

Whose Land?

**An Introduction to the Iroquois Land Claims
in
New York State**

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for the American Friends Service Committee**

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Preface

Behind the peaceful scenery of rural New York State, a controversy rages. The Iroquois people, whose ancestors once lived here unchallenged, are trying to recover a part of the lands their forebears lost. In federal courtrooms over the past 30 years, they have laid claim to some 350,000 acres that they say were taken from them illegally by New York State. Their claims have been met by a wave of disbelief, worry, and opposition from landholders in the claim areas.

The controversy has already spilled from the courtrooms into the communities, where the atmosphere is now heavily laden with age-old resentments, misunderstanding, and anxiety. Hostility has torn apart families and friendships. Open violence is a real possibility.

"There's a powder keg out there," one resident told a newspaper reporter. "It will take a very small spark."

Where did this controversy originate? Who are the Iroquois people? On what basis do they claim these lands? What will become of non-Indians now living in the claim areas? And what direction offers the best hope for a peaceful and fair resolution to these disputes?

This booklet is a brief introduction to the Iroquois land claims in New York State. It attempts to answer these questions concisely but carefully. It is written for people who have sincere concerns about the issue and are looking for reliable, understandable explanations.

The booklet was prepared by the American Friends Service Committee, a Quaker organization that includes people of various faiths who are committed to social justice, peace, and humanitarian service. The American Friends Service Committee (AFSC) was founded in 1917 by the Religious Society of Friends to provide conscientious objectors to war with a constructive alternative to military service. AFSC sent Quakers to France and Germany to distribute food and clothing and to help rebuild villages shattered by World War I. In 1947, AFSC and its British counterpart were awarded the Nobel Peace Prize.

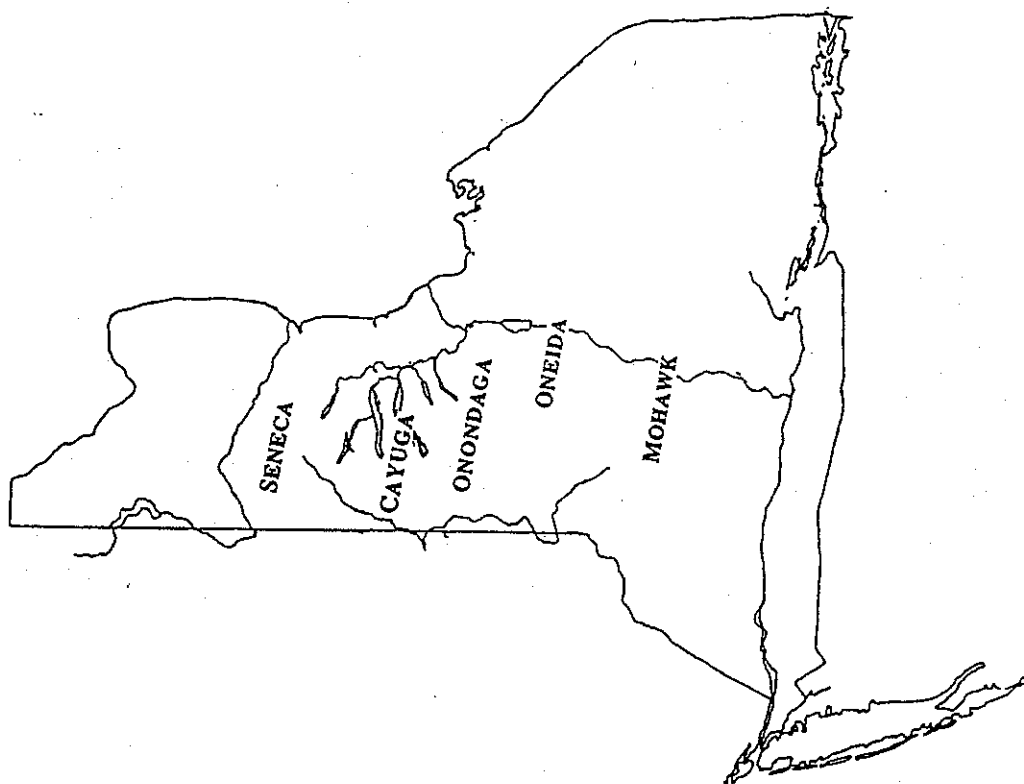
The American Friends Service Committee bases its work on Quaker beliefs in the worth of every person and in the power of love to overcome violence and injustice. Today it carries on programs of emergency relief, development, social justice, and peace education in 22 foreign countries and in 43 places in the United States. A regional AFSC office in Syracuse, New York, established in 1969, offers various community programs, including school workshops on nonviolent conflict resolution and a self-help project for people using welfare.

