THE LEGAL STATUS OF THE LAPPS IN LAND AND WATER LAW

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I. THE LAPPS—COUNTRY AND PEOPLE

Probably the Lapps settled in their present dwellings in the northern parts of Norway, Sweden and Finland and on the Kola Peninsula, which is part of the Soviet Union, at any rate beginning with the early Bronze Age (1600 B.C. – A.D. 400). At a conservative estimate the Lappish population in these four states numbers at present approximately 36 000. Some 3 800 Lapps reside in Finnish territory, viz. 400 in the municipality of Enontekiö, 250 in the municipality of Sodankylä, 2 100 in the municipality of Inari and 1 050 in the municipality of Utsjoki which has the exclusive majority of Lappish inhabitants. The overall population figures of these municipalities are as follows: Enontekiö – 2 350, Inari – 7 000 and Utsjoki – 1 400.

The Lappish language is a Finno-Ugrian language, which nowadays is divided into three linguistic forms and these, in part, into several dialects. The common original source of the present dialects was Primitive Lappish. Analogously, the common original source of the Baltic languages is Primitive Finnish. Primitive Finnish and Primitive Lappish are, again, derived from a common ancestor, Early Primitive Finnish. A population speaking Early Primitive Finnish probably came from the direction of the Urals when the forest belt became permanent about 7000 B.C. It merged with a population that spread from the eastern parts of Central Europe to the eastern parts of Estonia, Latvia and Lithuania, to Finland, to eastern Karelia and to the northern parts of eastern Europe. The result of this merging was a population speaking the Finno-Ugrian parent language with racial characteristics which have both western European and eastern mongoloid traits. The divergence of Early Primitive Finnish into Primitive Lappish and Late Primitive Finnish probably took place in Finland during the first half of the second millenium B.C.

During our era the Lapps have moved to the north into what is now Finnish territory and now the southern border of Lappish settlement is about latitude 68°. In Sweden and Norway Lappish settlements have spread from north to south and now extend to the northern parts of Dalecarlia and Hedmark, about latitude 63°.

From time immemorial, reindeer breeding, hunting and fishing have been the principal sources of livelihood of the Lapps. They have trans-

formed the wild arctic deer into semi-domesticated reindeer grazing in the vast fell and forest districts (in summer and winter). Nearly half of the present Lappish population in Finland earns its living mainly by raising reindeer and by hunting and fishing. About one sixth of the Lapps have taken up farming as their principal occupation. Farming holds a particularly strong position in Utsjoki, whereas reindeer raising as well as hunting and fishing prevail especially in Enontekiö. In addition to these principal sources of livelihood the Lapps carry on such activities as building, service, handicraft, transportation, etc.

A population subsisting on natural sources of living needs large areas of land. Such areas have from time immemorial been held by families or "generations" as well as in common. In this way the ancient Lapp villages or *sijds* were formed, usually around some important watershed. The boundaries of a *sijd* were the boundaries of the land tilled by a clan. Nowadays, the old *sijd* system has broken down and it is being superseded by the Scandinavian real-estate system in Lappish territory, too. Settlements have become permanent.

II. THE NORDIC LAPP INSTITUTE'S RESEARCH PROJECT ON THE LEGAL STATUS OF THE LAPPS IN LAND AND WATER LAW

The Nordic Lapp Institute has been founded by the Nordic Council. It is the task of the Nordic Lapp Institute, which is situated in Kautokeino in Norway, to serve the Lappish population in Scandinavia by promoting its development and status in the fields of culture, law and economics. The Institute is headed by a Board and an Executive Director and it is divided into three sections. The Scandinavian countries share the cost of the Institute in conformity with a resolution made by the Council of Ministers.

In 1974 the Nordic Lapp Institute launched a research project on Lappish land and water law and history of law, entitled officially in Norwegian "En kritisk historisk-juridisk undersøkelse av bruksmåtene og bruksretten i sameområdene". The objective of this project is, in brief, a statement of the legal status of land and water law in respect of the Lapps and Lappish territory with regard to historical development, present conditions and prospects of future development.

For the project the Nordic Lapp Institute has appointed a *Project Committee,* which in cooperation with the Institute will be responsible for the

scientific and professional standards of the project. Professor Knut Bergsland of Oslo, Lapp Commissioner Tomas Cramér of Stockholm and Professor Veikko O. Hyvönen of Helsinki have been appointed to the Project Committee.

III. RESEARCH AIMS

According to the plan of the legal-historical research project, research will be carried out in three different phases, as follows:

- during the first phase legal-historical data will be gathered and published,
- during the second phase the data will be systematized, and
- during the third phase the data will be processed and such historical and juridical conclusions will be drawn as are justified by the facts and data.

It is the purpose of the study to state the legal status consistent with Lapps and Lappish territory land and water law in respect of both historical development and present conditions as well as developmental prospects. The official title of the research project emphasizes Lappish modes of application and users but it is not the intention to limit the project to particular rights of property since the objectives must be considered as a whole. Reference is now made to Lappish ownership and related claims on land and water areas, too.

The research and its results will be utilized for development of land and water law in Lappish territories. Legal actions related to the legal status of Lappish land and water law may also profit from these results. The Lapps have recently claimed ownership of territories in their possession against the states involved, e.g. the "Skattefjällsmålet" (tax fell case) in Sweden and the "Altevann" case in Norway. In Finland no major legal actions have been brought.

