

Implementing Indigenous Self-Determination: The Case of the Sámi in Norway

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ELSE GRETE BRODERSTAD, MAY 30 2014

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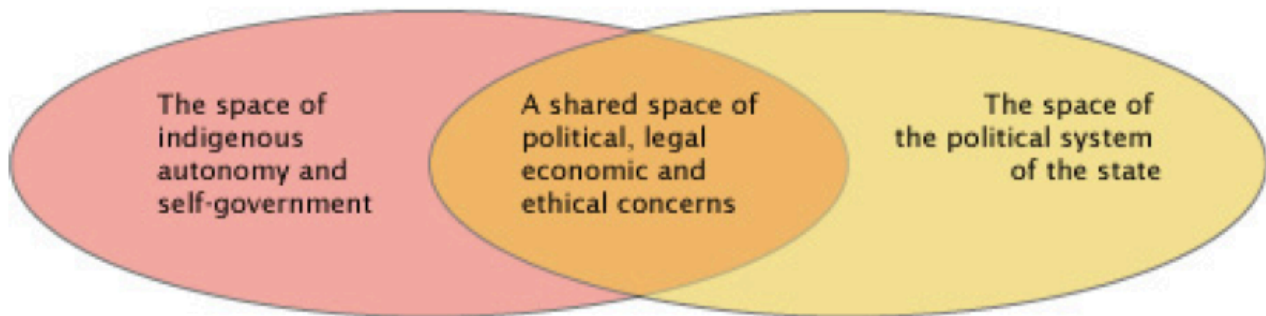
This article focuses on the issue of implementing principles of indigenous self-determination for the Sámi living in Norway. In order to capture core challenges related to implementation issues, the first section outlines the importance of adopting a relational approach to indigenous self-determination (see Kingsbury 2005; Young 2007; Murphy 2008). By using the explanatory power of this approach, it is possible to understand contemporary Sámi self-determination efforts in Norway. The second section connects the concept of rights to four stages of development of legal and political arrangements, which I present as a procedural outline for achieving Sámi self-determination.

A Relational Approach to Self-Determination

A relational approach helps capture core challenges related to implementing indigenous self-determination. Inspired by Williams (2005), it is useful to envisage two analytical normative spaces of political participation and governance. The first space is governed by indigenous peoples themselves through forms of autonomy and self-government. The second space encompasses the political system of the state as a whole. The perceived size and nature of the respective spaces vary and may depend on such factors as livelihood, cultural background, and territory (for instance, the Sámi could be either a minority or majority within a given region).

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At the intersection of these two spaces of political participation and governance are common political, legal, economic, and ethical concerns shared by indigenous and non-indigenous peoples alike (see above figure). This is the space where citizens, including Sámi citizens, must exercise their autonomy through participation in shared political processes. In this shared space, they articulate their interests, values, and rights by negotiating and debating issues of shared concern and issues of indigenous difference (e.g., land rights, cultural protection, and so on). Based on a deliberative and procedural understanding of politics aimed at achieving consensus in collective decision-making (Eriksen and Weigård 1999), the process of extending Sámi perspectives and participation into non-Sámi affairs can be described as the “integration of authority” (Broderstad 2008). A relational approach to self-determination captures and illuminates the potential of focusing on the integration of authority due to the approach’s normative force in explaining complex interdependence between the policies, interests, and rights of indigenous and non-indigenous peoples.

In practical terms, a relational view of indigenous self-determination focuses on the ways in which the Sámi can extend political influence beyond the traditional domain of Sámi politics – beyond self-government in autonomous indigenous institutions – by incorporating their perspectives into mainstream decision-making bodies at local, regional, and national levels. As a result, indigenous peoples increase their influence through their increased ability to collaborate with the wider political community through closer relations with non-indigenous people. Equally important is the need on both sides to develop feelings of respect and trust. Building trust depends, in large part, on building political influence through autonomous indigenous institutions, like the Sámi Parliaments in Norway, Sweden, and Finland. The next section looks at some of the steps that can restore and maintain trust between the Sámi and non-Sámi.