At the American Friends Service Committee, we have been engaged with American Indians for the past 50 years. A project of our Syracuse office, for example, assists the efforts of Mohawk people to clean up toxic waste and revive traditional economies at their Akwesasne home on the St. Lawrence River. Because of such partnerships, we know the Iroquois people have waited for generations to have a fair hearing and a just resolution of their land claims. But we also know that non-Indians in the claim areas have important concerns that must be addressed. For many of these people, the changes they see coming are downright frightening.

Given this complexity, what does justice require? That is the question we ask ourselves as we consider this issue. We believe that the Iroquois land claims cannot be resolved without a mutually respectful conversation about that question. Such a conversation must include a careful study of history. We hope this booklet will encourage that conversation. We hope it will help you ask yourself the question, What does justice require?

A booklet of this nature can never be completely up to date. Significant events continue to unfold. Nevertheless, we hope this booklet will provide a solid basis for understanding new developments.

On the following pages, you will find a brief narrative history of the Iroquois people and their land claims. Included is a discussion of the concerns raised by non-Indian landholders and of the position of opponents of the land claims. Next, you will find an explanation of the conclusions we at AFSC have reached for ourselves about this dispute. After that comes a short explanation of AFSC's position on Indian sovereignty and AFSC's answers to frequently asked questions about the land claims. Then each of the Iroquois nations is profiled and their current land claims are described in more detail. We also provide an address list of these nations and of other groups involved, as well as some suggestions for further reading. Finally, a feedback form solicits your questions, concerns, and suggestions. We welcome your response.



MAP 1. ABORIGINAL TERRITORIES OF THE HAUDENOSAUNEE. This map shows the approximate locations of the Five Nations before the Tuscaroras joined the Confederacy in the early 1700s. Their full territories extended beyond this area into what is now Ontario, Quebec, Vermont, Pennsylvania, West Virginia, and the Ohio Valley.

Meanwhile, New York State hoped to strengthen itself politically and economically by populating its western frontier with non-Indian settlers. The new state wanted land to give as bounty to war veterans. It also needed revenue to finance itself during these early years. To get this revenue, the state intended to acquire Indian land and then sell it to speculators—who in turn would reap huge profits by selling parcels to settlers. So, under the leadership of Gov. George Clinton, New York relentlessly pressured the Six Nations to give up their lands to the state.

In 1784, New York State representatives told the Oneidas, "We have no Claim on your lands: its just extent will ever remain secured to You." But the next year, New York began pushing the Oneidas toward land cessions by warning them that the state would not protect them from squatters—yet would hold the Indians responsible for any disorders. At a meeting in 1788, New York representatives led the Oneidas to believe that they had lost their land to an investment company, though this was untrue, and that the state simply wanted to help them recover the title. Through this deception, New York acquired some five million acres for \$2,000 in cash, \$2,000 in clothing, \$1,000 in provisions, and \$600 in annual rent. So cunning was the ploy that the Oneidas thanked the governor for an agreement that "secured to us so much of our Property which would otherwise have been lost." In similar ways over the next 50 years, New York systematically defrauded the Oneidas out of their entire territory. A 32-acre reservation was restored to them in 1920.

Under pressure from encroaching settlers and faced with hardships from the ravages of war and pestilence, the other Iroquois fared no better. They became easy prey for the high-pressure tactics of the state. New York maneuvered the Cayugas into agreements in 1789, 1795, and later that took away all their land. In 1788, the Onondagas sold to the state all but a hundred-square-mile reservation, then ceded two-thirds of that in 1793. In 1796, Mohawks who had moved to Canada ceded to New York all Mohawk land in the state except for some small tracts along the St. Lawrence River—but the Mohawk nation in New York was not a party to the agreement. In 1797, the Senecas lost most of their remaining land to financier Robert Morris of Philadelphia, who prepared for the negotiations by first laying aside a store of clothing for the women, bribe money for the men, and whiskey—later calculated at 25 gallons a day for 30 days. The Senecas moved onto small reservations.

These agreements were written in English, a language that most Iroquois people neither spoke nor read. They relied on non-Indian translators for an interpretation. And in nearly all of these land transfers after 1790, the buyers flouted the federal Nonintercourse Act by not bothering to obtain federal approval.

