

Lesson 11.4

UNDERSTANDING THE MAINE INDIAN LAND CLAIMS SETTLEMENT*

Objective: Students will be able to articulate the central dispute in the Maine Indian Land Claims Case, and based on selected articles and facts, will make their own judgments about how fair the settlement was.

Materials:

- **Sheet 11.4A:** Clarify Your Position student worksheet
- **Sheet 11.4B:** Maine Indian Land Claims Settlement Act Fact Sheet
- **Docs 11.4A – 11.4E:** Various articles on the land claims case

Timing: Four to five class periods

Background Reading: Chapter Eleven, Section Three

Note: This activity demands a good deal of independent motivation and thought on the part of students. You may wish to modify it, based on the level of your class. An alternative approach would be to read and discuss some of the articles (representing different points of view) as a class.

Procedure:

1. Review with students the section on the Maine Indian Land Claims Case in Chapter Eleven, Section Three of the textbook. Discuss with them the concept of sovereignty in American Indian tribes, the effect of the treaties passed in the nineteenth century, and the basic law outlined in the Indian Non-Intercourse Act of 1790. Ask them questions like the following:
 - What is sovereignty? Why is it so important to American Indian tribes? How might sovereign nations within the United States be in conflict with federal and/or state governments?
 - The Penobscot and Passamaquoddy tribes signed treaties with the state of Maine between 1794 and 1833 that transferred the title to most of their land to the state. Why do you think the tribes signed these treaties?
 - What was the Indian Non-Intercourse Act of 1790? How did it affect Maine Indian tribes? What role did it play in the Indian Land Claims Case?
2. Tell students they will have a chance to deepen their understanding of the case by researching and presenting a certain point of view on the facts of the case. Warn students that they must do their best to argue their assigned point of view, even if they do not agree with it. They will be able to express their own individual opinion after the presentations are finished. Break students up into five groups. Assign one of the following points of view to each group:

- a. Non-Native view that the case is invalid and should be dismissed by Congress by having Congress ratify the two-hundred-year-old treaties.
 - b. Non-Native view that the state should fight the case in court because the state will be likely to win.
 - c. Non-Native view that the state should settle the case with the Indian tribes.
 - d. Native view that the tribes should take the state to court, because the tribes have the potential of gaining more land or money.
 - e. Native view that the tribes should settle the case with the State of Maine.
3. Give each group a Clarify Your Position worksheet, a Maine Indian Land Claims Settlement Act Fact Sheet, and copies of each of the articles . You may want to assign roles to students to ensure that they work well together (see Appendix 1). Give students enough time (2-3 class periods, and/or time at home) to read through the articles and the fact sheet, to discuss the issues of the case and develop their group's position statement, using the Clarify Your Position worksheets. Each group should plan a presentation of no more than 5 minutes.
 4. On a designated day, have students make their presentations. Their presentations should state their position clearly and support it with at least three statements found in the articles and the fact sheet. See the Clarify Your Position worksheet for details.
 5. When all the groups have finished presenting, give students an opportunity to discuss the case in more detail. Ask questions like the following:
 - What new information have you learned about the case?
 - Has anyone changed his or her opinion after listening to the presentations? Why?
 - In this case there are more than two simple sides to the issue. What are those sides? Can you think of other situations in which there are more than two sides to an issue?
 - Was it difficult to argue a position if you did not believe in it?
 - What do you think might have happened if the case had gone to court? Why?
 - Do you think the settlement was a fair solution? Why or why not?
 - Does being treated equally ever mean being treated differently? Under what conditions? Consider the handicapped, elderly, and small children as examples.
 - Should any group ever be given special rights and privileges? Why or why not?
 - Should treaties ever be broken? Why or why not?
 6. **For Homework:** have students write an opinion piece (1-2 pp.) on the Land Claims Settlement. They should express whether they believe the settlement was a fair solution or not and give reasons why they think so.

Evaluation: Grade students on both an individual and group level. Their individual grade should be based on their opinion pieces and their participation in the group. The group grade should be based on the quality and accuracy of the group's presentation. Provide students with a rubric when you assign the project, in order to make your expectations clear.