Developing Legal and Political Arrangements in Four Stages

The development of Sámi rights over the past 30 years illustrates how political compromise and legal decisions further self-determination. On the one hand, courts (re)interpret evidence on important issues, like land rights, problematizing former understandings, policies, and approaches. For instance, the Selbu and Svartskog Supreme Court cases from 2001 both ruled in favour of the Sámi when disagreements arose over land use (Eriksen 2002; Ravna 2011). Such outcomes put pressure on the political system, which typically strives for compatibility between law and political practice. Particularly in common law contexts, Supreme Court decisions have played an important role in changing government policies on land claims. On the other hand, political solutions can be the driving force, modifying legal and political institutional arrangements. This was the case when the Norwegian Parliament adopted the Finnmark Act in 2005, which gave Sámi additional rights in Norway’s northernmost county. Rights of land disposition were conferred to a new landowning body, the Finnmark Estate (Finnmarkseiendommen), which administers land and natural resources in Finnmark on behalf of all inhabitants of the county. Prior to 2005, the Norwegian state considered itself the owner of 95% of the land in Finnmark, and this land was managed by a special state entity called Statskog. A political approach can draw attention to new ways of imagining the inter-subjective relationship between, and self-understanding of, both the Sámi and non-Sámi peoples. By making use of the political

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rights of citizenship, the Sámi have achieved significant breakthroughs in terms of their political influence and ability to self-govern. The following four stages help explain the path the Sámi have taken in Norway to increase their ability to self-determine, both in terms of increasing their autonomy and influence in the shared space of Norwegian politics.

Stage 1: The “Negative” Aspect of Rights and Political Participation

Like many other indigenous peoples around the world, the Sámi people of Northern Fennoscandia have a long-standing history of assimilation. The official policy of assimilation lasted roughly a century. However, unlike in Australia, Canada, and New Zealand, the Sámi were not historically excluded from voting in national elections (Murphy 2008). But like in Australia, Canada, and New Zealand, assimilation was gradually abandoned. The initial post-war period of sociopolitical development was marked by the need to recognize Sámi as equal members of the state, itself comprised of individual members, implying a uniform treatment of all without any recognition of cultural difference. This view was made clear when Norway ratified the International Covenant on Civil and Political Rights from 1966 without giving any relevance to the unique relationship with the Sámi (Minde 2003). Article 27 of the Covenant states that “In those states in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practice their own religion, or to use their own language.” A traditional reading of this article depicts rights as “passive” or “negative” rights preventing discrimination. It does not demand any active measures by nation-states. This did not change until the Alta struggle brought greater attention to Sámi issues and concerns, resulting in the Human Rights Committee – a body of independent experts that monitors the states’ implementation of the conventions on human rights – which thoroughly examined the Norwegian position towards the Sámi in 1982-1983. The Alta struggle in the late 1970s is regarded as a turning point in terms of state policy towards the Sámi, which changed dramatically in the second half of the 1980s. The building of a hydroelectric power station on the Alta River bred conflict as Sámi protests and resistance efforts led to a dramatically greater sense of self-awareness and feelings of identity among the Sámi. Several dramatic events took place, including civil disobedience and hunger strikes outside the Norwegian Parliament. A strong alliance between the environmental and Sámi movements occurred, showing external support for their cause and leading to significant international attention on Norway’s treatment of the Sámi.

Stage 2: The “Positive” Aspect of Rights and Political Participation

The second stage involves positively recognizing indigenous rights by calling on the state to honour the distinctive group character of indigenous peoples. Due to concessions made during the Alta affair, the Norwegian Government established the first Sámi Rights Commission (SRC) in 1980 with a mandate to propose solutions regarding Sámi rights to land and water, among other issues. The SRC argued for a new reading of Article 27, allowing for greater “positive” rights. The Norwegian Parliament followed this reading, implying that the nation-state had to actively contribute to developing Sámi culture, as well as embracing the material aspects of a minority culture. The authorities felt increasing pressure to be proactive on the subject. This is the stage when the Sámi institutionalization process made some headway. Based on the SRC’s work, the Norwegian Parliament passed the Sámi Act in 1987, which led to the establishment of the Sámi Parliament in 1989. In 1988, a constitutional amendment (110a) was adopted, creating an obligation to secure and develop Sámi language, culture, and societal life. By securing and institutionalizing political rights through the Sámi Parliament, the Sámi became increasingly able to successfully argue for their rights, including the important issue of land rights.

