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THREE COMPLEMENTARY PROCESSES THAT ALIENATE THE SAAMI FROM THEIR LAND IN SWEDEN

by Hugh Beach .

The utilization of territorial resources by native peoples within a modern nation-state involves a complex relationship between land and people which is regulated by culture, technological means and legal constraints. It is this last aspect, that of law and the various legal techniques by which the Swedish Saami are alienated from their territory, which is brought into focus here. Obviously, the actual extent to which a region is utilized depends (among other things) upon the number of people with resource rights and, on the other side of the relation, the amount of land made available under these rights of utilization. The land-people relation determining actual resource use is further refined by legislation which constrains the kind of resource and/or the sub-category of people within the larger native group able to enter into the relationship. In Sweden, for example, the scope of Saami rights as a whole has been constantly diminished; the reindeer herding rights which remain relate to specific land areas and entail only highly limited grazing, hunting and fishing rights. Furthermore, it should be noted that, in Sweden, there is a vast difference between the number of Saami who possess reindeer herding rights and the number who are permitted to exercise those rights. The Swedish Saami have been subdivided successively into finer and finer categories with differing access to the various aspects of Saami rights.

Alienation of territory among pastoralists, therefore, cannot be dealt with fully in terms of the mere appropriation of space for other purposes by the nation-state. Certainly the Saami are ever losing ground to the intertwined forces of various extractive industries, but this is only one facet of Saami alienation from their land. In fact, the practical, physical loss of land is intimately related to the other factors: legal blindness to Saami rights and denial of the right to exercise herding rights.

In this paper, I shall discuss what I see as the three most threatening methods by which the Swedish Saami have been, and still are, alienated from their land: 1) reduction of (or rather the failure to recognize the existence of) Saami land rights 2) successive splintering of the Saami people into categories with different rights and denial for some categories to exercise their rights 3) continued erosion of the land base by loss to extractive industries. I hope to demonstrate how each of these feeds back into the others to generate a highly complex and devastating spiral of resource alienation for the Saami people in general and for the Saami pastoralists in particular.

The Reduction of Saami Land Rights

Saami land rights in Sweden, once generalized for all Saami and securing for them herding, hunting and fishing use (if not outright ownership)

of large regions, have evolved into a limited occupational right for a small number of reindeer herders. The transition to what I have termed the occupational paradigm did not occur overnight (Beach 1985a). The change occurred gradually over hundreds of years, marked by a number of legislative milestones, for example: the various early royal decrees by Swedish kings in the 1400s and 1500s signaling the possibility that Saami land ownership could well be recognized (see Samernas Vita Bok 1968-81); the so-called "Lappcodecill" of 1751 whereby Saami land rights were upheld in both Norway and Sweden by joint agreement (Cramér & Prawitz 1970); the founding of a Saami-sheriff administration in 1760 to supervise the taxation of the Saami; the Grazing Act of 1886 which ended the Lapp Taxland institution and ushered in that of collectively defined grazing territories, Lappby/Sameby; the drawing of the "Agriculture Line" in the late 1800s and the pronouncement in the early 1900s against the combination of herding and agricultural lifestyles (see Ruong, in SOU 1975:100); the Grazing Act of 1898 which enforced strict regulations on Saami herding to ease the conflicts developing with the growth of farming; the Grazing Act of 1928 whereby herding rights could be lost to Saami families after the third generation of passivity; and the enforced relocation southwards of Saami herders from the northernmost districts which continued from about 1923 to 1944 (Elbo 1952, Ahren 1975 and Marainen 1984). Roughly summarized, Swedish legislation concerning Saami has passed through four main phases: a tribute/taxation phase; a "parallel theory", whereby the different resource utilizations of Saami and Swedish pioneers were not thought to conflict; a policing function, to control herder-farmer interaction; and the current rationalization of the herding industry to maximize the income and living standard of herders.

