

**Formation and Change of Property Regimes:  
The Case of Reindeer in Norway**

By

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Noragric Working Paper No. 41  
July 2007

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**Norwegian University of Life Sciences**

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Bergstrøm, Cassandra. Formation and Change of Property Regimes: The Case of Reindeer in Norway  
Noragric Working Paper No. 41 (July, 2007)

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ISSN: 0809-4934

Photo credits: Digital Vision

Cover design: Åslaug Borgan/UMB

Printed at: Rotator, Ås

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## **1. INTRODUCTION**

This study forwards a social approach to property regimes; to sets of rules created to access, use, control and manage a resource, in this case reindeer in Norway. As such, it begins with people and their often differing and diverse beliefs, values and interests. Central among the actors involved in reindeer property regimes in Norway are the indigenous Sámi people. Another important actor is the Norwegian state. Examples of the types of claims they make include: a basic necessity – a source of food and warmth; a nuisance; a source of sport; a basis for claiming national sovereignty; a basis for maintaining a living language; a part of nature and a part of the cultural landscape.

Reindeer property regimes are also affected by actors, such as farmers, pursuing interests to other resources, in this case mainly to land. Overlapping interests in land and in reindeer have historically often come into conflict. Contestation and struggle affects property regimes. One result is that the sets of rules introduced with respect to access, use, control and management of reindeer are complex; they include not only diverse rights, but also diverse obligations. This is not only the obligations of others to respect the rights of an “owner”, but also obligations for the claimant to care for the animals, to compensate those negatively affected and finally to consider the interests of future generations. In addition to rights and obligations we also find constraints to both.

Different actors pursue their diverse beliefs, values and interests by aligning with others in different decision-making arenas. There have consequently come to be multiple, overlapping and changing institutions where reindeer property regimes are but one of a number of rule regimes (and underlying interests). Rather than one clear hierarchical set of rules, there is a politics of property to determine who gets what and how much, and concerning how resources can and will be used. We will see that while the Sámi have joined and actively collaborate with international arenas championing indigenous rights, the Norwegian Ministry of Agriculture and the Ministry of Environment each create their own sets of rules to regulate and manage Norway’s reindeer. Farmers also align with their own interest groups to legitimize and justify their interests. The resultant politics underlies that property regimes are not isolated from other types of rule regimes: the market is but one central arena determining reindeer property regimes.

In order to capture this full story, I have chosen to present the story of the creation and re-creation of reindeer property regimes as I have found them to be: messy and complex – yet also providing order. At any particular point in time, these rule regimes have provided structure to the choices and interactions of the strategic agents involved.

The paper proceeds with a description of the methodological approach of my study. It is followed by a presentation of examples chosen to illustrate: multiple and diverse actors, including the state; the complexity of property regimes including both rights and obligations; the overlapping of rule regimes and the resultant politics of property. The story is told chronologically to also demonstrate the importance of history in the evolution of property regimes. This is followed by a discussion of the implications of the findings with respect to the general study of creation and change of property regimes.

## **2. METHODOLOGICAL APPROACH**

This is an historical case study. It addresses the questions: Why have there been changes in reindeer property regimes in Norway? And, how have these changes come about? Emphasis has been put on establishing categories and relationships, on understanding particular problems and on understanding these same problems and findings theoretically. Particular weight has been put on identifying processes (change over time) and taking account of context.

Noblit and Hare have written about the art of developing concepts and theory based upon the interpretation of existing studies (1988). New questions provide us with a means of viewing a particular issue from a number of different vantage points. They suggest that such a study moves through phases. Briefly, the researcher begins with a general idea that is of interest and works with several concepts that contribute to gaining an understanding of it. One gains insight to the problem through both the development of the case and by attempting to learn through the different ways that others have understood it or comparable cases. One then attempts to gain perspectives about the phenomenon by shifting the angle of approach – by searching out both negative cases and alternative theory and concepts that take the new cases into account. This is an iterative process where writing, reading and analyzing are intertwined. Returning to the approximate original angle, it is possible to see to what degree

and in what ways one has gained new insight, or has come to understand new aspects of well-known (or existing) facts and interpretations.

The original vantage point in the study was a traditional theoretical approach to common property resources (CPRs) (Oakerson 1992; Ostrom 1990). CPR theory provides both an additional category of claimants (groups of actors) and inclusion of management principles as compared with a classical economic approach to property. Reindeer were chosen as they are examples of valued, migratory animals that have historically and continue to be valued in a multitude of ways. Whilst reindeer are typical in this respect, they are also special in that both wild and tame reindeer are found in Norway. These are not distinct populations. They continue to be found in the same area and can interbreed. In addition, individual ownership of reindeer is largely limited to the indigenous Sámi people (at least in Norway). A major basis for Sámi present-day claims to reindeer is founded on their use of reindeer from “time immemorial”. Understanding the basis for current Sámi claims thus requires an historical study. My study, which this paper is based upon, spans a period of about 400 years – from the 1600’s to the year 2000 (Bergstrøm 2005).

In addition to developing the case, I have also been interested in discerning how property regimes have been defined by others. A central question in approaching the vast array of potential material has been: Just what does a case on reindeer as property entail? I have been particularly interested in seeing how others have limited the scope of their studies – with respect to reindeer, Sámi, and property<sup>1</sup>. Examples of characteristics used to make distinctions and introduce limits include those made to:

- Potential actors (Norway/Sweden, Ministry of Agriculture/Ministry of Environment, Sámi/Norwegian citizens; extensive/intensive herders, herders/farmers);
- Reindeer (wild/tame, Norwegian/Swedish, Sámi/Norwegian); and
- Definitions of property (market/social).

