

# **INDIGENOUS PEOPLES AND THE RIGHT TO SELF-DETERMINATION: THE CASE OF THE SWEDISH SAMI PEOPLE**

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## **Abstract / Résumé**

This article analyses Swedish Sami policy during more than a century. By this historical perspective the author shows how public policy constitutes a 'true' and 'authentic' Indigenous identity, which both delimits legitimate political action and maintains a political order founded on hierarchical premises. Self-determination of Indigenous peoples in terms of the power to define the people in question and their indigeneity is decisive to break away from this legacy, the author concludes.

L'article analyse la politique suédoise à l'égard des Lapons au cours de plus d'un siècle. La perspective historique adoptée par l'auteur démontre comment la politique gouvernementale crée une identité autochtone « véritable » et « authentique » qui délimite l'action politique légitime tout en soutenant un ordre politique fondé sur des hypothèses hiérarchiques. En conclusion, l'auteur avance que l'autodétermination des peuples autochtones en termes du pouvoir de définir les peuples en question et leur caractère autochtone est un élément décisif pour se démarquer d'un tel héritage.

In the Swedish debate on the first *Reindeer Grazing Act* at the turn of the nineteenth century, it was considered 'indisputable that the Lapps were the first to make use of the Swedish Lapplands' and it could not be 'denied that they have been pushed aside by culture.'<sup>1</sup> Thus, there could be no infringements of the rights 'they have had since time immemorial.'<sup>2</sup> In the contemporary debate on a ratification of the 1989 *ILO Convention 169 Concerning Indigenous and Tribal Peoples in Independent Countries*, a similar argument is put forward: 'The Sami are an Indigenous people in Sweden [...] a Sami population lived in what is now northern Sweden before the country acquired its present state boundaries.'<sup>3</sup> Accession of the convention calls for 'special measures, which promote the social and economic rights of the peoples concerned and protect their spiritual and cultural values.'<sup>4</sup>

Reading these disconnected statements, separated by a time-span of more than a hundred years, it is evident that indigeneity has been in focus in Swedish Sami policy for a long time, although in quite different ways. Indigeneity has been ascribed a normative value, which explains and justifies a specific public policy, and a specific system of Sami rights. In a historical perspective, Sami indigeneity has supported a paternalistic policy founded on race biological arguments and cultural hierarchies, as well as the current multicultural politics, where cultural diversity is ascribed a value in itself. Despite many ambiguities, conflicts and important changes regarding how Swedish Sami policy has been legitimised, however, the legislative development on Indigenous rights in Sweden has been rather insignificant, and the system of Sami rights is today in many ways similar to the one established over a century ago.

By an extensive analysis of the Swedish Sami policy during more than a century, I want in this article to delve further into the apparent reluctance to change the public policy towards Indigenous peoples in many Western liberal democratic states today, for instance, obvious in the unwillingness to ratify ILO convention 169. No doubt, the contemporary international debate on minority rights and rights of Indigenous people, including the controversial issue of land ownership, challenge traditional governmental policy. And, as James Anaya claims, 'international law, although once an instrument of colonialism, has developed and continues to develop, however grudgingly or imperfectly, to support Indigenous peoples' demands.'<sup>5</sup> How are we to understand this tension in contemporary politics between a political rhetoric praising cultural diversity and Indigenous rights on the one hand, and an insignificant progress in changing political practice and the prevailing legislation on the other?

In this article this tension is analysed by a focus on political practice

on a national level; or, more accurately, through an analysis of the constitutive character of politics. The constitutive character of politics could be described in terms of a problem inherent in all modern societies, since individual members of a society continuously are assigned to different categories which determine if a person is included or excluded from social, economic and political activities.<sup>6</sup> In minority politics this on-going categorisation is constantly in focus, as the question of how to legitimise differential treatment of some members of society is of vital importance. The necessity to explain and justify differential treatment presumes answers to the decisive questions *why* and *how* certain persons should be treated differently, and to *whom* specific (group) rights should be granted. In answering these questions distinctions, categorisations and definitions are needed. To explain and justify deviancies from the ideal of treating all members of society alike is thus to define and demarcate a specific group in society. As Patrick Thornberry points out, this 'politics of definition' is also of immense importance in international law, where the use of the concept 'Indigenous' is interlocked with 'ethical, political and epistemological considerations.'<sup>7</sup>

In this process of inclusion and exclusion, sharp boundaries are construed between insider/outsider, friend/enemy, us/them, and between subject/object.<sup>8</sup> Hence, the constitutive moment in politics makes it impossible to formulate a policy on Indigenous rights, without constituting the Indigenous people in question at the same time. This is a rather trivial understanding of politics; yet, the consequences are far from trivial. As I will try to show in the first part of this article, the constitution of collective identities delimits legitimate political action by the internal (discursive) boundaries constituted within a specific policy field. Consequently, radical policy changes are rare and difficult to pull through. Furthermore, the constitution of a collective Sami identity has maintained a political order founded on hierarchical premises. The constitution of well-demarcated categories includes notions of good/bad, right/wrong, nature/culture, et cetera, which reinforce and maintain boundaries between categories. As Seyla Benhabib puts it: 'Whether in the psyche of the individual or in the imagined community of a nation, it is very difficult to accept the "other" as deeply different while recognizing his/her fundamental human equality and dignity.'<sup>9</sup>

In the second part, I shall discuss self-determination for Indigenous peoples in terms of the power to define and an enlarged sphere of political action. As I will argue, the constitutive character of politics necessitates an increased Sami influence on how to define indigeneity, including basics such as Sami culture, the Sami heritage and who to define as Sami. Without challenging the prevailing social relations of power by

granting Indigenous peoples a legitimate sphere of political action, earlier discriminatory attitudes based on race and culture, run the risk of being translated into the current debate.

### **Public Policy and the Constitution of a Collective Sami Identity**

To analyse the constitution of collective identities in Swedish Sami policy, I focus on the internal boundaries constituted within this specific policy field. These limitations are best described in terms of the order of discourse—in the words of Michel Foucault—as the ‘various rhetorical schemata according to which groups of statements may be combined (how descriptions, deductions, definitions, whose succession characterizes the architecture of a text, are linked together).’<sup>10</sup> In order to analyse the order of discourse, I reconstruct the system of knowledge and beliefs, which has explained and justified Swedish Sami policy. Basically, the reconstruction is done by a diachronic study of how the problem has been depicted within the public debate. If we analyse the formulation of problems in public discourse, the considered causes of the problems, and the proposed solutions, the constitutive character of politics becomes evident. Problems have to be explained to be meaningful and the proposed solutions must be justified in accordance with how the problems have been formulated. Explanations deal with questions of responsibility and fault, at the same time as the causes of the problems are specified and pointed out.<sup>11</sup> As we will see further on, the dominant conceptions of the Sami are of significance here; partly because the Sami themselves are *the* problem in Sami policy, partly because these different conceptions explain the problems and justify certain political measures. Thus, the Sami are a crucial element in the order of discourse.