Each of these major events in Saami legal history (and there are many others of equal importance) must be viewed against the background of its predecessors as well as from within the context of its contemporary dominating ideology. It is quite plain, for instance, that the general attitude toward Saami in Sweden and, as a consequence, the legislation enacted with regard to them, changed significantly soon after 1859 with the spread of social darwinism (Cramér 1981). Cramér (1985) points out that the enforced relocation of the northern Saami stems directly from Sweden's desire to accommodate Norwegian demands during the difficult dissolution of the Swedish-Norwegian Union in 1905. The story of Saami legal history in Sweden is far from clear; much work remains to be done. Yet, largely due to recent Saami court cases, mainly the Altevåtn Case and the Skattefjäll (Tax Mountain) Case, much research has been done, and an overall picture has begun to emerge. To trace the entire evolution of the current occupational paradigm of Saami rights in Sweden would require a massive effort. Elsewhere I have discussed the derivation of the occupational paradigm with respect to changing resource/consumer ratios (Beach 1979 and 1981). My purpose in this section will be rather to explain basic characteristics of this paradigm and the resulting land alienation it causes the Saami.

There are approximately 50 herding territories, called Samebys, in Sweden. Each Sameby (previous to 1971 called Lappby) defines a zone whose limited use is conferred upon certain specific Saami herders. A Sameby, therefore, defines a social as well as a territorial entity. The Swedish government does not recognize any general Saami ownership of land. Instead, Saami herders are given the use of the land with respect for their traditional herding occupation, but this is limited to herding use along with some hunting and fishing privileges. The Swedish State has granted certain

special resource rights to the Saami to preserve their unique culture, but Saami culture is then narrowly recognized by the government to mean only reindeer herding, and to the extent a Saami strays from this livelihood, to that same extent must he give up his special rights (Beach 1985b).

As it is today, reindeer herding rights constitute the foundation of Saami minority rights in Sweden. Herding affairs are administered under the Department of Agriculture in accordance with the Reindeer Act of 1971. Paragraph 1 of this act designates who is and who is not eligible to be a reindeer herder in Sweden. It includes the following statement:

The right according to this law to utilize land and water for support of oneself and one's reindeer (reindeer-herding right) belongs to him who is of Saami ancestry, if his father or mother or one of his grandparents had reindeer herding as a steady occupation. (SFS 1971:437)

In short, Saami ancestry is a necessary but not sufficient criterion for reindeer herding rights. Following paragraphs allow limited exceptions to the ethnic aspect of this formula with regard to Swedish-Saami herder marriages. Only those who actually exercise their herding rights enjoy any special resource rights beyond those of any Swedish citizen. Currently, out of a Saami population of about 17,000 in Sweden, there are only 900 active herders, or, with families, about 3,000 people economically dependent upon reindeer herding.

Through the linkage of Saami resource rights (and culture) to reindeer herding alone, those Saami who hunted and/or fished for a living were deprived of any special land rights. Swedish law has focussed upon reindeer herding to the near complete exclusion of investigation into the traditions and rights of Saami hunters and fishermen (SOU 1975:99 & 100). As a result, not only has Saami culture been diluted by the narrow framework within which it is recognized by law, but also thousands of Saami have been alienated from their lands.

Yet further alienation continues today through what I term the Reindeer Act's phase-out clause. The occupational aspect of Paragraph 1 of the Reindeer Act of 1971 (contained in the previous Act of 1928 was well) where it is stated that one of Saami ancestry must also have a parent or grandparent who has herded steadily in order to obtain herding eligibility himself, creates a phase-out clause of major threat to the continuation of Saami culture and herding. Not only have hunting and fishing been stricken from the list of criteria granting resource rights, but even herding cannot guarantee resource rights for more than two generations. With each passing generation, many more Saami are born into the category of ineligibility as the number of those eligible decreases.

These restrictions are in stark contrast to the rights of ancestral usage, immemorial rights, espoused by the Swedish State in its civil law. According to Swedish civil law, if someone using the land can demonstrate blood ties with the original inhabitants or users of a specific land area, as far back as can be remembered, then this person has certain rights in the area. These rights are not dissolved through passivity, at least until a period of 50-60 years have passed (Beach 1985b).

