of his explanatory memorandum on the Indian land claims litigation which he wrote a year ago. The memorandum contains Mr. Brennan's review of the background of the case, his analysis of the nature of the Indian claim, his evaluation of the case, and discussion of the options of negotiations or legislation.

In this issue, we are also printing an updated report by Steve Cartwright on the mixed reaction report of some of the Penobscot Indians to the proposed settlement. Also, the centerspread features a thesis by Bro. Lawrence Smith, S.J., entitled: "The Church, the State, and the American Indian." Brother Larry ministered to the Passamaquoddy Indians at Pleasant Point with the late Fr. Stanley Bowe, S.J., and more recently with Fr. Joseph E. Mullen, S.J. He hopes to return to the reservation upon the completion of his studies in Cambridge.

Lest anyone get the impression from Brother Larry's excellent thesis that the priests who served on the reservations have only been concerned with the spiritual needs of the Indians, we should be reminded that the physical welfare of the Indians also became the concern of the chaplains - especially in recent years.

One priest (and there were others) whose preoccupation was to try to restore to the Indians their sense of dignity as a proud people, and to instill in state officials some faith and confidence in the Indians' ability to govern themselves was Fr. Louis F. Berube. Now pastor of St. Philip's Parish in Auburn, Father Berube served as tribal chaplain to the Passamaquoddy Indians at Peter Dana Point in eastern Washington County from 1952 to 1961.

The priest was chagrined at the shameful conditions to which the Indians were subjected - particularly the shabby housing, the substandard school facilities, and the careless attitude of government officials toward their oft-neglected state wards. Father Berube stalked the halls of the state house in Augusta, pleading with state officials to give the Indians their dignity, to encourage them in their efforts toward self-government.

Father Berube was advised - politely at first, then bluntly when he refused to yield - to keep his nose of out government affairs, and minister spirtually to the Indians as called for in his contract. But he persisted. The results were slow in coming, but eventually inroads were made, and successes were achieved. The Reservation school was improved; a water system was installed; indoor plumbing was introduced; 17 new houses were built; a sewage system was constructed.

"Most of the really meaningful results occurred after I completed my apostolate with the Indians," Father Berube recalls. An Indian was subsequently named Commissioner of Indian Affairs, and the Indians were given a greater role in legislative procedures that affect their well-being.

When I visited the reservations in June 1976, an ambitious and exciting Title X federal program - involving aquaculture, energy, health and social services, and a construction company - was breathing new life into the reservations. (This was described in CW articles).

But there is the matter of redress for past injustices still to be reckoned with. This is what the Indian land claims are all about. As the young Indian said: "If we could ever get back some of what we have been cheated out of, we wouldn't need the white man's gratuity or his programs. We'd build our own houses, our own businesses, and be self-sufficient as we once were before the white man became our benefactor."

Taken From The
Church World
March 2, 1978

Why Maine's Attorney General initially felt Indian Land Claims should be settled in Court

A year ago, when Attorney General Joseph E. Brennan issued the following explanatory memorandum to the Maine Legislature, he expressed the belief that the Indian land claims should be settled in a court of law - that the moral question in the case is a wholly separate one from the legal issues posed by the pending litigation. Since he wrote this memorandum - which reviews the background of the case, analyzes the nature of the Indian claim, and discusses the options of negotiation or legislation - proposals for a settlement have been made. The first, by Judge William Gunter, was rejected by both the Indians and the State; the second, by a Presidential task force, has been accepted by the Indians and is presently being examined by the Attorney General in behalf of the State of Maine. The memorandum is presented as part of an effort to provide our readers with as much information on the Indian land claims as possible.

The background of the case:

The claims arise under the so-called Indian Non-Intercourse Act. That Act, originally passed by Congress in 1790, provides that no one may obtain title to Indian land without the approval of Congress. In 1972, the Passamaquoddy Tribe asked the United States Department of Interior to bring suit against the State of Maine under the Non-Intercourse Act. The Department of Interior refused on the grounds that it owed no trust obligation to the Tribe, and the Tribe sued the Federal Government challenging that refusal. Shortly after suing the United States Government the Tribe obtained a court order requiring the United States to sue Maine, so that the statute of limitations might not run out on the Tribes' claims. These suits, one on behalf of the Passamaquoddies and one on behalf of the Penobscots, seek only monetary damages in the total amount of $300 million. They do not seek return of land.

In 1974 the United States District Court issued a decision in the Tribe's suit against the United States holding that the Non-Intercourse Act created a trust responsibility upon the United States to protect the Tribe's interest.

In late 1975 the Court of Appeals affirmed the decision of the District Court but specifically qualified its opinion to make clear that,

1. It was not ruling on the applicability of the Act to the Indian transactions in Maine, and

2. It was leaving open the question of whether, even if the Act did apply, Congress or the Tribes might be deemed to have acted in a fashion to make the land transactions legal.

The Court noted:

> "Whether, even if there is a trust relationship with the Passamaquoddies, the United States has an affirmative duty to sue Maine on the Tribe's behalf is a separate issue not raised or decided below and which we consequently do not decide."
>
> "In reviewing the district court's decision that the Tribe is a tribe within the meaning of the Non-Intercourse Act, we are not to be deemed as settling, by implication or otherwise, whether the Act affords relief from, or even extends to, the Tribe's land transactions in Maine. When and if specific transactions are litigated, new facts and legal and equitable considerations may well appear, and Maine

should be free in any such future litigation to defend broadly, even to the extent of arguing positions and theories which overlap considerably those treated here."

In so ruling (on the existence of a trust relationship), we do not foreclose later consideration of whether Congress or the Tribe should be deemed in some manner to have acquiesced in, or Congress to have ratified, the Tribe's land transactions in Maine."

For the last year the United State Government has been evaluating the history of the land transactions in Maine in order to determine whether it should bring suit on behalf of the Tribe. The Department of Interior, under the former Administration, has recently made a tentative recommendation to the Department of Justice that the suit be brought on behalf of both the Passamaquoddy and Penobscot Tribes.

The Nature of the Claim

The two Tribes claim that Maine, and its predecessor state, Massachusetts, acquired about 12,500,000 acres from the Tribes after 1790 without Congressional approval. The principal transactions on which the Tribes base their claim are agreements with the Passamaquoddies in 1794, treaties with the Penobscots in 1796 and 1818, a purchase of Penobscot land in 1833 and other numerous small purchases, easements, road constructions and the like in and through tribal land. The Tribes claim the Non-Intercourse Act entitles them to return of all the land and to $25 billion in money damages for trespass for the intervening years.

The boundaries of the claim area are still imprecise. Neither the Tribe nor the Federal Government has ever clearly delineated its outline. It may even be that the claim, if ever made, will be for much less than 12 million acres. Nevertheless, the magnitude of the potential claim is enormous. As we presently understand it, it encompasses roughly all land in and to the east of the Penobscot River watershed. The northerly boundary is very vague but may run roughly as far as an east-west line midway through Aroostook County. Until the Tribes define the claim area more precisely, these dimensions are mere approximations.

Our evaluation of the case

We firmly believe that the Indians will not be successful in their claim. We assert that view after careful historical and legal analysis, and without equivocation. There are several reasons for our opinion.

History

An examination of the historical record clearly indicates that in 1790, the operative date of the Non-Intercourse Act, neither the Penobscots nor Passamaquoddy had any legal claim to land in Maine.

In 1755 the French-Indian Wars were underway. The Province of Massachusetts declared war on the Penobscot and Passamaquoddy Tribes that year. By 1759 the war in Maine had come to an end. That year Governor Thomas Pownal travelled up the Penobscot and issued a proclamation declaring that the land of the Penobscot and their allies the Passamaquoddy, had been lost through conquest by Massachusetts. This act of Conquest was subsequently acknowledged by both tribes in various documents in 1760 and later. Although the Tribes continued to occupy some lands in Maine, then eastern Massachusetts, they did so at the sufferance of Massachusetts, the Tribes having lost any right of aboriginal possession.

In 1775 as a result of the so-called Watertown Agreement, Massachusetts agreed to set aside some land for hunting and fishing for the Penobscots in return for their help in the Revolutionary War. The land set aside for the Tribe consisted of a strip 6 miles wide and 6 miles long in the area either side of the Penobscot River at the head of the tide (roughly Bangor). These hunting and fishing rights were given to the Tribes probably in return for the Tribe's assistance in the Revolution. Massachusett's continued to take the position that the Tribe had no legal right to occupy lands having lost the same through conquest by Pownal in 1759.

The position of the State of Massachusetts found support from the early federal government. In 1783 John Jay, John Adams and Benjamin Franklin relied on Pownal's declaration of conquest in negotiating the terms of the treaty to end the Revolutionary war with Britain. While discussing the terms of the treaty with Great Britain in Paris, a dispute arose as to the easterly boundary of the United States and Canada. The British argued for the Penobscot River as the boundary; the Americans for the St. Croix River. Adams produced Pownal's 1759 document as evidence of Massachusetts' victory in the French-Indian War, thereby establishing Massachusett's possession of all the lands in Maine. The American view of the boundary prevailed. The United States negotiators thus relied on the truth of Pownal's declaration of conquest in important international dealings.

In the early 1780's the Penobscot's asserted to Massachusetts a claim to their former lands. In 1784 the Massachusetts Legislature appointed commissioners to investigate the Penobscots claim. The commissioners, including General Henry Knox, reported that the Tribe had lost their lands in 1759 and that the Watertown Agreement at best gave to the Penobscots the right to hunt and fish on some lands but did not give to the Tribes any title to land. However, Massachusetts decided as a matter of equity to set aside some lands for the exclusive use of the Penobscots. Acting on this recommendation negotiations were begun in 1786 and an agreement in principle was made permanently granting to the Indians essentially the lands covered by the Watertown Agreement.

After agreeing in principle to this resolution of their claim, the Penobscots refused to sign it for 10 years despite repeated statements by representatives of Massachusetts that unless the Tribe agreed to the proposal, they would have no lands at all. In 1796 the agreement of 1786 was finally signed by both the State of Massachusetts and the Penobscots. Although the 1796 agreement contained language in which the Tribe appeared to relinquish their lands to Massachusetts, in reality the 1796 agreement constituted a landgrant by Massachusetts to the Penobscots. The language in the agreement relinquishing their claims was included to make it clear that the agreement was designed to finally resolve a long standing dispute between Massachusetts and the Penobscots.

The relationship between Massachusetts and the Passamaquoddy was similar. Like the Penobscots, the Passamaquoddy had no lands in 1790 because of the outcome of the French-Indian War. They acknowledged their landless status in the 1760's and as late as 1792 when they wrote to the Massachusetts Legislature asking for a land preserve. Acting at the request of the Passamaquoddy and presumably out of a sense of debt to that Tribe for their aid in the Revolution, Massachusetts in 1794 made a grant to the Tribe in the form of a treaty setting aside 23,000 acres for the Passamaquoddy and other Tribes. Like the agreement with the Penobscots, the agreement with the Passamaquoddy was a land grant by the State and not a vehicle to obtain lands from the Tribe.

Of course, the details of these transactions and the events leading up to them are considerably more complex than this summary. In brief, however, the historical facts clearly indicate that the transactions after 1790 were grants of lands to the Tribes, not acquisitions from them. While the lands granted in 1794 and 1796 were subsequently sold or otherwise transferred by the Tribe to others, the nature of the title acquired by Tribe from Massachusetts was not covered by the Non-Intercourse Act.

Applicability of the Non-Intercourse Act

As we noted above, the opinion of the Court of Appeals makes it clear that the question of the application of the Act to Maine is unresolved. Research done as of this date by our historians, indicates quite clearly that Congress never intended the Act to apply to New England. We believe our interpretation is supported by, among other things, the following facts.

The Non-Intercourse Act and its predecessor, the Indian Ordinance of 1786, were largely the product of the efforts of Henry Knox of Massachusetts. Knox was Secretary of War from 1784 through 1794 with primary federal responsibility for Indian Affairs. Knox's various communication about the Acts indicate that he never intended the act to apply to Indians within any of the States. Moreover, the administrative framework under both acts indicates that Congress never intended to apply the Act to the States. Under both Acts, Congress established administrative structures to supervise Indian Affairs but never created a division within the government to supervise Eastern Indians. Indeed, the last federal Eastern Indian agency was closed in 1783 at the request of Massachusetts.

Interestingly enough Henry Knox himself purchased 3,000,000 acres of land from Massachusetts in 1791 and 1793 in the area now claimed by both Tribes. Unless one is to assert that Knox was acting illegally, an assertion wholly unsupported by Knox's distinguished record of public service, one can only conclude that Knox correctly believed that the land he purchased did not belong to any Tribe and that the Non-Intercourse Act did not apply in any event.

Reports of the War Department in the early 1800's demonstrate that the Department knew of the New England Indians, including the Passamaquoddy and Penobscot, knew of their relationship to the States, so advised Congress. Debates in Congress in the early 1830's over Indian legislation again confirms that Congress knew that the Act was never applied to New England. When a modified version of the Act was considered in 1834, the Congressional Committee Report states that its intent was "to continue" the policy of the earlier Acts to apply the Act to Indians "not within any state." Reports to the Congress of various Secretaries of War and President Andrew Jackson also make it clear that the Executive branch never interpreted the Act as applying to New England. We have found no evidence that Congress ever expressed any disapproval of such interpretation.

These facts and other items of legislative history have led us to the conclusion that the Non-Intercourse Act was never intended to apply to tribes within the original 13 colonies. We think it clear that the interpretation, when brought to the attention of the Court, will prevail.

The Admission of Maine to the Union

In 1820 Maine separated from Massachusetts and was admitted to the Union as a separate State. Both the Maine Act of Separation and the Maine Constitution refer to Indians and require Maine to assume all obligations of Massachusetts to the Indians from the earlier treaties. In considering the admission of Maine, the Acts of Separation enacted by Massachusetts and the proposed Maine Constitu-

tion were read in the United States Senate. The preamble of the Act admitting Maine to the Union specifically refers to the Act of Separation and the Maine Constitution. Clearly Congress was on notice that (1) there were Indians in Maine and (2) Massachusetts had treaties with these Indians.

We have examined United States Supreme Court decisions dealing with legal significance of the admissions of a State to the Union, including, for example, the admission of West Virginia and Kentucky. In those cases, the Supreme Court made it clear that in admitting a new state to the Union, Congress was deemed to consent to the terms of the compacts between the new State and the old State. We think the principle of those cases is equally true here. Even if we go so far as to assume that the Indians in Maine lost their land in Maine after 1790 without immediate federal approval and even if we assume that the Non-Intercourse Act applied to New England Indians, it seems clear that in admitting Maine to the Union in 1820 Congress approved all the treaties up to then.

The suggestion that Congress might have overlooked the Indian issue in admitting Maine is a specious one. In 1819 Congress, when debating the admission of Alabama discussed at great length the jurisdiction of Alabama over Indians. Ultimately Congress admitted Alabama but with special conditions regarding Indians. In considering Maine's admission a year later, and despite being on notice regarding the Indians in Massachusetts and Maine, there was not even any debate on the subject of Indians.

Implied Federal Approval

In addition to all the above, there is case law to support the proposition that the actions of Congress and the Executive branch can constitute ratification of all the transactions between the Tribes, the State, and private citizens. A brief recitation of the types of federal transactions in Maine involving land in the claim area include federal acquisition of park lands, military bases, harbor facilities, post offices and federal loans and grants for highways, urban renewal, Farmers Home Administration loans, Small Business Administration loans, pollution control facilities and the like. In all those instances land was involved. In none of those instances has the federal government ever paid any money to a Tribe in acquiring land for federal use nor has it required the recipient of a federal loan, grant or mortgage guarantee to obtain a release from the Tribe. In short, for 157 years the United States has acted consistently as if the Non-Indian occupants of the land had good and valid title and possession. We believe that as a matter of law this indicates federal agreement with our entire posture in this case.

Other Legal Issues

In addition to all the foregoing there are of course many other defenses too numerous and detailed to set forth here. Not only are there other defenses but there are what we believe to be valid claims that we can, and of course will, assert against the Tribe, the United States and Massachusetts. Indeed Massachusetts' financial stake in this claim is as big as the State of Maine's, since if there was any illegal act it related back to Massachusetts prior to 1820.

Of course the summary set forth above is only a summary of our continuing legal and historical research. The research and facts cannot be set forth in full, herein, because it would be far to lengthy. The above explanation should, however, adequately explain our assessment of the case.

Negotiation or legislation

In spite of the fact that the outcome of the case seems abundantly clear, the mere pendency of a threatened claim of this size has had enormous impact on Maine. No municipal bonds have been sold in the claim area since early 1976. Whether or not forthcoming State and local bonds will be sold will soon be tested. Residential real estate transactions have continued but some large developments have been delayed principally because title insurance is not unavailable.

Because of the economic problems created by the pending claims, some people have suggested that we should negotiate with the Tribes. Some people have suggested that since the United States owes the American Indian a moral debt Maine ought to negotitate this claim. Finally, other people who have been concerned about the strength of our legal case have suggested negotiations. I understand these views but respectfully disagree.

The only purpose that I can see in negotiations would be to discuss the possible payment of State lands or monies to the Tribe. I believe it would be wrong to compromise this claim in that way. I believe it would be wrong to settle a case about which we feel so strongly simply because the Tribes, backed by the resources of the Federal Government are in a position to bring great financial pressure to bear on the State.

Although I am not willing to negotiate away State land or money, I am willing to discuss with the Tribes or any other person any proposal that might permit the Tribes to pursue their claim in Court without causing the State financial distress. Governor Longley and I have for several months urged enactment of federal legislation to that end. The legislation we have proposed and which has now been endorsed by our Congressional delegation, would validate current titles and permit the Tribes to sue the Federal Government for money damages. Thus far the Tribes have rejected this proposal, but have offered no alternative.

I think it is important to recognize that the claim being asserted by the Tribes involves two significantly different issues. On the one hand, there is a legal claim being asserted by the Tribes against the State and its residents. On the other hand, there is the question of whether or not this nation owes a moral debt to its Native Americans regardless of any legal claim that they might have. The two questions ought not to become confused. I believe that it would be perfectly proper for the United States Congress and the nation as a whole to resolve once and for all the question of whether or not there is some longstanding unpaid national debt to the Native Americans, including the Tribes of Maine. That question, however, is a distinctly different one than the question posed by this lawsuit. While I think it would be perfectly proper for Congress to address the moral question, I do not believe that moral problem can be resolved in the context of this lawsuit.

The record of this country in its dealing with Indians is not a proud one. But I would suggest that, while not perfect, the State of Maine has made great strides in the last 10 years in trying to correct economic disparities and social injustices that may have existed in the State of Maine with respect to native Americans. Over the years, the State of Maine had given millions of dollars in benefits to the Maine Tribes. The State currently provides the Maine Indians social welfare benefits that are more than $2,000 per family of four in excess of similar benefits given to non-Indian poor. The State makes educational expenditures for Indian children that are twice the expenditures made for the average non-Indian child. The State of Maine was the first state in the country to create a Department of Indian Affairs. Tribal housing authorities are funded by the bonds underwritten by the full faith and credit of the State of Maine. So far as we know, Maine is one of the few states in the country to provide benefits to

Indians of this size and diversity. Furthermore, the State has in the last 10 years repeatedly joined with the Maine Tribes in seeking federal recognition and federal benefits for the tribes. Despite the mammoth problems created by the pending claims, I have heard no state official suggest that these programs be discontinued or that there be any form of retaliation against the tribes. All of those considerations must be weighed in any determination of whether indeed there is any unpaid moral debt to the tribes.

In any event, as I stated above, the moral question is a wholly separate one from the legal issues posed by the pending litigation. I firmly believe that it would be wrong for the State of Maine to give in to the pressures of the litigation and to give state lands or monies to the Tribes to settle these suits. I believe the legal issues should be settled in a court of law.

Taken From The
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March 2, 1978

How some Penobscot Indians view the settlement

Francis C. Sapiel, a full-blooded Penobscot Indian born and brought up on the reservation here, at Indian Island, says the latest land claims settlement package is a compromise for his tribe, and that Indians deserve a better deal.

Mr. Sapiel said he wishes the Penobscot-Passamaquoddy claims case would be litigated in court, because the proposed settlement of the suit gives Indians too little. Mr. Sapiel voted against accepting the negotiated proposal at a recent tribal meeting, although a majority of both tribes favored the compromise.

The other day, Mr. Sapiel had an opportunity to learn first hand how the President feels about Indian claims in Maine. By a stroke of luck, Francis "Flapper" Sapiel's wife Edwina won a ticket to Carter's recent "town meeting" at Bangor, and she gave it to her husband. Then, by a further piece of luck, Mr. Sapiel was selected to ask the President a question. He was ready: "Would you veto any attempt by the Congress to abolish the Penobscot-Passamaquoddy land claims suit?"

President Carter wasn't sure of the question at first, but then answered "yes." At that point, the non-Indian audience at the meeting broke into applause. "I was surprised, really surprised," Sapiel said. And he said he was pleased.

Another Indian attending the meeting, George "Skipper" Mitchell, a Penobscot tribal councilman, said later that President Carter "cleared up a lot of doubts in people's minds, both about the case and about his stand."

As a member of one of the two tribes involved in the current Maine Indian land claims suit, Sapiel and his family have been directly concerned with the outcome, although he has no official connection with negotiations.

If the State and a group of large paper firms in Maine agree to the joint proposal of a Federal task force and Indian negotiators, the two tribes could be awarded 300,000 acres of privately-held land plus options on 200,000 additional acres. Also, Penobscots and Passamaquoddies would receive $25 million from the Federal government plus $1.7 million from the State, for the next 15 years, under terms of the agreement.

The original land claims case alleges Indians are rightful owners of about two thirds of the State. The claim has been upheld through a number of court decisions, and has won the backing of the Federal Government.