My focus upon the constitutive character of politics has put public policy, such as official government reports and legislation, in focus. Consequently the political mobilisation of the Sami, their resistance and struggle, is only noticeable in the margin, and the importance of the Sami struggle for political change is partly neglected. All such analytical approaches ‘from above’ run the risk of reifying a picture of the dominated group as mere objects in the hands of the dominating society, in contrast to their own struggle and experiences as autonomous political agents. However, I hope to counteract this marginalisation of the group in the following analysis by my focus on how this marginalisation has been explained and justified in public debate by the constitution of a specific Sami identity.

## The Foundations of a Modern Swedish Sami Policy: Sami Rights as 'Lapp-Privileges'

The modern history of the Swedish Sami policy has its origins in the first *Reindeer Grazing Act of 1886*, when the common law was relinquished and replaced by special legislation.<sup>12</sup> By this act the Sami are granted a specific right to herd reindeer, i.e. a monopoly on reindeer herding (as being 'the Lappish occupation'), including a right to hunt, to fish and to forestry on Crown land. At the same time, however, the Sami 'definitively lost their ownership to land, and individual pasture rights were made into an exclusive communal right for the Sami villages'.<sup>13</sup> The act was intended to spatially separate two different forms of activity pursued in the north of Sweden—reindeer herding and farming—since, the argument goes, the reindeers, as a consequence of the unsatisfactory state of the reindeer herding practices, were damaging the settlers' property. With this foundational formulation of the problem, the question of how reindeer herding is managed becomes fundamental, and the legislation is organised around a conception of good reindeer herding and the good reindeer herder: the nomad. 'The herding of reindeer demands that the Lapp has a nomadic way of life', as it is claimed in a Royal Commission Report 1909.<sup>14</sup> Protection of the nomadic culture emerges as the sole and coherent foundation for Swedish Sami policy and the system of Sami rights. It is, the argument goes, the only way to obtain good reindeer herding, at the same time, as 'civilisation' will be allowed to develop and spread.

In this initial debate on Sami rights, we can discern the constitution of a specific collective identity, which functions as an intersubjective ground in legitimating the public policy conducted. By establishing a specific conception of Samihood, the public policy obtains a kind of built-in logic where both the formulation of problems and concrete measures get political power by adhering to the Sami identity already construed. As it is stated in the discussion concerning state expenditure for the Sami school: 'Only nomadic Lapps could make demands for support in the capacity as Lapp.'<sup>15</sup> A distinct and comprehensive Sami identity supplies the answer to the question *why* the policy should deviate from an ideal of equal treatment of citizens, but also to the questions *how* the system of Sami rights ought to be designed and to *whom* these rights should be granted. The relation between Samihood and a nomadic way of life is institutionalised in and through legislation in 1917, as a limitation of the right for a Sami to own reindeer in another person's keep. 'A Lapp', according to the amendment to the *Reindeer Grazing Act of 1898*, is understood to be him, 'whose father to some extent is of

Lappish origin', but only if his father's or grandfather's permanent occupation was reindeer herding without 'cultivation of a homestead or settlement.'<sup>16</sup>

The institutionalisation of a conception of Samihood in and through legislation creates, however, internal discrepancies in discourse, when new problems are formulated and new measures proposed. In the 1920s, for instance, the main problem in Swedish Sami policy is formulated in terms of the necessity to regulate and limit the number of reindeers.<sup>17</sup> The question of who has the right to pursue reindeer herding thereby becomes of great importance, as one apparent solution to the problem is to limit the number of reindeers by delimiting the right to herd reindeer. And as the right to herd reindeer is defined as the Sami right *per se*, the legal definition of a Sami is (once again) under scrutiny. To grant all Sami the right to herd reindeer would be to establish the 'Lapp capacity, in a way contrary to the public opinion' (and it would definitely not reduce the number of reindeers), thus ruling out descent as a criterion to explain and justify Sami rights.<sup>18</sup> The conclusion reached, is that it is most natural to restrict the right to herd reindeer by excluding those whose parents have abandoned reindeer herding and chosen other occupations. In the first article of the *Reindeer Grazing Act of 1928*—following the amendment in 1917, but raising the ban against 'cultivation of a homestead or settlement'—it is stated that the right to herd reindeer belongs to those who are of 'Lappish origin' if the father, mother or grandparents as a permanent occupation have been reindeer herders. This right to herd reindeer also belongs to women, married to men with this right, but if a woman marries a man without such right, she loses it.<sup>19</sup>

As a result of this discussion, two different categories of Sami is discernible—reindeer herders and non-reindeer herders—standing in different relation to the system of Sami rights. Decisive for making this distinction is the well-established notion of the 'true' Sami identity represented by the nomadic reindeer herder. It explains and justifies an exclusion of both non-nomads and non-reindeer herders—i.e. the vast majority of persons of Sami origin. Non-reindeer herders are included in discourse only in capacity of what they are not, neither nomads nor Swedes, neither reindeer herders nor settlers. They are defined by negations. And as reindeer herding is a male occupation and the herder the yardstick for the Sami identity and culture, Sami women are made invisible in discourse.

In establishing a system of Sami rights, the potential rights of the Sami as an Indigenous people are obliterated or neglected within discourse. Sami rights are discussed in terms of being a 'so called Lapp-

privilege'.<sup>20</sup> Accordingly, in virtue of being rights (or 'privileges') defined by special legislation, the rights could be withdrawn in full, or diminished gradually (like the rightful grazing areas), due to changes in governmental policy. Furthermore, Sami that do not live up to the shared standards, or share a specific way of life, are from a legal perspective legitimately excluded from the system of rights. As it is put forward by a government agency: Only nomadic Sami can claim the right to Sami 'privileges', and if a Sami abandon a nomadic way of life, he should have the same rights and responsibilities as other citizens.<sup>21</sup> Hence, those included run a continuous risk of being excluded, if they divert from the homogeneous Sami identity that prescribes what it is to be a Sami and how one should live: Women who out-marry lose their rights, as well as persons who deviate from a traditional way of life. And the third generation criterion excludes persons who have parents/grandparents that have abandoned reindeer herding and a nomadic way of life.<sup>22</sup>

