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Making Local and Indigenous Knowledge Part of World Trade Law

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This paper argues that local and indigenous knowledge (LIK) must be linked into emergent world trade law discourse. LIK is used here to refer to indigenous knowledge and knowledge that is local. Indigenous knowledge is quite well established as a special domain. Local knowledge may be traditional. However, it may be the case that it sometimes effectively derives from traditional sources but may appear to be purely contemporary, because a community has been forced from their home. For example, if community systems blossom on the margin of urban societies, this manifestation should not be ignored. In legal writing, for example, De Sousa Santos might be cited in the latter case.¹ He uses the idea of the informal law of the *favela* in Rio to indicate the relevance of a system that is non-professional, accessible, participatory, and consensual. It would seem strange that the dispossessed should be ignored because they have been uprooted. It may be that this is the very reason why they should be listened to more. Likewise, it would seem that if a country has gone through a process of industrial transition, then the profile of the indigenous is often ignored. Similarly, if a society has actually integrated ideas from indigenous cultures into its mainstream philosophy, that does not mean to say that LIK does not exist, but only that it may appear to come from the center rather than the network of local communities themselves. This could possibly be argued in relation to China, for example.

The academy in general is one appropriate vehicle for the integration of such knowledge. In addition, it appears that the academy could itself do with a little healing. The benefits of such integration should be to strengthen local knowledge that is worth protecting and at the same time influence the development of institutions that could benefit therefrom. One area that is increasingly important to all people is the regulation of world trade. The process and result of making world trade rules has significant implications. In the latter case, it is submitted that the logic and lessons of LIK could be brought more into the academic mainstream itself. These could then begin to be translated into usable principles that may help in the development of concepts necessary to provide a counterweight to models based purely on allocative efficiency in the evolution of world trade discourse. The example of the Zapatistas is particularly germane. They were formed to oppose NAFTA, because of the destruction of their local corn-based economy. In opposing the evolution of world trade, they have linked into other anti-globalization movements around the world. This paper explores the opportunities for deeper engagement between local and indigenous world-views and contemporary ontologies underlying world trade.

Issues of indigenous knowledge must be firmly located in commitments to the protection of indigenous people. That legal regime is developing and crystallizing through the

efforts to articulate indigenous rights at an international level, the linkage of indigenous rights to environmental law developments and individual national cases, particularly in Australia and Canada. The legal environment of the analysis of particular issues requires perhaps a map of the intellectual terrain, or at least an awareness of approaches that may be taken to negotiate it.

The approach here is described as **pragmatic cosmopolitanism**. The pragmatic approach is well established in philosophy and jurisprudence.² Posner argues that pragmatism must have,³ (a) a distrust of metaphysical entities “viewed as warrants for certitude in epistemology, ethics or politics,” (b) an insistence that propositions be tested by their consequences, and (c) an insistence on judging projects by their conformity to social or other human needs. Posner emphasizes, in relation to pragmatism, that: “It signals an attitude, an orientation, at times a change in direction.”⁴ Its chief benefit is that it asks the consequences of particular courses of actions.⁵ However, this approach is located and thus tethered to reality by cosmopolitanism. Barry argues that a cosmopolitan approach can be traced to the Stoics and is characterized by commitments to individuality, equality, and universality.⁶⁻⁸

Cosmopolitanism is supported by a few moral and political philosophers, such as Charles Beitz, Thomas Pogge, and Peter Singer. It is probably the working creed of officials in some United Nations Agencies such as UNICEF and the WHO, and NGO's such as Amnesty International, Oxfam and Greenpeace.... Like nationalism and statism, cosmopolitanism comes in many forms. Utilitarianism, for example is a form of cosmopolitanism, its main principle asserting that everyone is to count as one, no more and no less. Other cosmopolitans give Rawlsian or Aristotelian justification for their universalist perspective. For example, Beitz and Pogge suggest that nationality, like peace and gender, is arbitrary from a moral point of view and thus equally irrelevant to a Rawlsian distributive scheme. Nussbaum argues that as “citizens of the world” each of us is entitled to the conditions required for the exercise of our own basic and important capabilities.

