

THE PARADOX OF FREEDOM TO ROAM: NON-  
RECOGNITION OF INDIGENOUS PEOPLES' LAND RIGHTS  
IN SWEDEN AND THE UNITED STATES

by

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The public land-use policy history of Sweden and the U.S. from the mid-19<sup>th</sup> century to the present day contains distinguishing patterns in each country's approach to land access and ownership. My analysis centers on the legal frameworks surrounding access to land, focusing on the Swedish concept of allemansrätten, or freedom to roam, in Sweden and on the ties between public land and democracy in U.S. rhetoric, politics and collective thought. Land use policy in both nations simultaneously place an emphasis on the right of access to and proliferation of public lands while denying land rights for the Indigenous Sámi people of the Arctic and the American Indians in North America. While land access policy is touted in both Sweden and the U.S. as forwarding the respective nations' goals and images of equality and freedom, many aspects of both nations' land access policy do not meet international standards for recognition of the land rights of Indigenous peoples, revealing an intentional paradox representative of crucial gaps between image and reality for two nations generally considered to be primary examples of democracy on the global stage.

In establishing the underlying historical and cultural context for attitudes towards land access among the settler-colonial and Indigenous groups in both Sweden and the U.S., I discovered many similarities in the policies, legal rhetoric and timeline of Sweden and the United States. Legal policies in the nation-states of Sweden and the U.S. reflect Euro-centric cultural norms and values regarding land access, ownership and management, and these policies often contradict the cultural norms and values, and pre-existing land uses and designations, of Indigenous Peoples.

In consolidating my findings, I present a critical analysis of the effects of current public land access, management and ownership practices and policies in place in Sweden and the United States on the rights of land access and claims for Indigenous groups. My intent is to frame land access in both countries as a paradox in which freedom-to-roam is touted by the state as an element of equality, while such frameworks continually undermine and neglect Indigenous Peoples' claim and control over their land.

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## Introduction

When I studied abroad in Scandinavia, I learned about the societal and governmental emphasis on equality that is inherent to the region's modern structure. Often referred to as the "Swedish model" or "humane capitalism," social democracy in Sweden and its neighboring nations "relies heavily on the close collaboration of business, government, and labor." Equality is a value mirrored in the legal frameworks, social programs and even outdoor recreation policies in Scandinavia. During my time abroad, I learned about a unique Swedish law known as *allemansrätten*, or Right of Public Access. The law creates free access to land in Sweden, including that which is privately owned. The central importance of policies creating access to nature is connected to the inherency of nature to Swedish identity, apparent in the cultural ubiquity of outdoor pastimes and family homes in the countryside known as *stugas*.<sup>1</sup> I became curious about how this concept compared to public lands policy in the U.S., where national identity is also closely tied to a love of nature.

Although no equivalent to *allemansrätten* exists in U.S. national law, societal rhetoric mirrors its sentiment, especially in the West, where private landowners have historically advocated for their right to use public lands. National parks and wilderness areas are widely considered a source of pride for Americans and Swedes alike. Sweden's national park system is modeled closely after its U.S. counterpart, and was the first such system in Europe. Although the capitalist framework of the U.S. and the

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<sup>1</sup> Martin J. Gannon, and Pillai, Rajnandini. *Understanding Global Cultures : Metaphorical Journeys through 29 Nations, Clusters of Nations, Continents, and Diversity*. 4th ed. Thousand Oaks, Calif.: SAGE, 2010.

social democratic model in Sweden differ greatly, both nations frame public lands as emblematic of their societal values.

My initial inquiry was into the cultural similarities influencing the public land discourses in the U.S. and Sweden. Essentially, the rhetoric of “equality” that is used to justify public land policy and management in Sweden and the U.S. is often wholly ignorant of Indigenous rights to and perceptions of land and property. Beginning in the late 1800s, designation of public lands as “national parks and other types of protected areas had major social and economic impacts on Indigenous peoples, many of whom were displaced from the environs of the new forest and wildlife preserves in colonized territories,” including Sami and Native American land in Sweden and the U.S., respectively.<sup>2</sup> The U.S. and Sweden are both upheld as extremely democratic nations in the international sphere, and equality is central to their governmental models and societal value systems. Furthermore, the U.S. and Sweden are nations conducive to legal comparison given their strikingly similar histories of land encroachment and land use policy. In what ways do these nations’ settler-colonial histories clash with their democratic images?

There is an inherently cultural conflict at play between Indigenous minorities and national majority groups in both the United States and Sweden regarding public land designation. Indigenous input and presence is often entirely excluded from the creation and management of protected areas and other lands projects, and their own perceptions of land and understandings of appropriate land-use are thus ignored. As

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<sup>2</sup> John Sandlos. “National Parks in the Canadian North: Comanagement or Colonialism Revisited?” In *Indigenous Peoples, National Parks, and Protected Areas: A New Paradigm Linking Conservation, Culture, and Rights*, edited by Stan Stevens, p. 134. Tucson: University of Arizona Press, 2014.



asserted by anthropologist Thomas F. Thornton in an analysis of national parks in Alaska, “At heart, most disputes between Native people and non-Native managers and constituents of parks and protected areas stem from strong affective ties to place based on opposing constructions of space and time.”<sup>3</sup> In the United States, prior to European colonization, tribes interacted with one another and their environment in a manner shaped by a spiritual and emotional connection to the land and a non-linear understanding of time and space. Further, regional systems of land ownership and use differed greatly according to the resources available and the local economies and political environments.

The Sámi, as the Indigenous Peoples of the Arctic Circle region are known, have a relationship to nature similarly characterized by a “fundamental feeling of connectedness with the natural environment in its entirety.”<sup>4</sup> Sámi territory lies north of the Arctic Circle, in an area inhabited by many reindeer, relatively few people, and characterized by bitter cold, midnight sun, and, depending on the season, days of darkness or light. The Sámi lifeway is rooted in reindeer herding, an activity uniquely suited to the landscape they inhabit, but the Sámi practice a diverse number of activities, subsistence and otherwise.

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<sup>3</sup> Thomas F. Thornton, “A Tale of Three Parks: Tlingit Conservation, Representation, and Repatriation in Southeastern Alaska’s National Parks.” In *Indigenous Peoples, National Parks, and Protected Areas: A New Paradigm Linking Conservation, Culture, and Rights*, edited by Stan Stevens, p. 116. Tucson: University of Arizona Press, 2014.

<sup>4</sup> Bistra V. Nikolova. “SÁMI REINDEER HERDERS – LAND AND IDENTITY .” Lunds Universitet/SÁMI REINDEER HERDERS – LAND AND IDENTITY , Lund/Lund University, LUMES Lund University International Master Programme In Environmental Studies and Sustainability Science , 2007, [www.lumes.lu.se/sites/lumes.lu.se/files/bistra\\_nikolova.pdf](http://www.lumes.lu.se/sites/lumes.lu.se/files/bistra_nikolova.pdf).

How have approaches to land use policy, specifically regarding public lands, developed in Sweden and the United States to appear democratic and inclusive on the surface while undermining the land rights of Indigenous peoples? This thesis explores how public lands legal developments, centered on values of equality and freedom inherent to the separate societal ideals in Sweden and the United States, have affected the rights of access to and control of land for Indigenous peoples. How have public lands conflicted with Indigenous cultural perceptions of land ownership, their traditional and ongoing land uses, and territory boundaries? Specifically, I address how land-use policies that reflect goals of equality and freedom in the realm of public lands fall short of doing so in regards to how they affect and include Indigenous perspectives and land claims.

Sámi and American Indian worldviews contrast fundamentally with the Western religious traditions held by their respective colonizers, because “From a Christian perspective, the primary value of the natural world lay in the usefulness of its forests and rich soils.”<sup>5</sup> Whereas the Sámi and Indigenous Peoples of the United States recognize land as a “sacred entity,” their colonizers view land as a commodity.<sup>6</sup> However, property rights are not a foreign concept to Indigenous communities; “Indians, like all other peoples, recognized property rights in food, clothing, houses, tools, and the

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<sup>5</sup> Stephanie Kaza. 1996. Comparative Perspectives of World Religions: Views of Nature and Implications for Land Management, in *Nature and the Human Spirit: Toward an Expanded Land Management Ethic*, eds. B.L. Driver, Daniel Dustin, Tony Baltic, Gary Elsner, George Peterson, U.S. Forest Service: Venture Publishing, pp. 41-60.

<sup>6</sup> Bistra V. Nikolova. “SÁMI REINDEER HERDERS – LAND AND IDENTITY .” Lunds Universitet/SÁMI REINDEER HERDERS – LAND AND IDENTITY , Lund/Lund University, LUMES Lund University International Master Programme In Environmental Studies and Sustainability Science , 2007, [www.lumes.lu.se/sites/lumes.lu.se/files/bistra\\_nikolova.pdf](http://www.lumes.lu.se/sites/lumes.lu.se/files/bistra_nikolova.pdf).

like,” as did the Sámi, although their systems for organizing property differed from that of the European colonizers considerably.<sup>7</sup>

The colonization of Indigenous Peoples’ lands in the U.S. and Sweden and the resulting creation of settler nations disrupted the cultural connection to the land held by the Indigenous groups, enforcing the Western conceptions of land use through various governmental policies that are at odds with Indigenous perspectives. Consequently, “conventional protected areas” including national parks and wilderness areas “have been at odds with indigenous peoples’ rights to self-determination and territorial control.”<sup>8</sup> Colonizing groups in the U.S. and Sweden used their own conceptions of land use to justify theft of land from Indigenous groups. Often, the lands occupied by Indigenous peoples appeared “unutilized” to 19<sup>th</sup> century colonizing groups who considered natural resources as commodities to be exploited and land as needing to be shaped through intensive agriculture and industry.

In a sermon to the Virginia Company in 1609, minister William Crashaw asserted the common European view of Indian land, that “in so much of a great part of it lieth wild & uninhabited of none but the beasts of the fielde, and the trees.”<sup>9</sup> My research focuses on how land use policies encompassing the colonizers’ worldview began to dominate at the expense of Indigenous land claims in the 18<sup>th</sup>-century and beyond, as it was around this time in both nations that forces of state expansion saw

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<sup>7</sup> Stuart Banner. *How the Indians Lost Their Land: Law and Power on the Frontier*. Belknap, 2007. p. 18

<sup>8</sup> Stan Stevens. “Indigenous Peoples, Biocultural Diversity, and Protected Areas.” In *Indigenous Peoples, National Parks, and Protected Areas: A New Paradigm Linking Conservation, Culture, and Rights*, edited by Stan Stevens, p. 38. Tucson: University of Arizona Press, 2014.

<sup>9</sup> William Symonds. “Virginia: A Sermon Preached at White-Chappel.” *Virginia Company Sermons. A Sermon Preached at White-Chappel, 30 Oct. 1617, White-Chapell, Virginia*, scholarscompass.vcu.edu/cgi/viewcontent.cgi?article=1001&context=britva.

more interaction between Indigenous groups and settlers, and encroachment upon Indigenous territory, than previously seen in either country.

### **Contribution to field**

This research is unique because it attempts to explain policy trends from a cultural and historical angle, applying the distinct political and cultural developments of two countries to the land rights of Indigenous Peoples. As asserted by Professor Lesley Head, an expert on human-environment relations, “Research traditions attending to cultural dimensions expose how people relate to confusing and uncertain (abstract) futures while hanging on to various pasts through the reproduction of landscapes by means of embodied and other (concrete) practices.”<sup>10</sup> It is significant to address the inequalities inherent in land use policy given that different land use decisions can have various impacts on the environment and people it applies to, and it continues to have relevance today given that “local voices have challenged the dominant national environmental imaginary.”<sup>11</sup> It is increasingly recognized that policies must be more inclusive of diverse perspectives in order to truly further equality.

