

A Comparative Analysis of Indigenous Rights in Fennoscandia

Lennard Sillanpää*

The historic claim of the Sami to lands that they have traditionally used and occupied – an issue that has long been dormant – is emerging as a significant public issue in Finland, Sweden and Norway. This article develops a control-consociationalism typology to analyze how each of the three states responds to Sami claims to their historic rights. Under a control situation, the cultural identity of a minority is almost exclusively determined by the laws, regulations and administrative procedures of the state. Under a consociationalism model, there would be a continuing dialogue between a state and a minority within an administrative framework that the minority has had a major role in developing. The typology traces more than two centuries of administrative control by the three states and examines how existing institutions deal with the Sami minority. Interviews indicate that most authorities see collective minority rights as a component of human rights and, furthermore, that the Sami constitute an indigenous minority. However, the concept of aboriginal land title divides politicians and administrators; many oppose it or maintain that it is not really necessary. Many Sami rights activists, on the other hand, see it as a fundamental issue – even one of moral justice – that ultimately must be addressed by each state.

The historic claim of the Sami to lands that they have traditionally used and occupied – an issue that has long been dormant – is emerging as a significant public issue in Fennoscandia (Finland, Sweden and Norway).¹ Several factors have contributed to this, including an increased politicization of the leadership elite of the Sami minority and a greater awareness of similar developments in other jurisdictions of the world. This article examines the applicability of a control-consociationalism typology as an analytical tool for studying how each of the three states responds to Sami claims to their historic rights and, from a comparative perspective, how public administrations in these countries are able to sustain a balance between the claims to some form of self-determination enunciated by a minority and the interests of the majority. The typology traces more than two centuries of administrative control of the Sami minority and examines institutions created by the three states to deal with the Sami minority. This empirical analysis focuses primarily on administrative structures that affect the Sami in Finland, Swe-

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den and Norway and makes comparisons to determine the development of a possible “Nordic pattern” for addressing these administrative issues. The impact of the international mobilization of indigenous peoples is given special consideration.

Data collection is approached in two ways:

(a) Objective criteria, i.e., histories, legislation, court cases, regulations, policies, administrative structures, that provide the context for the administration of indigenous rights in each country, an understanding of the historical background of the land ownership and utilization issue, and the emergence of public agencies for dealing with these issues.

(b) Subjective criteria, i.e., in-depth interviews with civil servants and experts in Norway, Sweden and Finland, and with Sami representatives. The questions, while generally open-ended, are structured to provide consistency and to ensure that comparisons could be made.

Aboriginal land ownership and use is used as a test case since this is widely seen as a fundamental issue in defining what constitutes “aboriginal” or “indigenous” peoples as it has come to be understood in the sociological and legal meanings of these terms. It is the demand for control over lands within their respective homeland regions – a claim to some form of aboriginal title – that has set the Sami of Finland, Sweden and Norway apart from other minorities in Western Europe and can be appropriately compared with demands enunciated by aboriginal minorities elsewhere in the world (Allardt 1979).

Development of a Control-Consociationalism Typology

This study utilizes two recent theoretical models dealing with comparative political systems – the consociationalism and control models – to examine how political institutions in Norway, Sweden and Finland have responded to the often conflicting demands that exist within a pluralist society and to demonstrate how these models can be used jointly to examine the emerging politicization of Sami culture.

Consociationalism democracy, a term first proposed by Arend Lijphart (1977), denotes a model of democracy that seeks to resolve political differences by consensus rather than majority rule. The term consociationalism has been applied to certain political societies (e.g., the Netherlands, Switzerland, Belgium, Austria) that simultaneously exhibit both high social fragmentation and obvious political stability. One of the distinguishing features of a consociationalism democracy is the ability of the leaders of competing subcultures within a pluralist society to avoid the dangers of intergroup conflict by continually striving for both cooperation among the

respective subcultures and a degree of commitment to the unity of the country. Lijphart stated that *consociationalism democracy could be attempted in virtually any society irrespective of the degree of societal pluralism it exhibits* and suggested that consociationalism could, for instance, be used effectively to remedy racial, ethnic, linguistic or religious-communal conflicts (Lijphart 1977, 53). On the other hand, the *control model*, as developed by Ian Lustick (1979), operates in settings where the conditions for successful consociationalism politics may be absent. In particular, it occurs in situations where a majority dominates and reduces another segment of the national population to a position of subordination. (See Lustick's (1980) major study on the situation of the Palestinians within the state of Israel). The control model can explain political stability in certain "deeply divided" societies and, furthermore, it can be utilized to examine situations in many other parts of the world where distinct ethnic, racial, or religious minorities face a dominant host society that may also be repressive.

In developing a typology of regimes, Kenneth D. McRae (1990, 102) has suggested that the consociationalism and control models can occupy places in a unified typology of political regimes. McRae specifically points out that the control model can be applied to analyze the situation of aboriginal peoples in many areas of the world – a situation that can be characterized as one of dependency on and control by the dominant culture. The key problem for a minority in such a situation, therefore, is to convert a relationship of intergroup domination to one based on equality. An overall Sami objective has been to secure recognition from the state of the legitimacy of their claims to aboriginal rights and, from this, to be able to participate with political decision makers and administrators in some form of consociationalism arrangement to resolve problems through consensus.

