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Mostafa Haider

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PERFORMING COMMUNITY IN AN INTERNATIONAL LAW CLASSROOM

MOSTAFA HAIDER *

This article explores the challenges of teaching community in an international law classroom. It does this in the context of a core assessment component of a Public International Law unit, namely reflective participation in classroom discussion, that the author teaches at Curtin Law School. The article highlights the importance of students' engagement in class discussion and introduces a performance analysis to the structure of in-class discussion. It locates community as an open, malleable and contested theme in international legal scholarship. While the article engages with selected readings on community from a Public International Law unit, it argues that students and teachers experience community anew every time they perform it in a classroom. It reformulates community as a political sublime by recourse to a performative lens to class participation and reflects on the hope that this reformulation generates for international law students of today and global policymakers of tomorrow.

I INTRODUCTION

In keeping with the theme of the 2024 *Western Australian Teachers of Law* ('WATOL') conference, this article explores the thinking about and practice of community in my own teaching. This article asks: How does the idea of community fare in my Public International Law class that I have been teaching now for some years? It considers the many facets of community in international law and in the teaching of it. It particularly looks at the remaking of community through the mundane discussion of it in a Public International Law (hereafter 'international law') classroom.

Community is, like most ideas and themes in international law, open to diverse interpretations.¹ This openness is often due to international law's entanglement with global politics.² Much of what students and teachers of international law do, by way of teaching and research, is at once legal and political and often the distinction is not clear.³ It is hard to engage in international law topics including community without encountering those that are considered political.

* Mostafa Haider is a Lecturer at Curtin Law School, Curtin University.

¹ See Parts III and IV for discussions on this.

² See Fleur Johns, *Unruly Law: Non-legality in International Law* (Cambridge University Press, 2013) 1.

³ For analysis of how international law draws distinctions, see David Kennedy, *Of War and Law* (Princeton University Press, 2006).

The article does not, however, attempt to disentangle law from politics to make sense of community. Instead, the article approaches community as a performative sublime in the context of my international law classroom discussion. It argues that classroom discussion often renders community a political sublime which is experienced anew every time students and I perform it. It does this by drawing inspiration from contemporary critique of expertise that combines performance analysis with aesthetic theory. The article suggests that as students and teachers perform community in the classroom, they are more likely to embrace a more context-specific, progressive and egalitarian posture of community than an abstract textual interpretation of and attachment to it.

The article has four substantive parts. First, Part II lays out the settings of an international law class that inculcates an open and reflective debate of international law topics among students. Part III briefly looks at the concept of international community and the inherently contested nature of this concept. Part IV looks at what is at stake in the discussion of community in my international law class, which I frame as community in struggle drawing on Fleur Johns' work. Part V reconstructs community as a performative sublime in the face of the enormous challenges of grasping the struggles and intricacies associated with community. Finally, by way of conclusion, the article reflects further on the hopes of remaking community in an international law classroom and beyond. But before all else, we must understand the basics of the unit and assessment, which will set the scene for the later discussion.

II THE STRUCTURE OF CLASS DISCUSSION IN PUBLIC INTERNATIONAL LAW

I teach Public International Law as a five-week intensive trimester unit at Curtin Law School. This means that all lectures and tutorials are conducted within the first five weeks of teaching. The unit is part of the elective offerings and student numbers typically range between 10 and 20. As a relatively small unit, I have been entrusted with unit coordination as well as all lectures and tutorials of this unit for the past seven years. Currently it has three assessments: reflective participation (assessment 1), presentation on a selected theme of international law (assessment 2) and a research paper on an international law topic (assessment 3).

Assessment 1 has two interrelated parts. Part 1 of assessment 1 comprises individual participation by students in class discussion. Part 2 of assessment 1 comprises a very short written paper based on students' reflections on participation and discussion in tutorial class. The basics of part 1 are that students are required to read a few prescribed readings and then discuss them in class. The readings are predominantly scholarly articles

and book chapters. The discussion of the prescribed reading in the classroom is centred around three general questions, which are as follows:⁴

1. What have you made of the article/book chapter? Explain, in your own words, the key takeaway from each of the readings.
2. Are there any ideas/reasoning/arguments/examples from each of the readings that strike you as particularly interesting? Explain, by reference to the reading, why, in your view, the idea/reasoning/example is interesting.
3. Do you think that the paper is well written and well substantiated? Explain whether or not the author has provided strong evidence to support their assertions and/or argument(s).