On the basis of this research a standpoint should be taken, too, with regard to proposals for legislation that have been put forward, e.g. in the current move in Norway and in Finland for a total reform of reindeer-breeding legislation. In the final stage it should be possible to draw up a development plan for land and water legislation in the Lappish territory, which would constitute the framework for a draft proposal for Lappish protective legislation. The proposal for a Lappish Act submitted by the Finnish Committee for Lappish Affairs (1973: 46) might be regarded as a preliminary draft for a Lappish protective statute in Finland.

IV. RESEARCH METHODS

Research methods in the field of the *history of law* seem to be of primary importance at the initial stage of research. The present study started off with a systematic gathering of source data, e.g. court and authority decisions on land used in Lappish territories and extracts from the land register and statute texts, *inter alia* in respect of land tax. By means of these data it has been possible to prove, preliminarily, that the legal status of the Lapps in regard to possession of land and water was very strong as early as in the 17th and 18th centuries. The Lapps' right to land and water areas could preliminarily be shown to be ownership in conformity with various other studies. Only towards the close of the 18th century and especially from the beginning of the 19th century did the legal status of the Lapps deteriorate, among other things for the reason that, in land registers and in decisions concerning the separation of surplus land, territories which of old were owned by the Lapps were held to have shifted over to the state in a unilateral manner. This evolutionary process is revealed in statutes and in court decisions.

Using the research methods of *comparative law,* vital problems related to particular pieces of legislation can be clarified, e.g. in respect of reindeer-breeding legislation the Lapps' privilege to raise reindeer in Lappish territory, the reindeer-breeding territory involved and the principles of surveying its boundaries, its administration, the use of the power to make decisions, etc. Answers to the questions involved might be found by making comparisons between legislation and development plans which exist in the Scandinavian countries. By way of comparison it is possible to indicate the most appropriate solutions for a further development of Lappish law and to indicate to what extent these solutions could be materialized from the viewpoint of the legal systems in force in Sweden, Norway and Finland.

The study should also designate the *subject of the legal status in respect of land and water law,* which is not self-evident. At an earlier stage the subject was the Lappish village, the *sijd.* Many people think that the Lappish village cannot be revived judicially in Finland today because present-day village division has already a different aspect. However, the matter should be made clear before establishing a legal status according to land and water law.

The determination of the legal status of Lappish possession of land and water might be preceded, for instance, by using methods of *analytical jurisprudence.* The legal status in conformity with land and water law of a Lappish village should be stated by reference, on the one hand, to its normative contents and, on the other, to its legal protection. In respect of

the legal impact the right of possession concerning the village involved should be ascertained both as to its contents and as to its territorial extent in relation to the other part owners of the village and to right holders not belonging to the Lappish village whose rights might encroach on the same territories. The competence of a Lappish village should, on the one hand, be studied from the point of view both of private law and of public law. From a private-law point of view this would mean the right to assign private-law rights and from a public-law point of view it would mean the use of the right to be heard in court and before authorities in cases concerning land and water. Legal protection, then, would manifest itself in a static relationship as a protection of possession and in a dynamic relationship as a protection of competence. An analytical research method of this type has been established by the Danish scholar Alf Ross and has been further developed by several other Scandinavian scholars. It seems to be equally well suited to a study of the Lapps' rights.

An explanation of this type of ownership during the historical stage of development and of present-day status could be arrived at, in any case, on the basis of extensive historical data. During the study of data, other, perhaps even more valuable aspects and modes of procedure might be discovered, but an analytical elucidation of the legal status should, in any case, be one of the most important objectives.

V. CHARACTERISTICS OF REAL ESTATE

In Scandinavian and German real-estate legislation the concept of real estate has been put on a level with concrete objects and that of ownership on a level with rights. The concept of real estate has been defined in a summary and programmatic way both in Swedish and Finnish legislation, though in the latter case not until 1976. In conformity with the new Swedish Land Code, ch. 1, sec. 1, land is divided into units of real estate. In accordance with sec. 282, para. 2, of the Finnish Partition Act an independent unit of ownership is designated as a unit of real estate. In legal writing ownership of land has long been defined as referring to a territorially limited part of the earth's surface which has been registered as a unit in the real-estate register, the land register or the building-site register. Under the Nordic legal system, however, ownership of real estate is traditionally based on possession founded on legal title. Registration helps to strengthen the owner's legal status, especially with regard to a third party, but it does not constitute a legal right. Therefore, ownership may also refer to real-estate units which are not found in the registers mentioned above.

Under Finnish law, as developed by the courts, the owner may register *a special real-estate unit* as an estate when the majority of the following six material characteristics have been proved to be present:

– establishment according to legal procedure as stipulated, e.g., in older legal enactments (including inspection of an independent mill or saw mill),
– separate taxation as a unit on its own,
– registration in the land register, as a rule preceding the establishment of the land-register institution,
– landed estates in the country provided with boundaries of their own,
– separately accorded legal confirmations of possession and mortgage deeds and possible mortgages on real estate, and
– independent possession of long standing based on legal title, in which case the right of immemorial usage should be considered as legal title, too.

According to the practice of the courts, a real-estate unit once established on special grounds does not lose its character of real estate even if the unit involved has been omitted from present-day real-estate registers. The old real-estate unit maintains its real-estate character in the same way as it has acquired it on the basis of legislation which was in force in the past and which was then revoked in a procedure of establishment, of taxation and of acts of surveying perhaps performed later on.

