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# Sami Legal Scholarship - The Making of a Knowledge Field

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**Introduction**

Sami legal scholarship is a fairly young knowledge field in Norwegian, Swedish and Finnish legal scholarship, established as a discipline of its own during the latter part of the 20th century. The establishment of the discipline can be understood in a context of an international movement with an increasing focus on indigenous people, on minority rights and the principle of non-discrimination. This development is also connected to the political process of reconciliation and the acknowledgment of the rights of the Sami people. The Sami people are an indigenous and minority group in the above-mentioned nation-states. The three jurisdictions, however, recognize the specific rights of the Sami people to various degrees. The history of the relationship between the Sami people and the nation-states is a history of colonisation and conflicts between different interests, mostly concerning the usage of land. According to May-Britt Öhman the colonisation of Sapmi is still ongoing and it is aggressive.[[1]](#footnote-1) The knowledge field of Sami legal scholarship is consequently tied to political struggles to recognize Sami rights. It has been stated that the main objective for Sami legal scholarship is to create a strong protection for Sami culture in order to render it sustainable.[[2]](#footnote-2) This emancipatory and empowering objective is a characteristic that the discipline shares with other legal knowledge fields established at the same time, which also address the legal status of certain groups of individuals.[[3]](#footnote-3)

The focus in this article will be on Sami legal scholarshipas a field of knowledge, which has as its object Sami law (or Sami legal issues), a specific area of law, legal issues and themes. The field is studied with a concept capturing a process of how a knowledge field is formed and transformed, i.e. theformation of knowledge.[[4]](#footnote-4) Studies of a knowledge field may focus on different things. One important aim here is to map out how a field is formed and transformed over time and in different contexts, inherent in which are sociological and epistemological questions. Sociological questions are, for example, how a field of knowledge becomes established as a discipline within the academy, how the field is demarcated, performed and communicated, its’ representation in law schools and in identified research areas. Epistemological questions are, for example, which theories, methods and concepts that are applied.[[5]](#footnote-5) Studies of comprehensive collections of research and research reviews (such as state of the art) can provide knowledge of the content of a field and what kind of theories, methods and concepts are used.[[6]](#footnote-6) The same analytic tool has been used in similar studies of gender legal scholarship.[[7]](#footnote-7) The study of the formation of knowledge in Sami legal scholarship expands the area of inquiry in the legal discipline. Sami legal scholarship has many similarities to gender legal scholarship. They are both critical perspectives on mainstream legal scholarship and thereby challenging the way that the law is constructed as a majority and/or hegemonic legal system. They are also quite recent additions to Nordic legal scholarship, with several challenges and obstacles in their process of being institutionalized. Although both knowledge fields are part of a dynamic international legal scholarship, gender legal scholarship is more established with useful experiences that could be drawn upon in the development of Sami legal scholarship.

One useful perspective from the study of gender legal scholarship is that there are reasons to be self-reflective.[[8]](#footnote-8) At times, we need to reappraise our methods and theories, reflect over priorities, and reconsider if there are some issues that have remained disregarded, all in order to meet contemporary challenges. The need for critical scholarship in the field of Sami law has been emphasized repeatedly.[[9]](#footnote-9) In an international context, Gordon Christie has raised the need for theoretical reflections within indigenous law. According to him, few indigenous scholars have broached the relationship among legal theory, indigenous legal scholarship and the question of whether indigenous peoples might not only have particular perspectives from which to critique the law, but also particular theoretical perspectives on the law.[[10]](#footnote-10) This study of the knowledge field is an attempt to reflect on the discipline from this meta-perspective.

This chapter has three objectives. The first is to reflect on sociological aspects of the formatting process and the institutionalisation of a specific field of knowledge, Sami legal scholarship. This section begins with the question of how Sami law is defined and how this relates to Sami legal scholarship. The second is to reflect on some epistemological characteristics of the knowledge field. Finally, the third objective is to sketch out some claims for future developments in the field.

**The Formatting Process and the Institutionalisation of Sami Legal Scholarship**

*What are Sami Law and Sami Legal Scholarship?*

Sami legal scholarship is a knowledge field within Nordic legal scholarship and with specific correlations to international indigenous legal scholarship. The object for this scholarship is *Sami law*. Sami law spans over several areas of law, such as the history of law, constitutional law, public international law, property law, administrative law, and environmental law.[[11]](#footnote-11) It has a specific dimension; the legal issues within these areas relate to Sami customs and conceptions shaped in a Sami legal culture, a culture that sometimes is acknowledged as relevant in the national legal system, and at other times is not.

Sami Law can be defined in several ways. Susanne Funderud Skogvang presents two definitions in her book *Samerett*. One definition is the legal discipline, in which only legal issues special for the Sami group are included. The other definition embraces, in principal, all parts of Norwegian law, in which cultural and linguistic differences between the Sami group and the Norwegian population means that the rules function differently.[[12]](#footnote-12) The discipline as such transcends many of the internal legal disciplinary boundaries.

The themes in focus within the discipline may differ depending on what issues are highlighted as important and problematic in a broader context. It could be claimed that law is always reflective of a social context, but not all legal disciplines recognize this circumstance. In Sami law, this is, however, one of the starting-points. It shares this with other legal disciplines focusing on a specific group identified out of its subordinated status in relation to a specific nation-state jurisdiction and to a hegemonic group. As Skogvang puts it, there is a ‘sliding transition’ between Sami law and Sami politics. One aspect of the acknowledgement of law in this context is that its trans-disciplinarity also applies in relation to disciplines other than law. Sami law (in Norwegian *samerett*) according to the mentioned definition is part of Norwegian law.

The other definition of Sami law (in Norwegian *samisk rett*) is the Sami legal tradition, i.e. the perception of law, legal norms and customs within Sami culture.[[13]](#footnote-13) The difference is easier to notice in Norwegian than in English, *samerett* is a noun and *samisk rett* is an adjective. Sami law in the latter sense has its own legal culture that is distinct from the Norwegian legal system. The Norwegian legal system was developed as a function of the Norwegian nation state as it established itself on territories already populated by the Sami peoples. Parts of Sami law (here, in the adjective sense) have over time been incorporated or accepted in Norwegian law, but is not recognized as forming a distinct legal system.[[14]](#footnote-14) Norway acknowledges only one legal system, the Norwegian, but within its nation state territory exists also a distinct Sami legal culture. The term ‘legal culture’ can be seen as a colonial word that has been imposed on the Sami nation through a process similar to the forced application of words such as Aboriginal, Native, Indigenous, or Indian as discussed by Patricia A. Monture and Patricia D. McGuire.[[15]](#footnote-15) Sami law is defined as being outside the mainstream legal jurisdiction, and as such not considered to be a legal system but rather a ‘legal culture’. Despite the problem with the chosen term, it is used here within citation marks as a signifier of the imposed definition by the nation-state. Sami law bears with it this dual meaning (not always explicit or conscious even in Norwegian languages, despite the possibility of distinguishing it linguistically) and its colonial history.

