

Culture as Property? Some Saami Dilemmas

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Saami peoplehood and cultural distinctiveness

A couple of years ago archaeologist Kjersti Schanche discovered by chance a field of red ochre paintings on a rock surface close to the road in one of Finnmark's fjord areas. Finnmark is the northernmost county in Norway and home of most Saami, the aboriginal people of Northern Scandinavia.¹ The paintings were later estimated to be up to 4000 years old. In her announcement of the discovery, the archaeologist suggested that the paintings were made by Stone Age Saami. As evidence, she emphasized the continuity in archaeological finds between the Stone Age settlement in the area and the Saami settlements in later periods.

However, and much to Schanche's surprise, the finds immediately triggered a vehement debate concerning the probability of their Saami origin. She was accused by lay people of manipulating Finnmark's prehistory, since, in their opinion, the Saami arrived in Finnmark at a much later stage. They took her Saami identification of the paintings to be support for an unwarranted Saami claim of aboriginal territorial rights. Some of her fellow archaeologists also doubted the likelihood of a Saami origin, arguing that "Saami" is a label pronouncing an ethnic identification generated by contact with other peoples at a much later phase. A conflict developed between the cultural heritage curator of Finnmark county and the Department of Culture and Environmental Protection of the Saami Parliament.² Both parties claimed responsibility for the custody of the sensational finds (Schanche 2003).

Why this controversy? Obviously, the past is a contested field in this region. Although it is true that Northern Scandinavia has been colonized by nation states that incorporated Saami territory within their borders, unlike the colonization of the Third World by European powers, this did not happen through conquest at a specific and recorded date in history. In popular opinion the question of whose ancestors were there first is crucial in deciding whether Saami claims of aboriginality, and their concomitant claims of territorial rights and self-government, are soundly based or not.³ There are those who claim that ethnic origin, aboriginal or not, should not form the basis for any claim to special treatment, rights or prerogatives. Everyone, they argue, is a citizen of the Norwegian state and should enjoy equal rights and duties as such. Privileges based on ethnicity should be banned, since they inspire grievances and provoke conflicts. Then there

are those who claim that the Saami were not aboriginal to the area at all, that they came well after the arrival of the Norse. These people reject the idea that finds in the area older than 800-1000 years can in any way be considered Saami, and they refute the contention that international legislation on the rights of aboriginal or indigenous peoples should oblige the Norwegian government to introduce special rights for the Saami. And finally, there is the Saami ethnopolitical movement that over a period of 30-40 years has succeeded in persuading the Norwegian government to recognize the Saami as a people and not just as "Saami-speaking Norwegians". This recognition is most clearly represented in the establishment, in the late 1980s, of the Saami Parliament and a constitutional declaration of equal status of the Saami as a people in their own right.

It should come as no surprise, then, that the issue of "whose cultural heritage?" is a contested one. It touches upon the very essence of Saami aboriginality. Moreover, any claim of cultural ownership is argued on moral grounds as well as on the basis of authenticity, namely that Saami inherent cultural knowledge is a prerequisite for a deeper interpretation of its meaning.⁴ This is why the Saami Parliament demanded and was accorded administrative responsibility over all tangible cultural remains considered to be Saami. This was not achieved without protests from the Norwegian cultural heritage administration.

In this chapter I intend to shed light on the culture-as-property issue as seen from the vantage point of the Saami as an ethnic minority and an indigenous people. I will treat the concept of property in a metaphorical sense, and avoid the question of legalizing copyright to objects, tangible or intangible, of cultural heritage.⁵ The idea that cultural elements belong to peoples needs to be distinguished from the conception of property as such. Culturally characteristic elements may be classified as belonging to a category distinguishing a people and used, accordingly, as ethnic markers. As such, they are part of a global discourse to create, maintain and express distinctiveness between peoples. In this process cultural elements are borrowed, their origin is contested, and their symbolic references are manipulated. When elements enter a realm where they are employed as ethnic boundary markers, their idiomatic value can be undermined when their origin is questioned. And in a different process of symbolic manipulation, they may be adopted by outsiders and their symbolic meaning exploited for commercial purposes (e.g. touristic exoticism) or made to caricature those they are associated with. However, the employment of cultural emblems for communicative purposes by others can hardly be avoided, irrespective of what purpose or message is intended.

The Saami people, as an ethnic minority, have faced pressures to assimilate with their majority neighbors. Seen from the majority perspective, they were offered opportunities to adopt Norwegian cultural elements, pass through the ethnic boundary and become Norwegians, a transformation of identity that would normally take more than one generation for those who embarked upon it. However, they have survived as a people despite more than a hundred years of effort by Norwegian governmental authorities to assimilate them by obliterating their cultural heritage and their existence as a distinct people. I will not go into the various motives behind this policy, which lasted from the middle of the 19th century to about 1960. Let me just mention that its “scientific” underpinning was the paradigm of Social Darwinism; it inspired the urge, on the part of politicians and administrators, to eradicate all elements of Saami culture, from heathen practices⁶ to language use and reindeer-herding.⁷ The 19th century was the era of Norwegian nation building, culminating in the establishment of the independent Norwegian state (breaking the union with Sweden) in 1905. There was no place for a distinctly different people in this national struggle. To many Saami, in particular those living as farmers and fishers on the northern Norwegian coast, this process of assimilation resulted in the loss of their language and induced in them a sense of inferiority at a time when they were trying to cope with the demands of Norwegianness and with modernity in its varying forms. They were led to reject their cultural heritage as something belonging to the past and to a condition of poverty and inferiority. It afforded them few skills relevant for coping with the challenges of participating in the economic and political life of the new nation. In addition, nearly all material remains of the past – buildings, boats and tools – were destroyed by the German occupants, who pursued a scorched earth strategy as they fled from the Russian army toward the end of World War II. No wonder the recovery of their material cultural heritage became a pressing challenge to the Saami revivalists when political and cultural emancipation was again placed on the public agenda in the 1960s.

