"Whose Land Is It Anyway?"[1]

The Third Side's Response to Indian Land Claim Conflicts in Upstate New York

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> In the earliest published histories of Onondaga County, there is a tale about an Onondaga Nation chief who was visited nearly 200 years ago by a white settler seeking to buy a small piece of the Onondagas' territory. The chief, Oundiaga, invited the man to sit with him on one end of a 12- foot log, according to historian Joshua V. H. Clark. Oundiaga began a spirited complaint about the encroachments of settlers on the Indian nation's land. As he talked, he hitched himself closer and closer to his guest, forcing the visitor to move a few inches. Eventually, the white man found himself at the far end of the log. Oundiaga gave his guest a final bump, sending him sprawling to the ground. "There," said the Chief. "You white folks, if allowed permission to sit down with us on a little piece of ground on our borders, you keep crowding up, crowding up, till the Indians' land is very small; and finally we shall in a very few years be entirely driven from our lands, piece by piece, without anything to help ourselves with, as you have been crowded from the log." (from, "No Authority to Make a Deal", Syracuse Post-Standard, 8/10/00, p. A-10).

This story foreshadows what actually happened to the Six Nations[2] in New York. As a result of a series of land transactions with the State of New York, the Onondagas, Cayugas, Oneidas,

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[1] This title corresponds with a segment of 60 Minutes that aired on 5/23/99.

[2] The Six Nations -- Mohawk, Oneida, Onondaga, Cayuga, Seneca and Tuscarora – are also referred to as the Iroquois and the Haudenosaunee (People of the Longhouse). For more information about the Longhouse League, visit their web site at www.sixnations.org . For political histories of the Iroquois, see

Senecas and Mohawks were crowded from the log. Within 50 years of the American Revolution, New York had acquired most or all of the homelands of each of these Nations. (See Map 1). The struggle over land, and figuring out whose land it was and is anyway, began then, but continues to this day.

In recent years—since the mid-1970s—the Nations have been pursuing claims in federal court in an attempt to regain some of these lands. The cases generated controversy and conflict in the state of New York, as the state, local governments, and non-Indian local residents and landowners struggled to understand the implications of the

Fenton (1998) and Snow (1994). For ethnographies, see George-Kanentiio (2000), Morgan (1993[1853]) and Shimony (1994).

Map 1: Iroquois Lands

Source: A Special Report: Confederacy at a Crossroads, Syracuse Herald American, October 15, 1995, p. 15.

land claims for them. Over the past quarter-century, this legal and domestic struggle has gone through periods of little activity, as well as periods of intense effort and conflict. Numerous attempts have been made to settle the land claims out of court. During the period from December, 1998 through December, 2000, the conflict went through a period of particular intensity, both in terms of

the level of conflict in the land claim areas and in terms of legal activity. [3] This spawned Third Side interventions by at least 11 different organizations in an attempt to prevent violence and to generate resolutions to the land claim conflicts.

The authors have been conducting research into the conflicts and the Third Side activity that resulted from those conflicts. In this chapter, we analyze the Third Side interventions that took place during this two-year period in three related land claim cases—Cayuga, Oneida, and Onondaga.

To begin this analysis, we note some notes on the legal and historical background of the land claim conflicts. The events of the two-year period of this study are rooted in centuries of imperial, colonial and American history. Making sense of the events of 1999 and 2000 requires some understanding of the events of the past 200 years, and some understanding of the federal law that has governed how the native nations have pursued their claims in court[4]. We begin, therefore, with an extremely condensed synopsis of the history and legal events that foreshadow the period of this study.

Through a series of treaties with New York State, the original reservations of the Cayugas (64,000 acres), Oneidas (250,000 acres) and Onondagas (71,000 acres) were reduced in size, some drastically. For example, by 1811, the Cayugas had no reservation whatsoever while the Onondagas and Oneidas possessed only small remnants. This happened despite the fact that the federal government had made two firm commitments to protect the Six Nations' lands. The 1790 Indian Trade and Intercourse Act (ITIA), reenacted in 1793, outlawed the purchase of Indian land without the explicit approval of the federal government.[5] A little more than three years later, in 1794, the

[3] All references to ongoing litigation or negotiation are current as of December 2000. Please see the afterword for case developments since December 2000.

[4] We note that traditional Haudenosaunee (Iroquois) people have told us many times that they do not recognize the principles of federal law in any way. Likewise, non-Indian property owners have told us that federal law does not reflect "common sense." The land claims, however, are being pursued in federal court, and as a result, federal law governs how the courts have handled the cases. We feel the need, therefore, to provide the reader with sufficient background on federal law to understand the events which we discuss here.

[5] Section four of the 1793 ITIA (now 25 U.S.C. 177) reads, "That no purchase or grant of lands, or of any title or claim thereto, from any Indians or nation or tribe of Indians, within the bound of the United States, shall be of any validity of law or equity, unless the same be made by a treaty or convention entered into pursuant to the constitution…"

United States signed the Treaty of Canandaigua with the Six Nations. In this treaty, the government agreed that the Six Nations' land could never be taken from them, in exchange for which the Six Nations agreed to peaceful relations with the new nation.[6] However, changes in the geo-strategic, political and economic balance of power ultimately left these laws unenforced, and the Six Nations dispossessed.

The loss of their lands marked the beginning of their struggle to regain them. For the last 200 years, each of these nations has, despite numerous legal, political and economic obstacles, pursued a series of claims against the State of New York and the United States. As a result of this struggle, a small amount of money has been offered and paid to partially compensate the Cayugas and Oneidas for their losses (Shattuck, 1991; von Gernet, 1999; Whiteley, 2000). However, no land has ever been returned.[7] Returning land was not even a legal possibility until 1974 when the United States Supreme Court allowed the Oneida Nation to pursue an ITIA-based land claim "test case" in federal court (414 U.S. 661). Until that decision, both the federal and the state courts, citing technicalities in the law, had not allowed any of the Six Nations to file land claim lawsuits (Shattuck, 1991).

For the purposes of their test case, the Oneidas sued Oneida and Madison Counties (which were located on the Oneidas' former reservation) for two years' worth of back rent. Essentially, the Oneidas claimed that they still owned the reservation lands, despite the fact that New York—and Oneida and Madison Counties—had been in possession of the land since 1795. Since they still owned the land, the Oneidas said, and since the counties were occupying part of that land, the counties should pay the Oneidas rent (Shattuck, 1991). To resolve this matter, the court had to

[6] Article Two of the Treaty (7 Stat. 44) states, "The United States acknowledge the lands reserved to the Oneida, Onondaga and Cayuga Nations, in their respective treaties with the state of New York, and called their reservations, to be their property; and the United States will never claim the same, nor disturb them…but the said reservations shall remain theirs, until they choose to sell the same to the people of the United States, who have the right of purchase."

[7] Not surprisingly, given what the eminent historian Paul Prucha points out, "the conflict between whites and Indians that marked American Indian relations was basically a conflict over land. Who was to own and control the land? – This was the elemental question. Land was of supreme importance, outweighing all other considerations in the matter of white-Indian relations" (1962: 139).

determine whether the counties or the Oneidas had legal title to the lands in question. To decide that, the Court had to determine whether the State Treaty of 1795 that conveyed the land to the State was valid or not, i.e. did it comply with the provisions of the ITIA.[8] In July of 1977, Judge [FIRST NAME] Port ruled against the counties; he found that the state's 1795 purchase had violated federal law, and therefore was void as a matter of law (434 F. Supp. 527). The Oneidas, then, still had title to the land even after the passage of 175 years.[9]

In the wake of the Oneidas' success in 1974 and 1977, a number of eastern Indian nations who believed that their land had been taken from them in violation of the ITIA, began filing their own land claims. Their early legal successes led the federal government to adopt a general policy of negotiating these claims, and, under President Carter, a number of task forces were appointed to work on them (Jones, 1979). Some of these cases were settled out of court (Walke, 1999), but not in New York.

While the Oneidas pursued their test case, the Cayugas were preparing a land claim for their original horseshoe-shaped reservation on the northeast and west sides of Cayuga Lake. New York State had acquired the entire reservation in the state treaties of 1795 and 1807. The Cayugas asserted that the treaties violated the ITIA because they did not have federal government approval, and were therefore void. The federal government responded by appointing a task force to negotiate the Cayugas' claim, and a settlement was reached in 1979.[10] However, that settlement was never implemented. Consequently, the Cayugas went to court in 1980, asking for the return of the reservation, which would mean the eviction of thousands of people who live there now. The Cayugas

[8] To establish a prima facie case for an ITIA violation, a test, set out in *Narragansett Tribe of Indians v. Southern Rhode Island Land Development Corp. et al* (418 F.Supp 798, 803 [1976]), is applied: 1) is the plaintiff an Indian "tribe" under the act; 2) are the parcels of land at issue herein covered by the act as tribal land; 3) has the United States ever consented to the alienation of the tribal land; 4) has the trust relationship between the United States and the tribe, which is established by coverage of the act, been terminated or abandoned. For more discussion, see Berkey (1993) and Clinton & Hotopp (1979-80).

[9] Technically, federal law makes a distinction between "aboriginal" title and other types of title to land. For the purposes of this paper, we will not highlight to the differences, as it would require a lengthy "legal detour" and would not change the points we lay out here.

[10] The settlement would have created a reservation for the Cayugas from two parcels of land totaling aproximately 5,500 acres, and an $8,000,000 trust fund, part of which could have been used to purchase additional land (Lavin, 1988).

also asked the Court for $350 million in damages for 200 years of illegal use and occupation of their land.[11]

Ironically, despite the fact that the Oneidas' land claim was the first ITIA case that was allowed to proceed by the federal courts, the claim has not yet been settled. The Supreme Court's 1974 decision did not give the Oneidas their land back—it only allowed them to proceed with a lawsuit in an attempt to reclaim the land. Judge Port's 1977 decision was a victory for the Oneidas—it unequivocally stated that they still had title to the land—but it did not give them the land back. That decision only awarded the Oneidas back rent for the two years named in their test case. Since the Port decision, which was supported by a split Supreme Court (5-4) in 1985, the Oneidas have been pursuing a full-scale land claim (470 U.S. 226). That claim is still in process.

During this same period, the Onondaga Nation (also in New York State) has been preparing its own land claim.[12] The Onondagas held a 71,000 acre reservation in 1790. That reservation was reduced to approximately 7,000 acres in a series of four transactions with New York Sate between 1793 and 1822. Wary of litigation, as they watch the ups and downs of the Oneida and Cayuga cases, the Onondaga Nation has attempted to negotiate, unsuccessfully so far, with the state to resolve their claim, rather than file and pursue the case in the federal court system.

