

BOOK REVIEWS

Self-Governance and Sami Communities: Transitions in Early Modern Natural Resource Management, by Jesper Larsson and Eva-Lotta Päiviö Sjaunja
Palgrave Macmillan, 2022, 247 pp, £44.99 hb, £34.99 pb, open access ebk
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Self-Governance and Sami Communities: Transitions in Early Modern Natural Resource Management discusses the regulation of common-pool resources (CPRs) – a question that is often at the heart of environmental law and has given rise to many transnational environmental law and regulation regimes. The book’s approach, however, is different from the works typically reviewed in *Transnational Environmental Law*. Rather than presenting an analysis of how CPRs such as forests, fishing grounds, or groundwater basins are governed in the here and now, Jesper Larsson and Eva-Lotta Päiviö Sjaunja examine CPR governance by early modern Indigenous Sami inhabitants of interior northwest Fennoscandia,¹ with a focus on the period between 1550 and 1780. Despite its historical perspective, the book’s findings provide important insights for modern-day resource management systems, as well as a better understanding of how these historical developments have shaped our current systems. To enrich ongoing debates on Indigenous self-governance and resource management, this brief review highlights Larsson and Päiviö Sjaunja’s findings as to where and why the Sami’s CPR system was particularly successful, and the circumstances under which local CPR management may coexist with state regulation in beneficial ways.

The meticulously researched book is composed of three parts. The first Part (Chapters 1 to 4) sets out the theoretical and methodological context for the empirical work in Part II (Chapters 5 to 8), which discusses specific resources and their management by the Sami. It is noteworthy that the discussion on resource management includes resources beyond reindeer pastoralism (Chapter 7), which has traditionally been seen as the main, and even exclusive, livelihood of Sami.² Since this assumption does not align with the complex reality of Sami lives, the chapters on fishing (Chapter 5), hunting (Chapter 6), and other income sources (Chapter 8) also aim to help to correct an erroneous and under-inclusive narrative of Sami identity³ and, by extension, the perception of their CPR governance systems as one-dimensional, focused entirely on reindeer pastoralism.

The most fascinating insights of the book come from Chapters 4 and 9, which set out the ‘three main variables that impacted how and why Sami land use changed in the early modern period’ (p. 71), and reflect on the co-evolution of land-use practices and

¹ Fennoscandia comprises Norway, Sweden, Finland, and a Western part of modern-day Russia, including the Kola Peninsula.

² This impression is reinforced by legislation that stipulates that only reindeer herders are Sami; Reindeer Grazing Act (1928), cited in the book under review, p. 9.

³ See also L.I. Hansen & B. Olsen, *Hunters in Transition: An Outline of Early Sámi History* (Brill, 2014).

property regimes in Fennoscandia, respectively. Framing the sector-specific segments on fishing, hunting, reindeer pastoralism and other economic activities, these chapters jointly provide a complete narrative of Sami CPR management. Chapter 4 succinctly demonstrates the impact of external factors on Sami resource management while Chapter 9 further substantiates the impacts of these factors and the resulting changes to land use, property rights, and governance systems.

Chapter 4 identifies the ‘three main variables’: trade, taxation, and population (pp. 71–90). Trade had been an empowering activity for the Sami from prehistoric times, when hunting was their main activity (p. 74). Colonization – starting from 1550 – meant that Sweden tried to integrate Sami trade into its own trading system through designated semi-annual markets (p. 74). These markets were linked to other activities such as taxation and religion, which were also aimed at state building. Though trade became increasingly regulated from the early 1600s, Sweden struggled to control Sami commerce, whose goods (primarily reindeer furs) were in high demand and could be traded freely beyond Swedish territory with Russia and Norway (pp. 74–5).

Taxation was similarly used as a state-building device, both through funding public institutions as well as by linking individuals to a state through citizenship. This was crucial in the light of armed conflicts between nascent Nordic states in the decades around 1600 (p. 78). Here, too, the Swedish state’s limited understanding of the Sami economy obstructed its ability to tax. For example, while the government had a list of Sami who paid taxes, it did not have land- or water-use records, and several attempts of widescale surveys in the 1600s failed (p. 79). Apart from lack of information, the government also struggled to account for the divergence in wealth within the Sami population and how best to tax fairly. There was a keen awareness that overly harsh taxation could lead Sami in border regions to align with bordering states. Particularities of Sami culture – where they lived, where they moved to, what kind of livelihoods they pursued – had an impact on the tax regime, but the tax regime also affected Sami life. Specifically, the Swedish government’s choice to tax Sami villages instead of Sami households triggered internal subdivision of tax (collection) within villages by the Sami themselves.