The rights of the Sami as an indigenous people represent a test of whether Norway, Sweden and Finland are willing and able to accommodate the legitimate cultural demands of a very small minority which has, historically, occupied and used large tracts of lands within their respective states. In many ways, any consociationalism relationship between the Sami and the state could be characterized as a pure example of this model in that it would be totally dependent on the principles of human rights and moral justice. It could not be labeled a pragmatic political solution in the same manner as Lijphart's classical consociationalism democracies, since the electoral weight of the Sami population is too insignificant for this minority to effect a relationship with the state based on a political accommodation of approximately equal factions.

The first step in this study is a comparative analysis of the general types of responsiveness and commitment that prevail among public agencies with respect to indigenous rights. Based on the aforementioned definitions of control and consociationalism, the variables of responsiveness and commit-

Fig. 1. Responsiveness and Commitment of Indigenous Rights Issues Within a Public Administration Under a Control–Consociationalism Typology.

<i>Types of Commitment:</i>	<i>Types of Responsiveness</i>	
	Control	Consociationalism
Formal observance of the "rule of law"; serious commitment to general ethics of civil service	I Non-acceptance of indigenous rights – equal rights only	II Reluctance to accept indigenous rights as primary objective; public administration serves "needy groups"
Special commitment to understand historical conditions underlying indigenous rights	III Uncommitted to indigenous rights; only if rights are part of state administration	IV Firm acceptance of indigenous rights; strong commitment to indigenous rights within public administration and even to ideas of self-government

ment within a civil service to the demands of aboriginal minorities can be outlined in the typology in Figure 1.

The types of administrative responsiveness to indigenous rights by a control administration would be characterized as highly responsive to the recognized equality rights and obligations of the population at large.

Under Cell I, a control type administration is reluctant to accept indigenous rights and could even be prepared to reject these outright.

In Cell III, while a public administration dedicated to indigenous rights may have undertaken a special commitment to learn about the historical conditions surrounding these rights, such an administration, operating under the control model, could continue to retain an uncommitted attitude towards such rights and the concept of aboriginal self-determination. Such a bureaucracy would only establish new structures related to indigenous rights if these could become an integral part of the existing state administration. For example, a Ministry of Education may be prepared to establish a new agency to promote the Sami language as part of the school curriculum, but ultimate control of such an agency would lie within the existing ministry structure.

In contrast, the types of administrative responsiveness under a consociationalism model would be responsive to indigenous needs and sensitive to identifying certain exceptions that are unique to this minority from universal obligations.

In Cell II, where there is a high commitment to existing law and the civil service merit principle, a public administration might be reluctant to accept indigenous rights as one of its primary objectives if this compromises the professional standards of the civil service.

Under Cell IV, for a public administration with a special commitment to understanding the historical perspective of the situation of indigenous peoples, there would be a firm acceptance of their rights. It could even be strongly committed to a recognition of the indigenous land title and to developing the concept of aboriginal self-determination.

Because observed responsiveness and commitment are the main determinants for demonstrating that a public administration is listening to the actual demands and grievances of its aboriginal clientele, this analysis will provide, together with the above structural analyses, a realistic description of the present balance between the control exhibited by a national bureaucracy and efforts to achieve a new balance based on consociationalism.

Administration of Sami National Culture: Historical Context

This section will provide an historical and political context for an analysis of the administration of the Sami people, their lands and their culture. Much of Sami history down through the centuries lies in the continuous diminution of Sami territory. Even today, Sami organizations fear that further encroachments by outsiders will threaten what is left. For several centuries, the Sami homeland was an area over which expanding states competed; each state strove to gain actual control over the Sami homeland area, thereby counteracting the influence of neighboring states. The territories of the Sami were eventually annexed as integral parts of rival states. To integrate the Sami territories, governments promoted the colonization of their newly acquired regions by the majority population; the interests of the indigenous Sami inhabitants were of secondary concern to national governments and generally ignored (Sámi Instituhtta 1990, 62).

For many years, the established official opinion in Sweden, Norway and Finland was that the Sami had no rights to land – that in annexing these lands within their respective national boundaries, these states had taken possession of “ownerless lands.” Outsiders penetrated the Sami homeland and assumed ultimate responsibility for all decisions on resource allocations in these regions. The Sami were effectively relegated to a subordinate position. Many Sami suffered social stigmatization if they continued to speak their mother tongue in public or expressed outward manifestations of their culture, such as wearing their national clothing (Eidheim 1971). The states exerted an almost total domination over the Sami and their lands in much the same way that Lustick has outlined in his control model.

Official administrative practices prevented many Sami from continuing their traditional forms of livelihood, such as hunting, fishing and reindeer herding (Sámi Instituhtta 1990, 37–48). Eventually, a very tightly regulated

form of reindeer herding was the only occupation that the Norwegian or Swedish states recognized as a distinct Sami livelihood. This represented a virtually absolute form of cultural control. Reindeer husbandry in both Sweden and Norway has divided the Sami community between those who practiced this occupation and the majority of Sami who did not. Since this latter group does not enjoy any other aboriginal rights recognized by the state, their historic links to their traditional territories have been severed. Unlike Sami in Sweden or Norway, Sami in Finland do not have a legal monopoly on reindeer herding. Finnish legislation has, since 1898, provided that any Finnish citizen living in a reindeer-breeding area can own reindeer. In 1993, Finnish legislation was amended to permit any citizen of the European Union who resides in such an area in Finland to practice reindeer husbandry.²

In recent years, Finland, Norway and Sweden have each created administrative structures to coordinate a more comprehensive approach to the expressed needs of its Sami minority than simply those related to reindeer husbandry. In 1960, the Finnish government established, by Cabinet Decree, the Advisory Council on Sami Affairs.³ The Finnish government appoints representatives nominated from five different ministries (Interior, Education, Lands and Forestry, Labor, Environment) and five Sami members nominated by the Sami Parliament; the Governor of the County of Lapland, an appointee of the government, serves as chairman.