An appropriate approach would be thus one of pragmatic cosmopolitanism in view of the need to have an approach that promotes the interests of local and indigenous people and their knowledge and the need to have a non-parochial view in order to do so.

Cosmopolitanism suggests a disposition that is open and inclusive but not relativist, one that looks at universal patterns, issues, and approaches thereto within the phenomenon of law. It is close to “holism,” especially insofar as it can be argued that there is a major dichotomy between holism and atomism in legal analysis.⁹ Samuel argues in relation to the critique of narrow epistemological approaches in law that are narrowly conceived as merely comprised of rules:¹⁰

The thesis that to have knowledge of law is to have knowledge of rules reduces legal method to an ars hermeneutica. This is dangerous because law is equally about the causal, functional, structural, actional and dialectical schemes, as the case analysis ... has dearly shown.

The adoption of a cosmopolitan approach avoids an unduly rules-based concentration. The motivation is reasonably clear. In an interdependent world, national legal systems must respond to international issues such as the movement of people or terrorism and that response, for example, may have direct implications for existing approaches in national systems. This may include the reduction of the level of protection of rights in mature legal systems. That is related to the fact that states and people participate in the evolution of global legal structures. Helena Kennedy puts it simply:¹¹

In a globalised world we have to find a common language of law: not creating one universal system but establishing shared principles and fundamental values.

What is the basis on which indigenous rights should be protected? That may depend on each particular individual's perspective. However, on a legal basis it seems clear that the protection of human dignity that underlies most international instruments on human rights, on an individual and (where appropriate) group basis provides a ready-made justification both legally and philosophically to justify the protection of indigenous rights. This has direct implications in favor of recognition of indigenous knowledge systems. Thus it is suggested that a universal system can accommodate the legal rights of indigenous people and that this is ultimately a potentially superior approach to a relativist one.

The Distinctive Nature of Indigenous and Local Knowledge

Yeats's poem *Gratitude to the Unknown Instructors* might apply to the invisible and forgotten constructors of indigenous knowledge upon whose back we were all carried.

*What they undertook to do
They brought to pass;
All things hang like a drop of dew
Upon a blade of grass.*

Indigenous knowledge is distinctive. Native thinkers, whether historians, lawyers, philosophers, poets or theologians in recent decades have challenged presumptions and norms that permeate western philosophy.¹² Historian Donald L. Fixico argues, for example, that:¹³

Native Americans and Anglo-Americans differ considerably in their value systems. The latter has established a system emphasising capitalistic individual gain and individual religious inclination. By contrast, American Indian values are holistic and communally-oriented.

Professor Tinker writes that in the context of space and time:¹⁴

That there is and has been historically a fundamental difference between Euro-American and American Indian worldviews emerging from different priorities of space and time has been long recognized by American Indian observers of Euro-American cultures, even if it has not been regularly noticed by the academic specialists or Euro-American observers of Indian cultures.

Winona LaDuke explains that, in relation to the environment:¹⁵

According to our way of looking, the world is animate. This is reflected in our language, in which most nouns are animate.

Different conceptions and values associated with space, time, theology, language, philosophy, justice, animals, and land are cited as part of the worldview. They will not necessarily be consistent across the spectrum of indigenous peoples, but there will inevitably be common features. Particular features may include a strong sense of community, culture, relationship with the environment, involving concepts such as kinship, collectivity and interconnectedness. The common strands should inform an indigenous educational ethos.

The origin, attainment, and quest for indigenous knowledge is different. It "may come

from ancestor spirits, vision quests, or lineage groups that transmit it orally but not necessarily from a specific individual act of discovery.”¹⁶

Although different, it is no less sophisticated in its fabric; thus,¹⁷

Scientists use the term indigenous knowledge systems (IKS) to describe the totality of information, practices, beliefs, and philosophy that is unique to each indigenous culture. Such a system may be commonly held within a community or indigenous society, or it may be known only to specialists, tribal elders or lineage groups. The term traditional ecological knowledge (TEK) describes those aspects of an indigenous knowledge system that are directly related to the management of and conservation of the environment.

