

## **Indigenous Rights and Self-determination: Models and Options**

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## Key Terms and Concepts

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- ❄ Alaska Native Claims Settlement Act
- ❄ Assimilation
- ❄ Coexistence
- ❄ Greenlandic Home Rule
- ❄ Obshchina
- ❄ Rights
- ❄ Sami parliaments
- ❄ Self-determination
- ❄ Self-government

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## Learning Objectives and Outcomes

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Upon successful completion of this module, students will be able to

- ❄ Place Aboriginal-state relations in their historical context;
- ❄ Outline the events and conditions that contributed to the emergence of Indigenous rights movements in various Arctic Eight countries;
- ❄ Recognize and define different types ethnopolitical rights; and
- ❄ Understand the reasons for and be able to describe the various approaches to accommodation of Indigenous rights and self-determination in the Arctic Eight.

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## Overview

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This module traces the emergence of Indigenous rights and self-determination movements and looks at the different approaches and forms that Indigenous rights and self-determination have taken in the Circumpolar World. The module begins with an outline of key historical features of relations between Indigenous people and states. The text then discusses the reasons for the emergence of Indigenous rights movements. The module then introduces and discusses the concept of ethnopolitical rights. Finally, the text considers the different approaches to Indigenous self-determination in the Circumpolar North, starting with Alaska and coming full circle to Russia. It will become apparent that, although Indigenous peoples may have a lot in common, there exists great variety in the models of self-determination.

## Lecture

Conflict between political communities is common; accommodation is rare. Historically, northern regions have had their fair share of conflicts and tensions, notably between Indigenous peoples and newcomers. Today, the world's northern regions are at the forefront in seeking solutions to accommodate the divide between these communities. Aboriginal peoples seek to continue to exist as distinct political communities; non-Aboriginal peoples seek to maintain constitutional frameworks of government that apply to all citizens. Both aspirations are legitimate. Across the Circumpolar North, agreements have been reached to attempt to bridge these divergent political aspirations. In each case, these agreements—for example, Greenlandic Home Rule, Sami Parliaments, or Nisga'a Self-Government—grant greater self-determination, but in ways that reflect the political culture and constitutional frameworks of the dominant societies.

### ***Aboriginal/State Relations in Historical Context***

#### **Coexistence**

The Issues such as hydroelectric development in northern Norway, oil development in Western Siberia, or constitutional demands for **self-government** in Canada often suggest that the relations between Indigenous peoples and their states are always characterized by conflict. While this is one of the realities of relations between Indigenous peoples and dominant societies today, it certainly has not always been the case.

Indigenous or tribal peoples have coexisted for thousands of years alongside state societies in countries around the world. This pattern of **coexistence**—where different types of societies and peoples live in close proximity to one another, without one attempting to assimilate the other—was the norm across the Circumpolar North as late as the nineteenth century.

To be sure, as Europeans expanded their power around the world—biologically, politically, economically, and culturally—Indigenous peoples did not often fare well. Exposure to Old World diseases, such as tuberculosis and smallpox, to which Indigenous people had no natural immunity, resulted in massive declines in Indigenous populations. Europeans also sought to extend their sovereignty over the new lands they discovered, whether it was the Swedes and Norwegians in Lapland, the British, French and Dutch in North America, or the Russians in Siberia, the Far East and the North Pacific. This extension of sovereignty often created conflict. For example, there was considerable resistance and conflict over the enforced collection, by the servants and officials of Russia's tsars, of *yasak* (or *iasak*, the fur tribute) from Siberia's Indigenous peoples.