In Norway, the Sami Affairs Department of the Ministry of Local Government, established in 1980, coordinates a number of government policies relating to the Sami people (Norwegian Ministry of Local Government and Labor 1990). This Department, located in Oslo, is an integral part of the Ministry although, as the interviews indicate, its officials have developed an empathetic dialogue with its client group. In 1977, the Swedish government established the Interdepartmental Working Group on Sami Affairs, representing all ministries of the Swedish government, to coordinate activities concerning the Sami; the Minister of Culture chairs this working group. Sami representatives may be invited to participate, but there is no legal obligation to do so.⁴

Governments in Sweden, Norway and Finland have also established inquiry commissions to examine the situation of their Sami minority and make recommendations. Such commissions represent an ad hoc approach by governments to examining Sami concerns and can lead to the development of new administrative structures to deal with these issues. The effectiveness of such a commission would depend on: (a) the terms of reference defined by the government as to the subject and scope of its inquiry; and (b) how government and parliament ultimately decide to deal with its recommendations. An inquiry commission can open new channels of dialogue between a minority and the institutions of a state. However, it can also be simply another tool of the state to secure its control over a periphery.

The typology in Figure 1 is applied to examine how each state administration responds to the issue of Sami reindeer husbandry as an aboriginal rights issue.

Under Cell I, a control type administration would be reluctant to accept aboriginal rights and would even be prepared to reject these outright. In the case of Sami reindeer husbandry, administrators have pointed out that such a livelihood for a small minority that extends over huge areas of Sweden and Norway is already a special privilege that no other citizen in these countries enjoys under the present legislation.

The Ministry of Agriculture in Sweden, for example, places a great deal of emphasis on balancing what is perceived as the special rights of Sami reindeer herders to hunt and fish in the course of pursuing reindeer husbandry and the difficult economic conditions faced by the rest of the population of northern Sweden, a region of high unemployment. Sami representatives stated, however, that this balance has always been maintained in favor of the forestry interests and questioned whether decision makers in Stockholm really understood the situation of the Sami in northern Sweden.

Figure 1 then examines how the more recently established state administrative organs have responded to the concerns of the Sami people. Most of the activities of the various coordinating bodies outlined above could be categorized in Cells II and III of Figure 1 – that is, between weak elements of the need for consociationalism on the part of bureaucracy (Cell II) or a growing appreciation of Sami interests as long as they do not undermine the need for administrative control (Cell III). As presently constituted, these advisory type committees, notably those in Norway and Sweden, contain only the most elemental aspects of consociationalism – a sort of status quo plus.

Under Cell II, while there may be a growing appreciation of the possible existence of aboriginal rights, the civil service still seems reluctant to accept aboriginal rights as one of its primary objectives. While acknowledging that the number of people in each national bureaucracy who understand Sami issues has been expanding, many Sami rights activists question whether administrators really see the concerns of the Sami as minority rights issues.

Under Cell III, while civil servants may have undertaken a special commitment to learn about the historical conditions surrounding aboriginal rights, a bureaucratic administration operating under the control model could continue to retain an uncommitted attitude towards aboriginal rights and the concept of aboriginal self-determination. In Finland, for example, the Ministry of Environment established a number of national parks in the Sami homeland in 1990.⁵ In the preparatory work leading up to the enactment of this legislation, the Ministry of Environment consistently stated its appreciation of Sami culture. However, after the national parks were established, the Ministry indicated that it expected the Sami to comply with its admini-

stration of the lands and waters within these national parks just as all other Finnish citizens (Finnish Ministry of the Environment 1991). The fact that aboriginal rights could exist apart from the legislation that established the national parks was either not addressed or was expected to be subordinate to the legislation.

Although the present coordinating mechanisms on Sami issues in Sweden, Finland and Norway only hint at a special commitment to understanding the historical perspective on aboriginal rights or even a firm acceptance of aboriginal rights, there are indications that aboriginal rights are receiving recognition and acceptance in official circles and in public opinion. A number of civil servants and non-government experts who have worked on Sami rights issues have come to appreciate the difficulties that the Sami minority encounters and have developed a professional determination to undertake steps to assist them. These may be crucial in developing a transition to a more consociationalist arrangement as described in Cell IV if they are able to influence colleagues and decision makers regarding the importance of Sami rights.

Re-Emergence of the Sami Nation

Sami cultural identity has experienced a renaissance in the three Nordic countries which can be seen as part of an emerging ethnic revival that began in the 1960s throughout Western Europe (and, since 1989, in Eastern Europe as well). What is most impressive is that a tiny minority, located in a number of isolated and scattered communities on the national peripheries of three different countries, has mobilized politically into national and Nordic organizations to demand that the national authorities establish a dialogue on a wide range of issues that the Sami themselves have identified as essential to their interests.