In 1838, New York State attempted to have all the Iroquois people removed to a territory west of Missouri. To do this, the state devised a treaty stating that the Six Nations had become "convinced from the rapid increase of the white settlements around, that the time was not far distant when their true interest must lead them to seek a new home among their red brethren in the West." But this treaty, exposed by Quakers as fraudulent, was repealed.

Of course, some Iroquois leaders genuinely wanted to sell their land and expected thereby to gain a better life for their people. But the deliberate American practice of undermining the social fabric of the Iroquois and subverting their political systems had left few other options. Combat, starvation, and disease during the Revolutionary War and its aftermath cut the Iroquois population in half. By 1850, the Confederacy was shredded by discord, and the vast territories of the Haudenosaunee had been reduced to a few scattered settlements.

But even this meager land base was not secure. In the twentieth century, New York State found it convenient to take over still more Indian land for various public projects. In the 1950s, despite determined resistance by Senecas, the Kinzua Dam flooded 9,000 acres of the Allegany reservation, including sacred burial grounds. In 1960, the Tuscaroras lost a similar battle when the State Power Authority confiscated 550 acres to construct a hydroelectric dam and reservoir, a project doggedly promoted by the engineer Robert Moses. Another Robert Moses project, the St. Lawrence Seaway, took land from the Mohawks at Akwesasne and Kahnawake. By industrializing the area, the seaway also contributed to the pollution that has virtually destroyed the Mohawk's fishing and agricultural practices, threatened their health, and weakened their self-sufficiency and traditional culture. The New York State Thruway and Interstate 81 took additional land from the Senecas and the Onondagas.

At the same time that Indians were losing their lands, their cultural identities were under persistent attack. The U.S. government pressured the Six Nations to give up their traditional form of governance. Some complied by adopting elective systems fashioned on the American model; some resisted successfully; and some had the new systems imposed on them.

The federal government also embraced various policies designed to "civilize" native people by forcing them to accept Christianity and a European way of life. For example, the government and private religious institutions operated boarding schools for Indian children that were characterized by military-style discipline, coercive and illegal "recruitment," and strict prohibition of Indian languages, dress, and customs.

Such policies did profound and long-lasting damage to Indian communities and cultures. Families were disrupted; languages were decimated. The effects have extended into our own time. In the 1970s, a third of all Indian children nationwide were living either in institutions or in adoptive or foster homes, mostly non-Indian. At a 1997 conference on the status of the Iroquois language, the Senecas estimated that they had just 25 fluent speakers of their own language. The Onondagas knew of 17; the Tuscaroras, only 12.

An Overview of the Land Claims

In 1492, Christopher Columbus stepped onto the shores of a world that was not his own. Rather, it was home to countless nations of indigenous peoples. From sea to sea, they had inhabited the land for as long as any of them could remember. Clearly, this land in its entirety belonged to Indians.

But over the next 500 years, Europeans steadily took possession of the land, often convinced by church and state that it was theirs to “discover” and own. Today, Indian nations in the United States have access to about 50 million acres of land in reservations—just 2 percent of the total land area. Nevertheless, the memory of their ancestral lands has been sustained for centuries in the recollections of elders. In Indian communities across America, there have always been native people who believed their lands were taken from them unjustly.

In New York, the Iroquois people have ceaselessly pursued the return of their land. For example, as early as 1794 an Oneida leader complained to the federal government about New York’s illegal confiscations. The government promised to investigate but never did. Throughout the nineteenth and into the twentieth century, Oneidas petitioned state and federal agencies for a hearing on their land claims. All their appeals were rebuffed or ignored. Meanwhile, both state and federal courts refused to consider Indian land claims cases, each citing a lack of jurisdiction.

Left with no other recourse, the Oneidas decided to challenge this jurisdictional roadblock. Though most observers considered their cause hopeless, in 1970, the Oneidas filed a test case in U.S. District Court. Their lawsuit was carefully written to convince the federal courts to accept the responsibility of settling an Indian land claims dispute. In 1974, the Supreme Court ruled in favor of the Oneidas’ right to have their claims settled in federal court. This landmark decision opened the federal courts, not only to the Oneidas, but also to other Indian nations seeking to recover land.