The claims of the Oneidas, the Cayugas and the Onondagas have been in the litigation or pre-litigation process for decades. As they have proceeded, the regions of land involved in the land claims have experienced unrest, conflict, and occasional threats of violence. Some of the non-Indian residents of the area are generally unconcerned with the situation. Others wonder if they will lose their land, or if their property values and means of livelihood are under threat. Still others are enraged at the possibility that the land holdings of Indian nations may grow, and they are actively working to prevent this from happening. The conflicts spawned by these decades of uncertainty

[11] See Lavin (1988).
[12] For more information, see http://www.indianlaw.org/onondaga.htm. For more historical background on the claim, read "an Empire Lost", a week long series of articles that ran in the Syracuse Post-Standard from 8/6/00 to 8/11/00.

have cycled through periods of escalation and de-escalation. What, if anything, is being done to prevent, resolve and contain these conflicts? Can anything be done?

In the pages that follow, we explore a significant escalation of the conflicts that took place between December, 1998 and December, 2000. This escalation was significant both in terms of the conflicts that have occurred in the Oneida, Cayuga and Onondaga land claim areas and in terms of the work of third siders (Ury, 2000) who stepped in to address these conflicts. Next, we analyze the impact of the third-side interventions. Finally, we conclude with suggestions for what needs to change and what roles need to be played for the Third Side to intervene successfully in these large, intractable social conflicts.

Part 1: Conflict Developments, December 1998-December 2000

Over the years, numerous attempts had been made by the federal courts, as well as state and federal governmental officials, to support a negotiated resolution of the Oneida and Cayuga claims. In recent events on the Cayuga side, Judge [FIRST NAME] McCurn—the presiding Federal District Court judge for both land claim cases—and court-appointed mediator Howard Bellman worked from 1996 to early 1998 to settle the case, staying legal proceedings during this time. Because they were not successful, Judge McCurn lifted the stay of action in February of 1998. Nevertheless, he did not give up on the possibility and desirability of out-of-court settlements. In the same year he had decided to appoint a settlement master in the Oneida claim, but the appointment had not yet taken place.

During this period, the Oneidas announced that too little had been done to settle their claim during the past decade of negotiations. They believed that they needed to increase the pressure on the state to work toward settlement.[13] In order to accomplish this, the Oneida Nation moved, in December of 1998, to amend its land claim lawsuit to include the 20,000 individual property owners who lived in the Oneidas' claim area. The Oneidas' legal move created much anxiety on the part of

[13] For a perspective on this, see Starna (1987).

residents of both the Oneida and Cayuga claim areas. (As the two land claims are very similar, developments in one often affected the other.) It also served to catalyze developments in both the legal and political arenas.

First, the court appointed "settlement masters" as mediators in both the Oneida and the Cayuga cases to support settlement efforts, naming Eric Van Loon of JAMS/Endispute for the Cayuga claim and Dean Ronald Riccio of Seton Hall Law School to the Oneida post.

Second, Judge McCurn lifted the stay in the Oneida case that had halted proceedings since 1987; this meant that the legal process would resume, and perhaps the threat of court-ordered decisions would spur the litigants to settle out of court with the assistance of the settlement master.

Third, a small business owners group—Upstate Citizens for Equality (UCE)—responded to the property owners' fears and launched a grass roots movement opposed to Indian land claims.[14] While Track One negotiations involving the litigants (Indian, County, State and Federal governments) proceeded, UCE organized direct actions, such as motor rallies and candle light vigils, to protest the negotiations and the land claims themselves.[15] According to UCE's platform, Indian reservations (that would either be created or expanded in a land claim settlement) and Indian sovereignty were both unfair and un-American. [16] Shortly after the Oneidas moved to amend their lawsuit, UCE staged a 1,000 car auto rally in protest. They also expanded their organization by adding a chapter in the Cayuga claim region to organize the property owners there to combat the Cayuga land claim.

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[14] At this point UCE had already been in existence for two years. It had been organized by local residents who owned and operated small business such as gas stations and convenience stores. The Oneida Nation was also operating these types of businesses in the area, and, as the Oneidas' operations were tax-free, their prices were lower than those of the taxed businesses. Non-Indian businesses, unable to compete, were going out of business. UCE's original goal was to find a resolution that would allow local people to continue to operate businesses in the area. When the Oneidas ammended their complaint in late 1998, UCE's membership grew exponentially, as it also began to give voice to property owners who were concerned that their land would be taken from them. One of UCE's stated goals is to end all Indian land claims.

[15] Track One refers to formal government to government negotiations, while Track Two refers to unofficial diplomatic efforts to resolve disputes (Diamond and McDonald 1996).

[16] See UCE's website for more on this, www.ucelandclaim.com.

Table 1 summarizes the key events in the Oneida, Cayuga and Onondaga land claim conflicts. Table 2 is a key to the abbreviations used throughout this article to identify constituent and third side groups. The reader will find it helpful to refer to both of these tables while reading the remainder of this section which describes the events in the conflict and the groups involved in third side activity from the end of 1998 through the end of 2000.

Table 1: Key Events and Outside Interventions in the Oneida, Cayuga and Onondaga Land Claim Conflicts (December 1998 – December 2000)

Date	Oneida Land Claim	Cayuga Land Claim	Onondaga Land Claim
Escalation of the Conflicts, 12/98 – 2/99			
Dec. 1998	• Oneidas move to amend lawsuit to include individual property owners.		
Jan. 1999	• UCE: 1,000-car auto rally to protest Oneida land claim.		
Momentum Toward Settlement, 2/99 – 6/99			
Feb. 1999	• Dean Ronald Riccio appointed as settlement master. • UCE announces plans to file lawsuits challenging Indian sovereignty, the Oneidas' casino, and the Oneidas' police force.	• Eric Van Loon appointed as settlement master. • UCE Cayuga-Seneca Chapter organized.	
March 1999	• UCE begins protest pickets at Oneida businesses		
April 1999	• Dean Riccio announces that a draft agreement	• Van Loon announces that a settlement would	

	will be reached by June.	stipulate that no non-Indian property owners would be evicted from their homes or lands.	
May 1999	• UCE May Day rally: 200-car caravan to the state capitol to protest land claims. • Congressman Boehlert holds a town hall meeting with his constituents to discuss the land claim.		
Momentum Away from Settlement, 6/99 – 11/99			
June 1999		• Cayuga settlement proposals leaked	
July 1999		• Federal District Court Judge McCurn rules out ejecting non-Indian property owners from the land. • UCE: 1200-car auto rally to protest settlement proposals • Van Loon meets with	

		County Legislatures to promote the idea of a negotiated settlement	
	• AFSC decides to intervene in the conflicts by publishing a short book discussing the history of, and reasons for, the land claims.		
August 1999	• Dean Riccio holds a public meeting to discuss the land claim and the status of the talks.		
Sept. 1999		• USDoJ lawyers hold a public meeting to explain why they believe that settlement is in the public interest.	• RSF begins land claim research project.
Oct. 1999		• CWDs announced	• NOON begins to form after meeting with the Onondaga Nation.
	• At the request of RSF and AFSC, authors come to a meeting to explain the historical and legal bases of the land claims		
Momentum Toward Settlement, 11/99 – 2/00			
Nov. 1999	• Anonymous death threats issued against Oneidas, effective Thanksgiving day. • FBI, ATF, State, local	• 1st Circle held on Thanksgiving day by the group that becomes SHARE	

	and Oneida police form task force to find source of threat letter. • IRC, UCE, AFSC denounce violence • Oneida and Madison Counties announce CWD program to involve citizens in the settlement process • At the request of a Syracuse church, authors meet with local ministers, IRC, to explain historical and legal bases of the land claims and to discuss possibilities for creating a constructive process to achieve resolution that would meet the needs of all the stakeholders.		
Dec. 1999	• CWDs take place		
Jan. 2000		• SHARE is formed. • Pre-trial settlement offer	

		fails.	
Feb. 2000	• IRC's Peacemaker Circles are announced.		
	• AFSC report is published		
Impasse, 2/00 – 12/00			
Feb. 2000	• Riccio sends a dire, confidential report on settlement progress to all litigants (report released to public 3/00).	• Cayuga Trial: Jury awards $36.9 million in damages as the fair market value of 64,000 acres and 200 years of back rent.	
March 2000	• At the request of Oneida County, authors send a written description of a "conflict assessment" process that could be used to involve public in the settlement process • McCurn declares impasse, then allows further talks. • IRC pilot Circle is held		• NOON presents at the "People's Round Table" on the Onondaga land claim
April 2000	• Settlement talks break down and then restart		
	• RSF Voices on the Land #1		

May 2000	• RSF Voices on the Land #2,3,4		
June 2000	• Final impasse is declared; mediation ends.		• NOON Summer Solstice Concert is held at the Onondaga Nation
July 2000		• Judge McCurn holds hearings on pre-judgment interest on part of the jury award. • SHARE 2nd Circle is held.	
Oct. 2000	• RSF Voices on the Land #5.		
Dec. 2000			• NOON Winter Solstice Concert is held at St. Pauls Cathedral, Syracuse NY; NOON distributes informational booklet.

Table 2: Key to Abbreviations

AFSC	American Friends Service Committee
ATF	U.S. Bureau of Alcohol, Tobacco and Firearms
CWD	Community Wide Dialogue
FBI	Federal Bureau of Investigation
IRC	InterReligous Council of Central New York
NOON	Neighbors of Onondaga Nation
RSF	Religious Society of Friends
SHARE	Strengthening Haudenosaunee-American Relations

	through Education
UCE	Upstate Citizens for Equality
USDoJ	U.S. Department of Justice

Momentum Toward Settlement, February-June, 1999

Meanwhile, in the first significant legal development after the Oneidas moved to amend their lawsuit, Judge McCurn appointed two settlement masters to mediate the Cayuga and Oneida land claims respectively. This took place in February of 2000. In the following months, it appeared that both mediators had made substantial progress toward settling the cases. Cayuga mediator van Loon announced in early April that all the parties had agreed that no property owners would be evicted under any settlement agreement. He called this a significant development that should ease the minds of land owners. On the Oneida side, mediator Riccio reported at the end of April that all the attorneys in the case could work out an agreement in principle by June and the details by the end of the year. Judge McCurn announced that he expected the settlements in both cases to be outlined by June.

Momentum towards settlement continued to build throughout late spring, in spite of the fact that UCE did a great deal of work to end the settlement talks and to terminate the land claims. UCE's initiatives included: 1) filing three lawsuits that challenged Indian sovereignty, fighting a contract that gave the Oneida Nation Police powers as deputy sheriffs, and arguing that the compact that permitted the Oneidas to operate a casino was illegal; 2) picketing of the Oneidas' casino as well as Oneida Nation-owned gas stations and convenience stores; 3) staging a motorcade rally of 200

cars to Albany to "end Indian land claims" on May Day; 4) publicly calling on Congress to retroactively ratify the 18th and 19th century land sale treaties, which would validate the land sales and therefore end the land claims. UCE was able to bring public attention to its perspective through its efforts, and the organization's concerns began to be reflected in the public statements made by individuals involved in the settlement process. At the same time, UCE's efforts did not stop the settlement talks: in fact, both settlement masters expressed optimism about the process, and confidence that settlements would be reached.