The moment of classification in politics presupposes that a certain way of life—a specific identity—is emphasised or recognised, at the expense of other possible identities. In a historical perspective this legislative specification construes an arbitrary boundary 'within a dense and multidimensional continuum.' The multiplicity of cultural expressions within a group or culture needs in the public realm to be assigned a 'single legal status.'<sup>23</sup> The institutionalisation of specific categories in and through legislation conceals the fact that social categories are a consequence of the prevailing power relations, at the same time as they confirm them. For instance, the conception of Sami as being nomads equals being 'uncivilised' in discourse, which implies that the Sami are incapable of handling their own affairs. In a parliamentary debate in 1917 concerning the possibility to combine reindeer herding and farming, the question is posed whether the 'Lapps' really are capable 'of realising the consequences of such a system? In opposition to their own opinion [in favour of a combination] one could present the results, arrived at by experienced men with the mandate of the government to investigate the issue and whose competence and impartiality are beyond doubts.'<sup>24</sup> Demands for political rights for the Sami in capacity of being an Indigeneous people are in this perspective easily rejected within discourse.<sup>25</sup>

The constitution of a distinct Sami identity positions the Sami within discourse, but not as political subjects or legitimate participants with a right to act; rather, they are constituted as the object of inquiry and considered to have no knowledge of their own affairs. Even though nomads in their 'capacity as Lapps' can raise certain demands according to the constructed system of rights, the state maintains, by the same token, a powerful control. Proper reindeer herding, for instance, is considered to

require a well functioning 'Lapp Administration.'<sup>26</sup> The dominant conception of Samihood thus justifies a paternalistic and 'protective' policy, institutionalised in detail in legislation. In the case of colonizing states Anaya has described this kind of state policy as a 'trusteeship doctrine':

As colonizing states and their offspring consolidated power over Indigenous lands, many such states adopted trusteeship notions [...] as grounds and parameters for the non-consensual exercise of authority over Indigenous peoples. Although it represented an element of humanistic thought toward Indigenous peoples, nineteenth- and early-twentieth-century trusteeship doctrine was rooted in the same Western philosophy that underlay the positivist construct of international law, which viewed non-European Aboriginal peoples and their cultures as inferior. Pursuant to this philosophy, associated with the now infamous school of 'scientific racism' the objective of trusteeship was to wean native peoples from their 'backward' ways and to 'civilize' them.<sup>27</sup>

The regulations and the apparatus of control created in Swedish Sami policy, for instance 'the Lapp Administration', make this kind of hierarchical order clear. The Sami and the Swedish are discursively construed as incompatible entities in terms of civilisation vs. reindeer herding and a nomadic way of life. The constitution of different and clearly demarcated categories—Sami and Swedes—contributes to and accentuates a social and political order where the relationship between the Sami people and the dominant society is defined in terms of the Sami's lesser value. On the one hand, we have the dominant society acting rationally, objectively, fairly and impartially; on the other, we have the specific, different, and deviant acting irrationally and subjectively. Until the mid-twentieth century this evaluation was explicit, on seemingly 'objective' and 'neutral' grounds, as 'unchangeable qualities' were attributed to the Sami identity, such as a specific nature, race or culture.

In the new historical-political context after the Second World War—in discourse described as a 'modern era', characterised by 'technological advancements', 'intellectual enlightenment' and 'democratic consciousness'—the main problem is formulated in terms of rationalisation of the reindeer herding 'regarded as underdeveloped'.<sup>28</sup> Rationalisation is presumed necessary for the survival of reindeer herding in competition with other users of land. The nomad's traditional way of life is, however, an obstacle for rationalisation and, accordingly, for the Sami to obtain a socio-economic position equal to that of other citizens. Rationalisation is hindered by 'certain conservatism' on the part of the rein-

deer herders and 'the traditionalism that a peculiar occupation and way of life tend to bring'. 'Society' therefore needs to intervene to 'catch up with the lagging behind.'<sup>29</sup> Hence, the fact that explicit race biological and hierarchical cultural arguments are repudiated in discourse from the late 1940s and onwards, does not make a hierarchical politics unfashionable; the reindeer herders are still designated as different and inferior by virtue of being those who have preserved the Sami traditions and stall the inevitable progress. However, the hierarchy is implicit and expressed in neutral economical terms.

Swedish Sami policy is during the 1950s incorporated in and aligned with the policy of the full-blown interventionist Swedish welfare state. Reindeer herding is considered to be like any other economic enterprise, and the problems the reindeer herders face during the process of rationalisation are considered to be the same as other professionals. They are basically a labour-market problem, and like other professionals they may be forced to change occupation, to find new employment and housing, and to re-educate themselves.<sup>30</sup> The formulation of Sami policy in terms of rationalisation thus presumes a changing conception of the Sami in the public debate. The good reindeer herder is no longer the conscientious nomad; rather, good reindeer herding is measured in profitability, efficiency and technological progress.

The reindeer herders' 'normalisation' within discourse could imply that the previous foundation for Sami rights disappears, as it is immediately called in question why reindeer herding as an ordinary economic activity ought to be treated differently than other trades, and why reindeer herders as profit-seeking businessmen should be treated differently than other citizens. Parallel to the issue of rationalisation, however, the Sami are during the 1960s recognised as a minority or ethnic group with a unique culture, and Sami rights are increasingly legitimised as an explicit protection of Sami culture. Although this discursive change challenge the prevailing political order—as it could be an argument in favour of a transformation of the system of Sami rights in a more inclusive and extensive way—it actually works in the opposite direction, and reinforces the previous categorisations and demarcations. Since Sami culture has been made equal to the nomadic reindeer herders' way of life, the 'true', 'authentic', and 'traditional' culture has, the argument goes, been preserved by the reindeer herders. They are the natural core in the culture and in statistical terms they are put forward as the norm in the normal distribution, and the non-reindeer herders are—once again—defined as deviant and marginal.<sup>31</sup>

In accordance with this viewpoint reindeer herding is established as a prerequisite for Sami culture and the reindeer herders the ones 'that

should be built upon for measures supporting Sami culture<sup>32</sup>. And as such the policy and the system of Sami rights are in order, as long as reindeer herding gets the support it needs to survive.<sup>33</sup> Accordingly, both the exclusive legal definition of a Sami, and the narrow focus of the system of rights, is confirmed in the *Reindeer Farming Act of 1971*. Hence, special legislation based on reindeer herding is, rather contradictory, still legitimate as protection of the Sami culture, even as the major objective of the rationalisation is to break away from those cultural traditions reindeer herding is considered to be the prerequisite for.

