Native Claims and Political Development

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by

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PREFACE

A recent report to the Governor of Alaska on federal-state-tribal relations describes the conflict over native or tribal "sovereignty" as follows:

On one side are Alaskans who support the aspirations of Native people in rural villages to exercise powers of self-government. They argue that, in addition to being state citizens, Alaska Natives, like most other Native Americans, have a unique government-to-government relationship with the federal government. They believe that the federal government has explicitly recognized Native residents of rural villages as Indian "tribes" with inherent powers of self-government similar to the powers of self-government which tribes in the forty-eight states exercise within the boundaries of Indian reservations.

On the other side are Alaskans who oppose the aspirations of Native people to govern the areas surrounding their villages without state interference. They argue that, whether they live in Anchorage or Akiachak, Alaska Natives are state citizens whose political rights are identical to the political rights of all other state citizens. They believe that since Alaska Natives vote in state elections, it is not unreasonable for Native people in rural villages, and the use of lands and natural resources in areas surrounding those villages, to be subject to the jurisdiction of the Alaska Legislature. They also believe that essential governmental services funded by state monies in rural, predominantly Native villages should be provided by municipal governments organized under state law rather than by IRA or traditional Native councils.*

There obviously are good, rational arguments on both sides of the issue. Generally, this might sharpen and focus a debate and facilitate a resolution. On the issue of tribal sovereignty, however, the strengths (and the passions) of opposing arguments appear to have increasingly polarized the debate. Proponents are claiming inherent, general powers of self-government for Alaska Native "tribes," and opponents are denying that Alaska Natives have any special political status at all.

This paper discusses a middle ground of native political change—one that avoids the absolutes of the two extremes of the sovereignty debate. Within the context of native claims movements and settlements, it suggests that native political rights—whether or not limited to the political rights of all other state citizens—are the means to native gains in specific areas of self-government.

This paper attempts to show that native groups can effectively pursue significant political goals and achieve much of the substance of community self-determination without necessarily resorting to expansive claims of “sovereignty.” Instead of claiming the broad (and vague) powers of sovereign status, native groups can achieve practical political, economic, and social gains through native claims movements as well as through other familiar forms of political action, and they can do this within the rules of a given political system.

Thus, this paper is not an argument for native sovereignty. “Sovereignty” implies absolute or final authority; it is an outdated, sixteenth-century concept. Neither the contemporary state governments in the United States, for example, nor even modern nation-states effectively exercise such authority. Rather than advocating native sovereignty, I am arguing for increased native autonomy or self-determination.

Within the general limits and rules of a democratic political system, natives have at least the same rights to demand, bargain, and persuade in order to achieve their goals as do all other groups. Accordingly, natives might win some benefits—such as control of certain natural resources—that are also claimed by other groups. Or they might achieve greater control over their own internal affairs—such as local education or law enforcement programs. Such gains would not so directly involve claims of other groups. Whatever the stakes involved, native groups and communities can pursue their goals as participants in an open political process. This paper argues that the process of native political development is continuous, and that claims movements and settlements are a part of that continuous process.

**NATIVE CLAIMS AND POLITICAL DEVELOPMENT**

**Introduction**

Native claims movements and settlements generally attract public attention because they involve transfers of land and cash payments to native peoples. But claims movements and settlements are much more than just economic transactions: they are critical episodes in the political development of aboriginal peoples. In this paper I examine the relationships between claims movements, settlements, and native political development in Alaska and northern Canada.

Natives—and all other groups—develop politically as they strengthen their sense of identity and increase their control over resources and decisions that affect their lives and well-being (Coleman, 1968; Morehouse, 1987). Claims settlements can advance native political development when they aim to integrate rather than to assimilate native peoples into the dominant society. By integrating native peoples I mean bringing them under the same broad laws and standards that apply to everyone in the society, but making adjustments to allow them to keep their own distinctive ways of living. By contrast, assimilating individual groups means simply absorbing them and attempting to create a society where everyone has similar habits, attitudes, and values.

The claims settlements passed in Alaska and Canada since 1971 have by and large been attempts to assimilate native people by extinguishing aboriginal title and rights. “Aboriginal title and rights” are hard to define, because courts and government officials over the past couple of hundred years have defined them in various, sometimes vague and contradictory ways. But in general, aboriginal land title is the right of aboriginal peoples to occupy land by virtue of having occupied and used that land for thousands of years before anyone else. It differs from fee title to lands because it does not include the right to sell the land (except to the federal government)—just to occupy it.öl Aboriginal rights are more elusive; broadly speaking, they include rights of native peoples to their own ways of living and self-government—with such rights again inherent in the fact that native societies existed in the north long before western society took over.²

In exchange for the extinguishment of aboriginal title and various rights, recent claims settlements have generally awarded natives

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1 See David Case’s definition and discussion of aboriginal title in his *Alaska Natives and American Laws* (1984: 47-75).

cash payments and ownership of or rights to specific lands, with very few provisions for native self-government or traditional styles of living. Such settlements retard native political development because they attempt to eliminate—through fairly straightforward economic transactions—that which distinguishes natives from other groups.

An alternative kind of claims settlement would be one that, instead of broadly extinguishing aboriginal rights, left a larger share of them intact and set up mechanisms to allow natives to keep their own separate identities within the larger society. That sort of a settlement would be a recognition settlement. No recognition settlements have been passed in the north to date, although a few have included provisions that went a step toward recognition. Such settlements would enhance native political development because they would be a way of integrating natives into the dominant society while recognizing and protecting their own distinctive ways of living.