Law as an object for academic study, both for the professional education and for legal research and scholars, is traditionally (especially in the Nordic context) structured out of specific areas of law. Each area has its own principles, legal sources and academic traditions. During the last part of the 20th century, another organizational principle has emerged. Instead of taking a special area of law as the starting-point, the structural principle can be an academic or theoretical tradition based on a certain perspective and a specific set of theories and methods. The perspective can be related to a specific group, for example a ‘minority group’ or ‘women’, or to a specific epistemology, for example social constructivism or gender/feminist/critical legal studies. This kind of structure is based on a specific field of knowledge instead of a specific area of law. Sami law could also be considered in this perspective, namely as a field of knowledge which encompasses legal themes that vary over time, acknowledging the close relationship between law and politics, specific concepts, theories and methods, and furthermore, looking at certain legal sources, often international treaties, used as arguments to criticise, change or expand domestic law in a certain direction. The term Sami legal scholarship is used signifying the field of knowledge, in order to distinguish it from Sami law, signifying a specific area of law.

*The Institutionalisation of the Knowledge Field*

Sami law developed gradually as a discipline within law at a time when several new disciplines were established in Nordic legal scholarship, starting in the 1970s. Institutional settings, like centres and academic positions, journals, Sami law as a subject within the law programme, publications, and doctoral theses are all important in the process of making a knowledge field.[[16]](#footnote-16)

The first University that established Sami law as a specific legal subject was the University of Tromsø (since 2013 UiT, The Arctic University of Norway). As pointed out by Øyvind Ravna, the committee that prepared the establishment of a law programme in Tromsø *(Kjønstadutvalget)* highlighted research and education in Sami issues as the specific responsibilities of the University.[[17]](#footnote-17) This specific responsibility contributed to the establishment of the Law Department *(Institutt for Rettsvitenskap)* in 1987. Sami law was one theme in the first issue of the Department’s own writing series.[[18]](#footnote-18) It later became a compulsory course in the law programme in 1991, and also available as an optional course on the Master level. During the launching ceremony of the Department, Carsten Smith referred to the previous lack of interest in Sami legal research among legal scholars and lawyers. According to Smith, it was in this context that the importance of the establishment of Sami law as a discipline and of making it part of the compulsory curriculum in the law programme must be considered.[[19]](#footnote-19) For a few years, Sami and indigenous rights have been prioritized areas at the Faculty of Law and this specific academic environment is probably the largest amongst law schools in Scandinavia.[[20]](#footnote-20) A research group for Sami law was established in 2000.[[21]](#footnote-21) There are no specific academic positions in Sami law in Tromsø, however this is not specific to Sami law, as almost all academic positions are in *Rettsvitenskap* (legal scholarship). There is also a Centre for Sami Studies, with scholars from the humanities, social sciences and education. The only other university in Norway that offers Sami law as an optional subject is the University of Oslo. The Sami University College in Kautokeino instead addresses Sami issues over a broad range, including legal issues.

At the Finnish University of Lapland, Sami-related research is part of every faculty, including the Faculty of Law. The faculty has both research and education in Sami Law in accordance with national guidelines for the University, similar to that in Tromsø. Sami law is an optional subject, introduced in 2009. As the only university in the Nordic countries, the University of Lapland has specific academic positions in Sami research, including law. For the moment (November 2014) there are one associate professor and one senior researcher at the Faculty of Social Sciences, and one junior researcher, one fully employed PhD candidate and four other scholars without funding with PhD topics in Sami law at the Law Faculty. These researchers form a research group established in 2009.[[22]](#footnote-22) There is also the national and international hub of information and centre of excellence, the Arctic centre, which conducts multidisciplinary research in changes in the Arctic region.[[23]](#footnote-23) One research group forming a separate unit within this centre is the Northern Institute for Environmental and Minority Law (NIEM), established in 1985. The institute has a special focus on studying the law relating to indigenous peoples in the Arctic and environmental law as it is applied in the Arctic and northern region.[[24]](#footnote-24)

Sami law in Sweden is not established in the same way that it is in Norway and Finland. Courses have been offered in Sami law at Luleå University of Technology and at Mid Sweden University in Östersund, but not currently. There are, however, other departments directed at Sami issues. Umeå University has a Centre for Sami Research (CeSam), coordinating different areas of Sami research, culture, language, history and society, as well as new research initiatives and projects. . It aims to be a meeting-place for PhD students and researchers from a variety of disciplines at the University.[[25]](#footnote-25)

The only journal fully devoted to Sami legal issues is the *Arctic Review on Law and Politics*, an independent, peer reviewed journal, initiated by researchers at the University of Tromsø in Norway. It was established to provide a forum for discussing and challenging questions of a legal and political character in an Arctic context. The board of editors come from the eight Arctic countries: Canada, Denmark/Greenland, Finland, Iceland, Russia, Sweden, United States and Norway. The journal publishes articles in the fields of law and politics understood in a wide sense. It encompasses not only research on legal and political sciences, but also such disciplines as economics, sociology, human geography, and social anthropology. The aim of the journal is to provide new insights and a deeper understanding of fundamental issues related to the Arctic and the High North and thus become a forum for academic discussion on sustainable development in the North.[[26]](#footnote-26)

The first doctoral thesis in Sami law was defended in 1972 by Sverre Tønnesen.[[27]](#footnote-27) It addressed Sami rights to land in the county of Finnmark in Norway. The second thesis in Sami legal history was published in 1989, by Kaisa Korpijaakko-Labba[[28]](#footnote-28), and the following on property law in 1999, by Otto Jebens.[[29]](#footnote-29) In the early 21st century, several doctoral theses were defended: the theses by Christina Allard[[30]](#footnote-30) in 2006, Øyivind Ravna[[31]](#footnote-31) and Eivind Torp[[32]](#footnote-32) in 2008, Laila Susanne Vars[[33]](#footnote-33) in 2009, Matthias Åhrén[[34]](#footnote-34) and Leena Heinämäki[[35]](#footnote-35) in 2010, Nils-Johan Päiviö[[36]](#footnote-36) in 2011, and Tanja Joona in 2012[[37]](#footnote-37). The doctoral thesis by Gunnar Eriksen from 2007 was not explicitly on Sami law, but it considered issues at the core of Sami law.[[38]](#footnote-38) Also, the thesis by Ánde Somby[[39]](#footnote-39) in 1999 was influenced by a Sami tradition.

