

Effective Techniques for Teaching about Other Cultures and Legal Systems

Systems within a system: teaching international law through interactive learning and simulations.

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This comment explores teaching about other cultures and legal systems through the lens of a teaching technique that was designed primarily for a different purpose. The Inkundla ye Hlabathi project of the Law Faculty of the University of Cape Town (UCT) was aimed primarily at improving students' sense of the relevance and practical application of international law, particularly in an African setting. But an almost incidental aspect of this project suggests a route for learning and communication between cultures and legal systems.

Inkundla ye Hlabathi is a phrase in isiXhosa, the African language of the Western Cape, which translates as "World Forum". It was conceived by Salim Nakhjavani of the Law Faculty of UCT, designed by him, myself and Shihaam Donnelly in 2006-7 and piloted in 2007. This year the project has been developed and improved under Salim Nakhjavani's leadership. In my discussion of the project, I am drawing primarily on its pilot year, but also using some of the subsequent experience. Here I would like to thank Salim Nakhjavani for providing me with some useful pointers from the teaching experiences of 2008.

One of the inspirations for Inkundla ye Hlabathi was the simulations which the international law course had held in previous years. In these simulations, lecturers would set out an international incident, often relying on historical events, and the students would volunteer to represent states involved in the incident within a forum such as the UN Security Council. These events were always very popular, for a number of reasons. First, simulations provide the fun and excitement of a competitive game. Second, they give the students a chance to apply their international law knowledge to a concrete situation. A third, but related advantage, is that they allow students to have the experience of a practicing lawyer - in effect, students get the chance to emulate their role models, a situation identified as a powerful buy-in by education technologists. Finally, and somewhat to their own surprise, most of the students found that they identified strongly with their "adoptive" state. They took care to reflect the position which their states did adopt with respect to an historical event, or which they would be likely to adopt in hypothetical situations. They also substantiated and supported their states' positions with their own legal and factual research.

Inkundla yeHlabathi was a much more ambitious project, envisaging a year-long, continuous simulation. Students were divided not into tutorial groups, but into a number of African states, the United States of America, a liberation movement and a human rights organization. Students were told they were legal advisors to these entities and presented in the course of the year with a succession of historical events, starting in 1960, to which they had to respond, using the principles they were learning through the course.

In teaching international law, we were teaching a single legal system, albeit one experiencing tension between some of its established, and some of its emerging, principles. But there is considerable scope for variation between states in their application and understanding of international law and their participation in the international regime. Because international law is, in

theory, based on the consent of states, each legal subject in international law enjoys more leeway in accepting and interpreting many international norms. In addition, states' domestic application of international law follows a number of possible models. International law is therefore a system which is deeply affected by the individual legal systems and political outlooks of its subjects. Thus, to participate in the Inkundla yeHlabathi project, students have to research a range of aspects of the states they were representing. These include parts of their domestic legal systems and their political position on current and past events.

The first example of the interaction between systems was provided in the very first lesson of the academic year of 2007. When we launched Inkundla yeHlabathi, we presented the students with a brief overview of the International Court of Justice and explained that states could choose to submit to its jurisdiction. The first task given to the groups was to choose whether or not to submit to the jurisdiction of this Court, and, if they accepted the jurisdiction of the Court, whether they would like to attach any reservations to their acceptance. The reaction of most students was encouraging and surprising: most of them demanded more time to make this decision because it was "vital to the interests" of "their" states and would need some proper research. Given some extra time, students proceeded to use it well, and the final choices of the simulated states mirrored the choices of the real states very closely.

In a second example, one of the tutorial assignments dealt with claims brought in the domestic courts of some of the states, based on an international treaty. The success of such a claim depends on whether the state in question has signed and ratified the treaty, and its own rules for the incorporation of a treaty into domestic law. There will no doubt be many more such examples as the project develops. 2008 has already seen another, student initiative to manage the constant interaction between domestic and international law:

students have begun to appoint different members of their groups to carry out different portfolios within the domestic systems they represent.

It is almost a side-effect of this teaching of one system (international law) that students come to learn a great deal about a range of other systems - that is, the domestic culture and systems of the subjects of international law. But I thought this side-effect might provide a couple of useful pointers for techniques when teachers are aiming specifically to impart knowledge about other cultures and legal systems. The pointers would be to allow students an experience of the legal system and culture from the inside, as it were, ideally in a setting where some detail of the new system affects an interest which the student has come to identify as his or her own. The second lesson that the Inkundla ye Hlabathi project suggests is that students can, and indeed, should, be allocated to systems and cultures of which they have little experience. They are not, in other words, explaining their own, familiar, legal system or culture to other students in the class; they are researching a different system, and thereby consistently, albeit unconsciously, comparing the new system with their own. Ultimately, they might be learning more about the differences between systems than about any one system itself, but the growing awareness of potential diversity on a range of legal and policy choice is itself one of the best tools for further comparative study.

A related advantage of such an approach for any type of comparative study is that it avoids the trap of juridical tourism, teaching through immersion rather than detached observation. Here the second version of the project, running in 2008, has provided a different kind of simulation, in that it is based on current events rather than historical episodes. This seems to increase the relevance of the project for students, as simulations cover current and unfolding events on the continent. It motivates the students to follow current events and understand how "their" states approach particular current problems. This year, apart from taking on portfolios within their respective groups, students also

undertook independent research into the history, culture and legal interests of their states.

From an educational perspective, Inkundla yeHlabathi has the major advantage that it rewards those who actively participate, rather than those who absorb passively. In one example from this year, a problem arose from the “shared computer network” (that is, chat room!) that had been set up to facilitate group discussions. Students from one group began to observe the discussions in other groups, leading to a dispute regarding the inviolability of State-specific chat rooms - that is, whether representatives of the receiving State or any other State might infiltrate another State’s chat room in order to gather information. A small group of students raised this problem with the teaching staff, and saw it turned into the next academic exercise, in which students applied the *Vienna Convention on Diplomatic Relations* to electronic communication.

Finally, we submit that immersion is a virtue all of its own. Another legal system or culture cannot really be understood unless the student engages with it. Furthermore, because students in the Inkundla yeHlabathi project continue to identify strongly with the state to which they have been assigned, Inkundla provides a built-in incentive for tolerance and the appreciation of diversity.

There are some disadvantages, many of which put into doubt the extent to which this technique is transferable to other disciplines. One of the chief advantages of the international law context is that it provides one, unifying system which allows the individual systems to keep communicating with one another. Without this context, groups might splinter off into disconnected study projects, losing the competitive stimulus that an ongoing simulation provides. Secondly, the Inkundla yeHlabathi project teaches systems within a system. It is possible that the “incidental” quality of the research into the

smaller, inner systems might be lost without a strong umbrella system to inform and support the process.

Thirdly, Inkundla ye Hlabathi takes students out of their comfort zones. The first is a particular challenge for developing countries, as different students in the classroom have widely differing degrees of access to, and comfort with, the technology used for the project. From the perspective of equity, an education system should avoid putting students under this type of pressure. On the other hand, a different perspective suggests that it might be a positive step to take students out of their comfort zones, because it recreates the experience which we always have when facing a different legal system or culture. By providing a structured process whereby students are encouraged to engage with the unknown and the different, the Inkundla type of approach slowly provides the tools and incentive for intercultural dialogue in all areas of life.