However, some important changes are discernible. First, the conception of the Sami as profit-seeking reindeer herders positions the Sami within discourse as important participants, and the former paternalistic 'Lapp Administration' is no longer deemed necessary. Although still constituted as an object of inquiry, the Sami are granted a certain amount of influence on issues concerning the reindeer herding practice. Important for this change is of course the institutionalisation of Sami Assembly meetings after the war, and when the National Union of Swedish Sami (SSR) is constituted in 1950, the Sami have an organisation that can represent Sami interests. From the perspective of the state, SSR corresponds to other pressure groups representing specific interests, and thus becomes an actor the state must consider.<sup>34</sup> Second, by the act of 1971 men and women are granted equal legal status. The main argument for this legislative change is that equal rights can counteract the demographic threat of female depopulation in Sami regions. Moreover, the moral change in society has made the law obsolete. A woman living together with a man without marriage avoids exclusion from the system of rights, and thus undermines the original intent of the law.<sup>35</sup>

### **The Contemporary Debate: Sami Rights As Indigenous Rights?**

The last two decades, Swedish Sami policy has been formulated in terms of an explicit question of Sami rights. The Sami are recognised as an Indigenous people and a minority in their own country by the Swedish state. Of major significance in this discursive change is the apparent challenge to the traditional conception of Samihood (and the traditional policy) following the explanation and justification of Sami policy as a protection of Sami culture. When culture is generally considered to consist of more than reindeer herding and shared by more than a professional group the discourse is opening up. The implications of this recognition are, however, not entirely clear—as we will see further on—but the state has, as it is stated in an official report in 1983, 'obligations to show respect for Sami culture and customs' and 'make room for the Sami to

decide and influence' their vital conditions 'based on Sami values.'<sup>36</sup>

Of importance in directing the debate towards a rights-perspective, is the Swedish Supreme Court's judgement in the *Taxed Mountains Case* in 1981, which was claimed to clarify the legal rights of reindeer herding.<sup>37</sup> In that case several Sami villages and individuals in the province of Jämtland sued the Swedish state. They claimed 'full ownership rights to the property in dispute [...] located in taxed mountains' and to 'extended homesteads.'<sup>38</sup> Their fallback was a claim to different limited rights to the same areas. The Swedish state 'maintained that the State is the owner of the properties in dispute, and that only the special rights stated in the Reindeer Farming Act now belong to the Sami and the Sami villages.'<sup>39</sup> In understanding national law as both defined and interpreted by the state, as well as administered, the final decision of the Supreme Court comes as no surprise: The court ruled that the state was the rightful owner of the Taxed Mountains.<sup>40</sup> At the same time, however, the court's ruling was interpreted in terms of a strengthened legal position of the reindeer herders, as it states that the Sami's right of use of the land is constitutionally protected in the same way as ownership rights, i.e. their rights can not be withdrawn without compensation. The Sami have 'a firmly protected usufructuary right of a particular kind, based upon use and prescription from time immemorial.'<sup>41</sup>

In addition to the examination of Sami rights and the status of the prevailing legislation in court, the international debate on minority and Indigenous rights gradually takes a more prominent place within discourse.<sup>42</sup> What constitutes an Indigenous people is, however, claimed to be both vague and ambiguous, and the lack of an internationally recognised definition is stated to be a severe problem. In trying to sum up the development in the international debate, the characteristics of an Indigenous people are summarised as follows: Indigenous peoples have a historical and continuing relationship to land and are descendants of the original inhabitants of these lands (i.e. they were there first). Moreover, they use the land and its resources in a different way and they have other cultural traditions than the majority population. In accordance with this point of view, the prospective aim of the Swedish Sami policy should be, the argument goes, formulated from the needs of the Sami as an Indigenous people.<sup>43</sup>

In trying to substantiate the needs of the Sami as an Indigenous people, rights in terms of Sami self-determination comes into focus in discourse for the first time. The apparent starting-point of the debate is the first article of the 1966 *UN Covenant on Civil and Political Rights*, stating that 'all people have the right to self-determination', and 'by virtue of that right, to freely determine their political status and freely pur-

sue their economic, social and cultural development.' As it is stated in an official report: 'It is of course of major importance for the Sami to establish if they are a people within the meaning of the covenant.'<sup>44</sup> Not surprisingly, Sweden adopts the widely accepted 'salt water' thesis, which restricts self-determination rights to overseas colonies.<sup>45</sup> In the international debate, the argument goes, it is widely accepted that the article only applies to peoples subordinated to 'classical colonialism', not to minorities within the territory of an already existing state. Moreover, Sweden has never treated the Sami people in the same oppressive fashion as the colonial states, and 'the Swedish influence over traditional Sami areas cannot be compared to what is usually called colonialism.'<sup>46</sup> Hence, the conclusion is logical: If the Sami have not been colonised, they are not a colonised people and have no right to self-determination in accordance with international law. The discussion is firmly rooted within the nation-state, where the right to self-determination in capacity of being an Indigenous people should inform the public policy on Sami issues, not determine its direction.<sup>47</sup>

Other forms of minority protection in international law are, however, vividly discussed and endorsed. Within discourse, article 27 of the *UN Covenant on Civil and Political Rights* is considered to be the most important, as it states that persons belonging to ethnic, religious or linguistic minorities 'shall not be denied the right, in community with other members of their group, to enjoy their culture, to profess and practice their own religion, or to use their own language.' The article is interpreted as a justification of collective rights in terms of a direct protection of minority groups. Notwithstanding the potential antagonism between affirmative action and the conventional ideal of equal treatment of members of a society, affirmative action as a form of minority protection is looked upon as a necessity to guarantee minority groups a standing on a par with the majority population. Real equality demands equality of resources, the argument goes.<sup>48</sup> Hence, certain rights-claims are considered legitimate and in accordance with international law: The Sami people have 'the right to a certain amount of cultural autonomy (passive rights)'; and 'the right to state support to maintain their cultural activities (active rights).'<sup>49</sup>

But to what extent has this change within discourse actually become dominating? Is the conception of the Sami as an Indigenous people established in discourse, i.e. is it institutionalised in and through legislation? To answer these questions, we have to delve further into political practice and the proposals put forward as a consequence of this discursive change. Firstly, it is no doubt that the contemporary debate has had a major impact on the discussion of the legal standing of

reindeer herding. Besides the decision by the Swedish Supreme Court in the *Taxed Mountains Case*, article 27 of the UN *Covenant on Civil and Political Rights* is claimed to provide a strong protection of minority groups' social and cultural life. Following the well-established link in discourse between reindeer herding and Sami culture, reindeer herding is claimed to be 'the material prerequisite for the culture'.<sup>50</sup> And as such, it can no longer be correct, the argument goes, to make a theoretical division between Sami who have and have not the right to herd reindeer: 'It should be noted that the right to herd reindeer is a collective right that belongs to all Sami in Sweden. Reindeer herding rights should therefore not be lost in third generation.'<sup>51</sup> However, this essential indication of the Sami people's common cultural heritage is explicitly supported in discourse by the fact that the right to herd reindeer has no bearing on the actual practices of reindeer herding. The right to exercise the prescription from time immemorial is only to apply for members of a Sami village.<sup>52</sup>