There are comprehensive presentations of Sami law in a few publications serving as textbooks in Norway, Sweden and Finland. The first was published in Norway in 2002 by Susann Funderud Skogvang[[40]](#footnote-40), the second in Sweden in 2004 by Bertil Bengtsson[[41]](#footnote-41) and the third in Finland in 2010, an anthology edited by Kai T. Kokko.[[42]](#footnote-42)Interestingly, while writing his book, Bengtsson was hesitant to give a comprehensive presentation of Sami law for two reasons. First, the rights of the Sami to a great extent depend on historical circumstances, which had not been fully explored at that time. The second reason was the then ongoing legislative process which was expected to alter the situation for the Sami rights. According to Bengtsson, however, the legislative work was not performed with great enthusiasm.[[43]](#footnote-43)

Moreover, the Norwegian judges Erik Solem in 1933[[44]](#footnote-44) and Carsten Smith in 1987[[45]](#footnote-45) wrote some earlier publications with a comprehensive aim. Most of what is written in the field is directed toward specific issues. According to Bengtsson, real estate law is at the forefront of Sami law, and reindeer husbandry is included in this field of law.[[46]](#footnote-46) Other specific issues are legal sources for claiming Sami rights, the right to self-determination and cultural rights. One early example of a textbook which has become a central legal text is the first book on reindeer husbandry by Thomas Cramér and Gunnar Prawitz in 1970.[[47]](#footnote-47) In addition to the already mentioned authors Kirsti Strøm Bull has also written extensively within the field.[[48]](#footnote-48)

One characteristic of Sami legal scholarship is its close connection to the jurisdictions of the different nation-states, the Finnish, the Norwegian, and the Swedish. The obvious explanation for this being that legal issues of concern for the Samis have been dealt with within the nation-state context. There are, however, some similarities between the provisions on Sami issues in the three national legal systems, as well as many differences. When establishing a Sami legal knowledge field building on Sami ‘legal culture’, the nation-state jurisdictions can be challenged with arguments not only from the Sami ‘legal culture’ within the nation-state but also from neighbouring nation-states with a Sami population. Moreover, international legal documents also strengthen this process of moving from a nation-state jurisdiction-based knowledge field to a Sami-cultural-based and global indigenous-people-based legal argumentation. This can also be seen in this publication, in which some of the contributions are not focused on the nation-state context.

Arguments based on sources other than those specifically acknowledged as legal sources by the nation-state jurisdiction, can be used to strengthen the rights of the Sami people. ‘Other sources’ in this respect means sources that are recognized as legal sources in another jurisdiction or as not legally binding international document. One example of the latter is the ILO Convention no. 169, which has been ratified in Norway but not in Finland and Sweden. The convention has in fact strengthened the rights of the Sami in Norway, and hence, even if not ratified in the other two countries, it is notable to see how it is used in the work of several scholars.

The legal research on Sami issues is today anchored in the international research area of indigenous people’s rights. International conventions are ratified in some of the jurisdictions that encompass the Sami ‘legal culture’. At the same time, Sami legal knowledge is part of an international knowledge field, loosely held together by international legal sources, such as the ILO-Convention 169[[49]](#footnote-49) and the UNDRIP[[50]](#footnote-50), and by international policies and actions, all forming an international discourse on indigenous people. It is also notable to see how international research on indigenous people is used to an increasing extent, exemplified by the work of James Anaya.[[51]](#footnote-51)

To sum up, it can be said that Sami legal scholarship in the Nordic context has been characterised by its focus on national law, but has increasingly become more Nordic and international. At the same time, it has also shifted in its articulations from a strict focus on black-letter law to becoming more pro-active and argumentative as well as more general and theoretical in its approach. This transition process is in itself a good reason to reflect on the knowledge field. As with many other legal knowledge fields transitioned through international, theoretical, methodological changes, and when theories, methods, and concepts are exposed to new contexts, new ways of understanding can emerge.

**Theories, Methods and Concepts - Characteristics of the Knowledge Field**

*The Context of Sami Law*

The establishment of Sami law within Nordic legal scholarship is, as shown above, quite recent. Yet, legal conflicts between the Sami people, the State, and non-Sami inhabitants, concerning the use of land, have been ongoing since the early colonisation of Sapmi several hundred years ago.[[52]](#footnote-52) Why was Sami law not established as a specific discipline earlier? There are several important aspects to consider when reflecting on this question.

One aspect is that law in modern society has been so tied up with the nation-state, and it is only recently that the idea of a plurality of law producing subjects has challenged the idea of a monistic legal system.[[53]](#footnote-53) I will come back to this point later.

Another aspect is the general turn to acknowledge law as a social phenomenon, i.e. law as contextualized in a broad societal and political context. The turn from a formalistic legal scholarship in the middle of the 20th century, emphasizing law as a more or less closed normative system, to a realistic approach open for law also as an empirical entity, facilitated the establishment of new legal fields taking as their starting-point the experiences of certain groups being sub-ordinated or excluded from the legislative power. The Sami people share this experience of being in a subordinated position. Not only minorities can be subordinated in relation to formal and informal power to shape the law. The critical position toward law as an system infused with a certain hierarchical order, majority vs. minority, resourceful vs. impecunious, men vs. women etc., has been the starting-point for several new legal fields, such as Women’s law (today feminist or gender legal scholarship), Victimology law, and Sami law, just to mention a few.

One common characteristic among those legal fields is the close connection between political and legal claims in the formation process of the field. Political actions and legal reforms on one hand contribute to the formulation of a new academic knowledge field. Scholars within the field are often active in several roles, as political actors or voices, as advocates, or as academic researchers forming a specific legal knowledge field. Over time, these double or triple roles seem to fade out, at least on an individual level. There may be a risk of being accused of being too political and not sufficiently academic. However, with more legislation resulting from political actions and legal reform, the legal status becomes, if not more strengthened, at least possible to address legally and not (only or mostly) politically.

Another common characteristic is the critique of mainstream legal knowledge for not addressing issues that are important for the specific group or for addressing them out of a majority perspective. Such criticism based on the experiences of a specific group might be based on a social epistemology, acknowledging knowledge as social and contextual. Considerations like power, interests and traditions can be articulated and discussed in relation to what knowledge is, what law is, and by identifying the legal sources, and can be made without being trapped in a political or subjective position. Law is always a product of specific power relations, certain acknowledged sources, and these can be subject to reflection and changes. This general epistemological transformation, from an objective epistemology to a social critique, is sometimes referred to as the social turn.[[54]](#footnote-54)

This goes together with a view of law as based on a certain perception of what should be legally regulated and how. How the legal system is constructed is based on several layers of power orders that give certain interests and voices priority above others. The law is tightly connected to the nation-state and its representatives. Groups of individuals have been (or are) excluded from influence formally or have had less influence due to different practical circumstances or due to being a minority group. Sami interests have through history not been the interests of the majority population in the nation-states to which Sapmi belongs.[[55]](#footnote-55) Bertil Bengtsson stated quite frankly that ‘to support the Sami cause doesn’t give any political points; every government, social democrat or bourgeois, seems to watch all legal argumentation which demands greater respect to their rights with uneasiness’.[[56]](#footnote-56)

A third aspect relates to the discussion in the section above on sociological aspects, namely the personal aspect within legal scholarship. The identity and background of the researcher have, generally speaking, an impact on the content of the scholarship. This relationship has been studied and emphasized when it comes to gender studies in general and Women’s law in particular.[[57]](#footnote-57) Active scholars within a knowledge field impact the process of how knowledge is formed. The situation is not that simple with regard to the establishment of Sami legal scholarship. The establishment of Sami law, led by non-Sami scholars, precede Sami scholars entering the universities. It was only quite recently that the first Sami legal scholars defended their doctoral theses in law.[[58]](#footnote-58) However, the knowledge field is to an increasing degree further developed by Sami academics. But compared to gender legal studies, the situation differs; in gender legal studies there are still almost no men at all.