I was interested to find out the effects of such distinctions – as well as to ask the companion question: What is being overlooked? It was these questions that eventually led me to create different categories than those designated by early CPR theory. When something did not fit, I

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<sup>1</sup> Land has generally been used as the basis for the development of property concepts (Marchak 1987). In a number of recent studies, the question is raised if the nature of the thing being claimed introduces different considerations than those prioritized in studies based on land. Examples of studies raising these types of questions include Carpenter (sacred sites) 2005; Deardorff (art) 1995; Fowler (plant genetic diversity) 1994; Goldstein (nature) 1998; Mehta (water) 2003; Naughton & Treves (wildlife) 1999; Sax (cultural heritage) 1990; 1999.

was forced to question what it was that was problematic: Was it the category? Or the data? Was something missing – some event? Some actor(s)? Was something confirmed? Findings and variation between smaller case studies and events needed to be accounted for in the choice and presentation of new categories and concepts. It is, for example, very difficult to discuss the emergence of the Common Lapp Law without discussing a changing international context reflected in the state's changing attitude to the Sámi people. I was then forced to reflect upon the implications of this for my theoretical approach – and the type of information I would need with respect to the emergence of this law - and required to exam if the same question was pertinent to all laws concerning reindeer property regimes. One of the clearest limitations to CPR theory seemed to be the lack of appreciation of human agency. I therefore introduced a sociological approach that recognizes the interaction between human agency and institutions (Burns et al. 1985a; 1985b; 2000; Burns & Carson 2005; Burns & Dietz 1992; Carson 2005; Fowler 1994).

The study is inter-disciplinary by intent and design. My aim is to create a holistic approach to property regimes: one that captures the essence or core of the matter across traditional disciplinary divides (Midgley 2000). I collected works based on topic, problems and issues; on reindeer, pasture, the Sámi, Sámi-settler interaction; Sámi-state interaction and on both property theory and more general approaches to the interaction of actors and the institutions they act within and upon. I purposively chose material from different disciplinary fields – from biology, sociology, philosophy, anthropology, law and ecology. On the one hand, I was interested in the viewpoints these sources provided. On the other, I was attentive to events, outcomes and processes leading to discrepancies. Taking account of the interests of actors and identifying central events that have led to change have together laid the foundation for the construction of my study. A focus on change over time reveals processes where different variables may well impact differently at various points in time. It then provides a means to identify changes and underlying forces that have been neglected in other approaches to property regimes. This, in turn, provides a basis for exposing limitations in traditional property theory and for developing theoretical implications across traditional disciplinary lines.

The final study demonstrates the interaction between agency of actors and the structure provided by rule systems. Small cases are woven together to relate the development of rules



with practices. Relating the story in this way reveals different types of processes involved in changing property regimes.

### **3. REINDEER PROPERTY REGIMES IN NORWAY**

#### **3.1. MULTIPLE ACTORS: DIVERSE AND PLURALISTIC BELIEFS, VALUES AND INTERESTS BETWEEN SÁMI**

This story about Norway's reindeer property regimes begins in the far north in the late 1600's to early 1700's. Here we find different groups of Sámi living both inland and on the coast, as well as other Norwegians living mainly along the coast. By this time, many Sámi owned some tame reindeer, most also hunted wild reindeer. Hunting game, such as reindeer, was common throughout all of Norway at this time – the ancient Gulatings Law stating that “with weapon, shall each and everyone have the right to hunt game, irrespective of who it is that owns the outlying fields<sup>2</sup>.” Over time, in order to secure a successful hunt, Sámi developed a lifestyle that enabled their movement – they came to migrate at first to access game. Later some groups of Sámi began to migrate together with their reindeer. Reindeer, as one of a highly limited number of animals in the world, are amenable to domestication. As Sámi began to tame and manage reindeer, their ways of valuing them changed accordingly and came to include use of reindeer milk and use of reindeer's transport capacity to move through the arctic terrain.

Throughout the changes of this period, the structure of daily life for the Sámi presumably stayed much the same. Nonetheless, in the transition in their use of reindeer to include not only game but also “tame” animals, substantial changes to their interests to access, use and manage their reindeer emerged. These would have been initiated or accompanied by changed or altered cognitive ideas of the claims that could be made to these particular animals – a means to distinguish “mine” or “ours” from “yours”. Sámi groups that tamed reindeer differentiated between wild and tame animals with respect to how they were utilized. Rather than the meat, hides, blood, bones and sinews that continued to be collected from wild reindeer, the stream of benefits of tame animals prioritized the benefits of a living resource: of a hunting decoy, of transport, milk and/or progeny. These differing values and interests in

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<sup>2</sup> The Gulatings Law was originally oral and was passed on through chosen individuals. It is a modern translation of §95.1 that is quoted here (Lier-Hansen 1994, author's translation).

how wild and tame reindeer could/should be used necessitated a change in the types of claims being made to them.

Rules among the Sámi, among those who jointly utilized both the animals and their habitat, would have emerged, been amended and altered. This provides both a means of recognition and an enhancement of the changes in the ways reindeer were coming to be valued. Claims to the potential benefits associated with the kept animals were no longer limited to those appropriated during and after slaughter. Whilst rules to accessing and distributing wild reindeer were retained, rules of access and use of tame reindeer shifted to recognize and include management skills of both men and women, on enhancing survival of animals, improving production and - at least to a limited degree - caring for and controlling the animals, creating a substantially different set of demands for the emerging claimants than existed for hunters. In addition, given that reindeer can provide for basic needs of people as they provide a source of food, constraints on the extent of the rights that could be claimed were imposed by the society. Initially meat was shared. Later, rules were introduced allowing for the slaying of another's animals under specific conditions. Even today recognition of constraints on exclusive claims to reindeer is practiced as it is generally agreed that a reindeer can be slain and eaten by someone in dire need.

This period is characterized by change, at least with respect to reindeer property regimes. One such change is that the international market in fur increased (Hansen 1982; Odner 1992; Vorren 1974/75). Another is that wars in Finland meant that many refugees fled to the northern areas of Norway/Denmark and Sweden (Bjarnar 1989; Hansen 1985a; Aarseth 1982). Inter-Nordic wars also created a surplus of weapons and a need for the governments to, among other things, feed their soldiers (Göthe 1929; Kvist 1989). One means of doing so was to change the means of taxing the Sámi. Where previously taxes had been collected in surplus products, the government changed its policy demanding that taxes be paid in dried fish and live reindeer. This was in direct competition with Sámi needs to feed themselves.