Follow-up Activities:

- Invite a member of a Maine tribe (Passamaquoddy, Penobscot, Maliseet, or Micmac) who was an adult during the period of the land claims case to your classroom to talk to students about life in the tribe before and after the settlement.
- Try out some of the activities and readings in *The Wabanakis of Maine and the Maritimes: A Resource Book About Penobscot, Passamaquoddy, Maliseet, Micmac, and Abenaki Indians*, published by the Maine Indian Program of the American Friends Service Committee, 1989. They have more materials on the Land Claims Case, including interviews with Native people, as well as dozens of other lessons and materials on contemporary Indian issues.
- Have students research other land claims cases brought by other Native American tribes throughout the country. Have them compare other cases to the Maine Indian case. What issues are similar? What differ?

* This lesson is an adaptation of “Land Claims Case and Aboriginal Rights,” printed in *Wabanakis of Maine and the Maritimes*, by the Wabanaki Program of the American Friends and Service Committee, 1989. It is being reprinted here with permission.

Alignment with the Learning Results:

Grade Level: **6th-8th**

Content Area: Social Studies: **HISTORY**

Standard: **Historical Knowledge, Concepts, Themes, and Patterns**

Students understand major eras, major enduring themes, and historic influences in the history of Maine, the United States, and various regions of the world.

Descriptor **E1b**: Analyze and critique major historical eras, major enduring themes, turning points, events, consequences, and people in the history of the United States and world and the implications for the present and the future.

Grade Level: **6th-8th**

Content Area: Social Studies: **APPLICATIONS**

Standard: **Researching and Developing Positions on Current Social Studies Issues**

Students research, select, and present a position on a current social studies issue by proposing and revising research questions, and locating and selecting information from multiple and varied sources.

Descriptor **A1c,e,f**: Locate and access relevant information that includes multiple perspectives from varied sources, distinguish between primary and secondary sources, and evaluate and verify the credibility of the information found in print and non-print sources.

Name: _____ Date: _____

Group Members: _____

_____ Date of Presentation: _____

**MAINE INDIAN LAND CLAIMS SETTLEMENT: CLARIFY YOUR POSITION
STUDENT WORKSHEET**

As you read the materials provided, use this worksheet to help your group prepare to defend its position. Come up with at least three separate factual statements that support your position. Make sure you discuss the questions below with your entire group before answering them.

1. State the position your group has been assigned to defend. _____

2. Put yourself in the shoes of the people you are representing. Why do you think you might argue this position?

3. List all the facts that support your position. _____

4. Create at least three separate factual statements to use as arguments.

a. _____

b. _____

c. _____

5. Practice your presentation a few times before giving it to the class.

Name: _____ Date: _____

**MAINE INDIAN LAND CLAIMS SETTLEMENT ACT
FACT SHEET¹**

This fact sheet summarizes some of the terms of the Maine Indian Land Claims Settlement Act, signed into law in 1980.

- Only the Penobscot Nation, the Passamaquoddy Tribe, and the Houlton Band of Maliseets have any valid claims to land in Maine. Micmacs and Maliseets other than the Houlton Band must abandon their claims.
- All other claims by Maine Indians to land in Maine are extinguished.
- A Land Acquisition Fund of \$26.8 million apiece is established for the Penobscot Nation and the Passamaquoddy Tribe, and of \$900,000 for the Houlton Band of Maliseets.
- Any land in certain unorganized territories bought by the Penobscot Nation, the Passamaquoddy Tribe, or the Houlton Band of Maliseets is considered "trust land" and is specially protected by the U.S. government. All other land bought by the tribes has no special protection.
- The way the Penobscot Tribe and the Passamaquoddy Nation use their trust land must be approved by the U.S. Secretary of the Interior.
- A Settlement Fund of \$13.5 million apiece is established for the Penobscot Nation and the Passamaquoddy Tribe, to be held in trust by the U.S. government. Each tribe earns interest from their fund tax-free. The interest from \$1 million of each fund is set aside to be spent on the elderly of each tribe. The Houlton Band of Maliseets gains no trust fund from the settlement.
- The Passamaquoddy Tribe, the Penobscot Nation, and the Houlton Band of Maliseets are all federally recognized tribes, and as such are eligible for all federal Indian benefits. All other Indians in Maine that are not a part of those tribes are subject to Maine laws.
- The Passamaquoddy Tribe and Penobscot Nation are subject to the same laws as Maine municipalities (i.e. cities and towns), with some exceptions, highlighted below:

¹This fact sheet has been adapted from the book *The Wabanakis of Maine and the Maritimes: A Resource Book About Penobscot, Passamaquoddy, Maliseet, Micmac, and Abenaki Indians*, published by the Maine Indian Program of the American Friends Service Committee, 1989.