*Law and Politics and the Claim for Rights*

The close relationship between law, politics and academic knowledge is apparent within Sami legal scholarship. This does not mean that other legal knowledge fields do not have this close relationship, I certainly think this is the case. However, in Sami legal scholarship, this close relationship is emphasized and used as a point of departure for rights claims. Sami legal scholarship uses the relationship to make political claims and transfer them into legal claims, to perform an argumentation *de lege ferenda* or a legal-political *(rättspolitisk)* argumentation.[[59]](#footnote-59) The field has developed new ways to promote Sami interests and to guarantee the Sami population rights in several ways. Old and new legal sources, often international treaties, are used as arguments to criticise and change or expand the nation state law in a certain direction, in an interpretative and argumentative style that can be characterised as promoting Sami rights and as engaged scholarship. Like the international field of indigenous legal scholarship, Sami legal scholarship has an emancipatory purpose. Based on a history of colonialism and of being constructed as a minority within a nation-state context, the pursuit of justice for Sami people will hopefully be advanced.[[60]](#footnote-60)

The rights that are being claimed have changed over time and differ between the Nordic and the international contexts. Traditionally, the claimed rights for the Sami’s have been mainly those related to the use of land and, as such, connected to reindeer husbandry and to fishing and hunting. This view is especially emphasized by Bertil Bengtsson, in the book *Samerätt*. When he talks about Sami rights, he generally talks about the rights of the reindeer herding Sami.[[61]](#footnote-61) The content of these rights has been regulated in legislation specifically dealing with the conditions of reindeer husbandry. Throughout history, the conflicting land interests of the Sami, the State and the non-Sami have been regulated in different ways (and resulted in more or less access to the land granted for the Sami.) The access to land has been regulated mainly as usufruct rights but also, to some extent, as property rights. Property rights have in the nation-state jurisdictions, in modern times, been the rights that have been the most difficult to modify, but all rights have been questioned from time to time as not based on acknowledged legal sources. I will return to this question of legal sources later. First I will turn to a more general discussion of the concept of right in itself.

The concept of rights in the Nordic context is influenced by a functionalist approach to rights, an approach inherent in Scandinavian legal realism.[[62]](#footnote-62) This tradition has had an important impact upon legal thinking in the Nordic countries. The main issue at hand is that the concept of ‘right’ is only a word, and that the meaning of the word is interpreted according to certain observable facts and with reference to a concept. In short, the meaning or content of ‘rights’ has no normative power in itself but rather a directive and informative function. According to this view, the claim for rights can be illusive. Acknowledging a formal right to something does not need to mean anything substantial. The substance of a concept, for example a right to something, is nothing in itself, but rather a word gathering the different elements or functions connected to the concept. This functional approach has been criticized for neglecting the normative aspects of law and for reducing legal knowledge to empirical knowledge about social-psychological facts.[[63]](#footnote-63) Today, Scandinavian legal realism has lost some of its significance, but it remains important to be aware of its influences on the concept of rights, both in the international human rights discourse as well as in a Nordic setting.

The functionalist approach is still prevalent in mainstream legal scholarship. Traditionally, Sami rights have not been framed as (natural) rights in the sense that they emanate from a human rights discourse. The Nordic approach has instead been to consider regulation as a balancing between conflicting interests in relation to activities related to a Sami livelihood, such as reindeer herding, fishing and hunting, as exemplified in several of the texts in this edition. The content of the right to herd, fish and hunt has been and still is based on real estate law and the criteria defined by this specific field. However, the international framing of indigenous people’s rights as rights within the human rights discourse has had an increasing impact in the Nordic context. This is because the concept of rights within the human rights discourse has other connotations. Except being mostly a right for the individual, it is also understood as a right that can be admitted as long as no other individual’s right is being breached. This non-relational and non-contextual approach has been criticised within gender legal theory and relational theory.[[64]](#footnote-64)

The transformation of the rights concept is also connected to how the concept of democracy has changed. The perception of democracy has transformed from majority rule to include respect for minorities and anti-discrimination.[[65]](#footnote-65) Notwithstanding the important positive aspects of this transformation for minority groups and for individuals in a subordinated position, there are reasons to be hesitant to abandon the functional approach that focuses on the material context and the balance between different interests. The Nordic welfare state model, characterized by a perception of law as a tool for social change in the context of an active welfare state policy with redistributive ambitions, constructing a society with equal material conditions, has not used the rights concept as its main function. On the contrary, some scholars have highlighted that the dismantling of the welfare state occurs at the same time as the rights discourse gains ground.[[66]](#footnote-66) Distributive equality seems to be replaced by individual rights. One problem is that the latter requires resourceful individuals to take advantage of them.

Taking this into account and paying attention to some possible risks with the rights discourse, the discourse *de facto* gains importance. More Sami rights have emerged over time. Starting with rights (property and usufruct rights of different kinds) to land and livelihoods, rights to language, culture and tradition have become more highlighted over time. In addition, the political right and the right to self-determination have developed more recently in connection with the establishment of specific political institutions, such as the Sami Parliament. Questions of identity, that are issues related to defining who is a Sami and what it means to be a Sami, become more important when the rights are linked to identity instead of function, as for instance reindeer herding or hunting. With an increasing focus on identity and rights linked to identity, the questions of inclusion and exclusion appear. Who can claim the identity of a Sami? What about the right to a traditional livelihood? Can these rights also be claimed by individuals who have left Sapmi and the Sami way of life? Will there be a stratification of the individuals claiming to be identified as a Sami? A transition from a functional approach to a rights approach will surely raise these kinds of questions.[[67]](#footnote-67)

*Monism - Pluralism*

One theoretical aspect, prevalent explicitly or implicitly in the chapters of this edition, is the question of the relationship between Sami ‘legal culture’ and the nation-state legal system. As argued in the beginning of this chapter, Sami law can be interpreted as either legal issues concerning the Sami people (within the nation-state legal system) or as Sami ‘legal culture’. The labelling of a legal system and a ‘legal culture’, respectively, is based on a monistic perception of what law is. According to such perception, law is a legal system that emanates from one specific legislative subject, which, in the Nordic context, is the nation-state. Finland, Norway and Sweden have separate legal systems, with some things in common but nevertheless separate and different. How Sami issues are handled within these nation-state jurisdictions vary in some respect while it is similar in others.[[68]](#footnote-68) If the nation-state legal system is seen as the only legitimate legal system for the specific nation-state jurisdiction, than Sami law, that is Sami ‘legal culture’, cannot be considered a separate legal system. If Sami traditions and Sami perceptions on tradition are to be accepted an adhered to, they must be acknowledged within the legal system of the nation-state. This has historically been the main approach in all of the Nordic contexts. It is within the nation-state legal system that Sami interests have been acknowledged or not. Legal conflicts and legislative efforts have been perceived in the context of this nation-state position. The extent to which Sami claims can be met within the realm of this perspective depends on the willingness of the nation-state legal system to acknowledge Sami interests and define how these can be based on legally accepted sources and argumentation. Reform in one jurisdiction can be used as a leverage for arguments in another, however, they cannot be directly applied or gain an automatic relevance in another jurisdiction.