Momentum Away from Settlement, June-November, 1999

The atmosphere in the land claim regions changed in the summer of 1999. A settlement proposal in the Cayuga negotiations was leaked to the public, and a backlash ensued.[17] UCE built on this opposition, holding public meetings and a 1,200-car rally to protest a settlement of the Cayuga claim, and to pressure government officials to end the negotiation process. County officials began expressing doubt about the benefits of settlement, and the Cayuga County Board of Supervisors voted to completely withdraw from the settlement talks, under the assumption that their withdrawal could preclude a settlement from taking place. The Seneca County Board of Supervisors (the Cayugas' land claim straddled Cayuga and Seneca Counties) also considered withdrawing from the talks, but eventually decided to continue participating.

As opposition to settlement grew, Mr. Van Loon made a series of presentations to the county legislators in the Cayuga claim area, and to the public who attended their meetings, arguing

[17] The settlement would have given the Cayugas $110 million, and approximately 4,500 acres of land. In addition, it would have given them an option to purchase another 5,600 acres from willing sellers. Once the settlement proposal became public, a large number of property owners in the region were suddenly faced with the fear that either they would be driven out of the area or end up living next to an Indian reservation. For UCE members, a reservation meant, among other things, loss of constitutional rights, loss of sales tax revenues, loss of property tax revenues, possible loss of access to road, loss of enforcement of state or federal environmental regulations, loss of hunting and fishing regulations, loss of water rights, loss of control of the Cayuga lake and barge canal system, loss of mineral rights, possible loss of maintenance access to utility lines, loss of zoning restrictions, and loss of gaming (i.e. bingo)

that settlement, not litigation, was in their interest. Mr. van Loon argued that the concerns about settlement being expressed by UCE, other property owners, and county government officials would actually be better addressed through a negotiated settlement than they could be in court. The reason for this, he explained, was that the issues that could be addressed in court were far more limited than the issues that could be addressed in a negotiated settlement.[18] One result of a court decision would be that the entire 64,000-acre claim area would be recognized as the Cayugas' territory, although the land would remain in the hands of the current owners. The court would also award the Cayugas an unknown quantity of money as compensation for the loss of their lands. The Cayugas could then use that money, if they so desired, to purchase land in the claim area from willing sellers, with no restrictions on what land they could buy and restore to reservation status. Such an outcome would be likely to result in "checkerboarding," where parcels of land would alternate between private ownership and Indian reservation land.

In a negotiated settlement, the Cayugas would agree to repurchase land only within specific boundaries that would be considerably smaller than the original reservation's size, preventing checkerboarding. Simplified boundaries between reservation and non-reservation lands would also simplify legal issues, as reservation land generally falls under different legal and jurisdictional codes than do other lands.[19] Mr. van Loon also argued that if the counties withdrew from the talks, their interests would not be represented and they would have no say in any negotiated settlement. On these grounds, both counties agreed to continue negotiating (Cayuga County reversing its earlier decision to pull out), but the legislators made it clear that while they were participating in the negotiations, they were not committing to reaching a settlement.

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revenues. (from "Consequences of the New York State Proposal to Settle the Cayuga Indian land claim" , a handout given at UCE's 6/30/99 meeting at the Canoga Fire House, Canoga, NY.)

[18] The court would only be able to rule on the issues of land and money. The many other issues over which UCE had expressed concern (see prior footnote) could only be addressed in a negotiated settlement. In fact, in July of 1999, Judge McCurn ruled out eviction as an option. Instead, he said that a court award could be used to buy land in the claim area – but only from willing sellers.

[19] From "Why Consider Settlement?", a handout from Van Loon made available at the Indian Land Claim Informational Meeting, September 2, 1999 in Seneca Falls, NY.

Despite Mr. Van Loon's arguments in favor of settlement, UCE continued to remain opposed. UCE's actions and the overall shift away from public support for a negotiated resolution sparked the interest of several organizations with a history of doing peace and social justice work, including the Religious Society of Friends (Quakers), the InterReligous Council of Central New York (IRC) and American Friends Service Committee (AFSC). The IRC and the Friends began to investigate how they could support a peaceful and just resolution to the claims, signaling the beginning of Track Two efforts. AFSC officials, in July of 1999, proposed a two-month-long initiative that would: "explore the particulars of the land claims in New York as well as the changes that are being brought by the trial actions and non-Indian reactions…[and] also make recommendations for appropriate future action by AFSC, Friends and others" (letter dated 7/7/99). This initiative ultimately resulted in a report published in February of 2000, entitled "Whose Land?," (Harnden, 2000) which covered such subjects as the history of the Iroquois, the loss of Indian lands, the story of the land claims, the dilemma of non-Indian residents of the land claim areas, Indian sovereignty, and answers to frequently asked questions. The report concluded that:

- The Iroquois nations are the rightful owners of the lands they claim.
- The non-Indian residents of the claim areas have legitimate concerns about the future of their communities.
- The Iroquois nations have a right to receive just compensation for their losses.
- The state of New York bears primary responsibility for the unjust and illegal land acquisitions that caused this problem.
- Negotiated settlements, conducted with wide community involvement, hold the best hope for a just resolution of these disputes.

On the basis of this report, AFSC expressed the conviction that:

> the Iroquois land claims cannot be resolved without a mutually respectful conversation…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?" (Harnden 2000: vi).

Meanwhile on track one, the Cayuga claim negotiations continued through the summer and early fall with the participation of the counties. In an effort to bolster this work, attorneys for the federal government, with the support of Mr. Van Loon, held a public meeting on September 2 to answer any questions and concerns the Cayuga-area property owners may have had. The two federal officials made the same case for settlement as had Mr. Van Loon. The mediator had published a one-page outline of the benefits of settlement and the costs of going to court, and this sheet was provided to attendees at the meeting.

In the Oneida claim area, public sentiment closely mirrored the feelings being expressed in the Cayuga region. While negotiations continued under Dean Riccio's supervision, UCE led the public in expressing its dissent with settlement. Dean Riccio, like Mr. van Loon, decided to reach out to the public, and held a public meeting in early August to answer questions and to discuss his perspective on the benefits of settlement. He expressed his optimism that a settlement could be reached before the end of the year.

Despite the efforts of the two mediators and the government attorneys to convince the public that a settlement was in their best interest, UCE and other groups of landowners continued to oppose settlement in both land claim areas. One of the objections that members of the public had raised with regard to the settlement process was its secrecy. Negotiations were held under a court-ordered confidentiality requirement. While the confidentiality of the talks gave the parties freedom to explore options without the risk of public exposure (except, as happened in the Cayuga talks, when the content of the discussions were leaked), it also fueled a great deal of public consternation about what came to be referred to as the judge's "gag order." UCE members said that they had a right to know what was transpiring during settlement talks, and that they wanted to participate in those talks, as well.

In the Oneida claim area, Madison and Oneida County officials responded to this concern in the fall of 1999 by announcing a new initiative. Entitled "Nations and Neighbors: a Discussion of the Oneida Land Claim," this project was a series of five "Community Wide Dialogues" (CWD) with county officials, to which approximately 150 "delegates" were invited—around 30 people per meeting. County officials selected the delegates, who included community leaders, UCE officials, and others. The meetings were kept small so that the attendees could participate in what the counties hoped would be a comprehensive examination of the issues involved in the Oneida land claim, and the solutions that had been used by communities around the country that had reached negotiated settlements to Indian land claims.

The dialogue project was designed with two goals in mind: First, it was a means of giving area residents a voice in the land claim negotiations. Second, it served as a vehicle for disseminating information about issues facing the negotiators, and the benefits of resolving those issues through a settlement rather than in court. The delegates who were invited were individuals who, the counties hoped, would act as representatives of the community, talking with others in the region about their concerns prior to the dialogues and returning after the dialogues to discuss what had transpired. In this manner the counties hoped to reach a large number of people in as direct and personalized a manner as possible.

In addition to the Community Wide Dialogues, the counties also mailed information packets to each household in the land claim region, and placed binders of information in all local libraries. They also maintained active web sites, continuously updating the information on the sites as new developments occurred. It is not clear whether these efforts by the counties reduced the intensity of the concern that some members of the public felt about the negotiation process, or if the public believed that the delegates' opinions actually had an impact on the negotiations. UCE members were openly cynical about the CWD process, dismissing the series of meetings as a public relations effort that had no real meaning. Some of the other delegates, who were not UCE members and who did

not oppose a negotiated settlement, expressed confusion over the purpose of the meetings and what the results of the meetings might be.

As Oneida and Madison counties were planning the CWDs in the fall of 1999, another initiative, sponsored by the Religious Society of Friends, began. The Friends, having learned about the research the authors were doing on the land claim conflicts, asked us to meet with them to discuss the historical and legal bases of the land claims. The Friends had already begun a process of exploring opportunities for supporting the Central New York region in reaching peaceful resolutions to the Oneida and Cayuga claims, as well as the soon-to-be-filed Onondaga land claim in the Syracuse area, and they were interested in our perspectives on the history of these conflicts. Phil Harnden from the AFSC, who was at that time already at work on its short book on the history of the land claims (Harnden 2000), also attended this meeting.

While we did not meet formally with the Friends again, we witnessed the results of their work the following spring, when the Friends held a series of public meetings—"Voices on the Land"—to educate the public about the land claims and to build bridges between individuals and groups with differing perspectives on the issue. Shortly after our meeting with the Friends, we were asked to do a similar presentation for a group of Episcopal clergy in Syracuse. At that meeting we met Bob Hanson, the Executive Director of the InterReligious Council of Central New York (IRC). Hanson would later call on us for advice as the IRC worked to support a peaceful solution to the land claim (see below).

Momentum Toward Settlement, November, 1999 through February, 2000

In early November, as Madison and Oneida Counties were announcing their Community Dialogue process, a dramatic escalation of the Oneida land claim conflict occurred when a group calling itself the "United States National Freedom Fighters" (USNFF) mailed an anonymous letter to a local newspaper, threatening to execute one Oneida Nation member every three days, beginning on

Thanksgiving Day. The group also said that it would also select and execute one non-Indian found patronizing an Oneida-owned business.

While the threats against the Oneidas were, thankfully, never acted upon, the larger community was shocked into action. The FBI and the ATF, in addition to state, local and Oneida police formed a task force to protect the Oneidas as much as possible and to identify and apprehend those responsible for the letter. (While the investigation continued for some time, the perpetrators were never identified.) UCE publicly denounced the threat of violence, as did the AFSC and the IRC. All rejected the use of violence as a tool of coercion to settle the claim.

As a result of the death threats, two new track two efforts were started: strengthening Haudenosaunee-American Relations through Education (SHARE) in the Cayuga claim area and establishing the IRC's Peacemaker Circle Project in the Oneida claim area. The former, through dissemination of information and sponsorship of public events, sought to promote respect and understanding between Native and non-Native peoples. The objective of the IRC's project was to heal the divide between Native and non-Native residents of the land claim areas through a dialogue process.

