

Sámi Law: A Methodological Approach¹

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Abstract

Sámi law is the law of the Indigenous Sámi people. The territory where Sámi have historically lived is called *Sápmi* and encompasses parts of Norway, Sweden, Finland, and Russia. This article builds on the premise that Sámi law exists in *Sápmi*, in parallel with national laws. However, in terms of methodology and content, the scope of research on Sámi law compared to research about Indigenous law in Canada is limited. This article first describes an Indigenous law research methodology which approaches stories as a source of Indigenous law. The methodology was developed in Canada and applied to the Canadian Access to Justice and Reconciliation Project. The article then discusses this research methodology in relation to Sámi law.

Keywords: *Sámi law; Sápmi; research methodology*

Responsible Editor: Nigel Bankes, Faculty of Law, University of Calgary, Canada

Received: May 2020; Accepted: June 2020; Published: December 2020

1 Introduction

Sámi legal scholarship is a young field of knowledge.² Research produced therein mainly analyzes and describes the rights and duties that Sámi have collectively and individually according to relevant national and international law.³ Consequently, research in this area mainly builds on methodologies and methods developed for studies of national and international law. Sámi legal scholarship includes, to a lesser extent, research on Sámi law.⁴ This article argues that more research on Sámi law is needed and that it should examine issues such as how to identify, analyze and express Sámi law, how Sámi law relates to national law, and how a recognition of Sámi law would benefit both Sámi and non-Sámi populations.⁵

This article was inspired by developments in Canada where academic interest in rebuilding and revitalizing Indigenous peoples' laws and legal traditions has

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Citation: Kristina Labba. "Sámi Law: A Methodological Approach" *Arctic Review on Law and Politics*, Vol. 11, 2020, pp. 215–232. <http://dx.doi.org/10.23865/arctic.v11.2431>

increased over the last two decades, mainly among legal scholars.⁶ Research conducted in Canada has examined, for instance: research methodologies appropriate to studies of Indigenous legal orders; contemporary examples of Indigenous legal principles in action; the relationship between Indigenous legal orders and state-based law; and approaches to transmitting and teaching Indigenous law. Scholars in Canada agree that recognizing and revitalizing Indigenous law is an extremely valuable project that can support the survival of distinct Indigenous societies, thereby allowing Indigenous peoples to move away from colonial control and take control of their own governance.⁷

This article has two main objectives. The first is to briefly describe the research methodology developed by Friedland and Napoleon and applied to the Canadian Access Justice and Reconciliation Project (AJR Project) launched in 2012.⁸ These two legal scholars emphasize that their work is not about a specific outcome, but rather about developing an approach to rebuild the intellectual resources and political space for symmetrical, reciprocal, and respectful conversations within and between Indigenous law and national law.⁹

This article's second objective is to study and reflect on Friedland's and Napoleon's Indigenous law research methodology in relation to Sámi law. While this article assumes that Sámi law exists in parallel with national laws in Norway, Sweden, Finland, and Russia, here the research methodology is only used in relation to Sámi law in Norway.

The examples presented in this article, which are used to briefly illustrate why more research on Sámi law is needed, are mainly drawn from or relate to Sámi reindeer husbandry. This is a traditional Sámi livelihood, the practice of which is protected in various ways by national and international law in Norway. Norway's official position is that the Sámi people are the Indigenous people of Norway and that the nation state of Norway is based on the territory of both Norwegians and Sámi. Norwegian legislation states that Sámi have a right to conduct reindeer husbandry in the so called reindeer husbandry area (*det samiske reinbeiteområdet*), based on Sámi immemorial use (*alders tids bruk*). Moreover, relevant international law provides protection against resource extraction which would make it considerably difficult or impossible to conduct traditional reindeer herding on the land area in question.¹⁰ Despite this seemingly well-developed legal protection, Sámi reindeer herders face many challenges in practice. Two of the main challenges are considered to be the loss of reindeer to predators and the loss of essential land and water resources to competing interests, such as windmill parks and infrastructure projects.¹¹ In some areas the scale of these losses makes it impossible to continue Sámi reindeer husbandry.¹² The last section of this article briefly addresses whether extended research on Sámi law, carried out in accordance with Friedland and Napoleon's research methodology, could help, for instance, illuminate differences between relevant national law on the one hand, and Sámi law pertaining to reindeer husbandry on the other, with the goal of strengthening the relationship between them.

This article does not define the term Sámi law, nor does it aim to do so. However, it does refer to the law of the Sámi people, which most likely is embedded in resources deeply rooted in and expressed through Sámi society, culture, communities, traditional livelihoods, languages, and cultural expressions.¹³

2 The current situation of Sámi law in Norway

Since this article studies Sámi law in Norway, it is relevant to start with a description of the current situation regarding Sámi law in Norway. Therefore, this section briefly describes the main characteristics of Norwegian law and Sámi law, aiming to show how they differ. Following this, the article provides an equally brief description of how research and Norwegian legal sources address Sámi law, based on cases related to Sámi reindeer husbandry. A discussion of methodological questions related to Sámi law is deferred until the final section of the article.

2.1 Main characteristics

Law is often understood as a system of rules made and enforced by governmental or societal institutions. Norwegian law fits this model: It is both a system of rules and the product of the Norwegian legal system, which in turn is a civil law system.¹⁴ In the Norwegian legal system there is a separation of powers between three branches: the executive branch, the legislative branch and the judicial branch, in accordance with the Norwegian Constitution adopted in 1814.¹⁵ In this system sources of law consist of legislation, preparatory works, case law, customary law, administrative practice, and a conception of law, especially as expressed in the legal literature and equitable considerations. Each source has a certain dignity in relation to the others, although legislation is the most prominent among them.¹⁶ On the whole, Norwegian law and the legal system is easily accessible to the population in Norway, especially for legal professionals.