An alternative way to understand the relation between nation-state jurisdiction and Sami ‘legal culture’ is in a polycentric or pluralistic way. Theories of polycentric law and legal pluralism offer a way to understand law as emerging out of several legal subjects or as a way of acknowledging a situation in which more than one legal system can be both legal and legitimate.[[69]](#footnote-69) Obviously, the nation-state is not the only legislative subject. Nation-states such as Finland, Norway and Sweden are bound to follow not only legislation adopted by the national Parliament, but also legislation adopted by inter-state legislative subjects and adopted by the states themselves, such as the EU, EFTA, and international bodies, such as the UN and the ILO, just to mention some examples. This polycentric situation, with several legislative subjects, has different impacts. One impact is that one legal source can be used as an argument when interpreting another legal source. In more recent time, international law (legally binding documents, soft law and political agreements or declarations) has become a powerful tool to challenge the nation-state legal system and its balancing act between Sami and non-Sami interests.[[70]](#footnote-70)

Legal arguments to strengthen Sami rights could be applied either through a traditional monistic view or a pluralistic or polycentric view. According to traditional monism, legal arguments rely on sources and reasoning traditionally applied in the legal system. International law can, in this context, be used as an interpretative tool and as a normative argument. Arguments concerning a traditional way of life or traditional land use can be made in reference to provisions in international documents calling specifically for an acknowledgement of such cultural manifestations. This line of reasoning is not unfamiliar to Sami legal scholarship, and will be discussed in further detail below under the section on the doctrine of legal sources. The pluralistic approach, on the other hand, implies that it is useful to claim that Sami ‘legal culture’ is in fact a Sami legal system and thereby provide a basis for establishing self-governing institutions in accordance with the idea of self-determination for indigenous people. The presence of a legal system on which the idea of self-determination can be built could strengthen the development of parallel legal systems in the Nordic context. The presence of parallel legal systems is not unusual in an international context. Its impact in the Nordic context ought to be scrutinized. Such development probably has both negative and positive aspects.

*Sami Interests Meeting with the Doctrine of Legal Sources*

One important aspect of how Sami interests have been acknowledged in the Nordic nation-state legal systems is related to *the doctrine of legal sources*. There is, according to Lars Björne, a specific *Nordic* doctrine of legal sources.[[71]](#footnote-71) This view is accurate on a general level. On the other hand, when considering how strictly the doctrine is followed and the spaces available for dynamic interpretations of the sources, the differences are obvious.[[72]](#footnote-72) I will return to this aspect later. According to Björne, the Nordic countries have shared a common ground in the Ørstedts doctrine of legal sources since the first part of the 19th century. In an international context, the doctrine is quite formalistic and closed in relation to what kind of sources could be used to claim different rights. The doctrine of legal sources identifies which sources are considered legal or non-legal by the application of a strict formalistic scheme. The sources acknowledged as legal gains authoritative power within the legal system. Moreover, the doctrine also points out the hierarchy of the legal sources, which legal source has precedence over another. The most important legal source is considered to be the law. The law originates from and is adopted by the nation-state Parliament. When interpreting the law, other sources can be relevant according to this doctrine, like *travaux preparatoires*, legal practice (court cases) and custom (and usage). Custom is not automatically and always considered a legal source according to the Nordic formalistic doctrine of legal sources. It may be accepted as a legal source, i.e customary law, if fulfilling certain criteria.[[73]](#footnote-73) As a legal source, it generally has lower authoritative power than law, *travaux preparatoires* and legal practice. However, in a historical perspective, customary law has been considered as a legal source with higher value in the hierarchy.[[74]](#footnote-74) Moreover, customary law is more accepted as a legal source in certain areas of law, such as real estate law and contract law, than in others.

Despite the common doctrine of legal sources in the Nordic context, there are evidently differences between how Sami interests have been acknowledged in the three different jurisdictions as shown in the chapter by Christina Allard. The law concerning Sami interests, such as reindeer herding, fishing and hunting rights, differs as does the ratification of international conventions. The recognition of Sami land rights differs on the grounds of international obligations, national legislation and interpretation of the law. One specific aspect is the acceptance of Sami customs as customary law. As Allard shows, there are differences among the three countries in this respect as well. Perhaps the ratification of the ILO Convention no. 169 explains why the Sami customs have been more successfully accepted in Norway than in the other countries. But Allard also argues for a more general difference in attitude toward Sami. A discussion on the perception of Sami custom is therefore useful.

As already mentioned, not all customs are acknowledged as customary law. In this regard, one of the main conflicts of interest concern Sami issues. Sami customs have not always been accepted as customary law. When are Sami customs recognized as customary law? How has the Sami people's own understanding of their rights to land and water not been congruent with the State’s understanding of them? As Eivind Torp mentions in his chapter in this edition, the state officials have long had difficulties translating Sami legal relations (i.e. Sami ‘legal culture’) into the conceptual language of private law. Torp points out, that the conceptual framework of the nation-state’s legal system does not necessarily fit with the Sami customs. To receive acceptance and acknowledgement, Sami customs must be transformed into the specific framework of the Nordic nation-state legal system with its formalistic doctrine of legal sources.

How can a custom be acknowledged as a legal custom and thereby receiving recognition as customary law? What should the custom be based on and how can it be proven? The customs of the Sami people can be perceived in two ways, either as customs under the nation-state jurisdiction that may be acknowledged as legal customs (and consequently as customary law), or as legal customs within the Sami ‘legal culture’. As said above, Sami ‘legal culture’ is claimed to be a specific and separate ‘legal system’ (not with the origin from a nation-state but from a specific indigenous group, the Sami) that encompasses Sami customs and perceptions of what law is.[[75]](#footnote-75) These definitional standpoints can have consequences for the structure of the argumentation and for how conflicts are resolved between diverging interests. If a custom is considered to be a legal custom and thereby customary law in the nation-state legal system, then the rationality of this system, i.e. the perceptual framework, will determine whether or not it fulfils the requirement to be legally recognized. If a custom is considered a legal custom within a Sami ‘legal system’, then the argumentation will concern whether the Sami ‘legal system’ can be recognized. An historical turn from majority nation-state jurisdiction and a monistic view on law to minority indigenous self-determination and a pluralistic view on law might go hand in hand with a reform in how Sami rights claims are framed and the extent to which they can be successful.