The State and 14 major private landholders have until mid-April to respond to the current claims settlement proposal, the second offer since the case began a number of years ago, with the discovery of an historic treaty. If either party refuses to accept the settlement, court action is expected to follow. Both government officials and tribal leaders fear a drawn-out court case would create havoc in Maine's economy, affecting Indians and non-Indians alike.

Francis Sapiel and other Indians point out that the tribes have shown good faith in negotiations thus far, and have demonstrated their concern for a swift and just settlement that does no harm to small private landholders and other non-Indians in Maine.

Timothy Love, member of the Penobscot tribe and the Indian negotiating team, commented, "If we do file suit it will have very serious economic consequences for the State of Maine." But he added, "If they (State and paper firms) go to court, that's fine with us."

Gov. Nicholas H. Sapiel of the Penobscot tribe called the claims case "iron-clad," and said he is not afraid if the suit is tried in court because he feels Indians can't lose. Gov. Sapiel commented that the proposed settlement "represents a compromise which was difficult to accept, but on the whole is fair and honorable."

The two tribes' claims are based on the fact various treaties that removed their lands were not approved by Congress, as required under the 1790 Non-Intercourse Act. The case has taken years of legal preparation, and has consistently been called frivolous and without merit by Maine's Governor and Attorney General, who are now seen as the primary opposition to final settlement.

If Gov. James B. Longley, Attorney General Joseph Brennan, plus the paper firms agree to the proposed settlement, the package will probably be brought before the Congress. If the proposal is ratified by Congress, a landmark case will have been settled. It would be a compromise - especially for the Indians - but one they accept as realistic.

Whatever happens, Maine Indian land claims have national implications in terms of land suits everywhere, and the case has attracted international interest.

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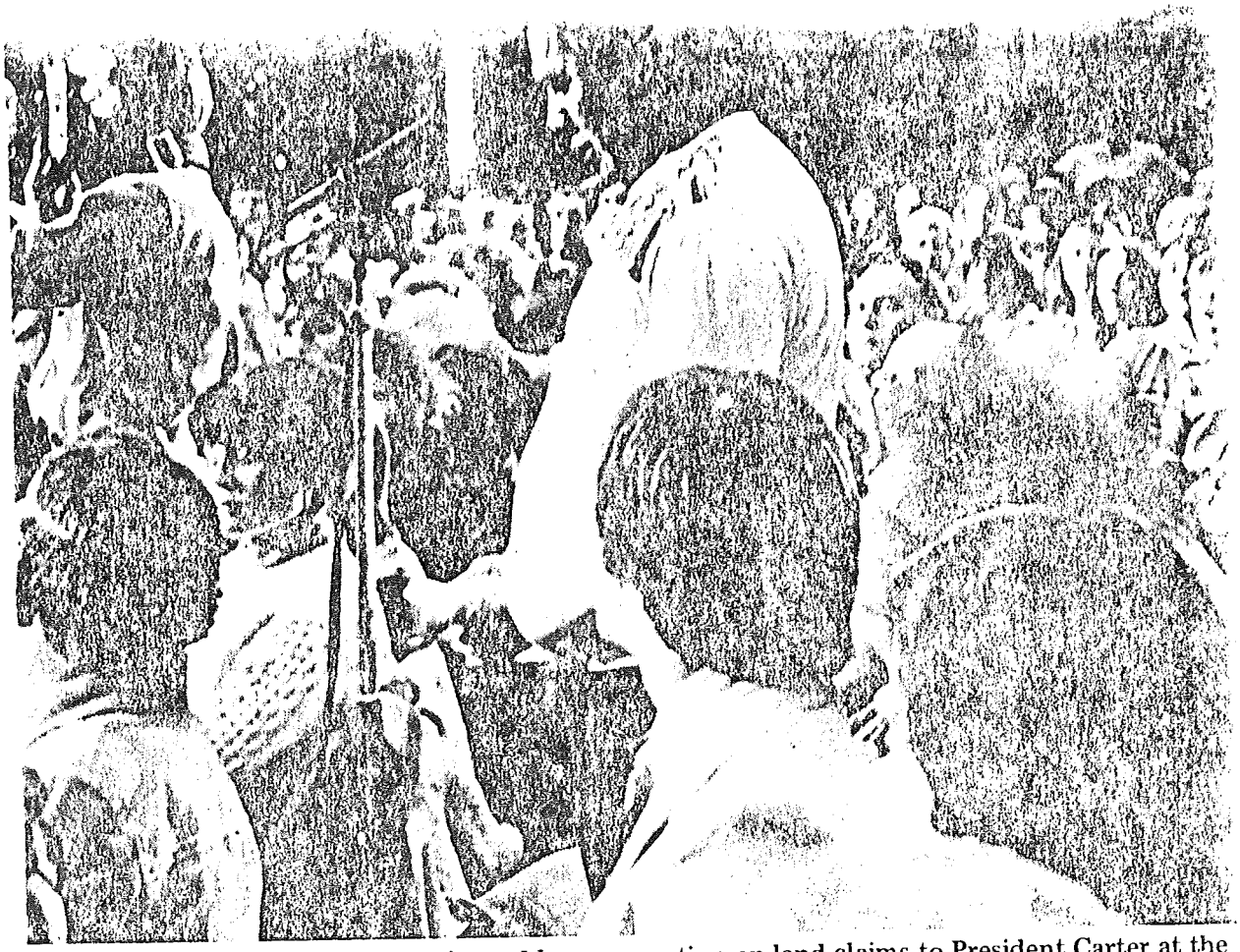

Francis C. Sapiel, Penobscot Indian, addresses question on land claims to President Carter at the "town meeting" in Bangor, recently. The President indicated he would support the Maine Indian should Congress attempt to extinguish the claim.

Penobscot tribal land claims negotiators Andrew Akins (left) and Timothy Love discuss the case which has attracted international attention and now appears to be nearing a settlement.

The Church, the State, and the American Indian

It is often easy, with hindsight, to recognize the bad and sometimes tragic mistakes made by clergymen and their churches in dealing with Native Americans. In America's history, the Church was perhaps one of the primary motivators for the destruction, or attempted destruction of Indian culture, religion, and traditional ways of life.

The earliest Jesuit missionaries to the Indians of New France did not actively encourage the destruction of traditional tribal cultures, but they did not actively support them either. In the words of Fr. Paul LeJeune, S.J. in early 17th century New France:

> Had I to give counsel to those who commence to labor for the conversion of the natives, I would willingly say a word of advice to them which experience will, I think, make them acknowledge to be more important than it seems at first sight, namely; that one must be very careful before condeming a thousand things among their customs which greatly offend minds brought up and nourished in another world. It is very easy to call irreligion what is merely stupidity and to take for diabolic workings something which is nothing more than human;...These could be abolished more gently, and I say more efficaciously by inducing the natives themselves gradually to find out their absurdity, to laugh at them and to abandon them not through motives of conscience as if they were crimes but through their own judgment and knowledge as follies.

We can see in this quote the acceptance by even the most enlightened of early missionaries of the natural superiority of Western and European culture.

Let us look now at the effect of missionaries on the actual lives of Indian people. Vine Deloria, the Indian lawyer, activist, and writer feels that..."One has to distinguish between the early missionary efforts and those of the later missionaries who came to the tribes in the West. In general the early missionaries were less inclined to become involved in the political affairs of the tribes and more concerned with providing good education and instruction."

What Deloria says may be true of the early missionaries in the West, though I have my doubts. In the East the early missionaries were very much involved in Indian politics. The division between church and state in the 16th and 17th centuries was notable by its absence. Protestant missionaries in New England took their orders directly from the state, and in cases where Indians became Christian the missionaires took over almost all negotiations between Indian people and white civil authorities.

Catholic missionaries in New France to the north were less tied to their government by structures of authority, being, for the most part, Jesuit and "ultra-montane" taking orders from Rome rather than France. Nevertheless, Catholic as well as Protestant missionaries often acted as negotiators and ambassadors for the state and at times for the Indians; with both the French and the English using Indians as pawns and weapons against the other during times of war.

The one major area where Catholic missionaries differed from their Protestant counterparts in dealing with Indians was in the area of "Inculturation." As we saw above in LeJeune's letter to his colleagues, the early Jesuits accepted and in many cases became active participants in the Indian nomadic way of life.

Destruction of a people

To get an honest picture, however, anyone studying any aspect of Native American history since the arrival of the European has to accept the fact that history has been, and continues to be, a history of the destruction of a people. Any time and any point in history where a white person, white church, or white government has attempted, or attempts, to make decisions for, or to control the lives of Indian people, destruction of some part of Indian life is the result.

There were, however, some points in history when the Christian church has inserted itself between the openly destructive power of the state and the Indian people. For example: 1) The very real debate within white society of 19th century America between those who openly advocated extermination of all Indian people, and the Quakers, among others, who advocated a "peace and civilization program" which stressed education and Christianization of the Indian people.

In the late 1860s the United States was in the midst of a new civil war, not of guns but about guns and their use as the solution to the "Indian problem." The debate came down to two points of view. One point of view was held by many Westerners as expressed by Congressman James Cavanaugh of Montana when he declared before the House,

> "I have never in my life seen a good Indian (and I have seen thousands) except when I have seen a dead Indian."...And The Junction City Weekly Union observed that "even William Penn could not palliate the cruel deed of hostile Indians of today. Many plans have been tried to produce peace on the border; but one alternative remains - EXTERMINATION."

On the other side, the Quakers and the humanitarian reformers were idealists who pushed for what they considered best for the "Christianizing and civilizing" of the Indian. Needless to say the Indians themselves were seldom, if ever, asked what would be best for them.

In the summer of 1867 the Quakers offered to take over the "education and civilization" of the Indians. The Quakers received the support of Presidential candidate U.S. Grant, and on the eve of his Inauguration he announced implementation of the Quaker "Peace Policy."

Ultimately, however, the reforms of even the best intentioned reformers proved destructive of Indian culture, religious traditions, and life. However, without the Quakers and humanitarians, the destruction would have, perhaps, been total and very bloody.

The only choice of a future for Indian people, that was to be made, was being made between these two alternatives, and that decision was being made by white men, not by Indians.

Indians as slaves

A second example of the Church placing itself between the state and the Indian was the battle in South America by early Dominican missionaries to prevent the use of Indian people as slaves or their outright extermination by white Spanish and Portugese settlers. This struggle led, in 1537, to Pope Paul III issuing the bull Sublimis Deus in which he stated:

> ...We...consider, however, that the Indians are truly men and that they are not only capable of understanding the Catholic faith, but, according to our information, they desire exceedingly to receive it... We define and declare by these our letters...the said Indians and all other people who may later be discovered by Christians, are by no means to be deprived of their liberty or the possession of their property, even though they may be outside the faith of Jesus Christ; and that they may and should, freely and legitimately, enjoy their liberty and the possession of their property; nor should they be in any way enslaved;...that the said Indians and other peoples should be converted to the faith of Jesus Christ be preaching the word of God and by the example of good and holy living.

This battle is still actively going on today with both Indians and priests being murdered in Latin America by government and "right-wing" forces in various countries.

Tensions in Maine

A third example can be found closer to home. As the 17th century ended and the 18th began, tensions began to mount between the English of Massachusetts and the Indians of what is now Maine. Maine had become bitterly disputed territory between the English and the French. The fact that there were still French Jesuit missionaries among the Indians made matters all the worse.

The English, who had always underestimated the intelligence of the Indians, presumed that it was the French Jesuits who were inciting the Indians to attack English colonists found in the disputed lands. It was even suggested that the "blackrobes" were leading raids on English settlements.

This charge cannot be proven, although I don't believe it can be disproven either. Many Jesuits had been with the Indian people for many years, and had become more French Indians than the French white men they were considered to be by the English. Their interests, therefore, was primarily the defense of the Indian nation and Indian interests, both spiritual and material; and only secondarily the defense of French land claims. As an example, we can recall Fr. Sebastian Rasle, S.J., who had lived and worked with the Indians of Norridgewock for 37 years.

A price was put on Father Rasle's head in 1720 by the English, and in 1724 a force sent to Norridgewock all but wiped out the tribe, killed Father Rasle, and brought back the scalps to Boston to collect the bounty. The village and the church were burned. The Dictionary of the Abenaki Indian language which Father Rasle had worked a lifetime to create was saved, and is now in the possession of Harvard.

There was almost steady warfare for the next 40 years. The Indians found that they had little choice left. They could either retreat into Canada or stay and take a chance in submitting to the English. Only the Passamaquoddy and the Penobscot chose to remain on their home territory and take their chances.

Demand for a priest

In all the negotiations for peace the one demand upon which the Indians would not compromise, was that they be provided with a resident Catholic priest.

It was not until the American Revolution that the Indian people finally got their priest. The patriots in Massachusetts needed the support, or at best, the neutrality of the Indians against the English. In her book entitled The Catholic Indian Missions in Maine, Sister Mary Celeste Leger states:

> It was agreed and concluded...that they should enjoy the free exercises of religion agreeable to their profession, a clergyman of that denomination be furnished and suitable residence be provided for him, on which a place of worship was to be erected.

The year was 1777. In 1977, the 200th anniversary of this agreement, the government of the State of Maine unilaterally ceased all support for the churches and clergymen on the reservations in Maine.

The best the Church could do in the periods of history we have looked at was to place itself and its influence betwen the Indian people and government forces, among others, bent on total destruction.

It is only within the last 10 or 15 years, however, that most missionaries themselves have even begun to change from a spirit of paternalism and open hostility toward native religion, culture, and traditions to one of cooperation with the appreciation for the rich spiritual, cultural, and racial heritage which the Native American possesses. Until one recognizes this I don't see how the Church can hope to do what it must, which is to encourage the Indian people to take the leadership of their communities upon themselves. They must take the leadership of their political lives, their cultural lives, and even their spiritual lives.

We white missionaries must learn to work with the Indian people as advisors and teachers and not take either the extreme of paternalism or of abandonment. We must speak out when necessary against injustice with the Indian people but not for, or in place of, the Indian people.

Searching for Their roots

During the past few years many Indian people, particularly young people, have been searching for their "roots." They are trying to regain their proud heritage and culture. They no longer if they ever did, look to white society for answers or solutions. They see the Christian Church as a white church and as a part of white society, which while not actively oppressive has not been actively liberating either, to say the least.

Our most difficult and most self-sacrificing role lies in how we deal with those who can honestly no longer find God speaking to them in a white Christian Church. We have a moral and spiritual obligation not only to tolerate the emergence of traditional Indian spirtuality, but to actively aid and encourage its growth. As Peter says in the Acts of the Apostles, Chapter 11:15-18:

> I had scarcely begun to speak when the Holy Spirit came down on them in the same way as it came on us at the beginning, and I remembered that the Lord had said: "John baptized with water, but you will be baptized with the Holy Spirit." I realized then that God was giving them the identical thing he gave to us when we believed in the Lord Jesus Christ; and who was I to stand in God's way?

The majority of Indian people here in Maine remain intensely loyal to their Church as were their ancestors. They have proven this loyalty throughout the history of this nation and this state, even to the point of shedding their blood in martyrdom.

The Church in Maine has been and will continue to be as loyal to its Indian people. It has taken a large step forward in this regard with the establishment of the Division of Indian Services and the Indian Resource Center. D.I.S., as part of the Human Relations Services of the Diocese of Portland, offers the Indian people of Maine financial, technical, research, and human resources for a wide variety of services and projects.

It is time for the Church in America to take an active role in the liberation of the Indian spirit. Where has Indian Christianity gone in 200 years? Why are there still white priests and Religious on the Indian Reservations? Where are the native clergy and the native Religious? Where do we go from here? Is it too late?

There are many examples of encouraging signs where the Church is putting its voice, its finances, and even its flesh and blood on the line to help Indian people improve their own destinies. Let us hope that this time the tide of destruction can not only be interrupted or lessened but can actually be reversed.

Taken From The
Church World
March 2, 1978

Passamaquoddy Indian youths at the Pleasant Point Reservation on Passamaquoddy Bay in Washington County.

', when Fr. Stanley Bowe *(top left)* died, the State of Maine honored a 200-year agreement to support resident clergymen and churches on the ervations. This agreement was broken last year. Pictured *(top right)* is St. Ann's Church at the Pleasant Point Reservation.

The Maine Indian land claims

Following are the views and analysis of the Maine Indian land claims issue expressed recently by Sandy Maisel, Professor of Government at Colby College in Waterville. Other views are invited on the issue.

The Passamaquoddy and Penobscot Tribes' land claims case has been singled out by the U.S. Department of Justice as "potentially the most complex litigation ever brought in the federal courts, with social and economic impact without precedent..."

This is the one issue in this campaign in which I feel that not being a lawyer has been a technical disadvantage. I have had to do careful research and have sought the advice of lawyers in my considerations. My starting premise was that if the State of Maine has an airtight case to take to court, we should not negotiate, but let the case go to the courts. If we do not have an airtight case, we should consider negotiating an out or court settlement to protect Maine property owners and businesses from disruption of financial loss.

But to consider this issue from the limited views of its legal question is inadequate. Any solution to this issue, no matter how correct it may be in the limited scope of the law, which would cost any Maine resident an interest in his home or that would penalize any Maine business or cost any employee his job is unacceptable.

The question is this: Does the State of Maine have such an airtight case that we can settle the matter in the courts without jeopardizing the Maine homes and business interests? Federal officials have publicly predicted that the United States government, in its role as trustee for the Maine tribes, has a 50% chance of receiving a favorable judgment from the courts with all or part of the cases social and economic impact being realized. Even if a court judgment gives the Indian tribes a fraction of the land they claim, the cost is too much for the people, the business interests, or the state government of Maine to bear.

I believe that the State of Maine should seek an out of court settlement of this case to avoid any possible disruption of Maine homes and business interests. The negotiation process should be quite specific in its aim, however. The only acceptable out of court settlement will be one in which the federal government bears the total cost of making settlements to the tribes.

There are valid reasons to place this responsibility on the federal government. In 1974 the courts found that the federal government was indeed a trustee of the Maine Indian tribes. This simply means that from 1794, the year of the first land transfer now in question, the federal government has been delinquent in its duty to the Maine tribes. It is because of this delinquency that these land claims can be brought up today - more than 180 year later.

Who should bear the consequences of this delinquency on the part of the federal government in its trust relationship to the Maine tribes? Maine landowners, large or small, whose title to their property is now in jeopardy because of a 180 year old legal fluke? The Maine Indian tribes, whose access to legal and social remedies from the courts or from the legislative bodies has been historically inadequate? The federal government, whose delinquency in its trust relationship for the Maine tribes over the 180 year period now in question has led to this legal fluke and dilemma for Maine landowners?

By negotiating for the federal government to assume its responsibility to both the Passamaquoddy and Penobscot tribes and to Maine residents and businesses alike, I believe that we can achieve an optimal settlement in which the land question will be quieted and the Indian tribes will receive federal concessions (Maine's tribes, unlike tribes in the western United States, have never received federal services or benefits, and concessions which may be grated at this time may be viewed not as strict settlements for land claims but also as a settlement for nearly two centuries of discrimination and neglect on the part of the federal government).

The settlement package put forth in February by the representatives of the Maine Tribes and the Special White House Work Group is merely a starting point from which the federal government will begin negotiations. The basic agreement in "Part A" of the settlement package will begin negotiations. The basic agreement in "Part A" of the settlement package calling for legislation settling the tribes' land and damage claims against specified landowners, counties and municipalities is a fundamentally correct approach to an acceptable settlement. Here the federal government is acknowledging its responsibility to bear the costs of settling this matter.

There is no legal basis for treating the large landowners and the state differently from other landowners. This is a breakdown instituted by the Work Group as a pragmatic consideration. "Part E" of the settlement package, which deals with the large landowners and the State of Maine, should be brought into alignment with the provisions of "Part A" to see that the federal government bears the cost of settlement and compensates the Maine Indians for two centuries of neglect.

Taken From The
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May 25, 1978

The Maine Indian land claims

Following are excerpts from an analysis of the Maine Indian land claims issue made by Charles L. Cragin, a Portland attorney. Other views are invited on the issue.

For the past several months, the Indian Land Claims have been the subject of countless public and private discussions. These discussions have focused on what is equitable; what is ethical; what is moral; and what is legal. My purpose, in preparing and issuing this document, is to respond to numerous requests for my comments concerning the pending claims.

As a lawyer, I felt it was incumbent upon me, prior to the issuance of any statement concerning the substantive issues in this matter, to conduct my own review and evaluation of the case from the documents which I have been able to assemble. I do not suggest that my analysis is exhaustive. A representative of the office of the Attorney General has indicated that the State is spending between $100,000 and $200,000 per year in defense of these cases. Certainly, the analysis conducted by me during the past month is limited by comparison. However, I have had the benefit of the memorandum prepared by both sides in the matter; the experience necessary to sift the arguments of legal advocates; and the ability to independently review the authorities cited by the parties.

Observations

After thoroughly reviewing the various memoranda, pleadings, communications and decisions relating to these cases, I am struck by the aptness of the comments of Chief Judge Kaufman of the Second Circuit Court of Appeals in a recent decision when the judge said: "As in so many cases in which a political solution is preferable, the parties find themselves in a court of law."

The Indian Claims Cases, in my opinion, scream for a political solution that does not negatively affect the people of the State of Maine. As Justice William B. Gunter said in his report to President Carter, "the Federal Government is primarily responsible for the creation of this problem." Therefore, I believe that it is the Federal Government that is primarily responsible for the resolution of this problem. It must be a federal resolution that does not jeopardize the ownership rights of any citizen of the State of Maine, whether that citizen be individual or corporate.