The final factor, population, gave rise to another set of constraints on state-building efforts in Fennoscandia. Given the Sami’s mobility, population numbers fluctuated naturally. Following Swedish attempts to force Sami to work in the mines, however, these numbers declined in the period after 1660. Many Sami decided to move away from areas under Swedish control to avoid such conscription, which led to a decline so severe that the government decided to reverse its policy. Nevertheless, population numbers took until the early 1700s for numbers to recover. During this period the state also tried to encourage non-Sami to settle in the area – with disappointing results. Only 22 settlers were registered in one of the larger towns by 1780 and the Sami population dominated until the late 1800s (p. 84).

These external pressures on the Sami way of life, combined with the shift to reindeer pastoralism, spurred the transformation of grazing lands into a vital CPR that was governed by a common-property regime (p. 215). This regime stands in contrast to the private hunting and fishing rights that had been awarded when these were the main economic activities. Notwithstanding the challenges that the Swedish state

experienced in its state-building efforts, by the end of the 1700s the colonization of Fennoscandia included unilateral property claims to all land and resources for the Swedish state, with no involvement of its Indigenous population, the Sami (p. 5). The Sami common-property regime was poorly understood and ultimately displaced in favour of public and private property regimes as Swedish colonization of Fennoscandia was completed (p. 234).

In combination with two interrelated events – the replacement of local courts composed of trusted Sami men by a government agency without any Sami representation to settle land-use matters, and the eventual increase of settlers in Fennoscandia – this led to the almost complete dismissal of Sami self-governance (pp. 5–6). Larsson and Päiviö Sjaunja's study therefore captures a natural experiment where the non-state-based regulation of CPRs – and the self-regulation of Indigenous people – was first successfully supported by and existed in parallel with state regulation, but was later crowded out by changing property right regimes and institutional reforms during colonization. These same property regimes, centred on rights to use land for hunting, fishing, and reindeer grazing, continue to be part of contentious political discussions on decolonization and the (re-)empowerment of Sami communities (p. 8). The remainder of this review will focus on two specific insights of the book regarding the role of courts and the role of social justice in the Sami CPR governance system, respectively, to reflect on their broader relevance for scholars of transnational environmental law (TEL).

Between 1550 and 1780, the Sami managed their CPRs sustainably through a system of user rights and common property, created and maintained by intricate institutions (p. 4). Though primarily family- and community-based, local courts were also an important part of this institutional arrangement. Local court decisions represent the majority of written sources on CPR management during the studied period, as these courts played a central role in conflict resolution (p. 57); in the Nordic judicial system many cases were resolved by settlements *in court*, not out of court.⁴ The courts' legitimacy and prominence derived from their lay composition: a state-appointed Swedish judge would preside over a panel of 12 – typically Sami – taxpaying men (*nämnd* or *tolvmanna*), who represented local knowledge and circumstances as lay judges (*nämnedmän*) (pp. 57–8).⁵ As a result, local courts became successful arenas for resolving social conflicts in a bottom-up manner, supported, but only marginally controlled, by the overarching system set up by the young Swedish state.⁶ The role played by these courts increased not only their own legitimacy as conflict resolution arenas, but also imbued local CPR management arrangements *and* the Swedish state with increased authority, the latter being seen as supporting rather than supplanting local customs. Apart from the successful CPR

⁴ E. Österberg, M. Lennartsson & H. Eyvind Næss, 'Social Control Outside or Combined with the Secular Judicial Arena', in E. Österberg & S. Bauge Sogner, *People Meet the Law* (Oslo Universitetsforlaget, 2000), pp. 237–66.

⁵ See also M. Korpiola, 'Not Without the Consent and Goodwill of the Common People' (2014) 35(2) *The Journal of Legal History*, pp. 95–119.

⁶ It must be noted that in criminal and religious cases, the Swedish state's view prevailed over local traditions and customs. The division of influence as described here was specific to cases related to the management of natural resources.

management that this provided, this system more generally supported the Sami's self-governance, even in the presence of state institutions.⁷

The discussion surrounding the local courts in this particular case presents interesting parallels with current-day TEL research. Larsson & Pääviö Sjaunja's reliance on court decisions is based largely on the lack of other (reliable) written sources on CPR practices during this period (pp. 49–65). Most TEL researchers today are presented with the opposite problem (an excess of written material that must be considered). However, there are parallels in so far as the authority and representativeness of TEL-related sources cannot always be confirmed at the time of writing as a result of the ongoing and rapid development of TEL. In many cases, national courts play a similar role vis-à-vis TEL as did the local courts vis-à-vis arrangements for Sami CPR management.⁸ Though typically without the lay dominance of the local courts in Fennoscandia, national courts similarly incorporate national knowledge and customs into their rulings, which allows TEL – often the result of bottom-up processes itself – to be tailored to, and legitimized for, specific (national) contexts when appropriate.