In the balance of this paper I look at the relationship between native claims movements, settlements, and political development in Alaska and northern Canada. I first discuss the concept of political development and its applications to claims movements and settlements. Second, I discuss the range of possible settlement provisions. Next, I describe a conceptual model of political change and policymaking that identifies major factors influencing claims processes and policy outcomes. Finally, I apply this analytical framework to six native claims cases in Alaska and Canada.

I discuss native “political development,” recognizing that much of the history of contact between natives and western societies is a story of native political and social decay. I take as given the sorrowful record of native cultural disintegration under the relentless pressures of dominant and expansionist industrial societies. This paper does not deal with that negative history but rather with some of the more positive, contemporary movements to rebuild and strengthen self-governing native communities. And rather than attempt to survey the entire history of vacillating, on-again, off-again federal policies aimed at native autonomy at one time and native assimilation at another, I focus just on native claims movements in the north during the last two decades.

In three of the cases I examine the American and Canadian governments have made claims settlements: the Alaska Native Claims Settlement Act of 1971 (ANCSA), the James Bay and Northern Quebec Agreement of 1975 (JBNQA), and the Western Arctic (Inuvialuit) Settlement Act of 1984. The Inuvialuit settlement is also known as the COPE agreement, for the Committee of Original Peoples’ Entitlement, which represented the Inuvialuit. In three other cases, negotiations continue as of this writing: the Council of Yukon Indians in the Yukon Territory, the Dene Nation in the Mackenzie Valley and western region of the Northwest Territories, and the Tungavik Federation of Nunavut in the eastern Northwest Territories (see Map 1).
Political Development

As groups cope, invent, and strive in ways that increase their power and freedom, as they increase their capacities to choose and shape their own futures, they develop politically. Three aspects of political development are relevant to native claims: identity, a sense of group integrity and continuity; welfare, control of and access to resources; and legitimacy, recognition by others of rightful or socially sanctioned claims to certain resources and authority (Riggs, 1984).

Native claims that aim to preserve indigenous cultural patterns—including sharing, consensus decisionmaking, and subsistence living—strengthen identity. Claims to land and resources and to financial compensation for losses of land and resources correspond to welfare. Demands for self-governing authority and for participation in decisions that have important effects on the group—and recognition by others of the justice of such demands—are matters of legitimacy.

Political development is closely associated with conflict, because it is in conflict that issues of group identity, welfare, and legitimacy (among others) most clearly arise. In the north, critical issues of political development arise in the conflict between indigenous peoples who want to protect and enhance their autonomy and welfare and organized interests from the south who want to control and develop the north's natural resources. Since the early 1960s, this conflict has given new form and urgency to old issues of northern native peoples' identity, welfare, and legitimacy.  

Native claims cases give us the opportunity to assess both the processes involved in pursuing collective goals and the outcomes of claims settlements. Relevant questions about native claims processes include the following: What are the goals of the parties to the conflict between resource development and native autonomy and welfare? How do they define the problems to be resolved? Whose definitions prevail? What policy alternatives are considered and who formulates them? What have been the effects of native claims actions in other regions? What have native leaders and government officials learned from these other cases, and how do they use such knowledge?

We can also examine claims settlements for their effects on po-

3 There is a very large literature on the origins of modern native claims movements and the stakes involved. Works consulted include Armstrong and others (1978), Berger (1985), Berry (1975), Condon (1983), Hunt (1978), McNees (1983), Morrison (1983), Orvik (1983), Sugden (1982), and Wittington (1985). Although they vary widely in their perspectives, emphases, and positions, most observers tend to agree on the general terms and context of native claims issues and the basic conflicts involved.

Settlement Types

Claims settlements can run the gamut from extinguishment to recognition settlements. Extinction settlements—as the name implies—are intended to end special native rights and to bring native peoples into the social and economic mainstream. Recognition settlements, on the other hand, are designed to maintain special aboriginal rights and ways of living.

Table 1 lists some hypothetical provisions of extinguishment and recognition settlements. This table is intended to illustrate the range of possible settlements by showing the two types in their purest forms; actual settlements are never purely one or the other but some negotiated combination of the two. Although the provisions listed are hypothetical, they are derived from a review of existing and proposed claims settlements in Alaska and Canada. All these provisions have implications for the political development issues of identity, welfare, and legitimacy:

1. Objectives—Objectives of settlements may or may not be explicit in settlement documents. If not, we can infer them by assessing substantive provisions and by examining the historical context and political process of claims negotiations. Goals of extinguishment settlements can include clearing title to lands under native claim, opening the way to resource development, assimilating natives into the dominant society, and even—in the extreme—terminating government-native trust relationships and special service and development programs.

Goals of recognition settlements, on the other hand, can include limiting development and affirming aboriginal rights to land, to natural resources, to distinctive ways of living, and to self-governance. Such settlements could be open-ended agreements whereby specific rights would be recognized at the time of the settlement, with the understanding that other, yet-to-be-defined rights might be recognized through future negotiation.