Justice Gunter was of the opinion, in which I concur, that "private property owners owning property within the claims area do not bear any responsibility for the creation of the problem." However, private property owners will continue to bear a burden as long as the claims are pending in the courts. The federal government has the power to resolve these claims if and when it wants to. These claims, at least on a subconscious level, impair the marketability of land. They dissuade long-range planning of land resources. They exact a price in increased title insurance premiums. They detract the attention of public officials from other matters which are also of importance to the people of Maine.

In my opinion, any proposed settlement of this case, such as that proposed by the White House Work Group, which requires Maine citizens to give up lands owned individually or held by the state in trust for them collectively is abhorrent, unjust and totally inequitable. So also would be a required committment that we, as citizens of Maine, dedicate future tax revenues to the payment of a settlement in a matter in which we were not responsible.

A political solution means a Congressional solution: In fact, there is no way that Congress can avoid a federal involvement and legislation even if the Indian claims are held valid. At best, the Indians would be held to have rights of "use and occupancy." How these rights interact with those of Maine landowners who would continue to own the fee, no one knows. In a memorandum to the U.S. District Court for the District of Maine, filed last winter, the U.S. Justice Department concluded:

> Assuming the United States were successful in regaining possession on behalf of the Maine tribes to those lands over which the tribes exercised a right of use and occupancy in 1790, further Congressional action would still be necessary. A substantial portion of the claims involve only the right of use and occupancy, or aboriginal title. Such title is a unique interest in land. The peculiar nature of this title is defined by the Supreme Court in United States v. Santa Fe Pacific R. Co., 314 U.S. 339 (1941). It is a right the sovereign protects against third parties, a policy reflected in the Non-Intercourse Act, but as between itself and the tribe, the sovereign can treat such title as it sees fit. Thus, upon recovery of possession in the instant litigation, Congress would still have the power to settle the possessory interest. This is not to indicate that Congress would act arbitrarily. Nonetheless, this doctrine makes clear that litigation cannot solve finally all aspects of the dispute presented. As the Supreme Court stated in United States v. Sante Fe Pacific R. Co., 314 U.S. at 347, the ultimate resolution of aboriginal title as between Indian tribes and the United States raises "political, not justiciable, issues.

The claims

The United States of America, acting through its Department of Justice, has brought suit against the State of Maine on behalf of the Passamaquoddy and Penobscot Indians. It appears that the Indians' theory in these suits, as espoused by the Justice Department, is that by a number of transactions, the State of Maine, and its predecessor, the Commonwealth of Massachusetts, unlawfully dispossessed these two tribes of their aboriginal lands.

The government has alleged that these transactions were effected in violation of 25 U.S.C. S 177, which is the codification of one section of one of a series of statutes commonly called the Non-Intercourse Acts (otherwise known as the Trade and Intercourse Acts). This section provides, in part, that:

> No purchase, grant, lease, or other conveyance of lands, or of any title or claim thereto, from any Indian nation or tribe of Indians, shall be of any validity in law or in equity, unless the same be made by treaty or convention entered into pursuant to the Constitution.

The U.S. Department of Justice has concluded, in a memorandum to the U.S. District Court of Maine, "that a valid cause of action exists for possession and trespass damages for those lands actually used and occupied by the Penobscot and Passamaquoddy Tribes as of 1790..." The State of Maine, acting through the office of the Attorney General, is of the opinion that "the likelihood of any court finding in favor of the Tribes is so remote as to be inconceivable."

Assessment of legal case

These claims raise complex factual issues. They also raise difficult and, in some respects, novel questions of Constitutional law and statutory interpretation. Full litigation of these suits on the merits, including anticipated appeals, is likely to extend over a period of years. The United States, in a memorandum to the U.S. District Court of Maine, indicated how it intended to pursue this case in the event a satisfactory out-of-court resolution were not secured.

If litigation is found to be the only method for resolving these claims, it will be necessary to divise a lawsuit which can be effectively managed so that a final decision on all major issues can be obtained as rapidly as possible. In order to reach that objective, the United States at this time contemplates a lawsuit against a limited number of major landowners owning lands in the Penobscot and St. Croix watersheds and in those portions of the St. John, Dennys and Machias watersheds which are found to be included in the claim area.... If the court denied a claim to a particular watershed, there might be no need to proceed against any other landholders in the same watershed.

For it a claim against major landowners in a given watershed is upheld, we would thereafter proceed against the remaining landholders within the claim area in that watershed.

Whatever their legal rights, and despite the lack of equity in their case, the Indians have the power, merely by pursuing the litigation, to cause serious economic and social disturbance in Maine. The defenses raised by the State of Maine depend to such an extent upon factual questions that it is almost an impossibility to give an opinion of the outcome of these suits.

Assume, for example, that we say that there is an 80 percent chance that the State of Maine would win in litigation. Thus, we must also assume that there is a 20 percent chance that the State will lose in litigation. So long as there is any possibility of the State losing in litigation, the question that must be resolved is whether we, as citizens of this State, wish to take whatever risk is involved. That question is both legal and political.

Recommendations

I would recommend that the State continue to take the posture of readiness to litigate these claims in the Courts. However, at the same time, I would also recommend that the State utilize its best efforts to attempt to persuade Congress to assume the responsibility to solve the problem it has created. Congress has the power to resolve these claims on a basis that does not injure Maine or its citizens that own private property.

I believe that the State of Maine, through its Legislature, can immediately take certain actions to officially impress upon Congress the solidarity of Maine citizens with respect to the resolution of these claims. Initially, the Legislature should consider the enactment of legislation insuring that no citizen of this State, whether individual or corporate, is forced to expend money in the defense of an action in which our citizens bear no responsibility. The United States, in its memorandum to the U.S. District Court of Maine, suggests that it would move initially against the large landholders because they have the "resources to defend the case." This we should not permit and we do not have to permit it.

I would recommend that the Legislature consider the enactment of legislation guaranteeing to every citizen of Maine that the State will, with the citizens consent, assume the legal defense of any claim brought against a private landowner by the United States government on behalf of the Passamaquoddy and Penobscot Indians. Secondly, I would suggest that the Legislature consider the enactment of legislation indemnifying any private landowner from any economic loss which might result from a judicial determination in favor of the Indians.

I would also suggest that the State continue to encourage the Federal Government, through the State's congressional delegation and such other means as are available, to press for the enactment of legislation such as that proposed by our delegation to extinguish any claims to land in Maine on the basis of the Non-Intercourse Act or any theory of aboriginal title. While there have been comments from high officials of the U.S. Government to the effect that they would not support such action, perhaps those objections could be ameliorated by a congressional recognition that these claims are merely one facet of a developing national problem that requires the utilization of a specialized body, such as the Indian Claims Commission, to hear claims by Indians and adjudicate those claims with compensation coming solely from the federal treasury.

Taken From The
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May 18, 1978

Let's view the Indian Lands Claim with an open mind

"I wish we still had slavery!" black comedian Flip Wilson told a largely white audience on the Bob Hope Comedy Hour, Monday night. "I would like to own a few whites," he added - and there was nervous laughter. "I would put them on my plantation in Alaska, and have them pick snow." The tension eased as the ludicrous statement emerged from his mouth, and there was genuine laughter.

An hour later, Martin Luther King, Jr., (in a dramatization based on the life of the renowned leader of the civil rights movement), was explaining to his young son that the reason racial prejudice was so strong in the South, and that segregation was allowed to exist for 100 years after the Emancipation Proclamation and the Civil War, was largely because most whites were brought up believing that blacks were "things" - not human beings.

If that sounds unbelieveable, I invite you to take a poll of the first 100 people you see (including Catholics), asking them whether they think that the living fetus in a mother's womb is a "person" - or an "appendage" that can be removed if the mother so chooses, for a variety of reasons.

Polls should be scientifically conducted (like Father Greeley's was) if they are to reflect accurately the general consensus of a group of people. But even the most informal and unscientific poll (like the one we conducted a year ago on the subject of women priests) gives us an indication of how the people are thinking.

Again, Monday evening, WGAN-TV revealed the results of its "Maine Opinion" poll concerning the Indian lands claim. Father Greeley has always maintained that polls can be manipulated - depending largely on how the question is worded. For instance, suppose we were to ask: "Do you think it was just and fair for the Commonwealth of Massachusetts, back in the 1780s and 1790s, to deprive the Penobscot and Passamaquoddy Indians of the land over which they had roamed, and hunted, and farmed for untold centures, and confine them to small reservations?" Do you think that the response would be more affirmative than if we asked: "If you believe that the Indians were unfairly treated in the 1780s and 1790s, would you be willing to give up half of your possessions in order to make amends?" The results of the first survey would most likely indicate that the majority of the respondents are sympathetic to the Indians - whereas the results of the second would probably show just the opposite. The difference between the two questions is that one requires only lip service - the other requires personal sacrifice.

And so it was predictable when "Maine Opinion" asked the viewers, about 24 hours after the proposed Indian lands claim agreement by the federal government was made public, if they would opt for the rejection of the settlement (as proposed) and take the matter to court, that the results would be two-to-one in favor rejecting the agreement and taking our chances in court.

I am not knocking the "Maine Opinion" poll, because this may well be where the people stand in this issue at this time. This is why it is important that the proposed agreement by thoroughly understood by as many people as possible - not just the politicians, whose views may be swayed by dreams of elective office. It's important that the people of Maine - in every walk of life - realize what is at stake here.

Just for a starter, it appears that the proposed settlement would accomplish three things:

1. In return for a federal payment of $25 million, the Indians would give up their claim against the first 50,000 acres owned by any single landowner or corporation.

2. If the state will promise to continue to pay $1.7 million a year (as it is currently doing) to the Indians, the Indians would drop their claim on Baxter State Park, 400,000 acres of public lots, 30,000 acres of state parks, and miscellaneous other public lands.

3. If the large landowners will sell 300,000 acres at bargain prices, and give the Indians an option to buy another 200,000 acres at market prices, the Indians would give up their claim to 3.5 million acres.

There are several moral issues involved here. For instance, are the Indians entitled to redress for something that occurred two centuries ago? Are the Maine people liable for wrongs incurred by the Commonwealth of Massachusetts before Maine became a state? Are the landowners who happen to own more than 50,000 acres of disputed land more liable than those who own fewer than 50,000 acres? These are just a few of the moral issues.

Over the next several weeks, there will be considerable rhetoric flowing in legislative chambers, in meeting places all over the state, and in the press. There will be many occasions for you, the reader, to acquaint yourself with the facts (as well as the myths) in the case. You owe it to yourself - and, as a Christian, to the Indians in Maine - to know everything you can about the Indian lands claim, the proposed settlement, and the negotiations that will ensue.

The vital thing is to approach this matter with an open mind. Keep an open mind as you read the hundreds of articles and columns and opinions that are printed in the publications you come across, and as you listen to reports and commentaries on the radio and television. Hopefully, as they become informed in this issue, our Maine priests will speak about it from the pulpit - because, after all, this is a matter that involves Christian justice.

On our part, we hope to provide as much enlightenment in this matter as our limited resources will permit. And we would like to encourage a frank and honest airing of the issue in our letters pages. We fully realize that this may result in letters being published that reveal bias and prejudice, but I feel that this is a risk that we must take. As the Rev. Phil Palmer noted in his letter (Feb. 2) when he discussed racial bigotry, "If indeed some people are still thinking this way, it is important that you (Church World) remind us and also offer a chance to set forth a better way to look at life."

Taken from the
Church World
February 16, 1978

Indian Governor John Stevens and Wayne Newell discussed the Indian lands claim last year at Colby.

Photo by Yvonne Goulet

Review of advantages and disadvantages of Indian land claims proposal

Thinking clearly about the Passamaquoddy and Penobscot Indian land claims case requires not only an open mind and a set of moral principles, it requires some basic information.

Following is an attempt to: 1) offer some basic information about the origin of the claims; 2) describe the proposed settlement offered by the White House Group; 3) present what appears to be the possible advantages and disadvantages of the proposal to the interested parties; and 4) ask some questions concerning the justice of the proposed settlement from the point of view of interested parties.

State officials must decide within 60 days of the presentation of the proposed settlement (it was offered on Feb. 6) whether to: 1) accept the proposed settlement; 2) reject it and continue to negotiate; 3) decide to litigate. Another option is to have Congress retroactively ratify the 1974 treaty in question and thus invalidate the Indians' claims.

As Church World reported last year as a result of an interview with Passamaquoddy representatives John Stevens and Wayne Newell, the following is the basis of the Indians' claims.

A 1794 law specified that all treaties between whites and Indians required Congressional approval. The Maine Indians claim that Congress never approved a treaty allowing the transfer of 12.5 million acres from the Indians to the state of Maine. According to Mr. Newell, the Indians have been seeking the return of the land for 20 years. In 1971, a copy of the treaty in question was discovered and in 1972, the Courts determined that the Indians had a valid claim against the state.

Because Maine has "sovereign immunity," it cannot be sued by the Indians; therefore, the Courts required the Justice Department to sue the state on behalf of the Indians. The Justice Department appealed the decision, but appeals were lost and the Justice Department filed a plan of action last year on behalf of 5 million acres, reserving action on the other 7.5 million acres.

Maine's defense against the plan of action was to be that Congress did ratify the 1794 treaty in question and that if the courts hold otherwise, the liability would be the Federal Government's and not the state of Maine's.

Last year, President Carter appointed William Gunter, a former justice of the Georgia Supreme Court to look into the situation and to propose an out-of-court settlement. The proposed settlement, offered in July included $25 million in federal money, $1.2 million annually from the State of Maine forever, and 100,000 acres of land and the option to buy another 300,000 acres.

That proposal was rejected by the Indians and a White House Work Group, meeting with the representatives of the Indians and headed by Bangor attorney Eliot R. Cutler, came up with the February 6th proposed settlement which was agreed to by the Indians.

The compromise settlement of February 6 covers the following:

1) The federal government will pay $25 million to the Indians;

2) The Indians will drop their claims to private land except to 14 parcels of land belonging to large landowners (those who own more than 50,000 acres).

3) In exchange for the dismissal of the claim against three million acres, the tribes ask that 300,000 acres by conveyed to the Department of Interior as trustees of the tribes, and that long term options be given them to buy an additional 200,000 acres at fair market value. (The tribes are also asking the federal government for an additional $3.5 million to allow them to exercise these options).

4) The state of Maine will continue to pay the Indians $1.7 million annually for the next 15 years.

5) If an agreement is not reached within 60 days from the date of the publication of the proposed settlement, the White House will introduce legislation into Congress for the appropriation of the $25 million.

Various analyses of the proposed settlement have been offered. It has been pointed out that under the proposed settlement responsibility for the settlement belongs to: 1) the federal government, which agrees to pay $25 million to the Indians in exchange for their dropping their claims against those landowners who own less than 50,000 acres, (and a possible additional $3.5 million to insure the possibility of the Indians exercising the option to buy 200,000 acres from the landowners at fair market value, should the large landowners agree; and 2) the large landowners themselves, who would have to give up 300,000 to the Department of Interior for the Indians, and an additional 200,000 if the Indians exercise the option to buy.

Those not taking on any new responsibility under the proposed settlement are the State of Maine, which would merely continue for 15 years paying the Indians what they now pay them annually (as a result of the 1794 treaty now being questioned); 2) The landowners in the areas of the state in question who own less than 50,000 acres; against whom all claims would be dropped.

Now, under the latest proposed settlement, what are the advantages and disadvantages to the parties?

To the large landowners (all pulp and paper companies), there would be the following possible advantages: 1) The Indians would give up the claim to 3.5 million acres of land in their territory; 2) If the companies sell land at less than the market price to the Indians, they will receive tax advantages; and 3) The paper companies could set the price for any wood the Indians would harvest on their newly-acquired land.

To the state, the seeming advantage is great; instead of having to continue paying the Indians indefinitely, the State's monetary responsibility would end after 15 years; 2) The state would also have no claims against 400,000 acres of public lots, 30,000 acres of state parks, and other public lands and 3) All litigation against the property of a large percentage of Maine citizens would be eliminated, and resultant hardships of people overcome.

To the small landowners there is the great advantage of not having to wait for the outcome of litigation which would put into doubt the status of their property for years.

What possible disadvantages are there to the proposed settlements?

For the state, the main disadvantage seems to be that the proposal would create ill feelings in the state, whereas under litigation, there is a possibility that all claims against the state will be extinguished. (This is the attitude of Attorney General Brennan, who is opposed to the settlement and its preparing litigation).

To the big landowners, there is the burden of defending themselves. The Federal Government's $25 million did not cover the Indians' claim to their land. According to White House Group member Culter, "The large companies have resources to defend themselves. The small businessman and landowner does not." He admitted that it was simply a matter of money that sufficient money was not offered to extinguish all land claims.

The disadvantage to Maine people is related to the plight of the paper companies. If the paper companies must curtail operations or leave the state, (as has been intimated) what happens to many Maine jobs?

And finally, is the plan disadvantageous to the Indians themselves, who would be gaining only about 2.5 percent of what they originally sought?

The other possibilities of resolution now appear to be three: the Indians and the State of Maine negotiate another settlement; 2) The case would go to the courts; or 3) Congress could retroactively invalidate the Indians' claims (This was the gist of legislation proposed by U.S. Rep. William Cohen last year).

Henry Gosselin, in his column of February 16, raised the following as moral questions suggested by the case and its proposed settlement:

1) Are the Indians entitled to redress for something that occurred two centuries ago?

2) Are the Maine people liable for wrongs incurred by the Commonwealth of Massachusetts before Maine became a state?

3) Are the landowners who happen to own more than 50,000 acres of disputed land more liable than those who own fewer than 50,000 acres?

Other questions about the case and proposed settlement are:

4) Is it just for the federal government to "buy off" the suit against the small landowners but not against the large landowners?

5) Is it just for the state to take the stand that the Indians' claims are non-negotiable? (and its corallary);

6) Is it fair for the state to proceed with litigation when so many innocent people (small landowners) could be hurt by a long term court proceeding?

7) Is the settlement fair to the Indians, if indeed they have a right to Maine Land? Are they being taken advantage of by an agreement to only 2.5 per cent of what they originally claimed?

8) Is the settlement fair to the Maine people who are employed by the paper companies and whose jobs might be in jeopardy?

9) Would it be just for Congress retroactively to ratify the Treaty of 1794 and thus extinguish all Indian claims?

10) Was President Carter's statement about the case at the recent news conference a demonstration of moral leadership: "I don't have any preference about it. I don't have any personal interest in it, as you know."

And what about the larger moral picture: Do we apply to Maine the same kinds of principles of social justice that we apply to blacks in South Africa? Are there any answers provided by the Church's teaching on social justice in the last 100 years? Can liberation theology help us, that theory of the coming to self respect and self determination of oppressed people throughout the world?

And what of the Church? As Bro. Larry Smith, S.J., has pointed out, the Church has been a strong support to the Indians throughout the history of the Church in Maine. What is the proper role of the Church, if any, in the current situation?

William Gunter called the Maine Indian Land Claims case, "the toughest I've ever dealt with." From the thorny moral, legal, and social problems it entails, that seems an understatement.

Taken From The
Church World
March 9, 1978

Says Maine's action on Indian claims is contrary to principles of fairness

Following is an analysis of the Maine Indian land claims issue made by Norman Croteau, a Portland attorney.

"State Asks U.S. Pay Off Indians." So read a front-page headline in the Portland Press Herald on May 23, 1978. Governor Longley and Attorney General Joseph Brennan have recently appealed to the Maine congressional delegation to sponsor national legislation which would immediately extinguish the Passamaquoddy and Penobscot Indian claims to land and for damages against any person in Maine and against the state itself. As a result, the Maine Indians would only be allowed to sue the federal government and only for monetary damages. Such a proposal deserves serious comment.

In lobbying for his proposal, Governor Longley has continually raised the banner of "fairness" as justification for such action, his proposal being, in his opinion, "the fairest and wisest approach for resolving the claims for all the innocent people of Maine..." The state's concept of "fairness" is somewhat narrow in scope, and, when compared to the proposal and recommendations made by President Carter's task force, the proposal submitted by Governor Longley and Attorney General Brennan seems shallow and unconscionable. A brief comparison of the Carter and the Longley-Brennan proposals is warranted, but, before continuing with such a discussion one preliminary issue must be addressed.

Governor Longley's more recent statements concerning the Indian land claims case have been extremely political in character and could easily create, either intentionally or unintentionally, an atmosphere of hostility vis-a-vis our Maine Indian community. I refer specifically to Governor Longley's public comments regarding the constitutionality of that portion of the Carter proposal which recommends that the 14 largest landowners sell 300,000 acres of land at $5 per acre to the tribes and give them an option to purchase additional land at market value at a later time. In challenging the constitutional validity of this provision, Governor Longley publicly likened the Carter plan to large takeovers of land under Communist rule in the Soviet Union and China.

To begin with, such a provision in the Carter plan is merely a recommendation and would not necessarily be forced upon the state or the large landowners. Neither party would be compelled to accept these recommendations but could continue negotiations or begin litigation, if necessary. Even if this particular recommendation were mandatory, however, the Governor's analogy of the Soviet Union and China would still be totally inappropriate and inaccurate. Such a statement merely attempts to transform the Indian land claims case into a political issue where emotionalism overrides any rational approach to the obviously difficult task of compromise and negotiation.

Even if the provision referring to the 14 large landowners was considered mandatory, it is not clear that such a proposal would be unconstitutional per se or would be an infringement on the constitutional right to private property. The United States Supreme Court, although recognizing the right to property as a "fundamental" constitutional right, has ruled on innumerable occasions throughout our history that, under a due process or equal protection analysis, legislation may indeed interfere with an individual's property rights if there exists a "compelling state interest" for such legislation.