Further, my question is unique in that it chooses to hone in on the key concept of Indigenous land rights in the realm of public lands. Beginning with an analysis of the *allemansrätten* concept and similar rhetoric present in the U.S., I address why land access rights, particularly in the public lands system, that are conceived of by the state are nearly always at odds with Indigenous sovereignty and conceptualizations of land

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<sup>10</sup> Lesley Head et al. “Holding on and Letting Go: Nature, Temporality and Environmental Management.” *Nature, Temporality and Environmental Management: Scandinavian and Australian Perspectives on Peoples and Landscapes*, Routledge, Taylor & Francis Group, 2017.

<sup>11</sup> *Ibid.*

ownership. I intend to analyze how the nation-state's land-use policies, such as *allemansträtten* in Sweden and protected areas in the U.S., fall short of and/or provide support to Indigenous access to and control over land. I will also describe how recent developments in the international discourse on human rights and Indigenous sovereignty are putting pressure on Sweden, the United States, and other nation-states with ongoing histories of colonialism to recognize and correct their past discriminations and denials of Indigenous land rights, which are categorized today as human rights abuses.

### **Who are the Sami?**

The Indigenous Peoples that inhabit the Arctic Circle region in Scandinavia and Northwestern Russia are collectively referred to as the Sami. Within this general identity, there are a diverse number of groups of Sami cultures, including the Coastal and Mountain Sami, with distinct dialects, traditions, and regional homelands. The Sami have been residing in the Far North for thousands more years than the Swedish state has existed, since at least 98 AD, and were described by the Scandinavian Vikings as Lapps as early as the 9<sup>th</sup> century.<sup>12</sup> Reindeer is a central resource for the Sami, and “conflict regarding land rights and borders has troubled Sami reindeer herders since the arrival of the current dominant ethnic group from Southern Europe.”<sup>13</sup> Herders travel with their reindeer between designated summer and winter pastures today, although the migration of their herds was more dispersed and variable before encroachment and colonization

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<sup>12</sup> Kimmi Woodard. “The Sami vs. Outsiders.” *The Sami vs. Outsiders*, University of Texas, 2001, <https://www.laits.utexas.edu/sami/dieda/hist/sami-west.htm>

<sup>13</sup> Julia Van Raalte. “The Sami Reindeer Herders of Sweden.” Indigenous Religious Traditions, Colorado College. November 4, 2011. <http://sites.coloradocollege.edu/indigenoustraditions/sacred-lands/the-sami-reindeer-herders-of-sweden/>

by the southern Europeans. This animal's central importance to Sami culture and survival is exemplified in many elements of Sami life, from the "storytelling traditions known as yoiking, to famous stone engravings of reindeer found in Alta, Norway."<sup>14</sup>

Today, Sami identity and activity is limited by the Swedish government's imposed distinction that "only those who belong to the government certified villages [*samebys*] are allowed to herd," about only one-tenth of the Sami population in Sweden.<sup>15</sup> Ever since the Sami transitioned from hunting wild reindeer to pastoral reindeer herding, they have been involved in a diverse number of subsistence activities, including fishing and gathering berries, and even these activities are not practiced regularly by the majority of Sami today. The creation of *samebys* has a similar effect to the recognition of tribal status in the U.S.; declaring the rights and identity of some members of the Indigenous population as legitimate and ignoring others based on bureaucratic, utilitarian, and often arbitrary and offensive rationales. Although the Swedish government regulates reindeer herding and administers various programs related to Sami issues and interests, the "Saami's status as an indigenous people has not yet been codified into law."<sup>16</sup>

### **Who are the American Indians and Alaska Natives?**

Geographically and culturally diverse, the Indigenous Peoples of the U.S. comprise about 2% of the country's population. Before European contact, the

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<sup>14</sup> Dirk Sonnicksen. "Reindeer Herding in Sweden." Sami Culture. 27 Decemger 2017. University of Texas. <https://www.laits.utexas.edu/sami/diehtu/siida/herding/herding-sw.htm>

<sup>15</sup> Julia Van Raalte. "The Sami Reindeer Herders of Sweden." Indigenous Religious Traditions, Colorado College. November 4, 2011. <http://sites.coloradocollege.edu/indigenoustraditions/sacred-lands/the-sami-reindeer-herders-of-sweden/>

<sup>16</sup> Eva Josefsen. "The Saami and the national parliaments: Channels for political influence." Geneva/New York: IPU and UNDP, 2007.

Indigenous Peoples in the Americas existed in thriving and complex communities, each with unique spiritual beliefs and rituals, diets and lifestyles adapted to their surroundings, and distinct political and social systems. The U.S. government recognizes the continental American Indian population today in designating tribal status to certain Indigenous groups, communities for which reservations are sometimes set aside, depending on the legal agreement with the given group.<sup>17</sup>

The federal government recognizes 562 Indian Nations, about half of which are found in Alaska. Lands held by tribes today are located primarily in rural, desert environments, and the largest tribal land holding is the Navajo reservation in the Southwest.<sup>18</sup> In what is often referred to as a ‘trustee’ relationship, the Indian nations are “distinct sovereigns within our complex constitutional system.”<sup>19</sup> Alaska Natives are designated status in a different system; they are organized into 13 corporations per the 1971 Alaska Natives Claims Settlement Act.<sup>20</sup> 250 years after European contact, American Indians continue to practice their languages, religions and traditions throughout the United States and fight for their autonomy and cultural preservation. Although Indigenous peoples in the U.S. are often grouped under the umbrella term ‘American Indian,’ Indigenous identity is connected to specific bands, tribes and communities, such as the Western Shoshone or Northern Paiute.

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<sup>17</sup> United States Census Bureau. “Facts for Features: American Indian and Alaska Native Heritage Month: November 2014.” U.S. Census Bureau, U.S. Department of Commerce. November 12, 2014. <https://www.census.gov/newsroom/facts-for-features/2014/cb14-ff26.html>

<sup>18</sup> National Congress of American Indians, “An Introduction to Indian Nations in the United States.” National Congress of American Indians. 2002. [http://www.ncai.org/about-tribes/indians\\_101.pdf](http://www.ncai.org/about-tribes/indians_101.pdf)

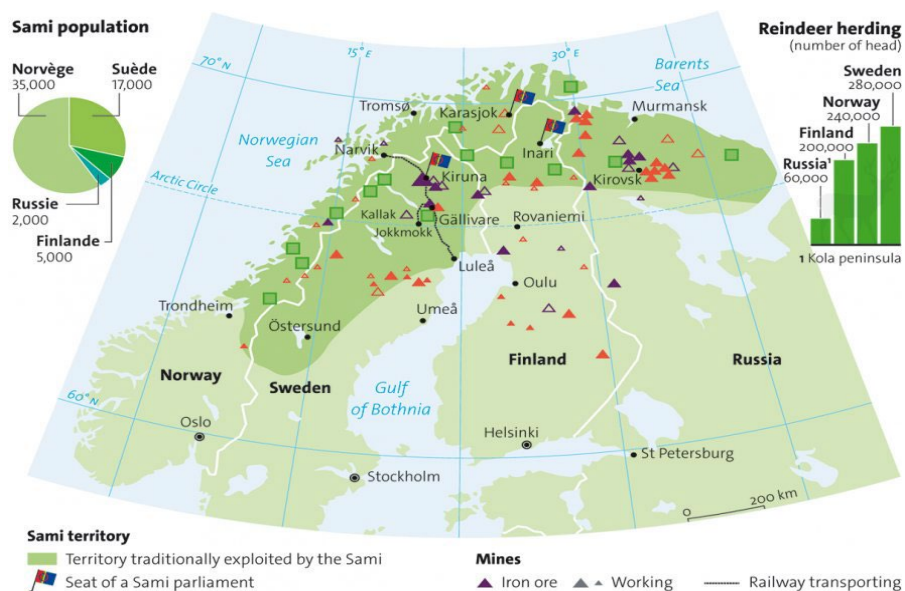
<sup>19</sup> Richard B. Collins, “A Brief History of the U.S.-American Indian Nations Relationship.” *Human Rights Magazine*. Vol. 33 (2006).

<sup>20</sup> James D. Linxwiler, “The Alaska Native Claims Settlement Act at 35: Delivering on the Promise.” (paper presented at Proceedings of 53<sup>rd</sup> Annual Rocky Mountain Mineral Law Institute, Vancouver, BC, July 2007).

## History of Land Use and Impacts on the Sámi in Sweden

Before encroachment onto their territory by the Swedish people, the Sámi were largely nomadic, and considered land to be the basis of their identity. Sámi folk singer Sonia Jannok, who attempts to bring Sámi culture and struggles to wider audiences through her music, emphasized this attachment to land in explaining the concept of one of her music videos. She said, “My people didn’t see that a piece of fabric gives us a right to be on this land...The land owns itself and we are just here.”<sup>21</sup> These concepts hold true for the Sámi today, but they are complicated by continual enforcement of the incompatible conceptualizations and uses of land held by the Swedish nation-state, with mining as a particularly significant example in the Arctic.

**Figure 1**



Mining on Sámi Territory: This map depicts traditional Sámi territory, which spans the Arctic Circle, and highlights outside land-use interests, including conservation areas and mines, that are encroaching on Sámi territory today.

<sup>21</sup> Mara Johnson-Groh, “Songs for Decolonization: A Q&A With Saami Singer Sofia Jannok.” Arctic Deeply, News Deeply, 8 Sept. 2017, [www.newsdeeply.com/arctic/community/2017/09/01/songs-for-decolonization-a-qa-with-saami-singer-sofia-jannok](http://www.newsdeeply.com/arctic/community/2017/09/01/songs-for-decolonization-a-qa-with-saami-singer-sofia-jannok).



Even land uses that are generally framed as positive for the wider public, such as wilderness and national parks, though, have historically been “established and/or managed in violation of Indigenous peoples rights,” presenting an inherent paradox in the history of public lands in Sweden and the U.S.<sup>22</sup>

One of the initial factors that led the Sami to lose control of their land was increasing immigration into Sapmi, as their traditional territory is known, in the 12<sup>th</sup> through 14<sup>th</sup> centuries. “As the Swedes, Finns, and Norwegians pushed northward, Sapmi steadily decreased in size,” and some Sami migrated south in Sweden as a result.<sup>23</sup> The Swedish system of land access is derived from the organization of Nordic kingdoms into districts, developed with the idea that “social status depended on property,” in which landowners were considered part of the “yeoman class.”<sup>24</sup> Land ownership remained central to the subsequent feudal system, which was followed in the 17<sup>th</sup> and 18<sup>th</sup> centuries by trends towards the exclusive legalization of private land ownership. Collective land rights, such as those of the Sámi, were thus denied. This marked the beginning of a process in which the state worldview and jurisdiction were extended to the Sámi without their consent, and was followed by further land reforms meant to break apart the Sámi territory and undermine their sovereignty, land rights and way of life, including taxation zones, national borderlines and the carving of Sámi territory into Swedish farms and settlements.

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<sup>22</sup> Stan Stevens. “Indigenous Peoples, Biocultural Diversity, and Protected Areas.” In *Indigenous Peoples, National Parks, and Protected Areas: A New Paradigm Linking Conservation, Culture, and Rights*, edited by Stan Stevens, p. 37. Tucson: University of Arizona Press, 2014.

<sup>23</sup> Kimmi Woodard. “The Sami vs. Outsiders.” *The Sami vs. Outsiders*, University of Texas, 2001, <https://www.laits.utexas.edu/sami/dieda/hist/sami-west.html>

<sup>24</sup> Bistra V. Nikolova, “SÁMI REINDEER HERDERS – LAND AND IDENTITY .” Lunds Universitet/SÁMI REINDEER HERDERS – LAND AND IDENTITY , Lund/Lund University, LUMES Lund University International Master Programme In Environmental Studies and Sustainability Science , 2007, [www.lumes.lu.se/sites/lumes.lu.se/files/bistra\\_nikolova.pdf](http://www.lumes.lu.se/sites/lumes.lu.se/files/bistra_nikolova.pdf).