The case thus strengthened the other land claims that were arising, not only in New York, but also in other eastern states. The Passamaquoddies and Penobscots in Maine, the Wampanoags in Massachusetts, the Mashantucket Pequots and Mohegans in Connecticut, the Narragansetts in Rhode Island, the Pamunkeys in Virginia, the Seminoles and Miccosukees in Florida, and the Catawbias in South Carolina all asserted that land had been illegally taken from them.

The legal basis for these claims rested primarily on the Nonintercourse Act of 1790, the federal law that forbids all transfers of Indian land without the consent of the federal government. Indian nations pointed to land transfers made after 1790 without federal approval. They argued that, without such approval, these transfers were illegal. In 1977, in a second test case brought by the Oneidas, a federal court accepted this argument and

ruled in the Oneidas' favor. This ruling was later upheld by the U.S. Supreme Court. It was the first Indian land claim case won on the basis of the Nonintercourse Act, and it had obvious implications for other land claims.

Most of the states subsequently negotiated pretrial settlements in their land claim disputes. Typically, these settlements compensated the Indian nations with a combination of money and land. The money came from federal and state funds. The land was either public land turned over to the nations or it was private land purchased from willing sellers using federal and state funds.

In most cases, the Indian nations accepted much less money and land than they had originally wanted. In Maine, for example, the Passamaquoddy and Penobscot nations had sought 12.5 million acres and damages of about \$25 billion. But a 1980 agreement provided the two nations with an \$81.5 million federal trust fund and 300,000 acres of forest land purchased from lumber companies with federal funds. The agreement also created a tribal-state commission to continually review the effectiveness of the settlement and to address issues of jurisdiction.

Out-of-court settlements were also reached in Connecticut, Massachusetts, Rhode Island, Virginia, Florida, and South Carolina. In none of these cases were landholders forced from their homes. No Indian nations acquired the homes of American citizens against their will.

Although land claims in these other states have been settled, the Oneida claim in New York remains unresolved. The court has delayed awarding damages in order to give the parties an opportunity to negotiate their own out-of-court settlement. But negotiations between the Oneidas, the state, and the counties have languished for years. Many observers blame the state for the delay. Unlike Maine, which addressed land claims promptly, New York has dawdled for more than a decade and apparently still hopes to somehow avoid paying compensation to the Oneidas. Today, the Cayugas, the Senecas, the Onondagas, and the Mohawks also have unsettled land claims in New York.

The Dilemma of Non-Indian Residents

Today, Iroquois people are not the only ones with a strong emotional attachment to the land in the claim areas. Many non-Indian families have lived on and nurtured this land for several generations. Now they find themselves in a dilemma. While they may empathize with the Iroquois people, they also have misgivings about what might happen if parts of the land they love become an Indian reservation. As one resident noted, "Two sets of people loving and claiming the same land is painful the world over."

These residents raise important questions about how the claims will be settled. Those who have labored hard to promote ecological awareness in their communities want to know what will become of environmental regulations and zoning protections on lands that become part of a reservation. Others ask, Who will pay the compensation in a land settlement? Who will bear the loss of property tax revenues when these lands go off the tax rolls? What will become of law enforcement and fire protection in the claim areas? And what about financing schools and municipal services?

Residents also worry that reservations will become ever larger, that the claims will never end. They wonder if the tax-exempt status of reservations won't give Indian businesses there an unfair advantage over non-Indian merchants nearby. And they find especially worrisome the idea that a gambling casino might be built next door. They point to serious problems that have arisen around some Indian-run casinos elsewhere. What is to prevent such problems from arising here? How might a casino affect the community's character?

Such concerns are similar to those raised whenever a community anticipates a "new neighbor"—be it a large corporate retailer, a landfill, a prison, a military base, or a tax-exempt nature preserve. Responsible citizens wonder how their communities will be affected, and they ask legitimate questions. Try substituting the words *Wal-Mart Superstore* for *Indian reservation* to better understand these people's concerns about impacts on local businesses, schools, traffic, jobs, taxes, and the environment.

Many residents fear that they will be left with the tab when the land claims are settled. They wonder why they should be held any more responsible for past injustices than other American citizens. Assurances of state or federal assistance often sound suspect to rural people who know from experience how quickly Albany and Washington can lose interest in their problems. Understanding how these governments have treated Indians only deepens their worries about how they themselves will be treated.