Whether such a "compelling state interest" would be found to exist in this particular case is not the focus of this discussion. The point is simply that such a concept does exist in constitutional law and that Governor Longley's statement labelling any such interference with private property rights as "Communist" in nature is a misleading and unfounded appeal to public emotion especially in view of the fact that this portion of the Carter proposal is merely a recommendation and not an ultimatum.

With the constitutionality of the Carter proposal framed in the proper perspective, perhaps a brief comparison of the Carter and the Longley-Brennan proposals is now in order, an analysis which, I believe, will raise serious questions as to whether the Longley-Brennan proposal is indeed the "fairest and wisest" approach to the Indian land claims.

As a major reason for their position, Governor Longley and Attorney General Brennan argue that their proposal is necessary to assure that the title to land purchased by "innocent people" will not be clouded by the "mere existence of these claims." (Portland Press Herald, May 23, 1978). It should be noted, however, that under the Carter proposal this problem would be immediately resolved for the 330,000 small landowners involved. The Carter plan would extinguish all claims against these small landowners in exchange for payment of $25 million by the federal government to the Passamaquoddy and the Penobscot tribes. As a result, title to the land owned by the small landowners would remain free and clear and the federal government, not the state, would assume the financial burden of his part of the settlement.

The next portion of the Carter plan pertains to the state and the 14 largest private landowners affected by these claims. The recommendation made by President Carter in regards to the larger landowners has been termed grossly unfair by these landowners and the state, but, as we previously noted, that recommendation is not mandatory and does leave the larger landowners with at least some alternatives. If the recommendation remains unacceptable to them, they still have the option of continuing negotiations or of ultimately seeking a judicial resolution of the case. The Longley-Brennan proposal, however, strips the Indians of any alternatives whatsoever in regards to their claims to land. It simply nullifies all of their claims to land in one swift blow and makes no provision for continued negotiation or for an adjudication of these particular claims. I am not suggesting that the larger landowners be "sacrificed" for the sake of other interested parties in the case. I am simply trying to put the Carter proposal in perspective in regards to those people, both Indian and non-Indian, most affected by the Passamaquoddy and Penobscot claims.

Looking to the state itself, the Carter proposal recommends that the state pay the Indian tribes $25 million over the next 15 years in exchange for the tribes' agreement to drop their claims against state public lands. If it finds this recommendation unacceptable, the state still has the option to continue negotiations or to have the land claims resolved in a court of law. Assuming that the state does seek judicial revue, the title to any land owned by private landowners, large or small, will not be in question since the claims against the state deal solely with public lands.

Interestingly enough, a judicial resolution of the land claims against the state would be far more appropriate given the Attorney General's recent statement that "it would be wrong for the state of Maine to give in to the pressures of the litigation and to give state lands or monies to the Tribes to settle these suits. I believe the legal issues should be settled in a court of law." (Church World, March 2, 1978). In the same article, Attorney General Brennan expressed his confidence in the state's case and his belief that "the outcome of the case seems abundantly

clear." In light of these remarks, the Longley-Brennan proposal to shift the burden of the litigation that Attorney General Brennan speaks of from the state to the federal government seems indeed puzzling and contradictory.

Aside from basic fairness, the Longley-Brennan proposal also appears to falter substantially if examined from the viewpoint that the governor considers this the "wisest" approach to the problem at hand. Although Governor Longley's and Attorney General Brennan's primary interest is to lift the cloud over the title of property owned by Maine landowners, their proposal could in fact lead to ever cloudier skies for a far longer time than would be apparent under the Carter proposal. If the state's proposal were enacted, it would be apparent under the Carter proposal. If the state's proposal were enacted, it would surely be challenged on constitutional grounds. Since the resolution of this constitutional issue would most probably take considerable time, most landowners in the claimed area would possibly find themselves in a far more precarious position than they would have been had the Carter proposal been adopted.

If the Longley-Brennan proposal was deemed unconstitutional and the Carter proposal was not implemented, the Passamaquoddy and the Penobscot tribes would be left with few alternatives and would probably be forced to sue the state and all the landowners involved, a situation the tribes have been trying to avoid since these land claims came to light. The small private landowners would then be faced with the possibility of losing their land, a situation that would be completely avoided under the Carter plan. To those who argue that the Carter proposal in an attempt to "sacrifice" the larger landowners for the sake of the other parties involved, it should also be evident that the state's refusal to accept the Carter plan could conceivably be viewed as its attempt to "sacrifice" the immediate interests of the small landowners for the benefit of the state and the larger landowners. Although I am not suggesting that the state is in fact dealing with the land claims in this manner, I do believe that the interests of the small landowners should not be inappropriately used as a political or psychological shield to obscure the real issues involved. If "fairness" is to be the state's rationale, the state must address itself to the interests of all the Indian and non-Indian parties involved in these claims.

In light of the Longley-Brennan proposal to the Maine congressional delegation, it seems quite obvious that the state continues to be extremely cavalier in regards to the members of our Maine Indian community. The state proposes to completely extinguish any Indian claims to land without benefit of judicial revue and then has the audacity to suggest that such a proposal should not be "looked upon as termination of our dialogue." (Portland Press Herald, May 23, 1978). One would be hard put to find a better example of "gunboat diplomacy."

According to the Attorney General, this proposal was made at this time because of the "slow progress" made in the negotiations. I suggest that perhaps one reason for the alleged "slow progress" is Governor Longley's recent decision to no longer participate in the negotiations until some of his questions are definitely answered. Perhaps these negotiations would be somewhat more fruitful if our governor displayed as much interest in negotiating a settlement as he does in having the federal government randomly extinguish all Indian claims to land. To simply refuse to participate in negotiations until certain demands are met may be effective from a dramatic, political viewpoint, but such behavior does little to enhance the state's credibility or to contribute to the negotiation process.

In conclusion, the ultimate question here is not whether Governor Longley and Attorney General Brennan or I agree as to the substantive merits of the Indian land claims case, there being valid, legal and equitable arguments on both sides of the issue. The crucial point at this time is that our state and our congres-

sional delegation are attempting to arbitrarily deny the Passamaquoddy and the Penobscot tribes their right to a judicial or negotiated resolution of their land claims, a legal right which they clearly established in court. Even if we assume that such legislation could be enacted constitutionally, its moral overtones are certainly questionable.

I must speak candidly and bluntly. The state of Maine's action in promoting such legislation is offensive to the principles of fairness and justice embodied in the United States Constitution. Since Governor Longley and Attorney General Brennan have directly proposed and endorsed such legislation, I strongly urge them to reconsider the long-range effects of this action on our basic constitutional values. To even ask that such a bill be introduced is simply embarrassing to all of us as citizens of Maine and does little to compliment the political integrity of its proponents. Perhaps the Carter plan itself will not ultimately be the best solution that can be found to this complex and often emotional issue. However, when compared with the Longley-Brennan proposal, it certainly emerges as the approach which is far more cognizant of what fairness and wisdom mean in regards to the interests of all the Indian and non-Indian parties involved.

Taken From The
Church World
June 8, 1978

Indian land claim: 'potential powder keg'

Following is an analysis of the Indian land claim issue as recently expressed by Richard J. Carey of Waterville. Other views are invited.

The Indian land claim is potential powder keg. Let's play with a full deck.

The major treaty in question is the Non-Intercourse Act of 1790. The Attorney General claims this applied mainly to western tribes in America. Let's face it, there were 13 states in the Union in 1790, the 13 original colonies. These obviously were not western states as the Louisiana Purchase did not occur until 1803. The Non-Intercourse act specifically mentions states.

Then there is the 1818 Treaty of Bangor between the commonwealth of Massachusetts and the Indians. The Indians were given four townships in Massachusetts which are in Maine now, including the town of Millinocket. When Congress accepted Maine as a state it accepted the 1818 Treaty.

When Maine became the 23rd state in 1820, the only non-Eastern states were Indiana, Illinois and Ohio: hardly considered Western states. So I consider the A.G.'s interpretation as a fallacy.

In 1833, 15 years after the Treaty of Bangor, the State of Maine bought back the land of the four townships. A small handful of Indians made the sale for promises of housing. The Indian land agent at that time did not know about the transaction until after the fact and the vast majority of the Tribal Indians had no prior knowledge. It seems curious that Judge Gunter arrived at the figure of 100,000 acres to be returned to the tribes, coincidentally the area the four townships comprised approximately 96,000 acres.

If this is how the figure was arrived at, then it was the state that deprived the Indians of the land and there was no effort to achieve ratification in Congress.

We must face reality - we must negotiate in good faith. What if the Indians do get the land? - do win the case? We must address these questions. Will there be a guarantee that the wood on these lands would be available either for the industrial expansion of the Indians or of private interests? Will it be available to our paper industry? Will the land be all public lots, or paper company land, or land owned by those with title to over 50,000 acres? What price will be paid? What use would be made of the land if the Indians acquire it? Will it be a staggering blow to the paper companies or will the Indians cooperate?

Last February, after the report from White House Task Force was published, I sent a letter to the Governor asking him to set up a special panel of distinguished retired Maine judges. Their combined experience and expertise could have presented to the Attorney General and the Governor a respected an apolitical opinion. But the Governor adamantly stated that the Indians have no claim to either Maine land or money and denied the need for such a panel.

I cannot stress enough the need for thoughtful negotiation. Every person who has studied the problem seems to disagree with the stand taken by Governor Longley and the Attorney General.

The present hard-nosed stand taken by Maine's executive branch is somewhat frightening. The people of Maine are bucking not only the Passamaquoddies and the Penobscots, but their affective legal council, the U.S. Dept. of the Interior and the President as well. The new plan presented by the Governor asking that the suit be settled by the U.S. Court of Appeals fell on deaf ears in our nation's Capital. He wants a settlement of money but refuses to budge on the land issue. This type of settlement would adversely affect the U.S. on a national level. The federal government could lose much more money than the present force on the Indians claim process. And what if the land owners refuse to sell their land if the Indians get a monetary settlement?

Taken From The
Church World
June 8, 1978

Some of the Indian lands were fraudulently acquired, Indian historian says

In all the publicity attending the Maine Indian Land Case as it has progressed through the last few years as item has been largely overlooked, an item though seemingly small in the overall picture, sticks out as one of the biggest land frauds in the history of the State when one examines thoroughly the documents relating to it.

The item I refer to is the supposed sale of the so-called Four Townships, owned by the Penobscot Tribe, to the State in 1833.

The legal minds on both sides of the Indian Land Case can come up with all sorts of arguments and counter-arguments as to whether the Indian Land sales between 1790 and 1820 were or were not violations of the 1790 Federal and Non-Intercourse Act, but a fair-minded examination of the records concerning the sale of the Four Townships of land reserved to the Penobscots in the Treaty of 1818 will leave the researcher astounded if not sickened by the casual violation of both State and Federal law, by the Commissioner appointed by the State and by their complete disregard of common decency, morality and ethics.

Indians retained Townships

The Treaty of 1818, also known as the Treaty of Bangor, was signed by the Chiefs, Captains, and Chief men of the Tribe on the one hand and the Commissioners appointed by the Commonwealth of Massachusetts on the other, at the old Penobscot County Court House in Bangor, Maine on June 29, 1818.

In that treaty the Tribe gave up all claims to lands in the State of Maine except the islands in the Penobscot River above Old Town, two acres of land in Brewer and four townships of land each six miles square, whose locations are described in the treaty and which are to be surveyed and laid out as soon as possible. This was eventually done but not without some prodding from the Tribe since we find that the Resolve passed in 1826 to re-survey the two lower townships did not occur until the Legislature was directly petitioned by the tribal officials.

During the 15 years the Tribe held the Townships they derived a considerable income from them. The Agent could, under the law, lease cutting rights to persons or companies who wished to cut on Indian land, the income from which was set up in a trust fund for the Tribe. The Agent however, was not long in finding out that much of his time was being spent in trying to keep out lumbermen cutting illegally, or in Court trying to get those who had already cut and sold illegally, to pay up.

State pressures Tribe

Soon the Agent had another problem to contend with. Squatters began to move in and build camps and houses and sometimes only the presence of the Sheriff with the Agent was sufficient to remove these later comers.

Finally in the middle 1820's the State officials began to pressure the Tribe to sell their two lower Townships where most of the trouble was occurring. The tribe consistently refused to sell and there the situation rested, until an unfortunate chain of circumstances conspired to change the whole picture and in time to change the whole course of Penobscot Tribe history.

Tribal disruption

In 1816 John Attean had been elected Governor or Chief of the Tribe and John Neptune Lieutenant Governor. Both were chosen for life in accord with the law of that time. The Chiefship had been semihereditary for several generations although it did not necessarily descend to the sons of the former Chief. The office of Chief was elective but the new Chief had to be related in some way to the old. Over the years since 1816 a number of differences had arisen between Attean and Neptune, some of them personal rather than of a political nature.

The rift grew and eventually divided the Tribe into two political factions.

In time (some time after sale of the Four Townships) Attean and Neptune again became friends and put aside their other disagreements but the opposition party who had originally sided with Attean now felt that he was no better than Neptune and decided that they both should be thrown out of office.

The final rupture of the Tribe into the Old Party (favoring the Old Governor & Lt. Governor) and the New Party (who wished to choose new leaders) did not occur until the summer of 1838 but the party factionism and political unrest in the Tribe, an unrest that had risen to such heights as to prompt John Neptune to completely vacate the reservation early in 1832, was sufficient for the State to take advantage of it and try again to purchase the Four Townships of Penobscot land that certain State officials had long viewed with covetous eyes.

False report filed

In 1832 the State Legislature passed a Resolve (Chapter III of the Resolves of 1832) authorizing the Governor and Council to appoint two "commissioners who are empowered on behalf of the State to purchase from the Penobscots such of their lands as they may be disposed of payment as may be agreed upon." The two commissioners appointed were Amos M. Roberts of Bangor and Thomas Bartlett of Orono.

Most of the maneuverings described in the various accounts however apparently are the work of one Stephen Lovejoy of Old Town, who does not seem to rate very high in Indian Agent Mark Trafton's opinion.

The report of the sale made to the Governor and Council of Maine by the Commissioners is a model description of how land transactions with Indian peoples should be carried out. They speak of their proposition of sale being "cordially received," of the Tribe "convening their Council and Chiefs, consisting of members of both parties," of "having public deliberations on the matter - for several weeks," of "frequent interviews with us by delegates appointed by their convention and receiving from us a full explanation of the subject."

This report filed with the Governor and Council is exactly opposite to the facts as presented by the reports and affadavits of Mark Trafton, the Indian Agent and the Penobscots themselves.

Apparently on June 10, 1833, Tribal Governor John Attean and some others signed a deed purporting to sell the Four Townships to the State. According to Trafton and the Indians' report Stephen Lovejoy had been on the Island for about a week previous to this trying to get the Indians to sell their lands. What Lovejoy was doing there instead of the Commissioners is unknown. According to later reports by most Tribal members no one was aware the Commissioners had any intention of purchasing Indian land.

Lovejoy promises new homes

After a while, by some means, Lovejoy prevailed upon the Governor and several others to meet him and Bartlett on the day following at the Indian School at a set time to sign a paper. For doing this Lovejoy promised them all that the State would build them new houses. He cautioned them not to mention this to anyone else.

At the hour appointed they met at the school but two or three men standing near the schoolhouse saw them go in with Bartlett and Lovejoy and resolved to go in and see what was going on. When they arrived and found the question was the sale of the Townships these two or three opposed it with vigor.

The Governor then seeing how things were going, requested that the signing be put off until the next day but Lovejoy refused and urged them to sign, promising that next day the Commissioners would return with a legal document that would secure them in their rights. Some of those present then signed the deed after which Bartlett and Lovejoy left and had still not come back when the Indians finally told Indian Agent Mark Trafton of the above described events some two days later.

Tribal meeting called

A general meeting of the Tribe was called on the 13th of June and a messenger was sent to get the Agent who was in Bangor. He agreed to meet with them and did so on the 14th of June. On learning the truth of what had happened and the strong opposition of the whole Tribe to the sale of any of their lands, even the Governor and those others who had signed, "appeared to be sorry," and "all requested me to write to the Governor of the State not to take away their lands without the consent of the Tribe." So reported Mark Trafton the Indian Agent.

In addition to the charges of Bribery and corruption levelled at the Commissioner by Trafton should also be added that of forgery. It is plain that at least one man's name was signed to the document without either his knowledge or consent, that of Captain Peol Sockies.

John Neptune did not sign either for he had been gone for over a year. Peol Molley signed for him claiming to have been given authority to do so, but that claim was later denied. Joseph Poris' (Polis) name is also affixed, signed by a mark. Why should Polis sign by mark when only a few days later he signed a petition protesting the whole business in how own hand?

Although Trafton sent his report accompanied by the affadavits of the Indians and sent them directly to the Governor by the hands of Joe Sockabason and Peal Mitchell, who as he says in a letter to the Governor of Maine dated June 18th, 1833 can give a good explanation of what went on and answer any questions. It would seem that Governor Smith did nothing.

When Trafton's four year term as Agent was up in 1836 a certain Joseph Kelsey was appointed to succeed him. Kelsey was the man who was chosen by the State to survey and lot the Townships in 1834. In 1835 the second conveyance of land on the Townships to an individual by the State was for a tract of 2,881 acres which was bought by Amos Roberts, Samuel Smith and Edward Smith. (Note the first two names). This was in February 1835. In April of the same year Roberts bought 8,467 acres more. The entire cost of the two sales was about $1.00 per acre. Between this time and 1838 when an investigation of the whole affair was made by the legislature the State Land Agent had issued 66 deeds to land on one or another of the Four Townships.

Investigation dropped

The next reference found to the matter is the Legislative Investigation of 1838. In their papers we find where Governor Kent submitted copies of the documents as requested. It is among these copies that we find the only surviving text of the Four Townships Deed. What this committee of the Legislature discovered we do not know but they quickly dropped it.

On March 22, 1838, the committee reported to the House and Senate that they wished to be "relieved from any further consideration of the subject." The report was read and accepted without comment in both Houses. From there on the record tells us nothing, except as I said in the beginning, in the summer following a joint tribal meeting to impeach Attean and Neptune and choose new leaders was held.

It was destined to be the last time that such a convention was to be held between the three Federated Tribes, Malaseet, Passamaquoddy and Penobscot. The old leaders refused to step down and the new leaders elected at that time (August 31, 1838) attempted to assume authority resulting in a political confusion that was to last for the next three decades. In such a state of confusion in the Tribal Government, lasting for such a long period, (a whole generation) it was fairly easy for the State officials to cover up their part in the affair.

Deed lost or destroyed

The deed to the Four Townships has been lost or destroyed and has never been recorded. The State Officials who figured prominently in the affair later as purchasers of land on the townships or in the possession of more lucrative State jobs.

I believe the two deeds to Roberts and his Associates however, viewed against the background of the Trafton Report and the Affadavits of the Tribal Members submitted with it, as well as the curiously worded report of the Joint Select Committee on Indian Affairs submitted March 22, 1838, throws a flood of light on the whole dirty business.

An odd circumstance

With the material presently available we can prove nothing against those men of course, but isn't it an odd circumstance that one of the Commissioners appointed to buy the Indian lands should be almost the first to purchase part of those lands from the State, along with a certain Samuel Smith. Whether this is the same Samuel Smith who was Maine's Governor in 1831-32-33 I have been unable to determine. Isn't it also very strange that Joseph Kelsey the surveyor who lotted No. 1 Indian Purchase for the State should be appointed Indian Agent in 1836 to replace Mark Trafton? In addition to this the Copy of the survey of the Two Upper Townships returned to the State Land Office show at least a quarter of the lots in Township 3 were marked Smith as well as several in No. 4. Whether this is the same Smith who was Governor I don't know but it looks somewhat odd considered against other known facts.

I think with this information at hand it isn't too hard to figure out why Lovejoy, Roberts and Bartlett showed such arrogance and contempt to Trafton and his Penobscot friends. It isn't too hard either to see why their Prayers and Petitions encountered blind eyes and deaf ears when they reached Samuel Smith, Governor of Maine.

To the above account I have an interesting Postscript to add, taken from Louis C. Hatch's History of Maine (1919) Vol. I Page 197 in giving a short account of Gov. Smith's life, a postscript that fits ideally with what we have learned: "Judge Smith was an able lawyer, industrious, well supplied with this world's goods, and said to be very diligent in acquiring them."

One more item needs to be added also from Hatch's history; and that being that Smith was an "Ardent Supporter" of President Andrew Jackson's Indian Removal Policy.

Copy of deed located

I wish also to add that in addition to not being recorded, the Original of the Four Townships Deed has apparently been lost. After a diligent search of material in Maine State Archives including quite a bit of help by the people working there, we have been unable to find the Original Deed.

However, some time after our search a copy was located. The copy was found in a collection of papers from the various past legislatures known as the "Legislative Graveyard." Much of this material hasn't yet been sorted and indexed. All this material in relation to the Four Townships in the form of copies had been presented to the Legislature by Governor Edward Kent in response to a legislative order for an investigation into the matter.

The copy of the deed shows one defect that quite likely prevented its being recorded. It shows no evidence of ever being acknowledged before a Justice of the Peace or Notary Public as required by Law.

The plain record of what took place during the transaction combined with a legally defective deed that has been lost and never recorded gives the State and all who derive title from her a very shadowy claim at best to land on the Four Townships.