At the same time, cooperative trading relations were established between Indigenous peoples and newcomers. In some rare instances, Europeans eventually formally recognized the internal autonomy of Indigenous political communities through official documents. In British North America, the Royal Proclamation of 1763 stated that In-

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And whereas it is just and reasonable, and essential to Our Interest and the Security of Our Colonies, that the several Nations or Tribes of *Indians*, with whom We are connected, and who live under Our Protection, should not be molested or disturbed in the Possession of such Parts of Our Dominions and Territories as, not having been ceded to, or purchased by Us, are reserved to them, or any of them, as their Hunting Grounds; We do therefore, with the Advice of Our Privy Council, declare it to be Our Royal Will and Pleasure, that no Governor or Commander in Chief in any of Our Colonies of *Quebec*, *East Florida*, or *West Florida*, do presume, upon any Pretence whatever, to grant Warrants of Survey, or pass any Patents for Lands beyond the Bounds of their respective Governments, as described in their Commissions; as also, that no Governor or Commander in Chief in any of Our other Colonies or Plantations in *America*, do presume, for the present, and until Our further Pleasure be known, to grant Warrants of Survey, or pass Patents for any Lands beyond the Heads or Sources of any of the Rivers which fall into the *Atlantic* Ocean from the West and North West, or upon any Lands whatever, which, not having been ceded to, or purchased by Us as aforesaid, are reserved to the said *Indians*, or any of them.

Portion of the Royal Proclamation of 1763, that recognizes that North American "Nations or Tribes of *Indians*" have certain rights to lands that have not "been ceded to, or purchased by Us."

dians and their lands west of the already settled territories of eastern North America were to be left in peace by the settler populations. When Sweden and Denmark–Norway concluded a border treaty in 1751, a supplement was added, known as the Sami Codicil, which recognized the **rights** of reindeer-herding Sami to pasture lands across the new boundary, as well as limited rights of self-governance. The Codicil has been referred to as the Sami Magna Carta. It is important to understand that, in many places, even after several hundred years (and sometimes longer) of relations between Indigenous peoples and European, Indigenous peoples enjoyed a fair degree of **self-determination**.

## Assimilation

By the nineteenth century in Fennoscandia and North America and, following the October Revolution (1917) in Russia, the pattern of relatively benign coexistence was replaced by policies of **assimilation**. States no longer viewed Indigenous peoples as distinct political communities; rather, Indigenous peoples were to be incorporated into the new nation-states.

In Canada, the passage of the Indian Act of 1876 set in motion a number of policies aimed at assimilating Aboriginal cultures. The Act was amended over the years in response to conditions and to changes in the government's intentions. Federal residential schools were established and religious residential schools were supported with federal funds to provide education to Indigenous people and, at the same time, assist the process of assimilation and socialization into the dominant society. Indigenous practices such as potlaches were outlawed in 1927, as was the right of Indigenous people to organize politically.

In Norway, similar policies were enacted. In 1850, the government introduced the Finnefondent, a policy of promoting the Norwegian language in Sami areas. The State Land Act of 1902 restricted the private ownership of lands to those who could speak, read, and write Norwegian. Both chipped away at the self-determination of the Sami in Norway.

In Russia, after centuries of being pawns in tsarist expansionist plans, the Soviet state collectivized reindeer herds and organized Indigenous communities into state and

collective farms. As in the case of Fennoscandia and Canada, Indigenous children in Soviet Russia were often placed in boarding schools away from their parents.\*

These policies resulted in large changes in the ways of life of Indigenous people, both positive and negative. Positive changes are largely ignored. Many Indigenous leaders argue that the effects of contact and the policies of assimilation have largely had destructive consequences for Indigenous peoples, including the loss of languages, customs, and lands and are the cause of many, if not all, of the social pathologies that afflict Indigenous communities today.

## **Aboriginal Rights Movement**

Today, Indigenous leaders and organizations around the Circumpolar World are seeking greater political autonomy and self-determination for Indigenous peoples within the states of which they are a part. Policies of assimilation are no longer accepted. However, it is important to understand the context in which today's Indigenous rights movement emerged.