Their distrust is not misplaced. After all, it was New York State that misled them into believing that they held legal title to this land. In effect, the state had convinced the Indians to *sell* the land and then convinced non-Indians to *buy* the land—in both cases knowing full well that these transactions were illegal. And it is New York that now seems content to leave the residents hanging in a vulnerable, uncertain position. As a result,

their property titles are clouded, and the real estate market is collapsing around them. Meanwhile, they look at the settlement negotiations and worry that their own futures are being decided by unknown power brokers bargaining behind closed doors.

These grievances against the state might well have given landholders common cause with the Iroquois people, whose main grievance is likewise with the state. But in 1998, the Oneidas sought to revive their unsettled lawsuit by amending it to include as defendants the 20,000 non-Indian property holders in the Oneida claim area. Many residents reacted with shock and anger, convinced that the Oneidas were bent on taking away their homes. This sudden polarization deepened the dilemma of those residents who had been hoping to find a practical compromise that would address everyone's concerns. The possibility of landholders and Indians together pressing the state for a resolution faded quickly as tempers on both sides flared.

Today, the most fervent opponents of the land claims in central New York have erected billboards on their properties, some of them menacing. On one sign, a resident sights down the barrel of a gun and suggests that the Oneidas "come and get your rent." At least one of these signs has been vandalized by equally zealous activists from the other side. Opponents and supporters have traded inflammatory rhetoric, hate mail, and phone threats. Anonymous callers have threatened to disrupt opposition activities with bombs. And in November 1999, a letter to a Utica newspaper, purportedly from a group calling itself the United States National Freedom Fighters, threatened to kill one Indian every three days beginning on Thanksgiving Day.

"I never knew hatred was so deep in this community," one resident told a Syracuse newspaper.

This firestorm of controversy is all the more unfortunate since it is apparently fueled in large part by a misconception that the Iroquois nations want to drive non-Indians from their homes and that this is likely to happen. Yet time and again, various Indian leaders have stated that this is not their intention. In the Cayuga case, all parties in the negotiations have agreed that any settlement will not involve forcing landholders off their properties. The presiding judge (who is also the judge in the Oneida case) has stated that he will not consider eviction as a remedy in the dispute. And the governor has promised that he will not agree to evictions. Furthermore, in the other land claims settlements in eastern states, no Indian nations have ever acquired the homes of any American citizens against their will.

But despite this, many landholders remain firmly convinced that their properties are in jeopardy. They fear losing their homes, their farms, their businesses—if not directly by eviction then indirectly by economic pressures or because of drastic changes in their communities that would force them out. They point to a community in Connecticut where heavy traffic to an Indian casino is so troublesome that several nearby residents have become "willing" sellers and left the area. This is seen as an ironic parallel to the way Indians themselves "willingly" sold their homelands to overbearing non-Indians two

centuries ago. These fears have mobilized scores of residents to demand that the Iroquois land claims be overturned. They have organized into grassroots groups such as the Madison-Oneida Landowners, Inc., the Central New York Fair Business Association, the American Citizens Association, and the Upstate Citizens for Equality, Inc.

With some 8,200 members, the Upstate Citizens for Equality (UCE) has maintained the highest profile. In 1999, it led a "Motorcade to End Indian Land Claims," a convoy of over a hundred cars that drove from western New York to the state capitol in Albany. The organization has also lobbied legislators, held local rallies, picketed and boycotted Indian businesses, and suggested that landholders in the claim areas should withhold their property tax payments.

In the Oneida claim area, opposition has sometimes mixed with resentment over that nation's newly found prosperity from its gambling casino. Some non-Indians in this working-class region have watched the Oneidas rocket from poverty to affluence while their own incomes have stagnated. Opponents complain that Indians do not have to play by the same rules, since they are exempt from taxes and certain regulations. Some see reservations as "islands of privilege" that put nearby non-Indian merchants at a disadvantage. UCE literature describes tax-exempt reservation enterprises as "race-based apartheid businesses."

UCE leaders favor trials—rather than out-of-court negotiations—to settle the land claims disputes. One reason is that they say negotiated settlements elsewhere have not worked out as promised for landholders. Another reason is that they still hope to reverse the court decisions that have validated Indian land claims. UCE hopes, for example, that on appeal, the Cayuga land claim decision might be overturned by a higher court—perhaps even by the Supreme Court. UCE believes that the political climate has changed since 1985, when the Oneida claim was upheld by that court in a slender five-to-four vote. None of those five supporting justices remains on the bench today, and the positions of the current justices are unclear. Reversing the Cayuga claim would, in turn, jeopardize all the other Iroquois land claims. But those court decisions cannot be appealed until *after* a trial is held to award compensation to the Indians for the loss of their lands. If an agreement on this compensation is negotiated outside the courtroom, the appeal process ends.