The concept of real estate has not always been the same, but has undergone changes in the course of the centuries. In particular, the repàrtition of land towards the close of the 18th century and during the 19th century had a vital impact on this development. In Swedish legal writing real-estate partition preceding the repartition of land has been described in the following terms: partition of villages and individual estates outside the villages constitutes proprietary real-estate partition and partition of homesteads within the villages constitutes cameral partition. The homesteads' share in the village was thus fixed in proportion to the amount of tax levied and the homesteads did not have any fixed boundaries, at least not outside their home estate lands. The homesteads were not given their fixed boundaries until the repartition of land took place and this reform has been described, especially in Finnish legal writing, as meaning that real-estate partition has changed from abstract to concrete. The share in the village indicated by the amount of tax levied has in an official survey procedure become transformed into a parcel of land which is defined by boundaries and which has been duly registered in the real-estate register.

VI. PRINCIPLES OF LAPPISH REAL-ESTATE LAW

The majority of the six leading characteristics of a special real-estate unit seem also to hold good with regard to Lappish landed property. The basic task for a study dealing with Lappish real-estate law at the present stage might be held to be to designate fundamental characteristics separately for each period on the basis of Nordic legal systems then in force and to compare them with Lappish land ownership.

Lapps' rights to land ownership are based on *the right of immemorial usage*. The legality of their original titles and the integrity of their possessions was conceded in the letters of liberty and self-protection which the kings of Sweden–Finland issued to the Lapps, e.g. in Gustavus Vasa's letter of 1551, in Johan III's letter of 1584, in Charles IX's letter of 1602 and in Queen Christina's letter of 1646 to the Lapps in Jämtland.

The additional protocol to the frontier treaty concluded in Strömstad in 1751 between Denmark and Sweden—the Codicil (*kodicillen*)—might with good reason be called the Lapps' Magna Carta. In this treaty the present-day boundary between Norway and Sweden, to which Finland then belonged, was fixed for the first time.

The redrawing of inter-state boundaries at that time split Lappish territory, necessitating certain arrangements related to local land ownership. In these arrangements it was considered self-evident that the Lapps should own the land which had been in their possession for a long period. At the same time the Lapps on both sides were given the right to cross the frontier whenever their reindeer raising should require it.

The legality of *the procedure of establishment* by which the real-estate partition was established in Lapland has, then, become duly clarified in time. During different periods only landed property to which no other party can prove a better right has been declared state property. This holds good, too, for forest legislation on state-owned forests in Finland.

The taxation procedure for Lapland was issued on July 8, 1695, and it had to be adapted to the Lappish villages which were located on the northern side of the Lappish boundary. Taxes were assessed in money for the whole village. The part owners of the village paid this land tax, which was registered in the Land Book, up to the time when land taxes were discontinued in all Finland by an Act passed on November 29, 1924 (295).

The Land Book of Lapland was established in 1696 for the registration of land taxes in accordance with the taxation procedure for Lapland. As a rule, the Lappish villages, village part owners, the taxable land of part owners and every taxation unit were registered. Land books lost their importance as an up-to-date real-estate register when the land register was

established in 1895 and as a tax roll after 1924. In our days the practical importance of a land book is evident, *inter alia* owing to the fact that by means of an extract from the land book the real-estate character of a particular real-estate unit which is missing from the register might be proved. Lappish tax on land has long been registered in the land book in the same way as a land tax imposed on real property in general. These registrations were based on current ordinances related to taxation on land. They prove that the right of a Lappish village to its landed property has been considered as real property in taxation.

The real-estate partition of Lapland was in force at least up to the 18th century and even since then. The Lappish village or *sijd* was surrounded by fixed and precise boundaries and so separated from other Lappish villages. Within the *sijd* were located the hereditary lands of the village part owners, later on the so-called "Lappish tax lands". Prominent researchers in Lappish law hold, following the Norwegian scholar Solem,[1] that the *sijd* partition is a real-estate partition based on Lappish ownership. Some other researchers have chosen to consider individual Lappish tax land as equivalent to a real-estate unit. In historical and geographical literature the importance of this difference has at times been belittled and it has been sought to explain the actual circumstances themselves in a descriptive way. The thesis by Arell[2] recently published in Sweden belongs to this group. The import of the difference is many-faceted, however, even going beyond the important suit pending in Sweden as to which has the better right to some tax fells—the state or some Lappish villages.

Merely on the basis of a *boundary* or its absence no conclusions can be drawn in either direction, because real-estate partition has developed from village partition to homesteads with boundaries only since the repartition of land even in other places in Sweden and Finland.

In the same way a settlement cannot be denied the character of real estate exclusively on these grounds, not even during earlier periods. The character of a *sijd* as an object of *tax on land* is not alone sufficient to prove the real-estate character of a *sijd*. However, neither the fact that the criteria for the choice of object for taxation were indistinct and varying when the legislation of 1695 was enacted, nor the fact that the principles governing the final decision were inconsistent according to that legislation, is sufficient to nullify the real-estate character of the *sijd*. Corresponding phenomena have been under development in the overall Nordic legal system. Only the whole of the characteristics in six or several items, as

[1] See Erik Solem, *Lappiske retsstudier*, Oslo 1970, pp. 87–9.
[2] See Nils Arell, *Rennomadismen i Torne lappmark*, Umeå 1977, pp. 81 and 234.

presented above, might constitute a basis for solutions. The comparison with a Nordic common real-estate law in force at the period involved might facilitate an understanding of Lappish real-estate partition during various historical periods. Establishment of comparisons exclusively in respect of our present real-estate law would be a mistake. Geographers might be right in their descriptive caution because details of the structure of real-estate partition might in the opinion of Lapps during the past centuries have appeared strange and even of secondary importance. However, it is certain that the Lapps have separated "my" land and "our" soil from the lands of another village and "my" and "our" fishing waters and beaver brooks from the property of another village.