In relation to TEK, Johnson explains that it is “... a body of knowledge built by a group of people through generations living in close contact with nature. It includes a system of classification, a set of empirical observations about the local environment, and a system of self-management that governs resource use.” However, it is also important to recognize the general logic, approach, world-view, and philosophy of a community. This may not be capable of easy articulation. To quote Bruce Lee: “You can’t organize truth. That’s like trying to put a pound of water into wrapping paper and shaping it.”¹⁸

This sort of knowledge often has not been recognized by the main bodies that control knowledge. For example, the churches such as the Catholic Church may have seen the holders of indigenous knowledge as hostile to their interests. The holders of traditional knowledge may have directly or potentially opposed the Christian worldview. While the Catholic Church has long since changed its position, it is important to contextualize that history in its time. Thus, while romanticism may prevail in certain quarters, it is important to mention that the Aztecs, for example, terrorized their neighbors and that there were many brutal practices in South America that can only be defended with a very relativistic argument. It is submitted here that there is a conundrum about indigenous knowledge that needs to be answered. What if the surviving knowledge is a destructive and negative body of knowledge? Obviously this question depends on the perspective of the viewer but does require some answer. Likewise, the historical growth of imperial power in China was by definition associated with a degree of centralization and subjugation that involved perhaps both a destruction and an incorporation of indigenous knowledge.

It is submitted that local knowledge may be of this type or it may have been distanced from its local context through the interactions of others, yet remain in a more elusive but nevertheless pervasive manner. The LIK often will differ in its epistemology and ontology. In particular, it may present an holistic model of knowledge that differs from an individualistic and atomistic view of knowledge. The study of schemes of intelligibility in the social sciences reveals the distinctive nature of different constructs of knowledge. Furthermore, the LIK may be more related to concrete community needs than to abstract ones. It is worth pointing out that indigenous legal knowledge is sometimes overlooked as part of the construct of LIK, although the discipline of anthropology was arguably largely dependent on the need to understand legal systems in their growth. LIK often will involve deeper conceptions of meaning, relevance, and significance and therefore be better placed to recognize the complexity of both individual and community experience than other models that are predicated on different epistemologies and ontologies. Even within that framework, however, it would be a mistake to forget legal knowledge. For example, Robert C. Ellickson, who has

become in vogue for his book *Order Without Law: How Neighbours Settle Disputes*,¹⁹ argues that people govern themselves by informal rules without the aid of the state. However, while this is arguably in favor of local knowledge and practices, it might arguably support the outsider against the indigenous. Cattle ranchers in the western United States, for example, are unlikely to be of Native American origin. That the informal rules and norms found may reflect the transplantation of European legal norms was not considered.

The Value of Local and Indigenous Knowledge

The value of LIK derived from its distinctive nature as adumbrated above. There are a number of obvious contexts of value of LIK; four are mentioned here briefly.

(1) The first value is usually to the community itself. The LIK may provide the basis of a cohesive and sustaining community with role definition and adaptation appropriate to the environment or place where the community operates. The LIK may represent the most efficient storage system of necessary knowledge without which life would be difficult or less rich. The knowledge is directly relevant and applicable. Therefore, the protection of indigenous and local knowledge may serve to maintain the social apparatus and context of operation.

(2) The first value may be linked to the second: the concept that that which is useful for one community or society may benefit another. All humanity has been advanced through interaction, learning, and borrowing of particular practices and LIK. This may be both positive and negative in the mode of occurrence. The practice of bio-prospecting largely reflects the way that societies have struggled for others' knowledge over the millennia. The context of the operation of pharmaceutical industries is particularly relevant.

(3) A third value is the value of the construct of the knowledge itself. This is the one that may be more relevant to the academy. It is submitted that the holistic nature of LIK may be its greatest value as an example of a possible pathway from the malaise of the Western academy. This, in turn, relates to wider issues that the academy faces, such as globalization.

(4) It is also important to understand the local and indigenous context. That is why I have used the example provided by a postgraduate student I met when teaching in Changsha recently on the subject of competition law. In the course of a tour of Mao-Zedong's birthplace, we began to discuss the issue of the local in the context of international issues and he used the example of the betel nut industry in that part of China. As I thought it was a useful example I asked him to write a brief case study of it, which is incorporated in this paper. The lesson of this for me is that the comprehension of local context is of critical importance.