After the Second World War, Sami in the three countries began to mobilize. National organizations were created to represent the interests of Sami reindeer herders, to promote Sami handicraft, to arouse the identity of Sami youth, and to create a general feeling of pride in being Sami and to promote the opportunity of a Sami to choose, to as great an extent as possible, a Sami way of life. This mobilization brought about a revival in Sami cultural identity in all three countries (Sámi Instituhtta 1990, 79–96). The Sami also mobilized at the pan-Nordic level establishing, in 1956, the Nordic Sami Council to develop solidarity among Nordic Sami groups and to advocate commonly held Sami views for general knowledge and public discussion. In 1992, the Sami of the Kola peninsula region of northern Russia joined, and this organization was renamed the Sami Council. The Sami Council consists of fifteen members: five from Norway, four each from

Sweden and Finland, and two from Russia. The Sami have deliberately allied with other aboriginal peoples around the world and have participated in a number of meetings that have resulted in the adoption of international conventions.

The old pattern of control practiced over centuries by the authorities in Finland, Sweden, and Norway whereby the state could even decide unilaterally as to what constituted the identity of the Sami as a distinct people has been challenged at the local, regional, national and international levels. As the Sami mobilized politically in the late 1960s, the term "Lapp," which had been used for centuries by non-Sami to identify them, was gradually replaced by the preferred term "Sami." In 1971, the Nordic Sami adopted a political action program which became a part of the programs of national Sami organizations in Finland, Sweden and Norway (Nordic Sami Council 1974). This political action program continually asserted the Sami need to have their rights to the use of land and water within "Same Ätnam" strengthened. This passage is reminiscent of the declarations of other aboriginal minorities around the world:

We are *one* people, with a common language and a common history and culture, and we have a strong feeling of affinity. Our lives are based upon the endeavours of past generations; we are living and working in the present and we are building for future generations. Only when we have attained a secure position legally, socially, and financially can our cultural life be fully developed and remain a living culture.

These efforts at self-identity have enabled Sami representatives to present a cohesive Sami view in their dealings with the authorities, to promote a personal pride in being Sami, and to make society appreciate the worth of Sami culture.

Three inter-related issues have emerged among the Sami demands as stated in their political position on aboriginal land title:

(a) Legal recognition of the continued existence of a traditional Sami (or "Lapp") livelihood, particularly hunting and fishing, as practiced by the Sami people even before reindeer husbandry was developed. Many Sami feel that such aboriginal rights should not be tied exclusively to the administration of reindeer husbandry.

(b) No Sami group has ever conceded land ownership to the state. In other words, there is no Sami equivalent of the Indian treaties in the United States and Canada. To the Sami, the question of title to the lands remains open; to that end, they have challenged the three states as to their acquisition and administration of "ownerless lands."

(c) The Sami have demanded a share in revenues derived from the exploitation of resources within their homeland.

One of the earliest challenges to the state's "ownerless lands" position was a doctoral dissertation by Sverre Tønnesen (1972) which addressed the

Sami land title issue in Finnmark.⁶ The Nordic Sami Institute is documenting the situation of the Sami as a separate ethnic group in their settlement areas and their relations with other groups in the Nordic countries throughout history (Sami Instituhtta, undated). A doctoral dissertation in legal history by Kaisa Korpjiaakko (1989) demonstrates that the Sami people have had clear title to the lands they occupy and that this title had been recognized under Swedish law and by the courts in Lapland from the middle of the 16th century to the late 18th century.

Sami activists launched a number of direct challenges to the “ownerless lands” premise; the cumulative effect has been to place Sami rights issues on the national agenda of each country. The 1981 Swedish Supreme Court decision in the *Skattefällsmålet* (“Taxed Mountains”) case dealt with claims by a number of Sami organizations and individuals to ownership of certain areas in the county of Jämtland (*Nytt Juridiskt Arkiv* 1981). Although the Court ruled in favor of the Swedish state on virtually all points of contention, the decision did recognize that: (1) the right of usage since time immemorial was a valid means of acquiring land title under Swedish law; (2) such a legal interpretation, while it had not proven to be applicable to the county of Jämtland, the region to which this decision applied, might be successful in the northern areas of Sweden; and (3) the traditional Sami practice of reindeer herding is a strongly protected user right of a special kind based on immemorial use and, therefore, is safeguarded against expropriation without compensation.⁷

In Norway, Sami organizations directly confronted the Norwegian state about its intention to build a hydro-electric dam on the Alta-Kautokeino river system which flows through Finnmark into the Arctic Ocean. The Alta events resulted in a political uproar that divided Norwegian public opinion for several years (1979–82). These demonstrations were a major turning point in relations between the Norwegian state and its Sami minority, and partly in response to this issue the Norwegian government in 1980 created a Sami Rights Commission to investigate the situation of the Sami minority within the Norwegian state.

In response to lobbying efforts by Sami activists in Finland, the Constitutional Committee of the *Eduskunta* has, since 1976, issued a number of statements that some form of ownership might still belong to the Sami. Tracing Finland’s legal system from the period of Swedish rule, through the period when Finland was a grand duchy within the Imperial Russian Empire (1809–1917), and the period, since 1917, of Finnish independence, Finnish constitutional experts have determined that there has never been any law or legal decision that has abrogated Sami title to their traditional lands.⁸

A unique development in the creation of institutions of self-determination for aboriginal minorities in the world has been the establishment in Finland (1973),⁹ Norway (1987) and Sweden (1992) of Sami assemblies – special assemblies created by legislation and elected by the Sami themselves. Sami

assemblies represent a new force in the development of a comprehensive Sami viewpoint and the possibility of transforming the situation of the Sami vis-à-vis the authorities from the historic one of a control predicament to one of a meaningful consociationalism dialogue with the authorities.