Moreover, the 1981 verdict of the Swedish Supreme Court in the Skattefjall Case confirmed the principle of immemorial rights for Saami. The Court did not constitute these rights in 1981, but rather determined them to have been in effect even if illegally ignored in subsequent legislation. Saami immemorial rights have existed for hundreds of years, and laws which have ignored these rights (such as the Act of 1886 and its later manifestations confining Saami resource rights to herders and ignoring the rights of Saami hunters and fishermen) can be challenged and should be found unacceptable.

The Vapsten Case, now before the Swedish Supreme Court, presents just such a challenge. In this case, three Saami with claims to immemorial rights are on trial for utilizing resources on their ancestral grounds in a manner reserved for Sameby herders.

The Reduction of the Ability to Exercise Saami Land Rights

Once it was established that the herding occupation alone would create the foundation for Saami rights (ignoring immemorial rights), it did not take long before further restrictions were spun around this theme. The Grazing Act of 1928 decreed that only those who were officially registered Lappby (later Sameby) members had the right to exercise their herding rights. This meant that someone with herding eligibility according to Paragraph 1 of the Act of 1928 and later the current Act of 1971 is no longer assured the chance to practice herding in reality and thus utilize his Saami resource rights. It became (and still is) the current Sameby members' decision whether or not to admit a new member, although the Swedish authorities claim the right to intervene in special circumstances (as will be seen, an important point). Eligible candidates are usually denied admittance by the vote of the Sameby members. The current members are frequently and understandably loathe to welcome new herders to compete over their limited grazing territory. Internal Sameby politics, factionalism and group interests often hinder the admission of new members (Beach 1981). In effect, the old distinction between herding Saami and non-herding Saami has become elaborated to encompass new categories. Many of the non-herding Saami are still eligible herders according to Paragraph 1, while many (and, because of the phase-out clause, increasingly more) are not. The category of Saami who are eligible to herd reindeer but do not can be further subdivided into those who wish to exercise their herding rights but have been denied and those who have never had the intention to herd. Even within the category of Sameby member, the occupational paradigm makes itself felt. Members are divided into three membership categories depending largely upon their activity as herders. For instance, the men who are in the field gathering, marking and separating reindeer are usually given Sameby voting rights beyond those of their wives who merely tend the home, fix the food, care for the children, mend the clothes and do everything else necessary to support the work of their husbands and to promote their lifestyle as a herding family.

One might well wonder why legislation demanding that herders become registered members of a Lappby/Sameby was deemed necessary when previous legislation had already established that only herders had special Saami resource rights. It seems that there was a desire to group herders according to specific territories so that they must share a collective responsibility for

the trespass of reindeer into the fields of farmers (Beach 1981). A recent and highly provocative hypothesis to explain the limitation of the rights for Saami to exercise their herding rights through the demand of Lappby/Sameby membership has been proposed by Cramér (1985). He traces this legislation to the need for the Swedish authorities to secure herding rights for the relocated Northern Saami on "foreign soil". Were the authorities to effectuate their forcible (illegal) relocation of the Northern Saami and their reindeer herds to the south, then they would also have to obtain the (illegal) relocation of their reindeer herding rights. The Northern Saami had no immemorial herding rights on the lands to the south. The government authorities took the power to enlist the relocated Northern Saami as members in the southern Samebys to which they came, whether or not they were welcomed by the indigenous Saami.

The Vapsten Case, mentioned above, challenges not only the narrow criterion of herding for Saami resource utilization. This case also confronts the related issue of denying those eligible to herd the right to exercise their rights. The three Saami on trial in the Vapsten Case have all of them engaged in reindeer herding on their ancestral grounds, although neither the authorities nor the official Vapsten Sameby (whose land encompasses the ancestral grounds of the defendants) recognize them as Sameby members. One of the defendants has also engaged in moose hunting on his ancestral grounds in a manner permitted only Vapsten Sameby members. In the lower courts the defendants have been found guilty on all counts. However, this verdict is based solely upon the Reindeer Act of 1971 and can be questioned on many points.