Bengtsson has argued that the custom of Sami reindeer herding is a legal source, i.e. customary law. It has been acknowledged in the Swedish jurisdiction as a legal source for the legal institute of immemorial prescription. A legal institute is, according to Strömholm, a group of rules with mutual affinity, such as proprietorship and contract.[[76]](#footnote-76) The purpose of an institute is to express the social function of the collection of rules. The difference between legal source and legal institute is consequently that the first is about including and acknowledging some claim based on a specific source within the legal domain, whereas the second is about how to handle the claim based on a source considered legal within the legal system. If a custom is recognized as a legal source (as customary law), it can be captured within an institute affording certain rights to the person (or group) who have claimed the custom as an authoritative legal source. As such, it can even have precedence before the law, according to Bengtsson with reference to the Taxed Mountain case.[[77]](#footnote-77) If case of doubt when interpreting the law, it should be interpreted in accordance with the traditional usage of the land of the Sami people.[[78]](#footnote-78)

History shows that the acknowledgement of Sami customs has not been without complications. It is the legal system of the nation-state, in relation to the Sami people and the colonial nation-state, which has the privilege to formulate and to define whether a custom should be acknowledged as a legal source, and, if so, under which legal institute a claim could be classified. The conflicts of interest with regard to Sami claims, primarily related to the usage of land, have been handled in different ways over time and in the different Nordic jurisdictions. The claims of the Sami people seem to have been more successful in Norway than in Sweden and Finland. One reason may be the ratification of the ILO Convention no. 169. The convention creates the opportunity to discuss a platform of a more pluralistic understanding of law. If Sami ‘legal culture’ is recognized as a legal system, and not only as a custom that might be acknowledged as legal within the nation-state legal system, it could give Sami interests a better position in relation to the nation-state, i.e. Sami claims could be acknowledged as legal, also in the nation-state legal system. Together with a strengthening of self-determination and a political structure for self-determination, such as the Sami Parliament, the future of Sami rights, at least with regard to land rights, could be strengthened. This does not mean that the conflicts with other interests disappear; it just means that the position in land claims etc. for those involved will be more equal.

**‘Claims’ for the Future**

In this chapter, I have discussed the formatting process and the institutionalisation of Sami legal scholarship. I have also reflected on the context of the field, its emancipatory aim, how the question of a monistic or a pluralistic view on law relates to the field, and the possibility of Sami interests to be transformed to accepted legal sources. In this last section, I will conclude by highlight some issues that ought to be considered.

The knowledge field is quite young. Nevertheless, an increasingly extensive scholarship has developed in the recent decade. Most of what has been written is related to the issues traditionally and historically perceived as important for the Sami group, namely issues related to land use. As Patricia A. Monture and Patricia D. McGuire have stated, the land is essential for Sami identity and not only as a source for sustaining a livelihood but also for the existence of Sami culture.[[79]](#footnote-79) Influenced by international developments, the scope of the field of indigenous legal issues is likely to expand to other issues and has already started to do so. For instance, the oppression that the Sami people have experienced in the 20th century, with racial studies and forced photography performed by the Swedish Race Biology Institute[[80]](#footnote-80) as well as the systematic silencing of the Sami languages, has not been extensively studied. In addition, questions concerning land conflicts will probably be further considered.

Furthermore, this chapter has explored a claim for a continuous meta-reflection of the field of knowledge. Although Sami issues and interests are the central theme for scholars within the field, I would like to see more reflection on theories, methods and concepts applied in their analysis. Most of what is written on Sami law is written in the Nordic formalistic and pragmatic tradition using the tools offered by mainstream legal scholarship without regard to whether the scholarship, the material or the context is national or international.

I would also like to see more reflections on Sami ‘legal culture’ and its inherent conflicts. As often follows with a position subordinated to the majority or to the authoritative legal system, the focus for the critique and for certain claims is directed toward ‘the other’, the mainstream position. I would like to see more of what Sami ‘legal culture’ can offer and the inherent problems and conflicts that could result from such offerings, such as, for example, between reindeer herders and non-reindeer herders and between men and women within Sami society. If the Sami ‘legal culture’ is a specific legal system, that system must be open for reflections and critique.

Finally, I recommend that scholars within the field engage in a scholarly discussion on certain basic presumptions, used concepts, theories and methods. For instance, what would adopting a legal pluralistic view mean for Sami law? What would it mean to criticise and to argue for another doctrine of legal sources? What would it mean to study conflicting interests between different Sami legal subjects? These are only some questions, but there are many more. The future for Sami legal scholarship seems to be bright as there is still much to discuss.