4 The typology used in this paper is based directly on Hunt (1978), and it is supported by Morrison (1987) and Task Force to Review Comprehensive Claims Policy (1985).
TABLE 1

Hypothetical Provisions of Extinguishment and Recognition Types of Settlement

<table>
<thead>
<tr>
<th>Settlement Provisions</th>
<th>Types of Settlement</th>
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<tr>
<td></td>
<td>Extinguishment</td>
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<td></td>
<td>Recognition</td>
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<tr>
<td>Objectives</td>
<td>Clear title</td>
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<td></td>
<td>Protect Native cultures and aboriginal rights</td>
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<tr>
<td>Develop resources</td>
<td>Limit development</td>
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<tr>
<td>Assimilate Natives</td>
<td></td>
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<tr>
<td>Land</td>
<td>Specify and limit</td>
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<tr>
<td></td>
<td>Confirm Native title</td>
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<td></td>
<td>Establish long-term process</td>
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<td></td>
<td>Surface and subsurface rights</td>
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<tr>
<td>Subsistence</td>
<td>No special rights, protections, or institutions</td>
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<td>Priority rights</td>
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<td></td>
<td>Non-Native lands</td>
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<td>Native participation</td>
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<td>Finances</td>
<td>Ties to development</td>
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<td></td>
<td>Independent of development</td>
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<td>Long-term support</td>
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<td>Taxes on land</td>
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<td>Limited payments</td>
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<td>Institutions</td>
<td>Existing structures</td>
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<td>Special arrangements</td>
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<td>Traditional forms</td>
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<td>Decentralization</td>
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<td>Western models</td>
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<td>Centralization</td>
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<td>Uniformity</td>
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2. Native land—Lands can be legally transferred to Native ownership, or kept in government ownership but reserved for exclusive native use. Natives may receive only surface rights or subsurface rights as well. Provisions may allow only limited, one-time selections, or they may permit future as well as present selections. Natives may win veto powers over development activities affecting subsistence resources.

3. Subsistence resources—Provisions can allocate resources on native lands only or on non-native lands as well; they can establish priority rights and new protective regimes or be restricted to existing institutions and procedures.

4. Finances—Cash payments to natives can be either dependent on or independent of development of resources. Tax and other provisions can either add pressures to develop lands or insulate them from such pressures.

5. Institutions and authority—Provisions can establish special arrangements for native representation, recognize traditional forms, and decentralize controls, or they can require conformity with existing structures and authorities.

Whether the extinguishment or recognition type of settlement prevails in a given case depends on the combination of circumstances unique to each situation. The settlements adopted in the north to date have included some features of the recognition type but overall have been extinguishment settlements. The next section outlines a conceptual scheme that can be used in explaining how and why settlement processes tend toward either extinguishment or recognition.

Political Change and Policymaking

Political systems theory and policy process models can help organize a discussion of the politics of native claims. We can think of policy as an output of the political system, which comprises all the actors, processes, and institutions involved in making and carrying out public policy. The political system responds to forces in its environment, and systems theory deals primarily with this environmental-political system interaction (Easton, 1965a, 1965b).

Analysis of policymaking—what goes on within the political system—requires focusing on particular policy processes. The policy process model I use in this analysis highlights the interaction between problems, policy alternatives, and politics—interaction that produces policy decisions and actions (Kingdon, 1984) (Figure 1).

Problems may get attention for various reasons. Systematic indicators (for example, poverty levels, unemployment rates) may point to them; “focusing events” (such as major new resource finds) may occur; or current policies may fail and create new and more urgent problems. The policy proposals that survive must meet tests of technical, political, and financial feasibility. The political system will tend to be receptive to a problem-policy set under a number of conditions. Majority opinion may be favorable; significant changes in constitutional-legal systems or political institutions may occur; or interest groups may bring pressure to bear.

When compelling problems and favorable political events combine, they create opportunities to generate (or select) policies. Figure 1 presents a simple model of the elements of political change and
policymaking for native claims settlements, based on a review of native claims cases in Alaska and Canada.

The main elements of the environmental-political system in this model are stakes, diffusion processes, and the political environment:

1. **Stakes**—At stake in native claims cases are who will control resource development, and to what extent the political development values of identity, welfare, and legitimacy will be advanced or set back by settlements. Settlement provisions affecting native political development show up as policy alternatives in the figure.

2. **Diffusion processes**—Ideas, experiences, and innovations are diffused—spread—from one political arena to another in a variety of ways (Walker, 1969). National and international networks of interest groups, professionals, and public officials pass along their experiences with public problems and policies in analogous situations. Political learning, emulation, and competition are part of the diffusion process for political issues in general and specifically for native claims cases. Timing also plays a part when claims movements and settlement actions in one region influence events and decisions in other regions.

3. **Political environment**—This is the broadest category. It includes the broad mood of the time, the political culture, and the constitutional-legal regime.

Stakes, diffusion processes, and political environment interact, and they have important effects on the following policy process elements:

4. **Politics**—To be distinguished from the broad environmental factors just mentioned, these are political conditions or factors that impinge directly on specific policy controversies. Political conditions affecting native claims include elite and popular attitudes toward indigenous, ethnic, or minority political movements; specific changes in legislative, administrative, and judicial institutions; the power of affected interest groups; and characteristics of the regions involved.

5. **Problems**—These are more specific forms of the general concerns identified as stakes. Experts as well as interest group members and politicians wrangle over how problems should
be defined. In native claims cases, specific terms and conditions of resource development become intertwined with native groups’ demands for various protective and compensatory measures. Different parties to such conflicts recognize and define problems in ways most favorable to themselves. These disagreements contribute directly to competing formulations of policy alternatives.

6. Policy alternatives—These are proposed solutions to selected problems. Ordinarily, policymakers identify problems and then seek solutions, but sometimes they take a solution and attach it to a problem that comes up. For example, those who favor assimilating natives into the economic mainstream have long advocated placing rural natives into roles of urban capitalist entrepreneurs. A version of this solution was adopted as part of ANCSA to help resolve problems of native land claims and of native social welfare. The claims settlement typology discussed earlier listed policy alternatives under the headings of land, subsistence, finance, and institutions. These correspond to major provisions of claims settlements.