Owner's possession designates possession which, as to its contents, is equivalent to normal conduct of an owner. Independent owner's possession of landed property of a Lappish village during centuries is seen from court decisions. Owner's possession should be studied especially in the light of the Lapps' principal sources of livelihood, separately from the viewpoint of reindeer breeding, fishing, hunting and other land use, and as a whole. Nor is it possible to draw any conclusions from the owner's possession in itself with regard to ownership or real-estate partition, since owner's possession is only a part of the contents of ownership. Only the whole of the characteristics might be decisive.

VII. THE LEGAL STATUS OF A LAPPISH REAL-ESTATE UNIT

Ownership of real estate is, under the Nordic legal system, owner's possession based on legal title which an owner might assign to a third party and which carries with it a certain degree of legal protection against a third party. On this ground the legal status of an owner can be looked upon either from the aspect of its contents or from the aspect of protection offered by the law. In the contents of ownership one might distinguish between owner's possession right and the competence of assignment. On the same basis one might study, too, the stable right of possession to land and water areas which is equal to real property.

In a study dealing with Lappish law one should also aim at viewing the overall legal status of the owner–possessor, viz. its contents and protection. Only on such a basis might it be feasible to turn to the drawing of conclusions. Tegengren concluded in his studies on beaver trapping that only the Lapps and sons of settlers who married Lappish girls had the right to trap beavers in the beaver brooks belonging to Lappish villages. Under the Östgöta Code of the 13th century and Christopher's General Rural Code (Sweden) of the 15th century the right to trap beavers was restricted

to the landowner, whereas certain beasts could be caught by anybody and some game was permitted to be hunted uninterruptedly up to the moment of killing. On the basis of his studies on beaver trapping Tegengren draws the conclusion that the Lapps might be considered originally to have been endowed with full ownership of the hunting grounds that were located within the territory of the village.[3]

However, a choice between theories based on ownership and theories created later on, in the 19th century, based on a permanent possession right cannot be made exclusively on the basis of law cases relating to beaver trapping but again the importance of an overall legal status of the owner–possessor should be emphasized. Property right to land has been strong and stable exclusively in the close vicinity of a village centre in the Nordic legal system as a whole and not only in Lappish territory. The grip of an owner weakens when he moves away from a village centre and tends to vanish altogether in the wilderness, as Brotherus[4] has strikingly put it. The neighbouring villages' boundaries might, however, have confronted each other already before final disappearance.

Beaver trapping is closely related to old customary rules. Conclusions in respect of the legal status of the owner–possessor should only be drawn on the basis of the use of land as a whole, e.g. on reindeer raising, fishing, hunting and other sources of livelihood in respect of land. A study dealing with possession right, even if it were a complete one, would comprise only half of the whole because it would not cover elements related to the right to assign and to inherit land and to other questions bearing on power to dispose of ownership rights.

VIII. COLONIZATION

Colonization of Lapland from the south by the other Nordic peoples began at latest in the 17th century and possibly earlier. The reign of Gustavus Vasa, already, is known for its energetic settlement activity in Finland. Sweden had been granted by Russia the right to northern territories in accordance with old usage in the treaty of Teusina in the year 1595, under which the boundary with Russia runs into the Arctic Ocean. Even after this, however, the status of Lapland as far as international law was concerned remained for a rather long period controversial, because several different governments levied taxes in the same territories. Promotion of colonization in that area, especially at an early stage, had its distinct foreign

[3] See Helmer Tegengren, "Samernas i Kemi lappmark rätt till bäverfänge", *Samenes og sameområdenes rettslige stilling historisk belyst,* edited by Knut Bergsland, Oslo 1977, p. 53.

[4] See Harry Brotherus, "Rajankäynti ja tilusriita", *Lakimies* 1932, p. 8.

policy and national defence reasons in addition to reasons of financial policy.

The first important ordinances with regard to the colonization of Lapland are the ordinances issued by the King of Sweden on September 27, 1673, and September 3, 1695, granting settlers who moved to Lapland tax exemptions and other privileges superior to those granted in respect of settlement activity carried on in other parts of the country. After half a century there was issued the important "instruction" for Lapland of the year 1749, which concerns both earlier settlement and colonization in Lapland. In this instrument, ordinances concerning settlement activity in Lapland were collected and rearranged. There were detailed directions both on procedures to be followed in the establishment of new homesteads and on rights and duties in respect of colonization of new homesteads. Settlement activity in Lapland has been arranged by special Acts from those days up to our own times.

In the opinion of Arell[5] it is seen in the oldest known *pleadings* concerning colonization that a seller could buy his right to landed property from a Lappish possessor of tax land. Arell believes that a possessor of tax land was regarded as an owner, though in the cautious manner which he has adopted in legal questions he adds that it is probably impossible to discover the actual character of this ownership. Legal actions have been traced before and after the Lapland ordinance of 1673. Owing to the small number of lawsuits it is, however, not feasible to draw any conclusions from the percentage shares of original and derivative acquirements but probably both occupation and purchase were at that time known as legal modes of acquirement.

