

## On Saami Claims to Land and Water

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Saami claims to land and water in Norway pose fundamental challenges not only to political action, but also to the academic fields of law, political science and political philosophy. There are several reasons why the question of Saami claims to land and water merit scholarly attention at this point in time.

Firstly, appropriate handling of Saami claims is an important political issue in its own right, not least for the sake of the Saami presently living in Norway. Saami claims are on the Norwegian agenda due to several extensive Official Reports by the Norwegian Royal Saami Rights Commission.<sup>1</sup> In the 1970s, Norwegian government interest in a hydroelectric dam on the Alta River conflicted with the needs of Saami reindeer herding. The popular support and protest for the Saami cause led the government to appoint the Saami Rights Commission aimed at assessing Saami claims to land, water, political influence and autonomy. The Saami law of 1987 established the Saami Parliament, a largely advisory body. In 1988 the Saami were recognised in the Norwegian Constitution (Article 110A). Land and water hold both instrumental and spiritual value for this particular indigenous people, hence the details of the institutional arrangements require careful reflection. Kirsti Strøm Bull provides one important contribution highlighting the practical challenges of designing appropriate legislation. She argues that the proposed provisions from the Saami Law Committee do not to a sufficient degree safeguard the interests of the reindeer herders due to the nomadic nature of their use of land, and the legal basis of rein-

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<sup>1</sup> NOU 1984 (18): Regarding Saami Rights (*Om samenes rettsstilling*); NOU 1993 (34): The right to and Administration of Land and Water in Finnmark, by the Law Group (*Rett til og forvaltning av land og vann i Finnmark*); NOU 1997 (4): The Natural Resources of the Sami Culture (*Naturgrunnlaget for samisk kultur*); NOU 1997 (5): Indigenous Land Rights according to International and Foreign National Law. Background material for the Saami Rights Commission (*Urfolks landrettigheter etter folkerett og utenlandsk rett. Bakgrunnsmateriale for Samerettsutvalget*).

deer herders' rights under customary use. The article by Else Grete Broderstad addresses another challenge: the need for common arenas of deliberation and practical reasoning for political decision-making. Alternative forms of power splitting and power sharing provide different opportunities regarding the incorporation of Saami political concerns in society as a whole.

Secondly, the Saami case raises important questions concerning rectification of historical injustice. The present government reports are only the most recent contributions to a story harking back to at least 1751, when Sweden-Finland and Denmark-Norway regulated their borders by treaty. The 'Lapp Codicil,' an annex to that treaty, concerned the impact on the Saami populations. Some regard this as the Saami 'Magna Carta,' in that it acknowledges the pre-existing rights of Saami in the area (NOU 1984 (18):166-69; NOU 1997 (5): 73-78). Henry Minde discusses the legal issues of indigenous rights and special political bodies in historical perspective, both as they arise concerning indigenous peoples in general and concerning the Saami people in particular. Nils Oskal discusses some of the fundamental philosophical issues concerning ownership claims based on original acquisition in his contribution.

Thirdly, the non-Saami residents in areas historically under Saami control may be affected by the various modes of partial self-governance and accommodation secured by the Norwegian Saami. Non-Saami are affected regarding such disparate issues as the language of instruction in public schools and control over land. Such influences, and the conflicts they fuel, merit careful reflection – particularly since the present populations can hardly be held responsible for injustice perpetrated by previous generations. The reasons for Saami claims to reparation and political control must be scrutinized when determining how best to respond to dilemmas between claims of different groups. Else Grete Broderstad considers some such dilemmas, and Andreas Follesdal addressed such topics in a previous issue of this Journal.<sup>2</sup>

Fourthly, the handling of Saami claims in Norway is of great relevance for resolving similar dilemmas concerning the Saami of Sweden, Finland and Russia. The solutions must be attuned to the local history, legislation, culture and conflicts. Still, since Norwegian developments have been greatly influenced by the evolution of the international law concerning the rights of indigenous peoples, how that law is applied in Norway may have considerable impact regarding indigenous peoples in Sweden, Finland and Northern Russia. Arguments and models pursued in Norway may be relevant. Asbjørn Eide's contribution presents the international developments and the Nordic responses, both legal and the more general normative, concerning Saami claims to land and water.