When political systems and policy processes coalesce in ways that reinforce each other, then policies are enacted:

7. Decisions/actions—This last part of the scheme refers to the content and potential effects of adopted policies. In native claims settlements, these policies take the general forms of extinguishment or recognition. If settlement laws and agreements do not include explicit language either extinguishing or confirming aboriginal rights, then review of specific provisions on land, subsistence, finance, and institutions can provide evidence for assessing likely effects of a settlement. Other evidence for such an assessment can be obtained from studying the political context of and policy process leading to a settlement.

Native Claims Cases

This section discusses the contexts, the processes, and the provisions of proposed and actual native claims settlements in Alaska and northern Canada, based on the settlement typology and the conceptual model described above. It is beyond the range of this paper to present detailed analyses of such diverse situations. I intend only to test the utility of the conceptual framework and to provide a broad, comparative perspective on modern native claims cases in Alaska and Canada.

First, I discuss elements of the environmental-political system that apply to all cases. Then I classify the cases chronologically on a continuum from extinguishment to recognition settlements. Finally, for each case, I briefly review how principal settlement provisions or proposals relate to the settlement typology, sketch some of the main policy process elements involved, and comment on implications for native political development.

Sources and Setting of Native Claims

The system-wide stakes in native claims are control and development of resources versus protection and improvement of native autonomy and welfare. This is essentially a north-south confrontation, although there are often differences of opinion among affected groups on either side. For example, if native groups have direct economic interests in development through their ownership of subsurface resources, they may be at odds with native communities that place greater weight on preserving subsistence resources. The fundamental political development values at stake, however, are identity, welfare, and legitimacy, and these apply to all native groups. Cultural identity, land and money, and self-government are basic elements of most contemporary statements of native claims goals.

In Alaska, state land selections and proposed major resource development projects mobilized native claims groups several years before the Prudhoe Bay oil discovery of 1968. Then Prudhoe Bay oil provided leverage for passage of the Alaska Native Claims Settlement Act of 1971: the huge field could be developed only if a pipeline to carry the oil south were built across Alaska, including land claimed by Alaska Natives. Shortly after the Alaska claims act was passed, numerous resource exploration and development projects—including a massive hydropower project at James Bay, petroleum development in the Mackenzie Delta and Beaufort Sea, and a proposed Alaska-Canada gas pipeline through the Mackenzie Valley—stimulated and reinforced native claims movements in the Canadian north.

Diffusion processes, the second major component in the environmental-political system, can be seen most concretely in the influence that ANCSA has had on virtually all major claims settlement negotiations of the 1970s and 1980s, in the north and elsewhere. ANCSA set standards to be met or surpassed, and it revealed failures and omissions to be avoided.

Claims negotiators in Alaska and Canada have also learned from their own countries’ historical dealings with Indian groups in both
the north and the south. Governments as well as natives have benefited from this political learning. On a broader front is the growth of international native consciousness (and white consciousness of native demands) through the development of native organizational networks, such as the Inuit Circumpolar Conference and the World Council of Indigenous Peoples, and the work of advocates such as Thomas R. Berger, who headed the Mackenzie Valley Pipeline Inquiry in the 1970s and the Alaska Native Review Commission in the 1980s.

The third major component at the system level is the political environment, including such elusive elements as the mood of the time and political cultures as well as constitutional-legal regimes. Morrison (1983: 39-40) has commented on the spirit of the 1960s and 1970s and the emergence of modern claims movements in the north:

We live in an age when social justice (variously defined) is a goal supported by a wide segment of the population, especially the influential middle class. This is due partly to the spread of liberal ideas through wider education on the part of Native people and non-Natives alike, and partly due to the immediacy of television news reporting, which was of crucial importance in forming the opinions of middle-class North Americans on civil rights issues and the Vietnam War. . . . The middle-class college students studying sociology and the other liberal social sciences over the past two generations have surely changed racial attitudes to some degree for the better, if there is any validity in the efficacy of liberal education.

Looking at similarities and differences in the U.S. and Canadian political cultures provides additional perspective on claims settlements. Both are more or less liberal democracies with capitalist economies—which tells us something about why their national leaders would recognize native rights movements in the first place, and why they would tend, at least initially, to emphasize the elimination of social welfare problems and the assimilation of natives into the mainstream.

Less obvious are differences between U.S. and Canadian political cultures that undoubtedly have had subtle effects on settlement negotiations in the north. At the broadest level these differences are summarized by a political scientist's observation that "The United States was born in revolution and confrontation; Canada was a creature of evolution and compromise" and that, in contrast to citizens of the United States, Canadians display "greater deference to authority, less egalitarianism, and more respect for law . . . " (Drummond, 1982: 146). Another student of political culture has also suggested that in Canada the government is seen as generally more beneficent, protective, and social welfare-oriented than it is in the United States (Westell, 1985: 246). And yet another observer has commented that "The Canadian tradition of relatively heavy public involvement [in the society and economy] coincides with a power system traditionally more accommodative and less confrontational" (Ostry, 1985: 262).