Aboriginal peoples have always had claims against the state. But, following the World War II, circumstances changed, which allowed Indigenous peoples the opportunity to transform these claims into effective Aboriginal rights movements. First, faced with the atrocities of the war, Western societies became increasingly more tolerant of dissenting viewpoints and organizations, whether they were labour movements or women's organizations. This applied to minorities, as well, most graphically in the civil rights movement focussed on black people in the United States. These changes provided Indigenous leaders more political space in which to advance their claims. Second, with the creation of the United Nations and other international organizations, international pressure became an increasingly important tool for Indigenous peoples to force their own governments to change policy. Third and last, the emergence of effective Indigenous political organizations, coupled with the emergence of pan-Indigenous political identities, gave Indigenous people the capacity to press their demands more successfully in this changing political climate. As a result, over the past three decades, Aboriginal peoples have made significant advances toward self-determination and the recognition of their rights.

## **Ethnopolitical Rights**

Before we look at the achievements to date toward Aboriginal self-determination, it is important to first understand the basic types of **ethnopolitical rights**. In a general sense, a right is an entitlement that permits one to do something or to refrain from doing something that others have an obligation to respect. Sometimes, but not always, rights are codified in law.

Will Kymlicka (1995) offers one way of understanding ethnic group rights, including indigenous rights. He suggests that three basic rights are

1. Self-government rights;

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\* This issue is touched upon in Module 9: Well-being of Northern Peoples and Communities.



2. Polyethnic rights; and
3. Special representation rights.

**Self-government rights** permit a group greater political autonomy or territorial jurisdiction. **Polyethnic rights** include such things as the freedom to use one's own language and to practice one's own culture. **Special representation rights** guarantee representation in the legislative processes of a state. Different Indigenous organizations have sought one or more of these kinds of rights. Below, we look at how these rights are reflected in different models of self-determination across the Circumpolar North.

### Alaska Native Claims Settlement Act

When the United States purchased Alaska from Russia in 1867, Native Alaskans were the majority population. Today, Native Alaskans represent roughly 15 per cent of the population of Alaska. Throughout its history, the increasing numbers of newcomers paralleled the increasing demand for lands and resources traditionally used by Native Alaskans. Oil reserves were of particular importance. Before further development occurred in Alaska, and because of the importance of oil to the American economy, the United States government insisted that Native claims be first settled. Negotiations eventually resulted in the Alaska Native Claims Settlement Act (ANCSA) of 1971, one of the most important, pioneering pieces of legislation in Aboriginal rights. The ANCSA attempted to redefine the shape of relations between Aboriginal peoples and the state and to provide greater self-determination for Indigenous Alaskans.

Although a number observers and Aboriginal organizations have pointed out the many serious shortcomings of the ANCSA, it was remarkable in its time. The ANCSA created 12 regional for-profit corporations with surface and subsurface (mineral) rights to 180,000 km<sup>2</sup> of state land. In each region, village corporations were created and held **surface rights** to local lands. A thirteenth corporation was created for beneficiaries who did not live in Alaska. Native Alaskans also received nearly one billion dollars in exchange for lands and rights ceded. Native Alaskans did acquire greater self-determination through their regional and village corporations, however, Native Alaskans did not acquire political self-government rights in the same way as some other Aboriginal peoples in North America. Moreover, Native Alaskan also do not have the same degree of protection of subsistence rights on non-corporation lands as do their counterparts in other areas of North America.



Map showing the areas of the 12 ANCSA regional corporations. Map from Map 5 in McBeath and Morehouse 1994, 271.

### Canadian First Nations Land Claims and Self-Government

Aboriginal people in Canada constitute about three per cent of the population and more than 50 different language groups. However, there is great variation in the region-