It is a very complex and difficult and at the same time interesting task to clarify the relationship—as to the law of real estate—between original Lappish landownership and the right of a settler to a land and water area. This problem should be approached from the real-estate characteristics for the period in question and from the whole of the characteristics of property right. Researchers in Lappish law have given special attention to facts concerning taxation and boundaries. Lappish taxes were assigned to the Lappish village as a whole and settlers, too, participated in their payment. In the same way the boundary with another village was fixed as a whole. From these individual characteristics the status of the Lappish village according to the law of real estate seems to be a strong one and it clearly remained so in the first half of the 18th century.

A protected owner's possession of family holdings might be a more

[5] *Op. cit.*, pp. 143 f.

appropriate starting point in an analysis of a settler's legal position. The old Lappish real-estate partition which is based on village partition and the real-estate partition based on colonization have in a certain sense been superimposed one upon the other up to our own days but both subjects have felt themselves to be owners at least of their family holdings. Fees and taxes collectively assigned to village communities were, on the other hand, not unknown even in other places in Sweden and Finland,[6] but nevertheless real-estate partition might have developed into homestead partition. Fixed boundaries have developed, too, at an early stage on a provincial level.

In studies of Lappish law some characteristics typical of the real-estate law in the 16th–18th centuries dating back to feudal law cannot be forgotten. Of these the most famous is the prohibition against reducing tax land which is contained in ch. 4, sec. 9, of the Land Book in the Swedish General Code of 1734. In general, transfer of tax land was rather limited during these centuries. Homestead parts created as a result of the splitting up of a homestead were not allowed to be smaller than what was considered viable having regard to the family's subsistence needs and its ability to pay taxes (*besuttenhetsprincipen*).

The prohibition against reducing tax land had its adverse effects, too. By a Swedish Royal Letter of April 19, 1555, peasants were forbidden to own more land than could be considered reasonable to be included in the full amount of a homestead. At the same time settlers should be permitted to have their cultivations on waste land. These regulations were at that time in force for both Sweden and Finland but, according to Arell,[7] decisions in keeping with the principle of need (*behovsprincipen*) are known in legal practice in Lapland by the close of the 18th century. An owner's right to dispose of taxable land concerned, as a rule, only well-founded interests. The colonization of Lapland was, at times, justified on the ground that settlers exploited for agriculture land which the Lapps did not avail themselves of by reason of the special character of their sources of livelihood (reindeer breeding, hunting and fishing) and so they could not possibly have suffered any harm from colonization.[8] A court was considered to have authority to rule on colonization to the extent that the right of an owner of tax land to run his economy in full was not infringed.

Sec. 21, para. 1, of the Finnish Act on legal confirmation provides as follows: "If a real-estate unit has been forfeited by its proper owner and if

[6] See Kyösti Haataja, "Maanosittamisrajoitukset Suomen lain mukaan", *Suomen maanmittari-yhdistyksen aikakauskirja*, Helsinki 1909, p. 105.
[7] *Op. cit.*, p. 236.
[8] Arell, *op. cit.*, pp. 81 f.

he or the party on whom his right has been conferred has not within ten years from the date when the real estate concerned was forfeited by the former and the latter obtained legal confirmation for it received back the real estate in question or launched legal proceedings to claim it back, his right to carry on a lawsuit shall be forfeited, unless the party on whom legal confirmation has been conferred or some other party on whom he has conferred the real estate concerned was at the moment of acquirement in good faith."

The homesteads of settlers in Lapland have been re-established as real-estate units in the manner provided and have been registered as estates in the land register and, additionally, owners have been given legal confirmation of their titles. Assignees may be considered to have been bona fide to such a measure that the Lapps' village's right to carry on a lawsuit can be held to have been superseded in this respect, especially as many actual owners of settlers' estates are, in fact, Lapps.

The Finnish state, by contrast, has not been in a position to grant legal confirmation for vast areas that are left outside the partition of estates in Finnish Lapland, nor does it seem to be capable of proving good faith with regard to such Lappish rights as the parties involved have possessed and cultivated for so long a time that nobody remembers or knows "from true speech" how their ancestors or assignants initially acquired them, as is provided concerning the right of immemorial usage in the Swedish Land Code of 1974, sec. 15, para. 1.

The right to launch lawsuits for real property against a state has not been limited in respect of Lappish villages.

IX. THE FOREST STATUTE OF 1886 IN FINLAND

In literature describing the general development of the question of the Lapps in Finland it is often stated that as late as the 18th century the Lapps had a firm right to land and water which state authorities had recognized in legal practice and in the Codicil of 1751 (*kodicillen*), but that in the Forest Statute of 1886 the Lapps' rights in Finland to land and water were nationalized.

The main lines of development do, in fact, show some features of the kind mentioned. But the accounts of the development have been over-generalized by writers, inasmuch as they have picked on, as turning points, enactments which perhaps are not of sufficient importance to merit such attention. This seems especially to apply to the Forest Statute of 1886. It is, of course, evident that the development in the 19th century was not

Lapp-orientated and this is seen in many of the events of that period better than in the Forest Statute.

In sec. 1 of the Forest Statute of 1886 woodlands not belonging to the village communities and lands and surplus land to which an individual or village community could not prove a better right were retained in the ownership of the Crown and the State. Ideas of this kind have found expression in Swedish common legislation at least since the ordinance issued by Gustavus Vasa on April 20, 1542; and the regulations of 1886 do not differ in this respect from their predecessors.