If such observations suggest political culture characteristics that have influenced the politics of native claims, we can draw inferences and test them against claims experience in both countries. It does appear that, compared with the process that led to passage of the Alaska Native Claims Settlement Act (ANCSA), the process of negotiating claims in northern Canada is relatively less confrontational and adversarial, more managerial, and more under central government direction or influence. In Canada, there has been a federal Office of Native Claims since the mid-1970s; the government "accepts" claims cases for negotiation and it suspends them; federal funds support native as well as government sides of the negotiations; and much attention is given to "constitutional development" processes by all parties and observers. From a U.S.-Alaska point of view, these are

5A recent positive example in Canada is the report of the federal Task Force to Review Comprehensive Claims Policy (1985), also known as the "Coolican Report," which was written under the general direction of the Minister of Indian Affairs and Northern Development. This report proposes that the government include political rights within the scope of native claims negotiations and that it abandon extinguishment objectives. On the other side of this issue is the report of a study team to a federal Task Force on Program Review (1985) under the Deputy Prime Minister. This report, known as the "Nielsen Report," proposes that negotiations of comprehensive native claims be suspended until the government resolves the issue of native political rights, or "until the government position on native self-government is determined and implementation is well under way" (1985: 246).

6Albinski (1973: 120) conveys an official Canadian and Australian perspective on the problems of aboriginal peoples in the late 1960s and early 1970s: "The attack on native backwardness and underintegration is being carried forth on the socioeconomic and political fronts. It has been recognized that a sickly, under-educated, and socially disorganized people cannot, even if awarded full legal equality, hope to compete and live productively in an advanced European society."

7Concerning the emphasis on "constitutional development," examples of Canadian government documents are Drury (1979) and Task Force to Review Comprehensive Claims Policy (1985); of a participant's views, Nunavut Constitutional Forum (1983); and of observers' comments, Abele (1985) and Whittington (1985). Also, Landes (1983: 242-243) discusses the broad political culture context of the constitutional development perspective.
interesting peculiarities, certainly in some contrast with the free-wheeling, political-adversarial process that surrounded development of ANCSA from beginning to end (Berry, 1975).

To the extent that claims processes do differ systematically between the two countries, part of the explanation may also be found in structural differences in their constitutional-legal systems. It is a commonplace that Canada’s cabinet-centered parliamentary system permits more central direction and management of federal policy than does the divided power system of the United States. Even cursory review of the politics of native claims seems to confirm the influence of this fundamental structural difference on native claims experience in both countries. It is no accident that claims processes in Canada have taken the form of administrative negotiations leading to formal agreements and, as a final step, the passage of ratifying legislation that may be required. In the case of ANCSA, the political process began and stayed in the public arena, with the intensive bargaining among executives, legislators, professional staffs, and interest group representatives ultimately taking place in the hallways and committee rooms of the U.S. Congress.

Another important element of Canada’s constitutional system is the Charter of Rights and Freedoms, adopted as part of the Constitution Act of 1982. This is likely to be of increasing importance for native claims in the future. Under the charter and a 1983 amendment, aboriginal and treaty rights (but not aboriginal land title), including rights under native claims, of the aboriginal peoples of Canada are constitutionally entrenched. Further, the Constitution Act requires that subsequent conferences of the prime minister and the first ministers of the provinces (First Ministers’ Conferences) be devoted to defining aboriginal rights and reconciling them with federal and provincial control of nonrenewable resources.

There is a great deal that could be said about the items included under the general headings of stakes, diffusion, and political environment. I am not arguing that any one of these elements or combination of them has been determinative in any claims case. Rather, I am using them to illustrate various strands of inquiry and to suggest how system factors may shape politics, problems, and policies.

The six claims cases discussed below are arrayed in Figure 2 according to their timing and their placement on the settlement continuum from extinguishment to recognition types. Each settlement and proposed settlement includes some elements of both recognition and extinguishment types, but tends overall toward one type or the other. Three cases were settled over a thirteen-year period between 1971 and 1984. Three other cases have yet to be resolved; their settlement timing and placement in the figure are hypothetical. It is
not clear where new settlements will actually fall or how existing settlements may change in the future.

Alaska Native Claims Settlement Act

Provisions: ANCSA, enacted by Congress in 1971, is in retrospect clearly an extinguishment settlement. In exchange for the biggest awards of land and money in any case to date—44 million acres and nearly $1 billion—the act extinguished aboriginal title and assured that prior federal land conveyances, such as the Prudhoe Bay lands that had been approved for transfer to the State of Alaska, were valid. The settlement lands and money did not go directly to individual natives, but rather to for-profit regional and village corporations established under the act; individual natives alive at the time of the settlement became shareholders in the corporations. About half the billion-dollar settlement was dependent on proceeds from resource development rents, royalties, and bonuses, including those the state government would eventually receive from Prudhoe Bay oil.

Regional and village land selections, which had to be completed quickly, were tied closely to village locations. Both surface and subsurface rights were included in the land award, but all subsurface rights went to the regional corporations, which were under pressure to generate profits. Surface rights generally went to the smaller, weaker village corporations, which were dominated by the regionals.

ANCSA shielded undeveloped Native lands from taxation for 20 years after passage of the act; under existing terms of the act, most Native lands will become taxable in 1991. The act also provided that corporate stock could not be sold or seized for most kinds of debt until 1991; after that time, Native shareholders can sell their stock to non-Natives and it can be seized for debt. The act explicitly rejected establishment of “any permanent racially defined institutions, rights, privileges, or obligations. . . .”

Policy process: Passage of ANCSA was consistent with the political attitudes and moods of the late 1960s and early 1970s: it is important to keep this point in mind when considering the act’s provisions. It became law at a time when the black civil rights movement was having political and social spillover effects for other minority groups, including Native Americans. Federal anti-poverty programs encouraged and supported minority political organization in Alaska and elsewhere.