In this turbulent time, some Sámi settled. Many Sámi faced destitution. A few were able to capitalize on the changes. Management of owned animals provided the means for some to accumulate and transport wealth, while the increased value of reindeer hides from the increased fur trade meant that it was rewarding to do so. These herders, who became interested in greatly increasing the size of their herds, came to be known as Mountain Sámi.

As their ways of valuing reindeer changed, wild reindeer came to be defined as problematic for them for a number of reasons. First and foremost the existence of wild animals meant that many others believed that they retained the right to hunt reindeer generally. Some may have believed that all living resources were fair game, accessible and usable by all. Some people may have hunted the tame animals because they were an easier target<sup>3</sup>. Still others may have hunted the tame animals by mistake. In addition, large herds of wild reindeer are attracted to smaller herds of tame reindeer making it virtually impossible to catch the tame reindeer again. For any or all of these reasons, wild reindeer were considered to be a menace by the Mountain Sámi who had intentions to increase the numbers of animals they owned. Ridding an area of wild reindeer also enabled these herders to base and justify their claims to reindeer in part on location. Mountain Sámi thus began to actively eliminate the wild reindeer eventually eradicating them from the far north (Lundmark 1989). They also greatly increased the size and location of pastoral areas (Vorren 1973).

Farther to south, in competition with settlers who were supported by the state, Forest Sámi further developed traditional strategies of accessing and using multiple natural resources, including wild reindeer. Because, as described above, small herds are subsumed in larger herds, extensive herding was incompatible with Forest Sámi ownership of small herds of tame animals kept for milk and transport. The large owned herds of reindeer also threatened the often settled, marine-based Coastal Sámi as the Mountain Sámi allowed their herds to trample lichen in the area and eat the grasses the Coastal Sámi needed for their own animals (Solem 1933; Paine 1957).

In capturing reindeer – both literally and figuratively – the Mountain Sámi secured many of the benefits in the northern areas of Norway. This was at a considerable cost to both other Sámi, who had previously shared rights to wild reindeer, and to other settlers, who through a changing situation had gained access to this good – and both of whom were now excluded to varying degrees. However, those who bore the costs of the Mountain Sámi claims did not simply acquiesce. Groups of actors joined together and continued to make claims on reindeer, legitimizing their claims in other decision-making arenas and making use of other rule systems.

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<sup>3</sup> For a case study in Alaska, see Beach 1985; for Russia, see Syroechkovskii 1995).

### **3.2. MULTIPLE RULE REGIMES: THE ROLE OF THE STATE**

Different groups of Sámi had different, conflicting and incompatible ideas of how reindeer were defined – and consequently how they should be used and managed. But it was not only cooperation, competition and conflict between groups of Sámi that was to define the interrelationships between them. The state, to which we now turn, became an increasingly powerful actor in defining, introducing and enforcing rules and laws. In so doing, the state also contributed to legitimizing the changing balance between the groups of Sámi.

By the early 1700's there was a growing interest among nation states to define mutually exclusive sovereign states (Ruggie 1993). Nordkalotten, the northernmost areas of Norway, Sweden and the Kola Peninsula were, in fact, the last area in Europe still held as a common district. Following the inter-Nordic wars, Denmark/Norway and Sweden agreed to define a border between them. Each had their own interest in doing so. The Swedes were mainly interested in securing an ice-free harbour and in ensuring their continued trade with the Sámi. The Norwegians were primarily interested in protecting their coastal interests and associated trading centers farther inland (Bjarnar 1989). Both recognized that in the inland areas the Sámi were almost exclusive users. As had been the case for hundreds of years, access to the Sámi continued to provide the states with a means of accessing the natural resources of the area. In addition, proven jurisdiction over the Sámi now also came to imply a basis for territorial control (Hansen 1985b; Aarseth 1989).

Although in the south the states could use private property and geographic boundaries in establishing the national border, this was far more difficult in the far north where established farms were increasingly spread and scarce. Special commissions were established in both Sweden and Norway/Denmark (Bergsland 1995). These state actors turned to records of historical agreements and jurisdiction through such things as tax records claims to (land) ownership and historical possession; each using the arguments best suited to their national interests. Norway argued that nomadic herding, which was prevalent in the area as it had been from time immemorial, was essential for the very existence of the Sámi nation (Innstilling 1904, appendix nr. 7 cited in Bjarnar 1989). Recognizing the Sámi nomadic movement between summer and winter pastures also served the Swedish interest. Once agreed to for a particular area, the same reasoning came to be applied to other areas in both the north and the south (Jebens 1989).

The agreement between the nation states of Denmark/Norway and Sweden came as an addition to the Strömstad Treaty of 1751. It is commonly referred to as the Lapp Codicil<sup>4</sup>. It is essentially an agreement allowing for the free movement of the Sámi over the newly established national border. In accordance with the period of Enlightenment and its ideals of rights and equality, it was common among colonialists of this period to recognize common law and practices among the existing groups in areas they overtook (Tully 1994). This was largely true of the Lapp Codicil. The Codicil thus legitimized, through judicial recognition, three different property systems – two state systems and the Sámi traditional system. This introduced legal pluralism and with it periodically conflicting rule systems. While nation states through the Lapp Codicil acknowledged and legitimized the existence of differing systems, this would not always be the case. Nonetheless, the foundation was laid and has, in fact, never been rescinded<sup>5</sup>.

Despite the motives behind the agreement being driven by national interests, where the Sámi were not even a negotiating part, the Lapp Codicil in fact recognizes a people whose way of life precluded them from fitting into the defined territorial areas of the newly defined nation states. Precisely because the livelihoods of some Sámi were based on migrating animals, they received special recognition in this international agreement. Once the herders were recognized, the agreement itself became broader, seemingly equating reindeer herding with being Sámi – despite many Sámi never having herded and others by this time having chosen other livelihoods. The agreement, for example, stipulates the neutrality of the Sámi “nation” should there be war. As such, it was recognition of both the rights of the Sámi as an independent people and of their collective right to reindeer herd as a profession. The right to herd was legitimized as the commonly held right of the Sámi people – a right held in common by the Sámi to this day<sup>6</sup>. The national recognition of interests in reindeer had therefore changed. Reindeer were now more than an object of trade; reindeer were recognized as being the basis of a particular livelihood.