The description of Norwegian law above does not apply to Sámi law. Sámi law is not a product of a civil law system nor is it a common law system. Instead, it is of a nature common to Indigenous law, meaning that it is not written down and is primarily transferred orally and through living practices in Sámi communities and other arenas of Sámi society,¹⁷ and used, for instance, to maintain social order.¹⁸ Since it has not been recorded, systematized and articulated, the content of Sámi law can be difficult to access for people outside, and even inside, Sámi communities and arenas where Sámi law prevails.¹⁹ All this means that Sámi law is not necessarily understood as a system where, for instance, powers are shared between different branches and where rules are made and enforced by governmental institutions.

Further, different aspects of what Friedland and Napoleon write about Indigenous legal traditions, can be transferred to Sámi law. For instance, it is misleading to argue that all Sámi law is intact, formally employed, or even in conscious or explicit use.²⁰ Moreover, since Sámi law does not exist or operate in isolation from

the Norwegian legal system or the Norwegian state, the impact of Norwegian law on Sámi law should not be underestimated.²¹

Insofar as Norwegian and Sámi law exist in parallel there is potential for legal pluralism. Legal pluralism is a major scientific subject globally and the concept can be applied in several different ways.²² John Griffiths' definition of legal pluralism: "that it refers to the coexistence of more than one regulatory order in a society",²³ is widely accepted. Davies argues that legal pluralism arises when more than one law or legal system exists in a geographical space defined by the conventional boundaries of a nation state. Research on legal pluralism includes studies of, for instance, the relationship between colonial and post-colonial societies and customary and Indigenous laws.²⁴

2.2 Some examples of Sámi law in research, legislation and case law

The following three subsections provide examples of how research material and Norwegian legislation and case law address Sámi law.

2.2.1 Research on Sámi law

As mentioned in the first section, the scope of research on Sámi law within Sámi legal scholarship is of a limited extent. However, there is some research that has been conducted by legal scholars and scholars in other fields.²⁵ One of the most cited and oldest publications is Solem's book *Lappiske rettsstudier* from 1933. The book presents Sámi customs in former *Finnmark* County, based on Solem's studies of historical literature, and his own observations of Sámi society and traditional Sámi livelihoods during an eight year period in the early nineteenth century when he served as a judge in *Tana* district court, in the northernmost part of Sápmi in Norway.²⁶

Over the last few decades several publications addressing Sámi law have been published. The Norwegian government's investigation *NOU 2001:34* and Funderud Skogvang's book *Samerett*²⁷ are central in this respect. The former publication presents the results from a research project in which a number of independent scholars participated and where Sámi customs and legal opinions in different situations were studied, in relation to, inter alia, hunting, fishing, reindeer-herding, and succession. The research also brought forth Sámi terminology related to customs and legal opinions.²⁸ To some extent, the latter publication theorizes Sámi law and provides a description and analysis of how Norwegian legal sources address Sámi law.²⁹ In addition, Oskal's and Sara's research is central to the field of Sámi reindeer husbandry, since it contributes important knowledge of traditional reindeer husbandry ethics and system of norms, the *siida*-system, and the reasoning behind this system.³⁰

2.2.2 Sámi law in Norwegian legislation

In a 2008 research report on best practices for implementation of the principles of ILO Convention No. 169, Henriksen concluded that Sámi law was only taken into

account to an extremely limited degree in policy decisions and in the development and application of national legislation.³¹ This conclusion seems equally applicable today, with the development of national legislation for Sámi reindeer husbandry as a partial exception.

Sámi reindeer husbandry is associated with an enormous amount of traditional knowledge about nature, animals and how to survive in nature, expressed through, inter alia, complex terminology and organizational structures.³² In Norway, Sámi reindeer husbandry is practiced according to both Sámi and Norwegian law, where the latter is principally represented by the Norwegian Reindeer Husbandry Act that came into force in 2007. The 84 provisions of the Act, regulate for instance, Sámi reindeer grazing areas, reindeer husbandry practices and organization, reindeer ear-marking, and the relationship of reindeer husbandry to other uses. The Law Committee, which drafted the Act, considered it an important aim to draw up provisions based on the culture and traditions of reindeer husbandry.³³ Consequently the Act's first section states, inter alia, that the Act shall promote culturally sustainable reindeer husbandry based on Sámi culture, traditions and customs. A more specific example is that the Act recognizes the *siida* as a legal subject which, for instance, can establish rights to use certain land areas.³⁴

The *siida* is a traditional Sámi reindeer herding unit, which since time immemorial has played a central role in the practice of Sámi reindeer husbandry. The traditional unit is associated with many unwritten norms that active reindeer herders experience as more or less binding.³⁵ However, it is important to mention here that not all of these unwritten norms have been incorporated into the Act, and that the incorporation of the *siida* into Norwegian law has met with criticism for not having the intended effect, with the explanation that the provisions are not fully based on concepts, understandings and priorities related to the *siida*.³⁶

2.2.3 Sámi law in Norwegian case law

In 1996 a Norwegian Law Courts Commission was appointed to investigate and report on several major issues, such as the organization of the central courts administration and extra judicial activities. In several places, the Commission's report refers to a so-called Sámi dimension and discusses what duties the courts in Norway have in relation to the Sámi. The Commission found that according to section 108 (former 110 a) of the Norwegian Constitution, state authorities have a special duty to ensure that everything is done to enable members of the Sámi ethnic group to preserve and develop their language, culture and society, and that a similar duty is implied on behalf of the courts and their organization in respect of the competence, knowledge and attitudes required of judges.³⁷ Based on the Commission's report, *Indre Finnmark tingrett* was established in 2004. This is a district court in Troms and Finnmark County given the special purpose of safeguarding the Sámi dimension within the courts.³⁸

Over the years, a number of civil and criminal cases in the Norwegian courts, especially those with jurisdiction in Sápmi, have had a Sámi reindeer husbandry dimension.³⁹ Civil cases have either had an internal or external character. Internal civil cases have primarily consisted of disputes within the *siida* and raised questions about, inter alia, who has the right to lead a *siida*-unit, reindeer numbers in a *siida* and geographical borders between different *siidas*.⁴⁰ Typical external cases have comprised disputes between a state or privately owned company and a reindeer-herding district, over permission to establish an industry or infrastructure project, or compensation for activities already established on land that reindeer herders in the district have used since time immemorial.⁴¹ Criminal cases with a Sámi reindeer husbandry dimension comprise cases of, for instance, reindeer theft.⁴²