Furthermore, the importance ascribed to reindeer herding calls for a reinforcement of its legal position to protect it from encroachment like land exploitation. However, the legal standing of reindeer herding cannot, the argument goes, be discussed detached from the interests of other users of the land. It is a necessity that the political measures are 'designed to minimise conflicts between reindeer breeding and other land users in the reindeer breeding area.'<sup>53</sup> This way of formulating the problem thus re-establishes a link to the classic debate in Swedish Sami policy—the herders' relation to other groups in society—and we reach the ultimate limit of political change. Despite all references to international law and the law in force, the discussion is very similar to the one a century ago: There exists an inevitable conflict between herders and other land users, the number of reindeers must be restricted, and new herding methods cause problems, often in combination with a certain laxity in the care-taking of the herds.<sup>54</sup> Hence, when 'opposing interests' are taken into consideration the perspective is displaced from being a question of Sami or Indigenous rights, to become a struggle between different interests. And with the notion of competition between different users of land, it is the duty of the state to strike a balance between these various interests. This has always been a forceful argument for a limited system of rights, and this perspective is not abandoned. Moreover, it explains and justifies a continued hierarchic and paternalistic policy, as it favours state regulation and control of the reindeer herding.<sup>55</sup>

Secondly, the recognition of the Sami as an Indigenous people both explains and justifies the establishment of a Swedish Sami Parliament

in 1993 as a way to grant the Sami cultural autonomy. The tasks of the parliament are, among other things, to allocate funding to cultural activities and Sami organisations within the financial limits set by the Swedish state, to guide and direct the work on Sami languages, and to look after matters of special importance to the Sami people. Nonetheless, even when the explicit objective of the policy is to maintain and develop Sami culture it seems as if a hierarchical foundation is partly reified once again. The elected parliament's legal status is as an administrative authority, and its field of action is very limited. The Sami Parliament is not granted any actual political influence or real power, such as a right of participation in decision-making, veto-rights concerning administrative decisions, or a legal status as a body to which proposed legislative measures on Sami issues ought to be referred for consideration by other administrative authorities.<sup>56</sup> Instead, its status as a consultative body with expert knowledge in questions concerning reindeer herding is emphasised, and as an administrative authority the Sami Parliament 'must observe objectivity.'<sup>57</sup> Even though the Sami Parliament is free to formulate its own policy, the space for political action is severely cramped by the parliament's economical dependency of the Swedish state. As in Norway—quoting the former president of the Norwegian Sami Parliament, Ole Henrik Magga—'the Parliament does not have its own revenue derived from taxation or from exploitation of natural resources in Sami areas.'<sup>58</sup>

Thirdly, the discursive change legitimise, for the first time ever, an official report ending up in a proposition to ratify the *ILO Convention 169 Concerning Indigenous and Tribal Peoples in Independent Countries*. The previous dismissal of ratification—that the convention recognises Indigenous peoples' ownership and possession rights in a way not 'consistent with the Swedish judicial system'<sup>59</sup>—is now replaced by the notion that it is Sweden that 'does not fulfil the conditions set down by the Convention with regard to land rights.'<sup>60</sup> Hence, the immediate political result is quite similar: Sweden cannot ratify the convention here and now. Swedish accession is considered to be a long-term objective, based on a number of investigations, principally regarding the actual Sami right to land: 'Firstly, the land to which the Sami have rights under the Convention must be identified [...] Secondly, the scope of the Sami hunting and fishing rights on the land which they traditionally occupy must be clarified.'<sup>61</sup> The fact that one of the most challenging and controversial issues in Sami politics must be resolved, or at least be 'addressed', before accession is possible seems to be negligible within discourse.

Fourthly, at the same time as the importance attached to reindeer herding is confirmed—it is a prerequisite for Sami culture—Samihood is

no longer defined only in terms of reindeer herding; rather, it is defined as the sum of the entire Sami population's conceptions, values, and symbols.<sup>62</sup> The emphasis is now on the feeling of belonging as an indication of a common identity, which can be discerned in the cultural heritage, religion, language and traditions.<sup>63</sup> Actually, language has replaced reindeer herding as the main marker of identity/ethnicity within discourse: 'The language of a people is its most unique cultural asset. The language expresses a people's living conditions, values, opinions and traditions.'<sup>64</sup> This new out-look is institutionalised in legislation in the *Sami Parliament Act of 1992*. In this act a Sami is defined both by a subjective criterion, you have to consider yourself a Sami, and an objective one, the Sami language should have been spoken in your home, or in the home of your parents or grandparents.<sup>65</sup>

Furthermore, language preservation by special legislation is within this perspective formulated as a prerequisite to support and maintain Sami culture. However, all proposals on Sami language-rights are ignored within discourse until a ratification of the *Council of Europe's Framework Convention for the Protection of National Minorities*, and the *European Charter for Regional or Minority Languages* comes into focus. The conception of the Sami as an Indigenous people and a national minority clearly indicates that the Sami belong to those national minorities referred to by the two conventions.<sup>66</sup> By the accession in 2000, the Sami language was publicly recognised, implying language rights at least in accordance with the conventions. It seems as if the international debate has had an enormous impact on Swedish policy, where the self-image and the international community's opinion of Sweden obviously are of greater importance than an independent Swedish decision on Indigenous rights. As stated in an official report 1999: 'Sweden has a long tradition of commitment to weak, disadvantaged groups, etc. In international terms respect for the traditional ways of life of the Indigenous peoples of the world has grown in recent years. It is clear that the Sami should be given the opportunity to develop within the framework of their own culture.'<sup>67</sup>

To conclude my analysis, it is on the one hand apparent that the discursive change the last two decades has opened up the Sami discourse. The conception of Samihood in terms of the Sami being an Indigenous people, with a feeling of belonging as a marker of a common identity, challenge the traditional Swedish Sami policy. There are, for instance, no internal discursive criteria to reject rights-claims from non-reindeer herders, based on the former distinction between different categories of Sami—the Sami people is heterogeneous. Neither can the conception of the Sami as an Indigenous people legitimise a limited

system of rights based on reindeer herding. Legislative proposals with the objective to maintain and develop Sami culture can no longer be rejected beforehand as illegitimate, or by reference to any pre-given criteria. On the other hand, it is just as obvious that this discursive change is not accompanied by a radical change in political practice; on the contrary, in legislative terms the policy itself has been surprisingly coherent, uniform and difficult to change. An excluding legislation and a very limited system of Sami rights are thus still legitimate.