Besides the point discussed in the previous section, that immemorial rights cannot be ignored and that ancestral herding, hunting, and fishing rights lie outside those embodied in the Reindeer Act of 1971, the defendants insist that they should be considered Sameby members. They claim, moreover, that whether or not they are members, it is wrong for the Act of 1971 to make Sameby membership a precondition for the exercise of their ancestral herding rights. In short, if it is claimed that herding rights have been delegated to the Act of 1971 and are no longer regulated by civil law, this cannot be done without due legal process nor in a manner which denies membership to a group operating on a "closed shop" principle.

The Reduction of Land

The early colonization of Lapland placed large tracts of land in the hands of Swedish settlers, the Church and the Crown/State. Farming in the north has since declined, but grazing lands are still lost to the Saami herders at a rapid rate. While the population of northern Sweden decreases, the exploitation of its natural resources increases (Curry-Lindahl 1983). Those extractive industries which have damaged Saami herding most through the physical destruction or appropriation of the land for other purposes are the mining industry, hydro-electric power industry, timber industry and tourism. Each of these major industries has fluctuated greatly in size and impact. The hydro-electric power industry, for example, grew to enormous proportions during the 1950-60s only to dwindle with the depletion of virgin rivers to dam. Each industry has its own history, and yet none can be grasped in isolation of the others. Much of the labor force brought north by the hydro-electric power industry, for instance, has shifted to the timber

industry. The road cut through the wilderness to transport a huge generator and other building materials to a dam site can later open the nearby forests to logging by the timber industry (Beach 1981). The mines have often established large cities around them with a wide transportation system and populations which demand recreation opportunities. The various extractive industries have together created Swedish populations in the north which dwarf the local Saami into a minority position in every Swedish municipality.

Because of difficulties with expensive transportation and with competition from abroad, Swedish mining in the north is no longer so expansive as it once was. The hydro-electric power industry is in painful retreat, and threatens the few remaining untouched waters in order to give its employees jobs. Currently it is the timber industry which poses the severest new problems for reindeer herding. The timber industry has reached a point where irreplaceable, virgin forests in the mountain regions are sacrificed in order to supply raw material to the over-dimensioned timber plants for finished products along the coast and to the south (Hagberg 1986 unpublished). Here again employment opportunities are frequently given as the justification for permanent environmental damage. Yet the timber industry almost more than any other has rationalized its labor structure and developed its technology to the extent that one man operating a modern timber machine replaces scores of workers. The large-scale encroachment of the timber industry for the first time into forests near the mountains in zones heretofore spared causes the loss of beard moss, a valuable emergency reindeer food during hard winters; the soil preparation necessary for replanting efforts causes the loss of ground lichens, the reindeer's main winter food.

Encroachment into the mountain forests has caused storms of protest from both herders and conservation organizations. Logging was begun without proper consideration for the herder's rights. According to Paragraph 30 of the Reindeer Act of 1971, drastic changes in the use of land also utilized by the Samebys for grazing cannot be made without consultation and careful negotiation with the affected Samebys. Of course, as it is today, the Samebys can be consulted and dutifully informed about the most detailed land use plans without necessarily being able to change or veto them.

Tourism is widely acclaimed as the "solution" to the unemployment problems of northern Sweden. It is hoped that tourism will give new jobs without destroying the necessary land base for old jobs. For Saami pastoralists, however, tourism is a mixed blessing, for while it depends largely upon the maintenance of an unspoiled natural environment, it does not always seek to maintain Saami herding within this environment. The many large National Parks in northern Sweden have (usually but not always) protected land areas from the commercial interests of extractive industries, but the zeal to protect Nature has meant constraints upon herders in many respects (Cramér 1984).

The tourist whose greatest challenge is to experience "Europe's last wilderness" does not delight in the knowledge that this wilderness is in fact the immemorial homeland of Saami and the stamping grounds for a highly developed traditional reindeer herding. The Saami have in fact been instrumental in creating the environment which some conservationists wish to label as purely natural. As the conceptualization of Nature comes to exclude mankind, the Saami herders will find themselves increasingly hampered in their traditional lifestyle. If the Saami herders are to be

excluded from the formula of Nature, one might well wonder if their reindeer should not also be excluded.