In most of these cases Norwegian law, as provided for in the Norwegian Constitution, the Reindeer Husbandry Act, the Planning and Building Act; the unwritten rule of immemorial use (*alders tids bruk*); as well as international law, such as article 27 of the International Covenant on Civil and Political rights, have all been applied. Sámi customs have also been invoked as a rule of law in some civil and criminal cases, some with reference to article 8 in ILO Convention no 169, which establishes that states shall pay due regard to Indigenous peoples' customs and customary law in the implementation of national laws and regulations.⁴³ In criminal cases that have reached the Supreme Court of Norway attempts to invoke Sámi customs have all been rejected in favor of competing norms of Norwegian law.⁴⁴

3 Indigenous law research methodology

As mentioned in the introduction, there has been increased academic interest in Canada over the last few decades to rebuild and revitalize Indigenous peoples' law and legal traditions. For instance, legal scholars have developed methodologies and methods through which Indigenous law and legal traditions can be approached.⁴⁵ In a useful literature review Coyle observes that these methodological studies offer important insights into how Indigenous laws should be identified and interpreted, sources of these laws, and how Indigenous legal reasoning can be understood.⁴⁶

This section briefly describes the Indigenous law research methodology that Friedland and Napoleon have developed. It also draws on methodologies and methods developed by Borrows and Fletcher who, along with Friedland and Napoleon, are leading legal scholars in the field of Indigenous law.

Friedland's and Napoleon's methodology was applied in the AJR Project, a research project launched in 2012 by the University of Victoria's Indigenous Law Research Unit, Indigenous Bar Association, and The Truth and Reconciliation Commission of Canada. The project was led by Napoleon.⁴⁷ The overall vision of the AJR Project was to honor the internal strengths and resiliencies present in Indigenous societies, including the resources within these societies' own legal traditions. In turn, the

goal of the project was to better recognize how Indigenous societies have used their own legal traditions to successfully deal with harm and conflict between and within groups and to identify and articulate legal principles that could be accessed and applied today to work toward healthy and strong futures for communities.⁴⁸ The AJR project conducted research in seven Indigenous societies and all together six legal traditions were represented.⁴⁹

The approach in the AJR Project was to engage seriously with Indigenous laws as laws.⁵⁰ Friedland and Napoleon argue that for an extensive period of time, all Indigenous peoples had complete, non-state social ordering modalities that were successful enough for them to continue as societies. They also argue that we can assume that Indigenous legal traditions of the past were reasonable legal orders managed by intelligent and reasoning people.⁵¹

3.1 A four-phase research methodology

The research methodology developed by Friedland and Napoleon includes four phases.⁵² The following subsections briefly describe each phase.

3.1.1 Phase One: A Specific Research Question

The first phase in their research methodology is about finding a specific research question. According to Friedland and Napoleon it is important to start by identifying the specific question the research is going to focus on, since the better the research question, the better the outcome achieved by the researchers. To illustrate the importance of this point, the two scholars draw on an example from Canadian law: “When researching Canadian state laws, we bring questions to it that we need answers to” and “Why would we not do the same with Indigenous laws?” The two scholars also argue that all law, including Indigenous law, has to be capable of responding to the specific, and applied to the real world rather than to a series of philosophical generalizations.⁵³

3.1.2 Phase Two: Case Analysis

The second phase in Friedland’s and Napoleon’s research methodology is a case analysis, which in turn raises the question of resources⁵⁴ analyzed, with the aim of finding out: a) what the main human problem in the resource is, b) what facts in the resource matter to the particular problem, c) what is decided that solves the problem, and d) what the reason is behind the decision.⁵⁵

Friedland’s and Napoleon’s case analysis model draws on Borrows’ research on stories as a source of Indigenous law. In 2002 Borrows published research in which he retold stories as cases and used the common-law case-method to identify legal principles in single stories.⁵⁶

In the AJR Project the researchers analyzed stories and other material, with the specific research question(s) in mind. Each researcher in the project analyzed

between twenty and forty stories that addressed harm or conflict in any way. Friedland and Napoleon write that the case analysis in the AJR Project led to a number of significant outcomes. For instance, it created space for discussions on harm and conflict in the communities, and showed that it is important to analyze many stories in each research area since these stories vary and many are equally rich and complex as sources of normative material.⁵⁷

Friedland and Napoleon observe that access to Indigenous legal sources is not simple, due to the consequences of colonialism. However, they recognize that informal and formal Indigenous law may be recorded in many different ways. In the AJR project they focused on stories but according to the two legal scholars it is also possible to apply many other types of resources, such as songs, dances and art, kinship relationships, place names, narratives, practices, rituals, conventions, oral histories, personal memories, information gained through interviews and other published research, as well as resources found in the structures and aims of institutions. It is also possible to apply other forms of analysis than they did, in order to engage with and articulate Indigenous laws, such as identifying legal meanings through linguistic processes. They also note that it is important to be rigorous, transparent, and consistent in the analysis, for instance by citing sources.⁵⁸

In addition to Friedland's and Napoleon's discussion on sources of Indigenous law, Borrows argues that Indigenous law can be found in more broadly dispersed and decentralized forms than legal scholars are accustomed to examining.⁵⁹ According to him, Indigenous law can be found in stories, songs, practices, customs, published collections of ancient origin stories, from family and elders' teachings regarding laws in nature, from pots, petroglyphs and scrolls found in an ancient ceremonial lodge, terms within an Indigenous language, and descriptive historical accounts recorded by outsiders.⁶⁰ Of oral histories and stories he writes that they provide a public memory and are intellectual resources, and that they communicate ways of perceiving and responding to harm in a structured manner.⁶¹ He also argues that sources of Indigenous law can be sacred, natural, positive, customary, deliberative, and social interaction.⁶²

Finally, Fletcher, a law professor in America specializing in Indigenous law, argues that parties in a tribal court setting, knowledge of language and secondary literature about tribal customs and traditions are also sources of Indigenous law.⁶³