Stage 3: The Procedural Aspect of Rights and Political Participation

The third stage is about enforcing procedural aspects that promote indigenous rights, which in the Sámi-Norwegian context have been implemented in the Finnmark Act in 2005 and the consultation agreement between the Norwegian Government and the Sámi Parliament that same year. The agreement regulates the relationship between the Norwegian Government and the Sámi Parliament. The consultation obligations of International Labour Organisation (ILO) Convention No. 169 on Indigenous and Tribal Peoples in Independent Countries are regarded as important premises for the agreement, designed to contribute to the implementation of the state’s obligations to consult indigenous peoples under international law. In these processes, the interaction between national legislation and

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international law became particularly evident. The Finnmark Act has partly incorporated ILO Convention No. 169. The procedural aspects embrace the rights of indigenous peoples to consultation, negotiation, and real participation in decision-making processes. These processes are resulting in new arrangements for securing indigenous governance, and co-determination in fields such as the management of land and resources. In the past, the state has been able to ignore and even remove customary Sámi rights by overlooking rules and procedures found in internal law and principles of international human rights (Oskal 2001). Thus, in addition to public-judicial issues, procedures of clarifying customary land rights came into place. The evolving consultation practices seek to realize a partnership between the Sámi Parliament and state authorities. The enhanced recognition of rights expresses both a principle of autonomy and closer relations between the Sámi and the wider political community. The ability to build trust and political influence depend on the effectiveness of an autonomous Sámi Parliament to secure such arrangements. A representative political body had to be in place before the development of procedures of political inclusion could begin. Step by step, the Sámi Parliament has been empowered and stands out as the defining body in consultation processes with the Norwegian state. The Sámi have undoubtedly gained acknowledgement and the inclusion of Sámi concerns in a common legal framework is expanding, even if challenges and setbacks do sometimes occur.

Stage 4: The Institutional Aspect of Rights and Political Participation

Through consultation and negotiation procedures, indigenous institutions are empowered to deal with a wide range of policy matters critical for the implementation of indigenous self-determination. Thus, a fourth stage of enhanced institutionalization is taking place, entailing legal institutionalization. Institutionally anchored rights allow for extensive relations between autonomous indigenous institutions and state institutions. These relations require a complex framework outlining the jurisdictional powers of different authorities. Further, indigenous autonomy involves clearly defining relationships with state authorities, which implies constantly revising and politically justifying the framework (Kingsbury 2001). Illustrative of the increasing influence of the Sámi Parliament on relevant policy matters is the growing number of consultations with state authorities. Between 40 and 50 consultations on legislation and policies are carried out annually, with a majority leading to consensus. The topics are diverse, including consultations on education, health, language, national parks, cultural heritage, hunting and fishery regulations, reindeer husbandry, windmills, power stations, and mining. However, the number of consultations failing to reach agreement is also increasing. Still, the enhanced institutionalization and recognition of rights has made it possible to reach consensus and to move more firmly towards consensus through intermediate agreements requiring further steps or procedures for dispute resolution. The institutionalized consultation process promotes the involvement of the Sámi Parliament in state decision-making processes. The concerns defined within the space of self-government can be expanded upon and expressed more widely through the shared space of governance to the legislature. This being said, attention must be given to the fact that the opportunities for establishing indigenous autonomy differ. A unitary state like Norway primarily relies on transferring and delegating management tasks from central authorities to the Sámi Parliament. But there is gradual change in governance practices related to the Sámi as an indigenous minority. This is being accomplished through institutionalizing consultation process – an exceptional case in Norwegian politics. Based on international law, on premises of real participation and influence carried out in good faith aiming at consensus or approval, the achievements of the Sámi Parliament are beyond those of just an advisory body. However, in practice this is not always so straightforward.