On Thanksgiving day, the day that USNFF had threatened to begin the executions, a group of 30 native and non-native people, many of whom would later organize as a group known as SHARE, held a "Circle of Peace, Hope and Knowledge" on the western shore of Cayuga Lake. At the Circle, they shared their perspectives on the land claim and their commitment to a peaceful resolution. While Clint Halftown, the Cayuga Nation spokesman, could not attend, members of the Onondaga Nation did come, as well as at least one member of the Cayuga-Seneca chapter of UCE. Julie Uticone, the organizer of the event, said that she wanted the land claim to be settled and that she wanted to live in peace with the Cayugas as good neighbors. The theme of peaceful coexistence was echoed by a UCE member who blamed the government, not the Cayugas, for what was happening: "most attendants agreed that the government is a common enemy and discussed coming together to find a solution to benefit all involved" ("Vigil Voices Peace", the *Citizen*, 11/26/99).

From this initial event, SHARE was formed in January to "promote opportunities through education for mutual understanding and respect between Haudenosaunee and American people, our communities, and governments" (SHARE brochure) by holding events and distributing information about the Six Nations, their treaty rights, and other issues. For example, in July of 2000, SHARE held its second Circle and potluck picnic on the shores of Cayuga Lake to share thoughts about the future. Fifty or so native and non-native people gathered to speak their minds in order to build mutual understanding and respect. In addition to being educational, the circle offered support to the native people present. The circle, a form and way of relating that has no sides, was important for people involved, and served as a symbol of cooperation in a sea of hostility.

Meanwhile, and also as a result of the death threats, the IRC decided, as spirit keepers of the community, to become involved in peacemaking in the Oneida claim area. They began their work with a press release stating that "Only courageous nonviolent acts and determined dialogue will lead us to a better tomorrow." They called upon local communities of faith "to spend the coming Sabbaths and the weekend of Thanksgiving in prayer for a just resolution to this crisis." On Thanksgiving Day, representatives of the IRC attended a public service at a Oneida-area church to pray for peace.

In mid-November the authors were asked by the IRC's Executive Director to attend a meeting to discuss how the IRC might contribute to bringing about a peaceful resolution to the conflict. At that time, the IRC had an established, successful and ongoing program of community wide dialogues on race in Syracuse, New York. (Syracuse is located between the Oneida and Cayuga land claim areas, and in the Onondaga land claim region.) During our meeting with Director Hanson, we discussed building on the success of the IRC's race dialogues by supporting Oneida-area churches in developing new dialogue circles on land claim issues. These dialogues would be based on models developed by the Study Circles Resource Center (SCRC) and by the National Coalition Building Institute (NCBI). They would provide a setting in which parishioners—both Oneida Nation members and non-Indians—could share stories, get to know one another, raise awareness,

gain understanding of the social, legal and historical circumstances surrounding the land claims, and begin healing the scars that they had suffered. Reverend Hanson emphasized that, while the dialogue circles would hopefully contribute to the resolution of the immediate crisis, he believed that the larger purpose of the circles would be to build long-lasting ties within the Oneida-region community, across the "Indian/non-Indian" line. With that understanding in mind, he agreed with our suggestion of exploring the possibility of forming a link between these church-based groups (a track --two initiative) and the land claim mediator, Dean Riccio, so that these dialogues would also give participants the opportunity to have input into the track one mediation process for the Oneida claim.

The IRC formed a Land Claim Task Force, which, in conjunction with church leaders in Oneida and Madison Counties, developed the new program during the months of December, 1999 and January, 2000. In the Peace Maker Circles, as they came to be known, participants would share a sense of unity, speak face-to-face about what it means to know peacemakers in their lives and what it means to be peacemakers themselves. A series of questions would structure the development of each circle that would help the participants build trust, explore their fears and other feelings about the land claims, and then discuss concrete steps that they could take to support a resolution of the conflict that would meet the needs of all of the stakeholders.[20]

Over the following two months, training material for facilitators was designed, and several pilot circles were held. While the specific experiences of Circle participants remain confidential, the Circles received a positive response by participants. Unfortunately, a shortage of staff time and funding at the IRC prevented the organization from expanding the Peace Maker program beyond the pilot circles, so their impact was limited.

[20] This process of moving through the steps of building trust, exploring the issue, and planning specific action steps is a hallmark of the Study Circle Resource Center's model (McCoy 2001), on which these circles were based (see www.studycircles.org).

Impasse: February, 2000-December, 2000

In the Cayuga land claim region, during the early months of 2000, the negotiations ended without a resolution. In January of 2000, the case went to trial in Federal District Court. The actual scope of the trial was limited. Judge McCurn had already ruled that the Cayugas were entitled to compensation for the loss of their land. In July of 1999 he had decided the specific nature of that compensation: The Cayugas were to receive fair rental value for 200 years of lost use, ruling out eviction of the property owners (1999 U.S. Dist. LEXIS 10579). They were also to receive the present-day fair market value for the 64,000 acres of land that technically was still their reservation, but now was in the possession of others. The purpose of the trial was only to determine what the proper amounts would be for these two items. Because the entire 64,000 acres would continue to be recognized as Cayuga land, the Cayugas could use the damage award to re-purchase all or portions of the land from willing sellers, and then return it to reservation status.

After hearing three weeks of testimony, an all-white jury awarded the Cayugas $36.9 million dollars—a figure about halfway in between the two figures that the state of New York had suggested as fair, and far below the $350 million for which the Cayugas had originally sued. The award was subject to adjustment by Judge McCurn (either up or down) for pre-judgement interest on the back rent. (See the Afterword for an update on the case that is current as of this writing.)

While the Cayuga trial was in progress, the Oneida talks continued. However, progress was extremely slow in the early months of 2000. Officials of Oneida and Madison Counties had hoped that the Community-Wide Dialogue Process would spark a public drive to settle the land claims, which would, in turn, pressure all of the parties at the negotiating table to make the concessions that would be needed in order to reach a resolution. That public pressure never materialized. The track one negotiations reached a virtual standstill in February. In an attempt to push the parties into motion, Dean Riccio issued a dire report, to Judge McCurn, which he also shared with the parties.

(The report was not released to the public until March 11.) Riccio's report forecast an impasse unless the state and the Oneida negotiators expressed and acted on a renewed willingness to bridge differences and settle. County officials began meeting with members of the public in an effort to address concerns, inspire support for the negotiations, and put pressure on the state and the Oneidas to move toward common ground.

During this process, the authors were consulted by Oneida County about options for assessing the status of the conflict and for developing a resolution that would be supported by the community. Based on our analysis of the events that had transpired to that point, the absence of meaningful public participation in the negotiations, and the level of anger among many property owners, we suggested that an experienced professional in the field of conflict resolution be hired to conduct a conflict assessment disputes (letter to Ralph Eannace from Bianca Wulff, dated 3/6/00). Conflict assessments are a common tool used in resolving public policy disputes (Susskind, 1999). The assessment that we suggested would be an information-gathering process that would identify the various parties, or stakeholders, in the Oneida land claim dispute, describe the issues of importance to them, give a recommendation as to whether or not moving forward with a consensus-building process would make sense, and outline what it would look like.

We believed that there would be several benefits: First, the process would be a virtually risk-free means of reducing the pressure by giving stakeholders a formal avenue of expression. Second, it would enable the divided stakeholders to begin to build ties among themselves as they interacted with each other during various stages of the assessment process. Third, it would provide a professional examination of the possibilities for bringing the community together in a mutually beneficial resolution of an otherwise damaging and divisive issue. In interacting with the consultant and reading the assessment report, we hoped that the parties would be able to see the situation more objectively, and therefore be able to discern opportunities for mutually beneficial agreement in areas that previously seemed impossible to address.

Based on our understanding of the situation at that time, we believed that conducting a conflict assessment was likely to be the best way to explore opportunities for developing a resolution to the conflict that would meet the needs and interests of all of the parties. It would also provide a means for including the non-Indian residents of the area in the track one settlement process. We believed this was especially important, as this was a key stakeholder group that had been excluded from the negotiations until that point.

Oneida county officials expressed initial interest in doing such a conflict assessment. However, events at the track one level prevented them from seriously exploring that option. Four days after we sent our letter to the county, Judge McCurn declared an impasse in the negotiations and began preparations for returning the case to court. Five days later, on March 15, the judge agreed to re-start the negotiations. However, by that time the atmosphere had changed: The parties had begun to prepare for a court battle, and the window of opportunity for them to work together in support of a conflict assessment had closed. The conflict assessment idea was not explored further.

Parallel to these developments, the Syracuse Monthly Meeting of the Religious Society of Friends (Quakers) held a series of four informational programs in April and May of 2000. Each session explored the issues and facts about Indian land claims from a particular perspective, beginning with New York State, followed by, in subsequent sessions, the counties and property owners, the Haudenosaunee, and the federal government. The "Voices on the Land" programs were

> …offered in the spirit of community fellowship, to provide a thoughtful examination of many aspects of native land claims. Understanding and caring for our community is a work in progress. (from a 4/11/00 press release).

The format of each program was: introductions; a panel presentation; questions from the audience for the panel; small group discussions; and closing remarks in plenary session. Each program was moderated by a professor from Syracuse University's Program on the Analysis and Resolution of Conflicts (PARC). Over 100 people attended the series, and as a result, there was a call for more dialogue in small groups. That call was answered in October of 2000 when a fifth forum was held.

This all-day meeting, in which participants broke up into small groups of about six, went beyond dialogue and better understanding to explore how a respectful process could be created that would help native and non-native people move forward on land claim issues.

Based on the experience of one of the authors, a palpable shift occurred in at least one of the small groups. Participants, including some UCE members, moved from hard-line stances in the morning to creative and genuine problem solving in the afternoon. For the first time, there was evidence that the land claim could be resolved collaboratively. Unfortunately, this element of progress came too late to help in either the Oneida or Cayuga claims. However, this series of events will contribute to a resolution of the Onondaga land claim that will be beneficial to and supported by the residents of the Onondaga region.

Learning from the mistakes that had been made in their brothers' land claims, the Onondagas have pursued a more proactive approach. Besides allying themselves with non-Indians to protect the local environment (e.g. a movement to stop a gravel mine in Tully, NY and a movement to clean up Onondaga Lake in Syracuse, NY), they have worked with the Syracuse Peace Council to resurrect a formerly active group that would build bridges between the Onondagas and the local communities, including the City of Syracuse.

This group, the Neighbors of the Onondaga Nation (NOON), after several meetings with Onondagas and after researching land claim history, held its first event in March of 2000. The purpose of this meeting was to present information they had been researching and to facilitate a discussion on treaty history, New York and federal law, and to advocate for land owners to support a settlement. Andy Mager, one of the organizers of NOON and a local property owner, called on the 30 or so participants (some of whom were Native) to speak out for justice, to act as role models for others (by being willing to give up some land), and to foster dialogue so that public support could be built for a settlement. NOON's mission, reflected in this call, is to support the Onondaga Nation's inherent sovereignty, a mission they seek to achieve by supporting the land claim and a recent out-of-court settlement of that claim.