Furthermore, the historically discriminatory attitude, based on racial and cultural hierarchies, tend to be recreated into inequities in the present debate. Even when political solutions are intended to resolve the inequalities originating from the various denigrating conceptions of the Sami, many of the concrete measures are still formulated on the basis of the same social relations and hierarchical viewpoint that originally constituted the problems. A marginalisation of the Sami in decision-making processes is, for instance, still possible, as is evident concerning reindeer herding and the financial restrictions set on the Sami Parliament by the Swedish state. A recent example of this marginalisation is the ongoing debate on the administration of UNESCO's world heritage *Laponia*. Laponia consists of four national parks in Norrbotten in the north of Sweden, and decisive in granting 'Laponia its status as world heritage' were 'the combination of the fantastic, rich nature and the long history of a living Sami culture in the area.' In the proposal on organising the administration of Laponia, however, the actual influence of the Sami people is neglected, even though 'reindeer herding is the major Sami trade in Laponia.'<sup>68</sup> In opposition to the local authorities and the County Administration, the Sami strive to attain an independent administration, with a Sami majority and the right of decision on issues concerning the world heritage; so far, however, without success.<sup>69</sup>

The most striking example of this lingering hierarchical worldview and governmental neglect of the international debate on Indigenous rights may, however, be the case of Sami hunting and fishing rights. The inauguration of the Sami Parliament coincided with an encroachment on the exclusivity of the Sami hunting and fishing rights on Crown land, judicially dedicated 'to the sole disposition of the Sami'. Ignoring the firm opposition of the Sami, the Swedish government claimed hunting and fishing rights parallel to that of the Sami, and that the state thus ought to have recourse to their rights as it desires, for instance by increasing the amount of hunting and fishing licenses.<sup>70</sup> Thus, 'the gap between national law and what we will call developed Aboriginal law'—to quote Tom Svensson in his detailed study of the *Taxed Mountains Case*—'is still very great.'<sup>71</sup> In political practice, Sami self-determination

and cultural autonomy still seems far away in Swedish politics.

### **Indigenous Rights as Public Policy: Some Conclusions**

I believe that the absence of any major political changes in Swedish Sami policy may be understood in terms of how the dominating conception of the Sami—and their indigeneity—defines ‘the object of knowledge’ of discourse.<sup>72</sup> The dominating conceptions provide a logical field of possible political options—they prescribe how to act, think and express oneself—and thereby set normative limits for legitimate action.<sup>73</sup> The highly praised values formulated in discourse—be it democracy, justice, freedom, equality, as well as race, nation, culture or a multi-cultural society—have received their meaning in relation to the questions of who is a Sami and what Samihood is.

The constitutive character of politics is thus intimately related to an inherent essentialism, similar to what Iris Marion Young in her critique of ‘identity politics’ describes as ‘a logic of substance to conceptualize groups.’ Within this logic a group ‘is defined by a set of essential attributes that constitute its identity as a group.’<sup>74</sup> The constructed system of Sami rights has—in and through legislation—institutionalised a homogenous Sami identity deviant from the Swedish, maintaining a hierarchical order, at the same time as it explains and justifies an exclusion of the majority of Sami. The questions *why* the Sami should be treated differently, *how* the system of Sami rights should be designed and to *whom* these rights ought to be granted, have by the definition of the Sami people and its ‘true’ and ‘authentic’ Indigenous culture received a given answer, which has implied a policy difficult to change.<sup>75</sup> The state’s power to define has been determining both for what rights-claims that have been legitimate in discourse and for the development of the field of possible political options.

Taking the constitutive character of political practice seriously raises the question of self-determination of Indigenous peoples from the perspective of politics itself. If groups are partly constituted politically an important task for politics on Indigenous rights must be to open up ways to question dominant identities. The limits for what may be stated by whom in what way must be in a permanent state of reevaluation and flux. To keep publicly constituted identities ‘open’ is necessary in order to ensure a space for challenge and change in those relations that feed on collective identity construction. The discursive objects of knowledge, as well as legitimate subjects and subject positions, must be essentially questionable. Not surprisingly, most contemporary theories of minority rights stress a commitment to ‘intercultural dialogue,’ ‘cross-cultural dialogue’ or ‘complex cultural dialogues,’<sup>76</sup> claiming that any system of

(group) rights should be dialogically constituted, as understanding only comes through engaging in practical dialogue or discourse.

My analysis, however, makes me sceptical towards such a project without granting Indigenous peoples a 'fair say' in the democratic procedure, i.e. self-determination in various institutionalised forms.<sup>77</sup> In this context, it is important to note that my notion of self-determination evolves around the concept of internal autonomy, rather than a right to independent statehood. For most Indigenous peoples secession is not an option; rather, 'they want some form of autonomy within a larger state.'<sup>78</sup> The constitutive character of politics points primarily towards two concrete areas of problems where self-determination is a necessity. Firstly, if public policy constitutes collective identities through special legislation, the conclusion is evident: the Indigenous people in question should handle the definition of their own people and their indigeneity. Consequently, the power to define must be transferred to Indigenous peoples.<sup>79</sup> Such a politics cannot, however, overstate the state-group relation in focusing on justice between groups (or peoples), and omit the individual members, leaving them 'vulnerable to severe injustice within the group.'<sup>80</sup>

Furthermore, this conclusion is intimately related to the main problem of my analysis, as I implicitly assume what is historically constituted: Who, in capacity as Sami for instance, should define who belongs to the Sami people in the constituting phase? There are two solutions to this problem, none of them without objections. One is to make the initial definition of who is a Sami purely subjective. With this approach the existence of the people is not predetermined, and anyone defining herself as a Sami could at this initial stage be regarded as such. Another solution would be to interpret Swedish Sami policy contextually against the background of a study of how the Sami people in a historical perspective has been constituted politically. Such a starting-point could for example mean that the right to vote for the Sami Parliament also could imply a right to initially define who is belonging to the people.

Secondly, if the dominating conception of an Indigenous people defines the field of possible political options, and if a historically construed system of rights tends to institutionalise a society's social power relations, the solution must be to grant the Indigenous people a sphere of legitimate political action. In a historical perspective the order of discourse has been (and still is) a major obstacle for members of the Sami people to engage and participate in debate. Accordingly, the key issue here is to construct institutional arrangements that counteract external and internal exclusion, stemming either from the fact that Indigenous peoples often are debarred from the public debate or decision-making

process, or that the terms of discourse may function in an excluding way, even when an Indigenous people like the Sami is formally included. This requires a process of deliberation on Indigenous rights not only characterised by 'the same chances to initiate speech acts, to question, to interrogate, and to open debate', but also a process which ensures Indigenous peoples the rights 'to question the assigned topics of conversation', and 'to initiate reflexive arguments about the very rules of the discourse procedure.'<sup>81</sup>

In Swedish Sami policy such a process of deliberation could be enhanced by an immediate ratification of ILO convention 169. Ratification would indicate a willingness to institutionalise a new system of knowledge and belief, 'which recognizes the aspirations of [Indigenous] peoples to exercise control over their own institutions, ways of life and economic development and to maintain and develop their identities, languages and religions, within the framework of the States in which they live.'<sup>82</sup> Moreover, the convention establishes a political location for the Sami people—a legitimate subject position—within the framework of international law and the discourse of rights. However, to ensure the Sami people a powerful position in the political discourse on a national level, some form of special political representation would be of importance, for instance by expanding the role of the Sami Parliament. Furthermore, a radical policy change must include immediate tangible measures, such as veto rights concerning questions of land and water exploitation, and extensive cultural rights.