Until the Treaty of Stromstad in 1751 defined the Swedish-Norwegian border, many Sami were taxed by more than one nation-state, because multiple nations lay claim to the land areas occupied by the Sami. This treaty also contained a crucial addendum known as the “Lapp Codicil,” which “recognized...the right of the Sami to freely cross the border as part of their seasonal migration of reindeer herding.” Despite its positive assertion of Sami territorial rights, the Codicil also “forced pastoral Sami to choose citizenship in either Sweden or Denmark-Norway, and established the states’ right to regulate trans-border reindeer husbandry.”<sup>25</sup> Settler-colonial policies enacted by the Swedish state in this period included forced labor in silver and ore mines and tax relief via the Lappmark Proclamation of 1673 for Swedes who chose to resettle in Sapmi.<sup>26</sup> Assimilation tactics included Sami boarding schools, where only Swedish was spoken, and religious initiatives such as forced conversion to Lutheranism.<sup>27</sup> Only in recent decades has the discrimination against Sámi culture, independence and land rights begun to receive recognition, and reparations are far from complete. The designation of the Sami language as an official minority language of Sweden in 2000 and the 2010 development of a Strategy for the National Minorities represent recent strides in recognizing Sami identity and culture at the state level.<sup>28</sup>

With the consolidation of the Swedish nation-state in the 19<sup>th</sup> century came the concept of state sovereignty. State sovereignty was inextricably connected to the idea of

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<sup>25</sup> Scott Forrest, “Territoriality and State-Sami Relations,” University of Northern British Columbia, 1997. <http://arcticcircle.uconn.edu/HistoryCulture/Sami/samisf.html>

<sup>26</sup> As asserted by Tuck and Yang in “Decolonization is not a metaphor”, assimilation and forced labor are tools of settler colonialism. Forced labor in this context frames the Indigenous population’s “presence on the land...[as] an excess that must be dis-located” through destruction and subjugation, or rendered invisible through assimilation.

<sup>27</sup> Kimmi Woodard. “The Sami vs. Outsiders.” *The Sami vs. Outsiders*, University of Texas, 2001, <https://www.laits.utexas.edu/sami/dieda/hist/sami-west.html>

<sup>28</sup> “Sami in Sweden.” Swedish Institute, 2018. <https://sweden.se/society/sami-in-sweden/>

territoriality and control of all land occupied by the state, including Sámi homeland. In this period, establishing protected areas became one tool central to processes of “state territorialization from the standpoints both of the physical expropriation of land and the extension of state administrative control over formerly autonomous territory and peoples.” It represents an especially convenient method of “‘frontier’ pacification” given its socially-beneficial appearance and “international legitimacy and funding.”<sup>29</sup> While framed as beneficial to the public and democratic in nature, park lands and freedom-to-roam are concepts that have historically dismissed or revoked Indigenous land claims and have been used to justify removal and restriction of Indigenous peoples from “public” lands.

### **History of Property Rights of Indigenous Peoples in the U.S.**

Early justifications for European colonizing nations’ settlement of American Indian land in the colonial period focused primarily on the opportunity to spread Christianity, the “emptiness” of the land, and the legal “right of conquest.” Such rhetoric, however prominent, masked the reality that many Europeans purchased the land they settled on in what became the United States, and generally considered the American Indians to have full property rights. The end of the French and Indian War in 1763 marks the close of this period, after which “Indian land sales were transformed...from transactions between private parties into transactions between sovereigns,” resulting in a new approach to land deals between the U.S. and the

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<sup>29</sup> Stan Stevens. “Indigenous Peoples, Biocultural Diversity, and Protected Areas.” In *Indigenous Peoples, National Parks, and Protected Areas: A New Paradigm Linking Conservation, Culture, and Rights*, edited by Stan Stevens, p. 39. Tucson: University of Arizona Press, 2014.

Indigenous population on the continent.<sup>30</sup> From this initial period of land acquisition into the next, the illegitimacy of methods used to obtain lands from Indigenous populations was often purposefully obscured.

As the Euro-American colonizing population began settling on the East Coast of the United States in the late 17<sup>th</sup> and early 18<sup>th</sup> centuries, they continually undermined and ignored Indigenous rights to land. According to British law at the time, only the crown “claimed the sole right to negotiate transfer of land rights from the Native Americans,” yet a transaction occurred between individual colonists and American Indian parties in many instances, revealing that early European colonizers of America did, in fact, believe that American Indians possessed property rights. This viewpoint did evolve; “Actual practice on the frontier increasingly began to diverge from the law as stated in England.”<sup>31</sup> As European settlement increased in the coming decades, “the combination of European notions of natural rights [and] the transformed and transplanted English common law of property... led to the land’s distribution into private hands with secure titles,” and the property rights of American Indians began to erode.<sup>32</sup>

The policy tactic used to acquire American Indian land in the United States was primarily the treaty, the 100-year history of which can be divided into three periods. The first, lasting from 1774 to 1832, was characterized by treaties between the U.S. and tribes that were considered to be sovereign nations. This period also saw the forced

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<sup>30</sup> Stuart Banner. *How the Indians Lost Their Land: Law and Power on the Frontier*. Belknap, 2007.

<sup>31</sup> *Ibid.*

<sup>32</sup> Andrew P. Morriss. “Europe Meets America: Property Rights in the New World.” Foundation for Economic Education. January 1, 2007. <https://fee.org/articles/europe-meets-america-property-rights-in-the-new-world/>

removal of Indigenous people from the land they lived on and the rise of reservations, spurred by the 1830 Indian Removal Act. The federal treaty tactics changed after 1832, when the government began characterizing the tribes in its treaties and policy as a part of the U.S., no longer as separate entities.

The reservation system was created by Congress with the passage of the 1851 Indian Appropriations Act. Under the act, many American Indian communities were forcibly relocated and experienced subsequent inhibited mobility, often in spite of prior treaty stipulations ensuring access to traditional hunting and fishing lands.<sup>33</sup> Then, in 1871, Congress no longer recognized Indian nations as sovereign entities in another Indian Appropriations Act, instead treating American Indians as individuals under the law. This decision was motivated in part by the tendency of treaty agreements with sovereign Indian nations to subvert the federal policies in place to make public lands available to private interests.<sup>34</sup> However, it also represented a tool of assimilation, dismantling American Indian systems of communal land management. Thus, the Indian Appropriations Act and other federal Indian policy of the period served to achieve two goals: opening up Native land for settlement by whites and assimilating the Natives into “civilization.” The rise of the conservation movement at the end of this period also forwarded these paired goals of dispossession and assimilation.

As the late-19<sup>th</sup> and early 20<sup>th</sup> century U.S. witnessed increasing settler expansion, ideas of ‘conserving’ nature from urban and settler development were

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<sup>33</sup> U.S. National Library of Medicine, “1851: Congress creates reservations to manage Native peoples.” National Institutes of Health, Health & Human Services.  
<https://www.nlm.nih.gov/nativevoices/timeline/317.html>

<sup>34</sup> “American Indian Treaties.” National Archives and Records Administration, National Archives and Records Administration, 4 Oct. 2016, [www.archives.gov/research/native-americans/treaties](http://www.archives.gov/research/native-americans/treaties).

cultivated by “the dominant Anglo-European culture that spread across the United States, imposing its will and values on the surrounding landscape and indigenous peoples.” National parks were conceived in the United States as a way to “protect...nature enclaves from the taint of any permanent human presence.”<sup>35</sup> These protected areas were designed to safeguard both the natural splendor of the U.S. landscape and to protect American Indian “civilization,” framed as endangered and extinct. The development of national parks intended to displace and disappear American Indians, while romanticizing them as a primitive element of the ‘wild.’ As asserted by historian Robert Keiter, “Not only were Native Americans displaced to make way for new settlers, they were also dispossessed of their ancestral homelands in order to establish new national parks.”<sup>36</sup> In effect, the conservation movement and the creation of national parks coincided with federal Indian policy’s themes of assimilation and dispossession.

The legacy of the treaty period in the history of American Indian-U.S. government relations persists. As Native scholar and activist Winona LaDuke asserts, “The native struggle in North America today can only be properly understood as a pursuit of the recovery of land rights which are guaranteed through treaties.”<sup>37</sup> After passage of the Indian Appropriations Act, land use policy and national park designation continued to serve the role that treaties did, that of shrinking the size of Indigenous territory and exerting control over lands that Indigenous groups still lay claim to. The

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<sup>35</sup> Keiter, Robert B. *To Conserve Unimpaired : The Evolution of the National Park Idea*. Washington: Island Press, 2013, p. 121.

<sup>36</sup> *Ibid*, p. 122.

<sup>37</sup> Ward Churchill. *Struggle for the Land : Native North American Resistance to Genocide, Ecocide, and Colonization*. San Francisco: City Lights, 2002.

land rights struggle and colonialist process that originated with the arrival of the first European settlers on American Indian territory have legacies in the “neo-liberal and neo-colonial processes in present-day attempts to create and manage protected areas.”<sup>38</sup>

The process of a nation-state exerting control and ownership over land belonging to others, of which U.S. Western expansion is one example, is known as settler-colonialism. Settler-colonialist projects aim to displace and disappear the Indigenous population of the area they colonize, seeking the “destruction...over time and through law and policy, [of] Indigenous peoples’ claims to land.” The Indian Appropriations Act highlights the paradox characteristic of U.S. land policy, in which equality of opportunity for land access and ownership for the state’s majority is prioritized while allowing for, and often explicitly forwarding, denial of land ownership and access rights to Indigenous peoples. National parks present similar paradoxes; they are designed to be “for the use and enjoyment of all”, yet “have often been used by repressive states as a means to seize greater control of Indigenous peoples’ territories and lives.”<sup>39</sup> Although the U.S. and Sweden are rarely described as “repressive,” they can be considered so in their use of national parks and protected areas to justify acquisition of Indigenous land.

Under settler colonial regimes, “land is recast as property and as a resource,” delegitimizing Indigenous perceptions of and ownership over land. The settler-colonial land-use policies of the United States were specifically designed to disrupt Indigenous

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<sup>38</sup> Annika Dahlberg, Rick Rohde and Klas Sandell. “National parks and environmental justice: Comparing access rights and ideological legacies in three countries.” *Conservation and Society*, Vol. 8 Issue 3. (2010) p. 209-224.

<sup>39</sup> Stan Stevens. “Indigenous Peoples, Biocultural Diversity, and Protected Areas.” In *Indigenous Peoples, National Parks, and Protected Areas: A New Paradigm Linking Conservation, Culture, and Rights*, edited by Stan Stevens, p. 37. Tucson: University of Arizona Press, 2014.

conceptions of communal land ownership, as Commissioner of Indian Affairs T. Harley Crawford asserted in 1838: “Common property and civilization cannot co-exist.”<sup>40</sup> The Indian Appropriations Act is just one of many mechanisms, including assimilation policies and national park development, used by the U.S. government to advance its settler-colonial project.