Students are expected to structure their reading of the prescribed article/book chapter by recourse to the three questions above which are evidently open and wide. Reading an article/book chapter means having a conversation with the author of the piece. This exercise requires students to continue that conversation with their peers and tutor in class. The three questions, in short, serve as a basis for opening up the conversations with each other in class. The idea is that an open and inquisitive reading and engagement will help to sharpen students' independent thinking and analysis, which will be helpful for both assessments 2 and 3, that is, the presentation and research paper.

Recent scholarship has characterised class participation as among the 'enablers of student academic performance'.⁵ That is, that student-centred approaches to learning are key to participation, although there is some critique of centring students too much in the process of learning.⁶ This article is not, however, about the pedagogical value of class participation. Suffice to say, class participation as a mode of knowledge production has increasingly been in vogue in recent years.

I have a different pedagogical intuition for the assessment 1 part 1 class discussion. Inspired by an innovative study on law, expertise and performativity,⁷ I imagine the classroom more as a theatre and the class discussion as a drama.⁸ I am both an actor and spectator in the classroom drama even though formally I play the role of a moderator and marker. Class performances reenact some basic ideas and structures in international law. Thus, a dramatic performance lens better serves the purpose of the assessment 1 class discussion.⁹

It is within this creative and dramatic setting that students and I broach the idea of community. International lawyers use community in both singular and plural sense. In its

⁴ The questions are reproduced verbatim from the assessment 1 instructions for students.

⁵ Javier Márquez et al, 'Class Participation and Feedback as Enablers of Student Academic Performance' (2023) 13(2) *Sage Open*.

⁶ Michael F Mascolo, 'Beyond Student-Centered and Teacher-Centered Pedagogy: Teaching and Learning as Guided Participation' (2009) 1(1) *Pedagogy and the Human Sciences* 3

⁷ See Deval Desai, *Expert Ignorance: The Law and Politics of Rule of Law Reform* (Cambridge University Press, 2023) and the discussion in Part V.

⁸ There seems to be an increasing appetite in the higher education system to see classroom as a theatre. See, eg, Patrick Sexton, 'Bringing Theatre into the Classroom' (News, 16 March 2021) <<https://www.gse.upenn.edu/news/educators-playbook/bringing-theater-classroom>>.

⁹ Although not about classroom, for an interesting take on this dramatic performance lens, see Danish Sheikh, *Love and Reparation: A Theatrical Response to the Section 377 Litigation in India* (Seagull Books, July 2021).

singular manifestation, international lawyers often refer to the 'international community' and in its plural manifestation, communities of various modes and interpretations are at play in international law. Despite being a ubiquitous concept in international law, the unit does not have a separate topic entitled 'community'. Instead, community remains an overarching theme in international law. The next two parts look at what thinking of community is at work in international law in general and in my teaching of it in particular.

III 'INTERNATIONAL COMMUNITY'

International law textbooks frequently use the term 'international community' without specifying what exactly they mean by it.¹⁰ The same is the case with commentators, including my international law class students, as they often use the term without necessarily clarifying what they mean by 'international community'. Beyond textbooks, international lawyers have written a lot on the topic of 'international community' and debate community in a variety of contexts.¹¹ I will, however, limit my discussion here mainly to the prescribed tutorial readings for the unit.

As with many ideas in international law, the idea of 'international community' is a contested and controversial one. International lawyer Martti Koskenniemi states that the concept of 'international community' is not without controversy as international lawyers with opposing agenda invoke 'international community' to advance their legal arguments.¹² These opposing postulations of 'international community' are often manifested in the selective invocation of human rights violations and protection by states and other actors with differing agendas.