In the contemporary debate, indigeneity has—to quote Courtney Jung—'forged new political spaces, strategies, and alliances that insert new political actors into the public discourse. Indigenous identity pluralizes and transforms this discourse, and is self-consciously intended as a challenge to existing hierarchies, exclusions and patterns of state society relations.'<sup>83</sup> Hence, the debate on Indigenous rights—and indigeneity—is part of a fundamental struggle concerning how to define politics as such. And as long as the real power and the final right of decision on Indigenous issues remain within the sovereign nation-state, the prospects for radical policy changes are low.

### Notes

1. Rescript from the King's County Administration of Norrbotten, in Government Bill No. 2 1886, p. 14.
2. Government Bill No. 36 1883, p. 91.
3. Parliamentary Commissions of Inquiry 1999:25, p. 24.

4. *Ibid.*, p. 23.
5. Anaya 1996, p. 4.
6. Minow 1990, pp. 19-23.
7. Thornberry 2002, pp. 33-35.
8. Bauman 1991, pp. 53-61.
9. Benhabib 2002, p. 8.
10. Foucault 1972, p. 57.
11. Edelman 1988, pp. 12-36. See also Bacchi 1999, pp. 32-64; Mörkenstam 1999, pp. 51-61.
12. Swedish Code of Statutes No. 38 1886. This first reindeer grazing act is replaced already in 1898 by an act very similar to its predecessor, see the Swedish Code of Statutes No. 66 1898.
13. Kvist 1994, p. 209. For a similar analysis of the importance of the reindeer grazing acts in the late nineteenth century, see also Beach 1981, pp. 79-80; Korsmo 1992, pp. 155-156; Sillanpää 1994, p. 64; Lewis 1998, pp. 42-43.
14. Royal Commission Report 1909, p. 18. All quotations from government documents and legislation are translated by the author.
15. Government Bill No. 97 1913, p. 57. Later on a whole bundle of rights and/or obligations are attached to the publicly constituted Sami identity.
16. Swedish Code of Statutes No. 337 1917, §38.
17. This is partly due to the *Reindeer Grazing Convention of 1919* between Sweden and Norway, which involved a closure of vast tracts of pastureland in Norway used by Swedish herders, see the Swedish Code of Statutes No. 895 1919. The reduction of the number of reindeers is partly carried out by forcing Sami reindeer herders to relocate, see for instance Government Bill No. 201 1919, p. 5. For a thorough analysis of the background to and the consequences of the *Reindeer Grazing Convention*, see Marainen 1982.
18. Parliamentary Commissions of Inquiry 1927:25, p. 45.
19. Swedish Code of Statutes No. 309 1928, §1. The severe consequences of the legislation on an individual level are, for instance, obvious in *Kitok v Sweden*. In this case Ivan Kitok claimed, in connection with article 27 of the *UN Covenant on Civil and Political Rights*, to be deprived of his inherited rights to reindeer herding in Sorkaitum Sami village due to the Swedish law. The law had, according to Kitok, made him lose his membership of the village and thus the right to exercise his right to reindeer herding. The Human Rights Committee, however, accepted the claim by the Swedish government, that the intention of the law was to improve the living conditions of the reindeer herders and to protect an existence of reindeer husbandry

for the future. For a more detailed account of *Kitok v Sweden*, see Thornberry 2002, pp. 158-160.

20. Parliamentary Commissions of Inquiry 1927:25, p. 45.
21. Government Bill No. 206 1928, p. 28.
22. The exclusive character of the legislation is, for instance, made clear in a Parliamentary Commissions of Inquiry (1952:13, pp. 187-194), where it is stated that those who have ceased to be active reindeer herders, but still do not have any other permanent occupation, should enjoy the special Sami rights to hunt, fish, and forestry on Crown land. They are still considered to be reindeer herders. As soon as they take up another occupation, however, they ought to lose their rights. They become by definition non-reindeer herders, i.e. they diverge from an 'authentic' or 'true' Sami identity.
23. Pogge 1997, pp. 194, 211.
24. Secretary of State Stenberg in Parliamentary Debate (First Chamber) No. 51 1917, p. 9.
25. Demands for special Sami representation in the Swedish Riksdag were put forward as early as in the preliminary work to the act of 1886, and were actualised again in parliamentary debates and motions both 1920 and 1930, see Motion (First Chamber) No. 209 1920, and Motion (First Chamber) No. 210 1930, both by Carl Lindhagen.
26. See for instance, Parliamentary Commissions of Inquiry 1931:18, pp. 257-259, Parliamentary Commissions of Inquiry 1936:23, p. 210, Swedish Code of Statutes No. 592 1938. For a detailed account of the 'Lapp Administration', see Lantto 2000, pp. 48-56.
27. Anaya 1996, pp. 23-4.
28. See for instance the Parliamentary Commissions of Inquiry 1966:12; Parliamentary Commissions of Inquiry 1968:16.
29. Parliamentary Commissions of Inquiry 1968:16, p. 51.
30. Parliamentary Commissions of Inquiry 1968:16, p. 131; Parliamentary Commissions of Inquiry 1960:41, pp. 78-81.
31. See for instance Parliamentary Commissions of Inquiry 1975:100, pp. 280-307.
32. Parliamentary Commissions of Inquiry 1975:99, p. 131.
33. Government Bill No. 51 1971, p. 112. See also, for instance, Parliamentary Commissions of Inquiry 1960:41, p. 11.
34. The political mobilisation and action of the Swedish Sami is in focus, for instance, in Svensson 1976, 1997; Lantto 2000, 2003.
35. See the Swedish Code of Statutes No. 437 1971, §1; Parliamentary Commissions of Inquiry 1968:16, pp. 275-84.
36. Parliamentary Commissions of Inquiry 1983:67, p. 134.
37. See *Nytt Juridiskt Arkiv (NJA) Avd. 1, Rättsfall från Högsta Domstolen*