Ownership and permanent right of usage of land and water areas are, according to old Nordic law, possession based on a title; the title can also be immemorial usage. Under Finnish law an owner–possessor cannot be dismissed from his territory by means of a lawsuit based on title; but property which has been forfeited by its proprietor can be regained if there are certain prerequisites which have been provided by legislation of long standing. The Forest Statute of 1886 did not intend to amend legal relationships of private law but a Lapp village may also prove its better right to land and water areas. Authorities have, of course, wanted to draw from the Forest Statute more far-reaching conclusions than the statute text and the *travaux préparatoires* can explicitly justify. Among other things, authorities have afterwards issued permits for a fixed period to carry on reindeer breeding on state woodlands, i.e. on the same lands where Lapps have since time immemorial carried on reindeer raising without having to ask for permission from anybody. In this sense the Forest Statute of 1886 has had a negative effect on development.

X. LEGISLATION ON REINDEER BREEDING

Reindeer breeding has for centuries been a form of original production in the northern parts of Fennoscandia. Historically it has always been an inseparable part of the Lapps' way of life and even today reindeer breeding constitutes an essential material part of Lappish civilization.

In order to be successful, reindeer breeding requires vast contiguous areas of pasture. As a natural source of living it does not aim so much at exceptional territorial efficiency as at an exploitation of nature of long and firm standing. Present-day reindeer breeding is a highly vulnerable source of living and any permanent changes in the surrounding environment will be detrimental to it.

The first Reindeer Breeding Act in Finland dates back to 1932 and the

Act in force at present is from 1948. The question of a total reform of reindeer breeding legislation again came to the fore on the basis of a report of the Reindeer Breeding Committee in 1976. The Reindeer Breeding Act in force in Sweden dates back to 1971 and that in force in Norway to 1933. In Norway, too, a total reform of reindeer breeding legislation is under preparation, though the government bill for a new reindeer breeding act (1976–1977: 9) was rejected by the Diet in the autumn of 1977. A new bill, however, is in the making.

Under the Finnish Reindeer Breeding Act any Finnish citizen living in a reindeer-breeding area can be a reindeer breeder. By contrast, in Sweden and Norway reindeer breeding is, with certain exceptions, the exclusive right of the Lapps inasmuch as in these countries statutory regulation of reindeer breeding has, in addition to source-of-livelihood legislation, the character of protective legislation. Reindeer breeding, except that run by the Lapps living in Finland, has as a rule the role of a secondary source of livelihood, whereas in the domestic area of the Lapps the significance of reindeer breeding as a principal source of livelihood is very marked. In other respects, too, reindeer breeding differs in character in different parts of the reindeer-breeding area. Other reindeer breeding than that run by the Lapps is highly technological and is becoming less and less manpower-intensive. In the southern parts of the country reindeer breeding is about to develop into a one-sided form of meat production. This distorts the original image of reindeer breeding as a source of livelihood which is firmly bound to the inhabitants' way of life.

From the viewpoint of the Lappish population one of the most vital aims of the total reform of Finnish reindeer-breeding legislation is to maintain and widen Lappish privileges. Achievement of this aim, which is difficult to realize from a legislative-technical point of view, requires as a basis more extensive legal studies than have been performed so far. To enable reindeer-breeding legislation to take into consideration the historic rights of the Lappish people, it would be necessary to proceed with legal-historical methods and first and foremost to establish the development that has led up to the present-day situation. In studying reindeer-breeding legislation in Sweden and Norway one might, then, look for support to the Lapps' efforts to gain privileges in Finland.

With a view to the future, reindeer-breeding legislation offers, of course, further legal problems which are difficult to solve, e.g. the relationship of reindeer breeding to other sources of livelihood in competing for the use of land and the organization of reindeer breeding on a local, regional and state level. In Sweden local administration of reindeer breeding is based on the Lappish village system, which relies on a self-government princi-

ple. The Finnish system of associations of reindeer owners on a local administrative level of reindeer breeding also relies on the principle of democratic administration, but it is not specifically Lappish since it comprises all reindeer owners. Lappish questions related to hunting and fishing, i.e. to the other traditional sources of livelihood, come within the sphere of the Lappish village system in Sweden.

Overall development of reindeer-breeding legislation is closely linked to the question of ownership of northern land and water areas.

XI. BOUNDARY SURVEY OF WATER AREAS IN FINLAND

According to legislation long in force in Sweden and Finland, it is a rule of principle that water areas belong to private land ownership. It is likewise a rule of principle that the owner of a riparian village or homestead owns the water area in front of the shore in accordance with a middle-line principle. Regulations relative to this have been entered in the common legislation of Sweden and Finland, *inter alia* in ch. 14, sec. 9, of the Land Book of the Helsingeland Law of the 13th century and in ch. 12, sec. 4, of the part of the Swedish Code of 1734 concerning land. The middle-line principle has been stated, too, in ch. 1, sec. 5, of the present Swedish Land Code of 1970, and in sec. 1 of the Finnish Act on Boundaries in Water promulgated on July 23, 1902. In both countries the boundaries between villages have been surveyed definitively in accordance with this legislation, even if in the main part of the Lapps' territory, viz. in the municipalities of Enontekiö, Inari and Utsjoki, boundary surveys of water areas between villages have not been performed. This, again, was due to the fact that repartitions of land were not performed in Lappish territory by means of special legislation until this century.