### **Overlap in the land-use histories of Sweden and the United States in disrupting traditional lifeways of Indigenous communities**

The lifestyles and conceptions of land access held by Indigenous peoples often differ from those enforced upon them by colonizing states. Settler colonialism often results in “collisions of different worldviews, ways of life, and values.”<sup>41</sup> In the United States and Sweden, legislative forces have continually denied the collective land rights and patterns of territoriality familiar to Indigenous peoples. The “story of colonization” in the U.S. and Sweden is one steered by the colonizing forces’ “power to establish the legal institutions and the rules by which land transactions would be enforced.”<sup>42</sup> The 19<sup>th</sup> century, in particular, was a period in both nations in which “policy of assimilation and selective segregation” was a dominant method of subjugation of Indigenous groups by the state.<sup>43</sup> The national park, as a “distinctly western invention,” is one example of a land designation “unconcerned with socially regulated common pool resources or the

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<sup>40</sup> Senate Document No. 1, 25th Cong. 3rd. sess., serial 338, 450-56.

<sup>41</sup> Stan Stevens. “Indigenous Peoples, Biocultural Diversity, and Protected Areas.” In *Indigenous Peoples, National Parks, and Protected Areas: A New Paradigm Linking Conservation, Culture, and Rights*, edited by Stan Stevens, p. 19. Tucson: University of Arizona Press, 2014.

<sup>42</sup> Stuart Banner. *How the Indians Lost Their Land: Law and Power on the Frontier*. Belknap, 2007.

<sup>43</sup> Bistra V. Nikolova. “SÁMI REINDEER HERDERS – LAND AND IDENTITY.” Lunds Universitet/SÁMI REINDEER HERDERS – LAND AND IDENTITY , Lund/Lund University, LUMES Lund University International Master Programme In Environmental Studies and Sustainability Science , 2007, p. ii [www.lumes.lu.se/sites/lumes.lu.se/files/bistra\\_nikolova.pdf](http://www.lumes.lu.se/sites/lumes.lu.se/files/bistra_nikolova.pdf).



cultural functioning of a living landscape,” in direct conflict with an Indigenous view of land as shared and intertwined with human experience.<sup>44</sup>

The 1887 Dawes Act in the United States and the Swedish Reindeer Grazing Act of 1886 in Sweden make for a good comparison given their similarities in age and in the way in which they compartmentalized Indigenous land in a fashion that ran counter to their traditional lifeways and to understandings of land ownership and use. The laws are related to the settler-colonialism of the Swedish and U.S. nation-states, a process in which land is ”valuable, contested, required.” Settler-colonialism is largely characterized by homesteading, or the migration of citizens of the nation-state into new “frontiers” of land occupied by Indigenous peoples. Homesteading settlers, as agents of occupation, serve to “make Indigenous land their new home and source of capital.”<sup>45</sup> The concept of homesteading is central to legal developments of this era, as a tool of assimilation and breaking apart Indigenous communities.

The creation of Yellowstone and Glacier national parks in the U.S., and the 1909 creation of nine national parks in Sweden are key examples of settler-colonial dispossession via land conservation initiatives. Historian Robert Keiter characterizes the overlap between reservation and allotment policy with national park development as a coincidence. Conversely, I consider both initiatives to be intentional moves by the nation-state to dispossess Indigenous peoples from their lands and revoke their land

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<sup>44</sup> Annika Dahlberg, Rick Rohde and Klas Sandell. “National parks and environmental justice: Comparing access rights and ideological legacies in three countries.” *Conservation and Society*, Vol. 8 Issue 3. (2010) p. 209-224

<sup>45</sup> Tuck, Eve and K. Wayne Yang. “Decolonization is not a metaphor.” *Decolonization: Indigeneity, Education & Society* Vol. 1, No. 1 (2012). p.5.

access rights.<sup>46</sup> Protected areas are conveniently shielded from criticism by their support of “the theoretical tenets of conservation biology which today play a major role in the promotion of protected areas as well as providing cover for wider political agendas.”<sup>47</sup>

### *Dawes Act*

Passed in 1887, the Dawes Act reinforced the severalty of Native people in the legal realm, allotting plots of land to individuals and abolishing the more communal land ownership characteristic of many Native communities. The Dawes Act represents a period of blatant denial of property rights to tribes, justified by the cause of providing “unused” land to settlers at affordable prices while supporting the popular “ideal of assimilation” of the period.<sup>48</sup> Making land available to individuals willing to make a plot “productive” represented the Protestant and capitalist frameworks of white American society and extended opportunity of land ownership to more white individuals. Often justified with Christian ideals, allotment was completely counter to the Indigenous cooperative use of land, ignored the spiritual association with lands, and exploited Indigenous property rights.

The paradox of the democratization of land ownership while simultaneously denying Indigenous property rights is at the core of the Dawes Act, proponents of which “could think of themselves as advocates for the common man, seeking to break up land monopolies that favored a powerful few.” The Dawes Act implied a new, prosperous

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<sup>46</sup> Robert B. Keiter, *To Conserve Unimpaired : The Evolution of the National Park Idea*. Washington: Island Press, 2013, p. 124

<sup>47</sup> Annika Dahlberg, Rick Rohde and Klas Sandell. “National parks and environmental justice: Comparing access rights and ideological legacies in three countries.” *Conservation and Society*, Vol. 8 Issue 3. (2010) p. 209-224.

<sup>48</sup> Stuart Banner. *How the Indians Lost Their Land: Law and Power on the Frontier*. Belknap, 2007.

future for the Natives rooted in the “civilized” economy and subsistence and cultural activities practiced by the nation-state. The reality, though, was that the Dawes Act was “a bill to despoil the Indians of their lands and to make them vagabonds on the face of the earth,” as was passionately asserted by Senator Henry Moore Teller in 1881.<sup>49</sup> The Dawes Act was a cog in the wheel of dispossession inherent to the settler-colonial project of the United States.

The Dawes Act was implemented after treaty-making as a land acquisition method had been banned because it circumvented the public lands system. The treaty system was ultimately unfair to U.S. citizenry seeking land ownership as well as to the American Indians it effectively stole land from, given that the government was privileged over individual landowners in its exclusive authority to enter into treaties with tribes.<sup>50</sup> Although allotment was often supported by American Indian’s white allies as beneficial to Indigenous groups given its “civilizing” effect, it did not represent a fix providing more equal access to all users – rather, it made the availability of Indigenous land as private property for settlers and outside commercial interests widespread, diminishing the extent of Indigenous lands and relinquishing American Indians’ control over their legally-owned territory.<sup>51</sup> By the end of the assimilation period, marked by the 1934 Indian Reorganization Act, American Indians had lost most of their remaining land.<sup>52</sup>

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<sup>49</sup> *Ibid.*

<sup>50</sup> P.W. Gates. *History of Public Land Law Development*. Washington: Public Land Law Review Commission, 1968. Print.

<sup>51</sup> Stuart Banner. *How the Indians Lost Their Land: Law and Power on the Frontier*. Belknap, 2007.

<sup>52</sup> *Ibid.*

## *Yellowstone and Glacier National Parks*

The fact that reservation creation and national park designation coincided in U.S. history is far from coincidental. On the contrary, both policies were intended to dispossess American Indians of their lands in a dual process of removal and containment and found justification in problematic concepts, including nationalism and eugenics. As Sioux leader Black Elk stated in the early 20<sup>th</sup> century, the creation of protected areas and reservations served to create “little islands for us and other little islands for the four-leggeds,”<sup>53</sup> separating the American Indians from the Euro-American population and from the “wilderness” that was conceived of during the era of romanticism and manifest destiny in the mid-19<sup>th</sup> century. These conceptions persist in today’s public lands discourse, perpetuating ignorance of the “fact that national parks enshrine recently dispossessed landscapes.” In *Dispossessing the Wilderness*, historian Mark Spence asserts, “Much as the conquest of the West reshaped ideas about wilderness, it also led to the creation of an extensive reservation system,” revealing the interplay between ideals of wilderness and the settler-colonial project of the nation-state, working in tandem to essentially deny the existence of its Indigenous population and assert domination over the lands they occupy.<sup>54</sup>

Two of the earliest national parks, Yellowstone and Glacier, offer some of the clearest examples of how the history of national park creation is largely one of dispossessing American Indians from their lands, and these efforts go hand in hand with attempts to assimilate them on reservations. These parks were highly militarized as a

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<sup>53</sup> John G. Neihardt, *Black Elk Speaks: Being the Life Story of a Holy Man of the Oglala Sioux* (New York: William Morrow, 1932; reprint, Lincoln: University of Nebraska Press, 1988), 9.

<sup>54</sup> Mark D. Spence, *Dispossessing the Wilderness: Indian Removal and the Making of the National Parks*. New York: Oxford University Press, 1999.

direct effort to exclude American Indians, considered “the one great flaw in the western landscape,” from using them.<sup>55</sup> This perception of American Indians as detrimental to the natural integrity of the land denies the reality that national park landscapes “have been formed by a combination of natural and human processes that embody an identifiable history of cultural and political values.”<sup>56</sup> In Yellowstone, Shoshone bands were forcibly removed in a series of violent conflicts, serving as the “first example of removing a native population in order to “preserve” nature.” Simultaneously, the myth of the “vanishing Indian” was used to promote tourism at the parks, especially in Glacier, where the Blackfeet “proved an essential aspect of the tourist’s experience.”<sup>57</sup>

The Blackfeet in Glacier who continued to use park land, part of their traditional *Mistakis*, or “backbone of the world,” for hunting, fishing and other uses were considered “un-American in their lack of appreciation for the national park and almost 4barbaric in their unwillingness to let go of traditional practices.” Yet, they were central elements in park advertisements, entertainment and décor. Keenly aware of this cruel paradox, a Blackfeet man named D.D. LaBreche wrote to a Montana senator in 1915 to express concern about the legality of the U.S. government’s exclusion of Blackfeet from the park. In the letter, LaBreche questioned whether national park land was, in fact, public land, and demanded compensation if the U.S. would not recognize the Blackfeet’s claim to the park’s land.<sup>58</sup> LaBreche’s argument, and subsequent tribal claims over the decades, was rooted in the assertion that usufruct rights, defined as

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<sup>55</sup> Annika Dahlberg, Rick Rohde and Klas Sandell. “National parks and environmental justice: Comparing access rights and ideological legacies in three countries.” *Conservation and Society*, Vol. 8 Issue 3. (2010) p. 209-224.

<sup>56</sup> *Ibid.*

<sup>57</sup> Mark D. Spence, *Dispossessing the Wilderness: Indian Removal and the Making of the National Parks*. New York: Oxford University Press, 1999.

<sup>58</sup> *Ibid.*, p. 85.

access to and use of lands, had been reserved for the Blackfeet in 1887 when their land was ceded, and had been protected under the subsequent Glacier National Park Act of 1910. American Indians were central to the romantic image of national parks, yet their occupation of and subsistence on the parkland was counter to the construction of wilderness and was thus forcibly restricted.

### *Reindeer Grazing Act*

Also passed in 1886, the Reindeer Grazing Act had similar motives to the Dawes Act, attempting to control the way Sámi lived by dividing them into villages that were stationary and counter to the nomadic way of life of some Sámi. The striking overlap in timing and tactic between the Dawes Act and Reindeer Grazing Act are united by roots in the discourse of “European Enlightenment and modernity” supporting “the production of a “better” human,” achieved with assimilation tactics including land divisions and boarding schools.<sup>59</sup> With the Reindeer Grazing Act, the Swedish government wanted to encourage assimilation and intensify herding practices into a smaller area, so that the reindeer, herded by the Sámi for generations, would not roam as widely. The reindeer were damaging the crops that Swedish homesteaders were growing as they encroached into Sámi territory, collectively referred to as ‘Sápmi.’ The Reindeer Grazing Act shows how the Swedish government prioritized the protection of private property and Swedish settlements on Sámi land over the rights of Sámi to live in their traditional ways and carry out their livelihoods as they had been doing long before the arrival of the Swedes. The Reindeer Grazing Act only represents the beginning of a

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<sup>59</sup> Aman Sium et. al. 2012. “Towards the ‘tangible unknown’: Decolonization and the Indigenous future.” *Decolonization: Indigeneity, Education & Society* Vol. 1, No. 1 (2012). p. I-XIII.

long struggle between the Sámi and Swedish government, which today continues to enforce herding practices and land uses conducive to their own ideas of progress and development on the Sámi and their traditional territory.