Based on the work of these scholars, Friedland has developed a three-fold categorization of the available resources as: 1) resources that require deep knowledge and full cultural immersion; 2) resources that require some community connection; and 3) resources that are publically available. She also explains how the three legal scholars address different challenges in their work in relation to the identification and availability of existing resources. She roughly sorts these challenges into five categories, namely: 1) challenges of accessibility; 2) challenges of intelligibility; 3) challenges of legitimacy; 4) challenges of distorting stereotypes; and 5) challenges of relevance and utility.⁶⁴

3.1.3 Phase Three: Creating a Framework – Primer, Synthesis, and Legal Theory

The third phase in the research methodology of Friedland and Napoleon is to organize information from the sources in an accessible, convenient way so it can be more readily analyzed, applied, added to, and adapted to present circumstances in a principled manner. The third phase has three concurrent parts: primer, synthesis, and legal theory, each with a particular aim.⁶⁵

The first part, the primer, aims to contextualize the stories analyzed in phase two. Since every story is part of a broader societal structure, contextualizing helps to place each story in the societal structure and intellectual life to which the story belongs. The second part, which the two legal scholars call the main part in this third phase, is the synthesis. The synthesis, aims to synthesize the information from the single stories, into one consistent, structured analytical framework. The synthesis makes use of an analytical framework containing questions such as: a) which legal processes and legal responses a story presents, b) which principles govern the individuals in the story, c) what kind of rights they have, and d) which underlying principles the story reflects. According to the two legal scholars, synthesizing helps identify specific details in the stories, and interconnect them. In addition, the synthesizing exercise enables Indigenous law to move beyond external accounts and develop internal Indigenous views on the law, in the same manner as internal perspectives are developed within national law, for instance in law schools.⁶⁶

The third part of the third phase, regards theorizing Indigenous law embedded in the analyzed sources.⁶⁷ Theories about Indigenous law, such as what law is, have been developed by different legal scholars in the field. For instance, Borrows in *Canada's Indigenous Constitution* suggests that Indigenous laws hold modern relevance both for Indigenous communities themselves and for others, and can be developed through contemporary practices.⁶⁸

Napoleon has also theorized Indigenous law and writes:

Law is basically a collaborative process — something that groups of people do together. Law is never static, but rather, lives in each new context. In fact, one of the most important things to understand about any law is how it changes. Moreover, it has to change in order to be an effective part of governance — it has to be appropriate to new contexts and circumstances or it simply will not work. It also has to be appropriate to the experiences of the people or it will have no meaning or legitimacy.⁶⁹

3.1.4 Phase Four: Implementation, Application, and Critical Evaluation

By applying the research methodology and including the synthesis, the AJR Project was able to produce principles, law, processes, and procedures relevant to current human and social issues in the seven partner communities. The fourth phase of the methodology is about applying them. Friedland and Napoleon write that the final phase of their research methodology was not fully realized in the AJR Project at

the time their article was written. However, some of the partner communities have started to develop ways to apply the research results to different kind of issues, such as child welfare and criminal court proceedings, and some have expressed a willingness to develop, for instance, their own governance institutions.⁷⁰

4 The Indigenous law research methodology and Sámi law

This article argues that more research on Sámi law is needed, especially regarding how it can be accessed and understood. In order to do so, appropriate research methodologies and methods are needed. Ravna writes that legal sociological methods and social anthropological methods are appropriate for studies of Sámi law.⁷¹ This final section studies and offers some preliminary thoughts about Friedland's and Napoleons Indigenous law research methodology in relation to Sámi law in Norway, in order to assess whether this methodology could be applied to study Sámi law and what opportunities and challenges such an application could be expected to meet.

4.1 The four-phased Indigenous law research methodology

4.1.1 A specific research question

The first phase in Friedland's and Napoleon's four-phased research methodology is about finding a specific research question, in close collaboration with the Indigenous group whose laws the research is supposed to engage with.

To start a research project which aims to engage with Sámi law by identifying one or several specific research questions seems both possible and relevant. It also seems possible and relevant to identify the research question, or research questions, in close collaboration with the Sámi group whose laws the research project intends to engage with. Sámi legal scholars and researchers already collaborate with Sámi in studies on Sámi law, but mainly by using legal sociological methods.⁷² As far as I know, researchers have not arranged workshops with the Sámi in question, in the way the AJR Project did. Hence, researchers' collaborations with Sámi groups, such as individual reindeer-herding districts or/and siidas, would be a new methodological element in research conducted on the field of Sámi law.

As mentioned in section 3, the AJR project had as a goal to find ways of applying Indigenous legal traditions to resolve harm and conflict between and within Indigenous groups. A similar goal would also be reasonable for research on Sámi law since harm also appears within Sámi society.⁷³ There is also however a great need for continuing research on disagreements of an external character, in other words situations where Sámi groups have disagreements with non-Sámi groups. As mentioned in the introductory section, Sámi reindeer husbandry faces challenges of an external character, such as disagreements with national politicians (and consequently lawmakers) about, for instance, predator control and industrial development projects on land

areas traditionally used for Sámi reindeer husbandry. The Canadian material does not comment directly on the use of the methodology for research on issues of an external character. However, since the overall goal of the methodology is to, inter alia, develop political space for symmetrical, reciprocal, and respectful conversations between Indigenous law and national law, research on external issues should also be possible.

4.1.2 Case Analysis

The case analysis method in the second phase of Napoleon's and Friedland's research methodology, also seems appropriate for approaching Sámi sources. An application of the approach should be possible for professionals trained in civil-law, as well as individuals without such legal training. However, some training in the case analysis method would be beneficial before applying it. The questions asked in the case analysis may seem simple, but answering them requires a thorough review of the resource(s). It is however positive that the research methodology allows for other forms of analysis, if it turns out that the case analysis method, inspired by the common-law case analysis method, does not work for Sámi resources.