Only reindeer-herding remained as their distinctive economic and cultural emblem. Here they met with no competition from the majority population.⁸ This is why reindeer-herding is considered a Saami cultural “reservoir”. Here their language is particularly functional in the sense that herding knowledge is intact and transmitted from one generation to the next through the rich vocabulary on animals, landscape characteristics and climatic conditions, whereas in other activities the Saami have to communicate with an outside world that only understands the Norwegian language (Paine 1994).

However, reindeer-herding is not representative when it comes to the number of participants. In Norway, less than 10% of the Saami are active reindeer herders. So what about the rest of the Saami? How are they to distinguish themselves as a people with a distinct cultural heritage, one that they demand should be acknowledged as complementary to the Norwegian? In some rather isolated communities with a clear majority of settled Saami the population is still bilingual, and their Saami identity is not in question either by themselves or by their Norwegian neighbors. But in most other coastal communities it is not their language, their material culture or their economic adaptation that distinguish them from the Norwegians. It is on the basis of their Saami descent that they claim to belong to a different ethnic group. If they wish to vote in the Saami Parliamentary elections every fourth year, they have to register in the Saami electoral census. This requires that they have at least one Saami ancestor (i.e. a parent, a grandparent or a great-grandparent who spoke Saami) and that they identify as a Saami on a subjective basis. Registration is voluntary and a matter of personal interest, and it does not preclude being listed in the Norwegian electoral register as well. In 2001, 9921 individuals had so registered. It is only in Finnmark that more than 10% of the entire electorate is also registered in the Saami electoral census, although the number of those who may claim at least one Saami-speaking great-grandparent is thought to be much higher.⁹

It takes time to reverse the sense of Saami inferiority caused by the policy of assimilation. To increase significantly its electoral base, the Saami Parliament must demonstrate its ability to change the conditions of everyday life for Saami people. Another likely obstacle to Saami self-awareness is that, in reconstructing their ethnic identity, individuals are expected to subscribe to a cultural package that contains elements many of them feel are quite removed from their daily lives. A recurring argument made by coastal people (with or without Saami ancestry) is that Saaminess is centered on the interior of Finnmark and is associated with reindeer-herding and the daily use of the Saami language; those who do not fit this category are excluded from Saami identity.

The self-ascription of Saami ethnic identity is based, in principle, on two alternative criteria. Those who belong to the social sphere that participates in culturally specific activities, such as reindeer-herding and/or the daily use of the Saami language, hardly experience any discrepancy between their own self-ascription and the ascription by their social environment of their Saami identity. Those who do not belong to this sphere, however, yet still claim to be Saami, must point to their ancestry and their community's Saami past as evidence. Their claim to a Saami cultural heritage is particu-

larly fragile. As indicated above, however, claiming a Saami past is also problematic for those among their neighbors and even family members who might prefer that it be forgotten in order to corroborate their preference for a Norwegian identity.

Cultural heritage as property

The idea that culture may be treated as property is mainly derived from a relativistic and romantic conception of culture as bounded entities to be understood solely on their own terms. The idea also ties in, however, to a human rights concern with a more universalistic self-proclaimed approach; this regards peoples, in particular indigenous peoples who have no geopolitical borders to protect themselves, as entitled to certain measures to protect their cultures against (mis)use by non-members. Thus, the culture-as-property concept links ethnic identity to the politics of minority empowerment (Wright 1998).

As has been pointed out by a number of observers, (Brown 1998, Eriksen 2001, Kasten, *this volume*), the issue of cultural property rights comprises a range of concerns and dilemmas. As seen from the vantage point of indigenous peoples, the issue has both a moral and a legal aspect, and both relate to the broader question of relative power. On one side is a group that claims to be entitled to “reclaim its culture” on the basis of a set of overarching and internationally sanctioned moral principles of fairness and respect. Standing in juxtaposition is another, and usually more powerful, entity, such as a state or an international corporation, that has the power to decide according to its own values and assumptions, whether to accept or reject such claims. Most anthropologists today accept the fundamental legitimacy of native claims to have cultural objects such as human remains and ritual paraphernalia repatriated. (Of course, museum curators generally take measures to ensure optimal material conditions for the custody of such objects.) The issue of repatriation and native control is a broader one, however. According to Brown (1998), an emerging conceptualization of cultural information includes the following assumptions:

1. An ethnic nation – a people, in other words – can be said to have enduring, comprehensive rights to its own cultural productions and ideas. These include the right to exercise total control over the representation of such productions and ideas by outsiders, even in the latter’s personal memoirs, drawings, and fictional creations.
2. A group’s relationship to its cultural productions constitutes a form of ownership. This ownership may be literal – that is, based on some comprehensive definition of cultural or intellectual property – or

metaphorical, reflecting universal recognition that in moral terms a group “owns” the ideas and practices that it holds dear.