### *Sweden's national parks*

Sweden's national park system is closely modeled after that of the U.S., and was the first created in Europe. National park land overlaps significantly with Sámi land in the north, just as much U.S. national park land was dispossessed from American Indian communities in the west. Rather than coincidental, this overlap was made possible by the erosion of Sami property rights beginning in the 18<sup>th</sup> century that resulted in Sami land being declared as "crown land" by the end of the 19<sup>th</sup> century, meaning that it "cost the state nothing in land acquisition or compensation to establish national parks" in the north.<sup>60</sup>

National parks and wilderness areas were touted then and now as places of public enjoyment that exemplify the Swedish values of equality and nature access. Even 100 years after the creation of the national parks in Sweden, recognition of the displacement of and disregard for Indigenous peoples remains largely ignored in the national discourse. In the international legal realm, however, Indigenous land rights are increasingly sought as fundamental to Indigenous culture and continued existence. Shifting global norms have led to mounting pressure against Sweden's reluctance to represent its Sami population and its history of poor treatment towards it.

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<sup>60</sup> Annika Dahlberg, Rick Rohde and Klas Sandell. "National parks and environmental justice: Comparing access rights and ideological legacies in three countries." *Conservation and Society*, Vol. 8 Issue 3. (2010) p. 209-224.

In a document produced by the *Naturvardsverket*, the Swedish Environmental Protection Agency, celebrating the centennial of the parks, the Sámi are not mentioned. Further, nationalistic and capitalistic rhetoric that disregards Sámi lifeways and land rights is used in the document, published in 2009. The persistence of the paradox of freedom to roam is apparent in the Swedish EPA's discussion of park history, which goes so far as to include, without criticism, an explicitly imperialistic quote from King Gustav Vasa: "Such estates as have not been built on, belong to God, us and Sweden's crown and no other!"<sup>61</sup>

A timeline of public lands development in the same document continues to put positive emphasis on policies in which, by extending land access and use rights to Swedish citizens, the nation-state exerted further control over its territory. Sweden has yet to take a critical eye to its "centralized institutions with top-down management structures where local people were either ignored or regarded as a problem, and even forcibly removed" in the name of protected area development.<sup>62</sup>

As Swedish migration and expansion into the north increased in the mid-19<sup>th</sup> century, land-use policies were increasingly settler-colonial in nature and interfered directly with Sámi land rights. By the 20<sup>th</sup>-century, when national parks were established, the intent and rhetoric remained largely the same; the state exerted control and management privileges over wide swaths of land for the "common good."

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<sup>61</sup> Swedish Environmental Protection Agency, "Swedish Nature Conservation: 100 Years," SE-106 48 Stockholm, Sweden: 2009, p. 9.

<sup>62</sup> Annika Dahlberg, Rick Rohde and Klas Sandell. "National parks and environmental justice: Comparing access rights and ideological legacies in three countries." *Conservation and Society*, Vol. 8 Issue 3. (2010) p. 209-224.



It was never considered then, and has yet to be adequately considered now, that designating land as reserved “for the benefit of science and tourism,” excludes and dispossesses the Sámi, counter to the framing of increased access, better way of life, and equality for all Swedish people.<sup>63</sup>

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<sup>63</sup> *Ibid.*

*The Nature of the Paradox Inherent to Democratic Land Use by Colonizing Nation-States*

Settler-colonialism has been the central mechanism at play in the formation of land use policy affecting Indigenous groups in Sweden and the U.S. since the 18th century. As asserted by Eve Tuck and K. Wayne Yang, “The horizons of the settler colonial nation-state are total and require a mode of total appropriation of Indigenous life and land,” completely discounting Indigenous relationships to and organization of land in the name of expanding the land-base and control of the nation state. In the process of settler-colonialism, “Epistemological, ontological, and cosmological relationships to land are interred, indeed made pre-modern and backward. Made savage.”<sup>64</sup> In delegitimizing the Native claims to land and erasing history, the nation-state can usurp Indigenous land and strip Indigenous Peoples of their rights.

The structure of the state in Sweden and the U.S. results in a lack of consideration for the religious freedoms and land rights of Indigenous Peoples, whose spiritual beliefs are intertwined with the landscape and often center on specific places, landmarks and environments. Land is central to the processes of settler-colonialism, in which “there is no spatial separation between metropole and colony.”<sup>65</sup> In asserting its own perceptions of appropriate land use and ownership systems over the lands occupied by Indigenous peoples, the state in both Sweden and the U.S. has denied the land ownership and access rights and violated the spiritual connection to the land of its Indigenous populations.

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<sup>64</sup> Eve Tuck and K. Wayne Yang. “Decolonization is not a metaphor.” *Decolonization: Indigeneity, Education & Society* Vol. 1, No. 1 (2012). p.5

<sup>65</sup> *Ibid.*

Public lands, supported by the *allemansrätten* principle and the national park concept in Sweden, and by national and state parks as well as other federal designations of land in the U.S., have the opposite effect of their perception as promoting equal access and opportunity. When lands that are legally owned, occupied, or utilized by Indigenous groups are designated by the state to be “public,” Indigenous communities often lose rights over and access to these places.

As democratic states, the U.S. and Sweden both consider equality to be a central aim of their societies, a value to be upheld by the governmental frameworks that are enacted by the nation-state. In the realm of land use, equality often takes the form of providing access to preserved natural areas, or of ensuring a fair shot at any available land for a variety of interests. Following the Western tradition, distinctions are made between nature and places where human activity occurs, which contrasts with “the inclusive epistemologies of many Indigenous cultures, which situate people as part of their ancestral estates.”<sup>66</sup>

Sweden and the U.S. approach their land use goals differently, but both attempt to balance the capitalistic reality of private property with the conservation of spaces that can be used by all for recreational purposes. This latter use, which largely takes the form of national parks or ‘protected areas,’ is “largely a ‘residual’ land use, which often overlaps and conflicts with another residual land use, the remaining lands owned or accessed by Indigenous peoples.”<sup>67</sup>

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<sup>66</sup> Michael Adams, “Beyond Yellowstone? Conservation and Indigenous rights in Australia and Sweden”, in G. Cant, A. Goodall & J. Inns (eds) *Discourses and Silences: Indigenous Peoples, Risks and Resistance*, Department of Geography, University of Canterbury, Christchurch, New Zealand, 2005, 127-138

<sup>67</sup> *Ibid.*

In attempting to uphold equality in land use policy, both Sweden and the U.S. fall critically short in their lack of consideration for tribal sovereignty and Indigenous land rights. The ‘Yellowstone model,’ crafted by the United States and highly influential in the design of Sweden’s park system, applies the following characteristics to conserved public lands: “precise boundaries, State [ownership], and with people present as visitors only.”<sup>68</sup> The large amount of overlap between designated wilderness and park lands and Indigenous territories (approximately 94% of protected public lands in the Sweden and 25% in the U.S.) creates a significant conflict of interest in the land-use and management of these spaces.<sup>69</sup>

Indigenous considerations of land are often incompatible with that of the nation-state, because “in the process of settler colonialism, land is remade into property and human relationships to land are restricted to the relationship of the owner to his property.”<sup>70</sup> The land interests of the settler-colonial nation state deny the land rights and existing land management systems of the Indigenous Peoples whose land they occupy.

Whether the state designates a given area of land as open for public access or available for private use, they are violating the land rights of the Indigenous Peoples that originally inhabited that land and who in some cases are still in legal control of that land, even if they are denied this right in practice. The governments of the U.S. and

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<sup>68</sup> *Ibid.*

<sup>69</sup> Robert B. Keiter. *To Conserve Unimpaired : The Evolution of the National Park Idea*. Washington: Island Press, 2013.

<sup>70</sup> Eve Tuck and K. Wayne Yang. “Decolonization is not a metaphor.” *Decolonization: Indigeneity, Education & Society* Vol. 1, No. 1 (2012). p.1-40.

Sweden undermine the sovereignty and land rights of Indigenous peoples by controlling access to and use of land that belonged to these people since time immemorial.<sup>71</sup>

One of the main elements of Sweden's land use policy is the concept of *allmansrätten*. This concept is striking in its centrality to Swedish culture and its deep roots in the traditions of Swedish people.<sup>72</sup> Equality is a value that has long been present in Swedish society and legal frameworks, and *allmansrätten*, in providing land access to "all," illustrates this principle. However, the egalitarian ideals of concepts such as *allmansrätten* in Sweden are juxtaposed with the historical pattern of exclusion, persecution, and non-recognition of Indigenous peoples and their land rights.<sup>73</sup>

Sweden's pattern of non-recognition is a "logical consequence of Sweden's failure to engage with its colonial past and ongoing present," allowing for continued denial of land rights and recognition of sovereignty for the Sámi.<sup>74</sup>

In 2013, the United Nations Human Rights Committee on the Elimination of Racial Discrimination criticized Sweden for their lack of Sámi recognition in national legislation.<sup>75</sup> The United States has been similarly critiqued by the Inter-American Court of Human Rights, which found in a case brought before it by the Western

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<sup>71</sup> 'Time immemorial' is a legal concept that has been used to justify the land claims of Indigenous peoples, such as in the 1832 U.S. Supreme Court case *Worcester v. Georgia*. The case affirmed the land claims of the Cherokee Nation given their historical status as "the undisputed possessors of the soil, from time immemorial."; *Worcester v. Georgia*, 31 U.S. 6 Pet. 515 515 (1832).

<sup>72</sup> Marianne Wetterin. "This is the Right of Public Access." *Swedish Environmental Protection Agency*. Swedish Environmental Protection Agency, 3 May 2017, <http://www.swedishepa.se/Environmental-objectives-and-cooperation/Swedish-environmental-work/Work-areas/This-is-the-Right-of-Public-Access/>

<sup>73</sup> Lesley Head et al. "Mining as Colonisation: the Need for Restorative Justice and Restitution of Traditional Sámi Lands." *Nature, Temporality and Environmental Management: Scandinavian and Australian Perspectives on Peoples and Landscapes*, Routledge, Taylor & Francis Group, 2017, pp. 133–148.

<sup>74</sup> *Ibid.*

<sup>75</sup> UNHRC. "ALTERNATIVE REPORT to Sweden's 19th, 20th and 21<sup>st</sup> Periodical Reports to the Committee on the International Convention on Racial Discrimination" *United Nations Association of Sweden*, United Nations. July 2013. <https://fn.se/wp-content/uploads/2016/08/CERD-2013.pdf>

Shoshone Dann sisters that “United States law about Indian lands [is] fundamentally discriminatory and in violation of international human rights law.”<sup>76</sup>

Indigenous land rights are increasingly considered in the context of international law, given their characterization as a fundamental human right.<sup>77</sup>

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<sup>76</sup> Indian Law Resource Center. The Dann Case Before The Inter-American Commission on Human Rights: A Summary of the Commission’s Report and Its Significance for Indian Land Rights. Rep. Montana State University, Billings, July 2006. Web. 4 May 2017.