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<sup>4</sup> The actual name is “Første Codicill og Tillæg til Grendes-Tractaten imellom Kongerigerne Norge og Sverrig Lapperne betreffende”. It was concluded on 17-18 October 1751.

<sup>5</sup> As the Lapp Codicil has never formally been replaced or repealed, there is growing acceptance that it judicially remains an active document (NOU 1984: chapter 6). What remains unresolved is whether it recognizes traditional rights or if it is the agreement itself that creates these rights (NOU 1997:§6.2).

<sup>6</sup> The Sámi people have the right to herd within the reindeer herding districts. All Norwegians have the right to herd south of these districts.

The international agreement recognized Sámi rights to herd on the principle of ancient usage. This recognition served the state's interests in claiming areas of land in their pursuit of national sovereignty. At the date of signing, 1751, extensive herding was a fact, but hardly a tradition. Nonetheless, at the time of the agreement, recognition of extensive herding routes best served the Danish/Norwegian state's interests in establishing defined nation states. Recognizing these newly established extensive routes as traditional benefited both the state and the increasingly powerful Mountain Sámi – but certainly not the Forests and Coastal Sámi whose claims went unrecognized.

The period following this is one characterized by an increasingly strong and powerful state. In 1852, following a dispute over fishing rights, Russia closed the border to the migrating Sámi. Sámi herders demanded government intervention (Bull et al. 2001; Sillanpää 1994). The state came to define the reindeer situation as a crisis. Already in 1854 the state introduced a special law for the hardest hit, northern-most reindeer district, Finnmark<sup>7</sup>. The new Reindeer Law for Finnmark introduced a domination relationship between Saami herders and the state. The demands of the Sámi recognized, and hence legitimized, the authority of the national government to control the property relationship between Sámi and their reindeer. Their demand introduced a change in the power relationship between these actors. The power inherent in the changed relationship became increasingly visible and tangible over time.

### **3.3. COMPLEX PROPERTY REGIMES – RIGHTS, OBLIGATIONS AND CONSTRAINTS TO BOTH**

Whereas the Reindeer Law for Finnmark was invoked to protect reindeer herding and ensure its continued existence, the Common Lapp Law of 1883<sup>8</sup> was initiated to reconcile conflicting interests farther south between farmers and herders, as well as between herders on both sides of the national border between Norway and Sweden. Land in the far north was no longer valued solely as reindeer pasture. At least as important as the question of access to herd reindeer, was the increasing damage to meadow, hay and forests in the government-encouraged settlements in the Troms area in Norway (Wiklund 1923). In addition, emerging with the period of National Romanticism was an increasing feeling of irritation among Norwegians of “being used” by Sweden (Groth 1996). Swedish herders entering Norway

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<sup>7</sup> 7 September 1854

<sup>8</sup> *Lov angaaende Lapperne I de forenede Kongeriger Norge og Sverige* 2 June 1883

were a part of the more general conflict escalating between farmers and herders. Nonetheless, generally the involved stakeholders recognized that they were facing a changed context where many of the old rules no longer applied. Although interests, values and beliefs differed substantially between the involved parties, they shared an interest in clarifying the new situation – in creating order (Sillanpää 1994).

The Common Lapp Law contains three main principles that continue to be found in current reindeer herding law:

**District divisions** – establishing where there is a right to herd. This was to be based on traditional Sámi herding areas. (§6)

**Reporting requirements** – each reindeer herder who moved into a new district (also seasonally) was required to inform the sheriff of who they were with, where they were located, the number of reindeer they had with them and who were the owners of these animals.

**Common responsibility** - requiring the compensation by all Sámi in an area if a particular owner could not be identified with respect to damages caused to crops (§9) (Berg 1994 a, b).

The principle of common responsibility is unusual. It builds on the idea of guilt by association. Particular reindeer herders in a district have to prove their innocence in order to not be included in particular cases of damage retribution. This goes against the commonly accepted principle in Norwegian law that builds upon presumed innocence until proven guilty. Nissen identifies many of the particular challenges of enforcing the responsibility for ownership of migratory animals (1914). First, given the nature of the animals, Sámi find it rewarding to herd their animals jointly. This continues to mean that identifying the owner of single animals is not synonymous with identifying the owner(s) of the herd. In addition, although earmarks served as signs of ownership among owners, they were inaccessible for outsiders (non-herders) in identifying responsibility for damages. Nissen intimates that because the signs of ownership were not recognizable to landowners, an alternative was needed to the method commonly accepted and recognized as fundamental in the Norwegian law system (ibid.). As a way of instituting farmer's interests, common responsibility and fines were introduced for reindeer owners not controlling their herds – as well as for all of the other herders registered as having reindeer in the same area (unless they could prove their innocence). The introduction of common guilt creates a multiple rule system for the Sámi: in

this case introducing a law that contradicts a basic underlying principle of the Norwegian legal system, namely the idea that one is innocent until proven guilty.

The changes brought about by the process and enactment of the Reindeer Law for Finnmark and the Common Lapp Law run deeper than analysis of the laws alone can provide. Decision-making was moved away from the proximity of both the resource and the actors in question. The laws were negotiated and passed in the national capital, in a new negotiating arena for the Sámi, far removed from them in both a geographical sense and a political one – Oslo, the capitol, was considered “foreign”. The Sámi themselves could not participate directly and were instead represented by government officials with responsibility for reindeer herding. Representation, geographic placement, skills of the actors and the social rule systems all constrained the Sámi people’s ability to negotiate. The language and the rules of conduct for discussions - of what could be said, by whom and how – were all unfamiliar. As a result, the Sámi were in a weak acting position, which affected not only these particular laws, but also their capability and opportunity to influence future decisions (Dyck 1985). The foundation was shifted with respect to determining who had the authority to stipulate overarching questions of management, including where reindeer herding could take place, how many animals could be owned, and how they should be marked. At first this was uncontroversial and built largely upon Sámi traditions. But, as Fowler points out in writing about the historical global development of claims to plant genetic resources, “certain choices, it seems, involve a forfeiture of control, at least by certain actors. Such choices restructure the context and change power relationships” (1994:273). Once shifted, the power of controlling the negotiating arena created an opportunity for the state’s priorities to dominate over Sámi interests – the state at this time being primarily comprised of landed politicians and bureaucrats<sup>9</sup>.