3. Cultural information pertaining to ethnic minorities that was gathered in the past by anthropologists, missionaries, government administrators, filmmakers, and novelists is by definition so contaminated by the realities of colonial power that it cannot meet (today’s) standards of informed consent. This information may therefore be quarantined or subjected to severe access restrictions when and if its subjects deem its presence in the public domain offensive. (Brown 1998, 194–5)

This development is confirmed by the UNESCO Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore, which states that the terms in general use in international debate include:

- “traditional knowledge, innovations and practices” in the context of conservation and equitable use of biological resources;
- “heritage of indigenous peoples”¹⁰ and “indigenous heritage rights;” “traditional medicinal knowledge”¹¹ in the context of health policy;
- “expressions of folklore” in the context of IP [Intellectual Property] protection;
- “folklore” or “traditional and popular culture” in the context of safeguarding traditional culture;¹²
- “intangible cultural heritage;”
- “indigenous intellectual property” and “indigenous cultural and intellectual property;”
- “traditional ecological knowledge;” and
- “traditional and local technology, knowledge, know-how and practices.” (WIPO/GRTKF/IC/3/9; see also von Lewinski, *this volume*)

Here we are confronted with a number of definitional problems, such as what exactly should be understood by “tradition”, “folklore”, “intangible” vs. “tangible” cultural heritage, etc. The problems are related to an indigenous need to identify (which implies reifying or objectifying) their culture whenever issues of cultural appropriation by external institutions and individuals arise. This strategy is particularly understandable in cases where indigenous objects and knowledge are appropriated or copied for commercial use. Although the issue of collective rights presents legal problems in a jurisdictional sphere that is tailored to fit the individual or corporate interests of the modern capitalist world, in such situations there is a legitimate demand for some type of ownership or copyright. There is, of course,

the additional problem of keeping so-called traditional knowledge out of reach of those interests that might want to profit from it in a variety of ways (and not only economic) by making it available for exposure and exploitation in non-traditional ways. In the realm of postmodern bricolage, the innovative use of religious symbols and ritual practices “borrowed” from indigenous cultures by New Age practitioners is one conspicuous example. Another is the tourism industry’s devotion to the seemingly authentic indigenous in its promotion of exotic attractions (Root 1996, Olsen 2003).

But the concept of culture as an entity that is to be preserved and transmitted by “those who belong to it” (by descent, by birth and by upbringing) also implies the creation of a distance to it. Culture-as-property is also culture-as-object. It is something that we as majority members, and they as indigenous minorities, reflect upon and regard from a vantage point that is not unlike the anthropological approach of theoretical reflection. The difference is that the ethnic reflection is normative whereas the anthropological one is, or should be, descriptive and analytical. The analytical task, then, is to consider the implications of *rights* for the construction of social relationships.

Concerning cultural property rights, there are two sets of relations that I want to consider. I believe these relationships to be of fundamental importance for the analytical conceptualization of what we may regard as property rights pertaining to “culture”. The first of these is the relationship between people as concerning things. This relationship has to do with the social distribution of rights and duties, i.e. with what we understand as social structure. The second is the relationship between text and context, or what constitutes the production of meaning in society. This has to do with the decontextualization and recontextualization of sign objects. The distinction may be confused in the English language, where “property” denotes “something that is owned” as well as “characteristic” or “quality”, i.e. something that signifies the meaning of an object. This is also why I believe the distinction between “tangible” and “intangible” is confusing when it relates to different types of cultural property, such as material vs. immaterial objects. The meaning of an object resides in its ideational construction, e.g. its metonymic and metaphorical qualities, not in its materiality.¹³ I shall start with the aspect of property as it pertains to social relationships.

The notion of property normally (i.e. in Western usage) connotes a legal relationship between a subject (a person, a group, a company, an organization, etc.) and an object (a thing). However, it may be more accu-

rate to define a property relationship in terms of a specific constraint on the relationship between the proprietor and “the rest of the world” as concerns the object, i.e. in terms of the distribution of social entitlements (Hann 1998, 7). When I say “I own this book”, I am making a statement about my relationship to others concerning our disposal of the book. It may be exclusively mine, and anybody else will have to ask my permission to borrow it, or I may share it with some specified other(s).¹⁴ This is how Radcliffe-Brown understood it, when he referred to how Roman law treats the liabilities of persons to other persons and to things. He distinguished the following:

- (a) Rights over a person imposing some duty or duties upon that person. This is the *jus in personam* of Roman law. A father may exercise such rights over his son, or a nation over its citizens.
- (b) Rights over a person “as against the world”, i.e. imposing duties on all other persons in respect of that particular person. This is the *jus in rem* of Roman law in relation to persons.
- (c) Rights over a thing, i.e. some object other than a person, as against the world, imposing duties on other persons in relation to that thing. (Radcliffe-Brown [1952] 1965, 32–3)

According to the first legal principle, for example, an indigenous group could mobilize all its members in defense of its territory against some sort of encroachment. As for as the issue of cultural property is concerned, the principle would demand that every member of the group in question be expected to protect its cultural legacy. The second legal principle might imply that the group is entitled to respect from non-group members for their cultural heritage. It could sanction any non-indigenous person who tried to get hold of something considered to be “indigenous knowledge” from a member of the group, or who made use of it for purposes not authorized by the group. The third principle is the one normally considered as ownership proper, i.e. the exclusive right to dispose over an object.