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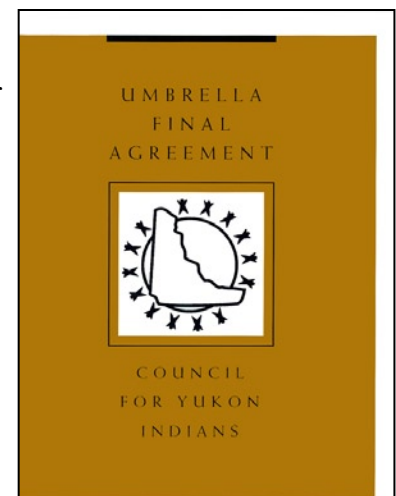
al distribution of First Nations people. In the northern regions of Canada's provinces, the proportion of the population that is Aboriginal is much higher than in the highly urbanized South. In northwestern British Columbia, for instance, Aboriginal people constitute about 25 per cent of the population. In the territorial North, the Aboriginal population is even higher with roughly 21 per cent of the population of the Yukon Territory of Aboriginal ancestry, 40 per cent in the Northwest Territories, and over 80 per cent in the newly created territory of Nunavut. The great variation of peoples, histories and population distributions has, understandably, led to different approaches to self-determination. While most Aboriginal peoples have not achieved self-determination in the form of formal agreements establishing protected self-government powers, the federal government has devolved considerable delegated authority to First Nation governments. Nevertheless, a number of agreements have emerged over the past three decades. Below, we will discuss three such models: James Bay, Nisga'a, and the Yukon First Nations.

In 1971, the Alaska Native Claims Settlement Act was viewed as an historic step forward in accommodating indigenous aspirations for greater self-determination. Four years later, the James Bay Cree and Northern Quebec Agreement of 1975 (extended in 1978 to include the Naskapi of northeastern Quebec) represented the second major agreement in North America in the modern era. As in the case of Alaska, the James Bay Agreement was in response to natural resource development, in this case a massive hydroelectric power development. The agreement provided three categories of land: the first category gave Natives surface ownership of 5,543 km<sup>2</sup> with a veto over the Province of Quebec's use of **subsurface rights**; the second category of lands provided exclusive subsistence rights over 62,160 km<sup>2</sup> of land; and the final and largest category of lands gave special consideration for traditional land use by Natives. Additionally, the agreement provided municipal-style, local, self-government to the eight Cree communities, as well as regional government through the Cree Regional Authority.

The 1993 Umbrella Final Agreement for the fourteen First Nations in the Yukon Territory and corresponding self-government agreements for four of the fourteen First Nations represented an even stronger agreement in terms of self-determination over lands and government. The agreement provides the 8,000 First Nations



Map of Canadian land claims settled to 1995. Map from Isaac, 1995, xv.



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people of the Yukon land rights to 41,439 km<sup>2</sup> of territory, including surface and sub-surface rights to Category A lands and surface rights to Category B lands. In addition, Yukon First Nations have co-management rights on key resource and development boards. The Yukon self-government provisions are also stronger than in the James Bay Agreement for the First Nations that have negotiated self-government agreements.

A final model is the recent Nisga'a Final Agreement. The land claim settlement of the Agreement is less remarkable than are the provisions for self-government. Although Nisga'a government is comparable to municipalities in a number of ways, it is much more than a municipal government in others. In this respect, the Nisga'a model of self-government differs from both the James Bay Agreement and the Yukon First Nations models. First, Nisga'a government will be constitutionally protected, meaning neither the provincial nor the federal government can unilaterally dissolve Nisga'a government. Second, Nisga'a government will have paramountcy in some areas of jurisdiction. That means Nisga'a law can prevail over federal or provincial law on some matters such as Nisga'a citizenship, language and culture. Together, the fact that the Nisga'a government will have paramountcy and constitutional protection makes the Nisga'a government a third order of government in Canada.

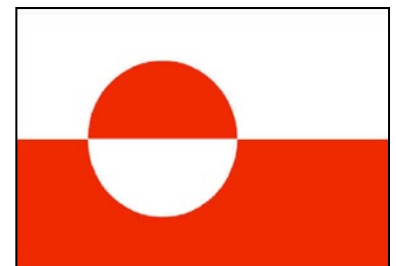
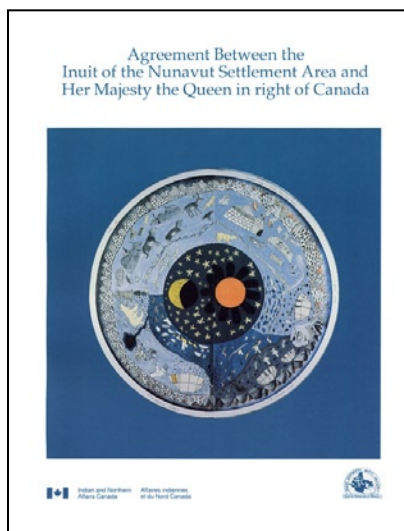