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<sup>9</sup> The Norwegian Constitution was consolidated in 1814 after the transfer of Norway from Denmark to Sweden. Although the constitution proclaims equality, there was a clear division between large landowners and civil servants on the one hand, and cotters, freeholders and laborers on the other. This duality was visible in, among other things, the right to vote and hold office. Only “property owners” who paid taxes were considered “active” or “real citizens”. Therefore, it was these people who were conferred the right to vote and hold office in parliamentary elections. They comprised between one third and one half of all adult men over the age of twenty-five. Due to allodial right of inheritance, this structure was largely maintained from one generation to the next (Aubert 1989). It was also the case that most Sámi were excluded because the State had claimed the rights to all land in Finnmark in the late 1700’s. This was recognized as problematic and amended in 1821 (Grunnloven §50, Arnesen 1988).



In the transition from the late nineteenth to the twentieth century, interest continued to grow to establish Norway as an independent nation (Jokipii 1987). National border areas again became of particular interest in establishing what was to be Norwegian territory. It became official, albeit secret, national agricultural and forestry policy to limit “Swedish Sámi [reindeer herding] traffic and to colonize the pastoral areas they had used. Not only were Sámi rights ignored, the state was actively involved in supporting agriculture through the building of roads, laying of telephone lines, the provision of cheap agricultural loans and granting permission to build summer mountain farms (*sæter*) in traditional herding areas” (Beach et al. 1992. See also Marainen 1984). The Norwegian state had interests in the land of the north being permanently settled as this served to further legitimize state sovereignty claims to these areas.

During this same period Social Darwinism, which had been visible in the Common Lapp Law, became more explicit (Minde 1986; 1989). Doctrines of race and racial hygiene were regarded as scientific disciplines, where the Sámi were regarded as an inferior race. The firm belief that higher social orders would spread, and replace the perceived lower social orders, was used to justify the conceptual hierarchy of development in which populations moved from hunting and fishing to pastoralism and finally to the ultimate “civilized” activities of farming and trade. Herding came to be defined by the state – and by farmers – as an “impediment to progress”. Given the belief that it was both natural and desirable that reindeer herding would eventually disappear and be overtaken by agriculture, and the fact that Sámi were still not politically represented, the Sámi suffered major losses in the newly proposed law<sup>10</sup> and its consequent regulations. The need to compensate reindeer herders for lost pasture secured in an earlier law was omitted completely. Rather than recognize and promote reindeer herding as an economically viable activity, the new law restricted expansion of herding at a time when reindeer herding was in fact rapidly expanding (Dunfjeld 1979). In this sense, the law was anti-reindeer herding, rather than pro-development. The potential uses of land were defined and constrained by powerful farmers and backed by the landed bureaucracy. Rather than promoting an economic system that generally promoted efficiency through privatization of rights and obligations, the state attempted to craft a property regimes that promoted its delegates’ particular beliefs, values and interests. The imposed idea of modernization, rather than revealing an inevitable march towards progress and development,

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<sup>10</sup> The Additional Lapp Law of 1897, *Tllegslappeloven av 1897*

instead exemplifies change that is evaluated and defined differently by the involved stakeholders.

A period of active assimilation of the Sámi people as a whole followed. Nonetheless, reindeer herding Sámi remained visible. As the reindeer profession within the districts remained distinctly Sámi, it was these herding families and groups that continued to define herding, including its many social and cultural practices. These Sámi were consequently able to maintain many of their traditions and ties to the land. Over time, herding remained comparatively stable, continuing to define not only an economic relationship between the Sámi and their animals, but also a cultural identity: social rules, language and successful use of the natural resources of the tundra which herders other Sámi and Norwegians continue to recognize (rightly or wrongly) as defining characteristics of the Sámi people. The strategy of owning must then be recognized as an evolutionarily stable strategy – a strategy able to persist in the particular physical and social environment of the north.

### **3.4. OVERLAPPING RULE REGIMES – THE CASE OF TROLLHEIMEN**

After many years of negotiation, the state passed the national Reindeer Herding Law in 1933<sup>11</sup>. The new national law continued to build upon the same three main principles (district division, reporting requirements and common responsibility) established under the Common Lapp Law. These remain integral to current reindeer herding law. The law was designed in accordance with the bureaucratic needs of the government. It implicitly established and recognized two parallel institutions: the administratively designated foreman and vice foreman, and the traditional leader<sup>12</sup>. These two institutions were developed upon different normative and cognitive constructions. Although the individuals could be the same, as often as not they were different. Questions of legitimacy and the over-riding authority of government and government regulations were often set against customary interpretations of rules (Sara 1993). Nonetheless, within a bureaucratic system recognition is extremely important. It is recognition that the “thing” in question holds a sufficient value for the state to protect it (Brewer & Staves 1996). According to Vorren, the new national law guaranteed the continued existence of Sámi herding; it provided an explicit recognition that reindeer herding

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<sup>11</sup> Reindriftsloven av 1933

<sup>12</sup> In Sámi – the “sii’ da ised”

was no longer considered by the state to be in a transitory stage of development (1968). It was also this law that legally established that, within defined district borders, reindeer herding was an exclusive right of the Sámi people – defined as extending to those Sámi who had at least one grandparent practicing the herding profession (Berg 1998).

The occupation of Norway during World War II by the Germans again introduced a new context. The Germans demanded that the Sámi slaughter their animals as a source of meat for the German soldiers. Capitalizing on the ability of tame reindeer to survive without their respective shepherds, the Sámi responded by allowing their herds to roam untended while the Sámi themselves also took refuge in the mountains<sup>13</sup>. During the war, the rate of poaching of these unshepherded animals by both the Germans and local people was high. At the end of this time, poaching remained so high that in many districts, despite slaying fewer animals than normal, Sámi were unable to increase the size of their herds. In addition, many of the animals had become so wild that they could not be captured.