UCE believes that the land transfers from the Cayugas to New York State were "fair, equitable, and just" and that the land claim lawsuits are "based on technicality." Scott Peterman, president of UCE, has written that "the Cayugas were paid amply and repeatedly for their land." He argues that the "land claim is a scam, and the Cayugas deserve nothing more!"

Reaching Conclusions

The subject of Indian land claims is complex and sometimes bewildering. Who can hope to become an expert in all the historical, political, cultural, economic, and legal issues? The court documents alone would form a mountain of paper that only a lawyer could climb.

Nevertheless, ordinary people can understand the important elements. We can carefully weigh them in our minds and in our hearts. At the American Friends Service Committee, we have tried to do just that. After much listening, study, and quiet deliberation, the following conclusions have emerged. We offer them here for your consideration:

- *The Iroquois nations are the rightful owners of the lands they claim.* The legal basis for these claims has already been upheld in federal courts. But just as importantly, these claims stand proven in the court of conscience. We believe that fair-minded people who seriously study the history of these claims will conclude that these lands were unjustly and illegally taken from the Iroquois nations.
- *The non-Indian residents of the claim areas have legitimate concerns about the future of their communities.* To be fair and enduring, any resolution of these disputes must address the concerns of residents regarding tax burdens, environmental laws, zoning regulations, law enforcement, fire protection, schools, road access, municipal services, reservation size, and unwilling loss of land, among others. It is reasonable for residents to insist that their government reach agreements with the Iroquois nations that ensure the safety and well-being of their communities. We oppose evicting any residents from the claim areas as well as forcing any landholders to unwillingly sell their homes or businesses.
- *The Iroquois nations have a right to receive just compensation for their losses.* We want our federal and state governments to put right, at last, these grievous illegalities. We also support the Iroquois people's desire to reconnect with the land of their ancestors and to recover the traditions imbedded in it. We believe this can be accomplished through the transfer of public lands and/or through the purchase of private lands from willing sellers. No residents need lose their homes or businesses.
- *The state of New York bears primary responsibility for the unjust and illegal land acquisitions that caused this problem.* The state's misdeeds have now hurt both Indians and non-Indians. New York has an obligation, to the Iroquois nations as well as to its own citizens, to pursue a prompt resolution of these disputes. It is the state along with the federal government—not the private landholders or the local towns and counties—that must shoulder the greatest burden of compensation.

- *Negotiated settlements, conducted with wide community involvement, hold the best hope for a just resolution of these disputes.* Landholders and Indians alike have a right to expect and to feel assured that their negotiators are responsible representatives of their communities, without personal agendas or conflicts of interest. The courts should provide every feasible avenue for these negotiators to hear the opinions of their neighbors and to release regular, accurate updates about the negotiations. But all the parties must enter the negotiations in a spirit of respect and fair play and with a willingness to compromise for the good of all.

Our conclusions have emerged from a diligent search for what justice requires in these disputes. Having concluded that the Iroquois land claims are legitimate, it follows that justice requires fair compensation for the losses suffered. That, in turn, leads us to oppose all attempts to overturn the court decisions or to deny fair compensation to the Iroquois nations.

We realize that this compensation cannot be made without some hardship, some inconvenience, some uncertainty. This is especially unfortunate for residents of the claim areas because the Iroquois people have made clear that their real dispute is with the state, not with these private individuals. While some hardships are inevitable, it is unfair to expect people in the claim areas to bear them alone. The best way to share these hardships as equitably as possible is for the state, along with the federal government, to provide the compensation and to bear the other costs that will surely arise.

Finally, at the American Friends Service Committee, we seek more than simply the righting of past wrongs. Those wrongs put our world out of balance, and we must work to restore its harmony. We want a full reconciliation between Indians and non-Indians in New York State, a reconciliation that establishes peace and respect between our peoples. We believe that people of goodwill from all sides of the issue can bring together their integrity, compassion, intelligence, and creativity to find a resolution that will strengthen and affirm both our communities. With that hope, we commit ourselves to the pursuit of both justice and reconciliation in the settlement of these disputes.

We invite you to join with us in this hope and this commitment. And we encourage you to take an active role in convincing your family, neighbors, and public officials to do the same.