Some arguments identify 'international community' with the United Nations ('UN') system of an international community of states, where most states are a member and are formally assumed to be equal.¹³ The UN is tasked to serve the common interests of all nations.¹⁴ But neither the UN nor statehood necessarily guarantee the kind of protection that one would assume by virtue of being a member state of the UN. The UN can do very little when people become stateless or are denied statehood.¹⁵ In short, the UN, itself a political settlement after

¹⁰ See, eg, Emily Crawford, Alison Pert and Ben Saul (eds), *Public International Law* (Cambridge University Press, 2023); Donald Rothwell et al (eds), *International Law: Cases and Materials with Australian Perspectives* (Cambridge University Press, 3rd ed, 2018). My research about textbooks is not exhaustive. But generally speaking, 'international community' remains more a ubiquitous rather than a well-defined concept in textbooks.

¹¹ These writings on 'international community' mostly appear in the form of scholarly journal articles. For some representative works, see Georges Abi-Saab, 'Whither the International Community?' (1998) 9(2) *European Journal of International Law* 248; Dino Kritsiotis, 'Imagining the International Community' (2002) 13(4) *European Journal of International Law* 961.

¹² Martti Koskenniemi, 'International Law in the World of Ideas' in James Crawford and Martti Koskenniemi (eds), *The Cambridge Companion to International Law* (Cambridge University Press, 2015) 47, 57–8.

¹³ For the limits of the UN on rethinking community, see Pemmaraju Sreenivasa Rao, 'The Concept of "International Community" in International Law and the Developing Countries' in Ulrich Fastenrath et al (eds), *From Bilateralism to Community Interest: Essays in Honour of Bruno Simma* (Oxford University Press, online ed, 2011) 326.

¹⁴ See the preamble to the UN Charter: <<https://www.un.org/en/about-us/un-charter/full-text>>.

¹⁵ See, eg, David Kennedy, *The Dark Side of Virtues, Reassessing International Humanitarianism* (Princeton University Press, 2004).

the Second World War, and its affiliate judicial and other organs, often operates more as a moral rather than a legal authority.

The reading list in the Public International Law unit is dynamic and gets restructured roughly every three years. Nonetheless, weekly readings I have included in the unit are somewhat critical of the idea of an international community. The invocation of a moral authority via international community often serves to embolden the claims of international civil society, itself a contested theme in social science and humanities.¹⁶ But there are other ways to envision community in international law, to which we turn now.

IV COMMUNITY IN INTERNATIONAL LAW

While 'international community' remains a contested theme in international law, it is often invoked in situations of conflicts and crises. Most recently, Fleur Johns, in the 9th TMC Asser Lecture, offered a rethinking of community in international law based on some recent International Court of Justice decisions ('ICJ'), most notably *The Gambia v Myanmar* and *South Africa v Israel*.¹⁷ At the heart of Johns' inquiry into community is a shift from the universalising conceptions of common interest to a more specific meaning of connection and common interest that are particular to a given dispute. Johns suggests that community frequently comes to be a focal point when there is a struggle involved.¹⁸ As in Johns' paper, the history of anti-colonial struggles was the main connecting thread for *The Gambia* and *South Africa* to institute cases on behalf of the Rohingyas and Palestinians. In other words, the struggling communities of Rohingyas in Myanmar or Palestinians in Gaza were connected with physically and culturally disconnected communities of *The Gambia* and *South Africa* by these recent ICJ cases. Johns sees an experimental reconfiguration of 'international community' by the ICJ arising out of these particular claims across struggling communities in the past and present.¹⁹

While Johns reinterprets ICJ's remaking of 'international community' via a specific set of disputes tied with a specific set of struggles, I put greater emphasis on the struggles of diverse communities seeking redress in international law. Put differently, it is this sense of communities in struggle that is at stake in both my teaching and scholarship in international law. This focus on community in struggle is demonstrated in my choices of readings assigned to students. The prescribed tutorial readings focus on, among other, feminists, Indigenous people and the third world people – all of whom have had their own sets of struggles, often manifested in the shadow of international law and politics.

¹⁶ Gayatri Chakravorty Spivak, 'Scattered Speculations on the Subaltern and the Popular' (2005) 8(4) *Postcolonial Studies* 475, 481–2.

¹⁷ Fleur Johns, *Connection in a Divided World: Rethinking Community in International Law* (9th Annual TMC Asser Lecture, Asser Press, 2024).