In Alaska there was also strong support, particularly among the white majority, for rapid and large-scale economic development.

Prudhoe Bay oil, discovered in 1968, became the key to the state’s economic development and provided the main impetus for settling native claims through an unusual political alliance of natives, oil companies, and the State of Alaska. Because ANCSA also set aside vast new federal land conservation areas, environmental organizations likewise supported the legislation. By the late 1960s, ample public documentation of the poor health, housing, education, and incomes of Alaska Natives provided further justification for a claims settlement.

These interests and events provided the basis for competing definitions of the native claims problem and of the purpose of ANCSA: (1) clearing title and opening land to development, (2) completing a property rights transaction with natives, (3) meeting native social welfare problems, and (4) providing means of bringing natives into the social and economic mainstream. All these definitions were blended into the ANCSA compromise, but the extinguishment objective was embodied in the law most explicitly.

Political development: The Alaska Native claims movement of the 1960s represented a major advance in the development of native political consciousness, group identity, political organization and resources, and recognition by majority interests. The 1971 settlement act, on the other hand, now appears to have been in many respects a major step backward in native political development: ANCSA was clearly intended to assimilate Alaska Natives into the American mainstream.

The act included no provisions on native subsistence rights. (Special subsistence provisions were later included in the Alaska National Interest Lands Conservation Act of 1980.) It rejected native or tribal government institutions. It institutionalized and reinforced divisions among Native regions and between regions and villages; it placed native lands in jeopardy by exposing them to alienation, corporate failure, and taxation. It included language that appeared to threaten the trust status of Alaska Natives under federal authority, although it has not been used to eliminate special federal health and other programs that Alaska Natives, like other native Americans, are eligible for.

Legal, political, and economic problems that have emerged since ANCSA was passed have led to strong native demands for significant amendments to the law before the twenty-year (1991) deadline, when corporation stock can be sold to non-natives and undeveloped native lands can be taxed under existing provisions of ANCSA. Congress is considering amendments to the act on these issues, but it is not certain what kinds of changes will be made and when.

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James Bay and Northern Quebec Agreement

Provisions: The James Bay agreement of 1975—covering northern Quebec—is in the lineage of ANCSA but falls toward the middle of the extinguishment-recognition continuum of Figure 2. It included a provision extinguishing aboriginal land titles and rights, and permitted the proposed James Bay hydroelectric project to proceed. But on the other hand, it also established exclusive hunting rights for the Inuit and Cree on certain lands and reinforced those rights with native participation in game management and an innovative Income Security Program (ISP). The ISP provides cash payments to Cree hunters and their families, based on time spent hunting and on their income levels. Further supporting native autonomy are provincially prescribed local and regional governments that are dominated by Natives and that impose special length-of-residence requirements on non-natives.

This agreement put very little land in native ownership, as compared with amounts of land Alaska Natives received title to under ANCSA. It also restricted size, location, and timing of selections of both fee title and hunting lands. In all cases, public access and existing rights such as mining claims were maintained. Provincial authorities retained controls over resource development on the lands designated for exclusive native harvests, and ultimate controls over game management as well as resource development in northern Quebec. Local and regional institutions play only limited and advisory roles.

Policy process: The James Bay agreement followed four years of negotiations involving federal and provincial officials, hydro development companies, and native representatives, who had ANCSA before them as a model. The proposed massive hydro project put great pressure on the natives, and threats of court-sanctioned delays put pressure on the Quebec government as well. In this case, the province was the key governmental player, and it used its authority to innovate institutionally but also to foreclose any real transfers of power. The native groups were relatively isolated and had few allies; at the same time, their economic and geographic isolation helped preserve a significant measure of autonomy, except for the James Bay hydro project threat. Natives were thus in a position to compromise, even gaining a limited voice in determining certain hydro project modifications. The strong provincial interest in completing the project, together with the native interest in preserving a hunting culture in the face of growing dependence on the cash economy, led to the compromise agreement, which was a complex blend of developmental, native welfare, and native autonomy values.

Political development: In the James Bay agreement, the Inuit and Cree of northern Quebec ceded aboriginal rights but also gained new recognition of distinctive subsistence cultures and local institutions. According to Feit (1982), the agreement helped stabilize the Cree hunting economy and increase the level of native autonomy. Subsequently, these treaty gains were further recognized, at least symbolically, through entrenchment in the Constitution Act of 1982. Identity and legitimacy values, then, seem clearly to have been advanced, if only to a small degree. In the short run, problems of native welfare also seem to have been ameliorated, particularly through the ISP. On the negative side are the fact that the act broadly extinguished various aboriginal rights, put very limited lands in native ownership, and offered only weak protection of hunting rights on non-native lands.

COPE Agreement

Provisions: The COPE agreement was ratified by the Western Arctic (Inuvialuit) Settlement Act of 1984. Compared with the James Bay agreement, the COPE settlement was a step back toward ANCSA standards of extinguishment. Like ANCSA, it provided natives with surface and subsurface title to land around their communities and a large cash settlement that was substantially tied to revenues from nonrenewable resource development. The COPE agreement falls short of the full subsurface rights granted under ANCSA because it excludes rights to oil and gas. COPE surpassed ANCSA primarily in one respect: the agreement grants surface title to extensive areas for exclusive subsistence harvesting and other traditional uses.