- 1981, p. 1. For further discussions on the Taxed Mountains Case, see Jahreskog 1982; Svensson 1997.
38. Supreme Court Decision No. DT2. Case No. 324/76, in Jahreskog 1982, p. 148.
  39. *Ibid.*, p. 151.
  40. See, for instance, Svensson 1997, ch. XI.
  41. Parliamentary Commissions of Inquiry 1989:41, p. 257. The Supreme Court's decision could also be seen as a success for the Sami as 'the Court rejected the Swedish government's position that nomads cannot acquire ownership rights' and 'specifically stated that its decision applied only to the country of Jämtland and that claims by the Sami to land title in the more northerly regions of Sweden could still be valid'. Sillanpää 1994, pp. 90-91.
  42. Of immense importance for the discursive change in Sweden is the legal development in both Norway and Finland. The political reforms on the legal status of the Sami people in the other Nordic countries (especially in Norway), the argument goes, run the risk of changing the international community's view on Sweden as a progressive force on minority issues. Thus, a major change of policy is necessary. See for instance, Parliamentary Commissions of Inquiry 1983:67, pp. 121-30; Parliamentary Commissions of Inquiry 1989:41, pp. 123-25, 191-94; Parliamentary Commissions of Inquiry 1990:91, pp. 99-102.
  43. Parliamentary Commissions of Inquiry 1986:36, pp. 59-60, 93, Parliamentary Commissions of Inquiry 1989:41, pp. 119-120. The recognition of the Sami as an Indigenous people is, however, not self-evident within discourse. The faculty of law at Uppsala University (in Ministry Reports No. 72 1989, p. 32), for instance, claims at the time that the Sami people's legal standing as an Indigenous people could be called in question, as the Sami are too assimilated into the Swedish society. The relation between reindeer herding and Sami culture is surprisingly weak, the argument goes, as only approximately ten percent of the Sami are engaged in reindeer herding. Moreover, the other main cultural marker, the language, seems to have lost its cultural meaning and importance, especially for the younger Sami, and the vast majority of the Sami can neither speak or write in the Sami languages. Hence, the faculty of law calls in question both reindeer herding and language as ethnic and cultural markers. This statement pinpoints the problem of positing a range of characteristics to Indigenous peoples: radical cultural difference or otherness is the only normative foundation of Indigenous rights, according to the faculty of law. Within this perspective, the Sami could only maintain distinctive rights as an Indigenous people if they maintain a tradi-

tional way of life. For a similar argument see Kymlicka 2001, p. 129; Thornberry 2002, p. 59.

44. Parliamentary Commissions of Inquiry 1986:36, p. 117.
45. According to Anaya (1996, p. 43), this thesis 'developed effectively to preclude from decolonization procedures consideration of Indigenous or tribal peoples living within the external boundaries of independent states.'
46. Parliamentary Commissions of Inquiry 1986:36, p. 164.
47. See for instance Parliamentary Commissions of Inquiry 2001:101, p. 143.
48. Ministry Reports No. 72 1989, p. 14; Parliamentary Commissions of Inquiry 1986:36, pp. 124-60.
49. Parliamentary Commissions of Inquiry 1986:36, p. 131.
50. Parliamentary Commissions of Inquiry 1983:67, p. 135.
51. Parliamentary Commissions of Inquiry 1989:41, p. 264.
52. Parliamentary Commissions of Inquiry 1989:41 pp. 90, 328-329; Government Bill No. 32 1992/93, pp. 88-93; Parliamentary Commissions of Inquiry 2001:101.
53. Parliamentary Commissions of Inquiry 1999:25, p. 32; Parliamentary Commissions of Inquiry 2001:101, chap 6.
54. Parliamentary Commissions of Inquiry 1983:67, p. 170, Swedish Code of Statutes No. 1489 1990, §71, Government Bill No. 32 1992/93, p. 180; Government Bill No. 4 1990/91, p. 100.
55. Government Bill No. 32 1992/93, p. 180; Swedish Code of Statutes No. 36 1993, §§15, 65-66.
56. In an official report concerning the role of the Sami parliament in the Swedish democracy, Parliamentary Commissions of Inquiry 2002:77, several proposals are put forward directed towards an increased level of self government for the Sami Parliament.
57. Parliamentary Commissions of Inquiry 1989:41, pp. 151-159, 305-311; Government Bill nr 32 1992/93, p. 35.
58. Magga 2002, p. 306. According to an official report, the budget for the Swedish Sami Parliament was a little more than 78 million SEK in 2002, see Parliamentary Commissions of Inquiry 2002:77, p. 11.
59. Government Bill No. 32 1992/93, p. 60.
60. Parliamentary Commissions of Inquiry 1999:25, p. 24.
61. *Ibid.*, p. 30.
62. Ministry Reports No. 38 1989, p. 19.
63. Parliamentary Commissions of Inquiry 1997:193, pp. 39-40.
64. Parliamentary Commissions of Inquiry 1990:91, p. 149.
65. Swedish Code of Statutes No. 1433 1992, chap 1, §2. It is important to note that the third generation criterion—considered obsolete con-

- cerning the right to herd reindeer—is introduced once again. However, it is this time attached to language. Consequently, a Sami could still lose his/her rights in third generation.
66. Parliamentary Commissions of Inquiry 1997:192; Parliamentary Commissions of Inquiry 1997:193; Government Bill No. 143 1998/99.
  67. Parliamentary Commissions of Inquiry 1999:25, p. 29.
  68. Proposal on the administration of Lapponia world heritage 2003-06-30, County Administration of Norrbotten, ch. 1, p. 2.
  69. *Ibid.*, ch. 12, p. 1.
  70. See for instance Beach 1995.
  71. Svensson 1997, p. 187.
  72. Foucault 1972, pp. 40-53.
  73. James Tully (1995, p. 35) formulates a similar understanding of politics in his ambition to conduct 'a survey which brings to critical light the unexamined conventions that govern the language games in which both the problem and the range of solutions arise'.
  74. Young 2000, p. 87.
  75. For a similar argument, see Barcham 2000, pp. 137-40.
  76. Tully 1995, p. 190; Parekh 2000, p. 128; Benhabib 2002, p. 186.
  77. Thornberry (2002, p. 9) argues for a similar development on an international level, when he emphasise 'dialogue to resolve claims', and 'dialogic approaches to sovereignty and much else'. However, he continues, to actually bring about change, a 'platform from which to argue' is needed and 'Indigenous groups are not—compared to States—securely positioned in the pantheon of international institutions'.
  78. Kymlicka 2001, p. 124. Using Anaya's (1996, pp. 97-112) distinction between five different subordinated norms of self-determination, internal autonomy could be divided into issues of nondiscrimination, cultural integrity, lands and resources, social welfare and development, and self-government.
  79. For a similar argument, see Thornberry 2002, pp. 58-59.
  80. Shachar 2001, p. 3. See also Barry 2001, p. 21; Benhabib 2002, pp. 71-104; Okin 1999, p. 12.
  81. Benhabib 1996, p. 70. According to James Tully (2001, pp. 30-33), the right to initiate constitutional change is an important part of the right to self-determination.
  82. Anaya 1996, p. 48.
  83. Jung 2003, p. 436.

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