Besides discussions on law and history, NOON works to build understanding through sponsorship of cultural events. Summer Solstice and Winter Solstice concerts were held at the Onondaga Nation School and at St. Paul's Cathedral (Syracuse, NY) in June and December of 2000, respectively. They featured native and non-native songs, art and food. Through music and celebration, the "Neighbor to Neighbor, Nation to Nation" festivals brought together several hundred people to share, to learn, and to build bridges. As one participant noted, "events like the concert helps [sic] stem people's fears…it helps people see the Onondaga Nation wants to be a good neighbor" *(* "Winter Welcomed in Song", *Syracuse Post Standard*, 12/21/00).

At the Winter Concert, NOON handed out a self-published booklet of "Readings on the Relationship of the Onondaga Nation with Central New York, USA" that "attempts to provide concerned readers with a starting place to understand the history of what has occurred and our responsibility as U.S. citizens and residents of New York to redress these wrongs [i.e. the illegally taken land]" (NOON 2000: 2). The publication, as part of a larger public education effort, contains an overview of Haudenosaunee-U.S. history, an understanding of Haudenosaunee culture, a discussion of the shared environment, a review of the land claim--"issue that brings us together" and various Central New York responses to the claim. NOON planed to distribute it among county libraries, churches and synagogues, community centers and government offices. They also called on local residents who support the cause (such as the concert goers) to distribute the booklet among their families, friends, neighbors, and co-workers so that they could learn about the issues and get involved. The booklet was also distributed at presentations that NOON members would make to local organizations and businesses. NOON had chosen this strategy as a primary focus for its work. Between presentations and distribution of the booklet, NOON hoped—as did the AFSC, the "Voices on the Land" initiative and the IRC Peace Maker Circles—that "accurate information can help to advance the process of a peaceful, timely and fair settlement" of the land claims (NOON, 2000: 2).

By December of 2000, the intensity of the battle in the Oneida and Cayuga land claim areas had diminished. In the Cayuga region, the trial had ended, and residents were awaiting a decision from Judge McCurn on pre-judgement interest. In the Oneida region, negotiations had essentially ended, and the sides were preparing for a trial in federal court, but with the understanding that the hearing would not take place for several years. In the Onondaga area, an overt conflict never emerged, and a variety of parties—the Onondagas, AFSC, the Friends, and NOON—continued to quietly search for common ground, and to build support for an effective, negotiated settlement.

A Third Side Analysis

"When spider webs unite, they can halt even a lion"

-Ethiopian proverb

Introduction to the Third Side Framework

A review of the recent developments in each of the land claims reveals that while there are spiders (see Table 4 below), they are small, and few, and their webs rarely unite. Underlying William Ury's (2000) Third Side framework is a theory of conflict that relates the roles that members of the community—the spiders—can play in three different stages of conflict: latent tensions, overt conflict and power struggles. These three stages provide key opportunities to intervene and channel conflict into positive action. Preferably, the third side should focus on Preventing first, then Resolving, and lastly Containing, but when conflict and violence have already broken out, the sequence of interventions is reversed. First it must be contained, and then the conflicting interests or rights resolved so that the overt conflict deescalates and the underlying bases of the conflict (i.e. frustrated needs and poor conflict resolution skills) can be addressed (Ury, 2000).

Ury has identified ten third-side roles that community members, or coalitions of members, might play. These include the functions of provider, teacher, bridge builder, arbiter, mediator, equalizer, healer, witness, referee, or peace keeper. community members functioning as the third side

intervenes at the level of latent tensions to prevent overt conflict by satisfying basic needs (*provider*), teaching conflict resolution skills (*teacher*) and creating cross-cutting ties to improve trust and communication (*bridge-builder*). If that fails and latent tensions boil over into overt conflicts between interests or over rights, the community can step in to resolve them by bringing the parties together to negotiate (*mediator*), to determine the disputed rights (*arbiter*), to equalize power between the parties (*equalizer*), or to repair injured relationships (*healer*). When and if these conflicts escalate into power struggles, the community lastly can act to contain violence by bringing public attention to the escalation and/or calling for help (*witness*), setting limits on the fighting (*referee*), or by protecting those involved (*peacekeeper*).

What is required to resolve land claim disputes? Ury (2002) answers, a mobilized community acting systematically, and motivated by a new perspective on the conflict. To mobilize the third side into action, a combination of incentives, critical incidents, catalysts and a certain mindset is needed. (For examples, see Ury 2002.) Third side successes have occurred when third siders—both insiders and outsiders--had incentives to get involved. In situations such as these, a few third siders, sparked by a critical incident or two, are prompted to "take responsibility" for what's going on, and help to catalyze change. Success depends on the ability of third siders to adopt the assumption that change is possible, that violence can be avoided or that "intractable conflict" can be resolved. Once mobilized, the third side must act systematically; that is, all the roles that are needed must be played, and players must coordinate these roles.

The failure of any of the land claims to be resolved, despite numerous efforts, shows that there is no mobilized community acting systematically. What's missing? Incentives? Critical incidents? Catalysts? The right mindset? Certain roles? Coordination? We turn first to looking at whether the community acted systematically; that is, what roles did third siders actually play in the land claims? After this, we turn to the mobilization of the third side, and contextualize it within a broader theoretical framework of driving forces and channel factors–a type of force field analysis--to account for its failure to resolve these disputes.

Third Side Roles in the Land Claim Conflicts

To begin, we examine the roles in which third siders intervened in the land claim conflicts. Table 3 summarizes the third side interventions that took place from December 1998 through December 2000 (with the addition of important prior events).

Table 3: Oneida and Cayuga Land Claim Conflicts: Mobilization of the Third Side

Event	*Resulting 3rd Side Activity*	*Role Played*
Significant Events, Prior to 12/98		
	Track I • Federal courts allow Indian Nations to pursue land claims in court; uphold legal basis of the New York claims by finding New York State liable (1974, 1977, 1985, 1990)	Arbiter
	• Federal courts call for parties to settle the land claims out of court (1970s-1990s)	Equalizer
	• Federal court decisions force state and county governments to take the land claims seriously.	Equalizer
	• Federal government intervenes in the legal suits on behalf of the Indian Nations	Equalizer
Escalation of the Conflicts, 12/98-2/99		
• Oneidas move to amend lawsuit • Property owners		

begin massive protests		
Momentum Toward Settlement, 2/99 – 6/99		
	Track I • Judge McCurn appoints Settlement Masters (Oneida, Cayuga)	Mediator
	• Cayuga: Mediator announces that no landowners will be evicted in a negotiated settlement	Mediator
	• Oneida: Mediator announces that agreement will be framed by June, works to repair divisions between litigating parties	Mediator, Healer
	• Oneida: Congressman Boehlert holds Town Hall meeting to tell his constituents that settlement is good idea	Mediator
Momentum Away from Settlement, 6/99 – 11/99		
• Cayuga settlement proposals leaked • Massive public backlash results	*Track I* • Judge McCurn rules out eviction of non-Indian property owners, limits potential damage award to money only.	Arbiter
	• Cayuga mediator meets with county legislatures to sell idea of settlement	Mediator
	• Oneida mediator meets with public to sell idea of settlement	Mediator
	• USDoJ meets with public to sell idea of settlement	Mediator

	Track II • AFSC decides to publish booklet to educate public about land claims	Bridge Builder, Provider
	• RSF wants to support peaceful and fair resolution; begins research project	Bridge Builder
	• NOON begins to form	Bridge Builder
	• Researchers present on land claim history to RSF and AFSC	Bridge Builder
Momentum Toward Settlement, 11/99 – 2/00		
• Anonymous letter issues death threats against Oneidas and Oneida supporters	*Track I* • FBI, ATF, police form task force to find source of threat letter	Peacekeeper
	• Oneida-area counties sponsor "Community-Wide Dialogues" about the land claim negotiations	Healer, Mediator, Bridge Builder
	Track II • Founding members of SHARE hold "circle of peace"	Bridge Builder, Provider, Teacher,

		Healer
	• Researchers meet with local ministers and IRC to explain land claim history and explore options for supporting win-win settlement	Bridge Builder, Provider
	• IRC, UCE, AFSC denounce violence	Witness, Referee
	• AFSC publishes booklet on land claim	Bridge Builder, Provider
	• IRC announces Peacemaker Circles	Healer, Bridge Builder, Teacher
Impasse, 2/00 – 12/00		
• Cayuga case goes to trial	*Track I* • Riccio writes dire report on settlement progress	Mediator
	• Judge McCurn ends, restarts, ends negotiations (Oneida).	Mediator
	• Court hearings on pre-judgment interest (Cayuga).	Arbiter
	Track II • Authors provide conflict assessment information (Oneida)	Provider
	• NOON presents at the "People's Round Table" on the history and current status of the Onondaga land claim	Equalizer
	• IRC Peacemaker Circles begin	Bridgebuilder, Healer, Teacher,

		Provider
	• RSF "Voices on the Land" forums	Bridgebuilder, Teacher, Provider
	• NOON Summer Solstice Concert at Onondaga	Teacher, Provider
	• SHARE disseminates information on Indian history and law, holds 2nd "circle of peace."	Bridgebuilder, Healer, Teacher, Provider
	• NOON Winter Solstice Concert (Onondaga), Syracuse, NY; distribution of informational booklet.	Teacher, Provider

Table 4 summarizes the roles taken by third side interveners in the land claim conflicts. Because the interventions occurred after the conflicts had already manifested, we follow the reversed sequence of roles in this overview. The remainder of this section examines each role in turn.

Table 4: Roles Taken by Third Side Interveners in the Land Claim Conflicts

(See Table 2 for a key to abbreviations.)

Roles/Land Claim	**Oneida**	**Cayuga**	**Onondaga**
Contain			
Peacekeeper	Police, FBI, ATF		
Referee	IRC, UCE		
Witness	IRC		

Resolve			
Healer	CWD IRC	SHARE	
Equalizer	Federal Courts, Federal Government Judge McCurn	Federal Courts Federal Government Judge McCurn	NOON
Arbiter	Federal Courts, Judge McCurn	Federal Courts Judge McCurn	
Mediator	Judge McCurn Riccio CWD	Judge McCurn Van Loon USDoJ	
Prevent			
Bridge Builder	CWD IRC RSF AFSC BB/BW	RSF SHARE AFSC BB/BW	RSF NOON AFSC BB/BW Onondaga Nation
Teacher	IRC RSF	SHARE RSF	NOON RSF
Provider	AFSC BB/BW IRC	SHARE AFSC	NOON AFSC RSF

The third side roles that were played in each of these land claim conflicts reflect, in part, the stage that the conflict was in. While the Oneida and Cayuga land claims had escalated from latent

tensions to overt conflicts, the Onondaga land claim had not yet emerged as an overt conflict. For this reason, there were no containing or resolving roles played in the Onondaga region. The Cayuga claim, in contrast, escalated into a conflict, but not into violence or threats of violence. Therefore, this conflict had little need for containment roles (other than, perhaps, the witness), and it is no surprise that no "containing" third siders took action in the Cayuga region. In the Oneida claim, however, containment roles were needed, and were played (Table 5a).