These distinctions can help us to clarify the relationship between the concepts of “cultural property rights” and the seemingly more general “cultural rights”. Are “rights” always in some manner about ownership? What kinds of “rights” are we talking about – legal rights or moral rights (legitimate but not enshrined in law)? There also lurk behind these questions a couple of more general and basic ones: What do we mean by “a culture”? In what way can a culture be owned? If the continuity of a culture is to be preserved, is this best achieved by defining it in terms that can make it a legal object to which someone can claim ownership rights as against others? Obviously, this sort of cultural ownership “as against the world”

can be claimed only once a process of reification has taken place, one through which “the culture” has been transformed to an object of common concern for the group in question, i.e. made into an estate around which the group has decided to form a corporation. To demand, however, that members of an ethnic category should unite as a group in defense of what is purported to be their common cultural estate may seem like a tall order, and particularly so when there are divergent opinions as to what objects, practices, types of knowledge or skills, etc., constitute “the culture.” When qualifications for obtaining membership in a corporate group are derived from the ability to demonstrate certain skills, such as having a command of the group’s language, unless recruitment of outsiders is actually welcomed the relevant competences will have to be protected (Harrison 1999).

If it is not, the group members in question will have to define their common identification as the proper owners of their cultural estate to be contingent on criteria other than shared cultural competence. And when ethnic belonging is construed as contingent on descent, which is seemingly the most common definitional criterion, mixed parentage is a ubiquitous source of confusion (unless a rule of unilineal descent is practiced). Common local residence may serve as a compensatory device when descent seems less suitable for according group membership. When members of different ethnic groups reside together and pursue similar ways of adaptation to the environment, ethnic difference may be overlooked or undercommunicated. Knowledge, ideas and techniques may be transmitted and shared. As we shall see in the Svartskogen case below, ethnic exclusivity is not practiced in the predominantly Saami (by descent) utilization of a shared resource area. But it stands to reason that, when cultural ownership on ethnic grounds is the ideal, some sort of independent regulation of access to ethnic group membership is required if exclusivity is to be successfully upheld. Otherwise outsiders might become members by adopting diacritic elements of the cultural estate. Defending the ethnic boundary by trying to regulate the flow of cultural elements in a globalized world is a difficult task. There is a need among indigenous minorities, then, to construct ethnic exclusivity on primordial grounds, i.e., contingent on origin, not culture.

Logically, a group’s control over cultural items considered to be important for the signification of its distinctiveness is more urgent the more similar to other ethnic categories the group may seem to be. Or, to quote Harrison (1999, 239), “ethnic groups may sometimes conceive themselves as in conflict not so much because they have irreconcilably different identities, but rather because they have irreconcilable claims or aspirations to the *same* identities. In these situations, it is the perceived similarities of

the ethnic Other that are experienced as threatening, rather than the difference.” The problem, simply put, is that the claim of a cultural item’s authenticity, which is founded on its inherent belonging within a specific cultural context, is undermined when members of a different ethnic group copy it. The aforementioned New Age practices of adopting symbols, beliefs and rituals belonging within an indigenous sphere of spiritualism, and mixing them with elements from other cultural areas, are illustrative of the decontextualization problem. Such items are thereby emptied of their distinction-making value and made to serve other interests on a delocalized level of meaning production. The property as (symbolic) quality is undermined when its identification as property (in the sense of ownership) is altered.

Idioms that unambiguously signal Saami identity are few, the Saami costume (Saami *gákti*, Norwegian *kofte*) being one of them. Today it is manufactured by local Saami handicraft shops, but also by Norwegian ones. As a commercial product it may also be bought by Norwegians, i.e. most manufacturers would not object to a purchase order from a Norwegian. This seems to be a rather hypothetical occurrence, however. Wearing a *gákti* at special occasions is rather a signal that a person – as an example of ethnic reorientation – seeks to have his or her Saami identity confirmed. Only very special non-Saami persons have been seen to wear the *gákti* unchallenged, notably members of the royal family when visiting Saami communities in inner Finnmark. This may be evidence that royal persons are individuals considered to be “above” the ethnic boundary, and that their occasional use of the *gákti* is a sign of reverence for the Saami (Thuen 1995, 113–4).

Cultural protection or innovation?

In the early 1960s the Norwegian contribution to the televised European Song Contest was a song performed by a popular Norwegian female singer clad in a make-believe Saami costume. The song portrayed a young Saami girl herding her reindeer and longing to come down from the mountain to meet her Saami boyfriend. It had every element of the typically romanticized conceptualization of the Other. This instance was subsequently showcased as classic example of majority exoticism at an exhibition of Saami ethnopolitical emancipation since World War II at Tromsø Museum in North Norway. The clear message was that reclaiming the capability for self-representation is an important ethnopolitical challenge. A contrasting example was the Saami segment of the opening ceremony of the Winter Olympic Games in Lillehammer, Norway, in 1994. Here, Saami perform-

ers staged a show symbolizing the affiliation of Saami culture to the Arctic region, to skiing and even to shamanism. In this case, the production was conceived and brought to life by Saami producers and performers, so there were few protests alleging exoticism or lack of authenticity. Likewise, the president of the Saami Parliament has volunteered to participate in the campaign to promote the city of Tromsø as the site for the Olympic Games in 2014.

Apart from the identities of the performers, the difference between these two examples is obviously that the first represents a borrowing (or stealing) by the majority of elements conventionally associated with Saami culture, which are then manipulated and recontextualized within a realm of commercialized international popular culture. To the Saami, the way this was presented must have been so caricatured that it bordered on the ridiculous. The second example also presents Saami cultural elements in a new context. However, in Lillehammer the Saami presence presumably appeared as a message of equality between minority and majority characterizations of “the Norwegian (including Saami) cultural heritage of winter sports.” Both contributed to a spectacular panorama of performance inventiveness. This was obviously an occasion for essentialistic presentations, rather than pretensions of authenticity. But even in this instance, there were some Saami who complained that the association of the Saami with reindeer seemed irresistible, while others argued that the allusion to shamanism represented the paganism of the Saami past and should have been avoided.¹⁵ There is seldom consensus on how Saaminess should be represented.