This agreement—like ANCSA—recognized no native political rights, except for native representation on advisory game management boards and land use planning committees. Inuvialuit negotiators, in fact, withdrew initial proposals for a native-controlled regional government. A further ANCSA parallel is the establishment of the Inuvialuit Development Corporation, which has entered into several joint ventures with the oil industry in the Mackenzie Delta-Beaufort region.
Policy process: Inuvialuit claims were originally part of the extensive claims of the Inuit Tapirisat of Canada (ITC). COPE separated from ITC to pursue the western arctic claims independently. Apparently, there was greater urgency in the west, and more likelihood of an early settlement, because of pressures from oil and gas exploration and development in the Delta-Beaufort region. The parties reached an “agreement in principle” in 1978, but the urgency seems to have waned along with the energy crisis. Negotiations lapsed twice before resulting in the 1984 agreement, which, according to one observer, was reached “without acrimony” (Whittington, 1985: 87). The result appears to have been a relatively straightforward commercial transaction: claims to aboriginal rights were removed as impediments to oil and gas development in exchange for land, cash, and exclusive subsistence harvesting rights.

Political development: In their initial statement of claims, the Inuvialuit sought the goals of cultural identity, political authority, compensation for rights foregone, and protection of subsistence resources and the environment. In their 1984 agreement they settled on economic but not political or cultural terms. It may be that alternative political channels, particularly the Legislative Assembly of the Northwest Territories and the territories’ constitutional forums (see below), will provide further access to the political development goals (e.g., creation of a Western Arctic Regional Municipality) the Inuvialuit conceded in the COPE agreement.

Council of Yukon Indians Claims

Proposals: A 1973 statement of objectives by the Council of Yukon Indians appeared to be a bid for a recognition settlement. The group sought to affirm native land title, obtain cash and other benefits, win recognition of political rights, and delay major development projects until claims were settled. After more than a decade of negotiations, settlement proposals had been reduced to a more standard extinguishment package: land selections near villages, exclusive hunting areas, cash and royalty benefits, and no special political rights except for guaranteed representation on advisory bodies.

It is not clear that the Yukon Indians will obtain a settlement more favorable than that won by the James Bay Cree. They may, however, be among the first Canadian native groups to have their aboriginal rights, as recognized in the Constitution Act of 1982, incorporated into a settlement agreement and legislation. Since these “rights” will be operationally defined in the political process over the long term, this does not necessarily mean that a Yukon Indian claims settlement will in itself represent an advance over the previous extinguishment settlements in Alaska and Canada.

Policy process: The key point to be made about the Yukon claims process is that it is taking place in the Yukon Territory. As represented in the territorial government, the Yukon’s white majority population has definite interests in limiting native gains that may be, or are perceived to be, at white expense. Both the territorial and the federal governments have sought to limit land transfers, and both have opposed granting any special political rights to Yukon Indians. The Yukon Territory has been especially committed to a “one-government” policy. The availability of an alternative constitutional development process—First Ministers’ Conferences to define aboriginal rights—has helped the government divert native political rights issues.

Competition for land has also provoked divisions among Indian communities in the northern, central, and southern regions of the Yukon. Higher proportions of white settlement in central and southern parts of the territory have meant that less land per capita has been offered to the Indian communities in these subregions. These communities have been holdouts in settlement negotiations. The Yukon claims policy process, like the others, was stimulated primarily by resource development activity in traditional native areas. And like the other Canadian claims, its early stages were influenced by the positive example of Alaska Native political activism leading to ANCSA and its immediate benefits.

Political development: The political development implications of the Yukon claims process are clearer than those associated with proposed settlement provisions. That process itself represents additional energy and advancement in native political development. More than the details of any given settlement, the changing political economy of the Yukon Territory and white reactions to Indian demands will influence outcomes for Yukon Indian identity, economic security, and self-government.

Dene Nation Claims

Proposals: The claims of the Dene Nation have been the strongest among northern natives and, until recently, included the most uncompromising political goals. The Dene have sought recognition of broad areas of aboriginal rights as well as aboriginal title to traditional lands, including income from the lands and compensation for past use of the resources of those lands. At one point, they sought virtually sovereign powers as an independent “nation” and distinct people, with such powers including extensive areas of jurisdiction in domestic and even foreign affairs. In recent years, they have moderated their still-unsettled claims, though they appear to remain committed to recognition as a basic settlement objective.
Policy process: The Dene claims and the process of negotiating them have tended to moderate as the energy crisis, the political impetus of the Berger Mackenzie Valley Pipeline Inquiry, and the Alaska ANCSA experience have faded. The Dene have largely discarded radical, Third World “national liberation” rhetoric and separatist political positions. They now actively participate in a supportive Northwest Territories Legislative Assembly, and they pursue joint ventures with the oil industry through the Deneh Development Corporation. Also, the Dene have shifted from a demand for recognition of land title to a demand for effective controls over land uses and a share in the economic return of development. The federal government has, however, continued to reject demands for broad recognition of special political status or rights. As in the case of the Yukon Indians, federal negotiators have sought to separate political claims from land claims, diverting political issues to the alternative, less volatile arenas of constitutional forums and the constitutional conferences on aboriginal rights mandated by the Constitution Act of 1982.

Political development: The Dene Nation case most clearly raises the issue of the potentially high costs (to the Dene) of radical political claims. At least until recently, they made all other settlement benefits contingent on federal recognition not only of their identity as a distinct people but their legitimacy as a “dependent nation.” The question is whether the Dene have, in a reversal of the case of the James Bay Cree, sacrificed the substance of a claims settlement to the form of political recognition. This is a calculation that only the Dene can make. It does appear, however, that the federal government is now in a position to assimilate their political claims in an indefinite process of constitutional deliberations. This is to question not the integrity of this constitutional process, but rather the effectiveness of Dene strategy. It is nonetheless possible that the Dene could effectively use the process to pursue their political goals.