Taken From The
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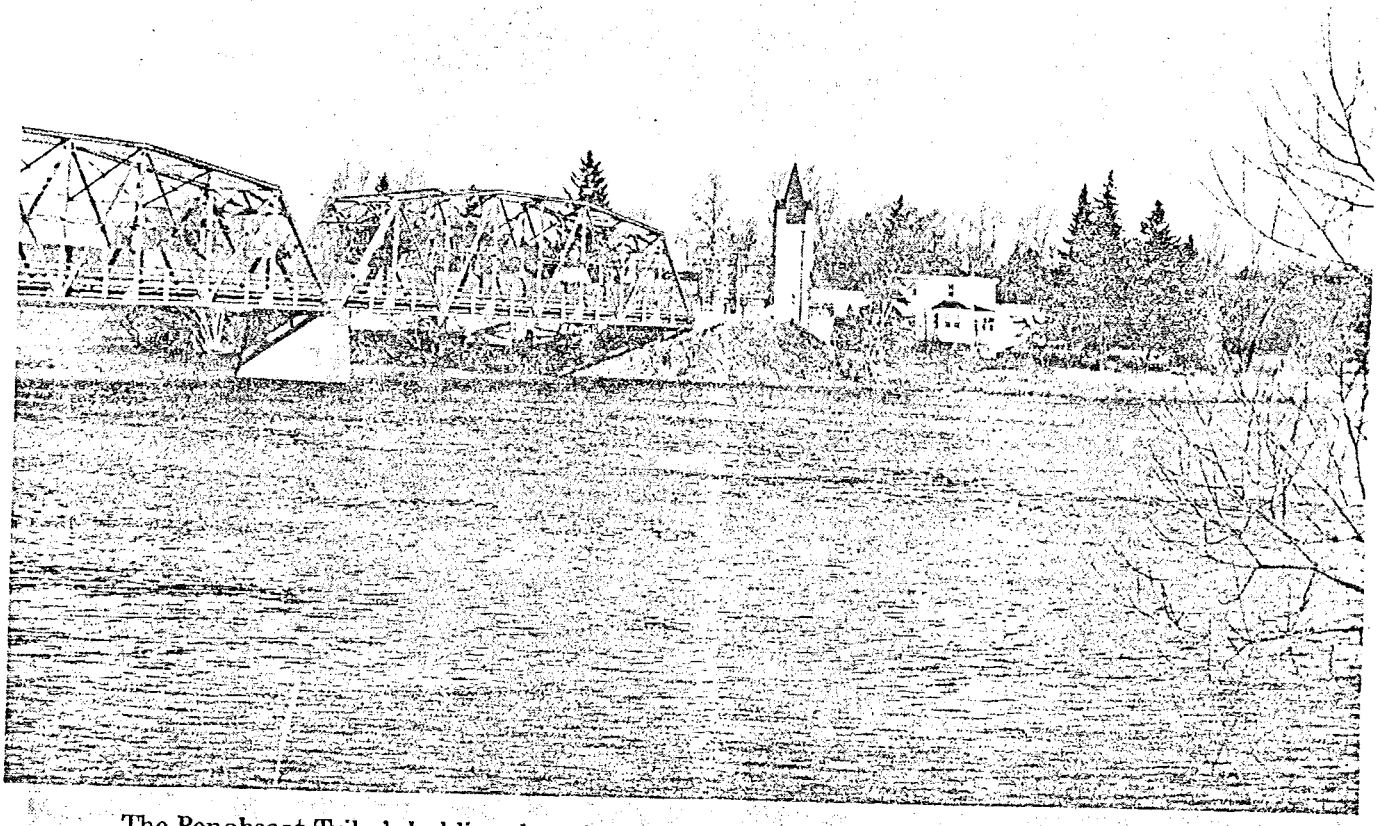
March 23, 1978



The Penobscot Tribe's holdings have been reduced to Indian Island (above) at Old Town, and a few other islands along the Penobscot River.

Photos by Henry Gosselin

This is part of Four Townships — land which was owned by the Penobscot Tribe until 1833. Mt. Katahdin and Baxter State Park are in the background.

Indian land claims: the morality of our political leadership is being tested

I have been very saddened by the political statements on the Indian Land Claims issue. Have you? You know, when moral issues are at stake, politicians seem to go to great lengths to justify their positions. It's one of the little things that help me see the hand of God in the affairs of State. Men perceive themselves to be moral creatures but are persuaded to use temporal logic to justify moral posture. A case in point in Richard Nixon's tendency to hold his moral ground with statements like, "I made mistakes, to be sure, but the mistakes I made were errors of omission rather than intentional deceptions." It seems more important to him to hold up his moral image than to seek a change of mind set which will produce real morality rather than pseudo morality.

Never have we had a clearer example of temporal morality than on the Indian Land Claims case. The morality of our political leadership is being tested, and the struggle that I see between conscience and cold legal logic gives me assurance that God is still at work.

But the time has come when a space must be called a spade. My heart sinks everytime I read a political position on the Indian Claims issue. I find myself reluctantly compelled to offer this rebuttal to the published positions of Atty. Gen. Joseph Brennan and Gov. James Longley.

Let me begin by stating that we may be expecting too much from our politicians on this issue. Asking a politician how he feels about losing two-thirds of the State of Maine in a lawsuit seems to me to be something akin to asking Mrs. Lincoln how she liked the play! While a few of us idealists may admire a political candidate who comes out four-square in favor of justice and equality at all costs, we have to be open to the fact that it may not in this case add up to winning elections. As a former candidate, I'll concede that much.

What I won't concede, however, is justifying a politically expedient position on a moral issue with long, quasi-legal briefs in the public press. It's almost as though the gentlemen in question know deep down inside that their positions defy sanction but are looking to us the readers for absolution. I resent being placed in that position, and for that reason, I have chosen to deal with both Brennan's and Longley's theses on a moral plane.

Attorney General's position

I would gather that the Attorney General is offering the "official State position" in the case. At the very least, he is the top legal officer and has the duty to represent the State legally on the matter. In fact, it seems to me that it is his duty to do nothing else! He is the defending attorney. Why, then, must we be subjected to his "moral" opinion? Joe Brennan states that Maine owes no "moral debt" to the Indians. Does that mean that we the citizens of Maine have been morally absolved by an appointed official? Are we not still accountable to a higher authority? What an incredibly brazen position to take!

Even "moral responsibility" in the political sense of the word is not clearly defined. Have we not consistently paid conscience money to Indians for what we did to them? Is that not a continuing acknowledgement of an "official" moral obligation? Does the Attorney General then consider such monies to have been adequate compensation for loss of dignity and national heritage?

Mr. Brennan makes a point that to accept moral responsibility in this matter would be setting a precedent for other matters of which there would be no end. Surely, he was forgetting the untold billions spent on forced de-segregation,

women's rights, the Job Corp, bussing and on and on. Surely he was forgetting Israel's "moral" claim to its lost territories and the billions we have literally given them to secure those rights. Surely, he forgets our insistence on the return of black Africa to its natives. The list goes on and on. I make a case, not for giving Maine back to the Indians, but for recognition of equity.

The Attorney General satisfies himself that Indians have no special attachment to the land because they no longer ride freely and forage for food. Does that mean that we have, after 200 years, finally accomplished our objective? Is this a premise on which our case now rests? For the sake of the innocent landowners, let's hope not!

Is there a contradiction in logic here? I think so. If one places himself at the mercy of the court, as Mr. Brennan appears to have done, he may defend a moral position on legal grounds, but he cannot defend a legal position on moral grounds. To say that the State has no legal obligation is a matter for judicial determination. To say that the State has no moral obligation is to invite the obvious question, "Who is the State?" Once we see that the State is you and I, the moral obligation to "love one's neighbor as one's self" becomes a personal matter and a matter for Divine adjudication. No one can relieve us of accountability.

Before we go on, I think it is vital at this juncture to point out that until a few weeks ago, neither the Attorney General nor the Governor had talked with the Indians for a year. It seems to me that as the defendant, the initiative to begin a dialogue was on the part of the State. Instead, the State, in its "official" capacity, has taken to yelling over the fence for the past year without searching for a reasonable point of dialogue on the broader issues.

Gov. Longley's position

Finally, a blurb that should never have been written - Gov. Longley's position on the issue. It's tragic and was totally unnecessary. I voted for Gov. Longley, have been a supporter of his and admire him for his courage in standing up against a spendthrift legislature. But his lack of sensitivity and compassion for anyone who opposes him is a sad thing to watch.

We own a debt to Gov. Longley for instilling us with the courage to believe in ourselves once again. But I can't help but feel that he was the one person who could have avoided this entire mess. I wouldn't suggest for one minute that he should have given away the store. But this "tough guy" posture has gotten us deeper and deeper into the muck on this issue to the extent that we may never find a way out.

Even lately, the Governor agreed to sit down with the "other side" and negotiate the issue, but he blocked the way with a red herring he calls "nation within a nation." The Indians went home and the Governor washed his hands of the entire matter. What an injustice to all the people of Maine!

The State of Maine may well be on solid legal ground. It doesn't really matter because either way a lot of people are going to be hurt and the real issues may never be resolved before this is over. A lot of people have already been hurt over the past 200 years. Gov. Longley would not have us pay for wrongs dating back 150 years. How about 100 years? How about 50 years? How about five years? The point is that there are times in history when we bite the bullet and redress wrongs when not legally obligated to do so. A recent example is the Nuremburg trials.

The one issue on which all respondents seem to agree is that Indians have been morally wronged. Gov. Longley's suggestion that "success depends on hard work" strikes me as a racial slur. When he states that "we fought years to integrate our society" he forgets that for Indians this meant assimilation. And what angers us now is that they didn't capitulate.

Moral wrongs still going on

I suggest that these "moral wrongs" don't go back 150 or 200 years. They're still going on! Taking land away from a once-proud people was a legal affront. Keeping them within defined boundaries by making it unfeasible either socially or economically to move out was and still is a moral affront. Has it occurred to anyone that the only sense on national heritage or pride left for an Indian is within these boundaries, however undesirable they may be? We speak and sing with great pride of our country, forgetting that its original inhabitants are still imprisoned. We say they are free to come out, but we dole out just enough welfare to keep them in. And come out to what? A new nation dedicated to liberty and justice that refuses to say, "I'm sorry" with anything more than a few bucks? We have reduced a once proud people to the ultimate welfare state and taunt them with accusations of laziness. That didn't happen 150 or 200 years ago; that happened yesterday and the day before.

Somehow, I am plagued with the notion, or the hope, that the Indians are making a last ditch effort for some dignity and sense of national pride. Somehow, I can't help but think that money or land has never really been as important as we are led to believe from either side. Money is usually what it comes down to when all else has failed. I think reparations are in order, but something else is more important - the willingness to listen. And our leadership has been doing a lot of hollering and very little listening.

Our game is money and power. The Indian nations are finally learning to play that game. For that I am sorry because the sensitivity that has been so much a part of the national heritage and which we learned so quickly to turn to our own advantage, will give way to the corruption of morals and lack of a sense of social justice that keeps us even today from working out our problems together for the benefit of all our people.

I happen to believe that a settlement of this issue is well within our reach if we accept our own culpability. If we fail to settle the larger issue - the issue of human dignity - we have settled nothing, and all the land and all the money in the world won't release us from our moral debt. "Come now, let us reason together..." seems a good starting point for the citizens of the State of Maine. Once we have reasoned with each other, we will be ready to reason with our Indian brothers and sisters. Whether they accept our reasoning is of no importance. The process of moral cleansing has been begun.

The jury is still out. It's not too late!

Taken From The
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June 1, 1978

One man's sojourn with the Indians

Several students have requested that I write something about Indians. Two are grammar school students and the others attend high school. I don't intend to get into the Indian controversy - although I have been keeping up with it - but there is something I would like to say about the traditional teachings of the Indians as a prerequisite to our own spirituality in this country. The land claims issue is too complicated for me to get into and this isn't what my young questioners were asking of me. (The CW is covering that subject very well.)

I was impressed with some observations made by a minister who had spent some time with the Navajo people. Touching another culture, sojourning in another land so to speak, made it a spiritual journey for him. He felt that we had lost something in the suppression and denial of what he referred to as "Amerindian" traditional teachings.

He said that all the time he was among the Navajo people, he felt embarrassed and even ashamed of his Christian connections, for he felt that there had been a policy of collaboration among institutions to root out the traditional beliefs and practices of the Indian people. He told of how medicine men had been sought out first, killed or disgraced, or sent into exile because they were the keepers of religious secrets and rituals of the people. He learned how the children had been forcibly separated from their parents and clans and shipped out to Christian boarding schools. At this point he said he was ashamed of the acts of "Christianity" as indoctrination began and an effort to destroy a native tongue took place. He was shocked as he listened to tales of missionary injustices who looked at the feats of medicine men and said they were works of Satan. They ignored the fact that what the medicine man did, worked.

Salvation became a regurgitation of the creeds. This minister felt that the Indians and their beliefs should have been left alone. That Christianity should have allowed itself to feel the influence and understanding of what this religious culture had to offer. Among the Navajo people there seemed to be little interest in mimicking our "technological paradise" with the exception of four-wheel drive and pick-up trucks that carry wood, and used for traverstion on roads. The most important evidence to the clergyman, of the spiritual vitality and incredible power of the Indian tradition, was the fact that the Indians survived. To him this was a singular and significant moral victory. To have survived successive waves of our military, our missionaries, our educators, and our anthropoligists was a ringing testimony to the hidden power of their symbolism, their vision, their dreams and their use of language.

Shifting Mental Gears

When Rev. H.M. arrived in the Navajo nation and established his relation with the medicine man, he said he knew he had to shift mental gears, the mental gears of his Western, rational, logic-loving mind. He now had to look at the reality of another world, had to find a way of sitting on his stereotypes so that they wouldn't spoil the picture he was seeing. Although, he admits, he didn't know how to do it exactly, he needed to let the silence and the solitude of the vast expanses of space illumine the narrow niches and tunnelled vision of his "Programmed mind" so that he could see with a native eye.

The limitations of his training imprisoned him in the pigeon holes of his own conceptions. "You know what I mean, don't you?" he asked. "Most of us are afflicted with an inordinate desire for intellectual control, no emotion unnamed or untamed, no feeling not confined and cribbed in, no ideas not categorized and classified in terms of our structure of knowledge."

He admitted to himself that there was no way he could learn the Navajo tradition or experience the strange archetypal rumblings of their rituals without sacrificing his "precious" pattern of seeing the world.

"I came to appreciate the warning that people not only have different customs or beliefs in different gods; it's rather that the worlds of different people have different shapes. The very metaphysical presuppositions differ. Man is not differentiated from life or non-life, from death, as it is in our world."

Other things Rev. M. discovered was that in the Navajo world space does not conform to Euclidian geometry, time does not form a continuous undirectional flow and causation does not fit Aristotelian logic.

Anglos speak too easily and glibly about the Indian. How can anyone, when there are supposed to have been 2,000 separate cultures on this continent in the 10,000 or more years before we stumbled onto it?

Navajo Mysticism

The Navajos have no religion, yet there is nothing in their view of the world that is non-religous. They worship no god, but there is no aspect of existence not untouched by an unseen spirit. Because of this, Rev. M. said that his own faith and theological constructs seemed shrivelled and incomplete.

His sojourn with the Navajos began to effect his own thinking greatly. He felt that the Navajos contributed to a leration of sorts. He began to be more aware of the earth and its mysticism by which Indians subjectively commune with it and all living things. It is seen most pointedly in the Pueblo view that in the springtime, Mother Earth is pregnant and one does not mistreat or abuse her anymore than one would a pregnant woman.

Some may think of this as lovely poetry, but impractical as agriculture. The Indian thinks of it as reality so that when the technologist tries to get a Pueblo farmer to use a steel plow in the spring, he is usually rebuffed. When you see the earth as divinely presented to you to do with as you please, to wit, what some Christians feel they can do, then the Indian view of the inner communion of life systems, earth, animals and human beings, becomes a superstition of a primitive people. Only industrialized, technological man, dead to his origins and blind to all sense on non-physical aliveness, could fail to see that the fuel of our machines are limited, that defacing the earth defiles human beings and destroys that devine voice that speaks so powerfully through all cosmic activity.

Our very survival may depend upon our capacity to learn from the Indian the art of communing with the earth.

Another lesson our clergyman learned was a different way of apprehending time and space and the world of reality. He said that this was one of the hardest things for him to grasp. His medicine man would be relating an event to him that sounded like it happened yesterday, while all the time it happened a millenia ago in the legend of the second world of the Navajo. It took the minister a while to understand that for the Navajo the mythic accounts of creation are not in some chronological time past. Rather they tell of processes which are an eternal happening. The same processes are recurring now and will recur in other cycles. "In my timebound, historical consciousness of past, present, and future, I have no way of understanding, I have no way of standing amongst the holy people at the sacred place of Ship Rock, New Mexico, and hearing the rolling thunder of their drums in the midnight desert. But for the Navajo, with whom believing is seeing, and hearing, and feeling, he communes with his ancient forebears as certainly as I recall my historical past." Thus spoke this humbled man of God.

"Not by words alone"...

Toward the end of his talk the Reverend summed up his thoughts with a belief that the religious traditions that Euro-Americans worked so hard to destroy is rich with ideas that both contradict and complement much of our own religion. He said his most lasting impression from exposure to the culture and tradition of the Navajos is that our world is too small and narrow. And that the world he had formerly believed in may be only a small part of reality. He came to see the truth in the paraphrasing of an old proverb: "If I hadn't believed it, I never would have seen it."

Gerald Wilinson, who is the Cherokee leader of the National Youth Council wrote, "Not by words alone will people learn the meaning of their lives; that may be why Western man studies so much and knows so little. He thinks he can change his life by changing his words. That may be his real forked tongue. We are not gods. That's what Western men thinks about his words; that may be why the earth has rejected him. The man who came from Europe is a stranger in this land. He thought he created America; he did not. He thought he was American; he is not. He is still searching for the meaning of America. He has not found it and he will not find it. In this land he'll be a stranger forever."

That young Indian may be right, but I'd like to believe that he and the other original Americans might help us find its meaning.

It is the Eternal Spirit, whose mysteries are always confounding our knowledge to whom we must pray for understanding. To pray for forgiveness of the arrogance with which we treat the truth of others and the callousness with which we have consigned other cultures to inferior roles.

We pray for justice and equality for the Indians in our nation, who still suffers from our unbearable paternalism.

We pray for the White man, in his dealings with the Indians, that he may not suffer injustice and inequality also.

We pray that God in His wisdom enlighten our own knowledge and keep us open to truth...The truth that keeps breaking upon our lives from unexpected sources.

Taken From The
Church World
March 30, 1978

Attorney General Brennan argues:

'Maine owes no moral debt to Indians'

Apart from the transitory issues raised by the Maine (Indian land claims) case, there is lurking a deeper issue. I think that issue is whether or not this country has a responsibility to pay reparations, either in land or money, to the American Indian for the events of 150 to 200 years ago. Some people have suggested that since the United States owes the American Indian a moral debt, Maine ought to negotiate this claim and agree to give some amount of land or money to the Tribes. I disagree, I do not believe that the State of Maine owes such a moral debt.

I believe that our society and government has an obligation to be just to all its citizens, and to provide to each person an equal opportunity to improve his or her life. But I do not believe that our society or government has an obligation through the payment of reparations to right all past wrongs that may have been committed by prior generations. I do not believe it is possible to create a system of perfect historical moral accounting that requires monetary payment for asserted ancient wrongs. I do not suggest that this view justifies treatment of the American Indian by former generations. This country's record of dealings with its native Americans may not be a proud one, but to argue whether the actions of our ancestors was right or wrong begs the question. The issue is not the morality of the actions, but whether this generation must be held accountable for them. My answer is that it should not be.

The Maine Indians are surely not alone in claiming a moral debt from society, Other religious, racial and ethnic minorities have been wronged by our society and government. Little more than a hundred years ago the United States Supreme Court in the Dred Scott decision said that blacks were not people. Even today we are still fighting the battle for equal rights for women. If one argues that reparations are due for past wrongs, why not begin with these more recent wrongs. Beyond that, where do we stop? Should we go about creating a moral balance sheet that tallies up for each racial ethnic and minority group, the wrongs committed by and upon that group to determine whether they had been more sinned against than sinned? I think not. I think that task is impossible to perform and is a morally unnecessary one.

One of the peculiarities of this claim is that there is absolutely no statute of limitations on any Tribe bringing a claim either for land or money against any citizen of the United States regardless of how old that claim is. The omission of a general statute of limitations for Indian claims is unique in Anglo-American jurisprudence. Indians appear to be the only group in this country that can bring a suit against other citizens for damages, to recover use or ownership of land or to control water rights based on ancient legal claims without any limitation of time for bringing of such suits. I think this raises some very fundamental questions about our legal system. I do not believe that a claim, regardless of its nature, or the group or individuals asserting it, should have an indefinite life. It is a basic tenet of our system of justice that at some point in time a claim must expire. The concept of a limitation of time to assert a claim, whether statutory or in common law prevades our legal system. This concept is presumably predicated upon the belief that a stable society and system of justice ought not and cannot remedy old wrongs. I believe that a principle of law which has such widespread acceptance and such uniform application ought to apply to all of our citizens, Indian and non-Indian alike.

If an Indian were to occupy your land for 20 years, he would acquire title to it by adverse possession. The converse is not true. If you were to occupy Indian land for 20 years, you would not acquire title by adverse possession. I think it is plain that we have developed a legal double standard in regard to Indian claims. This legal double standard is a historical accident unsupported by any ethical or moral basis.

It is sometimes argued that the Indians claim to land and the right to recovery of a portion of it is different from other people since, it is said, their ancient love of the land gives to them a unique moral claim. Again, I disagree. The assumption that the American Indian because of his ancient connection to the land has a greater moral claim to it than non-Indians is an assumption which I do not believe is supported by fact.

Indians, like other Americans, are 20th century people, albeit with their own special traditions and cultures. But ancient customs and lifestyles have changed. Indians no longer trap, fish and hunt for their existence. They are no longer a nomadic people, travelling around the state on a seasonal basis dependent upon the forces of nature for their survival. They live in homes heated with oil and wired for electricity; they drive automobiles and go to work like the rest of us. The ancient traditions and cultures which grew out of a lifestyle that, in Maine at least, no longer exist, give to the American Indian no greater moral claim to the land than the farmer in Aroostook County who has for generations depended upon the productivity of the soil for his existence, the woodlot owner who manages the land for his own needs, nor the citizen of the State who uses park land for physical recreation and spiritual regeneration.