Thus LIK has a potential hierarchy of values. As part of a virtuous cycle of knowledge, it is submitted that this could assist the academy. For example, it could:

- inform ongoing debates about academic conceptions of knowledge,
- corroborate the need to expand methodologies,
- validate and improve existing methodologies, and
- provide alternative or complementary models of academic investigation.

The Need to Understand LIK and to Heal the Sickness in the Academy

LIK needs to be understood for its own sake; this is related to the value of LIK as mentioned above. In addition, there are some very specific drivers of such an agenda. Indigenous scholars

have grappled with existing systems and have risen to the top in certain cases. They are in a position to criticize Western systems on their own terms and thus may be less tolerant of certain assumptions that may have gone unchallenged by a less sensitive audience hitherto. There also may be a spirit that seeks to genuinely support the greater expression of indigenous knowledge as important in the overall construct of knowledge. More importantly, there are students who want to learn more about this system.

This agenda creates specific challenges. For example, if one thinks of the challenge of legal education at an indigenous or aboriginal university, then specific challenges emerge. This author argued, seven years ago, that such a challenge would create specific needs.²⁰ These included obvious imperatives such as the need to:

- respect traditional systems of knowledge
- recognize alternative world views
- recognize alternative modes of encountering knowledge
- recognize alternative patterns of authority
- reflect and communicate aboriginal worldviews
- respect aboriginal community needs and distinctiveness
- reflect aboriginal concerns

However, these imperatives are only obvious when one is sufficiently aware of them, whether that occurs voluntarily or by pressure from another. Existing approaches to the re-interpretation of knowledge and methodology, such as from the feminist field are useful parallel examples.²¹ But beyond the direct imperative, there is a deeper argument that relates to the nature and construction of knowledge in the academy and the need to use the example of the treatment and incorporation of LIK for the health of the body itself. Thus it was argued that when assessing communications technology in legal education at a future aboriginal university one would need to

- ensure appropriate introduction
- respect the norms appropriate to the educational ethos
- satisfy relevant learner needs
- respect aboriginal worldviews
- respect the character of aboriginal education
- assist communication to and from elders
- be based in the community
- avoid interference or interposition from extra-community control
- be linked into global networks

Beyond that, there is the question of the relationship between indigenous knowledge and law itself. It is no doubt controversial in certain quarters to allege that there is a sickness in the academy. It is submitted here, however, that it is a simple and useful allegation. That the academy may be or is capable of being involved in some of the worse episodes in human conduct cannot be disputed. This can be seen in Nazi Germany, for example, where the involvement of people with Ph.D.s in some of the worst decisions and operations is remarkable. But that is not the “normal” state of affairs. The academy in Europe often has been complicit in the infrastructure of conquest and dispossession of indigenous people in the Americas, with notable exceptions.²² Without looking for extreme examples, there are simpler

explanations. A standard one is that of the mechanistic mind set that is often linked to Cartesianism. The mechanistic critique suggests that a machine-like view of the world has become significant and that this has had negative consequences. It is often seen as (or associated with) anti-Cartesianism, whether rightly or wrongly, but it would be a gross oversimplification to apply it too closely to law. This has been linked to a critique of scientific reductionism. Writers such as Capra have used it to explain the shortcomings of existing paradigms of science in the context of knowledge of quantum physics.²³ The basic analogy provides a useful vocabulary of criticism in relation to contemporary legal practice. Thus the worldview manifested in law might be characterized as “mechanistic.” The assumption underlying such an (often) implicit view suggests that law was perceived of as a machine that functioned in accordance with its own pre-ordained mechanisms.