¹⁸ *Ibid* 38. For an example of international legal arguments as a terrain for struggle, see David Kennedy, *A World of Struggle* (Princeton University Press, 2016).

¹⁹ Johns (n 17) 44.

As alluded to in the previous part, I sidestep the intellectual quandary of the best ways to reinterpret 'international community'. It is perhaps less fraught to imagine community in the temporal and contextual settings of a particular struggle. For example, as we annually gather around WATOL, we too struggle to put together the past, present and future of legal education in Western Australia. Even the local jurisdictions evoke community in this precise sense of struggle and vulnerability.²⁰

However important or exciting it might seem to explore communities in struggle, it is also impossible to really grasp the overwhelmingly diverse aspirations of these communities, alleged legal violations of which sometimes feature in the form of international legal disputes before international courts such as the ICJ. To tackle this fear and fragility of our grasps, I suggest that we approach the idea of community as a performative sublime. The next part explains what I mean by community as a performative sublime.

V COMMUNITY AS A PERFORMATIVE SUBLIME

Let me briefly explain what I mean by community as a performative sublime.²¹ The idea of community, as the foregoing discussion suggests, is often heavily contested. What counts as an 'international community' or an Australian community is easy to tackle if we consider them from a legal positivist perspective. An 'international community' from a legal positivist standpoint can be seen as the community of nation states serving common interests of global peace and security. Similarly, an Australian community can be seen as a community of citizens defined by their common allegiance to Australia.

As easy as it might seem, that is not how communities in struggle view their membership in the legal architecture of things. People without a membership of a legally recognised state, such as Palestinians and Rohingyas or people who have been denied their right to live in their ways of living despite having formal membership within a given community, such as First Nations Peoples in Australia, may not feel like they belong to their assigned national and 'international community'. In short, formal granting of membership to a community does not necessarily end the struggles of a group of members of a given community.

Under conditions of these struggles, I suggest that we pay attention to the interplay between knowledge (or lack of it) and action. Students not only prepare for the readings but also perform in the classroom and hence they do both thinking while preparing and performing while participating in the class discussion. This interplay of knowledge and action gets particularly interesting when my students and I imagine and act upon a sense of community in struggle in the classroom. As students of international law debate international law topics

²⁰ See, eg, Department of Communities, Government of Western Australia (Web page, 29 January 2025) <<https://www.wa.gov.au/organisation/departments-of-communities>>.

²¹ I develop this idea of community as a performative sublime drawing on Deval Desai, *Expert Ignorance: The Law and Politics of Rule of Law Reform* (Cambridge University Press, 2023). Connecting the Kantian concept of sublime with that of performance analysis, Desai constructs the rule of law expertise as a performative sublime. Although Desai suggests greater utility of performative sublime for expert projects of institution building, I found his innovative framework equally useful in imagining community in struggle.

in the classroom, they often find it almost impossible to imagine a neatly defined international or national community in the face of the deconstruction of community by differently situated groups of that community. Hence, students begin to engage with these struggles of a real and imagined community and almost always enact a provisional community by both accommodating and rejecting this or that claim of the communities in struggle. An 'international community' or for that matter any other community, in other words, is a community that is enacted anew every time students and teachers try to imagine it, shifting the conception from one domain to another as the topic under discussion demands.

This dynamic of knowledge and action are what make and unmake a community. Based on our sense of connections and commonalities, participants in the classroom imagine the experiences of Palestinians or the Rohingyas or the First Nations Peoples. It is these dynamics that enable us to claim or reject a part of us in the neighbouring community, professional community, national community, regional community and so on. But there is also an element of incomprehensibility for us to imagine the rights and freedoms of a community that we may not belong to and yet a community is made not only by its own members but also by outsiders. It is this sheer incomprehensibility of our imagination and action or 'the fragilities of our grasp of experience'²² or the sublimity of enacting communities in struggle that I get to experience in the classroom discussion.

At the core of this methodological gesture is to take student performance as seriously as their thinking.²³ The most important aspect of the performativity of the community is that it merges audience with actor. As students think and act in the classroom as a listener and speaker, they continuously shift their roles. They also importantly bring up their own sets of convictions and emotions, often a fusion of the personal and political. In reflecting on the idea of community, students and myself are thus cast as both knowledgeable actors and ignorant audience/spectators.