Most modern American Indians have adopted values and lifestyles which bear no relationship to that of their ancestors. The sacredness of land to the ancient Indian tribes was almost exclusively a result of their dependence on land for their very survival. With the change of lifestyle, the status of land in the Indian community has changed. Indian lands throughout the United States are mined, drilled, subdivided and developed for the economic betterment of the tribes. I don't pass moral judgment upon those actions. I merely point them out as a fact of life, and to place in perspective the argument that ancient tribal cultural values are necessarily determinative of these modern Indians claims.

As I said before, I recognize that our national history and the treatment of our native Americans has not been a proud one. But in recent years our nation, and certainly the State of Maine, has made great strides in trying to remedy the economic and social injustices of the past. The State of Maine alone provides extensive social, welfare and educational assistance to the tribes of our State. Maine spends two or three times as much per pupil on the education of an Indian child as it does a non-Indian child; provides an array of social programs to Indians, including State aid for the construction of Indian housing. Maine was the first state in the country to establish a State Department of Indian Affairs. All of those programs must continue since they are right and necessary apart from this case.

I do not believe, however, that refusing to pay reparations in land or money and refusing to negotiate this claim is inconsistent with the notion of social justice and equality of economic opportunity for all our citizens. I suggest that it may be an even greater injustice to permit unasserted tribal claims to live indefinitely and to be asserted against future generations, particularly claims which involve the potential removal of current occupants of land. At some time the potential for endless lawsuits against ourselves, our children and their children,

must come to an end. I believe that the solution to social injustice can and should come about through continued and increased assistance to Indians and other people in our society for social, medical, educational and other programs.

I am ready to litigate this case. I think it should be litigated. Nevertheless, I do not think we can avoid these basic issues that this claim raises. I believe that we should decide that after hundreds of years or reliance by individual citizens, ancient claims should be put to rest. We must still continue our efforts to make ours a just society, but we should not litigate forever these claims which arise out of the actions of our forebears.

Taken From The
Church World
March 30, 1978

Indian attorney disputes arguments by Attorney General Brennan

As an information session recently held in Portland under the sponsorship of the Committee for a Negotiated Settlement, an extensive presentation was made by Tom Tureen, attorney for the Penobscot and Passamaquoddy tribes, as well as by John Stevens, Tribal Governor of the Passamaquoddies, and Wayne Newell, a Passamaquoddy member of the negotiating team. The first article in this four-part series described the background of the case; the second article dealt with 20th century developments. In the final article, Tom Tureen addresses certain arguments that he said have been used by Attorney General Joseph Brennan regarding the tribes' claim to Maine land. Mr. Brennan's views were outlined in earlier articles appearing in CW on the Indian land claims.

Part 3

According to Mr. Tureen, Attorney General Brennan maintains that the Indians lost aboriginal title to their land in 1760 when they were conquered by Governor Pownal.

Mr. Tureen maintained that it is true that Governor Pownal sailed up the Penobscot River and declared the Penobscots conquered. However, Mr. Tureen said, the key point regarding aboriginal title is whether the British permitted the Indians to remain after that time. Mr. Tureen's response to this argument is that since the Indians were allowed to remain on the land after 1760, they retained aboriginal title.

Non-Intercourse Act

A second argument of Mr. Brennan's, Mr. Tureen said, is that the Non-Inter-Course Act passed by Congress in 1790 does not apply to the Indians outside the West (and therefore, that the treaties by which Maine Indians gave up their land did not require Congressional approval).

It is Mr. Tureen's contention that Court decisions have said that the Non-Intercourse applies to the tribes. He said that the Trade and Non-Intercourse Acts were designed to regulate all dealings between Indians and whites. The portion dealing with land transactions, he said, applied to all Indians within the boundaries of the United States.

Federal consent

Mr. Brennan puts forth arguments, Mr. Tureen said, that there was federal consent to the land transactions. The first, he said, is the argument that the federal government gave implied consent since the United States "did not do anything all these years," that is, never suggested that the transactions by which the Maine Indians lost their land were illegal.

Mr. Tureen's response to this point is that the Supreme Court has said that Congress must give its consent in the clearest possible way, not imply it.

A second theory of federal consent, he said, is that there was specific ratification of the land transactions in the compact under which Maine became a state in 1820. (There is a section of the compact, Mr. Tureen says, in which Maine assumes all of the obligations of Massachusetts, by treaty and otherwise.) Again, Mr. Tureen says, the Supreme Court has said that indirect reference is insufficient. There must be specific reference.

"Famous man" argument

A final argument of the Attorney General, Mr. Tureen said is what Mr. Tureen calls Mr. Brennan's "famous man" argument, "that famous man after famous man after famous man in Maine couldn't have done this if it were illegal."

Mr. Tureen commented that "recent history has told us that famous men are not always right and good." But he pointed out the fundamental disagreement among the country's founders on Federalism vs. States Rights. Nowhere was this conflict more clear, he said, than in the issue of Indian affairs. "There was tremendous debate over whether the states or the federal government really had the power to deal with Indians."

The debate went on, he said, until 1832, when the Supreme Court clarified the matter. "Famous men in the 1700s and early 1800s may have thought their dealings with the Indians were legal. They were wrong."

Possible litigation

Mr. Tureen then discussed possible litigation. He said the tribes have no preference as to which of the four alternatives comes about, litigation against the small landholders, against the small and large landholders, against the state and the small and large landholders, or whether the claims are settled out of court. It does seem important, however, he said, to clear the title of the small landholders.

With regard to the choice of litigation or settlement out of court, he said, "the state has to decide the nature of its risk and Maine people have to figure whether the state could lose if it went to court."

Advantages of settlement

Mr. Tureen then addressed the question of whether a settlement with the Indians would result in job losses to Maine people. He said the tribes, under the proposed settlement, would acquire only five percent of the land now held by paper companies, and that the tribes are willing to guarantee the companies "an adequate supply of wood from those lands, so that no existing jobs will be lost."

Moreover, he said a settlement would also create new jobs. By investing their funds, he said, the Indians could bring 6,000 new jobs to Maine since existing companies would be allowed to expand. Ninety percent of those new jobs, he said, would be held by non-Indians.

Finally, he said, the state of Maine will make money in the property settlement. The tax revenue generated by the new jobs, he said, would bring in $2,300,000 per year. Under settlement terms, he pointed out, Maine will be obligated to continue to pay $1.7 million per year for the next 15 years, and the state would lose $400,000 per year in property taxes on land. (The state, he said, gets nothing from the paper companies in property taxes). Therefore, he said, the state would gain more than it would lose on the settlement.

Unfair to paper companies?

Mr. Tureen then spoke of the paper companies. "We have no particular gripe against the paper companies, he said, restating that "The federal government was only willing to put up 25 million dollars for the settlement and for that amount the tribes were not willing to give up any more of their claims. That left the 14 companies and the State of Maine."

The paper companies are not obliged to give up any land, he said. "They're offered a settlement. Under that settlement they get paid for all lands they give up. If they don't feel they are getting enough money, it's their right to do what they can to get more."

The tribes really don't care if they litigate against the paper companies, he said their potential winnings in court are so much greater than what they would receive through the settlement.

Mr. Tureen then discussed the allegation that the proposed settlement is unfair to the paper companies, that they should not be singled out and left in the lawsuit.

Mr. Tureen said that the settlement is fair since the first 50,000 acres of any landholder are exempt. A person who owned one acre would have only one acre of land cleared, he said, while the big landholders get 50,000 acres cleared.

He also said he agreed with the suggestion of Republican gubernatorial candidate Charles Cragin that the state should agree to assume responsibility for defending the paper companies and to compensate them if the tribes are successful, if the state should lose. "The state is going to defend the case anyway," he said, "so it won't cost any more to defend on behalf of the paper companies. Joe Brennan says there's absolutely no chance of the state losing so there'll never be a recovery." The state, he said, would therefore never have to pay and if the paper companies were guaranteed being indemnified, the state wouldn't have to worry about the companies moving out of state in the meantime. "I think that suggestion is a serious one," he said.

False hopes

In closing, Mr. Tureen discussed what he termed a number of "false hopes" about the resolution of the case. "While the process of evaluation is going on, there are a lot of false hopes. The temptation to grasp at straws is great."

The first of these he said, is the possibility, voiced by some people, that "This is Massachusetts' fault. Massachusetts made the treaty and Massachusetts will have to pay for it. Maine will have a successful lawsuit against Massachusetts if we should have to pay." The problem with that position, he said, is that "by the compact of separation from Massachusetts, the state of Maine got paid $30,000 and in return we assumed responsibility for any obligation that Massachusetts owed to the Indians, by treaty or otherwise."

The second "false hope" he said, is "that Congress will simply wipe out these claims." The problem with that, he said, is that the President promised) and reiterated that promise at his news conference in Bangor) that he would veto any such legislation.

The final false hope, he said, is that the federal government will foot the full bill. People who hold this point of view, he said, point out that "in the claims in the West, the federal government has footed the entire bill. The critical difference, he said, between those claims and the Maine claim, he said, is that "in the West, it was the federal government who stole the land fair and square, as Senator Hayakawa said, but in the East, in Maine, it was the state."

In the West, it was the federal government which benefitted from the land transactions, he said, while in Maine it was the state that benefitted. "It was the state of Maine," he said, "that sold that land."

Taken From The Church World - May 4, 1978

The Indian land claims action in recent years: exercise in persistence

The following is the second in a series of articles on the Indian Land Claims case as presented by Tom Tureen, attorney for the tribes, and by Passamaquoddies John Stevens and Wayne Newell.

At his presentation on the Indian Land Claims case, Tom Tureen, attorney for the tribes, discussed the events of the past few years.

In the Fifties and Sixties, he said, the tribes attempted to file a claim for land, but to no avail. In the Fifties, the Penobscots took their claim to the United Nations and in the Sixties, the Passamaquoddies filed a claim against Massachusetts. "Neither went very far," he said.

However, the early Seventies, he said, he and other lawyers of the Native American Rights Fund concluded that the Maine Indian's Claim was still viable.

In 1966, he said, Congress passed a law saying that all old claims had to be settled by 1972. A legal strategy was put together, he said, that called for the Federal Government to bring action on behalf of the tribes. The request for such action was made on George Washington's birthday, he said, in 1972.

The Government he said, rejected the request, giving as a reason the Non-Intercourse Act of 1790 (indicating that the Treaties with Maine were approved by Congress and, therefore, valid). Since the Federal Government did not take action on the Indians' request, and since, under the Statute of Limitations imposed by Congress, July 1972 was the limit for filing land claims, the Maine tribes sued the Government in June, 1972.

According to Mr. Tureen, they sued to get a Court Order directing the Federal Government to get a case on file before the Statute of Limitations ran out. "We won that," he said, "The judge ordered the Federal Government to file a case on behalf of the tribes. He did not order the Government to proceed with it."

The second question the tribes asked the court to decide, Mr. Tureen said, was "whether the Government was right when it said the Non-Intercourse Act did not protect the tribes."

In a case known as Passamaquoddies vs. Morton he said, the tribes asked the Federal Court to interpret the Non-Intercourse Act to say whether it applied to the tribe specifically the Passamaquoddy tribe.

After about a year, Mr. Tureen said, the State of Maine came into the case as a co-defendant. The State's point, he said, was that "the State had to be allowed to present a case because its property was at stake."

The tribes wanted the State to come in to the case, he said, "because if you're a party to a case, you can't argue afterward that it doesn't apply to you." The State said it wanted to be in the case, he said, but did not want to be bound by the outcome. The State ultimately lost, on this point, Mr. Tureen said, citing the court's decision.

"That decision said two things. First it said the Non-Intercourse Act is applicable to all tribes, including the Passamaquoddy tribe, and 2) It holds that the statute creates a trust relationship between the Passamaquoddy Tribe and the United States.

Mr. Tureen said that Attorney General Joseph Brennan denies that the decision determined that the Non-Intercourse Act applied to the tribes. "Read the opinion," Mr. Tureen said. "The trust relationship was a separate issue that the State itself raised late in the proceedings."

On appeal, he said, the Court of Appeals "affirmed everything Judge Gignoux said but it was careful to say that the case was not over."

The Court of Appeals, he said, did go beyond the original decision "in one important way. It said that if the trust relationship meant anything at all, it meant that the Federal Government is obligated to investigate the claims and to take such action as was warranted under the circumstances. It did not say, as Joe Brennan insists it said, that the Court ordered the Government to proceed. All the Court did is order the Government to investigate."

The point, he said, is that "the government could have investigated the claim, and had they not agreed with the merits of the claims, said 'We're very sorry, Indians, we're not obliged to proceed'...They could have done that."

The investigation into the merits of the claim took place under the Ford administration, he said, and "The Government, after a lengthy analysis of the Indian Land claims case said 'Yes, there is cause. We're obliged to litigate.' Given the fact that that was a tremendously unpopular thing to do, I think that was very courageous."

President Carter reaffirmed the decision to litigate, he said, upon assuming office.

Mr. Tureen also noted the change in attitude on the part of Maine officials when they realized that the claim might be a serious one. In 1972, he said Gov. Kenneth Curtis and the whole Maine Congressional delegation has supported the suit. But when the First Circuit Court of Appeals upheld the Passamaquoddy decision of December 1975, legal experts began to question whether Maine towns could legally float bond issues since the title to the land was in question.

When this situation arose, Mr. Tureen said, Gov. James Longley went to Washington to discuss the matter with the Maine Congressional delegation. "on the following day," he said, "all four of them introduced a bill in Congress which would have simply wiped out the claims of the Penobscots and Passamaquoddies." Had the bill been constitutional, he said, "the effect would have been to wipe out the claims."

Meanwhile Mr. Tureen said, the Interior and Justice departments said the claims were valid and were beginning to proceed with litigation. This was followed by the appointment by President Carter of Judge William Gunter to look into the claims. The President, Mr. Tureen said, "decided to get an independent decision from someone he trusted on whether there was anything real here or just a bunch of hot air and bureaucratic nonsense."

He added, "Bill Gunter's basic assignment from the President was to give an independent opinion as to whether these cases were sufficiently strong to warrant a settlement by the Federal Government even though they have no legal obligation at all to participate in a settlement." If the case were weak, he said, "The approach would have been to let the legal process take its toll because there wasn't a whole lot of risk involved."

In the meantime he said, the tribes had added Prof. Archibald Cox to the legal group and the State had added noted trial lawyer Edward Bennett Williams. After talks with both sides, Mr. Tureen said, Judge Gunter "made the decision that the case had sufficient merit to warrant an (out of court) settlement and that the Government should fund the settlement by putting up some money."

The Gunter proposal (which was published in the Apr. 6 issue of Church World), involved: 1) The Federal Government appropriating $25 million to the tribes; 2) the State giving the tribes 100,000 acres of land; 3) the tribes being assured of normal Bureau of Indian Affairs benefits; 4) The State continuing to appropriate money to the Indians on the average of what it had given during the past five years; and 5) The Secretary of Interior attempting to acquire long term options on an additional 400,000 acres of land in the claims area, the options to be exercised by the tribes' paying fair market value per acre.

The problem the tribes had with the Gunter proposal, Mr. Tureen said, was its coercive nature, the provision that if the tribes refused the offer, all aboriginal title except for state-owned land was to be extinguished by Congress and the tribes could proceed through the courts against State-owned land. "That we considered not a very nice way to deal with the problem. Mr. Tureen said, "pretty tough stuff."

When the tribes rejected the Gunter proposal, the President appointed a task force headed by Eric Cutler of Bangor to negotiate with the tribes to reach a consensual agreement.

The State did not participate in these negotiations although it would have been welcome, Mr. Tureen said. "For some reason," he said, "the State decided not to participate."

As a result of the task force talks, Mr. Tureen said, the tribes agreed that for $25 million dollars from the Federal Government, they would "give up everything except claims against 14 large landholders in the State of Maine. Explaining why the claims against the large landholders were retained, he said, "We have nothing personal against the large landholders. The tribes were only willing to give up so much of their claims for $25 million dollars and the Federal Government was unwilling to provide enough money to fully reimburse us for all the landholders."

The other components of the task force recommendations concern the paper companies (the 14 large landholders) selling 300,000 acres of land to the tribes at $5 an acre with an option for the tribes to buy an additional 100,000 acres at fair market value. If the paper companies will participate, the tribes will be given $5 an acre for the 300,000 acres and an additional $3.5 million dollars to exercise their option to buy the 100,000 acres.

Mr. Tureen does not consider these recommendations unfair to the paper companies. "If the paper companies are unwilling to take those terms or are unwilling to negotiate better terms for themselves, they can go to court and assess their own risks."

In another part of the task force proposal Mr. Tureen said, "we will give up claims against the State of Maine for 350,000 acres, including all of Baxter Park, if the state will merely agree to continue the current level of spending, $1.7 million dollars for the next 15 years (a total value of $25.5 million dollars)."

Mr. Tureen concluded that neither the State nor the paper companies are obliged to accept the terms of the task force proposal. Their decision is currently awaited. "That's basically where we are," Mr. Tureen said.

Taken From The
Church World - April 27, 1978

No moral debt to the Indians?

I would like to thank Cecilia Belanger for her excellent article on Navajo spirituality. It is true the we non-Indians have much to learn from the spiritualities and traditions of the many and varied tribal cultures of this land we call America.

Last summer I was privileged to travel by car with two friends from the Pleasant Point Reservation, across this continent from Maine through Quebec and Ontario, across the Midwest, the Rocky Mountains and the Mojave, to Los Angeles and back. We returned through Arizona, New Mexico, Texas (with a wave at Mexico), back home again through Nashville and points east. In our travels which lasted five weeks, we covered over 10,000 miles, 23 states, 15 to 20 different Indian communities, and numerous Jesuit and Franciscan Missions.

The main purpose of our trip was to join some Indian friends of mine for a weekend of prayer. I have been honored over the past several years to have been accepted as an Associate Member of this rather special group of people called the National Association of Native Religious. It is a group of Indian People from various tribal backgrounds who also happen to be Roman Catholic Religious: Sisters, Brothers, and priests.

I would like to share with you an excerpt from an article in St. Anthony Messenger for July of 1975, called "Our Indian Heritage Is Sacred." In the article, one of the founders of the National Association of Native Religious, Sr. Gloria Ann Davis, S.B.S. writes:

> I was born in Fort Defiance, Arizona. We lived there for three years and then moved onto the Navajo Reservation to a place called Lukachukai for nine years. Dad is Navajo from Lukachukai. Mom is Choctaw from Pearl River, Mississippi.
>
> ...We often went to visit our grandparents, and when we stayed in their hogan, we slept on sheepskin. I remember many times Grandfather would wake us up at sunrise and give us pollen from a skin pouch. We'd just put our hand in, take the pollen and put it on our tongue. Then whatever was left, we'd offer it up to the east to our Creator. Grandfather would pray spontaneously and tell us to pray in our own way, silently or out loud.
>
> We used to go walking with Grandfather. He made us aware of creation. He taught us reverence and appreciation for nature. He had us stand and listen. He pointed out the sunset, the sunrise, the trees, the wind blowing, the earth. After a rain he'd say, 'Come and look; it's beautiful. Smell it.' He'd take sagebrush, rub it and make us smell it. It was like Vicks and it really cleared your nose out. He'd have us smell the different herbs.
>
> He always conveyed a reverence toward nature, toward everything, even toward food. He was always gentle...In those days, too, we took anything that was left over, like the bones and things, and we'd burn them. Even our hair when it was cut - we'd burn it out of reverence, because it was part of life and something sacred. As I look back, I think that this is where I got a real appreciation of God, our Creator - of how he created the sunset, moon and stars.
>
> ...When we walk in harmony with our nature, we walk in beauty, as

suggested by a small part of our ceremonial prayers:

'Beauty before me
Beauty behind me
Beauty above me
Beauty below me
Beauty all around me
In Beauty I walk.'

As a Christian, I see the beauty as God's presence before me, and so on, and because of his presence I walk in beauty.

I would like to see the Church regard the Navajo customs and myths with respect, and I do know missionaries who have. The Church would be placing before us a terrible block if it denied us the right to continue to treasure what was taught us by our ancestors. It is denied by only those people who are ignorant of our culture.

The culture of the Navajo People and that of their neighbors, the Hopi, are among those that have been the most resistant to white invasion. They have a very rich spiritual heritage that continues to survive into our present day.

No moral debt to Indians?

A book I would highly recommend to anyone interested in a study of the effects of our Western culture on North America, from an Indian perspective, is written by Stan Steiner, a white man. The book is called The Vanishing White Man, published by Harper and Row in 1976. I would like to use a quote from Steiner's book to lead me into a comment on Attorney General Brennan's contention that "Maine owes no moral debt to Indians."

In the last chapter of his book, Steiner quotes Gerald Wilinson of the National Indian Youth Council:

When the Europeans came to this country, something happened. There was a splitting off, a cutting off, of the white people's roots to their cultures. A final detribalization that was going on in Europe was completed here. The roots of the white people were just snapped in two... In America the European people began to look for something else. That document, that piece of paper, that 'Bill of Rights,' became their concept of themselves...So in basic sense, America is not a nation in a cultural sense to them. To most whites America is an idea. Some kind of concept, or document, a piece of paper, the Constitution of the United States. Perhaps it's the idea of material advancement, an ideology of things.

Now, Indian people have a different view. They don't look at themselves as an idea. They see themselves as a People who live in a certain space, on land where their ancestors are buried. On that space there is something that takes place, a culture takes place because the People live there. An that is America to them...The detribalization of Europeans was the final negation of 99 per cent of mankind's past. Most people here call that good. And that's what makes them so dangerous. To destroy your tribal past is the same thing as going out and destroying all the books in all the libraries, all the records and documents...