- a) The Indian Child Welfare Act applies to all three tribes. This Act recognizes each tribe's exclusive jurisdiction² over Indian children living on its reservation.
 - b) The Tribe and Nation may govern internal tribal matters without state regulation, such as tribal government, membership, residency in tribal territory, and how the Settlement Fund is used.
 - c) The Tribe and Nation have exclusive jurisdiction over minor crimes and civil disputes, divorce, and child custody matters.
 - d) The Tribe and Nation may regulate hunting, trapping, and fishing in their own territories. The rules cannot discriminate against non-Indians allowed to hunt and fish in the territories, except that the tribes may set special rules for their members to hunt, trap, or fish for their own food. If tribal fish and wildlife regulations are shown to be significantly depleting fish and wildlife outside their territories, the State Commissioner of Fish and Wildlife can overrule them.
- The Maine Indian Tribal-State Commission is established: a nine member group (of Indians and non-Indians) that will evaluate the effectiveness of the settlement and make recommendations to the legislature on any questions that may arise.

²jurisdiction: legal authority

THE INDIAN SUIT

Kennebec Journal, Letter to the Editor, 2/21/77.

If this Indian lawsuit goes through in Maine and Massachusetts, a precedent of tremendous magnitude will have been developed. Without the guts to face this cold potato of 200 years and so treat it for what it really is, a great extortion, the not-so-wise present day leaders are about to allow the creation of a monster in our midst once those two states bow to the Indian demands and so set the wheels a-rolling. Such a monster can and no doubt will in the final showdown demand payment for every blasted inch of land in the whole nation. Think that is too far-fetched? Then wait and see, as the handwriting on the wall is crystal clear.

The next demand to follow a capitulation by Maine and Massachusetts to this Indian lawsuit will be as the logical demand for payment of what was known as the Great Plains, an area from Texas to the Canadian border—Oklahoma, Kansas, Nebraska, South Dakota. White man thought this territory was useless and too dry for farming – so the U.S. Government set aside all the territory for the Indians, who had already been pushed all the way back from the East coastal area, and theirs then it would be theirs forever. That was in the 1830's.

Forever didn't mean much to the white man, for in 1854 the Kansas-Nebraska Act by Congress, squeezed the Indians practically out of this whole territory – settlers quickly moved in and took over, then due to Indian resistance over loss of the inalienable rights due to the territory, the U.S. Government turned its army against the. The rest is history – murder of men, women and children and of course defeat.

We of today are in no way responsible for that the U.S. Government did wrong 200 years ago. Still, our government in Washington is backing this Indian suit to the hilt, even though we the people of today are not in any way conceivably guilty of the atrocities instigated and carried out by orders from D.C.

The governors of Maine and Massachusetts should simply toss this lawsuit right back into the hands of our government in Washington, and the whole mess is blood on their hands, not ours – the sons and daughters of murders must not be punished for what the parents did before them.

The time has come to call an abrupt halt to all this nonsense being forced upon us. A state or nation so wishy-washy it can't or won't protect itself in the name of common sense is destined to end up on Hades. Every inch of what is now the U.S. once belonged to the Indians; therefore there is not one distinct place to draw a line: we took it from them, that is true, but we sure as hell are in no position today to give it back under treat of extortion or anything else. Like it or not the Indians are now a part of our nation and must be treated on an equal basis as all other U.S. citizens., none of whom would even dream of disrupting our entire nation to right a wrong done to our ancestors 200 years ago... Such an attempt would be instantly branded as the reactionary act of addle-brained nincompoops and be treated as such.

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ELLSWORTH AMERICAN*Maine Sunday Telegram*, Editorial, 2/27/78.

The Indian land claims settlement proposed by the Carter administration could be justified only on the assumption that the contentions of the tribal lawyer are sound and the basic demands of the tribes just.

This newspaper believes they are not, for the following reasons:

- (1) That the Indians generally held no legal title to land, but only were acknowledged to have possessory or occupancy rights.
- (2) That the Indian Non-intercourse Act of 1790 did not apply to any Indians living within the then-settled eastern states, but only to so-called “western” Indians on the borders.
- (3) That the Penobscot tribe of the Abenaki lost whatever possessory rights they ever had in the Penobscot valley by their alliance with France in the French and Indian Wars in which they were defeated.
- (4) That “title” to the former tribal area was not conceded to the Indians for their support of the American Revolution either in the accord signed after Lexington or in the arrangements made with the Passamaquoddy by John Allen.
- (5) That much of the land that Washington would convey to the Indians was acquired by good and valid grants from the State of Massachusetts to General Knox and others, and that such grants cannot be set aside subsequently by any arbitrary act.