Sámi have always and continue to tell stories, and many of these stories have been written down.⁷⁴ Finding enough Sámi stories to analyze in a single community or in neighboring communities might, however, prove challenging. If this is the case, the methodology seems to have a solution insofar as it is open to using other types of resources than stories in order to engage with Indigenous law. In Sápmi, it might be possible to identify legal constructs through Sámi linguistic processes, documentation of the knowledge of elders and other community members, as well as traditional *yoiks*.⁷⁵ A yoik is a traditional form of Sámi song that expresses or reflects, for instance, a place, a reindeer-grazing area, or animals.⁷⁶

4.1.3 Creating a framework

In relation to Sámi law, the third phase, which consists of analyzing and expressing potential Sámi legal principles, also seems appropriate and feasible. The part about theorizing Indigenous law in the third phase of the research methodology seems especially desirable in relation to Sámi law. As mentioned in the introduction, research produced within Sámi legal scholarship mainly analyzes and describes what rights and duties Sámi have collectively and individually according to relevant national and international law. This is, of course, an important contribution to an understanding of the Sámi people's legal situation, but there has been too little focus on theorizing questions about Sámi law. Theories about Sámi law should probably draw on legal theories developed by legal scholars in the field in Canada and other places in the world. Such theorizations could, for instance, address questions of an overall dimension, where the relationship between Sámi and Norwegian law is analyzed, as well as theories related to the Sámi group in question. These theories might

also address possible Sámi legal principles and how they are articulated through the research methodology as a source of Sámi law.

4.1.4 Implementation, Application, and Critical Evaluation

As part two of this article shows, Sámi law enjoys recognition in Norway, mainly in the sense that Norwegian legal sources to a certain degree address and recognize Sámi law. However, in terms of having an impact, Sámi law is subordinate to Norwegian law. In practice, this means that the impact of Sámi law in Norway largely depends on how Norwegian legal sources, such as legislation and Supreme Court case law, address it. Most likely this would also apply to Sámi principles articulated through the research methodology.

Henriksen states that whether Indigenous law is recognized and taken into account by national authorities in policy decisions and in the application of national laws and regulations, depends on two main factors: Firstly, it depends on the level of general acceptance of legal pluralism within the national judicial system.⁷⁷

Research about the relationship between Norwegian law and Sámi law from the perspective of legal pluralism is largely absent. Recent legal scholarship in Norway argues that concepts of legal pluralism and polysentrism in Norwegian law refer to its expansion into new fields in Norwegian society, such as biotechnology and information technology, and through its Europeanization and internalization.⁷⁸ This indicates that research on Sámi law, from the perspective of legal pluralism, is also needed.

Whether Indigenous law is recognized and taken into account, secondly depends on the issue at hand and the Indigenous law that is sought to be made applicable. As Henriksen points out, the Norwegian state's acceptance and application of Sámi law is in general selective and pragmatic, and largely determined by the overall interests of the state, in particular the economic interests of the majority population or certain sectors of the national community.⁷⁹ A 2016 report based on a study conducted among individual reindeer owners, shows that many Sámi reindeer owners have low confidence in central Norwegian public authorities. This lack of confidence is related to the loss of reindeer to predators and loss of land areas of importance to reindeer herding.⁸⁰ As already mentioned, these challenges include the loss of land due to the establishment of, for instance, infrastructure, windmill parks, military activities, power lines, leisure homes and related activities.⁸¹

A conventional assumption is, or at least has been, that Indigenous societies lack binding norms, or at least norms significant enough for the colonizing power to take into account.⁸² A central premise in Indigenous law research methodology is, however, that it is crucial to see Indigenous law as law. People might question why Sámi law should be seen as law in Norway. Research on the content of Sámi law would most likely provide a more detailed answer to this question, but it is already possible to suggest some reasons. First of all it is important to remember that Sámi law exists despite its lack of recognition in national law. The Sámi siida-system in reindeer

herding is an example of this. This reindeer herding system has ancient origins and was practiced contrary to national law for a long time.⁸³ The Norwegian Reindeer Herding Act, which came into force 2007, first recognized the *siida* as a legal subject, with the reasoning that it is important that the act reflect the culture and traditions of reindeer husbandry. Secondly, seeing Sámi law as law would correspond with both article 8 in ILO Convention No. 169 and article 9 in the proposed Nordic Saami Convention that an expert group with representatives from the governments of Norway, Sweden and Finland, and the Saami parliaments of these countries, submitted in 2005.⁸⁴ The first section in the proposed article states: “The states shall show due respect for the Saami people’s conceptions of law, legal traditions and customs.” Thirdly, seeing Sámi law as law would also be an important contribution to fulfilling the Sámi people’s right to self-determination, a right established by article 2 in the UN Declaration of the Rights of the Indigenous, whether or not this is a question of an internal or external aspect of the right to self-determination. At this point it is difficult to establish the content of the two aspects of self-determination and suggestions for what they should contain vary considerably. However, one suggestion is that the right to self-determination contains a material right to exercise autonomy and self-governance arrangements within existing state borders, on a sliding scale, meaning that the more important an issue is for an Indigenous people’s culture, society, and way of life, the greater influence the people shall have concerning the issue.⁸⁵ Research on the content of Sámi law would most likely contribute necessary knowledge to the process of determining the content of Sámi self-determination.

4.2 Final remarks

As my reflections in the previous sections indicate, it seems both possible and appropriate to apply the Indigenous law research methodology developed by Friedland and Napoleon to studies of Sámi law, especially when adjusted to conditions in Sápmi. The research methodology is problem oriented and transparent,⁸⁶ and therefore has the potential to help Sámi and non-Sámi develop ways to live and solve problems together. The exercise of examining Sámi law as law will also require a shift in assumptions about what law is.⁸⁷ This has significant educational potential. In Canada, for instance, regular courses on Indigenous legal traditions are now offered at nine out of twelve English-speaking Canadian law schools.⁸⁸ Once Sámi law has been the subject of greater research such courses could also be offered in Norwegian law faculties.

NOTES

1. This article was written as part of the research project “Sámi traditional livelihoods, competing land uses, competing legal sources”, funded by the Norwegian Research Council.
2. Eva-Maria Svensson, “Sami Legal Scholarship: The Making of a Knowledge Field”, in *Indigenous Rights in Scandinavia. Autonomous Sami Law*, ed. Christina Allard and Susann Funderud Skogvang (Ashgate Publishing Limited: 2015), 207.