<sup>2</sup> 'Indigenous Minorities – The Shadow of Injustice Past.' *International Journal on Minority and Group Rights* 7, 1: 19-37.

Fifthly, Saami claims in Norway may provide an instance of ‘Europeanization’ regarding indigenous peoples and other minorities. At first glance, this may seem odd for two reasons. It is not at all clear that European treaties affect Saami claims. Instead, the current legal bases are primarily contributions of the UN and ILO. Moreover, the Parliamentary assembly of the Council of Europe notes that the recent EU Charter on Fundamental Rights fails to consider the claims of national minorities and indigenous populations.<sup>3</sup> However, the Council of Europe does address national minorities, most recently in the Framework Convention for the Protection of National Minorities and the European Charter for Regional or Minority Languages.<sup>4</sup> The High Commissioner on National Minorities within the OSCE also plays an important role. True, the Saami in Norway are not affected by the Framework Convention. The Saami Parliament in fact recommended that the Saami were not listed as a national minority but instead retained their legal status as an indigenous people.<sup>5</sup> Still, the legal arrangements for Norwegian Saami may affect other European national minorities, if not as legal precedents then of political interest as models. This may be most obvious for the Saami of Sweden and Finland who are covered by the Framework Convention. Some features may even be relevant for the treatment of non-indigenous national minorities such as the Roma and Sinti in EU countries – or so argues Lukas Meyer in his contribution.

Sixthly, the Norwegian case is also an interesting first case of the application of ILO Convention 169 on the rights of indigenous peoples and for the United Nations ECOSOC Permanent Forum on Indigenous Issues. Norway was the first state to ratify ILO Convention 169 in June 1990. The Saami case may thus set standards and interpretations, for instance concerning users’ rights vs. property rights more broadly. Such standards will influence how other indigenous peoples are treated. Henry Minde addresses this issue. The United Nations Commission on Human Rights recommended the Economic and Social Council to establish an advisory permanent forum on indigenous issues covering such topics as development, culture, education, environment, health and human rights. The Council did so in 2000, in Resolution 2000/22. The Permanent Forum will no doubt follow the Saami case closely, as it may become a model. Lukas Meyer’s contribution addresses this concern, and includes further helpful references. He explores the normative significance of collective memories of a shared heritage understood as collective goods, impacting on the public order of a society, and compares and contrasts the Saami and Roma situations. Meyer particularly considers the ‘faultless’ members of present Scandinavian societies, and their obligations to eliminate the lasting impact of inherited public evils.

3 <http://stars.coe.fr/doc/doc01/EDOC8939.htm>.

4 <http://stars.coe.fr/doc/doc01/EDOC8920.htm>.

5 St.meld 5.1.1. Still, the Saami language is covered by the European Charter for Regional or Minority Languages.

Seventhly, the Saami case provides a test for the study of preference formation of governments. The Norwegian government apparently found itself bound in ways it may not have expected, and seems to have modified its position partly due to its concern to be perceived as a state respecting human rights. Henry Minde's and Anne Julie Semb's contributions address this phenomenon of preference formation, which is receiving increased attention also among political scientists. They trace the impact of international norms on contemporary Saami policy in Norway. Important factors are the concern for a good international reputation, the role of international legal norms on Parliamentarians' concern for the fair treatment of the Saami, and the impact on Saami collective self-understanding as a distinct people. A deeper understanding of how such mechanisms can work is important for the further development of effective human rights instruments.

The political responses to Saami claims to land and water are important for a wide range of potentially affected parties, beyond the population of Norway. They include those suffering from past injustice towards national groups, as well as those who in no way can be held responsible for past generations, yet must take responsibility for accommodating competing claims and concerns. The responses will shape future opportunities for accommodating legitimate differences, and shape citizens' conception of themselves. The issues concern what we must share and the differences we must respect when sharing territory but not heritage and ethnicity. Few topics are more worthy of systematic reflection at this time.