Sami assemblies in Finland and Norway have developed a strong track record. In Finland, the Sami Parliament has taken the initiative on many issues by adopting resolutions that recommend new policies or alter existing policies. Since the Sami Parliament's creation, the land title issue has been one of its primary concerns (Hyvärinen 1979). In Norway, the establishment of the *Sameting* created a new relationship between this institution and Norwegian administrators; the Executive began to deal with political ministers and local politicians rather than restricting themselves to dialogue only with the Sami Affairs Office as Sami organizations had done before. While the Sami assembly in Norway enjoys only consultative powers at present, it intends to gain control of those issues which have a definitive impact on the Sami people. The 1984 report of the Sami Rights Commission foresaw that the Sami Assembly could, in future, be administering lands within the Sami homeland region (Norwegian Sami Rights Commission 1984; Summary 53–54, 70). In Sweden, the leadership of the Sami organizations expressed reservations at the lack of a decision making capacity for their new Sami assembly but generally felt that, once it was established and operating, it could set its own agenda, thereby acquiring its legitimacy.

Sami assemblies have been created both as organs of the state and as potential representative bodies in the development of some form of Sami self-determination. The success of these Sami assemblies as effective representative bodies who reflect the collective will of the Sami will depend on their agenda and the willingness of the authorities in each state to engage in a substantial dialogue with them. These assemblies can be seen as a first concrete development towards the achievement of some form of consociationalism arrangement between the Sami minority and the governments of each of the states in which they reside and as potential instruments of aboriginal self-determination.

Current Perceptions of Sami Rights Issues

Two key factors for operationalizing a control-consociationalism typology are: (a) the effectiveness of the Sami leadership elite in espousing the legitimacy of its demands concerning the status of the Sami identity within the Nordic context; and (b) the existence of a pluralist ideology within a state that would enable politicians and civil servants to listen to Sami claims. If these elements are absent, the result can be confrontation, such as the Alta demonstrations or the *Skattefjällsmålet* case.

Fig. 2. Effectiveness of Sami Elite and Responsiveness of State in Control–Consociationalism Typology.

<i>Effectiveness of Sami Elite</i>	<i>Responsiveness of State</i>	
	Control	Consociationalism
Ineffective	I Reluctance to accept indigenous rights -- often outright rejection; indigenous rights undermined with argument of "all citizens equal; no special rights"	II Reluctance to accept indigenous rights but not hostile opposition; public administration would tend to treat its clientele as general "needy groups"
Effective	III Understanding but uncommitted attitude to indigenous rights so long as they are an integral part of state administration, e.g. language and curriculum	IV Firm acceptance of indigenous rights; commitment to concept of aboriginal land title and even to the idea of self-government

Sami Issues as Indigenous Minority Rights

After a revision of the control-consociationalism typology in Figure 1, utilizing the variable of the effectiveness of Sami organizations, political and administrative responses derived from the documentation and interviews are analyzed as to:

- (1) Sami issues as minority rights issues;
- (2) recognition of the Sami as an indigenous (aboriginal) minority;
- (3) acknowledgment of land title and traditional forms of livelihood as integral components of indigenous rights; and
- (4) indigenous land title as the fundamental issue of Sami claims to their identity as a people.

Most officials who work for state administrations in Norway, Sweden and Finland recognize that collective minority rights are a part of human rights. Administrators also recognize the Sami as an indigenous minority within their country as well as the Nordic setting and, therefore, deserving of special attention. The concept of an historic Sami title to lands and waters within their traditional homeland region, based on their being an aboriginal people, has gradually been recognized by authorities. It is especially apparent from the interviews, however, that this is a controversial subject and its underlying premises have not been fully accepted by decision makers. There is no degree of unanimity to accept this concept either by administrators or, more importantly, by political decision makers, and the responses vary in each country. Many authorities feel that title should be based on traditional use rather than ownership and, furthermore, want to limit these rights to certain usufructuary rights, such as reindeer husbandry.

Figure 2 represents a revision of the control-consociationalism typology of Figure 1 using the variables of the effectiveness of the Sami leadership elite and responsiveness by the state administration.

Cell I represents the status of the indigenous rights situation in the three countries as it has existed for almost two hundred years during which Sami concerns were ignored. The response of the state has been to treat any special indigenous rights the Sami might feel they enjoy as a total non-issue. On many occasions, the state has trivialized such demands or dismissed them as being outside a legitimate national administrative framework. Administrative remnants of a Cell I type control principle continue to exist, but a more modern and pragmatic response by governments to such demands is to insist – firmly – that the state has a responsibility to treat all citizens equally.

The interviews confirm, however, that the Sami will not be satisfied with the argument that entitles them only to the same basic civil rights as everybody else. As an aboriginal minority residing within their very own homeland, the Sami believe they have a right to special programs to preserve and develop their unique minority culture – that they possess a right to choose and enjoy a Sami way of life, to the fullest extent possible. That state administrators insist on equal rights, while precluding any appreciation of the intrinsic value of the Sami's collective rights as a minority, has been interpreted by the Sami as an indication of continued control of their culture by the state. Sami representatives believe that acceptance of the equality premise would result in the virtual disappearance of all vestiges of Sami culture and their complete assimilation into the majority society.