Table 5a: Containment Roles: Peacekeeper, Referee and Witness

Role	Land Claim	3rd Sider	Activities (see part 1)
Peacekeeper	Oneida	FBI, ATF, Police	• Form task force to identify the perpetrators
Referee	Oneida	IRC, UCE, AFSC	• Publicly denounce violence as a means for settling land claim
Witness	Oneida	IRC	• Attend prayer service for peace • Go to Oneida territory on day that first shooting is supposed to occur

Just before Thanksgiving of 1999, a group calling itself the United States National Freedom Fighters (USNFF) circulated a letter in the Oneida claim region. USNFF threatened to kill Oneidas and their supporters. In response, the IRC and UCE, among others, stepped in as *witnesses* and *referees* while police departments, the FBI and the ATF became involved as *peacekeepers*. Fortunately, the death threats were never acted upon, so focus of third side activity shifted away from Containment roles, and toward Resolving and Preventing roles. Tables 5b-g summarize activities in each of the Resolving and Preventing roles. In the text that follows each of the tables, we discuss a few of these activities in order to illustrate those roles.

Table 5b: Resolving Roles: Equalizer and Arbiter

Role	Land Claim	3rd Sider	Activities (see part 1)
Equalizer	Oneida Cayuga	Federal Courts	• Called for out-of-court settlement talks and mediations (1970s-1990s) • Legal decisions force state, counties to take claims seriously
Equalizer	Oneida Cayuga	Federal Government	• Intervened in lawsuits against New York State on tribes' behalf
Equalizer	Onondaga	NOON	• Educate public on the history of the land claims in order to build grass roots support
Arbiter	Oneida Cayuga	Federal Courts	• Rulings opening courts to land claims; upholding legal basis of claims
Arbiter	Oneida Cayuga	Judge McCurn	• Rulings on liability, eviction, and damages

Throughout the escalation of the land claim conflicts, the public, officials, and third siders paid a great deal of attention to resolving the conflicts. One of the tasks involved in resolving conflicts is balancing power among the parties. As Ury notes (2000: 154-155), "imbalance of power often leads to abuse and injustice. The strong refuse to negotiate with the weak or to submit their dispute to mediation or arbitration—why should they, they think, when they can win?" However, the federal government's and the court's involvement as *equalizers* did bring the parties in the Oneida and Cayuga land claims to the table. At the same time, their roles did not change the power imbalance sufficiently to allow negotiation to succeed. In fact, some of Judge McCurn's decisions, especially the one that ruled out the possibility of evicting property owners from the Cayuga claim area, had the potential to undermine the nations' bargaining power. Other federal court decisions, such as the ruling that New York's purchases of Indian land had violated federal law and were therefore void, or

the ruling that New York was liable to the Cayugas for illegal use and occupation, added to the Nations' bargaining power.

While the courts played the major *equalizer* role, two other third side parties contributed to this role as well. The federal government played this role when it intervened in the claims in support of the Oneidas and Cayugas. In addition, NOON worked to build grass roots support for the Onondaga claim. This support, if it were to materialize, would increase the Onondaga's power at the negotiating table.

Another role played by the federal courts in these conflicts was that of *arbiter*, with the responsibility for resolving the cases based on the legal rights of the parties. While the courts have called for out-of-court settlements, they have continued to rule on issues of liability, and, in the Cayuga case, damages.

Although mediation failed in the Oneida and Cayuga cases, necessitating that the courts step in, it is worth noting that, as a matter of justice, these cases may not have been appropriate for mediation in the first place. In order to have reached a mediated settlement, the Indian nations would have had to have given up some of the land or money to which they were entitled under the law. There may not have been a good reason for the nations to have done this. On the other hand, there is no guarantee that, when the courts do reach a final decision, they will provide the nations with everything to which they appear to be entitled, based on the court decisions made to date.

There are no easy or clear answers to this issue, and the nations chose to negotiate as well as litigate. It was as a result of stalled negotiations that the Oneidas decided to amend their lawsuit and escalate the conflict (a catalytic event). To help de-escalate the situation, Judge McCurn appointed settlement masters or *mediators* in both the Oneida and Cayuga cases (Table 5c).

Table 5c: Resolving Roles: Mediator

Role	Land Claim	3rd Sider	Activities (see part 1)
Mediator	Oneida,	Judge McCurn	• Appointed settlement masters Riccio and Van Loon.

	Cayuga		
Mediator	Cayuga	EricVanLoon	• Announced that no land owners would be evicted in a negotiated settlement
Mediator	Oneida	Dean Riccio	• Brought parties to the table, facilitated communication and negotiation • Met with the public and with UCE to sell the idea of settlement
Mediator	Oneida	Congressman Boehlert	• Held Town Hall meeting with constituents to sell the idea of settlement
Mediator	Cayuga	Eric VanLoon	• Brought parties to the table, facilitated communication and negotiation • Met with County Boards to sell the idea of settlement
Mediator	Oneida	Community Wide Dialogues	• Brought the public into the discussion
Mediator	Cayuga	USDoJ	• Meets with public to sell idea of settlement.
Mediator	Oneid	Dean Riccio	• Wrote dire report on settlement progress (to push the parties into action)
Mediator	Oneida	Judge McCurn	• Ends, restarts, ends negotiations

The mediators brought the litigating parties to the table, and helped them to communicate and explore possible solutions (Ury, 2000: 146-148). However, they faced a significant obstacle--public opposition to a negotiated settlement (for example, UCE). Until the Community Wide Dialogues in Oneida and Madison counties started, the property owners had not been invited to participate in the negotiations. The mediators met with the litigants only. However, in land use

disputes, excluded stakeholders will often attempt to block any settlement that does not reflect or include their interests (Bingham, 1986). This situation occurred, for example, when the settlement proposal for the Cayuga claim was leaked, precipitating a public backlash. This public opposition prompted Mr. Van Loon to meet with county officials in public meetings in an attempt to sell the advantages of settling.

In the Oneida claim area, Dean Riccio, facing similar public opposition to the land claim, scheduled meetings with the public and with the leadership of anti-land claim groups in an attempt to convince them to support settlement. Oneida and Madison Counties launched the Community Wide Dialogues for the same reason. However, these meetings did little to reduce the outcry against settlement voiced by UCE and others. Rather than actually engaging the property owners in the settlement process, the meetings reflected the traditional approach to public policy dispute management–decide-announce-defend (Susskind, 1996). That is, a small group of key decision-makers broker a deal without public input, and then "sell" that deal to the public on the grounds that it is in their interest. However, without involvement of all stakeholders, including the property owners, such deals frequently lack legitimacy, and, therefore, support.

If a settlement is to survive the implementation phase then the public has to have confidence in that settlement. Ury (2000: 161) notes that "at the core of many conflicts…lie emotions–anger, fear, humiliation, hatred, insecurity, and grief." These strong emotions can create psychological walls or barriers to resolving conflicts. The job of the third side here is to break through the wall, and address the injured or stressed relationships. This is why Susskind and Field (1996) suggest, when dealing with an angry public, that public officials acknowledge concerns, accept mistakes, share power and build relationships: the work of the healer. We note that in the land claim cases, there was not a great deal of healing activity (see Table 5d).

Table 5d: Resolving Roles: Healer

Role	Land Claim	3rd Sider	Activities (see part 1)

Healer	Oneida	Community Wide Dialogues	• Built relationships between the public and the county-level officials who represented them in the negotiations.
Healer	Cayuga	SHARE	• Held two "Circles of Peace"
Healer	Oneida	IRC	• Peace Maker Circles in local congregations

While Oneida and Madison Counties' CWDs functioned in a mediator role by bringing parties together to discuss the conflict, they also acted in the healer role by providing property owners with a forum in which they could vent their anger and frustration with the negotiations. On the track two level, two healer initiatives occurred. The IRC's Peacemaker Circles held out hope that healing could begin among and between Non-natives and natives in the Oneida claim area, but only a handful of pilot circles were conducted. A lack of financial resources and staff limited the IRC's efforts in this area. SHARE's Circles of Peace provided emotional support for native people and fostered relationships between natives and non-natives in the Cayuga claim area. This effort, while a positive experience for those who attended, involved only a very small number of people, and was perceived as taking place on the margins of the conflict.

While much more could have been done by healers, a number of attempts were made to build bridges in all three claim areas. Many of the third side organizations believed that public education was critical, and they focused much of their efforts in this area. Their work included reports and public presentations about the claims and Haudenosaunee-US relations and efforts to improve the quality of the dialogue between individuals and groups with opposing viewpoints (Table 5e).

Table 5e: Preventer Roles: Bridge Builder

Role	Land Claim	Third Sider	Activities (see part 1)

Bridge Builder	Oneida, Cayuga, Onondaga	AFSC	• Published report on the land claims
Bridge Builder	Onondaga, Oneida, Cayuga	RSF	• Research project, Voices on the Land Forums
Bridge Builder	Onondaga	NOON	• Booklet • Cultural Events (Concerts) • Presentations to local groups
Bridge Builder	Onondaga, Oneida, Cayuga	BB/BW (the authors)	• Presentations on historical and legal bases of the land claims to other third siders
Bridge Builder	Oneida	Community Wide Dialogues	• Create dialogue between the public and the counties
Bridge Builder	Cayuga	SHARE	• Dissemination of information about treaties • "Circles of Peace" • Cultural Events
Bridge Builder	Oneida	IRC	• Peace Maker Circles
Bridge Builder	Onondaga	Onondaga Nation	• Joint environmental projects (Tully mines and Onondaga Lake cleanup)

The meaning of the third sider effort to educate the public is reflected in the comments of Pearson d'Estree about an AFSC report in the Hopi-Navajo Joint Land Use Dispute:

> Their approach hoped that by summarizing the complex history of the dispute, certain myths would be dispelled and each group's dignity and worth would be recognized…Summarizing and reframing the issues from both sides' perspectives can lead to new learning by all parties, and thus be seen as a form of intervention into a conflict. Also, as inaccurate and distorted information tends to escalate conflicts…providing accurate information can be seen as one method for deescalating conflict. (Pearson d'Estree, 1999:131-132)

Through reports, booklets and presentations, these third siders hoped to foster a new, more constructive conversation between property owners, government officials and nation members about the land claims. Our efforts (BB and BW), meanwhile, focused on consulting with these organizations and providing academic presentations on the issues in order to support efforts at reaching a settlement to the conflicts that would be acceptable to all of the parties.

Beyond disseminating information, IRC and RSF organized circles or dialogues in the belief that they would help to promote understanding and build relationships between antagonists–a prototypical bridge-building effort (Ury, 2000). In the Onondaga claim area, proactive attempts to foster dialogue by RSF and NOON contrasted with the reactive attempts by IRC and SHARE. NOON attempted to build relationships before the Onondagas' claim was filed in contrast to IRC's and SHARE's efforts to mitigate public anger after the fact. In both cases, the organizations hoped that dialogue would change attitudes, and would foster support for a negotiated out-of-court settlement. This hope was supported, at least anecdotally, by the observation of one of the authors during a *Voices on the Land* dialogue session.