Ironically, the Saami herders and their reindeer are advertised as major tourist attractions. The tourist who desires a wilderness challenge is often willing to accept a leather-clad herder living in an old traditional tent, tending his herd on foot, but should the herder, garbed in synthetic materials, fly to his modern cabin by helicopter, the tourist can become indignant and demand restrictions. He argues (and not without grounds) that if there are rules protecting the environment which apply to him, they should also apply to the Saami herder.

Of course, most of the herding lands are not encompassed by National Parks, and here the danger is frequently the reverse: there are not enough regulations. Tourism grows to grotesque proportions, and the service industries catering to tourist needs come to crowd the herders (Beach 1981:268 ff.; Samefolket 1975, nos. 6-7, pp. 167 ff., and 1976, no. 4, pp. 102 ff.). Nonetheless, it should be noted that tourism in reasonable proportion and of considerate character for the environment is also of benefit to Saami herders. Contacts lead to mutual understanding which can lead to strong friendships and alliance in the face of threat from extractive industries. The herders gain the ability to supplement their economy by offering seasonal services to tourists (boat transport, for example) or by selling handicrafts and provisions.

The Interrelations of Land Alienation Methods

It remains for me here to note briefly the ways in which the three main forms of Saami land alienation are interrelated. The reduction of Saami land rights, their concentration on herding, established the occupational paradigm which, when extrapolated, led naturally to the system whereby active herders (Sameby members) can deny non-active, but eligible-to-herd Saami from exercising their rights. The demand that all herders belong to a Sameby first expressed in the Act of 1928 was officially justified by the government's very desire to protect reindeer herding. Without controls of reindeer numbers and herders, it was argued, the grazing lands would be depleted with dire results for all Saami. Other reasons have been proposed. The new law regulating the exercise of herding rights was needed to provide a means to override immemorial rights. Without a purely ethnic criterion for Saami land rights, and with the neglect of immemorial rights defined in civil law, the occupational paradigm has been driven to absurd lengths.

The constraints on the ability to exercise one's herding right has in turn caused the reduction of those with herding rights and immemorial rights because of what I have referred to as the phase-out clause. Those Saami who are denied their right to exercise their right cannot become active herders. Therefore, in three generations it is very likely that their descendents will have lost eligibility according to the Reindeer Act's first paragraph. Moreover, if, when barred from herding, they must abandon their immemorial lands because of economic realities, immemorial rights can with time also be lost.

Obviously, the reduction of Saami land rights diminishes as well the ability of the Saami to stand against the exploitation of the land by

extractive industries. The legal basis of resistance is reduced to the Reindeer Act of 1971 which lamely speaks of negotiations if "significant" land use changes for herding are sought. The conflict becomes defined as that between industries alone, herding (an industry of low monetary profile) against, for example, hydro-electric power with business in the billions of Crowns.

The reduction of the land base by the extractive industries, again feeds into the phase-out clause. The less land available to herders, and the less qualitatively usable the remaining land becomes in the total herding system, the fewer herders can herd successfully. If they are forced out of the herding livelihood, and, as often happens, even away from their land in the Saami core areas, their descendents may lose their herding rights under the Act of 1971 and also their immemorial rights as mentioned earlier.

The physical loss of the land base causes increased severity in the reduction of the ability for herding candidates to exercise their herding rights. It is the existing Sameby membership which permits or bars a candidate's membership, and if the existing members are themselves pressed by further loss of land, in time forcing out some of them, and certainly diminishing their own chances of herd growth, they are all the less eager to bring in someone new.