Cell II represents the situation of an ineffective Sami leadership elite and a possible consociationalism response by the state. That is, the state is prepared to acknowledge that some form of aboriginal rights may have existed – and may, in fact, continue to exist – but exhibits no inclination to take steps to deal with this situation. The state administration would tend to respond to Sami needs more by treating their clientele as members of a generally disadvantaged social group, rather than as a minority with special legal rights and identity. A 1959 conference of Nordic parliamentarians and the Nordic Sami Council is, perhaps, a classic example of a Cell II type situation of vague consociationalism. The record of the proceedings (Hill & Nickul 1969) reveals that an extensive list of topics of concern to the Sami people was endorsed, at least tacitly, by Nordic politicians. Among the subjects summarized were reindeer husbandry, farming, forestry, fishing, hunting, mining, industry, water regulation, tourism, and the creation of a Lapp Fund. Yet, apart from a neat listing of the items of concern at this conference – most of which remain objectives for Sami political mobilization efforts to this day – no action originated at the official level.

Cell III highlights the situation in which a Sami leadership elite, categorized as effective in the way it articulates indigenous rights issues, is

confronted by a state administration based on the control model. While the state may exhibit an understanding of indigenous rights, it retains an uncommitted attitude towards how these rights should be adapted within its institutions; such rights would be tolerated only so long as they can be integrated within these institutions. Any proposal to deal with usufructuary rights or ownership of lands the Sami have used for traditional activities could encounter resistance from entrenched interests.

Cell IV, outlining a balance between an effective Sami elite and a state administration based on consociationalism principles could lead to a mutually constructive relationship on a wide range of issues. The response to Sami proposals by the state would be within the context of an acceptance of the principles of indigenous rights. The concept of aboriginal land title could be accepted by the state even to the point of a strong commitment to having this issue resolved wherever it remains unclarified. The attainment of a balance between a Sami elite and a state administration over a wide range of substantive issues that comprise a Sami political agenda could eventually result in the establishment of both a pragmatic administration within the public bureaucracy dedicated to indigenous rights and a framework for Sami self-determination.

Responses to Sami Claims to Aboriginal Land Title

The political and administrative responses to the Sami land title issue varies considerably in the three countries. The development of a common Nordic solution to this matter will probably be more difficult than Nordic cooperation on other questions, such as social welfare, labor, pensions and health, and could take many years to resolve. To analyze recent developments in Sweden, Norway and Finland on the aboriginal land title issue and to make valid comparisons, the control-consociationalism typology in Figure 2 was revised slightly to form the typology outlined in Figure 3.

Figure 3 represents the effectiveness of Sami elites and the responsiveness of a state administration under a control-consociationalism typology focusing on the aboriginal land title issue. This title would include the right to carry out a traditional livelihood on these lands such as hunting, fishing and reindeer herding, as well as berry-picking and timber cutting for personal use.

Cell I represents the confluence of an ineffective Sami elite and a state administration that functions under the control model. Aboriginal land title would be a non-issue since the state administration does not accept the concept and would even exhibit hostility towards anyone who would want to raise such an issue, since this would be interpreted as challenging the ultimate jurisdiction of the state.

Fig. 3. Effectiveness of Sami Elite and Responsiveness of State on Aboriginal Land Title Issue.

<i>Effectiveness of Sami Elite</i>	<i>Responsiveness of State</i>	
	Control	Consociationalism
Ineffective	<p>I</p> <p>Non-Issue. No acceptance of indigenous rights if not outright rejection</p>	<p>II</p> <p>Paternalistic. Possibly some recognition of historic rights but considered irrelevant to sound public administration</p>
Effective	<p>III</p> <p>Threatening issue to public government. Challenge to status quo and state authority</p>	<p>IV</p> <p>Firm acceptance of legitimacy of claim to aboriginal land title; strong commitment to concrete discussions and possible negotiations on this issue. Recognition as integral component of self-government</p>

Cell II, representing an ineffective Sami leadership elite and a state administration of a consociationalism character, would respond to this issue in a paternalistic way at best. The state might be prepared to recognize that some form of historic rights may have existed in the past but would insist that they do not apply in today's situation and, therefore, would be irrelevant to the efficient functioning of a state administration.

Cell III represents an effective Sami leadership elite that espouses clear proposals about its indigenous right to own and/or use lands that they have traditionally occupied, which is confronted by a state administration that operates under the control model (at least as far as this issue is concerned). The state administration would see the Sami claims as a threat to public government as it has been administered for generations.

Cell IV represents a framework of cooperation between the Sami elite and the state administration based on some form of consociationalism principle. Such a framework could include a firm acceptance of the legitimacy of the Sami claim to some form of aboriginal land title. There could even be a strong commitment by the state administration to concrete discussions on how the traditional lands of an indigenous minority could best be administered. The state might even be willing to recognize that this was an integral component in the establishment of some form of self-determination.

The analysis focuses on reforms that have been proposed or are currently being investigated by government-appointed committees in Sweden, Norway and Finland. Valid comparisons are not easy since the Sami land title issue is at different stages of development in each country and, in fact, many national authorities have not accepted it as a legitimate issue.