Boundary surveys of water areas which were going on in the Lappish territories in Finland under the Act of 1902 were discontinued in 1962 upon the request of the Finnish Department of Forestry (which is in charge only of forests owned by the Finnish state, not of privately-owned forests) and the Surveyor-General's Office. New legislation was under preparation for boundary surveys providing, in addition to boundary surveys, administration and surveillance of water areas remaining outside the boundaries of villages and homesteads. The new reports were sharply criticized, *inter alia* by the Lappish population, especially during discussions held at the VIIth Lapps' Convention in Gällivare on August 13, 1971. After that proposals for amendment of the regulations were submitted by a new committee. On the basis of the committee's report the Government

of Finland submitted to the Diet a bill (1976: 243) for legislation on boundary survey of water areas in the municipalities of Inari, Enontekiö and Utsjoki and on fishing in northern waters. On the matter of fishing the bill was concerned with fishing in those watersheds and watershed parts which would have been excluded from water areas belonging to a village, a single homestead, an estate or a common forest.

The new government bill was again the target of strong criticism which was based on the latest findings of studies in Lappish rights. The Lapps are the original population of the territory involved and they think that their rights, which are based on Lapp village partition, should be acknowledged in the first place and that those of late colonization and related village partition should come second. Viewed historically two different real-estate divisions are superimposed in Lappish territory, viz. an older Lappish real-estate division and a more recent Finnish one, which is based chiefly on colonization. A water boundary survey in accordance with the proposal made by the Finnish Government would have accomplished only a Finnish real-estate division. The Finnish real-estate division, again, would have had to await its turn and the bill if carried would not have promoted a final and just settlement of the Lappish question.

The Standing Committee of the Finnish Diet, in its report of June 6, 1978, dealing with the new government bill, held that measures taken in pursuance of the bill (if it became law) would adversely affect the protection of ownership guaranteed to the Lapp population in constitutional law and thus would have to be treated according to the special procedure for enactment of fundamental-law measures, i.e. they could be passed only by way of a qualified majority.[9] At this stage it seemed that the government bill would not be passed by the Diet. The Finnish Government has now withdrawn the bill. The decisions made by the Government and the Diet indicate that there is a political will, too, to arrive at an overall solution of the Lappish problem. From the Lapps' standpoint this development must be considered an important step towards a better future.

XII. PROBLEMS RELATED TO HEARINGS

The Lappish *sijd* or the Lapps' village was in the old days both a private-law and administrative-law regional social unit. According to the tax rolls there were 26 *sijds* in the northern parts of Fennoscandia in the 16th and 17th centuries. Of these *sijds* Maanselkä, Kitka, Kuolajärvi, Sodankylä, Kemin-

[9] Cf. Ilkka Saraviita, "The planned constitutional reform in Finland", 22 *Sc.St.L.*, pp. 135 ff. (1978).

kylä, Sompio, Kittilä, Inari, Peltojärvi, Suonttavaara, Rounala, Teno and Utsjoki were located either wholly or partly in present Finnish territory. Of these only the six last-mentioned were situated in present Lappish territory. According to Nickul,[1] there were 21 *sijds* on the Kola Peninsula.

The gradual breaking up of the *sijd* system and its merging with other cultures had, as a rule, taken place by the beginning of the 19th century. This is related to a stabilization of colonization and a simultaneous deterioration of the traditional Lappish economy. The destruction of the beaver and the wild reindeer and the shifting over to full nomadism have also been milestones in the break-up of the *sijd* system.

Within the framework of present-day settlement legislation most Lapps own their self-established estates and these are registered in the land register and belong to the new villages in accordance with the land register. From these estates many Lapps exploit their old natural sources of livelihood, e.g. reindeer breeding, fishing and hunting. Some Lapps do not own any estate and are wholly reliant on natural sources of livelihood. For natural sources of livelihood the same vast areas outside the estate system which the *sijd* members have used during past centuries are still in use. The Lapps' rights to exploit their natural sources of livelihood and to land and water areas, too, are in addition to present-day legislation based on the right of immemorial usage, on the heritage of the *sijd*.

Following the break-up of the *sijd* system it is under present circumstances uncertain who is allowed to make use of the right to appear in court and before authorities on behalf of Lappish rights which are mainly based on the right of immemorial usage. In Swedish legislation the Lapps' village system has been re-established in respect of the surveillance of reindeer breeding and related matters. A Lappish village, as regards reindeer breeding and related matters, is an organization with a right to be heard, by virtue of its administrative organs and members. By contrast, use of the right to be heard is still problematic outside matters concerning reindeer breeding, e.g. in the extremely important lawsuit pending, directed against the state, whereby the Lapps claim a superior right with regard to certain fells in Jämtland (*Skattefjällsmålet*). At the initial stage there appeared as plaintiffs individual Lapps, Lappish villages, the Lappish community (*samemenigheten*) and the whole Lappish nation, under fourteen different titles. In accordance with an agreement on the personality of the plaintiff it was decided that only the Lappish villages involved, organized in conformity with the Reindeer Breeding Act, and certain individual Lapps should appear as plaintiffs in the lawsuit.

[1] See Karl Nickul, *Saamelaiset kansana ja kansalaisina*, Helsinki 1970, p. 187.

The problems connected with hearings are considerable. Their solution should be regarded as urgent, as it is vital that hearings should be supervised continuously to prevent a dropping off both in current legislative activity and in executions, measures and lawsuits in conformity with enacted legislation. From this aspect the problem of hearings should be studied separately, on a state, regional, local and individual level.