> Once you have destroyed your roots can you learn how to replant them from an ideology? No.
>
> No one can make a culture. You don't make a culture. You don't make a nation. You don't make a tribe. The Great Spirit makes them. It happens because people live together, because they have to survive. That's what makes a culture, a nation, a tribe...What is a tribe? It's not rituals and customs. It's the relationships of human beings who share their lives, who are together in the way they express themselves...
>
> ...The communities of tribal people are not organized to progress. They are organized to be. And that is absent in Western man - the ability to be. Perhaps the Indian People who have survived spiritually have created a way of saving the earth in this way, by simply being.

Wilkinson gives us, I think, a good description of what it means to be a tribal people, and what price is to be paid for becoming a part of that melting pot, the American Dream (or idea?).

Taking all this into account, how do we white people of today have a moral obligation towards the Indian People? What have we ever done to them? First, let us look at our ancestors and then at ourselves. What connection, finally, is there between the sins of our ancestors and ourselves?

The first step in the oppression of the native peoples of this continent by Europeans was taken over five hundred years ago by Columbus. Leo Marx, of the Massachusetts Institute of Technology, in the New York Times Book Review of March 26, 1978, while reviewing The White Man's Indian by Robert F. Berkhofer, Jr., explains it this way:

> Before the invasion of the Americans by European whites, the residents of the Western Hemisphere were divided into more than 2,000 cultures and even more societies...When Columbus made his landfall in 1492, in fact, these people had no conception of themselves - no name for themselves - as a single entity. For all practical purposes, at least, Columbus, who thought he was somewhere off the Asian coast, casually referred to the natives he saw as Los Indios...and the name stuck as a collective designation for all native Americans. This fateful misnomer exemplifies the bald fact that the idea of the 'Indian' was a white invention, and an ideological weapon of deadly effectiveness. By enabling the conquering whites to lump together under one racist stereotype all of the cultures between what is now Canada and Chile, the concept of an American 'Indian' has been an invaluable aid in the subjugation of the people it names.

For Mr. Brennan to say that, "our national history and the treatment of our native Americans has not been a proud one," is an understatement of enormous proportions. For me, it would be like someone saying that during World War II certain German people disliked Jews. If you recall my article of a few weeks ago in this paper, there were calls in the U.S. Congress and in the press only 100 years ago for the "extermination" of Indian People.

What about Maine?

What about our own State of Maine? What about Norridgewock in 1724? There are many different versions of what actually happened on that disgraceful day, but I would like to quote from the Kennebec Journal of 1832. It was to be an

early morning Mass, and the bell of the Church called the people to worship:

> In ten minutes the church was filled - an fathers, mothers, and babies were collected around the altar. Suddenly the English rushed in, sword in hand. For a while, there were horrid shrieks and screams, and then all were silent. In one hour, not even a babe of that happy settlement was left alive. The boats had all been scuttled, and those who attempted to escape in them, sunk to the bottom of the river. Those who remained in the church were destitute of weapons, and could make no defense...The white men excused this horrible transaction, by saying that they must either kill or be killed. Perhaps it was so; but I wish the history of New England had not this blood-red stain upon it.

By the time this account was written in the Kennebec Journal, the cousins of the Norridgewock People: the Passamaquoddies and the Penobscots, had been effectively and for all practical purposes, restricted to small tracts of rather unproductive land called reservations. This tribal People, this people of the land, of space and of place, were not only physically but also psychologically and culturally imprisoned where they still live today. I am sure there are those within this state who would like to see even these small reservations broken up and sold to tourists for summer homes. They would set the Indians free to melt into the melting pot and cease to exist. Sever their roots, so they can be searchers after the American dream as we are.

What about today in Maine? Why is it morally wrong to make restitution of land to an imprisoned people, when it is not morally wrong for a few wealthy paper company executives who live out of state to either own or control most of the land in Maine?

More than just property

As we have seen, land for the Indian is more than just property. It is life for the future generations of Indian People. It is also economic freedom. Are the Indian People to be forced to live on the white man's charity, handouts, and welfare forever? The Indian is part of the land, and the land is part of the Indian culture and traditional way of life. Contrary to what Mr. Brennan thinks, there are still Indian People who hunt and fish for their sustenance. He says they are no longer a nomadic people. Do they have a choice? He says that they drive automobiles and go to work like the rest of us. Which us is he talking about? He's certainly not talking about Washington County, which is one of the poorest in the country with precious little in the way of industry, jobs of any kind for Indian or white, or decent roads with which to attract industry. The Indian People are still a People. Culture and tribe are not determined solely by life-style as we have seen. It is living and surviving together on Mother Earth. It is being. Apart from the land where the People can be together as a tribe, the Indian ceases to be Indian, ceases to be tribal. The Indian ceases to exist.

The Indian cannot be like the white man in the city. He cannot become a white man any more than the white man can become an Indian or a black man or an oriental. We are our culture and our culture is an intimate part of our identify. In other words, the land case is not a fight just for property but for survival.

I say to Mr. Brennan and Mr. Longley that justice demands restitution. If no one is guilty of the offenses against the Indians, does the injustice continue forever? Are the sins of our ancestors also the sins of our present day community? Present day Roman Catholic theologians say, yes. According to Fr. Piet Schoonenberg, S.J., the Dutch theologian, in his book Man and Sin:

> ...what brings the sin of a community about is not that the guilt of one person simply passes to another person. That conflicts with the principle of personal responsibility. Hence, outside of the sins of the individual persons there must be a link which connects the sins of one person with the sins of another, the sins of the father with those of the children...That connecting link might be the punishment, that is, the sequels which proceed from sin. In that case, however, the sinful attitude itself, which is the sinner's main punishment, must be excluded, since it is as inalienable as the deed itself. But the loneliness, the fact of facing those who have been harmed by one's sin, the damage inflicted upon psychic and bodily health, the feeling of anxiety or of being unsheltered, all this may pass from the sinner to those who are entrusted to him or related to him...Yet we find in Scripture a solidarity which consists not merely in punishment but also in this, that the children imitate their fathers' sin. 'Fill up, then the measure of your fathers.' (Matt. 23:32)
>
> ...It can also have a delayed effect in space or time. Today's sin may not only draw others along through seduction but it may also in the same way influence posterity, which has lost its bearings on account of the sins of the fathers.

The sins of the fathers, in other words, creates a "situation" to which the children must respond by a free choice for good or for evil.

Continue the sin?

Our fathers sinned against the Indian people by taking their land and imprisoning them on reservations, etc. We, the children of those fathers must now make the choice of either re-committing or continuing the sin by maintaining the status-quo; or by making restitution for the sin.

It might be argued that, perhaps, our fathers did not know or understand the full consequences of their sin. The children of today, however, have seen what has happened to Indian people nationally throughout the history of this country. You should understand clearly the consequences for the Indian people of losing this land case. You should also try to understand the great example of self-sacrifice and justice that you could give the nation.

If you choose instead to turn your backs of the Indian people, then the sin of those who choose to continue this unjust situation is greater than the sin of the fathers. You will then pass of this "situation" to your own children for them to deal with at some time in the future.

There are too many non-Indians who do not understand the true gravity of this situation. There is also a lot a racism surfacing that people probably didn't know they had in them, but which calls for some serious, old fashioned, repentance.

Taken From The
Church World
April 13, 1978

Passamaquoddies on Indian land claims

A report on the Maine Indian Land Claims case a few weeks ago by members of the Committee for a Negotiated Settlement concluded with comments by two Passamaquoddies. Wayne Newell and tribal governor John Stevens.

Wayne Newell

Mr. Newell explained that he had invited attorney Tom Tureen to speak that evening "because I felt it was crucial for us to talk to the people of Maine. We just hadn't been talking." The land claims, he said, are "solid and substantial." He said he worries, however, "that the people know only one side."

It is important for the tribes to clarify their side he said, for the public, "our side, our legal arguments, of perception of where we are at. Even if you don't agree at least you'll be able to disagree intelligently."

He noted that "we have said to people, wherever we go, keep an open mind on the subject, not to be pointed one way or the other by rhetoric."

Some of those who oppose a negotiated settlement, he said have been circulating cards which urge people to write their Congressmen without being fully informed of the issue. They urge people, he said, to write "without studying the issue as you are doing." Sometimes, he said, "this gets dangerous."

The danger, he said, is that politicians will respond to voters who write in numbers even if the voters are not fully informed. "Keep an open mind." he reiterated. "Don't take the easy way out. This is a sheer numbers game."

Mr. Newell said United States citizens should look at the situation as home when considering the question of human rights. "It's awfully easy for us to point to things in South Africa, Russia, and South America. It's not quite so easy to look at our own state. We've criticized the south for so many years about racism and about inequality, political expediency, discrimination, but right here in the state of Maine I think we need to deal with that as people."

One of his biggest worries, Mr. Newell said "is not necessarily the outcome (of the case) but the biggest worry I have is if we lose in terms of going to court, not to get a chance to air those issues for the people of the State of Maine. If we are not, as a tribal group, as a small minority, able to proceed in the path that has been suggested by some of Maine's leading politicians, then we are all in trouble - our politicians, our judges, and our legislature are all in trouble." He emphasized that "this is not just for us. It's for all of us. We keep saying that because it's crucial."

He criticized Attorney General Joseph Brennan's statement that there ought to be a moral statute of limitations against such claims. "I ask Joe Brennan again where would he set such a limit? One day? One month? One year? Seven years? Because I think, on a legal basis, we're well on our way. We just have to keep harping at that other issue."

He concluded, "So what we have to say in terms of the tribal perspective is to keep an open mind. So you disagree. That's fine. But disagree intelligently. I think we have an obligation to do at least that."

John Stevens

Passamaquoddy tribal Governor John Stevens has some hard words about Maine politicians, and he commented, "I'm here to tell you that I will not be intimidated. I've been fighting almost half my life to prove a point to the government, that Indians have rights in the United States.

He spoke of his service in the armed forces for the United States.

He particularly criticized Congressmen William Cohen for having "seen fit to eliminate my right to proceed in court" (in legislation he introduced in Congress a few years ago). The next time, he warned his listeners, "It could be your problem, I wonder if he will do the same thing to you. Does he represent you or represent the paper companies, or represent himself? I wonder if he can sleep at night."

He urged his listeners to "stand up and do something about this."

Mr. Stevens described his long time concern with "the-human existence of my people," and spoke of their formerly living in shacks. It was in the Fifties, he said that the tribes first started the land suit. At the time, he said, the Indians would have settled for $10,000 and 6,000 acres of land. "That's all it would have cost. But what did they do? They laughed at us. They said come back when you have support.

Now that the claims are taken seriously he said, "They blame it all on us. We're the bad guys. They tell us, 'Don't go out and protest. Stay in court. Abide by what the court says.' They hoped the court would extinguish the land claim."

He said that the tribes had agreed to exempt small landholders. "We agreed not to touch the small people. That's the first thing we agreed to." However, he said the tribes wanted in return for the Governor not to cut the Indians budget. But he said, the Governor "cut all kinds of funds these last three years. We don't know what to believe. You know how I feel. It's a very deep emotional issue for me. All my life I've worked on it."

Mr. Stevens concluded by asking his listeners "to pass the word on. I hope you stand up and be counted."

Taken From The
Church World
May 11, 1978

Governor Longley explains his position on the Indian land claims issue

Recently, Fr. Joseph E. Mullen wrote for your publication an article called "Let's Show Equal Concern For Rights of the Dispossessed."

The gist of Father Mullen's article is that the Indians were deprived of "the land", and that the Indians had a right to "the land"; consequently, the government of Maine should return "the land" or "just compensation" even if it is done by arbitrarily subjecting some landowners to litigation. Fr. Mullen never defines exactly what he means by "the land" or how much land would actually be involved. If Fr. Mullen agrees with the extensive research that has been done by various historians hired by the State it may be that his use of the phrase "the land" actually refers to no land. It seems that the Maine tribes made an unwise choice during the French and Indian war. And research in the Archives of Massachusetts and Washington have indicated that Massachusetts' Bay Colony extinguished the Indian right of aboriginal possession prior to the Revolution. Even in Fr. Mullen disagrees with this bit of history, "the land" to which he refers I assume is land that was used by Indians to the exclusion of all other non-Indians in the territory now being claimed. That is, the Indians must show that some 500 Indians had exclusive use and occupancy of some 12,500,000 acres in 1790. A difficult point to even conceive, no less prove.

But I am not especially interested in discussing legal arguments. I do not expect that Fr. Mullen would have any way of knowing the legal arguments or weighing the validity of them. In addition, it is the Attorney General of Maine who has done the legal research and formulated the State's position with respect to the legal merits of the suit, not the Governor.

However, I am interested in Fr. Mullen's concept of morality and justice. First, it seems his concept of justice argues that totally innocent people, living today, should pay for alleged wrongs dating back over 150 years. This is somewhat contrary to the concept of equity that has served our Democratic system of justice, in which individuals are stopped from asserting claims that have grown so old and rusty that they are difficult if not impossible to prove and unfair and unjust to prosecute. These claims are not allowed by courts because those parties who were harmed are long gone, and those parties who might have been responsible are also long gone, yet those living who might be forced to bear the responsibility are totally innocent.

Under what theory would it be moral to deprive totally innocent people of land which they purchased in good faith. It is absolutely contrary to every notion of fair play and justice that I know to use vague claims from the distant past to try and apply leverage against innocent people in order to extract something that may not be justified by law or fact. There is absolutely no reason whatsoever why the innocent people of Maine must have their land tied up in these claims. First, it is the federal government that bears any responsibility for wrongdoing. The State of Maine has supported the Maine Indian Tribes from the beginning. The federal government has done virtually nothing. If there has been any violation of trust, it has been the federal government which has violated that trust. If there are any reparations due the tribes, it is the Federal government which should compensate the tribes financially. Money buys land. There is absolutely no reason whatsoever to threaten the innocent landowners of this state when in fact an adequate remedy exists which could provide whatever compensation, if any, that is due from the federal government.

Also, Fr. Mullen states that the lands were taken illegally because the Congress of the United States never consented. First, historical research indicates that the knowledge of the land transactions in Massachusetts and Maine extend all the way to the early Congresses and Presidents of the United States. There was no question that the 1790 law, in 1790 and right up until the 1970's, was interpreted by both the federal government and the State as having no bearings on Eastern Indians. It is deceptive and misleading to conclusively state that lands were taken without the knowledge and consent of the United States Congress. The United States in 1820 ratified the Constitution of the State of Maine when Maine joined the Union. The Constitution made reference to the treaties and the Congress ratified that Constitution and every provision therein. If the Congress or the federal government now desires to declare the treaties which Maine inherited from Massachusetts as being invalid, then the Congress must accept the responsibility for this action since it has already once acknowledged the validity of those treaties.

Finally, if there is immorality in these claims it lies in the potential harm that could be done to innocent people, both Indian and non-Indian. Whether we are talking about social relationships, community pride and self-respect, or the recognition that success depends on hard work, the potential damage that can be caused by these claims is immeasurable. Not only is it a cruel deception to promise people something that they perhaps cannot get and are not entitled to under the law, but it is a dangerous step that we take when we propose to establish a separate "nation within nation" in the State of Maine or any other state in this country. We have fought years to integrate our society and make sure that equal opportunity is available for all. Now, however, arguments are being made for separate treatment on the basis of race and heritage by some so-called liberals and civil libertarians that if made two decades ago would have been considered regressive and unconstitutional. I am talking about the establishment of separate schools, separate criminal and civil jurisdictions, separate laws governing social and commercial discourse, and a wide variety of clear and distinct rules and laws that would distinguish those of Indian heritage from their neighbors of non-Indian heritage. In short, the doctrine could be called "definitely separate and maybe equal." If it hasn't worked in the past, and if we have fought so long and so hard to establish a society of equal laws and equal opportunities, how then can we embark upon a discriminatory course that purposely divides and distinguishes on the basis of race or heritage, when every lesson that we have learned and every bit of pride that we have learned and every bit of pride that we have taken in our social growth and development points us as a nation in the exact opposite direction?

I would suggest to Fr. Mullen that we cannot rewrite history and try to correct wrongs done to those who have long been dead without causing even greater harm to the innocent people who are alive today. If Fr. Mullen is concerned with morality and justice, I suggest that he concern himself with this dangerous and livisive attempt to sacrifice innocent people in order to do something that cannot be done...rewrite history.

Taken From The
Church World
May 11, 1978

In the Indian land claims issue

A peacemaking offer

As the federal government prepares to inform the U.S. District Court in Portland, Monday, August 7, that it will sue the State of Maine on behalf of two Indian tribes claiming the norther two-thirds of the State, Bishop Edward C. O'Leary's offer to provide the peacemaking services of one of the nation's renowned negotiators still stands.

"The offer as outlined in my memorandum, still stands," Bishop O'Leary told the Church World on Tuesday.

In a memorandum issued to Governor James B. Longley, Attorney General Joseph E. Brennan, the tribal governors of Maine's three Indian reservations and their attorney, Bishop O'Leary offered the services of Msgr. George G. Higgins, Secretary for Research for the U.S. Catholic Conference (the social arm of the American Bishops) and a nationally-known and highly respected labor-relations arbitrator.

"Aware of the numerous legal and equitable issues surrounding the Indian land claims case," noted the Bishop, "I do not intend at this time to take a position regarding the substantive merits of this complex case. Nor do I wish to indicate that negotiation is preferred or the most acceptable route to follow."

The Bishop added that he has refrained from making any public statement in the matter, despite repeated appeals to do so. "I desire justice and equity for all of our citizens." he stated.

When there was talk of possible negotiation, the Bishop thought of Msgr. Higgins "who has had a lifetime of experience as a peacemaker." Should all interested parties desire peacemaking services, noted the Bishop, "I offer them in the person of Msgr. George G. Higgins."

At U.S. Attorney General Griffin Bell's request, Maine's Attorney General Brennan met Monday morning in Augusta with Deputy U.S. Attorney General James W. Moorman to discuss the case. Bell wanted the State to have a last chance to negotiate a settlement of the claims out of court.

Attorney General Brennan said the talk, which followed a brief session with Governor Longley, was "a very friendly, amicable discussion, but the State still feels very strongly there should be a total federal resolution of the claims."

Deputy Attorney General Moorman said "it doesn't appear that much did happen" during the hour-and-40 minute talk. He said it left the federal government with few options but to sue the State for $300 million and 350,000 acres of land on behalf of the Penobscot and Passamaquoddy Indians.

The tribes claim more than 12.5 million acres were taken from them more than 150 years ago, in violation of the U.S. Non-Intercourse Acts of the 1790s. President Carter has agreed to a federal payment of $25 million to end claims against more than 330,000 small landowners. Maine's 14 largest landowners were also directed to negotiate with the tribes.

Attorney General Brennan said he feels even stronger now about requiring federal settlement of the claims than he did earlier. "It's a total federal responsibility." But Deputy Attorney General Moorman cautioned Mr. Brennan that "in my view, the State bears some responsibility for this, and the Indians have a very good claim." A suit, he added, would subject the State to significant risks. Under those circumstances, the case should be settled, he said.

Mr. Brennan said he didn't anticipate any further meetings with U.S. officials about the claims. Mr. Moorman, on the other hand, said he was "willing to meet if he (Brennan) is willing to discuss the settlement in behalf of the State."

In the meantime, the Bishop's offer to provide the peacemaking services of Msgr. Higgins still stand.

A native of Chicago, Msgr. Higgins conducted advanced studies in economics and political science, and did his doctoral thesis on "Voluntarism in Organized Labor in the U.S., 1930-1940." He has taught in the Department of Economics of the School of Social Science at the Catholic University of America; and has been involved in the Social Action Department of National Catholic Welfare Conference (now U.S. Catholic Conference) since 1944.

Msgr. Higgins is chairman of the Public Review Board of the United Auto Workers; is a member of the Executive Committee of the Leadership Conference of Civil Rights; and he has served as consultant to Ambassador Arthur J. Goldberg, Chief of the U.S. Delegation to the 1977-78 Belgrade Conference on Security and Cooperation in Europe.

His experiences in the negotiating process have enabled Msgr. Higgins to work closely with such notables as Douglas Fraser of the UAW, Clarence Mitchell of the NAACP, Cesar Chavez of the UFW; George Meaney of the AFL-CIO, Joseph Califano of HEW, Secretary of Labor Ray Marshall, Rabbi Marc Tanenbaum, George Morris of General Motors, and many others.

"Monsignor Higgins," according to Bishop O'Leary, "has been involved primarily in labor-relations issues, but I believe that his vast experience in the negotiation process and his unbiased dedication to the principles of fairness and equity to be of definite value."

"He claims no particular competence in the case but he is willing to help," added the Bishop.

The text of Bishop O'Leary's memorandum is as follows:

"For some time now the Passamaquoddy and Penobscot Indian Land Claims Case has been on the agenda of our State and Nation. Despite repeated attempts at reaching an amicable and just solution of these land and monetary claims, a resolution seems to become more elusive as time goes on.

"As a citizen of the State of Maine and as the Roman Catholic Bishop of Portland. I have followed the developments with great interest and concern. I hope and pray that justice and equity will prevail in any solution. As spiritual leader for the Catholic community in Maine whose ministry touches all people - both Indian and non-Indian citizens - throughout our State, it is also my hope and prayer that fairness and wisdom will be the guiding principles in the process of settlement.

"Aware of the numerous legal and equitable issues surrounding the Indian Land Claims Case I do not intend at this time to take a position regarding the substantive merits of this complex case. Nor do I wish to indicate that negotiation is preferred or the most acceptable route to follow. Despite repeated appeals to do so, I have deliberately refrained from making any public statement on the matter except to say that I desire justice and equity for all of our citizens.