1. <<http://www.genus.se/Aktuellt/nyheter/Nyheter/fulltext//samisk-feministisk-kamp-pa-g14.cid1248953>> accessed 7 December 2014. [↑](#footnote-ref-1)
2. Carsten Smith, *Loven Og Livet : Foredrag, Artikler, Taler* (Universitetsforl. 1996). [↑](#footnote-ref-2)
3. The political struggle to recognize Sami rights started much earlier. One of the pioneers, Elsa Laula Renberg (1877-1931), was a feminist activist important for the Sami political struggle. [↑](#footnote-ref-3)
4. In Swedish *kunskapsbildningsprocess*, see Eva-Maria Svensson, ‘Formering Och Transformering Av Ett Kunskapsfält’ in Eva-Maria Svensson, Andersson, Ulrika, Brækhus, Hege, Burman, Monica, Hellum, Anne, Jørgensen, Stine & Pylkkänen, Anu (eds) *På Vei: Kjønn og Rett i Norden* (Makadam 2011). [↑](#footnote-ref-4)
5. Eva-Maria Svensson,‘Contemporary Swedish Feminist Legal Studies - Five Doctoral Thesis’ (2009) 17 (2) NORA. [↑](#footnote-ref-5)
6. Such overviews for gender legal studies can be found in Eva-Maria Svensson, *På Vei : Kjønn Og Rett I Norden* (Makadam 2011); Joanne Conaghan, *Feminist Legal Studies. Vol. I, Evolution*, Critical Concepts in Law (Routledge 2009); Joanne Conaghan, *Feminist Legal Studies. Vol. II, Neo/Liberal Encounters*, Critical Concepts in Law (Routledge 2009); Joanne Conaghan, *Feminist Legal Studies. Vol. III, Legal Method, Legal Reason, Legal Change*; Joanne Conaghan, *Feminist Legal Studies. Vol. IV, Challenges and Contestations* (Routledge 2009). [↑](#footnote-ref-6)
7. Svensson (n 4); Joanne Conaghan, ‘The Making of a Field or the Building of a Wall? Feminist Legal Studies and Law, Gender and Sexuality’ (2009) 17 Feminist Legal Studies; Svensson (n 5); Anne Bottomley, ‘Shock to Thought: An Encounter (of a Third Kind) with Legal Feminism’ (2004) 12 Feminist Legal Studies. [↑](#footnote-ref-7)
8. ibid. [↑](#footnote-ref-8)
9. Eivind Torp, ‘Samerättslig Forskning i Sverige: Pågående Forskning Och Framtida Utmaningar’ in P Sköld (ed) *Människor I Norr. Samisk Forskning På Nya Vägar* (Umeå universitet 2008); Susann Funderud Skogvang, *Samerett* (2edn Universitetsforl 2009) 60. [↑](#footnote-ref-9)
10. Christie Gordon, ‘Indigenous Legal Theory: Some Initial Considerations’, in Benjamin J Richardson, Shin Imai, and Kent McNeil (eds), *Indigenous Peoples and the Law: Comparative and Critical Perspectives*, Osgoode Readers (Hart Publishing 2009) 195. [↑](#footnote-ref-10)
11. These areas are mentioned by Cristina Allard in an application for research funding to Norges Forskningsråd *Sámi Rights in a Nordic Context - A critical assessment of legislation and legal systems* (SANC) (Forskerprosjekt - SAMISK 2010). [↑](#footnote-ref-11)
12. Skogvang (n 8)25. See also Eivind Torp, ‘Samerättslig forskning i Sverige- Pågående forskning och framtida utmaningar’ in P Sköld (ed), *Människor i norr. Samisk forskning på nya vägar* (Umeå universitet 2008) 84. [↑](#footnote-ref-12)
13. ibid. [↑](#footnote-ref-13)
14. ibid 57; Samerettsutvalget, ‘NOU 1993:34 Rett Til Og Forvaltning Av Land Og Vann I Finnmark’ (Norway 1993). [↑](#footnote-ref-14)
15. Patricia A Monture & Patricia D McGuire (eds), *First Voices an Aboriginal Women's Reader* (Inanna Publications and Education Inc. 2009) 1-2. [↑](#footnote-ref-15)
16. Svensson (n 4). [↑](#footnote-ref-16)
17. Øyvind Ravna, ‘Samerett Og Samiske Rettigheter I Norge’ in *Juss I Nord: Hav, Fisk of Urfolk. En Hyllest Til Det Juridiska Fakultet Ved Universitetet I Tromsøs 25-Årsjubileum* (Gyldendal 2012). [↑](#footnote-ref-17)
18. Carsten Smith, *Samerett : Gamle Rettskilder Og Ny Rettsdisiplin* , (Skriftserie / Institutt for Rettsvitenskap University of Tromsø 1987). [↑](#footnote-ref-18)
19. Ravna (n 16). [↑](#footnote-ref-19)
20. Hege Brækhus, ‘Hvordan gikk det? Det juridiske fakultet i Tromsø under 25 år’ in Kirsten Ketscher et al.(eds), *Velferd Og Rettferd: Festskrift Til Asbjørn Kjønstad 70 År* (Gyldendal juridisk 2013) 113. [↑](#footnote-ref-20)
21. <uit.no/om/enhet/artikkel?p\_document\_id=91269&p\_dimension\_id=88177> accessed 24 November 2014. [↑](#footnote-ref-21)
22. Interview with professor Juha Karhu, dean at the University of Lapland, 19 November 2014. [↑](#footnote-ref-22)
23. <http://[www.arcticcentre.org/InEnglish/ABOUT-US](http://www.arcticcentre.org/InEnglish/ABOUT-US)> accessed 24 November 2014. [↑](#footnote-ref-23)
24. <http://www.arcticcentre.org/InEnglish/RESEARCH/The-Northern-Institute-for-Environmental-and-Minority-Law> accessed 24 November 2014. [↑](#footnote-ref-24)
25. <http://www.cesam.umu.se/english/?languageId=1> accessed 24 November 2014. [↑](#footnote-ref-25)
26. Ø Ravna, ‘A new academic journal is born’. (2010) 1 (1) Arctic Review on Law and Politics 1-3. [↑](#footnote-ref-26)
27. Sverre Tønnesen, *Retten Til Jorden I Finnmark : Rettsreglene Om Den Såkalte ‘Statens Umatrikulerte Grunn’: En Undersökelse Med Særlig Sikte På Samenes Rettigheter. Skrift nr* 3/1972 (Universitetet i Bergen: Institutt for offentlig rett 1972). [↑](#footnote-ref-27)
28. Kaisa Korpijaakko-Labba, *Saamelaisten oikeusasemasta Ruotsi-Suomessa: oikeushistoriallinen tutkimus Länsi-Pohjan Lapin maankäyttöoloista ja -oikeuksista ennen 1700-luvun puoliväliä* (Lakimiesliiton kustannus 1989). The thesis shed in Swedish five years later; Kaisa Korpijaakko-Labba and Beate-Sofie Nissén-Hyvärinen, *Om Samernas Rättsliga Ställning I Sverige-Finland: En Rättshistorisk Utredning Av Markanvändningsförhållanden Och -Rättigheter I Västerbottens Lappmark Före Mitten Av 1700-Talet* (Juristförbundets förl 1994). [↑](#footnote-ref-28)
29. Otto Jebens, *Om Eiendomsretten Til Grunnen I Indre Finnmark* (Cappelen Akademisk forlag 1999). [↑](#footnote-ref-29)
30. Christina Allard, *Two Sides of the Coin - Rights and Duties : The Interface between Environmental Law and Saami Law Based on a Comparison with Aoteoaroa/New Zealand and Canada* (Luleå University of Technology 2006). [↑](#footnote-ref-30)
31. Øyvind Ravna, *Rettsutgreiing Og Bruksordning I Reindriftsområder: En Undersøkelse Med Henblikk På Bruk Av Jordskiftelovgivningens Virkemidler* (1 utg, 1 opl ed. Gyldendal akademisk 2008). [↑](#footnote-ref-31)
32. Eivind Torp, *Renskötselrätten Och Rätten Till Naturresurserna: Om Rättslig Reglering Av Mark- Och Resursanvändningen På Renbetesmarken I Sverige* (Universitetet i Tromsø, Det juridiske fakultet 2008). [↑](#footnote-ref-32)
33. Laila Susanne Vars, *The Sámi People's Right to Self-Determination* (Universitetet i Tromsø, Det juridiske fakultet 2010). [↑](#footnote-ref-33)
34. Mattias Åhrén, *The Saami Traditional Dress & Beauty Pageants: Indigenous Peoples' Rights of Ownership and Self-Determination over Their Cultures* (Universitetet i Tromsø, Juridisk fakultet 2010). [↑](#footnote-ref-34)