XIII. MODELS FOR SOLUTION OF THE PROBLEMS RELATED TO HEARINGS

On a state level there has been achieved in Finland the establishment of a Lapp Delegation by a statute issued on November 9, 1973. It is the task of the Lapp delegation, according to the statute text, "to see to it that the Lapps' rights are observed and to promote the Lapps' economic, social and cultural conditions and to launch initiatives and proposals and to report to authorities". At the present stage the Delegation is not endowed with as much decision-making authority as it originally planned to have (1973: 46). The Lappish Committee has already proposed the establishment of the office of a Lapp representative (*sameombudsman*) and a State Bureau. During the present period of economic recession the establishment of new offices in state administration seems to be difficult. At the time when the Delegation was created the proposal would perhaps have had some chance of being adopted, but the matter was not held to be urgent, even by the Lapps, at that stage. At the same time controversies arose with regard both to individual questions and to the location of the offices. The institution of the office of a Lapp representative should not be held up for any such reasons; in individual questions a compromise could be arrived at if appointments were made only for a limited period, e.g. for three or five years. In conformity with the examples set by Sweden the capital should be chosen as the site of the Bureau; there legislative activity would become a vital task whereas a Bureau located in the Lapp territory itself might decline into a mere legal assistance bureau.

On a local level the problem related to hearings is divided into, on the one hand, an administrative-law aspect and, on the other, a private-law aspect. First, however, the question of regional division should be solved. Village partition in conformity with the land register and present population would, as to its main features, correspond with the old *sijd* partition only in Utsjoki. Even the new Lapp village partition in Sweden seems to follow the present population and not necessarily the old *sijd* partition. On a local

level the problem connected with hearings should also be studied as a problem related to the legal system in force and not only as a development programme of legislation. The present statute, too, includes regulations on how often hearings should be arranged in court and with authorities in the interests of common justice and the common good. In the context of water boundary surveys, regulations of the Partition Act involved have already been mentioned. Regulations concerning common territories and common fishing legislation provide protection for a permanent right of usage, too, in accordance with enacted legislation, perhaps to a greater extent than has been noticed and required.

Research plans concerning this problem have been considered as central and important on the Finnish side and their materialization is well advanced.

XIV. A PROTECTIVE LAW FOR THE LAPPS

For the preservation of Lapp culture and economy it would be of paramount importance to provide a Lappish protective law, within the scope of which the Lapps would develop their own living conditions on a basis of their own. The research results of the legal-historical project should serve the achievement of this aim.

The Lappish Committee in Finland has made its proposals (1973: 46) for a Lapp law which might also be regarded as a preliminary bill for a Lapp protective law with regard to Finland. This draft law has six chapters and 62 sections. In the first chapter a Lapp is defined by birth, and the Lapp territory is designated to comprise the municipalities of Enontekiö, Inari and Utsjoki and, in the municipality of Sodankylä, the area of the Reindeer Owners' Association. The second chapter deals with the Lapp language, which would be promoted to belong to the group of official languages and to the rank of a language of instruction. The third chapter comprises the use of natural resources in Lapp territory. The Lapps' administration would, under the fourth chapter, be constituted by a Lapp parliament and a government appointed by it and by a Lapps' office in Inari as well as by a local government appointed by the village meetings of the Lapp villages. The sixth chapter deals with a Lappish fund to be established for the promotion of Lappish cultural and economic life. Its basic capital would be provided from state funds and would amount to 1 000 000 Finnish marks.

The establishment of a Lapp Delegation is, so far, perhaps the most visible result of the activities pursued by the Lappish Committee. When the Lappish Committee was established and its secretaries appointed, more

attention was paid to local knowledge based on domiciliary rights than to expertise. No person familiar with legal drafting or with legal reforms was appointed to the Committee. The Lapps' protective law was intended to be, first, a framework law safeguarding certain basic rights—without going into details—in various spheres, e.g. in the Lapps' territory, nationality, language, natural resources, economy, local government, state administration and basic funds. This law was not to go into details because to do so might be too much to cope with at one time. In the outcome, the Finnish draft for a Lapp law is perhaps at once too specific to serve as a pure framework law and too general to cover all those fields which it has been attempted to encompass.

Secondly, alongside the prospected Lapp law and independently of its progress it is desirable to try to proceed in various fields by way of legislation. Here there should always be chosen, in order of priority, one or a few individual sectors where in each case the need for renewal seems to be of a highly urgent nature.

It would enhance the possibilities of success if it was endeavoured to push the Lapp Law Bill through at the same time in all of the decision-making legislative organs in the three countries involved, on the basis of Scandinavian legislation. There would then be no danger of one country lagging behind the others and development could, perhaps, be controlled as a whole.

XV. FINAL REMARKS

In the development of the Lappish land question it is possible to proceed in parallel in many different ways. Especially in Sweden, lawsuits against the state and political solutions have been going on simultaneously. In Norway and Finland political decisions, viz. the legislative method, are preferred, despite the fact that, as it would seem, no rapid and comprehensive solutions can be achieved in that way.

A development of the Lappish land question claims as its basis and aim the performance of such scientific work as has now been launched by the Nordic Lapp Institute within the framework of a legal-historical project. This project deserves to be considered as vital and important and the Lapp population expects from it noteworthy and significant results. The present authors hope that such results will be achieved.