<sup>77</sup> United Nations Office of the High Commissioner on Human Rights  
<http://www.ohchr.org/EN/pages/home.aspx>

## International Developments in the Recognition of the Rights of Indigenous Peoples

International legal frameworks have been changing rapidly in recent years, attempting to better incorporate diverse perspectives and to enhance human rights protections. The discourse analyzing these changes has centered on the process of rejecting dominant paradigms and concepts that represent narrow worldviews and are rooted in Western thought, including *Terra Nullius* and paternalism. The legal concept of *Terra Nullius* considers land that is not developed by Anglo-European standards to be “empty” and therefore open for use according to the discretion of the nation-state. *Terra Nullius* was used to justify the creation of national parks and protected areas from the beginning of the conservation movement.<sup>78</sup> It is increasingly recognized that the governmental process itself can be counter to Indigenous worldviews and customs. Sweden and the U.S. are entering new phases of decolonization and Indigenous recognition, sometimes characterized as “postcolonialism.”<sup>79</sup> In particular, Sweden has only recently begun to reconcile its history of both external and internal colonialism; the nation had several colonies in the Caribbean and in the U.S. state of Delaware in the 17<sup>th</sup> and 18<sup>th</sup> centuries, in addition to its settler-colonial project towards the Sámi.<sup>80</sup>

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<sup>78</sup> Stan Stevens. “Indigenous Peoples, Biocultural Diversity, and Protected Areas.” In *Indigenous Peoples, National Parks, and Protected Areas: A New Paradigm Linking Conservation, Culture, and Rights*, edited by Stan Stevens, p. 37. Tucson: University of Arizona Press, 2014.

<sup>79</sup> Ween and Lien “Indigenous land claims and multiple landscapes: Postcolonial openings in Finnmark, Norway” in *Nature, Temporality and Environmental Management: Scandinavian and Australian Perspectives on Peoples and Landscapes*, edited by Head, Lesley, p. 5 Routledge, Taylor & Francis Group, 2017.

<sup>80</sup> Magdalena Naum and Jonas M. Nordin, eds. *Scandinavian Colonialism and the Rise of Modernity: Small Time Agents in a Global Arena*. New York: Springer, 2013.

Systems of reparations and restitution are inherently biased and unequal when they fail to take into account differences in culture. For instance, state land claims processes are non-inclusive of Indigenous peoples if they do not address social dynamics that are counter to concepts of individual claims.<sup>81</sup> The development of national parks and protected areas in Sweden and the U.S. also have yet to adequately incorporate the views of Indigenous and local actors affected by park creation, given a “lack of capacity to devolve control and decision-making powers to a local level.”<sup>82</sup> Much comparative analysis on this topic has been done amongst the U.S., Canada, and Australia, but there is less literature, especially comparative, about the land rights of the Sámi in relation to other nations. Although Sweden’s history is not one of colonization in the same way that Australia, the U.S, and Canada’s histories are, there are still striking resemblances in the events and patterns leading to the current legal situation for the Indigenous groups in the U.S. and Sweden in the realm of land rights.

*Legal Case Studies Representing Continued Challenges in Recognition of Indigenous Land Claims*

Various legal cases exist in national and international law that can serve as case studies to highlight complications in the modern shift towards legal pluralism, inclusivity, and recognition of tribal sovereignty and land rights. Two relevant cases that are striking in their similarities are the Dann Case in the U.S. and the Girjas case in

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<sup>81</sup> Ween and Lien “Indigenous land claims and multiple landscapes: Postcolonial openings in Finnmark, Norway” in *Nature, Temporality and Environmental Management: Scandinavian and Australian Perspectives on Peoples and Landscapes*, edited by Head, Lesley, p. 5 Routledge, Taylor & Francis Group, 2017.

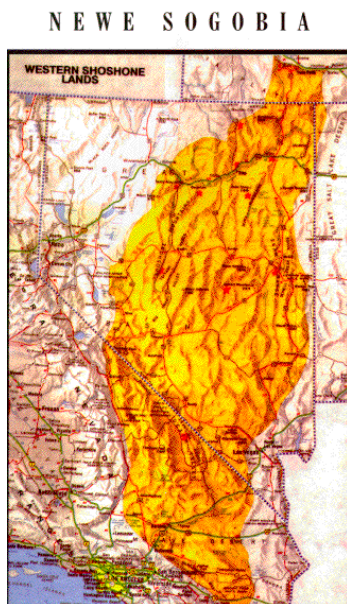
<sup>82</sup> Annika Dahlberg, Rick Rohde and Klas Sandell. “National parks and environmental justice: Comparing access rights and ideological legacies in three countries.” *Conservation and Society*, Vol. 8 Issue 3. (2010) p. 209-224.



Sweden. These cases can serve as vehicles through which to analyze the trends in land use policy in Sweden and the United States since the 18th century and how these patterns undermine the common narrative of progressive and democratic systems in both countries. Analysis of these two legal cases also allows me to determine the ways in which Indigenous land rights have been considered and addressed over time, as the global norms have shifted from paradigms of colonialism to the current post-colonial age. The paradox inherent in the denial of Indigenous rights despite the democratic and inclusive land rights and government systems in the U.S. and Sweden reveals that inequalities between Indigenous groups and those that colonized their land centuries ago remain.

### *The Dann Case*

The Western Shoshone people have traditional territory spanning a large area in the Great Basin of the United States.



**Figure 2:** Newe Sogobia is the Western Shoshone name for their homeland, which spans much of Nevada on land increasingly considered valuable for its uranium deposits by the federal government.

Mary and Carrie Dann are sisters and members of the Western Shoshone tribe, and they lived together for decades on a ranch in northern Nevada within the treaty-defined tribal boundaries. The Western Shoshone people signed the Ruby Valley Treaty of Peace and Friendship with the U.S. government in 1863, in which they did not cede any of their land. The agreements made in the treaty included allowing U.S. roads, railroads and telegraph lines to pass through the Shoshone lands, the future creation of and removal to reservations within Shoshone country, and compensation for game losses resulting from U.S. agricultural and mining projects on Shoshone land.<sup>83</sup> Nonetheless, in the following years and decades, immigration onto their land occurred steadily.

The Bureau of Land Management (BLM) first approached Western Shoshone sisters Carrie and Mary Dann in 1976, when a BLM official came to the Dann ranch and alerted the women that their livestock were trespassing on federal land. In a documentary called “American Outrage” detailing the Dann sisters’ on legal struggles, Mary Dann remembers thinking after the BLM official’s visit that she should have said to him, “You’re the one that’s trespassing.”<sup>84</sup> In attempting to deny the Dannels their rights as members of the Western Shoshone tribe to occupy and make a living off of their ancestral and legally owned lands, the United States government was violating the Treaty of Ruby Valley. However, the government took the position that, because the Indian Claims Commission (ICC) had set aside money as compensation for the loss of

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<sup>83</sup> Treaty of Ruby Valley, USG and Shoshone Indians in Nevada, October 1, 1863, UNR Manuscript Collection.

<sup>84</sup> Beth Gage, Gage, George, Steenburgen, Mary, Shenandoah, Joanne, Dann, Mary, Dann, Carrie, Miranda Productions, and Bullfrog Films. American Outrage. Oley, PA: Bullfrog Films, 2008.

the land, the Shoshone had revoked their land claims. The Shoshone opinion held that, because the compensation had yet to be distributed to or utilized by the tribe, they still held claim to their lands as they stood under the treaty.<sup>85</sup>

Over the subsequent decades, the Danns and their animals were repeatedly harassed by BLM, which continued to assert that their land did not belong to them. In response, the Danns sued the U.S. government's Indian Claims Commission (ICC) in 2002 for violating the 1863 Treaty of Ruby Valley, in which the Shoshone did not forfeit any of their ancestral lands. They asserted that the Indian Claims Commission acted unlawfully in 1962 when they denied the Western Shoshone access to their ancestral lands and utilized the unfair principle of "gradual encroachment" to suggest that the tribe's title to their land had been extinguished by the settlement of non-Indians on their land. Further justification for retained Shoshone land rights was derived from the creation, and subsequent liquidation, of the Duck Valley Reservation, which was outside of Shoshone lands despite the treaty agreement that such a reservation would be.<sup>86</sup> The Western Shoshone did not receive reparations for their lost land until 1979, when the ICC paid the tribe the amount for which their 24 million lost acres were worth in 1872. (1872 is considered the year that the Western Shoshone lost their land to gradual encroachment.)

In its role as trustee over the American Indians, the United States has a conflict of interest; they tend to make decisions that benefit or bring profit to their own nation. Consequently, the trustee relationship is inherently flawed, rooted in a bias towards the

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<sup>85</sup> Kristine L. Foot. "United States v. Dann: What It Portends for Ownership of Millions of Acres in the Western United States." *Public Land and Resources Law Review* 5 (1984).

<sup>86</sup> *Ibid.*

interests of United States and resulting in a pattern of legitimization of land theft from American Indians, a process that Carrie Dann refers to in “American Outrage” as “spiritual genocide.” Tim Coulter, a lawyer interviewed in “American Outrage”, expressed similar disdain for the trustee relationship, which he describes as unconstitutional and equal to the way “infants, the disabled, and insane people” are treated under U.S. law. In dealing with the land contestations of the Western Shoshone, “The government has always treated the issue as a win/lose conflict, rather than a unique situation requiring bilateral negotiations for a historically-informed resolution reflecting justice and equity.”<sup>87</sup> The international legal apparatus has taken note of this denial of Indigenous rights.

The Indian Law Resource Center took the Danns’ case into the international legal realm, filing a claim with the Organization of American States’ Inter-American Commission on Human Rights. The Commission found that the human rights of the Western Shoshone had been violated. The decision highlighted the need for better recognition of collective rights to land that align more closely with the Indigenous perspective on land ownership. The United States government did not acknowledge or address the recommendations and concerns put forth by the Inter-American Commission on Human Rights, and the Dann sisters and their tribe have received no remedy, monetary or otherwise.<sup>88</sup>

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<sup>87</sup> Thomas E. Luebben & Cathy Nelson, “The Indian Wars: Efforts to Resolve Western Shoshone Land and Treaty Issues and to Distribute the Indian Claims Commission Judgement Fund”, 42 *Nat. Resources J.* 801 (2002).

<sup>88</sup> Indian Law Resource Center. The Dann Case Before The Inter-American Commission on Human Rights: A Summary of the Commission’s Report and Its Significance for Indian Land Rights. Rep. Montana State University, Billings, July 2006. Web. 4 May 2017.

### *The Girjas Case*

The 2016 Girjas Case in Sweden was between the Sámi fishing village of Girjas and the Swedish government. Before a district court, the Sámi village attempted to claim control, or at least joint control, over their ancestral lands, including the right to fish and hunt on the land in question. The court granted their request, on the basis of the deeply-rooted and long-standing Swedish legal principle of “prescription by time immemorial,” which reserves rights to an area of land if that land has been “enjoyed for such a long time, and exercised, that no one remembers how and when the right came to be.”<sup>89</sup> However, the case was expected to be appealed by the state, which said in a statement that “Sweden has in this matter no international obligations to recognize special rights of the Sámi people, whether they are Indigenous or not.”<sup>90</sup> This blatant non-recognition of the Sámi and their land rights within the framework of the state’s own legal system represents an extension of concepts entrenched in the rhetoric of colonialism such as *Terra Nullius*.

This case also highlights that “Sámi territoriality is characterized by mobility and diffused boundaries and is essentially incompatible with the territorial organization of the state.” Sweden’s own land conceptualizations derive from historical Nordic organization of kingdoms into districts and value private property as a sign of prestige. These “western nationalistic identification labels” persist, even as Indigenous land rights are beginning to gain recognition on a global scale, and they pose serious threats

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<sup>89</sup> Elin Hofverberg. “Sweden: Court Recognizes Exclusive Fishing Rights of Sami Village.” *Global Legal Monitor*, Library of Congress, 9 Feb. 2016. [www.loc.gov/law/foreign-news/article/sweden-court-recognizes-exclusive-fishing-rights-of-sami-village/](http://www.loc.gov/law/foreign-news/article/sweden-court-recognizes-exclusive-fishing-rights-of-sami-village/).