Commissions of inquiry have proven decisive in many respects, in developing the concept of aboriginal land rights, especially in Finland. Commissions of inquiry in Norway (Norwegian Sami Rights Commission 1984) and Finland (Finnish Committee on Lapp Affairs 1952; 1973) have developed the concept of aboriginal land rights and legitimized it as an issue for public consideration and debate. In Norway, during the period of the interviews, a royal commission continued to study the Sami land title issue in the county of Finnmark. In Finland, a 1990 legislative proposal by the Advisory Council on Sami Affairs included the restoration of title of all public lands in the three northernmost municipalities of Finland to a form of collective Sami ownership (Finnish Advisory Council on Sami Affairs 1990). Such has not been the case in Sweden. Although the 1981 Swedish Supreme Court decision had suggested that the Sami may still enjoy some form of land title rights in the northern counties of Västerbotten and Norrbotten, the Swedish government did not include an investigation of these historic legal questions in the mandate of the Sami Rights Commission when it was established in 1982. The only efforts to address traditional Sami land use by the Commission, which completed its study in 1990, focused on reforms of the administration of reindeer husbandry. Furthermore, the published recommendations of the Commission (Swedish Sami Rights Commission 1989, 66–83) were ultimately ignored in the legislation enacted by the *Riksdag* in 1992.¹⁰

The response of the Swedish government to the Sami claim to aboriginal title essentially follows various positions on the control continuum, that is, between Cells I and III. While the Sami leadership elite is well organized, articulate and possesses excellent contacts with Sami groups in the other Nordic countries and with international aboriginal rights groups, it has not succeeded in making the Swedish state recognize the legitimacy of its position on the land title issue. The exclusive concentration of the Swedish government on reindeer husbandry matters as the only recognized traditional Sami activity could even be interpreted as a deliberate strategy by the authorities to divide the Sami community and avoid serious debate on aboriginal land title. An examination of administrative regimes on reindeer husbandry in all three countries demonstrates that, historically, and even today, these have been a part of the control mechanism of the state rather than the underpinnings of a potential consociationalism dialogue.

In Norway, both the Sami and the Norwegian government have awaited publication of the second report of the royal commission on Sami rights which will deal with the historic land rights of the Sami in Finnmark; as of April 1997, it has still not announced when this report would be published. A firm acceptance by officials and academics that Sami land title represents a legitimate claim can be categorized under Category IV of the typology in Figure 3. The interviews in Norway indicate a strong commitment by the

Norwegian state to have this issue thoroughly researched and subsequently debated in public. How strong this resolve by the Norwegian state will be when the second report is published remains to be seen. At this point the collective rights of an indigenous minority will come face to face with the concrete problem of adjudicating land title issues between two groups of people in communities where families have lived together for generations.

In Finland, many of those who made official comments on the 1990 Sami Act proposal clearly have not accepted the fact that the Sami may have a legitimate claim to land title based on indigenous rights under Finnish law. It is also obvious from the official comments – even by those who supported the proposed legislation – that this is a very complex legal problem involving very old land title procedures dating back several centuries (Finnish Ministry of Environment 1991). A resolution of this problem would require considerable expertise at both the national and local levels.

There have been attempts to create a consociationalism situation in Finland by directly addressing the Sami land title question, in spite of strong resistance from entrenched interests. The Norwegian government and *Storting* have developed a number of principles for the establishment of a consociationalism dialogue with its Sami minority over aboriginal land title, but it remains to be seen how the institutions of the Norwegian state will respond to actual proposals that the royal commission will eventually publish or, even more importantly, to the demands of the Sami if they claim that the recommendations of the commission are not sufficient. In Sweden, the state has given no indication that it is prepared to engage in a full dialogue on a comprehensive set of aboriginal rights principles with its Sami minority. Swedish governments, whether of the political center-right or of the left, continue to restrict indigenous rights to only those Sami engaged in reindeer husbandry – an occupation strictly administered by legislation. Events in Norway and Finland may lead to some sort of Nordic standard for approaching Sami rights issues, which could eventually have an impact on the situation in Sweden.

Applicability of Control-Consociationalism Typology

There has been a profound change in recent years in public attitudes and awareness of minority cultures in many areas of the world (International Labor Office 1988, 29). Governments in Europe, North America and elsewhere have shown increasing responsiveness to the demands of minorities and have adopted policies that recognize their legitimacy. More importantly, minority groups have taken the initiative themselves by demanding that their national governments take action to correct historic injustices and establish a more structured relationship between the leadership of a minority and the institutions of the state.

The typologies outlined in Figures 1, 2 and 3 demonstrate significant variations ranging from a total administrative control over the Sami minority, such as each of the three states has exercised for generations, to the development of newly established elements of a consociationalism relationship between the state and its aboriginal minority. The extent of these shifts varies within each state. For a minority, such as the Sami, being able to move from a situation of intergroup domination to one of balanced equality is essential; that is, there must be a transition from the lands and traditional livelihood of the Sami being totally controlled by a national administrative structure operating exclusively in the interests of the majority to one where the state recognizes the legitimacy of their claims to aboriginal rights and their right to participate with political decision makers and administrators in some form of self-determination arrangement based on a consociationalism administrative structure.

A control-consociationalism typology can be used to determine the comparative status of Sami rights as an indigenous people within the Nordic setting and within each state. The typologies in this study were intended to outline pure types with high and clear responsiveness and commitment. However, in real life, responsiveness and commitment are seldom exceptionally high (rather, they are carried out by routine actions) or pure (where the orientation of a bureaucracy to its clientele's demands remains ambivalent). It is also assumed that the typology applies both to organizations and individuals, although one can appreciate that the responsiveness of individuals and of the organizations they work for can vary, sometimes radically.

The aboriginal land ownership and use issue reveals major political-economic tensions inherent in existing administrative structures that deal with indigenous rights in Finland, Sweden and Norway and the orientations and attitudes of civil servants and experts to these tensions and conflicts. The Sami have a clear concept of territory that compares with aboriginal inhabitants in other parts of the world and continue to derive a traditional form of livelihood from hunting, fishing and reindeer husbandry on lands and waters they have occupied since time immemorial. The documentation and the interviews demonstrate that land title is a fundamental issue for Sami rights activists and represents the penultimate step in their political mobilization. The control-consociationalism typology furthermore identifies clear differences in responses by the states to Sami demands.