It may have been the behaviour of the reindeer and the perceived availability of, and access to, them that sparked local interest in hunting. It may be that people had become accustomed to hunting (poaching) during the war. Equally important was certainly the increasing interest in, and value of, game hunting within Norway. Severinsen relates that between 1959-1970 local Game officials and the Oppdal Commons Board (an established local landowner group) applied to the government for permission to hunt wild reindeer in Trollheimen, an area bordering up to the reindeer districts where some of the released Sámi reindeer had migrated (1980). Their applications were rejected. During the same period, on two separate occasions, reindeer herders were accused of unlawfully hunting “wild” reindeer because they had shot unmarked animals. Neither of the two Sámi involved were found guilty as the courts found both to be acting in good faith – in the belief they were still carrying out the eradication of “tame” animals. In the first case, in the local court of Nordmøre, 31 March 1964, the ruling also established that feral, unmarked reindeer in Trollheimen were now to be considered as “wild reindeer”.

As previously mentioned, Mountain Sámi decimated wild reindeer herds as a means of clarifying and claiming their exclusive rights to reindeer in the far north. In Trollheimen,

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<sup>13</sup> Another strategy used was that Sámi attempted to evacuate their animals to neutral Sweden (Bull et al. 2001: 247).

landowners were interested in securing the opposite right: the right to exclude tame reindeer herding altogether, to the advantage of wild reindeer hunting. Given the court's decision that reindeer were to be considered "wild", landowners again requested hunting permits. In a response of 21 July 1970, the request was again rejected with the reasoning that not all owners in the area were in agreement about wild reindeer hunting, and that the relationship to tame reindeer herding had not been clarified (Finset 1998; Severinsen 1980). But the Directorate for Hunting, Game and Freshwater Fishing also followed this up with a letter to the Ministry of Agriculture where they gave permission for wild reindeer hunting from the hunting season of 1972 in specified municipalities in Trollheimen. Here they stipulated that it was the hunter's responsibility should they fell a tame reindeer.

While the Ministry of Agriculture designated unmarked reindeer in Trollheimen as wild, the Hunting Law interpretation, in the jurisdiction of the Ministry of the Environment was that the animals were not wild. This was particularly unclear given the decision by the Ministry of Environment with respect to Hardangervidda farther to the south. Here there had also been reindeer herding, but it was abandoned as being untenable both because herders were unable to secure stable access to pastures and because of the relatively large herds of wild reindeer. The Sámi and other herders left, often without all of their reindeer (Enerstvedt 1993; Reimers 1972). These animals had reinhabited the south, becoming feral, and interbred with wild reindeer (Lier-Hansen 1994). Through a political decision that created national parks in the south, including the important wild reindeer habitat of Hardangervidda in 1978<sup>14</sup>, all of these animals were declared to be wild. Politically, no distinction was made by the Ministry of Environment between the few remaining distinctly "wild" reindeer populations in Norway, and all of the other unmarked reindeer - except in Trollheimen.

On 21 October 1981, the Superior Court ruled that Sámi had no historical claims to herd in the Trollheimen area. This decision was thus legally binding for all parties – those involved in the many law suits, as well as the Parliament. However, given a balance of powers, the government and the Parliament can overturn such decisions through the creation of new law. This is what happened in 1984 (Finset 1998; Arnesen 1988). On 21 December 1984 the Ministry of Agriculture proclaimed a law exclusive to the particular case of Trollheimen. In

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<sup>14</sup> Hardangervidda National Park includes both state and privately owned land. It was established with the understanding that agricultural interests, particularly in the border areas of the park, will retain a high level of access to the resources of the park. These rights include, for example, hunting rights to reindeer on the privately owned properties (Anonymous 1979/1984:H).

this new law, Sámi in the Trollheimen area are granted the right to herd "... both because it is a good use of the natural resources in the area ... and because the possible termination of Sámi reindeer herding in Trollheimen could mean a weakening of the basis for the Southern Sámi culture, which, in today's society, is already in a precarious position (cited in Finset 1998: 33, author's translation).

The Parliamentary decision demonstrated a radical change from earlier decisions that tolerated and later limited the extent of herding. Through expropriation, this decision actually increased the pastoral area for Sámi reindeer herding. The decision reflects changes in negotiating arenas for the Sámi, as well as in negotiating configurations of actors. Earlier there was a shift from the Sámi making their own rules and regulations, to moving to a national arena. By the 1980's, the Sámi were actively involved in international negotiating arenas. Similarly the State occupied a new position. A change had by this time been introduced in to the Constitution to support the continued existence of the Sámi culture<sup>15</sup>. Although the new paragraph gives no judicial basis for force (Smith 1990), the new law introduces both a political and moral dimension for discriminating in favour of the Sámi over other Norwegians, when the situation is judged to be influencing Sámi culture – as it was in this case.

The Trollheimen case illustrates the struggle of different actors, including different governmental actors, to exert their power to define how reindeer can be used and managed, and by whom, in accordance with their own cognitive idea of what reindeer are. These various definitions included; the Ministry of Agriculture which claimed that the unmarked reindeer in a particular area were not tame and therefore wild; the courts which ruled that the animals were feral – and seemingly therefore neither tame nor wild; the Ministry of the Environment which stated that the reindeer were not wild (even though other reindeer farther south in the Hardangervidda National Park, with a similar background, genetic make-up and behaviour had been declared and were managed as wild by them); a local county council

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<sup>15</sup> In 1988, the following addition (section 110A) was made to the constitution, "it is the duty of the state authorities to ensure that conditions exist within which the Sámi people can secure and develop their own language, culture and community life" (Ministry of Justice 1990). This was soon followed by the national signing of the ILO Convention of 1989 "Concerning Indigenous and Tribal People in Independent Countries". Together represent a major shift in Norwegian policy with respect to the Sámi. The Convention recognizes the rights of indigenous peoples, putting among other things, particular emphasis on rights to traditional use of natural resources of nomadic groups.

which demanded that the Sámi should have the right to herd in the area; local land owners who repeatedly demanded, also through the courts, the right to hunt; and the local Sámi families who claimed their ancestral right to herd. The final outcome was largely influenced by a changing international climate with respect to indigenous rights. It came as a contradiction to the National Herding Law of 1933 – enacted prior to World War II and consequently prior to the changed post-war political climate in Norway. The actors involved in the Trollheimen case strategically used the contradictions among the state actors in promoting their own beliefs, values and interests.