Another important lesson from the book – highlighted by the chapters in Part II – is the role of social justice in creating sustainable natural resource management systems. In the 16th and 17th centuries, most Sami families engaged in a range of natural resource use in order to sustain themselves. Over time, divergences developed between those who were able to obtain herds of reindeer, and those who continued to depend on fishing, hunting, and other activities (pp. 216–7). Because of the differences in the reliability, work intensity, and profitability of these activities, many families engaged in reindeer herding became significantly better off than those who relied on fishing or hunting (p. 231). Property rights were often used to balance these inequities where possible. In mountainous areas, for example, hunting grounds were open access, especially once wild reindeer had become extinct, so that impoverished Sami could add to their diets through hunting freely. Court decisions extended this regime to create 'tax lands' (privately held lands) in the forests for those who were particularly underprivileged (p. 150). Similarly, decisions regarding fishing rights were often made based on equity considerations. In 1761, two brothers were denied access to a lake – despite the fact that their father had obtained the right to fish the lake and had paid taxes for it – because they had access to good fishing elsewhere while other users of the lake did not (p. 107).

The involvement of local laymen in court decisions significantly strengthened the weight of social justice arguments in these decisions. It was considered the role of the courts to 'uphold and maintain a just and robust local economy' (p. 228). Awareness of the need to provide sustainable solutions for these conflicts – which involved long-term interaction between the parties – created flexibility in the

⁷ There is also an important parallel here with Vincent Ostrom's work on polycentric, and ultimately self-governing, societies, which – in his view – should be seen as symbiotic with the state rather than a rejection of state governance: V. Ostrom, *The Meaning of Democracy and the Vulnerability of Democracies: A Response to Tocqueville's Challenge* (University of Michigan Press, 1997).

⁸ See J. van Zeben, 'Facing the Legitimacy Challenge: Law as a Disciplining Force for Transnational Environmental Governance', in V. Heyvaert & L.-A. Duvic-Paoli, *Research Handbook on Transnational Environmental Law* (Edward Elgar, 2020), pp. 145–59.

application of shared norms and rules, and cemented the need for local knowledge on prior and ongoing land use (p. 228). These findings once again underscore the importance of social justice – in the form of environmental or climate, and increasingly energy, justice⁹ – in the governance of transboundary CPRs, such as the climate. At the same time, they underline how hard it is to facilitate such debates at the global level where CPR-related negotiations, such as those during the Conferences of the Parties to the United Nations Framework Convention on Climate Change,¹⁰ are often disconnected from local knowledge.¹¹

The value of Larsson & Pääviö Sjaunja's work does not lie in its direct generalizability but rather in the chance to study natural resource regimes from a 'distance' over a long period of time. The authors' holistic approach places natural resource management within its social, economic, and political context – as famously advocated by the Institutional Analysis and Development and Social-Ecological Systems frameworks developed by the Bloomington School of Political Economy (p. 25).¹² Apart from the parallels that may be drawn with modern-day TEL challenges, the book shows that integrated frameworks can provide fresh insights and perspectives even when they do not constitute the 'focal point' of the analysis (p. 31). Hopefully this contribution provides renewed inspiration for a similar uptake by legal scholars.

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Certifying China: The Rise and Limits of Transnational Sustainability Governance in Emerging Economies, by Yixian Sun

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China's economy has grown rapidly over the last four decades. Its market, measured by purchasing power parity, is top among nations, with continued growth expected in the

⁹ On environmental justice generally, see D. Schlosberg & L.B. Collins, 'From Environmental to Climate Justice: Climate Change and the Discourse of Environmental Justice' (2014) 5(3) *WIREs Climate Change*, pp. 359–74; on tensions between environmentalism and justice, see R. Sandler & P.C. Pezzullo (eds), *Environmental Justice and Environmentalism: The Social Justice Challenge to the Environmental Movement* (The MIT Press, 2007).

¹⁰ New York, NY (US), 9 May 1992, in force 21 Mar. 1994, available at: <https://unfccc.int/resource/docs/convkp/conveng.pdf>.

¹¹ C. Combetti et al., 'Adaptation and Resilience at the Margins: Addressing Indigenous Peoples' Marginalization at International Climate Negotiations' (2019) 61(2) *Environment: Science and Policy for Sustainable Development*, pp. 14–30.

¹² See, in detail, E. Ostrom, *Understanding Institutional Diversity* (Princeton University Press, 2005); R. Ostrom, R. Gardner & J. Walker, *Rules, Games, and Common-Pool Resources* (University of Michigan Press, 1993).