35. Leena Heinämäki, *The Right to Be a Part of Nature: Indigenous People's and the Environment* (University of Lapland 2010). [↑](#footnote-ref-35)
36. Nils-Johan Päiviö, *Från skattemansrätt till nyttjanderätt: En rättshistorisk studie av utvecklingen av samernas rättigheter från slutet 1500-talet till 1886 års renbeteslag* (Uppsala universitet 2011). [↑](#footnote-ref-36)
37. Tanja Joona, *Ilo Convention No. 169 in a Nordic Context with Comparative Analysis : An Interdisciplinary Approach* (Juridica Lapponica Series, Lapin yliopistokustannus 2012). [↑](#footnote-ref-37)
38. Gunnar Eriksen, *Alders tids bruk* (Universitetet i Tromsø, Juridisk fakultet 2007). [↑](#footnote-ref-38)
39. Ánde Somby, *Juss Som Retorikk* (Tano Aschehoug 1999). [↑](#footnote-ref-39)
40. Susann Funderud Skogvang, *Samerett: Om Samenes Rett Til En Fortid, Nåtid Og Framtid* (Universitetsforl, 2002). [↑](#footnote-ref-40)
41. Bertil Bengtsson, *Samerätt: En Översikt* (1 uppl edn, Institutet För Rättsvetenskaplig Forskning Norstedts juridik 2004). [↑](#footnote-ref-41)
42. Kai T Kokko (ed), *Kysymyksiä Saamelaisten Oikeusasemasta* (University of Lappland 2010). [↑](#footnote-ref-42)
43. Bengtsson (n 40) 12. [↑](#footnote-ref-43)
44. Erik Solem, *Lappiske Rettstudier*, Instituttet for Sammenlignende Kulturforskning (Serie B, Skrifter, Aschehoug 1933); There is a second edition published in 1970 by Universitetsforlaget. [↑](#footnote-ref-44)
45. Smith (n 17). [↑](#footnote-ref-45)
46. Bengtsson (n 40) 12. [↑](#footnote-ref-46)
47. Tomas Cramér and Gunnar Prawitz, *Studier i Renbeteslagstiftningen* (Norstedt 1970). [↑](#footnote-ref-47)
48. Two of Bull’s books are *Studier i reindriftsrett* (Tano Aschehoug 2007).and *Kystfisket i Finnmark – en rettshistorie* (Universitetsforlaget 2011). [↑](#footnote-ref-48)
49. The International Labor Organization Convention 169, The Indigenous and Tribal Peoples Convention, 1989. [↑](#footnote-ref-49)
50. The Declaration on the Rights of Indigenous People adopted by the United Nations General Assembly in 2007. [↑](#footnote-ref-50)
51. S James Anaya, *Indigenous Peoples in International Law* (2. edn OUP 2004). [↑](#footnote-ref-51)
52. See the chapter of Leena Heinämäki in this edition. [↑](#footnote-ref-52)
53. See the chapter of Kjell-Åke Modéer in this edition. [↑](#footnote-ref-53)
54. Eva-Maria Svensson, ‘Boundary-Work in Legal Scholarship’ in Åsa Gunnarsson, Eva-Maria Svensson, Margaret Davies (eds), *Exploiting the Limits of Law. Swedish Feminism and the Challenge to Pessimism* (Ashgate 2007). [↑](#footnote-ref-54)
55. Sapmi, the area in the Nordic Hemisphere, is under the jurisdiction of the nation-states Norway, Finland, Russia and Sweden. [↑](#footnote-ref-55)
56. Author’s translation. The quotation in Swedish is: ‘Att stödja samernas sak ger inte många politiska poäng; varje regering – socialdemokratisk eller borgerlig – tycks se med samma olust på all juridisk argumentation som kräver större hänsyn till deras rättigheter’. Bengtsson (n 40)13. [↑](#footnote-ref-56)
57. Svensson (n 4). [↑](#footnote-ref-57)
58. Jens Edvin Skoghøy, *Factoringpan*t (Universitetsforlaget 1990); Ánde Somby, *Juss Som Retorikk* (Tano Aschehoug 1999). [↑](#footnote-ref-58)
59. The notions of *de lege ferenda* and legal-political argumentation have several connotations. Here it is used as a broad concept capturing the space for arguing for changes of law based on legitimate normative claims, such as, for example, to improve the situation for a certain group or individual. The argumentation is problematic only in a formalistic perception of law. See a theoretical exposure of the problems in Ota Weinberger, *Law, Institution, and Legal Politics: Fundamental Problems of Legal Theory and Social Philosophy*, Law and Philosophy Library (Kluwer 1991). [↑](#footnote-ref-59)
60. Richardson, Imai, and McNeil (n 9) 4. [↑](#footnote-ref-60)
61. Bengtsson (n 40) 13. [↑](#footnote-ref-61)
62. Jes Bjarup, ‘The Philosophy of Scandinavian Legal Realism’(2005) 18 Ratio Juris. [↑](#footnote-ref-62)
63. ibid. [↑](#footnote-ref-63)
64. Eva-Maria Svensson, *Genus Och Rätt: En Problematisering Av Föreställningen Om Rätten* (Iustus 1997); Jennifer Nedelsky, *Law's Relations: A Relational Theory of Self, Autonomy, and Law* (OUP 2011). [↑](#footnote-ref-64)
65. See the chapter by Kjell-Åke Modéer in this edition. [↑](#footnote-ref-65)
66. Anu Pylkkänen and Finska litteratursällskapet, *Trapped in Equality: Women as Legal Persons in the Modernisation of Finnish Law* (Suomalaisen Kirjallisuuden Seura 2009). Åsa Gunnarsson and Eva-Maria Svensson, ‘Gender Equality in the Swedish Welfare State’ (2012) 1 feminists@law 2. [↑](#footnote-ref-66)
67. See the chapter by Tanja Joona in this edition. [↑](#footnote-ref-67)
68. See the chapter by Christina Allard in this edition. [↑](#footnote-ref-68)
69. See the chapter of Kjell-Åke Modéer in this edition. [↑](#footnote-ref-69)
70. See the chapter of Christina Allard in this edition. [↑](#footnote-ref-70)
71. Lars Björne, *Nordisk Rättskällelära: Studier I Rättskälleläran På 1800-Talet* (Skrifter Utgivna Av Institutet För Rättshistorisk Forskning. Serien 1, Rättshistoriskt Bibliotek, Institutet för rättshistorisk forskning: Nordiska bokh 1991) 222. [↑](#footnote-ref-71)
72. As shown by Christina Allard in this volume. [↑](#footnote-ref-72)
73. Aleksander Peczenik, *Vad Är Rätt?: Om Demokrati, Rättssäkerhet, Etik Och Juridisk Argumentation* ( 1 uppl edn, Institutet För Rättsvetenskaplig Forskning Fritze 1995) 230. [↑](#footnote-ref-73)
74. Björne (n 67). [↑](#footnote-ref-74)
75. See the section on what Sami law is with references to Skogvang (n 8). [↑](#footnote-ref-75)
76. Stig Strömholm, *Rätt, Rättskällor Och Rättstillämpning : En Lärobok I Allmän Rättslära* ( 5., uppl. ed., Institutet För Rättsvetenskaplig Forskning Norstedts juridik, 1996) 164, 178. [↑](#footnote-ref-76)
77. *Nja 1981 S. 1*, (1981). [↑](#footnote-ref-77)
78. Bengtsson (n 40) 88. [↑](#footnote-ref-78)
79. Monture and McGuire (n 14) 1-2. [↑](#footnote-ref-79)
80. <<http://www.do.se/sv/Diskriminerad/Diskrimineringsgrunderna/Etnisk-tillhorighet/Rasism/Sveriges-rasistiska-historia/>> accessed 7 December 2014. The investigations carried out by the Swedish Race Biology Institute have been studied by the artist Katarina Pirak Sikku in her Master thesis at the Umeå Academy of Fine Arts at Umeå University in 2005, see <<http://www.genus.se/Aktuellt/nyheter/Nyheter/fulltext//samisk-feministisk-kamp-pa-g14.cid1248953>> accessed 7 December 2014. [↑](#footnote-ref-80)