Nunavut Claims

Proposals: The Inuit of the vast east-central Northwest Territories have incorporated their land and political claims in a proposal to create “Nunavut,” a new, Inuit-majority territory, carved out of the Northwest Territories, which would eventually become a province. Nunavut would acquire control of subsurface mining as well as surface rights to territorial land. The federal government would retain control of oil and gas, but Nunavut would share the income. The new territory would also share control of offshore areas with renewable resources. One of the new territorial institutions, a Nunavut Impact Review Board, would have veto authority over development projects and land and resource management policies. Federal resistance to a Nunavut settlement centers on this proposal, which raises the fundamental issue of control over resource development in the north. While the Inuit and government negotiators have reached agreement on a number of secondary matters, the conflict over this issue is unresolved.

Policy process: Unlike the preceding cases, the Nunavut native claims process is being addressed directly as a problem of Canadian constitutional development. A special set of institutions—the Nunavut Constitutional Forum, the Western Constitutional Forum (for the western parts of the Northwest Territories outside the proposed Nunavut Territory), and the Constitutional Alliance, which joins the first two—have been established as vehicles of negotiation and deliberation. Thus, despite the impasse over control of resource development, other processes continue: discussions of the boundary issue, public education and mobilization, and allocations of other authorities and responsibilities between territorial, regional, and local levels. These constitutional development forums supplement and help focus the First Ministers’ discussions of aboriginal rights under the Constitution Act of 1982.

Political development: Because the political stakes have been raised to a high level, Nunavut, like the Dene Nation, carries relatively high risks of failure as well. Welfare values may be further delayed and reduced in the pursuit of the more elusive values of political legitimacy and identity. On the other hand, the alternative constitutional development processes, reinforced by the recognition of aboriginal rights in the Constitution Act of 1982, provide some assurance of continuing negotiations. This suggests a long-term evolutionary process of institutionalizing native rights.

Conclusions

Native claims movements and settlements are critical episodes in native political development. They arise as conflicts between national interests in northern resources and native interests in security and autonomy. Both the processes and the outcomes of native claims are strongly influenced by the economic and political stakes involved, by diffusion processes and political learning, and by the limits that central governments and majority interests place on the agendas for claims policymaking.

I used a typology of claims settlement provisions to analyze effects of settlement outcomes on the political development values of identity, welfare, and legitimacy. Extinction types of settlements represent setbacks to native political development in several
respects: they broadly extinguish aboriginal rights, link cash compensation to extraction of resources, and impose majority forms of economic and political institutions. At an extreme, they can terminate trust relationships and aim to assimilate natives into the dominant society.

The ANCSA, James Bay, and COPE settlements fall into the extinguishment category. The James Bay settlement’s support of Cree hunting culture through the Income Security Program is, however, an innovative advance beyond ANCSA and COPE. The Council of Yukon Indians’ unresolved claim also seems likely to fall into this category.

Recognition settlements advance native political development to the extent that they recognize native rights, secure subsistence resources, assure stable sources of income, and sanction native-controlled institutions. Government-to-government and trust relationships between natives and public authorities can also be recognized or confirmed under such settlements. Recognition promotes native integration, not assimilation, into the dominant society and economy. Although past settlements have included some of the elements identified with the recognition type, none has included more than a few, limited recognitions of aboriginal rights. On the contrary, the three completed settlements that I reviewed include very definite extinguishment provisions.

This pattern of broadly extinguishing aboriginal rights could be broken in any of the three pending cases (Yukon, Dene, Nunavut), even if government negotiators did not specifically confirm rights but just omitted any provisions explicitly extinguishing them. Government representatives will not agree to recognize aboriginal title in any claims cases, since that would require an open-ended commitment of land and resources to natives that no government would be willing to make. But some recognition of aboriginal rights—substantially more than what has been recognized in existing agreements—could be included. The danger there would be that such recognition might represent an improvement only in form, not substance, over previous agreements. It is the definition and application of rights, not their abstract recognition, that is at issue. This is where Canada’s “constitutional development” processes—including the constitutional forums and the First Ministers’ Conferences—will be important, as will be the native rights policies that emerge from federal, provincial, and territorial governments in the long run.

Also, the continuing play of “constitutional development” and the open political processes of representative democratic governments will present opportunities for changes in existing settlements, regardless of the extinguishment language they contain. ANCSA clearly was not a final settlement, as the “1991” controversy in Alaska and in the U.S. Congress shows. Nor were the James Bay and COPE agreements “final” in the sense of being immune to change. In Canada the Constitution Act of 1982 and political processes centering on national and provincial governments will also assure the continuing evolution of these agreements. The native groups involved will continue to press their interests and demands in the larger political arena, problem definitions will change, new and revised policy solutions will be presented, and central governments will be politically and morally obligated to respond. Thus, native claims processes themselves can represent advances in native political development, even if the terms of a given settlement do not meet recognition standards.

The claims cases I have reviewed suggest that the same processes that brought them into the policy arena in the first place will likely continue to operate in all native claims cases, whether officially “settled” or not. Political development opportunities are generated in conflicts between resource development and native rights, in diffusion and political learning, and in the interactions of politics, problems, and policies. Native claims settlements are episodes—significant junctures in a continuing process of political development and change—but not final political solutions.
REFERENCES