Although it is understandable that indigenous people will protest when their cultural representations are exploited, it is also important to protect the right to a free flow of information and to the innovative use of decontextualized and eventually reassembled cultural elements. From this point of view, it is both impracticable and rather authoritarian to extend public legislation so far that it includes measures against the scholarly investigation or artistic elaboration of cultural elements that, some might claim, belong within the context of indigenous cultural heritage.¹⁶ Appropriation by outsiders is one thing. Limiting any license to possess culturally specific objects (or to practice indigenous knowledge) solely to members of the indigenous group where it originated is quite another. In many cases this would involve, among other problems, the need to invent criteria of authenticity for ethnic group membership that would have rather unpredictable effects on individual identity management. As we have seen, for a majority of the Saami their ethnic identity cannot easily be recognized on the basis of specific ascriptive characteristics. It is a manifest characteristic

of the Saami ethnic revitalization process that the individual assertion of group membership may be just as legitimately questioned on the basis of proper descent as it is on the possession (or lack thereof) of indigenous knowledge and essential cultural skills. Members of the indigenous population have had not only to adopt the majority's cultural competences, but also to substitute them for their own. The effect, whether intended or not, has been assimilation. When group members must acknowledge and specifically authenticate those individuals who possess the right to perform or share in the heritage of an indigenous group such as the Saami, it bestows powerful authority on them as the custodians of the culture. This is even more the case when there is a ban on creatively innovating the heritage. In an age of worldwide electronic communication, such a ban seems rather impracticable in any case.

The claim to self-determination for indigenous peoples, based on principles confirmed in international declarations such as the UN International Covenant on Civil and Political Rights Article 27 and the International Labor Organization Convention 169, may be associated with a claim to cultural protection like the one embraced by the UNESCO World Intellectual Property Organization. Such cases entail the concept of "a culture" as a bounded, distinctive and internally homogeneous entity. It is an inherently essentialist view of culture. The cultivation of cultural uniqueness seems to lie at the heart of many indigenous people's movements, because to live in two worlds, their own and that of the majority, is fraught with failures and shortcomings in both realms. Although it may seem legitimate to link territorial and self-government claims to a claim to cultural protection, such a position has far-ranging implications. Anthropologists may be placed in a particularly uncomfortable position thereby. They have for quite some time disclaimed their former trademark *par excellence*, namely their conceptualization of the world as consisting of distinct cultures to be studied in bounded, small-scale units. Now they find themselves confronted by a claim to protection of cultural distinctiveness on the part of those who have figured most prominently among their objects of research.

Part of the debate on the politicization of culture relates to the problem of grounding a collective identity on the idea of common origin within a specific territory. It implies drawing boundaries around a complex of cultural elements, claiming that the elements belong together as an entity inherited from prior generations, while at the same time defining (on much the same terms as a corporation with an estate) those who associate themselves with this entity as a people with a culture. Cultural change – the inevitable processes of antiquation, adjustment and innovation shaped by the dynamic transboundary relationship of people, symbols, ideas and

impulses – may then be conceptualized within a preconceived matrix of acceptability. Some changes may be seen as threatening and destructive to cultural purity, others may signify a loss of cultural meaning. In the case of the Saami, one might ask what would be left of Saami cultural distinctiveness if reindeer-herding disappeared. Some Saami actually claim that the reindeer-herding industry has been modernized – through the introduction of a market-related economy, advanced technology, and legislation that renders many customary practices obsolete, etc. – to an extent that makes it less Saami, although still performed exclusively by Saami owners and herders. Rather than being viewed simply as passive adjustment to a changing environment, however, the disappearance of certain customary practices and the subsequent adoption of new ones could be seen more positively, as evidence that the Saami are able to appropriate the new opportunities offered by altered circumstances and to do so in innovative ways. The identification of ethnic identity with particular skills and practices, with a characteristic ethos (cf. “Volkscharakter”), or with other types of essentialized icons is certainly problematic. In the case of reindeer pastoralism the important point is that it is an exclusive and legally protected Saami privilege, which is not jeopardized by changes in how it is practiced due to the introduction of modern equipment or to market integration. But the question remains whether this privilege is based on a concept of hereditary right to land and a way of living, or on a principle of cultural protection. This question has not been posed directly in a legal context, but the acceptance by Norwegian jurisprudence of Saami pasture rights based on long-term customary practice seems to corroborate the view that it is a hereditary right that is not contingent on a specific and “traditional” type of usage.

An important element in the Saami ethnopolitical revitalization of the 60s and 70s was the grand narrative of a cultural loss caused by the policy of assimilation. The identification of the lost culture (and, for some, the lost identity), and subsequent efforts at revitalization, have centered on qualities and moralities that emphasize a contrast to the majority culture. “Typical Saaminess”, according to this position, comprises such essentials as the appreciation of individual equality and autonomy, close-to-nature sensitivity and ecological harmony, conflict avoidance and consensus seeking. This cultivation of the collective Self through narratives, practices, artifacts, etc., is presented as an image in direct contrast to the Other, i.e. to Western and Norwegian culture, and as the essential continuity of Saaminess, despite the loss of land, language, and self-esteem.