### **3.5. THE POLITICS OF PROPERTY**

Following the occupation of Norway during World War II, the state was faced with a formidable reconstruction project. Internationally, the state became actively involved in efforts to secure human rights through international agreements. In this changed context, Sámi – including Sámi herders – have come to define themselves, and be recognized by others, as an indigenous people. Both the state and the Sámi have thus become actively involved in international decision-making arenas. Perspectives, beliefs and interests in reindeer herding vary substantively: they include, for example, recognition that reindeer herding provides the basis for both a primary industry and a living culture. While the two ideas (and consequent uses of reindeer) can be mutually enhancing, there is no inherent reason that this is necessarily the case. In practice, multiple and overlapping reindeer property regimes are found; again the result of property politics. The outcomes of struggles over reindeer property regimes are consequently found to be contested and negotiated.

On their own, the Sámi remain few (in Norway, less than 1% of the total population), with highly diverse interests. For the most part, they as typical of indigenous groups, continue to live in peripheral areas. It was in the 1960's that the Sámi as a people began to actively fight for their rights as a defined ethnic group, to define for themselves what it is to "be Sámi". Sámi interests grew together with an increasing international awareness of indigenous/aboriginal rights. The movement rekindled an interest among many in the importance and value of self-defining a Sámi identity, embracing a Sámi heritage and claiming recognition of Sámi rights to natural resources. There has come to be an increasing pride in both the traditions and cultures of the Sámi people. This has also found support among Norwegians generally, including support from politicians (Stordahl 1993).

The Sámi were able to considerably strengthen their voice by joining and learning from the emerging international organizations. They enlarged their networks to include not only Sámi across national borders, but also national and international non-governmental organizations such as the pan-Sámi organization of the Sámi Council and the World Council of Indigenous People (WCIP) (Dyck 1985; Paine 1985). Although debated, the WCIP came to define indigenous people rather broadly – specifically to facilitate the inclusion of the Sámi (Minde 2003). Far from the isolated voices representing individual Sámi interests, or even the united but relatively weak voice of a Sámi interests group, the Sámi became part of the 250 million aboriginal people demanding recognition of their rights in international arenas and courts (Beach et al. 1992; Tully 1994).

In this new context, the state came to define reindeer herding as a primary industry, drawing comparisons (rather than contradictions) between it and agriculture and fishing. As with these other primary sectors, policy aims were directed to a large extent at increasing production efficiency. This was identified as a means of securing the welfare of a delineated group of herders that came to be designated and recognized by the state as practicing the profession of reindeer herding.

At the same time, also due to the changed political context, an increasingly strong human rights movement emerged carried on tides of strong beliefs in democracy and welfare for all. The state became internationally engaged in recognizing and supporting human rights eventually signing international conventions in support of them. Reports within Norway revealed that reindeer herding Sámi had life expectancies and lived in conditions that were comparable to people living in developing countries (Haraldson 1962; reported in Lofotposten 1964, cited in Bjørklund 2000). Among some state actors interests to address these conditions grew together with interests to contribute to improving conditions to maintain a living Sámi culture. Reindeer herding Sámi again came into focus. They were still in place, still speaking the Sámi language, still practicing many Sámi traditions. Reindeer herding Sámi came by some to be equated with being Sámi. Again as seen with the Lapp Codicil, it was the distinctiveness of the Sámi, particularly the reindeer herding Sámi and their continued use of reindeer over time, which provided part of the basis for them to justify their claim to particular goods. It is in this contexts that defining who can own, use and manage reindeer, and in what ways – and who can participate in these discussions – has again been raised.

Defining reindeer among these claimants reveals ideals and ideas to reindeer where their value is not solely revealed by market price. Among these actors, the value of reindeer is defined in part by cultural and social interests in the ways in which reindeer connect a people and their culture. Cultural values of reindeer and herding thus also came to be incorporated into new policies for the Sámi. Rules and regulations introduced to support Sámi culture and traditions can complement the interests of reindeer herders but there is no reason that they inherently do so. In practice, actors including groups of Sámi, supporting the differing claims of production efficiency and cultural interests have often been split. As a result, rules developed to enhance each have at times been contradictory, not the least because the different rule systems are designed to and are recognized as serving differing interests, values and purposes among the involved actors.

#### **4. DISCUSSION AND CONCLUSION**

It is difficult to divide the study of property regimes into neat segments – although many attempt to do so. In addition to a changing number and constellation of actors, there are on-going processes that affect property regimes. Agents refer to, use and create multiple relevant domains. When these things converge - or when two or more groups are trying to make claims on the same or associated resources – they, and thus we who choose to study these things, are confronted with a complex reality. Negotiations result in compromises and gaps. And, not the least, they are likely to affect some actors more negatively than others. Therefore, studies attempting to understand conflicting interests cannot be presented as a simple story. A few of the central elements identified in this study are listed below. Relating history allows for the possibility to reveal changing processes and practices over time. In addition, my study has identified a number of additional contextual factors, which are outside of a general property approach – but nonetheless affect reindeer property regimes. These include properties of goods, technology, exogenous events and unintended consequences (Bergstrøm 2005).



#### **4.1. MULTIPLE ACTORS: PLURALISTIC AND DIVERSE BELIEFS, VALUES AND INTERESTS**

This study uses a social approach to property regimes that at the outset recognizes actors and their differing ways of valuing reindeer. Its point of departure is actors and their relationships<sup>16</sup>. Actors are multiple and are recognized as having pluralistic values; communities are recognized as being made up of agents with multiple and diverse interests. For instance, there are important differences among Forest, Mountain and Coastal Sámi. There are also differences between Sámi herders and Norwegian farmers, differences between the Ministries of Agriculture and Environment, and differences in the interests of the Norwegian and Swedish states. In addition to differences between these parties, the roles and interests of these agents have changed over time. Actors' power and capability affect their possibilities to, among other things, establish and reform reindeer rule regimes. As a consequence, rather than one property regime being created to lay claims on reindeer and the associated resource of land, actors' willingness and ability to pursue their interests often results in multiple and complex property regimes being created – and re-created.