"Media reports of mid-July indicate a delay in the pre-trial lawyers' conference and, reportedly, that the U.S. Department of Justice officials want to negotiate an out-of-court settlement in the case. As the word "negotiation" came up again I thought immediately of a man who has had a lifetime of experience as a peacemaker. I am not certain that all interested parties would welcome an out-of-court settlement at this time. Nor am I recommending that all parties come together at the negotiating table. However, if all interested parties desire peacemaking services, I offer them in the person of Monsignor George C. Higgins.

"Monsignor Higgins is Secretary for Research for the United States Catholic Conference and the National Conference of Catholic Bishops in Washington, D.C., and a nationally known and highly respected labor-relations arbitrator. I have talked with Monsignor at some length and he agrees that I offer his services and expertise - if all parties want to use him in any way. He claims no particular competence in the case but he is willing to help. He would be willing, of course, to receive any input from all parties, if the offer of his services is accepted.

"Monsignor Higgins has been involved primarily in labor-relations issues but I believe that his vast experience in the negotiation process and his unbiased dedication to the principles of fairness and equity to be of definite value. Monsignor Higgins is presently Chairman of Public Review Board of the United Auto Workers. He is also a member of the executive Committee of the Leadership Conference on Civil Rights. Monsignor Higgins served as a Consultant to Ambassador Arthur J. Goldberg, Chief of the U.S. Delegation to the 1977-78 Belgrade Conference on Security and Cooperation in Europe.

"For your further consideration I am enclosing a curriculum vitae on Monsignor Higgins and a list of his personal references. I believe that a man of Monsignor Higgins' caliber would bring a new perspective and an added dimension to the dynamics of the present case.

"As a religious leader I have an obligation to do all within my power to respond to the needs of all people and to take an active part in dealing with contemporary social issues and problems. In this spirit and within the context of this message, my office stands ready to offer any assistance you deem appropriate to request."

The memorandum was addressed to Gov. James B. Longley, Attorney General Joseph E. Brennan, Governor John Stevens of the Passamaquoddy Reservation at Indian Township, Governor Francis Nicholas of the Passamaquoddy Reservation at Pleasant Point, Governor Nicholas Sapiel of the Penobscot Reservation at Indian Island, and Attorney Thomas Tureen, the Indian legal counsel.

Copies were sent to President Jimmy Carter, Attorney General Griffin Bell, the Maine Congressional delegation, and other federal officials involved in the case.

Taken From The
Church World
August 3, 1978

Is there justification for Indian 'confidence in our magnanimity'?

> "The exodus of this whole people from the land of their fathers is not only an interesting but a touching sight. They have fought us gallantly for years on years; they have defended their mountains and their stupendous canyons with a heroism which any people might be proud to emulate, but...they threw down their arms, and, as brave men entitled to our admiration and respect, have come to us with confidence in our magnanimity, and feeling that we are too powerful and too just a people to repay that confidence with meanness or neglect..."

This statement of General James Carleton reflects the attitude of many Nineteenth Century Indian fighters. Gen. Carleton was responsible for the campaign which resulted in "The Long Walk," the forced march in 1861 of some 8,000 Navajos from their home in western New Mexico to a squalid government reservation 400 miles across the state.

Such high-minded sentiments today appear tragically ironic in light of the government's treatment of the Indian. Historians estimate that the nearly 380 treaties between the U.S. government and Indian tribes have all been broken by the government. An now, the 95th Congress has before it legislation which, Indian leaders claim, will take away more of their rights.

In protest, the Indians mounted a new walk, this one voluntary. "The Longest Walk" brought demonstrations from Alcatraz Island in the San Francisco Bay, 3,000 miles to Washington, D.C. home of the "Great White Father" and province of the deliberators who, the Indians say, have come up with a dozen bills which would "virtually destroy Indian tribes in the United States."

The Indians stayed in the capital for about 10 days and met with legislators, the President and the Vice President. They made a protest which, according to Vice President Walter F. Mondale, "captured the imagination of the American people."

Religious organizations have been in the forefront trying to prick the moral and ethical conscience of the nation in regard to Indian rights.

About $76,000 was contributed by Protestant, Catholic and Jewish organizations to help impoverished Indians stranded in Washington after the Long Walk to return to their homes. Appeals have continued for further funds in behalf of the demonstrators.

Many modern Indians, however, are sometimes wary of the churches' charity.

"Christianity has done more to the Indians than the whole U.S. Calvary," complained one demonstrator, Lehman Brightman, a native American and a college professor from California.

Another demonstrator, John Mohawk, editor of Akwesasne Notes, complained to the National Catholic Reporter, "In the church, the most sacrificing and repressive people exist side by side in the same robes."

The culpability of the Churches in attempts to coerce native Americans to deny their heritage has gone unrecognized in the Churches themselves.

In May, 1977, when the U.S. Catholic Conference set forth a statement promising to join Indians in their "on-going struggle to secure justice," they included a prefacing statement of culpability:

"We come to this statement with a keen awareness of our not infrequent failures to respect the inherent rights and cultural heritage of our American Indian brothers and sisters. We offer this reflection of our attitudes and action in the spirit of reconciliation and with a stronger commitment to be more sensitive and just in our relationships with American Indians."

American Catholics, the statement said, "have a special responsibility to examine our attitudes and actions in the light of Jesus' command to love our neighbor and to proclaim the Gospel message and its implications for society. The Church is compelled both through its institutions and through its individual members to promote and defend the human rights and dignity of all people."

The Bureau of Indian Catholic Missions, authorized to speak for the National Conference of Catholic Bishops, endorsed the latest demonstrations, saying "the native American protest against recent proposed congressional legislation deserves our support so that further injustices may not stain our national conscience."

The legislation that the native Americans are protesting so vigorously has been prompted by recent disputes over land and water claims, fishing rights and the extent to which Indians can govern and police themselves - and others - on their own reservations.

One resolution, sponsored by five of the six representatives from the state of Washington, would restrict Indian fishing in the Northwest to reservations.

Three more pieces of proposed legislation would narrow Indian hunting and fishing rights and another would reduce the amount of water to which Indians have title.

Land and water rights are under question in Maine, Washington and New York, in bills introduced by congressmen from those states. Tribal jurisdiction over non-Indians would be cut by the Omnibus Indian Jurisdiction Act.

Few of the bills are likely to pass the Congress, observers note, especially in their current form. One-half of the bills were sponsored by two representatives from Washington state: Lloyd Meeds of Everett, and John E. Cunningham of Zenith.

Mr. Meeds, a Democrat, has been a supporter of Indian rights in the past, according to Charles Trimble, executive director of the Nation Congress of American Indians. Mr. Meeds apparently did an about-face as the backlash built in his state against court decisions favoring Indian rights.

Mr. Trimble told the United Presbyterian Council on Church and Race that "every advance that the Church has helped Native Americans make in the last 10 years is now in jeopardy" with the bills of Mr. Meeds and Mr. Cunningham, a freshman Republican.

Church support has been widespread. The United Methodist Commission on Religion and Race has resolved to "provide leadership through education and counsel of its constituency concerning the struggle of Indian people to maintain their sovereign right to land, natural resources and self-government in the face of forces which seek the destruction of these rights."

Eugene Crawford, director of the National Indian Lutheran Board, told the domestic missions division of the Lutheran Church in America that the legal question of honoring Indian treaties "must be dealt with in the conscience of this nation and the conscience of this nation is manifest in the Churches."

The Union of American Hebrew Congregations, in November 1977, noted a kinship between Jews and American Indians and called for federal assistance to Indians for social welfare needs and for its own congregations to study stereotypes and support "appropriate pending legislation."

Indian rights should be supported by Jews, the Union said, because "as Jews with our own history, as victims of discrimination, we should be particularly sensitive to the plight of native American Indians. Even today, we share with Indians the tensions between assimilation and desire to maintain cultural and ethnic identities."

The question posed by General Carleton more than a century ago, however, remains an open one and will probably take at least another session of the Congress to see the direction that the answer will take:

Is there justification for Indian "confidence in our magnanimity" or will the country, once again, "repay that confidence with meanness or neglect?"

Taken From The
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August 3, 1978

Redbird, of Ojibwa Nation in the Great Lakes area, was joined by members of the American Indian Movement (AIM) in "the longest walk" across the country in protest of the conditions the American Indians are forced to live in after their lands have been taken away. In background is Statue of Liberty.

Text of White House Plan on Indian Claims

Joint Memorandum of Understanding

For several months, representatives of the Passamaquoddy and Penobscot Tribes and a White House Work Group comprised of Eliot R. Cutler, Leo M. Krulitz, and A. Stephens Clay have been meeting to discuss the tribes' land and damage claims in Maine and the federal services to be extended to the tribes in the future. These discussions have produced agreement with respect to both a partial settlement of the claims and future federal services. The parties hope that the terms and conditions described here also will serve as a vehicle for settlement of all the tribes' claims.

A. The Basic Agreement: A Partial Settlement

The Administration, through the White House Work Group, agrees to submit to the Congress and to seek passage of legislation which would provide the two tribes with the sum of $25 million in exchange for (1) the extinguishment of the tribes' claims to 50,000 acres per titleholder of such land within the 5-million-acre revised claims area (Area I) 1 to which title is held as of this date by any private individual(s), corporation(s), business(es) or other entity(ies), or by any county or municipality; 2 and (2) for the extinguishment of all their claims in the 7.5 million additional acres (Area II) in the claims area as originally defined (Areas I and II). This, every landholder within Area I would have his title cleared of all Passamaquoddy and Penobscot land and damage claims up to 50,000 acres, 3 and all titles in Area II would be totally cleared of such claims.

The tribes will execute a valid release and will dismiss all their claims with respect to landholders with 50,000 acres or less in Area I. The legislation will not clear title with respect to any of the holdings of any private individual, corporation, business, or other entity which are in excess of 50,000 acres in Area I, nor to any lands in Area I held by the State of Maine.

By preliminary estimate, the $25 million to be paid by the federal government would clear title to approximately 9.2 million acres within the original 12.5 million-acre claims area. All claims against householders, small businesses, counties and municipalities would be cleared. Approximately 3.3 million acres in Area I out of the original 12.5 million-acre claim would remain in dispute. About 350,000 acres of the disputed land is held by the state; the remaining 3.0 million acres is held by approximately 14 large landholders.

B. Proposed Settlement of the Tribes' Remaining Claims Against the State of Maine and Certain Large Landholders.

The tribes and the White House Work Group recognize the desirability of setting the tribes' entire claim, if possible. However, direct discussions between the tribes and the State of Maine or between the tribes and the large landholders either have not occurred or have not been successful.

In an effort to promote an overall settlement, the White House Work Group has obtained from the tribes the terms and conditions on which the tribes would be willing to resolve their claims against the State of Maine and against the large landholders whose titles would not fully be cleared by the Basic Agreement. The tribes have authorized the Work Group to communicate these terms and conditions to the appropriate representatives of the State and the affected landholders. In this context, the Work Group serves primarily as an intermediary with limited authority to settle the remaining claims on the terms set forth by the tribes.

1. Claims Against the State of Maine

The tribes have claims against the State of Maine for approximately 350,000 acres of State-held lands in Area I and for trespass damages. Rulings on several of the defenses originally available to Maine already have been made by the courts in the tribes favor.

The State of Maine currently appropriates approximately $1.7 million annually for services for the Penobscot and Passamaquoddy Tribes. The tribes are willing to dismiss and release all their claims for land and damages against Maine in exchange for an assurance that Maine will continue these appropriations as the current level of $1.7 million annually for the next 15 years. The appropriations would be otherwise unconditional and would be paid to the United States Department of the Interior as trustee for the tribes. Should the State agree to give this assurance, the legislation to be submitted to the Congress by the Administration would provide for the extinguishment of all tribal claims to the affected State-held lands and all trespass damage claims when the last payment is made.

2. Claims Against Large Private Landholders

In exchange for the dismissal, release and extinguishment of their claims to approximately 3.0 million acres with Area I held by the large landholders as described in the Basic Agreement, and in exchange for the dismissal and release of all trespass claims against said individuals or businesses, the tribes ask that 300,000 acres of average quality (approximately $112.50 per acre) timber land be conveyed to the Department of the Interior as trustee for the tribes, and that they be granted long-term options to purchase an additional 200,000 acres of land at the fair market value prevailing whenever the options are exercised. The tribes also ask for an additional $3.5 million to help finance their exercise of these options.

In recognition of the desirability of achieving an overall settlement, the Administration will recommend to the Congress the payment by the federal government of an additional $3.5 million for the tribes, if the affected private landholders will contribute the 300,000 acres and the options on 200,000 acres as set forth in the tribes' settlement conditions. Additionally, the Administration will recommend the payment of $1.5 million directly to the landholders contributing acreage and options to the settlement package. The $1.5 million would be divided proportionately according to the contribution made by the respective landholders.

If a settlement of the tribes' claims against the large landholders can be accomplished on the terms specified above, the Work Group has agreed to use its best efforts to acquire easements permitting members of the tribe to hunt, fish, trap and gather for non-commercial purposes and to obtain brown and yellow ash on all property from the large landholders within Area I. The tribes will be subject to applicable laws and regulations in the exercise of these easement rights. Additionally, it is agreed that the exercise of easement rights shall in no way interfere with the landholder's use of his property, either now or in the future. If the Work Group's efforts to acquire these easements are unsuccessful, the tribes have reserved the right to reject a settlement with the large landholders.

C. Other Terms and Conditions

(1) Nothing in this agreement is intended by the parties to be an admission with respect to the value of these claims. If settlement can be accomplished, it will reflect a compromise from every perspective. The tribes regard their claims as worth many times more than any consideration to be received under this agreement. The State of Maine, on the other hand, has taken the position that the tribes' claims are without merit.

The Administration has chosen to evaluate the claims not merely on the basis of their merit and their dollar value, but also in light of the facts that the claims are complex; they will require many, many years to resolve; and the litigation will be extremely expensive and burdensome to everyone and could, by its mere pendency, have a substantial adverse effect on the economy of the State of Maine and on the marketability of property titles in the State.

With these considerations in mind, any settlement will reflect a shared understanding of the reality created by the litigation, rather than one party's view of the equality of the claims. The claims are unique, and resolution of them on any basis other than litigation similarly must be unique.

(2) If a settlement can be reached with the State of Maine, with the large landholders, or with both on the terms described above, the White House Work Group has the option of implementing a settlement on those terms, rather than on the terms of the Basic Agreement specified in Section A. The Work Group has agreed to consult with the tribes before choosing any of the alternatives provided by this agreement.

(3) The tribes recognize that in no event shall the federal government's cash contribution to any settlement exceed $30 million; the federal government will pay $25 million to achieve the Basic Agreement, and an additional $5 million to facilitate a settlement of all claims against private landholders.

(4) The location of the 300,000 acres must be satisfactory to the tribes. However, it is agreed that the 300,000 acres may be in several tracts, so long as the timber land is of average quality. It is also agreed that the land will be selected in such a manner as to not unreasonably interfere with the large landholders' existing operations.

(5) The cash funds to be obtained in the settlement shall be paid in trust for the benefit of the tribes on terms agreeable to them and the federal government. No part of the capital will be distributed on a per capita basis. The terms of the trust shall not preclude reasonable investment of the principal, nor shall they affect in any way the right of the tribes to dispose of income. The right to dispose of income shall be wholly a matter for tribal discretion.

(6) All property and cash obtained pursuant to this settlement shall be divided equally between the two tribes.

(7) The federal government pledges that the tribes will be considered fully federally recognized tribes and will receive all federal services, benefits and entitlements on the same basis as other federally recognized tribes.

(8) All lands acquired by the tribes and land currently held by the tribes shall be treated for governmental purposes as other federally recognized tribal lands are treated. The consent of the United States will be given to the exercise of criminal and civil jurisdiction by the State of Maine pursuant to 25 USC 1321, 1322, provided that the United States may effect a retrocession within two years upon request of the tribes.

(9) If a settlement can be reached with the State of Maine, the White House Work Group will use its best efforts to obtain for the tribes assured access under mutually agreeable regulations to a designated place in Baxter State Park for religious ceremonial purposes. If the Work Group's efforts to obtain such assured access are unsuccessful, the tribes have reserved the right to reject a settlement with the State of Maine.

(10) With respect to settlement of the tribes claims against the State of Maine and large landholders within Area I, the White House Work Group has 60 days to accomplish an agreement. If such a settlement cannot be accomplished within that period, the parties will proceed with the Basic Agreement outlined in Section A above.

(11) The settlement agreement will be executed in a form appropriate to effectuation of the terms of agreement and will preclude further litigation with respect to all claims settled. Suitable procedural safeguards will be adopted and implemented by court order in the pending litigation to assure that the parties' intent with respect to this settlement agreement is accomplished.

(12) The White House Work Group and this Administration pledge their vigorous support to settlement on the terms and conditions specified in this memorandum.

(13) This agreement is subject to ratification by the tribes on or by February Ninth, Nineteen Hundred and Seventy Eight.

Taken From The
Church World
February 23, 1978

Fr. Harry Vickerson asks

How should we, as Christians, deal with the Indian land claims?

When Jesus tells us in the Gospel that it is easier for a camel to get through the eye of a needle than for a rich man to get into heaven, and when St. Paul warns that we have to be willing to preach the word both in and out of season, and when Jesus tells the rich young man that he must sell all that he has and give to the poor, if he wants to be perfect, then we are faced with the most difficult part of the Christian teaching.

Here in Maine we Christians are being faced with a very practical application of Jesus' teaching. Lands in this area belonging to two Indian Tribes have been taken from them over the past two centuries, breaking a 1790 federal law which states unequivocally that Indian lands may not be taken without consent of the United States Congress. The Tribes have asked the United States to regain their land and to compensate them for damages. Federal Courts have upheld the validity of the Indian Claims. Where is justice in this matter? What does the Gospel tell us? How should we Christians, followers of Jesus, react to this social and economic problem?

This is where it becomes very difficult to see justice clearly. It is a fact that, as Jesus said in the Gospel, the more we possess the more difficult it is to be a Christian. Those who stand to lose most think that the Indians' claim is invalid; those who stand to lose little or nothing think the Indians' claim is valid. What about the non-Indian families who have bought land in the disputed area and have done it over the decades in all good faith? What about the Indian Tribes who have lost their land over the past two centuries while there was, in effect, a law to prevent this from happening? Are those non-Indians' deeds to be considered more valid than the 1790 law?

Although the Tribes have a legal right, according to our law, to all those lands taken since 1790, the Tribes have said that they don't wish to displace private homes and families. They are willing to negotiate and settle out of Court rather than disrupt the whole State's economy. We in the majority have said "No" to two offers by the Tribes. We don't want to give the Tribes lands now held by individuals, lands held by the State, or even lands held by corporations. We have refused every offer for settlement and we cry that the Tribes are being unfair.

We say that we are not responsible for what our ancestors did to the Indians. But what of justice? Does justice die after so many years? Does justice not count if you don't have enough votes? If you are poor? Others say that Reservations should be closed down and Indians should be forced to move out into the mainstream of society. We say that our ancestors came over here and had to tough it out for all they got; Indians should do the same. The problem is that our ancestors (either of decades ago or a few years ago) came here freely (unless we are black), and chose to live in this land and make their lot better than what it was in "the old country." But you see, Indians were already here and had been here for centuries; they aren't immigrants as we are! They shouldn't have to "get with it"; they already are and have been! Their culture revolves around the Land; they need it.

Some say that too much is being done already for the Indians. They have homes, education, government grants, etc. So what? The fact of the matter is that no one of us would want to change places with the Indian, despite our claim that he has too much! The fact of the matter is that whatever we non-Indians have and enjoy in this country, we have and enjoy at the expense of the Native Americans. We have done the Indians no favors; whatever good we have done toward them has been an infinitesimal return of their investment!

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Others want to know why the Tribes waited so long. One reason is that we never let them know that they could do anything about it. Another reason is that it has been only in recent times that the Tribes have had recourse to legal counsel. Besides, if we non-Indians are honest, we have always known that we stole the Tribes' Lands. We have libraries of histories and decades of movies to prove it! The time of reckoning is here!

Indian Land, by our law, is to be treated much differently than other land and real estate. The federal law does not allow Indian Land to be sold or leased as other land can be. The law of our country requires the federal government to right this wrong in behalf of the Tribes. Now that the Tribes are winning, some of our leaders are suggesting that the law be changed and that an act of Congress extinguish the Indians' rights to land. How unjust to change the rules after the game has begun! We have taken their lands illegally; now will we try even to take their protection by the law away?

There are roughly 400,000 acres of "public lots" owned by the State of Maine. Why not give these to the Tribes in compensation for their lands taken illegally? No homes would be disturbed. No corporations would be hurt. Couldn't these be part of a settlement?

The Catholic Church has been involved with the Indians in this part of North America since the 1600s. The Church's silence throughout this land controversy is discomforting. We have an opportunity to be prophetical, to announce justice to those who cry for it. We have been silent! Could it be that because we hold some of that Indian Land we dare not speak? (Think of the camel and needle, and the rich young man!). Are our possessions hindering our preaching of the Gospel, both in and out of season?

Why can't we deed back to the Tribes at least the land we hold on the Reservations? Why can't we deed back to the Tribes land that we are not using and that is in the area of the Indian Land Claims? Why can't we deed back to the Tribes all our holdings in the disputed areas and then ask the Tribes for permission to use their land?

The Gospel tells us that the rich young man found Jesus' teaching too much, and so he walked away. Will we Christians, followers of this same Jesus, find social justice too much and turn our backs on Jesus and his Passamaquoddy and Penobscot People, and walk away?

Fr. Harry R. Vickerson

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