The problem is, however, that such imagery may not match the need, e.g. among the younger generation of Saami, to orient themselves within

a globalized world where the Norwegian is not necessarily the significant Other, as it was during the era of assimilation. Cultural preservation, which is the standard argument behind the claim of ownership to a specific cultural heritage, is then a matter of some confusion. For instance, the Saami close-to-nature ethos may be regarded as much as a characteristic of their neighbors' preference for a romanticized Other as it is one of their own. A hundred years ago their neighbors associated Saami culture with primitivism and a lower position in the evolution of races. Many Saami accepted this image and tried to dissociate themselves from their cultural heritage. Today, Saami reindeer-herding is under critical scrutiny on ecological grounds, and reindeer herders are accused of being far from peaceful. There are issues related to alleged overgrazing on winter pastures in the interior of Finnmark and subsequent quarrels over grazing land. The point is that the interpretation of cultural elements as emblems of character, ethos or identity is a continuous meaning-producing process that is beyond the control of any single participant in the discourse. In this perspective, culture-as-property is a misleading concept. There is no way that any one of the various participants in the meaning-producing process can control or restrict its outcome. Thus, it makes sense to distinguish between "heritage" as the sum of objects under someone's custody, and the contextual meaning of those objects, which is always changing and always in the eye of the beholder.

Those who reject the idea of a Saami past tend to associate ethnic identity with place. A Saami community, i.e. a community that can invoke a cultural heritage materialized in archaeological remains, or has received an officially recognized Saami position,¹⁷ is not, apparently, a desirable home address for those who want to be considered Norwegian. On the other hand, those who aspire to be recognized as Saami individuals cannot content themselves with a Saami home address. They will be looking for means to present themselves more actively and positively as Saami, to become "owners" of culturally significant skills – a competence in pursuing a way of life that links them to the Saami past, including experience-based local knowledge about landscape, traditions, oral history and myths. This type of knowledge is best preserved in the Saami language. In learning the language, one may also hope to regain possession of the lost cultural knowledge. The problem is that this type of knowledge may have much less significance in today's modern world. It may come across more like folklore than as a living, albeit tacit, way of understanding and coping with the local world. This is particularly so if the quest for half-forgotten customs and traditions is construed as a quest for a uniquely *Saami* heritage. In some of these coastal communities people of different ethnic origin have

mixed over the centuries. Irrespective of how they once conceptualized their ethnic identity, they came to share many of the customs and traditions that were useful in coping with their environment. They may, therefore, think it more appropriate to abandon the idea of a cultural heritage that is tied to narrowly specific practices, and to assume that ingenuity, flexibility and the ability to adjust to a changing environment are the features of their heritage that enables people to orient themselves in the modern world. In some communities the inhabitants – Saami *and* Norwegians – were bilingual a hundred years ago. This mixing did not erase the ethnic boundary, but it may have reduced its significance in daily life. “Reclaiming the past” may in some communities mean ascribing an ethnic contrast to the past that was not actually so pronounced in the daily life of their ancestors. As we shall see, there are in fact communities whose members continue to interact according to a pragmatic morality of equality and inventiveness and overlook differences of ethnic origin.

Local customs and territorial rights. The case of Svartskogen (“The Black Forest”)

In a recent verdict the Norwegian Supreme court granted ownership rights to a particular territory to the local inhabitants of a northern Norwegian fjord community, most of whom are of Saami descent. For them, the area provides a common resource base and has done so for hundreds of years. It was, however, owned by the state, which claimed to have purchased it after the dissolution of the old tenancy system in the latter part of the 19th century. Local farmers had been using the land in common for a number of purposes, such as grazing cattle, sheep and goats, gathering fodder and collecting wood, and state authorities had raised no consistent objections. Based on this evidence, the court accepted that these local people had used the land “in good faith” as though they had owned it (Bjerkli 1996, Bjerkli and Thuen 1998). As a form of cultural heritage, what is significant here is not so much the various types of resource utilization but how these practices are organized socially. Every household is entitled to harvest what it needs, and there is no discrimination in the community on the basis of ethnicity or ownership to farmland. No one is allowed to monopolize a portion of it from one year to the next for their exclusive use, nor is anyone prohibited from using the land unless such use would be harmful to the sustainability of resources and would therefore impinge upon continued collective use. Newcomers to the community are allowed access to the area, whereas emigrants lose their right to it. Owners of small farms may rely on these common resources to a greater extent than those who have

a larger, privately owned resource base. In other words, a rule of collective right, individual autonomy and equality was, and still is, in effect.

It is just these characteristics – collectivity, flexibility, individual equality and autonomy with regard to interpersonal relations – that we may assume once operated in the ancient social organization of Saami communities, the so-called *siida* system. This system vanished as a consequence of the incorporation of Saami localities in the Danish-Norwegian state regulation of landed property, when land was registered for taxation purposes in the 17th and 18th centuries. Be that as it may, the interpersonal regulation of access to, and use of, local resources is clearly different from other common land practices that have been instituted in Norway. Such common land is ordinarily shared by farmers for grazing animals, wood-cutting, etc. The important point here is that what is inherited culturally is in fact not a specific type of resource or niche utilization, which might in such a case be taken to signify an ethnic distinction. Instead, the cultural heritage consists of a characteristic form of social organization that is built on shared customary principles of how individual interests are to be negotiated and reconciled with the interests of the local community. This specific interface of the individual and the collective (the shared ideals of autonomy, equality and flexibility, which have been preserved through the years as a kind of informal organization of local autonomy) is in fact what should be made the object of protective legislation as a cultural inheritance. Although it enshrines the right of the community's inhabitants to the land, the Supreme Court verdict (as officially proclaimed) may in fact require some kind of formal organization of the owners for the purpose of managing their common interests, both with regard to the outside world and to establish how their individual interests can best be negotiated with the local collective. Informal practices are, however, extremely difficult to protect by law, and especially so where it is a matter of moral arrangements between persons. Only when the object of such practices, in this case the area itself and its resources, is formally reallocated to its users can the practices be continued – or eventually changed – according to the free will of those entitled to its use.