In considering the diverse ways of valuing, some of these ways of valuing are private and some are social. Social interests including such things as interests in culture and safety are recognized as introducing obligations and constraints with respect to reindeer property regimes. Agents are found to pursue their differing values, beliefs and interests in different local, national and international arenas. As a consequence, different actors may apply rules from different decision-making arenas in the same place and with respect to the same animals. When this happens, it is found that property regimes may contradict and conflict with one another: this sets the stage for the politics of property.

#### **4.2. COMPLEX PROPERTY REGIMES – RIGHTS, OBLIGATIONS AND CONSTRAINTS TO BOTH**

Property regimes made with respect to reindeer – or concerning associated resources but affecting reindeer nonetheless – are complex; they include not only rights, but also obligations and constraints. In demanding that others must respect the rights of claimants, a moral dimension of responsibility not to harm these others through the use of the good arises (Waldron 1999). This manifests itself in demands that the Sámi control their reindeer to

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<sup>16</sup> This is a central difference from traditional CPR theory that takes its point of departure from the resource.

ensure that the animals not damage farmers' crops. Claims made with respect to obligations are central in the repeated conflicts between farmers and herders as with the principle of common responsibility introduced under the Common Lapp Law and of 1883 and still in effect today.

In writings concerning property regimes, there is often an assumption that a single, relatively simple rule system applies to any one resource and that value can be measured in economic terms alone. In my study, social interests – in such things as history, culture, moral/ethics, development, and the avoidance of risk – are also appreciated as values motivating actors' interests in forming and reforming rules and rule systems applying to reindeer. Social claims often concern the right to be included rather than excluded. Reindeer rule regimes include both private and social interests and are, as a result, complex spheres. Because some people value animals as sentient creatures and others have interests in avoiding risk or valuing stewardship of a natural resource, obligations and constraints also play a part.

Actors differ with respect to their beliefs, values and interests concerning:

- Access
- Control and management
  - How should the resource be used?
  - How should goods be cared for?
  - What type of risks may animals, claimants and the community be subjected to?
- Distribution of value as well as costs

### **4.3. OVERLAPPING RULE REGIMES**

The study demonstrates the state to be an agent heavily involved in the formation and reformation of reindeer property regimes and of other rules regimes affecting the fate and life chances of the Sámi people. Whilst the state has been involved in the creation of national laws concerning reindeer, its involvement has also been much broader. The state is a central actor in the area even when the policies it is pursuing are related to other concerns and interests. It has also been shown that the state is neither a single actor nor a neutral one. Diverse Ministries and a multiplicity of governmental agencies pursue differing agendas and

policies. Rather than a coordinated whole, I have found that at times aims, procedures and policies contradict one another. This is explicit in the Trollheimen case (1957-1981) where different Ministries defined the same reindeer as “wild” or “tame” in accordance with their respective criteria and policies. Later (1984), members of parliament chose to overturn the decisions of the Supreme Court, favoring instead positive discrimination on behalf of the Sámi herders living in the Trollheimen area.

The role of the state is important both because it is central in political processes and in forming and reforming property and other rule regimes. The state is shown to intervene in terms of crisis management, conflict resolution and the pursuit of other agendas including sovereignty, development and solidarity – issues not directly related to property regimes. The state is also shown to act in ways that indirectly affect reindeer property regimes. The Lapp Codicil of 1751 is a good example. The agreement recognizes the ancient use of areas of the far north by Sámi reindeer herders. Both Norway and Sweden in exercising their sovereign interests found it advantageous to recognize Sámi migrations; doing so strengthened the respective states’ claim to territorial control. Another example has been the state’s interests in solidarity – introduced through projects of homogenization. Active interventions were made in attempts to better the material conditions and living standard of the Sámi. The state has also pursued other agendas that have impacted reindeer herding including infrastructural development of the areas. Over time, the cumulative and long-term effects of these projects have resulted in significant reductions and fragmentation of pastoral areas. State interventions have also affected perspectives, values and interests with respect to reindeer as well as associated resources. They have affected herders’ power and positions, and also affected the Sámi position and their power to act more generally.

#### **4.4. POLITICS OF PROPERTY – CONTENTION, STRUGGLE AND NEGOTIATION**

As a consequence of property regimes being partial, messy, piecemeal, negotiated and historical over time, my study unearths not only specifications and elaborations of rule systems but also agents with pluralistic values. It highlights differing claims and new uses of reindeer. It also shows that some people have interests in maintaining rules, others in further specifying them, and others in changing them completely. To legitimize and strengthen claims, actors strategically choose decision-making arenas. This is well illustrated through

the Saami choice to define themselves as an indigenous people. Doing so increased the power of the Saami. It increased their legitimacy of claims to the resources of the far north, and to a way of life dependent upon those same resources.

Again we see that the resolutions of such struggles result in complex property regimes. In the case of the reindeer story, some outcomes have been dictated in the form of a state resolution. They have tended to reflect the relative strength of different branches of government or actors within the administration. Other outcomes have been imposed by powerful groups upon marginal ones. Nonetheless, marginalized groups resist this and struggle for the recognition of rights to use and manage reindeer and pasture, and are strengthened by both their distance from the dominant group and their proximity to the resources in question. Outcomes are often left open – a product of both the continuity and contradiction of multiple rule systems. During periods of contestation, new actors are enabled or constrained. They can choose, or be forced, to join the struggle to define and delineate property regimes to goods (and bads). In this politics of property, new actors enter the negotiations. They introduce new issues and possibilities, new ways of defining the resource itself and the associated resources. As such, they re-frame the very question of what is in dispute: they set about forming and re-forming new property regimes.

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