If the federal government, since 1790, should have been supported and acknowledged the Maine Indians, the state ought to be fully reimbursed for the support it has given the Indians since 1790 and assuredly should not be compelled to give them any further

The payment of \$25 million to the Indians to drop their claims against owners of parcels of less than 50,000 acres would have the virtue of quieting the controversy over the property of small holders and permit the normal land transactions of private persons to proceed. It is doubtful that even this piece of polite bribery could forestall in perpetuity of the possibility of recurrent claims by (a) Penobscot or Passamaquoddy individuals contending that the existing tribal governments did not represent them; (b) by the Maleccites and the Micmacs who are not included in the settlement offer and seem just as well entitled by indigenous and historic claims as the Penobscots and the Passamaquoddies; (c) by other remnants of the Abenaki tribes who fled to Canada. Perhaps Congress, or the Legislature, could quit title to the contested lands (but either or both can do that without payment of a dime).

The surrender of land of large land owners, many of the titles of which are as good as those of small holders, smells of sheer demagoguery and constitutes an outrageous discrimination based solely upon arbitrary distinctions of wealth that may conform to some theories of social justice but have nothing to do with historic property rights.

Maine’s small Indian tribes ought to be dealt with justly and generously, upon the basis of their formidable claims upon the humane impulses of people, but not upon legal fantasy that cannot be supported by either history or law. The place to determine such legal claims is not in the closets of vote-seeking politicians but in the chambers of the United States Supreme Court.

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support. They either have been or have not been charges of the Federal government.

Doc. 11.4C

LETTER TO THE EDITOR

Maine Sunday Telegram, Letter to the Editor, 3/5/78.

In response to your editorial on Feb. 19, "Indians and Fairness," if I were an Abenaki I would find it difficult to read the words Indians and fairness on the same page. The settlement proposed by Judge Gunther is good for everyone.

Maine and its citizens confiscated some 20 million acres of land from the Abenakis and didn't pay a penny for most of it, yet the Telegram is complaining about the state's largest land owners having to sell back a mere 300,000 acres, roughly 10 per cent of their holdings, for \$5 an acre.

If my figures are correct this acreage is less than 1 percent of the original Abenaki lands, yet they will have to pay \$1.5 million to get it back. That's like taking food from a baby then selling some of it back for a whacking good amount.

Very fair to the Indians? Hardly. But better than losing their scalps at 100 pounds per person, which was what the legislature offered bounty hunters when the state decided to depopulate Penobscot land centuries ago. That was the price we paid for their land! Should we speak more of fairness?

As to Maine's own share of the proposed settlement. Baxter State Park alone would be a steal for the \$25 million the state has been advised to pay the Indians.

The Abenaki losses were staggering. Consider the following:

The loss of 20 million acres of Abenaki homeland, except for Indian Island and the Passamaquoddy reservation;

The destruction of the Abenaki tribes along the coast and great rivers which included the Sokokis or Pigwacketts, the Anasagunt-

The reduction of the Penobscot and Passamaquoddis (sic) tribes to being wards of the state; The loss to the world of the Wabanaki culture and civilization.

Are we as citizens to quibble about the recommendations of the presidential commission? If so, the words fairness and justice should be stricken from the English language.

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Doc. 11.4D

ANOTHER ARGUMENT FOR SETTLEMENT

Kennebec Journal, Letter to the Editor, 5/6/78.

The State of Maine should settle the Indian land claims case. Enough acrimony, accusations and postures have been seen and heard.

Twice this case has been before United States Federal Courts. Twice the Indians have won. All the issues have not been decided, but what the courts have said is fundamental.

The courts have said, and it is now the law, that the Indian Non-Intercourse act, originally passed in 1790, applies to the Passamaquoddy and Penobscot Indians in Maine and creates a trust relationship between them and the federal government of the United States.

As a trustee, the federal government, under both Presidents Ford and Carter has felt compelled to sue the State of Maine and various landowners in Maine for the return of the land taken illegally from the Indians at any time after 1790. Exactly how much land that is remains in question. Whether courts would in fact order its return remains in doubt.