3. See, for instance, contributions in *Indigenous Rights in Scandinavia, Autonomous Sami law*, 2015; Kirsti Strøm Bull, *Studier i reindriftsrett* (Tano Aschehoug: 1997); Ande Somby, *Ƨuss som retorikk* (Tano Aschehoug: 1999); Øyvind Ravna, *Rettsutgreiing og bruksordning i reindriftsområder, en undersøkelse med henblikk på bruk av jordskiftelovgivningens virkemidler* (Gyldendal akademisk: 2008); Gunnar Eriksen, *Alders tids bruk* (Fagbokforlaget: 2008); Christina Allard, *Renskötselrätt i nordisk belysning* (Makadam förlag: 2015), Mattias Åhrén, *Indigenous Peoples' Status in the International Legal System* (Oxford University Press: 2016), Susann Funderud Skogvang, *Samerett* (Universitetsforlaget: 2017); Malin Brännström, *Skogsbruk och renskötsel på samma mark: En rättsvetenskaplig studie av äganderätten oc renskötselrätten* (Umeå universitet: 2017); Kristina Labba, *Renskötselns interna organisering* (UiT Norges arktiske universitet: 2018); Øyvind Ravna, *Same- og reindriftsrett* (Gyldendal: 2019).
4. See, for instance, Strøm Bull, *Studier i reindriftsrett*; Carsten Smith, “Hvilken plass har samiske sedvaner og rettsoppfatninger i norsk rett?”, *Ƨussens venner*, 39 (2004)); NOU 2001:34; Mattias Åhrén, “Indigenous peoples' Culture, Customs, and Traditions and Customary Law – the Sáami People's Perspective”, *Arizona Journal of International & Comparative Law* 21 (2004); Ravna, *Rettsutgreiing og bruksordning i reindriftsområder*; Funderud Skogvang, *Samrett*; Labba, *Renskötselns interna organisering*.
5. Other legal scholars have also argued for the need for more research on Sámi law: see, for instance, Smith, “Hvilken plass har samiske sedvaner og rettsoppfatninger i norsk rett?”, 137; Funderud Skogvang, *Samerett*, 59.
6. Hadley Friedland, “Reflective Frameworks: Methods for Accessing, Understanding and Applying Indigenous Laws”, *Indigenous Law Journal* 11 (2012): 1–4; Michael Coyle, “Indigenous Legal Orders in Canada – a literature review”, *Law Publications* 92 (2017): iv, 4.
7. Coyle, “Indigenous Legal Orders in Canada – a literature review”, iv, 4.
8. See <https://www.indigenousbar.ca/indigenoulaw/>
9. Hadley Friedland and Val Napoleon, “Gathering the Threads: Developing a Methodology for Researching and Rebuilding Indigenous Legal Traditions”, *Lakehead Law Journal* 1:1 (2015–2016): 17. See also Val Napoleon and Hadley Friedland, “Indigenous Legal Traditions: Roots to Renaissance”, *The Oxford Handbook of Criminal Law* (Oxford University Press: 2014), 240–42.
10. For an overview on Sámi rights and duties in Norway according to national and international law see, for instance, Funderud Skogvang, *Samerett*; Ravna, *Same- og urfolksrett*. See also Åhrén, *Indigenous Peoples' status in the International Legal System*.
11. See, for instance, <https://reindeerherding.org/challenges>
12. See, for instance, a news report on a request from the Nordland County Administrative Board to the Norwegian government for help for a reindeer herding district in crisis: <https://www.nrk.no/nordland/fylkesmannen-i-nordland-frykter-at-reindriffta-bryter-sammen-1.15076958>
13. The way the term “Sámi law” is used here is inspired by the way the term “legal traditions” is used by legal scholars in the field of Indigenous law, see for instance, Valerie Ruth Napoleon, *Ayook: Gitksan Legal Order, Law, and Legal Theory*, (University of Victoria: 2009), 1–2 who defines the term as “a set of deeply rooted, historically conditioned attitudes about the nature of law, about the role of law in the society and the polity, about the proper organization and operation of a legal system.” See also John Henry Merryman et al., *The Civil Law Tradition: Europe, Latin America, and East Asia* (2000), 3–5.
14. The description of Norwegian law in this chapter is limited to describe it from the often used concepts as legal culture and legal tradition. For a discussion on legal culture, see, for instance, Jørn Øyrehage Sunde, “Managing the Unmanageable – An Essay Concerning Legal Culture as an Analytical Tool”, in *Comparing Legal Cultures*, ed. Jørn Øyrehagen Sunde, Knut Einar Skodvin and Søren Koch (Fagbokforlaget: 2020); Øyvind Ravna, “Sámi Legal Culture – and its Place in Norwegian Law”, in *Rendesvovs in European Legal Cultures*, ed.