### Inuit Home Rule: Greenland and Nunavut

The Greenland Home Rule Act represents a pioneering effort to accommodate Indigenous peoples' aspirations for self-determination. Since 1380, the Inuit of Greenland have been under Danish rule, and Greenland was formally and legally a colony of Denmark until 1953.

Since 1979, however, Greenland has operated under the Home Rule Act, which grants its 55,000

residents a fair degree of autonomy from Copenhagen over its internal affairs. It does so, however, without granting Inuit residents any greater or lesser political rights than non-Inuit residents. Public monies for self-government are not transferred on ethnic lines; fiscal transfers from Copenhagen go to the Greenlandic government, which serves Inuit and non-Inuit Greenlanders alike. Home Rule, therefore, is a form of public self-government, not Aboriginal self-government. However, because Inuit residents make up 80 per cent

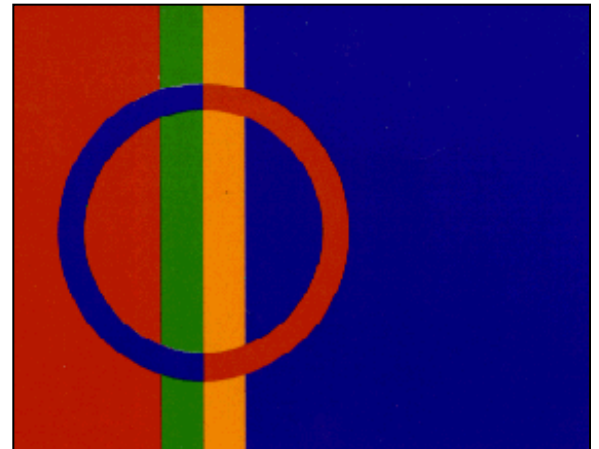




of the population, they are in no danger of being outvoted by non-Native residents. In this regard, the new territory of Nunavut in Canada's Eastern Arctic, which came into existence on April 1, 1999, is similar to the Home Rule public self-government model. However, the Nunavut Final Agreement also provides the Inuit of the Canadian Eastern Arctic ownership and subsurface rights to 36,000 km<sup>2</sup> of land.

## **Sami Parliaments**

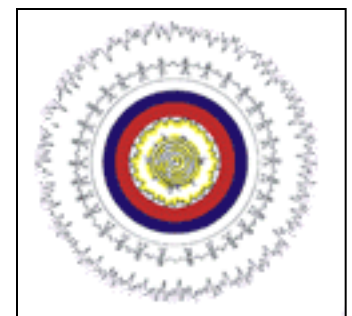
Another approach to Aboriginal self-determination are the Sami Parliaments of Fennoscandia. The indigenous Sami of Norway, Sweden, Finland, and Russia number about 70,000 and live largely above the Arctic Circle. Northward expansion in Finland and Scandinavia since the sixteenth century has made the Sami an ethnic minority in their traditional lands. There are no reserves in Fennoscandia, nor are there Aboriginal land claims in the same sense as in North America. In fact, the 1981 Swedish Supreme Court *Skattefjäll* [Taxed Mountain] decision denied Sami property rights. As a result, there are few prospects for territorially-based self-government.



Instead, as a response to pressure for official recognition of Sami rights, Sami parliaments were initiated in Finland in 1973 and provided for in law in Norway in 1987 and Sweden in 1992. Representatives to the Sami Parliament are elected by the Sami. The Sami Parliaments, however, only has advisory powers to the national governments and do not constitute an order of government with jurisdiction over Sami traditional territories. Although this is a weak form of aboriginal self-determination, it does provide Sami representation in the legislative process over policies that affect their cultural survival.