Having outlined these four stages as a roadmap for the recognition of indigenous rights, it is also important to note that setbacks in the struggle of Sámi rights recognition are apparent. A severe obstacle is the lack of recognition of historical fishery rights in coastal areas (Skogvang 2012). In 2008, the Coastal Fisheries Commission proposed to the Ministry of Fisheries and Coastal Affairs that all coastal residents had the right to fish in Finnmark's waters to maintain a reasonable livelihood. This conclusion was not accepted by the Ministry (Jentoft and Brattland 2011). Another contested issue is the new mining act (2009) where the Sámi Parliament and Norwegian Government failed to reach consensus. The government claims that the law safeguards Sámi interests, while the Sámi Parliament asserts the opposite, claiming that, among other things, the act breaches international law by not protecting Sámi rights south of Finnmark. These two cases on minerals and fisheries share one important commonality: they concern national resources with tremendous economic interests and political prestige. As is the case in the rest of the Arctic, politicians and industry leaders play a large role in how economic opportunities are developed. At the same time, this development may lead to greater conflict between industry, governments, environmentalists, and indigenous

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peoples. Governing systems handling conflicting interests – in this case, industrial activities versus traditional land use – must consider those who are most severely affected by exploitation activities and the duty of the state to protect human rights, including the rights of indigenous peoples against violations by third parties. According to Taylor (2013), this duty applies to all institutions of the state and involves standards of compliance for businesses to respect human rights, including government policy encouraging business to respect human rights. Without institutionally anchored rights and established procedures securing indigenous participation in state decision-making processes, the situation will only become more critical.

Summary

A relational perspective on implementing self-determination “encourages the view that indigenous peoples must seek influence in a variety of different political forums to manage the complex web of relationships in which they have become entangled with non-indigenous communities and governments” (Murphy 2008: 203). The relational approach makes the case that strengthening autonomy and self-determination through self-governing arrangements, versus extending indigenous perspectives and participation into non-indigenous affairs, are not necessarily contradictory. But the indigenous experience of seeking political influence and gaining self-governance is far from straightforward, as rights become necessary to counteract the arbitrariness of political decisions formulated through changing majorities in the state’s democratic institutions. Political and legal reforms are needed for effective cooperation to come about by better managing the complex relationship between democracy and rights. The case of the Sámi in Norway elucidates one example of how indigenous rights can promote self-determination. The relational aspects of Sámi self-determination have evolved through four stages of progress: the “negative,” the “positive,” the procedural, and the institutional aspects of rights and political participation. The Sámi themselves have pushed the perception of rights into the public political consciousness by appealing to human rights standards and international law. Though the four stages are presented sequentially, the political reality is that various changes can deviate slightly. For instance, procedural and institutional aspects may appear concurrently. The point is that legal and political developments have made it possible for Norway’s Sámi Parliament to directly influence state decision-making processes, which gives them a voice in a greater number of decisions affecting the Sámi. My emphasis on the relational aspects of Sámi political influence is not about impairing the importance of autonomy and the right to indigenous self-determination. On the contrary, I also claim that, in order to succeed with an expansion of authority, a relational approach to self-determination is required because the strengthening and empowerment of indigenous political participation depends on greater space for dialogue and shared understandings.

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Else Grete Broderstad is the Academic Director at the Centre for Sami Studies at the University of Tromsø – The Arctic University of Norway. She is part of the cross-disciplinary project TUNDRA, where she focuses on circumpolar governance arrangements, indigenous rights, and political participation. She is primarily interested in political procedures and rights governing the relationship between indigenous minorities and non-indigenous majorities.

In her most recent publication, "Cross-border Reindeer Husbandry: Between Ancient Usage Rights and State Sovereignty," in *The Proposed Nordic Saami Convention. National and International Dimensions of Indigenous Property Rights*, edited by Nigel Bankes and Timo Koivurova (Hart Publishing, 2013), she discusses the problems of reaching an agreement between Norway and Sweden on the cross-border reindeer husbandry management.