

Arctic Law – An Academic Discipline*Kamrul Hossain*

In its broadest sense, the law is a set of socially agreed-on norms. Traditionally, law's functions are strictly designed in a politically organized community, for example, an entity enjoying sovereignty. This may be a state, a component thereof, such as canton or autonomous territory. The competent authority resorts to a procedure or process to adopt, interpret and implement rules emanating from agreed-upon legal norms. Such a process forms a legal system.

In this sense, the Arctic does not have a legal system or belong to a legal family in the same way as comparative lawyers understand the concepts; examples of systems are Common Law, Civil Law, sharia law and mixed Law. Although the Arctic Indigenous peoples traditionally maintain their own legal traditions, known as customary law, the predominant Western understanding of law does not recognize such systems having true normative force, inasmuch as they are not derived from the legal systems of the states that colonialized the peoples.

The salient point to remember here is that the Arctic does not constitute a single political entity for purposes of creating a legal system of its own. Instead, it comprises a transnational region shared by eight sovereign states, each with national territorial jurisdiction over its part of the Arctic. The entire twenty million square kilometers of the Arctic include territory within and beyond states' national legal jurisdiction. The region's legal status hinges on the fragmented national legal systems of Arctic countries and applicable international regulations beyond national jurisdictions. This being the case, what is it that we call Arctic law?

Answering this question demands an investigation into what law is and why we study law. The goal of law is not merely to produce legal rules as prescriptions for behaving in a certain way or to create sanctions to punish behavior contrary to what has been prescribed. While applying legal rules furthers dispute settlement, serving an objective of the law, and legal practitioners rely on those rules in juridical processes. However, the purpose

of the law goes beyond resolving disputes. The established legal rules are often insufficient to achieve the ultimate goal of law.

The overarching goal of law is to serve society in order to create a better world. Law has a mission to accomplish – allowing humans to flourish in pursuit of an equitable, fair and just society – yet this is often jeopardized due to the problems created by the legal norms enacted to that end. Therefore, law is sooner a matter of better understanding society in its dynamic form, structural contexts and challenges, and integrating relational perspectives by critically analyzing and examining the pretext and context. The aim is to deconstruct presupposed structure and knowledge systems in the face of the dynamic nature of problems and challenges. Hence, the ultimate goal is to eradicate systemic governance challenges and promote an understanding of multifaceted challenges with a critical legal mindset that advances the achievement of a fair, just, and equitable society.

Thus, studying law does not necessarily mean becoming a practitioner only, even though a legal education will allow one to become a practicing lawyer who appears before judicial institutions. In broader perspective, the study of law provides skills to develop an analytical and critical mindset to apply when evaluating social norms and socially essential phenomena. Studying law offers intellectual strength combined with a practical approach to the world. The discipline of law provides insights into the complex relationship that humans as social animals engage in in everyday life while interacting with each other and the surrounding environment. For example, family law is not solely a branch of law that deals with marriage, divorce, succession and like issues; it also concerns itself with how justice is reflected in partnership relations and in the relations between parents and children.

Similarly, environmental law focuses on learning the interrelationship between various forms of human and non-human agents. It is not merely a matter of applying existing rules in the interests of biodiversity or nature protection. It very much includes a better understanding of the human-nature relationship in response to the anthropocentric worldview which prevails today; anthropocentrism is a mentality that ignores the historical and current relationship of power between colonizer and colonized, polluter and pollutee, and rich and poor, as well as the impact of the imbalances involved on the

planet. Approaches that develop understandings of law beyond such narrow perspectives are elemental in what we call Arctic law.

Arctic law offers an avenue to learn about the interlinkages between the climate change regime and global environmental governance. For example, a legal inquiry might look into how a disproportionate rise in the temperature in the Arctic not only affects the region itself but the entire globe as well, and how the protection of the pristine Arctic environment is indispensable for maintaining that of the planet at large. Arctic law helps us understand the Earth's functioning as an assemblage of interconnected natural systems with its own rules and ways of serving all agents equally, both living and non-living. Disruption by human processes, such as anthropogenic behavior, affects the natural systems that underpin the earth's functioning. The study of law reconfirms why the discipline of international environmental law emerged in the early 20th century, which suggests that an absolute rule-based approach to state sovereignty runs contrary to the natural courses of law. A concrete example was the Trail Smelter Case from the late 1920s, which established the foundation of extraterritorial relationships in environmental governance. Arctic law adds the transnational and transregional component to such extraterritorial relationships.

Such relationships offer room to explore similar interconnected phenomena, such as humans living in a region suffering from a violation of human rights due to states' inaction – failure – to comply with emission reduction obligations, for example. Law in this perspective shows us how climate change and human rights are interconnected, and how climate justice is a crucial consideration being threatened due to the existing “free-will based” structure of international law. Additionally, Arctic law helps us to understand the interdependence of science and law, that is, how science sets the stage for law and legal regulations, having critically examined the differences between “best available scientific information” and “best scientific information available”. For example, the Arctic Ocean bed is characterized through a set of geomorphological features known as ridge systems. Drawing legally binding outer limits of the continental shelf of states surrounding the Arctic Ocean requires our understanding of science to apply legal rules appropriately.

Arctic law teaches us to understand differences in the approaches observed by "others", such as the Indigenous peoples, who are unknown in the formal international law-making process. The discipline highlights an urgent need to give serious consideration to the integration of different knowledge systems and to decolonize the prevailing knowledge structure. For example, Indigenous knowledge systems are guided by evidence from historical trajectories and popularized as the knowledge base for a moral conviction instilled in human behavior across regions and territories. Such a knowledge system, evident in the Arctic, creates a sense of there being profound physical, mental and spiritual relationships between human and non-human agents. Its integration into scientific innovation offers a novel direction toward an inclusive and knowledge-dictated governance framework.

In this light, Arctic law sets itself the task of rectifying mistaken presuppositions that find their way into international treaty-based rules and reveal a lack of adequate knowledge of conditions in the Arctic. As an academic discipline, Arctic law helps us to analyze the dynamic nature of the Arctic's environment and its socio-cultural and geopolitical features, and thereby enhance our understanding of the Arctic challenges across the region and globally. Solving the Arctic's problems and problems caused by prevailing legal norms requires a critical legal mindset; indeed, this is what Arctic law provides us with – a mindset enabling us to advocate for a just, fair, and equitable Arctic.

For more on this, read...

Shibata A and Others (eds), *Emerging Legal Orders in the Arctic: The Role of Non-Arctic Actors* (1st edn, Routledge 2019) <https://doi.org/10.4324/9780429461170>