- Jørn Øyrehagen Sunde and Knut Einar Skodvin (Fagbokforlaget: 2009). For a discussion on legal traditions, see, for instance, H. Patrick Glenn, *Legal Traditions of the World* (Oxford University Press: 2010).
15. 3, 49, and 88 §§ Kongeriket Noregs Grunnlov.
 16. See, for instance, Jens Edvin A. Skoghøy, *Rett og rettsanvendelse* (Universitetsforlaget: 2018); Nils Nygaard, *Rettsgrunnlag og standpunkt* (Universitetsforlaget: 2005); Torstein Eckhoff and Jan E. Helgesen, *Rettskildelære* (Universitetsforlaget: 2001).
 17. Rt. 2001 at 1229. See also Gunnar Eriksen, “The tolerance of Saami culture and legal thinking in Norwegian Supreme Court rulings: The clash between an oral and a text based legal culture”, *Kart og Plan* 4 (2002): 228–45.
 18. See, for instance, Mikkel Nils Sara, “Siida and Traditional Sámi Reindeer Herding Knowledge”, *Northern Review* 30 (2009): 153–78.
 19. See about the characteristics of Indigenous law and legal traditions in, for instance, Glenn, *Legal traditions of the world*, 64–68.
 20. Hadley Friedland and Val Napoleon, *Gathering the Threads*, 17.
 21. This reflection is based on the work of Hadley Friedland and Val Napoleon, *Gathering the Threads*, 18–19. See also *Norsk ressursforvaltning og samiske rettighetsforhold*, ed. Ivar Bjørklund (Ad Notam Gyldendal: 1999), 7–11.
 22. Inger Johanne Sand, “Rettslig pluralisme og polysentri i norsk rettsvitenskapelig metode”, in *Juridisk metode og tenkemåte*, ed. Alf Petter Høgberg and Jørn Øyrehagen Sunde (Universitetsforlaget: 2019), 85.
 23. John Griffiths, “Legal Pluralism”, *International Encyclopedia of the Social and Behavioral Sciences* 13 (2015): 757.
 24. Margaret Davies, “Legal Pluralism”, in *The Oxford Handbook of Empirical Legal Research*, ed. Peter Cane and Herbert M. Kritzer (Oxford University Press: 2010), 805. See also Val Napoleon’s presentation “Legal Pluralism and Reconciliation”, Faculty of Law, University of Ottawa (2018).
 25. There is a large body of writing by Sámi and non-Sámi academics in fields of science other than law who describe and analyze Sámi culture and traditions. Although these works do not claim to record Sámi law, they could potentially serve as sources on Sámi law. See for instance, the anthology *Norsk ressursforvaltning og samiske rettighetsforhold*, ed. Ivar Bjørklund (Ad Notam Gyldendal: 1999).
 26. Erik Solem, *Lappiske rettsstudier* (Aschehoug: 1933).
 27. The term “samerett” refers to a knowledge field which spans over several areas of law and which has Sámi legal issues as its object. See, for instance, Eva-Maria Svensson, *Sami Legal Scholarship: The Making of a Knowledge Field*, 207–226.
 28. NOU 2001:34 Samiske sedvaner og rettsoppfatninger. See more in Tom G. Svensson, “Indigenous Rights and Customary Law Discourse case: comparing the Nisga’a and the Sámi”, *Journal of Legal Pluralism and Unofficial Law* 47 (2002): 10–13.
 29. Funderud Skogvang, *Samerett*, 53. See also NOU 1999:22, section 7.2.5; St. meld. Nr. 23 (2000–2001), section 11.2.
 30. See for instance Nils Oskal, *Det rette, det gode og reinlykken*, (Universitetet i Tromsø: 1995); Nils Oskal and Mikkel Nils Sara, “Reindriftssamiske sedvaner og rettsoppfatninger om land” in *Reindriften i Finnmark, Retts historie 1852–1960* (Cappelen: 2001); Sara, *Siida and Traditional Sámi Reindeer Herding Knowledge*, 158. Also, for instance, *Samisk reindrift, Norske myter*, ed. Tor A. Benjaminsen, Inger Marie Gaup Eira, Mikkel Nils Sara (Fagbokforlaget: 2016); Geir Hågvar “Den samiske rettsdannelse i Indre Finnmark”, *Dieđut* 2 (2006) and Øyvind Ravna and Jan Josef Olli, “Sedvanerettslige oppfatninger om arealbruk blant reindriftsutøvere”, *Dieđut* 2 (2011) are important research contributions in the field.

31. John B. Henriksen, “Research on Best Practices for the Implementation of the Principles of ILO Convention No. 169, Case Study: 7”, *Programme to Promote ILO Convention No. 169* (2008), 58.
32. Sara, *Siida and Traditional Sámi Reindeer Herding Knowledge*, 158; Mikkel Nils Sara, “Land Usage and Siida Autonomy” in *Siida ja Siiddastallan* (UiT Norges Arktiske Universitet: 2015); <https://reindeerherding.org/what-is-reindeer-husbandry>
33. NOU 2001:35, 6.
34. NOU 2001:35, 248–49.
35. See, for instance, Labba, *Renskötselns interna organisering*, chapter 3.
36. Sara, *Siida ja siiddastallan*, 12.
37. NOU 1999:19, section 15.4 on general principles. Section 108 of the Constitution provides that ‘The authorities of the state shall create conditions enabling the Sami people to preserve and develop its language, culture and way of life.’ Unofficial translation available at <https://lovdata.no/dokument/NLE/lov/1814-05-17>
38. <https://www.domstol.no/Enkelt-domstol/indre-finnmark-tingrett/om-indre-finnmark-tingrett/samisk-dimensjon/>
39. See www.lovdata.no which provides access to a collection of online legal resources, including case law with Sámi and reindeer husbandry dimensions.
40. See, for instance, LH-2018-98926, LH-2017-34107 and TINFI-2015-84532.
41. See, for instance, LH-2019-10873-2. An external case can also consist of a dispute between the state and an individual reindeer herder, a siida or a reindeer herding district, see, for instance, HR-2017-2428-A and TINFI-2019-131733.
42. LH-2016-171197.
43. Norway ratified The Indigenous and Tribal Peoples Convention, 1989 (No. 169) in 1990.
44. See more about the cases in Øyvind Ravna, “Sámi Rights and Sámi Law in Norway”, in *Polar Law Textbook II*, ed. Natalia Loukacheva (Nordic Council of Ministers: 2013), 288–89.
45. See, for instance, Matthew L. M. Fletcher, “Rethinking Customary Law in Tribal Court Jurisprudence”, *Michigan Journal of Race & Law* 57 (2007): 94–95; John Borrows, *Canada’s Indigenous Constitution* (University of Toronto Press: 2010), 23; Hadley Friedland, “Reflective Frameworks: Methods for Accessing, Understanding and Applying Indigenous Laws”, *Indigenous Law Journal* 11 (2012): 11–26.
46. Coyle, *Indigenous Legal Orders in Canada – a literature review*, v.
47. Friedland and Napoleon, *Gathering the threads*, 18.
48. https://indigenousbar.ca/indigenoulaw/wp-content/uploads/2013/04/iba_ajr_final_report.pdf, 2.
49. Friedland and Napoleon, *Gathering the Threads*, 18.
50. https://indigenousbar.ca/indigenoulaw/wp-content/uploads/2013/04/iba_ajr_final_report.pdf, 2.
51. Napoleon and Friedland, *Indigenous Legal Traditions*, 227.
52. https://indigenousbar.ca/indigenoulaw/wp-content/uploads/2013/04/iba_ajr_final_report.pdf
53. Friedland and Napoleon, *Gathering the Threads*, 20.
54. Friedland and Napoleon use the terms “resources” and “sources” almost interchangeably. This article differentiates between the two terms in relation to Sámi law. While resources can consist of, for instance the Sámi languages and yoiks, sources of Sámi law include not only Sámi customs and legal opinions as understood under Norwegian law, but also, for instance, Sámi principles. For a discussion of the sources of Sámi law see, for example, Funderud Skogvang, *Samerett*, 22.
55. Friedland and Napoleon, *Gathering the Threads*, 23–24.