<sup>90</sup> Trude Pettersen. “Sami Win Historic Land Use Case over Sweden.” *The Independent Barents Observer*, The Independent Barents Observer AS, 2016, [thebarentsobserver.com/ru/node/402](http://thebarentsobserver.com/ru/node/402).

to the ability of the Sámi to effectively carry out their reindeer herding and other cultural and subsistence practices.<sup>91</sup> As one Sámi reindeer herder puts it, “It’s sad because of our lack of power when the government don’t [sic] understand what [reindeer herding] means to us.”<sup>92</sup> Without full legal representation and governmental recognition, Sámi land is vulnerable to uses that conflict with and inhibit their own uses for the land.

The principle of *allemansrätten* creates a system that is inclusive and democratic on the surface, allowing hunters such as Thomas Widén to hunt on lands also used by the Sámi for reindeer grazing. As Matti Berg, leader of Girjas village asserts, “To be outside and hunt and fish is their last freedom. I understand them. It’s the same for me. But it needs to be done with some sort of responsibility,” a responsibility that the Sámi would like to be able to enforce as managers of their grazing lands. In a documentary about the Girjas case called, “Land Matters,” the hunter Widén expresses that if the Sámi were to “become owners of the land and water,” as granted in the initial decision of the case, then the “relationship between the Sámi and the locals” will “get out of hand.”<sup>93</sup> Tensions and conflicts over land exist even within a “democratic” land system that is supposed to be inclusive of various interests.

There are systemic limitations and cultural barriers for the Sámi that make their attempts at participation in legal disputes over land extremely difficult, as Matti Berg suggests in “Land Matters”: “I don’t think that anyone realizes, what sort of strain this

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<sup>91</sup> Peter Fjagesund. *Dream of the North : A Cultural History to 1920*, Editions Rodopi, 2014. ProQuest Ebook Central, <https://ebookcentral-proquest.com.libproxy.uoregon.edu/lib/uoregon/detail.action?docID=1686961>.

<sup>92</sup> Carl Herdenberg, director. *Land Matters*. Land Matters, Herdenberg Films , 2016, [vimeo.com/183612586](https://vimeo.com/183612586).

<sup>93</sup> *Ibid.*

puts on a small Sámi village, to be in this type of process...especially regarding a topic like hunting and fishing, which is holy to the majority of the Ore Fields inhabitants.”<sup>94</sup> In reality, *allemansrätten* only creates freedoms for individual elite recreational users, such as hunters and hikers, while ignoring the spiritual and practical land uses that the Sámi have practiced since time immemorial.

Corporate interests continue to exploit the Sámi, and locals have developed animosity towards what they consider the “special treatment” of the Sámi in being granted partial land ownership in the landmark Girjas case. Swedish locals and industrial operations do not consider the traditional lands of the Sámi that they exploit as “the reindeer’s country,” like the Sámi do. These disparate views are not given equal weight in the legal realm, and thus the needs of the reindeer and their Sámi herders are continually overlooked in land use decisions. Matti Berg argues that the only way to fix this inequality is to “get to a point where the government respect [sic] our autonomy when it comes to land and water.” Until the “Sámi society...is the body responsible for how the lands are being used,” then land use will continue to favor corporate interests, as well as those of the “recreational elite” in protected area creation and management.

The Girjas case is not unique, in Sweden or globally. In fact, around “1.5 billion people depend on Indigenous or community holdings – but only around a fifth of that area is legally recognized.”<sup>95</sup> This lack of legal recognition has severe and concrete repercussions for Indigenous peoples, in multiple facets of their existence. Economic impacts to these communities are often significant, especially in areas such as Sapmi

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<sup>94</sup> *Ibid.*

<sup>95</sup> Chris Jochnick. “Land Rights and Global Development.” Foreign Affairs, Council on Foreign Relations, 9 Feb. 2017, [www.foreignaffairs.com/articles/2017-02-07/land-rights-and-global-development](http://www.foreignaffairs.com/articles/2017-02-07/land-rights-and-global-development).

that are rich in both lucrative resources, such as oil and minerals, and in protected areas. Whether in private or public hands, management by outside entities often results in limited access to these areas for the local community, “with consequences for livelihood security, customary practices, local identity, recreational interests and economic equity.”<sup>96</sup>

Sweden and other countries continue to deny their “obligation to respect property rights on the basis of customary land tenure” to the Sámi, giving them no power to resist industrial development or protected area creation by the state on their lands, even when it directly harms their land and ways of life.<sup>97</sup> Legal struggles surrounding resource extraction and protected area designation are common in northern Sweden. For example, a park proposal for the Kiruna region of northern Sweden in the 1980s was abandoned after the Sámi and other local groups resisted it out of fear that “their access rights to the area for fishing, hunting and the use of snowmobiles would be curtailed.”<sup>98</sup> Beyond the economic hit, communities suffer from disruptions to their livelihoods and cultural practices caused by the encroachment of industrial activities and protected area development.

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<sup>96</sup> Annika Dahlberg, Rick Rohde and Klas Sandell. “National parks and environmental justice: Comparing access rights and ideological legacies in three countries.” *Conservation and Society*, Vol. 8 Issue 3. (2010) p. 209-224.

<sup>97</sup> Lars-Anders Baer (2017). International Expert Group Meeting on the theme Implementation of the United Nations Declaration on the Rights of Indigenous Peoples: The role of the Permanent Forum on Indigenous Issues and other indigenous specific mechanisms (article 42), New York, NY: United Nations Department of Economic & Social Affairs, Division for Social Policy & Development, Secretariat of the Permanent Forum on Indigenous Issues.

<sup>98</sup> Annika Dahlberg, Rick Rohde and Klas Sandell. “National parks and environmental justice: Comparing access rights and ideological legacies in three countries.” *Conservation and Society*, Vol. 8 Issue 3. (2010) p. 209-224.



In his book, *Dream of the North: A Cultural History to 1920*, Peter Fjagesund argues that Western societies “are only gradually coming to terms with the fact that it is impossible to talk about a single or homogenous view of the North,” just as the idea of the American West as a “wild frontier” has persisted in American collective consciousness.<sup>99</sup> These romantic perceptions of land sparsely settled by whites as ‘wild’ and void of human use and impacts were “embodied in the purpose of national park establishment,” and justified situations “where the local people were either ignored or regarded as a problem, and even forcibly removed.”<sup>100</sup> If Indigenous groups are to gain recognition and ownership over their lands, these perceptions must be acknowledged as false in their ignorance of the diverse Indigenous groups that often inhabited these areas long before Westerners colonized them.

A myriad of issues stem from the nonrecognition of Indigenous land rights, beyond just the clear economic disadvantage of their lack of legal control over resources in and access to their homelands. Many Indigenous groups suffer from the social exclusion from the very cultures that lay claim to their own territories. In the words of Sofia Jannok, a Swedish Sámi singer, “The hard part to being Saami is it’s completely invisible once you step into Swedish culture. It’s like, “Do you even exist?” It’s on those terms, that level of ignorance and invisibility.” Jannok is deeply aware of the heavy irony between Sweden’s reluctance to recognize its Saami population and the

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<sup>99</sup> Peter Fjagesund. *Dream of the North : A Cultural History to 1920*, Editions Rodopi, 2014. ProQuest Ebook Central, p. 28 <https://ebookcentral-proquest.com.libproxy.uoregon.edu/lib/uoregon/detail.action?docID=1686961>

<sup>100</sup> Annika Dahlberg, Rick Rohde and Klas Sandell. “National parks and environmental justice: Comparing access rights and ideological legacies in three countries.” *Conservation and Society*, Vol. 8 Issue 3. (2010) p. 209-224.

nation's global image as a society "considered the most democratic in the world."<sup>101</sup> In the U.S., the many American Indian groups that lack tribal recognition are similarly invisible.

### *Sweden and United States as Outlaw States*

Sweden and the United States consider themselves to be upstanding democracies, touting values of equality and freedom in their state rhetoric. However, their respective hidden histories of nonrecognition of Indigenous property rights contrast strongly with this image. Both nations have ignored international norms in their denial of Indigenous property rights from the early formations of their modern governments to the present. From the Discovery Doctrine of the 18<sup>th</sup> and 19<sup>th</sup> centuries to the human rights paradigm in place today, the consistent violation of international standards through the legal systems and practices of the Swedish and United States governments towards their Indigenous populations has posited them as outlaw states, or nations acting outside international norms. In a series of Supreme Court cases, Chief Justice John Marshall first asserted legal justification for nonrecognition of Indigenous property rights and "deliberately confused and deformed accepted legal principles to "justify" his country's pursuit of a thoroughly illegitimate course of territorial acquisition."<sup>102</sup>

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<sup>101</sup> Mara Johnson-Groh. "Songs for Decolonization: A Q&A With Saami Singer Sofia Jannok." Arctic Deeply, News Deeply, 8 Sept. 2017, [www.newsdeeply.com/arctic/community/2017/09/01/songs-for-decolonization-a-qa-with-saami-singer-sofia-jannok](http://www.newsdeeply.com/arctic/community/2017/09/01/songs-for-decolonization-a-qa-with-saami-singer-sofia-jannok)

<sup>102</sup> Ward Churchill. *Struggle for the Land : Native North American Resistance to Genocide, Ecocide, and Colonization*. San Francisco: City Lights, 2002.

In Sweden today, “despite an overall political rhetoric praising cultural diversity and Indigenous rights...the system of Sámi rights is today in many ways similar to the one established over a century ago.”<sup>103</sup>

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<sup>103</sup> Patrik Lantto and Ulf Mörkenstam. "Sámi Rights and Sámi Challenges: The Modernization Process and the Swedish Sámi Movement, 1886–2006." *Scandinavian Journal of History* 33, no. 1 (2008): 26-51.

## Conclusion

The lack of success for Indigenous Peoples to claim rights to their ancestral lands in these recent cases highlights the ongoing struggle of Indigenous groups in Sweden and the United States to effectively navigate the biased legal systems governing public land management. Despite the values of equality behind conceptualizations of land access in the both nations, the rights of Indigenous Peoples are continually violated and overlooked. The legal frameworks in place are not inclusive of the worldviews and ways of life of Indigenous groups, and therefore create an unjust system of land management.

Given that Indigenous peoples' "notions of sovereignty are often incompatible with the sovereignty of the state in which they are located and the theory of exclusive sovereignty on which the international legal order is based," this problem is universal and increasingly central to international policy discourse.<sup>104</sup> In the realm of protected lands, Indigenous Peoples are demanding participation in land use decisions and reasserting land claims over areas used by the U.S. government and private entities without their consent. The Standing Rock protests in North Dakota over the Dakota Access Pipeline began in 2016, and the Sioux continue to assert their rights and battle further work on the pipeline through petitions and ongoing suits.<sup>105</sup>

The Girjas case highlighted earlier in this thesis has had a mixed outcome as of January 24, 2018. The Swedish Court of Appeal determined that Girjas, the Sami

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<sup>104</sup> Gerry J. Simpson. *Great Powers and Outlaw States : Unequal Sovereigns in the International Legal Order*. Cambridge Studies in International and Comparative Law (Cambridge, England : 1996) ; 32. Cambridge, UK ; New York, NY: Cambridge University Press, 2004.

<sup>105</sup> "The Standing Rock Sioux Tribe's Litigation on the Dakota Access Pipeline." *Earth Justice*, 2017.

village that sued the state for recognition of Sámi hunting and fishing rights, should be compensated \$500,000 by Sweden, and gain “better right” to hunting and fishing in their village territory, loosely described as a larger management role, but still in conjunction with state and local land-use decisions.<sup>106</sup> It is essential that the narrative of this thesis not undermine the significance of continuous efforts on the part of Indigenous groups in both nations to actively resist their own oppression and denial of property rights. As evidenced by such recent movements as the activism at Standing Rock in the United States and the Sámi people of Girjas village’s assertion of their rights in court, Indigenous groups are not passively accepting the extension of outsider worldviews and interests onto their own land.