So why settle?

Our president and his representatives, and our senators, recommend settlement. Too many attorneys, both federal and private, believe the Indians have a strong case for their claims to be dismissed out of hand. Each new Indian victory in court raises the cost of a settlement and increases the possible economic disruption of a final judgment.

Maine bonds are selling again after a break in the market following the Indians' second court victory. A new court victory by the Indians' could easily disrupt that important market again. The current settlement offer would allow the state to keep all of its public lands, whereas further litigation could cost the state more than 300,000 acres. The state is not responsible for

Some Political figures apparently wanted to change the law and destroy the Indians' claim, apparently feeling that if the government could not win in court, it would simply exert its power to destroy the annoyance caused by these claims.

Even the Constitution would permit changing the law in the middle of a lawsuit because the government was losing (and I do not concede that it would), the President has not (sic) said that he would veto such a bill. The State must look elsewhere, therefore, for succor.

In addition to justice, humanity, policy, and common sense, which should be reasons enough to settle, the state faces undeniable painful and extended litigation with many of the public lots and all of Baxter State Park at risk. That risk is not worth it.

The state has the chance to settle for a money payment only. It should accept the offer or make an offer of its own. No one benefits from more delay.

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the large landholders. They may defend themselves or settle as they see fit.

Doc. 11.4E

GUEST COLUMN: “INDIAN POLICY”

Bangor Daily News, Guest Column, 12/11/78.

Now that the election battle is over, many have suddenly become so elated with the results that they think the war is over on our land claims case.

The BDN [Bangor Daily News] wants another Indian policy formed by the U.S. government immediately and the governor wants to tie up the loose ends such as jurisdiction and taxation, on a proposal accepted by everyone except us, the Indians. Griffin Bell simply wants us to crawl back into our history of Oblivia, never to return.

First, it’s another “Indian policy” which the BDN believes to be overdue. From this end of the spectrum Indian people are wondering exactly what kind of Indian policy the BDN speaks of since it never writes of such issues in definitive terms, only vague generalities with connotations which spell bad news again for the Indians.

This time the so-called Indian policy evolves around Indian land claims. The BDN feels these claims must be halted but stops short of saying how.

As an Indian I see the BDN advocating the continuation of the days when an Indian was Indian and the U.S. system of justice was for other Americans. In essence this is what the BDN and others are suggesting. Remove us from the court system for bringing such a claim regardless of its legal merit and furthermore the same for any other Indian nation who seeks justice from a system which we did not create but one we must live by.

It is with all honesty that I can say Indian people expect a net result of denial to access of the U.S. legal system if a negotiated settlement cannot be reached. It is history and it will repeat itself again. It was Andrew Jackson who

Which stated the Cherokee removal in Oklahoma was illegal. Jackson said to Justice Marshall, “He has made his decision, now let him enforce it.” Today, Indians across this land are still dealing with numerous politicians and citizens who have the same mentality.

It’s understandable why Griffin Bell has become the savior to the BDN and others. We can spend billions in the Middle East because of a commitment but it’s always been so hard to keep a commitment to Indian people.

It was amusing to read the BDN editorial “Cuban Ambiguity,” about the Russians breaking their word and allowing offensive weapons into Cuba. From two years past the BDN had been advocating a breach of the U.S. Constitution protecting Indian lands, yet today points a finger. Nothing like the pot calling the kettle black.

People know that we will continue as we have for the past two years to seek an honorable negotiated settlement, regardless of the accusations by the BDN and politicians who claim we are negotiating on a faulty claim, or we are revengeful and enjoy holding the state in a precarious situation. We have no fear of the Federal courts – after all, that is where our claim was created.

Perhaps the BDN would have preferred we filed our suits and brought the State of Maine to a grinding halt. And what the BDN? Isn’t that what your idea of an Indian policy really is? Keep us without and we will never be anything more than what we are today – wards of government grants. You and others criticize it so damn much, yet ironically you and those others are the biggest obstacles to us achieving economic freedom releasing us out from under Uncle Sam’s thumb.

spoke the famous Cherokee decision by U.S. Supreme Court Justice Marshall in the 1830's, You and others like you will be our living reminder of exactly what kind of system of justice we are stacked up against.

It is a long way from settlement of our claims whether through the courts or negotiations and

We have waited 200 years for this equality you so highly tout, so I'm sure we can wait another few years.

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