As with the reduction of land rights, the reduction of the ability to exercise these rights (herding) leads to a decreased ability to protect the land base against industrial exploitation. Eligible candidates barred from herding have little voice against extractive industries. Instead, such candidates must work at jobs that are non-traditional for Saami and usually far from the threatened lands. Solidarity with the active herders is often still very strong in the fight to withstand land exploitation, but this is weakened with time and the phase-out clause; even the most vociferous non-herding-but-eligible-to-herd Saami with a job in Stockholm is given scant attention by politicians concerned with profits and employment opportunities in the North.

The three main forms of land alienation affecting the Saami, especially the Saami herders, not only have individual impact, but taken together form a system of mutual reinforcement which is in the process of destroying Saami reindeer herding and a distinct Saami society in Sweden.

References

- Ahren, I.
1979 Tvangsflyttning eller dislokation: Nordsamernas for-flyttning till sodra Lappland. In NORRBOTTEN 1976-77, MIGRATION. Lulea.
- Beach, H.
1979 "The Legal Pattern Behind the Rationalization of Herding." In SAMISKA DOMSTOLAR, SAMISKA RATTSFALL. Samernas Vita Bok VI:5, ed. Tomas Cramér. Stockholm.
- 1981 "Reindeer-Herd Management in Transition: The Case of Tuorpon Saameby in Northern Sweden." Acta Univ. Ups., UPPSALA STUDIES IN CULTURAL ANTHROPOLOGY 3. Uppsala, Sweden.
- 1985a "The Reindeer-Caribou Conflict in the NANA Region of Alaska: A Case Study for Native Minority Rights Issues." In NOMADIC PEOPLES, no. 17, February, Commission on Nomadic Peoples. McGill Univ., Canada.
- 1985b "Moose Poaching or Native Minority Right: a Struggle for Definition in Swedish Saamiland." In NORD NYTT, NORDISK TIDSKRIFT FOR FOLKELIVSFORSKNING UDGIVET AF NEFA-Norden. Special-Trykkeriet Viborg a-s, Denmark. (in press).
- Cramér, T.
1981 "Jamlikheten satt ur spel: HD:s dom i skattefjallsmalet." RADIX, TIDSKRIFT FOR HUMANISM, NR. 2. Harry Jarv ed.
- 1984 "Samerna, Vetenskapsakademin och Nationalparkerna." LSS SAMENYTT, NR. 1. Landsforbundet Svenska Samer, Tarnaby.
- 1985 "Tappar SSR Folksolidariteten?" NORRSKENSFLAMMAN. May 30, 1985, newspaper, Lulea.
- Cramér, T. & Prawitz, G.
1970 STUDIER I RENBETESLAGSTIFTNING. Stockholm.
- Curry-Lindahl, K.
1983 SLAGET OM LAPPLAND. Almqvist & Wiksell, Stockholm.
- Elbo, J.
1952 "Lapp Reindeer Movements across the Frontiers of Northern Scandinavia." Scott Polar Research Institute: THE POLAR RECORD, vol. 6:43, Cambridge.

Hagberg, S.
1986 KONFLIKT OM DE FJALLNARA SKOGARNA I SAMELAND,
SVERIGE: ARBETE, RESURS, KULTUR. Unpublished
undergraduate thesis, Dept. Cultural Anthropology, Uppsala
University, Sweden.

Marainen, J.
1984 "Forflyttning i Sapmi." SAPMI 2: SKRIFTSERIE UTG. AV
SVENSKA SAMERNAS RIKSFORBUND (SSR).

REINDEER HERDING ACT 1971, Rennaringslagen or SFS 1971:437.

Ruong, I.
1975 "Historisk aterblick rorande samerna." In SOU 1975:100.
Samerna i Sverige: Bilagor. Stockholm.

Samefolket. "Svensk- och samisksprakig tidskrift." ORGAN FOR SVENSKA
SAMERNAS RIKSFORBUND OCH FORENINGEN SAME-ATNAM.

SAMERNAS VITA BOK.
1968-81 Tomas Cramér. ed. Svenska Samernas Riksförbund. Stockholm.

SOU 1975:99, Samerna i Sverige. Stockholm.

SOU 1975:100, Samerna i Sverige: Bilagor. Stockholm.

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