The solution requires alternative or modified approaches. Sometimes that comes from the mode of thinking or analysis. Real-world analysis may be linked to the dominant worldview and thus circularly to the analysis employed as a result. For example, David Cooper, in a book entitled *Psychiatry and Anti-Psychiatry*, argued that analytical rationality was appropriate for the natural sciences but not for human sciences, and argued instead for dialectical rationality.²⁴ Cooper put it thus:²⁵

Dialectical rationality is concrete in the sense that it is nothing more than its actual functioning in the world of actual entities. It is a method of knowing in which by knowing we understand the grasping of intelligible structures in their intelligibility. In these terms we comprehend dialectical rationality as comprehensive: it must not only know objects but must, in the same act, constitute its own criteria for the (dialectical) truth of its assertions about these objects. Dialectical knowledge of objects is inextricable from knowledge and both are necessary moments in a synthetic process which we call the dialectic.

He continues,

But the dialectic is not only an epistemological principle, a principle of knowing about knowing, but also an ontological principle, a principle of knowing about being. There is a certain sector of reality, a whole group of actual entities, which we know and in which there is a movement that is dialectic. Dialectic then is both a method of knowing and a movement in the object known.

The Threat of World Trade and World Trade Law

The Zapatista movement was predicated on its opposition to regional and world trade regulation. What does that involve? The idea of world trade law is contestable. At the present time of “global legal pluralism” it is necessary to elaborate on the meaning of world trade law, although the use of the description “world trade law” would be contested by some legal academics. More well-established terms include “international economic law” and the legal aspects of international economic relations. International trade law is sometimes contrasted with international economic law in that the former is fairly confined to the narrow context of commercial transactions in many works. International business law also may be an appropriate term. The emergence of the World Trade Organization (WTO) as the central economic institution of the world economy is important. The solidity of the Dispute Settling Mechanism (DSM) is a chief distinguishing feature from the previous *General Agreement on Tariffs and Trade* (GATT) system, with greater leverage for the continuing liberalization of trade. With procedural reforms, the WTO might be said to be at the center of world trade. The

greater shift towards rule-orientation is consistent with a process often described as “juridification,” a term that suggests an ongoing legal crystallization of trade rules at a world level. Consensus-based systems that prevailed before ultimately are being displaced.

If the WTO and its emergent jurisprudence are taken to be at the center, then the penumbra of world trade law is quite wide. International lawyers are reluctant to admit that the exact scope, meaning, and import of “international law” are in a state of flux, not least as a result of events in Iraq. Jurists such Kahn suggest that most international law scholars see their role not as the study of a social practice and belief but, rather, as contributing to the progressive realization of an international order. The Appellate Body of the WTO itself has sought to clarify the relationship between its rules and the rest of international law. Ultimately there will be a period of reconciliation of both sets of rules but, in some cases, the emerging world trade rules may displace or be perceived to displace other less crystallized international rules.

At the same time, the network of regional legal communities governing the context of operation of industries (such as tourism) could be considered part of the world trade law regime. The core conceptual base EC/EU revolves around the attainment of single or common markets based on an evolving Treaty construct that guarantees freedom of movement of the factors of production. The deeper logic, of course, relates to the attempt to eliminate tensions that derive from purely national constructs of law and their associated political dogma through novel legal constructions. The European Court of Justice (ECJ) was given the task of interpreting and applying the law under the Treaties. It boldly articulated the nature of the evolving legal community. When given the opportunity, it stressed that the community was a new order in international law, based on a transfer of sovereignty, for which Member States had limited their rights.

The individual natural or legal person may find that such Treaties have direct relevance to a situation they find themselves involved in, for which no national law is of assistance or, indeed, there is a *conflicting* national law. While the GATT, WTO, and EU constructs focus on inter-State relationships, the principles of “direct effects” may allow individuals to rely on certain provisions of these agreements. However, to complicate things further, protection of international business transactions also could be considered as part of world trade law. This requires an awareness or comprehension and consideration of the formation and enforcement of international sales transactions and securities. Similarly, ideas of a new *lex mercatoria* (law merchant) might suggest the advisability of considering the regulation of the trader or merchant as part of any world system. This refers to the idea of a set of customary principles and rules that are widely recognized in international transactions. These are seen to be among the earliest forms of globalization in the legal field. Communications technology and intellectual property issues also are increasingly regulated at an international level, and have been for more than a century. The Council of Europe *Convention on Cybercrime* of 2001 and the *World Intellectual Property Organization Conventions* (WIPO) of 1996 could be cited, as well as the *Trade Related Aspects of Intellectual Property Agreement* (TRIPS) that forms part of the WTO framework.