The right to a culture, or the right to self-government?

This brings us to the final question, which deals with the object of indigenous rights. In the Svartskogen case it is actually a question of the right to local self-government as regards formulating principles for regulating resource utilization in the area. By yielding ownership to the community, as decided by the court, the government has still not waived its right to

regulate resource use or to expropriate part of it to accommodate the larger public interest. The broader question of what should be contained in the aboriginal right to self-government is still to be settled in Norway. As a miniature example that highlights the broader issue of self-government, there is an inherent contradiction in the Svartskogen case. On the one hand, there is the right to protection of specific, culturally significant elements and practices, and on the other, the right to pursue collective interests regardless of where they lead, at least in so far as they are considered to be of importance to the well-being of the minority people, which is, in the end, to be determined through their own decision-making processes.

It goes beyond the scope of this article to discuss what form of ethnic self-determination is best suited to the diverse interests of an indigenous people such as the Saami. Here it is sufficient to mention that the two UN Covenants speak of the right of peoples to self-determination, and that the government of Norway has confirmed that the Saami are a people, not merely a population. The core issue of Saami rights that is currently debated in Norway is whether the area with a majority Saami settlement, the state-owned Finnmark plateau, is to be owned by the Saami themselves, who have used it from time immemorial, and governed by the Saami Parliament. The state proposes a more restrictive model of ownership and management of the area, one that includes Norwegian inhabitants in the ownership on an equal basis and grants the national government ultimate control over the area. This model is hardly in accordance with the overarching principles that were accepted by the government when it signed the relevant international conventions. The state appears more inclined to accept indigenous "cultural rights" when they include only those that encompass a tangible cultural heritage, language rights and the funding of artistic performances. The indigenous control of scarce natural resources, which the Saami consider essential to sustaining their distinctive way of life, is apparently a politically much more controversial matter.

A final remark

The indigenous claim to ownership of their cultures may be seen as a substitute for a claim to self-government. At the very least, it legitimizes the political assertion of a right to maintain distinctive units in an increasingly globalized world. But the problem, to quote Sahlins, is that

[the] people are not usually resisting the technologies and 'conveniences' of modernization, nor are they particularly shy of the capitalist relations needed to acquire them. Rather, what they are after is the indigenization of modernity, their own cultural space in the

global scheme of things. They would make some autonomy of their heteronomy (Sahlins 1999, 410).

It is a routine aspect of the human condition to acquire objects, techniques, commodities, customs, myths and visions from realms outside their domestic area. Such acquisitions have always inspired indigenous ways of life. The ethnopolitical attack on anthropology's anti-essentialist view of culture may cause professional embarrassment, but it is worth reminding ourselves that anthropology's fundamental contribution to how we understand intercultural dynamics lies in the continual reconceptualization of the boundaries between peoples and different universes of meaning. Why deny that we are occasionally riven by conflicts of interest on this score? On the one hand, the mission of our discipline is to describe and analyze other cultures with the purpose of disseminating knowledge of the cultural complexity of humankind. (This includes reflecting on the unconscious assumptions of our own culture.) On the other hand, our ethical, and very often also our political concern, is to protect the interests of those whom we study. While it is easy to condemn the "theft" by the pharmaceutical industry of indigenous knowledge about the healing qualities of a plant (although its commercial use may be beneficial to humankind), it may be harder to admit that exposing some secret ritual knowledge in a written or visual anthropological form should be considered of equal significance. Nor is it comforting to the profession when its message to indigenous minorities is translated as a warning that efforts to promote cultural distinctiveness are futile.

Let me suggest a way around the impasse that may be caused by such a collision of professional interests. Instead of presenting cultural unboundness as a message of moral as well as empirical truth, we might do well to include among our key anthropological challenges the investigation of cultural phenomena such as essentializations, the politicization of culture, the rhetoric of cultural distinctiveness, etc.. After all, it is a worldwide phenomenon that cultural boundaries are emphasized and distinctiveness embraced, and that a legitimate part of such endeavors is to invent protective measures against the commercialized exploitation of culturally valued objects and practices. How people engage in such efforts, what they choose to single out for protection, what the preservation of cultural items means for the representation of their identities in a globalized world of ever-changing sign material, – all these are intimately related to the way anthropology contributes to knowledge production. How much closer, in fact, than the promotion of specific indigenous interests by validating certain claims to "tradition" or its opposite, the rejection of any indigenous effort

to preserve cultural distinctiveness on the grounds that distinctiveness as such is some kind of misunderstanding by indigenous people. In my view, the more rewarding anthropological challenge lies in dealing with the question of how people envisage their relationships to one another in terms of boundary construction and identification, and in studying the various circumstances in which they either bring their distinctiveness to the fore, or else neglect it. Granted that people in the modern world tend to move freely between cultural fragments received from a variety of sources, and that such mixing inspires considerable inventiveness, it is nevertheless true that people everywhere also derive meaning from sources that they regard as their exclusive heritage, and that they seek to exercise control over access to this heritage by constructing various kinds of boundaries. In fact, these seemingly opposite stances may combine and harmonize. Once the boundary that demarcates a kind of exclusivity (such as some form of self-government) has been accepted by the surrounding society, people may begin to see mixing, invention, or bricolage as a natural and non-threatening phenomenon. In other words, this returns us, as anthropologists, to the defining characteristic of our entire anthropological project, which has relationships and processes as its observational and analytical core, rather than units.