The Onondaga Nation chiefs and clan mothers, as third siders working from the inside, were also trying to build relationships in order to avoid a destructive power struggle. They did this by collaborating with non-native groups on joint projects like the movement to stop mining in Tully, New York and to clean up Onondaga Lake in Syracuse, New York. Such joint projects, like dialogue, were attempts to create cross-cutting ties that would improve communication and build trust

(Pearson d'Estree, 1999; Ury, 2000), and, as a result, avoid the kind of public anger and resistance that were present in the other claim areas.[21]

Joint projects, like the dialogue circles that took place, also had the implicit effect of challenging stereotypes and, through modeling, teaching tolerance. Thus, many of these initiatives also fulfilled the teacher role (Table 5f), helping people learn to acknowledge the humanity of the other (Ury, 2000: 127).

Table 5f: Preventer Roles: Teacher

Role	Land Claim	3rd Sider	Activities (see part 1)
Teacher	Cayuga	SHARE	• "Circles of Peace"
Teacher	Oneida	IRC	• Peace Maker Circles
Teacher	Onondaga, Cayuga, Oneida	RSF	• Voices on the Land Forum
Teacher	Onondaga	NOON	• Solstice Concerts

The IRC's Peace Maker Circles, through explicit discussing the nature, characteristics, and behaviors of peace makers, moved beyond simply teaching tolerance to encouraging participants to think about, in a very conscious way, how conflicts should be handled (peacefully), and, by implication, how the land claim should be resolved. This design encouraged people to approach the subject indirectly by learning about problem solving and thus avoided re-enforcing a lot of the existing negative conflict dynamics that were already in play and that inhibited constructive dialogue.

[21] Whether this works or not remains to be seen. In one case (Pearson d'Estree, 1999), involving the Hopi and Navajo, a joint environmental project failed to improve goodwill between the two. The larger conflict between them over the Joint Use Area was put on hold while they cooperated on the project, but resumed afterwards.

While teaching tolerance and problem-solving skills were important, the underlying frustrated needs remained. Ury (2000:118) identifies four key needs to be addressed by providers in order to alleviate tension: resources (e.g. food, shelter), safety, respect and freedom (Table 5g).

Table 5g: Preventer Roles: Provider

Role	Land Claim	3rd Sider	Activities (see part 1)
Provider	Cayuga, Onondaga, Oneida	AFSC	• Published report on land claims
Provider	Cayuga	SHARE	• "Circles of Peace" • Dissemination of information
Provider	Oneida	BB/BW (the authors)	• Consultations with IRC on conflict resolution approaches • Consultations with Oneida County on conflict assessment
Provider	Oneida	IRC	• Peacemaker Circles
Provider	Onondaga	RSF	• "Voices on the Land" forums
Provider	Onondaga	NOON	• Solstice Concerts • Informational booklet

In these claims, three of the four needs identified by Ury are involved. These are conflicts over land (resources) that involve treaty rights and sovereignty (respect and freedom). Two of the three needs, respect and resources, are being addressed by the third side to some degree. Respect refers to emotional needs for love, recognition, belonging and identity (Ury, 2000: 121). AFSC, SHARE and NOON acknowledged and accepted the Oneidas, Cayugas and Onondagas as Indian nations that had a right to exist, and who had legitimate needs.

In terms of resources, NOON also worked, in parallel with the mediators and the federal judge, on returning land to the Indian nations. In a parallel vein, the AFSC report concluded that the Indian nations still had title to their reservations, and endorsed, as the others did, a settlement approach (which, based on past settlement proposals and other land claims, would involve returning some land). While these groups were not in a position to directly satisfy the need by Indian nations for freedom (i.e. autonomy), some of them, like NOON, explicitly recognized and endorsed their sovereignty.

The authors, in our consultations with Oneida and Madison counties, attempted to open doors to resources that might help the counties to resolve the land claim. Specifically, we recommended that the counties hire a conflict resolution professional who could conduct a conflict assessment as the first step in a larger consensus-building process. While we were not providing knowledge or resources that directly met the needs of the parties, our consultation represented an effort to open a door that would allow the parties to do so themselves (Ury, 2000: 124).

Outcomes

Despite making a significant effort, the third side was not successful in resolving the Oneida, Cayuga or Onondaga claims during the time period of this study. According to Ury's framework, then, this situation did not produce a "mobilized community, acting systematically, motivated by a new story." In the following paragraphs, we will first provide a summary of the implications of the above discussion on the issue of the degree to which the third side activity was systematic. We will then examine the manner in which the third side community was mobilized, utilizing a theoretical framework based on force field analysis. Throughout this discussion, we will consider the presence of a "new story"—a perspective on conflict assuming that a peaceful solution can be found. This

discussion will allow us to draw conclusions about why the third side was not successful in bringing about a resolution to these conflicts.

How systematic was the intervention of the third side? Putting this question in another way, were all the possible third side roles filled? As the discussion above, summarized in Table 4, demonstrates, all of the third side roles were filled in the Oneida case. In the Cayuga case, there was no place for containment roles, due to the fact that the conflict did not become violent. All of the prevention and resolution roles were present, however. In the Onondaga case all prevention roles, and one resolution role (equalizer) role were filled.

In the Oneida and Cayuga cases, all available roles were filled, yet the conflicts did not reach resolution. In the Onondaga case, only one possible role was left vacant—that of healer. (There was no place for the other two resolver roles—mediator and arbiter—as there was no overt conflict in the Onondaga claim area.) Again, the issue did not reach resolution.

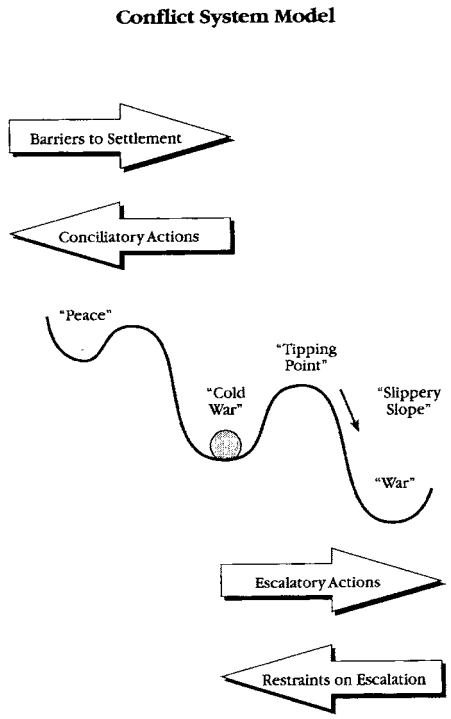
Despite the limited number of roles played in the Onondaga claim area, this region seemed best structured to reach a negotiated resolution. Once Judge McCurn released the Oneida and Cayuga mediators from duty and returned those cases to court, there was virtually no chance that the Oneida and Cayuga cases would reach an out-of-court settlement. Furthermore, the citizen groups that strongly opposed resolution remained active and strong in those areas. In the Onondaga claim area, it is impossible to predict what will happen. However, it was notable that anti-resolution groups did not establish a significant presence in the Onondaga claim area. This was despite the fact that the Onondaga claim area is "sandwiched" directly between the Oneida and Cayuga areas and could reasonably have been expected to feel pressure from the presence of the other two claims. Furthermore, all the federal court activity for all the claims took place in Syracuse, in the heart of the Onondaga claim area, and received extensive press coverage in print, on the radio, and on television.

Mobilization of the Third Side

Based on the comparison of the Onondaga, Oneida and Cayuga cases, it appears that simply filling all of the third side roles does not seem to be sufficient to resolve a conflict. The next issue to examine is the question of the manner in which the third side mobilized. What are the critical factors in mobilization? Are the size and strength of the interventions significant? Are there particular roles that must be played more strongly in order to achieve success? Are there other factors, not explicitly named by the third side framework, that are helpful in building an understanding of the outcomes of the Oneida and Cayuga land claim cases? If it is possible to build that understanding, would it be possible to utilize that information in making recommendations to third siders in the Onondaga land claim region who may be seeking advice as to how to maximize the effectiveness of their work?

We believe that the concept of driving forces and channel factors, as described by Watkins and Lundburg (1998), may be of assistance in answering these questions. Conflicts, from this perspective, are social systems in stable, but not static states. (See Figure 1.) There are three basic states: peace, cold war (i.e. "low level contention and friction that is neither all-out war nor durable peace" (Watkins, 1998: 117), and war. Driving forces press for change in the equilibrium, either toward escalation or de-escalation: They are the reasons why conflicts change. Restraining forces, on the other hand, oppose change: They are the reasons that conflicts do not transform. There are three types of driving and restraining forces: strategic, institutional, and psychological. See Table 6 for an explanation of the nature of each of these forces.

Figure 1: Conflict system model



Source: Watkins and Lundburg (1998: 118)

Table 6: Types of driving and restraining forces

Strategic	"strategic assessments about the prospects for reaching a mutually acceptable agreement…changes in strategic assessments occur when parties reevaluate their interests, recalibrate their aspirations, or find that their alternatives to negotiation have (or will) become less attractive" (Watkins 1998:121).
Institutional	"organizational and political factors that either support or hinder moves toward negotiations. Important examples include the presence or absence of channels of communication between the sides, internal political constraints on leaders, and the involvement of external players with stakes in the outcome" (Watkins 1998:121).
Psychological	Examples include: • Residues -- "having experienced decades of contention, the parties find it difficult to put aside their cumulative grievances" (Watkins 1998:123)

	• Transformation of Perceptions (us vs. them) (Watkins 1998:123) • War weariness (Watkins 1998:124)

Channel factors are leaders or momentum-building processes that tunnel through the residual barriers and tip the conflict into a new system equilibrium (peace, cold war or war). While channel factors (Table 7, below) can be and often are small, they can initiate "chain reactions that progressively build, leading to seemingly disproportionate results (Watkins 1998: 117)." Channel factors are how (as opposed to why) conflicts change.

Table 7: Channel Factors

Leaders	People who play a diverse set of roles (Watkins 1998:121): • entrepreneurial co-mediators—"moderate partisans [who] seek to advance the [negotiation] process by building relationships with moderates on the other side, and by developing 'centering' proposals that have the effect of pulling the sides together" (Watkins 1998:126). • guardians – "top leaders who have established their credibility as protectors of the respective groups during crucial periods of danger and struggle" (Watkins 1998:127). • unofficial representatives – individuals who have "a critical combination of connections to important officials and unofficial status" (Watkins 1998:127) who can act as de-facto representatives of the parties. • legitimizing sponsors – neutral, flexible and resource rich actors who can offer good offices to the parties (Watkins 1998:129) • facilitators – persons who can break down perceptual barriers between the parties, foster and shape "the development of a shared set of experiences that help buffer the process during difficult times" (Watkins 1998:130) and " the communications between rounds of negotiations" (Watkins 1998: 131).

Momentum-Building Processes	Processes that accelerate movement toward settlement: • secret diplomacy – "secrecy effectively transforms a multilevel negotiation process into a simpler bilateral one, delaying international negotiations and marginalizing opponents…Secrecy also permit[s] the parties to concentrate on the substantive issues, and avoid the posturing and media dynamics" (Watkins 1998: 131). • mutual confidence building – parties build confidence through mutual testing (Watkins 1998:131). • staged agreements – structures that allow the "parties to make progressively bigger and more difficult commitments" (Watkins 1998: 132).