The domain of culture and heritage protection is very relevant. But when the *World Heritage Convention* is examined, for example, it is hard to find a coherent rationale that explains to a judge the basis on which the system operates and that can be employed to settle contests. The preamble to the *World Heritage Convention* talks of “outstanding universal value” and the

need for the international community as a whole to participate in a complementary way to the state's role. The philosophical basis of protection seems clear to its advocates. Yet such an approach would seem capable of undermining indigenous rights in appropriate circumstances.

National cases can give rise to issues of legal rights of indigenous peoples that raise questions about indigenous knowledge. It is interesting that the celebrated *Mabo* case in Australia is an example of where the courts have had to grapple directly with the worldview of the indigenous people.²⁶ The problems that indigenous constructs present for legal concepts have been manifested most clearly in the context of Intellectual Property (IP).²⁷ Folklore and cultural practices are often difficult to record, preserve, and protect, as the work of bodies such as the *World Intellectual Property Organization* (WIPO) and *United Nations Education Social and Cultural Organisation* (UNESCO) have revealed. Posey puts it thus:

IPR law provides indigenous peoples with few legal courses of action to assert ownership of knowledge because the law simply cannot accommodate complex non-Western systems of ownership, tenure, and access.

The *Trade Related Aspects of Intellectual Property Agreement*, which is part of the WTO set-up, has direct implications for indigenous people. The *General Agreement on Trade and Tariffs* promotes the free movement of goods. The *General Agreement in Trade in Services* promotes the free movement of services. The growth of tourism is one of the most important consequences that will flow from this. Tourism may help indigenous communities if properly managed. Soft laws such as the *World Tourism Organisation (WTO-OMT) Code of Ethics* may be important sources for judges in the evolution of legal principles.

Thus all these factors will have general implications for indigenous people and local people. They also will have specific implications. There are some who would seem to prefer to wait and to see the negative manifestations, so they can corroborate their opposition, and there are some who would just ignore the implications. Nonetheless, they challenge ways of knowing, whatever way they are approached. In relation to law and anthropology, Nader writes,²⁸

Schools of thought are blurred, and multiple mirrors combine to enlarge both the strategies of research and the recognition of common objectives, one of which is an understanding of the relationship of global to local as well as of locals to locals. Microlevel fragments and dislocations are now integrated with macrolevel questions that involve law but go beyond law.

Basic problems arise. For example, if a university starts to teach indigenous knowledge, can it acquire IPRs in it to the exclusion of the indigenous community? This would seem to lie somewhere between the likely and the inevitable. Thus it might be appropriate to ensure that—at the stage of development of curricula, for example—these issues are sorted out.

Response to the Intellectual Challenge

The response to the challenge posed depends on the approach adopted. Here, the approach is one of pragmatic cosmopolitanism. Part of such an approach assumes that indigenous and local communities and/or their advocates must engage with the forces that are likely to destroy them. Furthermore, there must be some engagement with the hope of altering certain forces thereby. What might the response be? Four basic ones are suggested here.

(1) The first is to know what the rules say. This may be difficult. Some who criticize the WTO regime prefer to do so without studying the rules. Knowing what the rules are is a start for lawyers, although not the exclusive goal. If you play football, you need to know what the rules are, no matter how much you may disagree with some of them.

(2) The second response is to propose specific policies that may be integrated into the rules to support the indigenous arguments. For example, Article 20 of the *WTO Agreement on Agriculture* and Article 8(2) b (1) of the *WTO Subsidies and Countervailing Measures Agreement* could be utilized in appropriate circumstances to support pro-indigenous policies or to permit the appropriate recognition of non-trade concerns. This could be called re-alignment.

(3) The third would be to provide specific studies of the operation on existing rules on indigenous and local contexts.

(4) The fourth would be to seek to reform the pure trade paradigm, preferably in addition to (or instead of) the re-alignment suggested above. This would be a deeper commitment. Such a view would be dependent on promoting and advocating the interests of indigenous people, but would also be relevant for the critics of the world trade regime. The fourth response is the one with which the academy could help.