An analysis of the documentation and interviews indicate some minimal conditions for developing consociationalism-type structures to deal with the rights of the Sami as an indigenous people within the setting of the Nordic countries:

Effectiveness of Sami Leadership: The Sami leadership in each country must be effective in defining its role in history and in establishing a

continuous dialogue with the state based, primarily, on a political agenda formulated by the Sami themselves.

State Acceptance of Legitimacy of Sami Rights: A corollary to the effectiveness of the Sami leadership is that the state be motivated to participate in a dialogue. Fundamental to this participation is that the state recognizes the legitimacy of the historical position of the Sami people as an indigenous people within the state – at least within certain regions of the state. The concept of an historic Sami title to lands and waters within their traditional homeland region has gradually been acknowledged by authorities, but the interviews demonstrate that this is a controversial issue.

Agreement on Historic Facts: The Sami and the state need to agree on the historical facts as to how the Sami homeland came to be occupied by outsiders and what measures can be taken to preserve existing Sami rights of occupancy and use. At a minimum, both parties must be prepared to determine what constitutes the historic legal facts about this issue.

Events in the three countries indicate that Sami land title, based on aboriginal title, has become a significant issue. The Sami have clearly positioned themselves on this issue and have achieved a considerable degree of recognition and acceptance from the three Nordic states as to the legitimacy of their demands. With Sami representative institutions gaining legitimacy and confidence and the likelihood of new international conventions being adopted that will address the concerns of indigenous minorities in more specific terms, the Sami land title issue can be expected to increase in importance. The concerted efforts of politicians and administrators at both the national and local levels would be required to develop a new framework. The control-consociationalism typology, situated as it is within the context of the political history of the Sami minority, can be a useful analytical tool in the conceptualization of such a framework.

NOTES

1. The Sami who live in Finland, Sweden and Norway are an indigenous minority with a recognized territorial base and distinct languages. The Sami (until recently commonly known as Lapps) inhabit the arctic and subarctic areas of four different countries and number about 60–70,000 in total: 40,000 in Norway (of a total population of 4.3 million); 17,000 in Sweden (of 8.8 million); and 5,500 in Finland (of 4.9 million). Some 2,000 Sami inhabit the Kola peninsula region of northern Russia. While a minuscule proportion of the total national population, the Sami occupy some forty percent of Sweden's territory and almost the same percentage of the State of Norway. Furthermore, in Norway, the Sami are indigenous to much of the Arctic coast where they have derived a livelihood from fishing since time immemorial. The Sami homeland region in Finland represents almost ten percent of the territory of that country.
2. Laki 28.6.1993/614, EU 11.6.93. (Amendment of Reindeer Husbandry Act of 1990 (Poronhoitolaki 14.9.1990/848) allowing EU citizens to undertake reindeer husbandry).

3. Valtioneuvoston päätös n:o 401. Saamelaisasiain neuvottelukunnasta; 30.9.60. Valtioneuvoston päätös n:o 367; 26.3.87 (Cabinet Decree No. 401 on Establishment of Advisory Council on Sami Affairs issued 30 September 1960; amended by Cabinet Decree No 367; 26 March 1987).
4. The Sami Rights Commission in Sweden questioned the adequacy of this working group (Swedish Sami Rights Commission 1989, 83–84).
5. Erämaalaki 17.1.1991/62. (Wilderness Act of 1991).
6. Tønnesen's dissertation was cited in the terms of reference that the Norwegian government set out when it established the royal commission on Sami rights in 1980 (Norwegian Sami Rights Commission 1984, 43).
7. An English translation of this decision can be found in Jahreskog 1982, 146–242.
8. Finnish Constitutional Committee 1976–93. Perustuslakivaliokunnan lausunot (Statements of the Constitutional Committee of the *Eduskunta*): (a) Lausunto n:o 7/1978 vp., 6.6.1978, HE 243/1976 vp., on Sami water and fishing rights in the municipalities of Inari, Enontekiö and Utsjoki; (b) Lausunto n:o 5/1981 vp., 2.6.1981, HE 214/1980 vp. on revisions to the Fishing Act; (c) Lausunto n:o 11/1982 vp., 21.12. 1982, on riparian rights in the municipality of Utsjoki; (d) Lausunto 13/1989 vp., 13.10.1989, regarding an agreement on fishing by Finnish and Norwegian citizens in the Tana River; (e) Lausunto n:o 3 1990 vp., 8.5.1990, HE 244/89 on Reindeer Husbandry bill; (f) Lausunto n:o 6 1990 vp., 22.5.1990, HE 42/90, on Wilderness Areas bill; and (g) Lausunto n:o 8 1993 vp., 11.5.1993, HE 192/1992 on amendments to Reindeer Husbandry Act on rights of EU citizens to take up reindeer husbandry.
9. The Sami Assembly in Finland was first established in 1973 by a Cabinet Decree (Asetus saamelaisvaltuuskunnasta N:o. 824, 9.11.73). In 1995, the *Eduskunta* followed the examples of Norway and Sweden and enacted legislation to provide a statutory basis for the Sami Parliament in Finland (Finnish Law: Laki saamelaiskäräjistä (Act on the Sami Thing) 17.7.1995/974).
10. Regeringens proposition 1992/93:32. Samerna och samisk kultur m.m. (Swedish Government Proposition regarding Sami Rights and Sami Culture, etc.).

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