Therefore, resolution of conflict, when and if it occurs, requires several conditions. First, the driving and restraining forces must be equally balanced, putting the conflict at a "tipping point." Second, channel factors must act to "overcome residual barriers," and push the conflict toward resolution. (Watkins, 1998: 117).

From this theoretical perspective, the third side can either help to change the balance of driving forces and/or can act as a channel factor that propels change. Third side efforts can be few and small in scale and still be effective when they act as channel factors that trigger a new conflict equilibrium. For this to succeed, however, the system must already be at a tipping point. If the system does not contain driving forces of sufficient strength to put the conflict at a tipping point, then third side "channel factor" efforts will be unsuccessful.

When conflicts are not at a tipping point, they are generally in either a "cold war" or "war" status. To have an impact in a "cold war" scenario, the third side must intervene to change the strategic, institutional and psychological driving and restraining forces. This means that third siders need to play roles that will change the strategic assessment of the parties, change the organizational and political factors that impede negotiation, draw in outsiders who have a stake in the peaceful outcome of the conflict, erase psychological residues and change perceptions. While these third side

roles may emerge and self-organize to accomplish these ends, they involve important logistical challenges. Where there is no "hurting stalemate" such as a high level of violence or war weariness among the parties, the logistical challenges facing the third side are even greater. The presence of a hurting stalemate provides strategic and psychological forces that push the conflict or cold war towards peace. Their absence means that other driving forces need to be mobilized, and other conciliatory actions will be needed in order to overcome the barriers to settlement.

In the context of the land claims, the work of the third siders that we have examined could be interpreted as either channel factors or driving forces. As channel factors, their small scale is not necessarily an impediment to their potential effectiveness. If there had been a hurting stalemate, or other significant driving forces in the claim areas, then perhaps IRC, RSF, AFSC, SHARE, NOON and the other third siders would have been successful in channeling through the resistance to settlement, and in tipping the conflicts toward peace. However, those driving forces were not present. Could the third side have provided the driving forces? Theoretically, yes. However, the actual third side efforts in these cases was far too small to produce results in this manner. They were too sporadic, infrequent and small in scale to mobilize the strategic, institutional and psychological driving forces necessary to overcome the existing obstacles to settlement.

Throughout the time period of this study, the land claim areas were in a state of cold war. There was frustration and hostility, but little violence. (The single act of violence that was a driving force towards "war"–the death threats–encountered immediate restraining forces mobilized by the police, religious organizations and property owners groups.)

Throughout 1999 and 2000, every out-of court effort to settle the conflicts peacefully encountered institutional, psychological and strategic restraining forces. The property owners, who feared that their values, homes, livelihoods and communities were in jeopardy (psychological forces), put pressure on local politicians (institutional forces) not to settle the claims. The strategic forces opposing settlement were also strong. The property owners were confident that, on appeal, the courts would not be willing to affect the non-Indian communities that had formed during the course

of the past 200 years, and would therefore strike down the claims. This strategic assessment strengthened the restraining forces—the property owners' resistance to settlement—and reduced the strategic driving forces—the nations' ability to introduce the threat of legal action.

Many third side efforts were made to convert the psychological restraining forces into driving forces, but these efforts were too small to have any significant or lasting impact. For example, all of the bridge-building initiatives helped to change perceptions, but only a small number of people were actually involved. SHARE's two circles numbered in the tens of people while NOON's concerts numbered in the low hundreds. The total population of the three claim areas was over 100,000. To be effective at the grass roots level, the third side would have needed to have provided many events over a period of months or, more likely, years, in order to reach a significant number of these individuals.

That kind of outreach effort would require resources which small nonprofits, like the IRC, the RSF, and most of the other third side organizations did not have. Efforts of this scale raise large logistical problems that require money, organization and coordination. None of the third siders in any of the claim areas had the ability to solve these problems unilaterally. There was no one third sider who coordinated the third side efforts. Some coordination happened simply because the people involved shared many of the same social networks. However, even this modest amount of coordination was complicated by personality conflicts among some of the third siders that hindered their ability to work together. Coordination needed to occur within roles and across the land claims to maximize their effectiveness.

One example of coordination that did take place was between track one and track two efforts: Dean Riccio temporarily suspended the negotiation talks while the counties launched the Community Wide Dialogues. Other types of coordination were more difficult, or, in some cases impossible. For example, it might not have been possible to do a conflict assessment, even if the counties wanted one, while the court-sanctioned mediation process was taking place. The court might have discouraged an assessment fearing that it might interfere with the mediation process.

Other coordination obstacles were also of a legal nature. While the federal government and the court were both equalizers, they could not cooperate or coordinate with each other without violating the legal process, given the nature of their legal relationship. Lastly, even when there were excellent opportunities for coordination, for example between UCE, IRC and the Oneida Nation in response to the death threats, deep division and suspicion, as well as legal antagonism, often foreclosed those possibilities. These were all challenges that a meta-mediator (Ury, 2000) might have been able to address. However, it is unclear who might have been able to play this role in these cases.

In addition to mobilizing psychological driving forces, the third side would also have needed to have supported institutional and strategic forces for settlement. In this effort, the equalizer role would have been particularly important, including work such as lobbying local politicians as well as recruiting influential outsiders who could have become involved. Overall, for the third side mobilization to have succeeded, more thought to the problem of balancing the forces that could push the conflicts to a tipping point and rendered them ripe for transformation.

Unless the conflicts had been brought to a tipping point, no third siders acting as channel factors would have been effective. Nevertheless, it is important to consider the leaders in the areas, and the processes that might have facilitated change if the forces had been balanced. While there were mediators for two of the conflicts, were there, perhaps, other mediator roles that could have been filled? For example, who were the individuals among the property owner groups who might have been approached in an effort to convince the groups to sanction mediation? Were there unofficial representatives of UCE who might have been included in the negotiations? Who were the co-mediators, the insider third siders, among UCE and other property owner groups, who could have been recruited? The channel factor approach forces third siders to think in greater depth about how certain roles, e.g. mediators, should work.

In addition to giving attention to different types of leaders, this approach also would challenge the third side to think about different momentum-building processes that might have been

implemented. Could some confidence-building measures have been taken that would have built trust between the litigants and the public? What about a staged agreement approach that would have fostered the participation of property owner groups like UCE, but would not have asked all the parties to commit to a final, comprehensive agreement on all the issues? While there are advantages to secret diplomacy, this approach proved counter-productive in these cases. What would be the potential results of a public consensus-building process involving all stakeholders, as has been done successfully in other public policy disputes? There are no easy answers, but these are important questions for third siders to ponder in cases such as these.

Conclusion

The Oneida, Cayuga, and Onondaga land claim cases provide examples, respectively, of a conflict that approached violence and was not resolved; a conflict that did not escalate to violence and also was not resolved; and a latent conflict that has not, and might not, escalate—and that may or may not reach a negotiated resolution. Our examination of these cases through the third side analytical framework has shown that in each, multiple third siders have stepped forward to fill all the available roles. In two of the cases, simply having the roles filled was not sufficient to create a negotiated resolution. In the third case, we do not yet know how the situation will be resolved.

Clearly, simply filling all the available third side roles is not sufficient to bring about a negotiated resolution to large-scale social conflicts of this type. A multitude of other factors must also influence the outcome. In analyzing the land claim cases, we found it helpful to think of third side activities as either acting as support for building driving forces toward resolution, or as channel factors that directed existing driving forces in productive directions.

It requires a great deal more energy to build driving forces than it does to channel those forces. Thus, small third side operations could make the most effective use of their work if they could act as channel factors. However, channel factors are of no use unless there are driving forces to channel. In the Oneida and Cayuga cases, the major forces at play pushed against settlement,

rather than toward it. As a result, third siders had to direct their efforts toward building driving forces, and in this work the small scale at which they had to operate was a major obstacle to their effectiveness. In the Onondaga case, powerful restraining forces against settlement did not exist. Neither, however, did major driving forces *toward* settlement exist. It may be possible, in the absence of anti-settlement forces, for the small-scale third side activities in the Onondaga claim area to support the building of driving forces in the direction of settlement as long as large-scale operations in the other direction to not come into play.

As long as third siders must build driving forces, size probably counts. One way that the third siders in these conflicts could have increased their impact would have been to coordinat their activities. The coordination that did happen (for example, the AFSC made their land claim information booklet available at the RSF Voices on the Land meetings), occurred because of pre-existing relationships between individual members of the various third side organizations. Where relationships were problematic or nonexistent, coordination did not occur. Perhaps there is room in the third side framework for a new role—that of Third Side Effort Coordinator. In the Oneida conflict, for example, the coordinator could have assisted the parties in selecting a mediator who had extensive experience in resolving large-scale social and cross-cultural conflicts. During the Community Dialogue process, the coordinator could have worked with the parties to assist them in integrating that process into the track one negotiations. Perhaps, however, the goal of having a Third Side Effort Coordinator is simply a conflict resolver's daydream. It is difficult to imagine many situations in which a coordinator would carry a cloak of legitimacy so solid that all the third siders would be willing to coordinate their work through that person. Even Nelson Mandela, Jimmy Carter and Martin Luther King have their detractors.

As Ury points out, prevention is much simpler than resolution, and, to the extent that a conflict can be prevented instead of resolved, the need to enhance the impact of small third side efforts would be reduced. The Oneida and Cayuga conflicts might not have become so contentious if the public had been welcomed into the negotiation process from the very beginning. The roots of

the anti-land claim movements were fertilized by citizens who believed that their interests were not being protected in the negotiations. If those citizens could have been actively involved in the process, they might have decided that a negotiated resolution in which they were explicitly included would have served them better than litigation.

For the citizens to have been included in the process, however, the courts and the parties would have needed to have involved them early in the conflict. This could have only happened if those individuals had substantial familiarity with the concept of resolving conflicts through public involvement, and had reasons to believe that this approach would achieve better outcomes than would the more common "decide-announce-defend" technique. Thus, we come to the conclusion that the presence of a teacher, when the conflict was still in the latent stage, who could have provided information about involving the public in the settlement process, might have been the most important of all the third side roles in these conflicts.

Afterword

In March of 2002, Judge McCurn released his final judgment in the Cayuga case, awarding the plaintiffs $211 million dollars in pre-judgment interest on 200+ years of rent (in addition to the jury's award of $36.9 million for the fair rental and market value of the reservation). The case in now being appealed by the parties to the Federal Court of Appeals in New York. Upon rendering his final judgment, Judge McCurn once again called on all the parties to try and settle the claim out of court. Meanwhile, a new judge has taken over the Oneida case from Judge McCurn, and has streamlined many of the legal proceedings. A tentative settlement for $500 million dollars announced in February of 2002 has since collapsed, sending the parties back to court. As for the Onondagas, they have not filed their land claim as of July 2002, preferring to negotiate rather than litigate. Lastly, since December of 2000, most of the third side activity in the claim areas has tapered off, with only a few groups, such as SHARE and NOON, still active.

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