Recognising that class participants, including myself, do not really know how to comprehend a community in struggle that is not our own does not actually shut the door for rethinking the struggles of that community. Rather it opens up possibilities to redirect our attention to better connect with communities in struggle and with their calls for basic freedoms and equality. In short, a constant search for grasping the set of interests of communities in struggle despite our limitations is what makes community a political sublime. When we approach this political sublime via class participation, community comes to be a performative sublime.

In a theatrical performance of classroom, I get glimpses of some opinions and expressions, approval and disapproval, worries and reflections. Students thinking with the authors of weekly readings and arguing for and against the author joins the imagined communities in

²² Michael Shapiro, *The Political Sublime* (The Duke University Press, 2018) 4.

²³ This methodological gesture is different to 'active learning' designed to enhance student learning outcome: Paul Baepler et al (eds), *A Guide to Teaching in the Active Learning Classroom: History, Research, and Practice* (Routledge, 1st ed, 2016). For methodologies of law as performance in legal research, see Sean Mulcahy, 'Methodologies of Law as Performance' (2022) 16(2) *Law and Humanities* 165.

struggle, but they also begin to imagine a community that is not quite what the weekly readings and their authors construct. Looking at community through the spectacle of class participation and performance opens all kinds of interpretive possibilities.²⁴ It becomes possible not only to create and recreate but also cancel out communities in struggle. Interestingly, as much as speaking in the classroom enacts some versions of communities, so do silences, approval, stare and so forth. By recourse to a performance analysis, it is possible to make more than one meaning out of many small bits of performances. In short, a performance lens helps make us more attentive and open to, rather than dismissive of, diverse ways of looking at a community and its struggles.

Encountering classroom discussion of community in the mode of performative sublime has taught me two particularly important lessons.

First, class performance in the above mode creates a scope of 'rethinking' representation and perhaps fostering democracy in the classroom.²⁵ Even though students get to engage with particular struggles of communities via their performances in classroom, it is not going to be an overstatement that some of these students are going to be making choices in their professional lives that will have an impact on the continuing struggles of various communities. These students' thoughts and actions will not only be influenced by their own personal and political positions but also by their surroundings and importantly, by the discussions that they have had early on in their lives.

Second, by performing community in classroom, everyone gets to revisit their own sense of hierarchy that often informs our own place and position in a given society. I am glad that many students quickly recognise their own privileges in their local, national, regional and international settings. They also gradually recognise that rights are not automatically conferred upon a struggling community. These have to be fought for, and often the voices that are at the forefront of these fights may present to some as too provocative and perhaps controversial to work to achieve their goals.

VI CONCLUSION

A performative lens to my classroom discussion gives me hope that my students will help make a better community than the one that they currently live in. After all, my own professional community, that is, the community of teachers, is also a community of hope.²⁶ While the spirit of community is the coming together of people of disparate interests, the task becomes challenging when the small community of the classroom tries to imagine and enact a community not their own. But there is an interesting side to this discussion as well. It

²⁴ This is a more mundane interpretive take of communities in international law than the textual interpretation of it. See, eg, Michael Waibel, 'Interpretive Communities in International Law' in Andrea Bianchi, Daniel Peat, and Matthew Windsor (eds), *Interpretation in International Law* (Oxford University Press, 2015) 147.

²⁵ The sense of democracy that I have in mind comes from a close reading of Jacques Rancière, *On the Shores of Politics*, tr Liz Heron (Verso Books, 2021).

²⁶ bell hooks, *Teaching Community: A Pedagogy of Hope* (Routledge, 2004).

teaches us the power of ideas and imagination and of how openness to ideas can generate a sense of hope, even if momentarily, in the classroom.

As discussed in Part IV, Johns sees egalitarian possibilities of community-making out of the ICJ's recent engagements. I too seek such possibilities by introducing students to communities and perspectives that they might have not otherwise explored before. Weekly readings in which students are required to participate are an attempt to connect with voices that are otherwise marginal or poorly understood in the mainstream legal and political scene. We cannot foster a sense of community – local, national or international – unless and until we are actively listening to and engaging with communities that are often sidestepped as being political and/or marginal.