56. John Borrows, *Recovering Canada: The Resurgence of Indigenous Law* (University of Toronto Press: 2002), 16–20. See also Friedland and Napoleon, *Gathering the Threads*, 22.
57. *Ibid.*, 21, 24–26.
58. *Ibid.*, 21–26; Napoleon, *Ayook: Gitksan Legal Order, Law, and Legal Theory*, 71. See also Friedland, *Reflective Frameworks*, 8.
59. Borrows, *Canada's Indigenous Constitution*, 137, 139, 179.
60. Borrows, *Canada's Indigenous Constitution*, 179. See also Friedland, *Reflective Frameworks*, 8–9.
61. John Borrows, “Heroes, Tricksters, Monsters, and Caretakers: Indigenous Law and Legal Education”, *McGill Law Journal* (2016): 819.
62. Borrows, *Canada's Indigenous Constitution*, 23–58.
63. Mathew Fletcher, “Rethinking Customary Law in Tribal Court Jurisprudence”, *Michigan State University College of Law* 1 (2006): 89.
64. Friedland, *Reflective Frameworks*, 11–12, 13–17.
65. Friedland and Napoleon, *Gathering the Threads*, 27.
66. *Ibid.*, 27–29.
67. *Ibid.*, 27 and 30.
68. John Borrows, *Canada's Indigenous Constitution* (University of Toronto Press: 2010), 10.
69. Val Napoleon, “Thinking about Indigenous Legal Orders” in *Dialogues on Human Rights and Legal Pluralism*, ed. René Provost and Colleen Sheppard (Springer: 2012), 4.
70. Friedland and Napoleon, *Gathering the Threads*, 32.
71. Øyvind Ravna, *Same- og reindriftsrett* (Gyldendal: 2019), 141–42.
72. See, for instance, Elina Helander, “Samiska rättsuppfattningar i Tana”, in NOU 2001:34: 425–94; Peter Thomas Ørebech, “Sedvanerett i fiskeriene – sjøsamene i Finnmark”, in NOU 2001:34: 587–652; Øyvind Ravna and Jan Josef Olli, “Sedvanerettslige oppfatninger om arealbruk blant reindriftsutøvere”.
73. See, for instance, Snefrid Møllersen et al., *Reindriftas hverdag, interne og eksterne forhold som påvirker reineiere*, NBR-NRL and SÁNAG-SANKS (2016), 44–54. For an analysis of violence in close relationships in Sámi society, see the thematic report *Vold og overgrep i samiske samfunn* (Norwegian National Human Rights Institution: 2018).
74. See, for instance, Coppélie Cocq, *Revoicing Sámi narratives North Sámi storytelling at the turn of the 20th century* (Umeå University: 2008).
75. For documentation of knowledge of elders see Eva Maria Fjellheim, “Through our stories we resist: Decolonial perspectives on south Saami history, indigeneity and rights”, in *Indigenous Knowledges and the Sustainable Development Agenda*, ed. Anders Breidlid and Roy Krøvel (Routledge: 2020), 211.
76. Follow this link to a catalogue of audio recordings to yoiks that have been recorded throughout the Nordicregion:<http://libris.kb.se/hitlist?f=&q=db%3ajok&r=&m=10&s=r&t=v&d=libris&p=7>
77. Henriksen, *Research on Best Practices for the Implementation of the Principles of ILO Convention No. 169*, 58.
78. Inger Johanne Sand, *Rettslig pluralisme og polysentri i norsk rettsvitenskapelig metode*, 683–85.
79. Henriksen, *Research on Best Practices for the Implementation of the Principles of ILO Convention No. 169*, 58.
80. Snefrid Møllersen et al., *Reindriftas hverdag, interne og eksterne forhold som påvirker reineiere*, 55–64 and 76.
81. See, for instance, Snefrid Møllersen et al., *Reindriftas hverdag, interne og eksterne forhold som påvirker reineiere*, NBR-NRL and SÁNAG-SANKS (2016), 55–64 and 76. For information about interventions in reindeer herding areas, see, for instance, <https://reindeerherding.org/loss-of-pastures>; Ingunn Vistnes et. al., *Inngrep i beiteland, Biologi, jus og strategier i inngrepsaker*, Nina temahefte 26 (2004); Therese Bjørsting et al., “The institutionalisation of Sami

- interest in municipal comprehensive planning – a comparison between Norway and Sweden”, *International Indigenous Policy Journal* 11 (2020).
82. Åhren, *Indigenous peoples’ Culture, Customs, and Traditions and Customary Law – the Sáami People’s Perspective*, 63.
 83. See an explanation of this in, for instance, Mikkel Nils Sara, *Siida ja siiddastallan* (UiT Norges arktiske universitet: 2018), 13–27.
 84. https://www.regjeringen.no/globalassets/upload/aid/temadokumenter/sami/sami_samekonv_engelsk.pdf. For an analysis of the proposed Nordic Saami Convention, see, for instance, *The Proposed Nordic Saami Convention: National and International Dimensions of Indigenous Property Rights*, ed. Nigel Bankes and Timo Koivurova (Hart Publishing: 2013).
 85. Mattias Åhrén, *Indigenous Peoples’ Status in the International Legal System*, 138–141.
 86. Napoleon and Friedland, *Indigenous Legal Traditions*, 225–26.
 87. <https://indigenousbar.ca/indigenoulaw/project-documents/>
 88. Coyle, *Indigenous Legal Orders in Canada – a Literature Review*, vii.