Notes

- 1 The Saami live dispersed in the northern parts of Norway, Sweden and Finland. There is also a small group on the Kola Peninsula, Russia. The strongest concentration is in the interior of Finnmark. In total they number around 70,000, but as will be evident from my discussion, the number of people who identify as Saami can only be approximately estimated.
- 2 The Saami Parliament is a representative assembly elected by registered Saami in Norway. It has a mandate from the government to express a Saami opinion on a number of issues, as well as to supervise and administer whatever the government invites it to deal with, or it chooses to deal with on its own initiative. Its authority is mostly advisory, but on matters that are strictly "cultural," such as those concerning Saami cultural heritage, artistic scholarships, theater productions, financial support for small-scale economic enterprises, etc., it has a decisive power. There are also Saami parliaments in Sweden and Finland.
- 3 According to international law, aboriginal status is not founded on the "who were there first" principle, but on a group's presence as a people when territorial sovereignty was established by a colonizing state. In popular discourse, however, emphasis is on who were the very first inhabitants in the area. Archaeological research has not been able to produce conclusive evidence of a connection between the oldest remains in the area and the populations of today.
- 4 I follow Handler (1986) in viewing the search for authenticity as a modern predilection for the original as opposed to the copy and the unspoiled as opposed to the manipulated.

- 5 For a presentation of international legislation on the issue of indigenous cultural and intellectual property rights, see Simpson (1997). For a thorough discussion of issues related to the copyright question, see Brown (1998).
- 6 The Saami were christianized in the 18th century, but hidden, fragmented religious beliefs and practices survived. For instance, some sacrificial sites are still highly respected. Some Saami are also seeking to revive old shamanistic practices, while others, in particular members of the Laestadian orthodox Christian congregation strongly reject it as part of a pagan heritage.
- 7 Reindeer-herding was never prohibited, however, only circumscribed by legislation that put it under the control of Norwegian authorities and made it the weaker part in conflicts over pasture with Norwegian farmers. In recent court decisions their customary rights to pasturelands have been recognized, however.
- 8 This is true for Norway and Sweden. In Finland reindeer-herding is also engaged in by members of the majority, and on the Kola Peninsula also by Komi and Nenets.
- 9 No such official census exists, however.
- 10 "The heritage of indigenous peoples includes all moveable cultural property as defined by the relevant conventions of UNESCO; all kinds of literary and artistic creation such as music, dance, song, ceremonies symbols and designs, narratives and poetry and all forms of documentation of and by indigenous peoples; all kinds of scientific, agricultural, technical, medicinal, biodiversity related and ecological knowledge, including innovations based upon that knowledge, cultigens, remedies, medicines and the use of flora and fauna; human remains; immovable cultural property such as sacred sites of cultural, natural and historical significance and burials." Daes, Irene-Erica, "Principles and Guidelines for the Protection of the Heritage of Indigenous Peoples," United Nations Sub-Commission on Prevention of Discrimination and Protection of Minorities (E/CN.4/Sub.2/1995/26, as revised in E/CN.4/Sub.2/2000./26), paragraph 13.
- 11 "[T]he sum total of the knowledge, skills and practices based on the theories, beliefs and experiences indigenous to different cultures, whether explicable or not, used in the maintenance of health, as well as in the prevention diagnosis, improvement or treatment of physical and mental illnesses. The terms complementary/alternative/non-conventional medicine are used interchangeably with traditional medicine in some countries." Document WHO/EDM/TRM/2000.
- 12 "Folklore (or traditional and popular culture) is the totality of tradition-based creations of a cultural community, expressed by a group or individuals and recognized as reflecting the expectations of a community in so far as they reflect its cultural and social identity; its standards and values as transmitted orally, by imitation or by other means. Its forms are, among others, language, literature, music, dance, games, mythology, rituals, customs, handicrafts, architecture and other arts." UNESCO Recommendation on the Safeguarding of Traditional Culture and Folklore, 1989.
- 13 I will disregard for the moment the issue of functionality, which certainly resides in the materiality (shape, simplicity, etc.) of the object (or better put: in the relationship between an object, e.g. a tool, and the person using it, who may be skilled or unskilled in its use).

- 14 Mauss (1990) teaches us that I might still retain some kind of share in an object even if I give it away, since the gift would oblige the receiver to reciprocate.
- 15 Some Norwegians made a similar complaint about the presentation of the trolls in the opening ceremony. They were also pagan figures unworthy of representing a Christian nation.
- 16 Cf. the UNESCO definition.
- 17 According to the Saami Act a number of municipalities in Finnmark and a few farther south have been singled out as Saami municipalities. Here the Saami language is officially recognized as equal to Norwegian in public service, the schools have a Saami-inspired curriculum, and the Saami name of the municipality is used along with the Norwegian one in public administration and on road signs. This practice has caused sharp conflicts between local factions in some of these municipalities.

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