## **Small-Numbered Peoples of the Russian North**

The Indigenous peoples of the Russian North, known as the "Small-Numbered Peoples of the North," are the more the recent Aboriginal peoples in the Circumpolar World to embark on the path to self-determination. Collectively, they consist of just over forty peoples, but actually constitute but a fraction of one percent of the population of the Russian Federation. Nevertheless, given that their traditional territories often coincide with lands rich in natural resources and given the importance of Aboriginal issues among Northern countries, Indigenous peoples occupy a place on the national policy agenda greater than their numbers would otherwise dictate.



Since the late 1980s, when the Aboriginal rights movement began in Russia, fol-

Following the larger political and economic changes in the former Soviet Union, both the federal government and regional governments have developed legislation recognizing the rights of Indigenous peoples and granting increased measures of self-determination. Article 69 of the Constitution of the Russian Federation explicitly recognizes the rights of Aboriginal peoples in accordance with international norms, but does not define them.

One of the most interesting developments is legislation on **obshchinas**, which is a form of traditional land use rights over territories of ancestral lands, with limited powers of self-governance over those lands. In general, land rights and self-governance authorities of Aboriginal peoples are weak, in part because of the weakness of laws in general in Russia during this period of political and economic transition. Nevertheless, Aboriginal peoples have made great strides, under difficult circumstances, in a short time.

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## Useful Web Sites

**Becoming Visible: Indigenous Politics and Self-Government, papers from a conference held in Tromsø in 1993**

<http://www.uit.no/ssweb/dok/series/n02/indexen.htm>

**CELANEN: A Journal of Indigenous Governance (V.1, N.1 2004)**

<http://web.uvic.ca/igov/research/journal/index.htm>

**Indigenous Governance by the Inuit of Greenland and the Sámi of Scandinavia**

<http://www.austlii.edu.au/au/special/rsjproject/rsjlibrary/arccrp/dp8.html>

**Resource Centre for the Rights of Indigenous Peoples**

<http://www.galdu.org/english/index.php>

**Russian Association of Indigenous Peoples of the North**

<http://www.raipon.org>

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## Study Questions

1. When, roughly, did policies of co-existence change to policies of assimilation for Aboriginal people? How were these policies of Assimilation manifested?
2. What three circumstances following the Second World War gave rise to effective Aboriginal rights movements?
3. What are the three basic rights as defined by Will Kymlicka? Briefly explain them.
4. What new rights did the Alaska Native Claims Settlement Act give to aboriginal Alaskans? Did it grant the three basic rights in Question 3 above? Explain.

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5. Describe briefly the James Bay, Nisga'a, and the Yukon First Nations agreements. How is each, in turn, an advance in aboriginal rights over the previous one and an advance over the Alaska Native Claims Settlement Act?
6. Why does Greenland Home Rule not specifically give Aboriginal self-government? Should this affect Aboriginal self-determination? Why, or why not? How is its government different from that of Nunavut?
7. Why are Sami Parliaments a weak form of aboriginal self-determination? What are the strengths of Sami Parliaments?
8. Why are land and self-government rights weak among Russia's northern small-numbered peoples?

## Glossary of Terms

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**Assimilation:** The cultural and economic absorption of a people into a larger group through causing the minority culture to acquire the culture of the larger group.

**Coexistence:** Peoples existing together in mutual tolerance and respect even though maintaining differing cultures or ideologies.

**Rights:** Entitlements that others have an obligation to respect, and that permit a person, or a people, to do something or to refrain from doing something.

**Self-determination:** In its most absolute sense, self-determination is the freedom of a people to decide their own allegiance or form their own government. In most cases, when the subject is Indigenous rights, it means a degree of self-government coupled with other rights.

**Self-government:** Government chosen by a people. Self-government of groups within sovereign states usually means limited self-government, such as a municipality has, or it might mean another level of government, similar to a territorial government.

**Subsurface rights:** Mineral rights.

**Surface rights:** Rights to use land and its products (other than minerals) as the rights-holder chooses, within national and international law. Ownership.