As Indigenous Peoples across the globe demand recognition, reparations, and rights of access to and control over their lands, the gaps in inclusivity in government at both state and international levels are becoming more glaring. The 2009 federal apology by President Barack Obama to American Indian tribes in the United States is one example highlighting the new worldwide emphasis on government accountability for historical wrongs and ongoing discrimination against Indigenous groups. Comparative analysis of the trends in land use policy and its effect on the land access rights of Indigenous groups in the United States and Sweden illuminates the fact that “while Indigenous peoples find their own way over obstacles to achieve their self-determination objectives, the pattern of resistance they encounter from governments and

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<sup>106</sup> “Sami village wins court battle and compensation from Swedish state,” *The Local Sweden*, January 24, 2018.

general public are much the same everywhere.”<sup>107</sup> My thesis reveals a paradoxical historical pattern in Sweden and the United States of granting land access rights to the white, wealthy citizens of the state majority while denying rights to Indigenous Peoples in public land use policy.

It is my hope that this work will highlight the universality of continuing land rights denial to Indigenous Peoples in the 21<sup>st</sup> century. Various solutions have been proposed at global and national levels, including reparations and more inclusive land claims processes. It is crucial to critically analyze to what extent both the United States and Sweden have begun work on addressing their own shortcomings in recognizing Indigenous land rights. In 2010, the Sámi were recognized in the Swedish Constitution, and the Saami Parliament was established in Sweden in 1993. Although important, these steps forward are lacking in several respects. For example, some provisions in the Swedish Constitution regarding Sámi rights “lack implementing legislation,” and the right to “cultural self-determination” is not made explicit.<sup>108</sup> The proposed Saami Convention attempts to address some of the areas in which existing governmental frameworks are failing to properly represent Indigenous interests. If successful, the Convention,

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<sup>107</sup> Peter Jull. “Book Review - Sapmi - Becoming a Nation.” *AustLII, Indigenous Law Bulletin*, 2001, p. 16 [classic.austlii.edu.au/au/journals/IndigLawB/2001/50.html](http://classic.austlii.edu.au/au/journals/IndigLawB/2001/50.html).

<sup>108</sup> Elisabeth Roy Trudel et al. “Saami Still Struggle for Recognition.” *Arctic Deeply, News Deeply*, 9 June 2016. <https://www.newsdeeply.com/arctic/community/2016/06/07/saami-still-struggle-for-recognition>

could become the first regional treaty concerning Indigenous peoples and would enshrine various rights, including the right to self-determination, Saami language and culture, and land and water, endorsing the principle of free, prior and informed consent.

In working to protect Indigenous rights beyond national borders and government systems, the Saami Convention is part of a larger global movement, supported by several newer UN programs and other international NGOs' initiatives, to gain recognition, rights and reparations for Indigenous communities. Given that “no definitive resolution on the rights of the Sámi to their traditional lands has been enacted,” it is imperative that a regional consensus is reached if the Sámi are to have uniform protections that apply across Sapmi, their entire territory that spans parts of Norway, Sweden, Finland and Russia.<sup>109</sup>

In order to effectively have their voices heard on the global stage, the Sámi have created governing bodies to represent themselves and their traditional territory beyond the confines of a national framework, such as the Sámi Parliamentary Council, which includes all “Arctic Indigenous peoples.”<sup>110</sup> However, Sámi efforts at collaboration and unified governance across national borders cannot have equal footing in the international arena until they are represented in the UN in the same way that countries are, a problem addressed by the president of the Sámi Parliamentary Council, Lars

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<sup>109</sup> Melissa Johnson, “Sámi, Reindeer Herding, and Arctic Warming.” Sámi and Arctic Warming, Inventory of Conflict and Environment, 11 July 2011, [mandalaprojects.com/ice/ice-cases/Sámi.htm](http://mandalaprojects.com/ice/ice-cases/Sámi.htm).

<sup>110</sup> Lars-Anders Baer (2017). International Expert Group Meeting on the theme Implementation of the United Nations Declaration on the Rights of Indigenous Peoples: The role of the Permanent Forum on Indigenous Issues and other indigenous specific mechanisms (article 42), New York, NY: United Nations Department of Economic & Social Affairs, Division for Social Policy & Development, Secretariat of the Permanent Forum on Indigenous Issues.

Anders Baer, in a paper presented to the UN in January 2017. He writes that, “The existing UN rules for participation of non-state entities prevent Indigenous Peoples’ self-government institutions to independently take part in the work of the United Nations.”<sup>111</sup> This shortcoming is a crucial pitfall in UN support of Indigenous rights, although the organization has developed critical programs in recent years that do much to forward the interests of Indigenous Peoples.

An international example of increased recognition for Indigenous Peoples’ right to land is the UNESCO World Heritage Site project.<sup>112</sup> The UN officially designates areas deemed to fit within the specific criteria of World Heritage Sites as “cultural landscapes,” which are “significant interactions between people and the natural environment.”<sup>113</sup> This represents a renewed, modern recognition of land use as being beyond that of either economic and resource extraction or “untouched wilderness,” an understanding that aligns more closely with an Indigenous perspective of land use. In another UN example, the organization’s Convention for Biological Diversity has “voluntary guidelines...for assessing the effects of industrial development projects on lands and waters in Indigenous homelands” that are called “Akwé:Kon.”<sup>114</sup> This tool

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<sup>111</sup> Lars-Anders Baer (2017). International Expert Group Meeting on the theme Implementation of the United Nations Declaration on the Rights of Indigenous Peoples: The role of the Permanent Forum on Indigenous Issues and other indigenous specific mechanisms (article 42), New York, NY: United Nations Department of Economic & Social Affairs, Division for Social Policy & Development, Secretariat of the Permanent Forum on Indigenous Issues.

<sup>112</sup> UNESCO World Heritage Centre. “Laponian Area.” *UNESCO World Heritage Centre*, United Nations, [whc.unesco.org/en/list/774](http://whc.unesco.org/en/list/774).

<sup>113</sup> UNESCO World Heritage Centre. “The Criteria for Selection.” UNESCO World Heritage Centre, United Nations, [whc.unesco.org/en/list/criteria](http://whc.unesco.org/en/list/criteria).

<sup>114</sup> Emily Gertz, “Proposed Arctic Railway Would Cut Through Lapland Reindeer Habitat.” *Arctic Deeply*, News Deeply, 3 Aug. 2017, [www.newsdeeply.com/arctic/articles/2017/08/03/proposed0arctic-railway-would-cut-through-lapland-reindeer-habitat](http://www.newsdeeply.com/arctic/articles/2017/08/03/proposed0arctic-railway-would-cut-through-lapland-reindeer-habitat).



will be increasingly important as climate change increases the accessibility of valuable natural resources in the Arctic.

Higher temperatures caused by climate change have begun to melt Arctic ice, meaning that “natural resources – oil, gas, minerals, are more accessible to the industry,” directly impacting the Indigenous communities living in this territory. This secondary effect of climate change will exacerbate the difficulties the Sámi will face with changing climate and subsistence resource availability. As it stands today, Sámi self-determination may not be sufficient to protect their rights as the effects of climate change play out in coming years. According to research conducted through an Inventory of Conflict and Environment (ICE) Project spearheaded by Professor James Lee at American University, “the Sámi may not be prepared to deal with the effects of climate change without significant support from the government and local non-Indigenous populations to set aside and maintain sustainable grazing sites” for reindeer.<sup>115</sup> Further, climate change mitigation attempts such as wind turbine projects have been developed on Sámi land, interfering with reindeer migration. The fact that limits on reindeer migration and Sami herding and land rights have been further expanded in recent decades by the development of renewable energy projects highlights the paradox of the ignorance of Sami land rights in today’s environmental and social progressive discourse, in much the same way that the conservation movement has ignored Indigenous peoples since its founding a century ago.

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<sup>115</sup> Melissa Johnson. “Sámi, Reindeer Herding, and Arctic Warming.” Sámi and Arctic Warming, Inventory of Conflict and Environment, 11 July 2011, [mandalaprojects.com/ice/ice-cases/Sámi.htm](http://mandalaprojects.com/ice/ice-cases/Sámi.htm).

The Swedish government has been reluctant to respond to increasing international pressure for recognition of Indigenous land rights, and the presence of economically viable natural resources on Sámi land may be part of the reason. Sámi territory is home to the largest iron ore mine in the world, located in Kiruna, Sweden. The mine has been continuously operating since 1908 and contributes significantly to the economy of Sweden, which “was the 17<sup>th</sup>-ranked country in the world in terms of the value of production of its mineral industry” in 2010.<sup>116</sup> The lucrativeness of industries such as mining plays a big role in disincentivizing Sweden from extending land rights to the Sámi. Norway and Denmark are the only nations in Scandinavia that have ratified the International Labor Organization’s convention on Indigenous populations, which asserts that “governments must recognize native ownership of the land that they traditionally occupied and had access to in the past.” Sweden’s reluctance to sign on is influenced by the fact that “the rights to resources on the land are also mentioned” in the convention, “thus delaying any substantive agreement on land rights.”

Indigenous sovereignty and property rights are intertwined issues, and denial of the latter at the state level is exacerbated by nonrecognition of the former at the international level. As highlighted by Gerry Simpson in *Great Powers and Outlaw States: Unequal Sovereigns in the International Legal Order*,

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<sup>116</sup> Alberto Alexander Perez. “The Mineral Industry of Sweden.” Minerals USGS, Department of the Interior, USGS, Feb. 2015, [minerals.usgs.gov/minerals/pubs/country/2012/myb3-2012-sw.pdf](https://minerals.usgs.gov/minerals/pubs/country/2012/myb3-2012-sw.pdf).

The whole idea of statehood and sovereignty operates as a discourse of exclusion and hierarchy...The state has monopolized international legal life to the exclusion of other forms of political organization. So that, though equality is a principle of the system, this equality (even in its most generous versions) extends only to those social groups willing to adopt orthodox political designs. This is the paradox at the heart of self-determination.

Thus, the paradoxical nature of the “freedom-to-roam” legal frameworks found in the U.S. and Swedish governments remains largely unaddressed internationally given the exclusive reality of the international legal realm, and because of the positive image associated with protected areas such as national parks. Because Indigenous groups often do not operate in the same political structures that states do, they are effectively invisible in international legal organizations. This “double paradox” severely inhibits Indigenous groups’ ability to have property rights’ violations recognized and addressed. In the realm of U.S. land rights, “there has not been a formal transformative event resulting in a national inquiry or an urgent professional call to action to correct injustices across the board,” and this thesis proves that the narrative is strikingly similar in Sweden.<sup>117</sup>

Ultimately, public lands systems and protected areas have been deceptively portrayed as democratic in nature in both Sweden and the United States, despite their disregard for the land rights of Indigenous peoples. This “lid of secrecy over their internal applications of legal force for political purposes” is necessary for “maintaining

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<sup>117</sup>Daniel, Dominique., and Levi, Amalia S. *Identity Palimpsests : Archiving Ethnicity in the U.S. and Canada*. Series on Archives, Archivists and Society ; No. 6. Sacramento, CA: Litwin Books, 2014.

their ability to posture as “humanitarian entitles [sic] within the geopolitical arena.”<sup>118</sup>

A “concerned unifying effort” amongst all Indigenous peoples, examples of which already abound, must be utilized to draw recognition to this harmful paradox and to pursue justice for both historical and modern denial of land rights to American Indians and the Sámi.<sup>119</sup>

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<sup>118</sup> Ward Churchill. *Struggle for the Land : Native North American Resistance to Genocide, Ecocide, and Colonization*. San Francisco: City Lights, 2002., p. 251.

<sup>119</sup> *Ibid.*

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