Turning a Threat into an Opportunity

The indigenous mind often knows that the poison may cure the ailment in certain cases. By analogy, the threat of world trade and world trade law could be used as an impetus for assistance of indigenous and aboriginal interests. The threat provides an incentive to re-evaluate world trade and the interaction of advocates with it. This has occurred already, to some extent, or is occurring in the literature and in the academy. For example, the publicity machine of a diamond-selling company can be turned against itself if the participants in that machine withdraw their support and advertise the cause brought to their attention.²⁹ The Zapatistas already have linked with anti-globalists and anti-capitalists. Nevertheless, the question that might be asked is whether they could be more effective in engagement with the institutions. The communications technology that spread their message was global. It is unsurprising that there are emergent global rules. Global rules on human rights may help indigenous people. Granted, it is a slow process of engagement. Nevertheless it would be a mistake to ignore the benefits of incremental relief. The Bushmen of the Kalahari may take legal action in relation to ownership of their land in the Kalahari. The disillusionment that is associated with anti-capitalism may receive nourishment by a positive paradigm of indigenous knowledge that is contemporary and located within and without existing paradigms.

The reality is that there is a reflexive relationship between LIK and the evolution of world trade. That means that world trade may influence LIK, which is an obvious relationship, and also, although less obviously, that LIK may influence world trade. This presupposes that LIK will be dealt with by the academy in a way that is not mechanistic and not merely a dull, desiccated and rote description of a system that the academy seeks to dominate. This will be the great challenge and it will be difficult to surmount.

It is submitted that an appropriate model of the terrain needs first to be constructed in order to advance thinking. This is included in the Celtic cross figure (Figure 1). This figure recognizes that there are a series of interconnections to LIK that reflect a circular movement of forces between the indigenous community (and their concerns such as survival), other groups

(such as academics), the construct of knowledge/s (and associated issues of epistemology and ontology), and institutions such as the rule of law and world trade, which in turn influence the indigenous community, and so on. All of these points are linked to LIK and it them. Any attempt to engage with the phenomenon of LIK should be made with at least an awareness of the possible flow of forces and the feedback and relational systems.

This leads to some basic conclusions. Indigenous knowledge could assist the evolution of world trade law by its insistence on an holistic view of trade regulation—one that recognizes the possibility of exempting indigenous and local communities from the full rigor of the free market in certain cases.

Conclusions

The position of indigenous people continues to be precarious. Everywhere they still face dispossession, death, and destruction. Indigenous and local people are under threat. It is sometimes necessary to describe the strategy being adopted, so that it becomes clear to others as well as oneself. The approach adopted here has been one of pragmatic cosmopolitanism. Such an approach leads to an holistic view that seems consistent with an indigenous view. It is argued here that a pragmatic cosmopolitan approach would be useful and that this leads in a circular way to the problem. One of the problems is posed by the threat of world trade. This is but one manifestation of the general conflict between Western thinking and LIK and systems. If indigenous knowledge is valuable and if it works, then it should be mirrored. This will only happen if it works and also if people *believe* it works, not least those who know about it. The challenge of translation involves both the need to understand it and the need to explain it. I tried to learn a musical instrument once. It was clear that the instructor was proficient at the instrument; however, when I asked simple questions, it also was clear that he had never thought about the subject. Yet the learning of traditional knowledge, by its nature, has never really been wrapped up like the pound of water mentioned earlier. Nevertheless, in relation to world trade, it is imperative to seek to begin to understand.

It might be worth thinking of Joseph Campbell's insistence of the unity of man:³⁰

I find that the main result for me has been the confirmation of a thought that I have long and faithfully entertained: of the unity of the race of man, not only in biology but also in its spiritual history, which has everywhere unfolded in the manner of a single symphony, with its many themes announced, developed, amplified and turned about, distorted, reasserted, and, today, in a grand fortissimo of all sections sounding together, irresistibly advancing to some kind of mighty climax out of which the next great movement will emerge.

Endnotes

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APPENDIX:

A Case Study: The Indigenous Betel Nut Culture and Traditional