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Locating the International: Military and Monetary Interventions after the Cold War

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INTRODUCTION

It is now a commonplace that the ending of the Cold War prefigured major transformations in international law and international relations. Perhaps the two most significant changes in international politics resulting from the break-up of the Soviet Union have been the revitalization and expansion of the United Nations collective security system, and the increased trade and financial liberalization enabled by newly effective international economic institutions.

The collective security system, amongst other things, has come to represent a means for the liberal alliance of democratic states to bring human rights, democracy, and humanitarian principles to those in undemocratic or failed states. The dominant liberal international consensus is that collective humanitarian intervention has become necessary to address the problems of local dictators, tribalism, ethnic tension, and religious fundamentalism thrown up in the post-Cold War era. Surprisingly little attention has been paid, however, to the extent to which the activities of international institutions, and particularly international economic institutions, have affected political processes, and thus may have contributed to the crises now facing the expanded collective security system. The aim of this Article is to trace the

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consequences of economic restructuring and their effects on human rights, democracy, local political practices, and security, in order to suggest ways of rethinking the meaning and demands of humanitarian action under post-Cold War conditions.

Part I of this Article analyzes two key assumptions underlying the debate about the legitimacy of collective humanitarian intervention: first, that the choice facing the international community is one between action and inaction, and second, that the principal threats to peace and security after the Cold War emanate from the state or local level. This Part traces the ways in which military intervention has come to be largely accepted as the logical, realistic, and moral response to humanitarian crises.

Part II of the Article questions the assumption that the choice for the international community is between collective humanitarian intervention or inaction. By focussing on the case of one post-Cold War humanitarian crisis, that of the genocidal conflict in the former Yugoslavia, I suggest that an examination of the ways in which international institutions and actors contribute to the conditions leading to the outbreak of violence complicates the dominant representation that an absence of international law and a lack of international engagement were contributing causes of the crisis. I suggest that international, as well as local, passions and interests were a threat to peace and security in that instance.

Part III challenges the broader assumption made in pro-interventionist literature that local institutions, actors, or cultures pose the major threats to democracy and human rights, while international institutions and laws act primarily in the interests of human rights, democracy, and the people. That assumption justifies greater scope for intervention by international institutions, actors, and cultures at the state or local level. I argue instead that at least one of the major projects of international institutions in the post-Cold War era—economic liberalization—itself poses significant threats to democracy and human rights.

Part IV concludes by arguing that we need to rethink our understanding of international laws, international institutions, and international culture as necessarily emancipatory.¹ Arguments justifying Security Council actions present an idealized image of international law and of international institutions as bearers of human rights and democratic values.² That representation of international law limits our under-

1. On rethinking the nature of "the international," see David W. Kennedy, *A New World Order: Yesterday, Today and Tomorrow*, 4 *TRANSNAT'L L. & CONTEMP. PROBS.* 329 (1994); and on rethinking the meaning of "the global," see Vandana Shiva, *The Greening of the Global Reach, in GLOBAL ECOLOGY: A NEW ARENA OF POLITICAL CONFLICT* 149 (Wolfgang Sachs ed., 1993).

2. See Anne Orford, *The Politics of Collective Security*, 17 *MICH. J. INT'L L.* 373 (1996).

standing of the possibilities for achieving peace, democracy, justice, and survivable communities. I suggest that the ideals underlying the powerful appeal of collective humanitarian intervention demand a different set of responses in the context of globalization.

I. REPRESENTATIONS OF THE INTERNATIONAL

The range and nature of resolutions passed by the Security Council since 1989 leave little doubt that the Council has adopted an expanded interpretation of its mandate in the changed conditions of the post-Cold War era. In particular, the Council now appears willing to treat the failure to guarantee democracy or protect human rights as either a symptom, or cause, of threats to peace and security.³

Those supporting the legitimacy of this expanded role for the Security Council have themselves demonstrated a willingness to shift their understanding of the legal bases of Security Council action. While the Gulf War was justified in traditional collective security terms as a measure that was necessary to restore security to the region and to

3. That willingness was first evidenced by the Security Council Summit Statement Concerning the Council's Responsibility in the Maintenance of International Peace and Security, 31 I.L.M. 758 (1992). The statement emerged from the first meeting at the level of Heads of State and Government held by the Security Council in January 1992. The Council there stated: "The absence of war and military conflicts amongst States does not in itself ensure international peace and security. The non-military sources of instability in the economic, social, humanitarian and ecological fields have become threats to peace and security." *Id.* at 761. Recent practice of the Security Council suggests that it will treat "threat to the peace" as including cases of civil war or internal armed conflict, mass human rights violations, and violations of humanitarian law. See, *inter alia*, U.N. SCOR, 47th Sess., 3106th mtg., U.N. Doc. S/RES/770 (1992) (calling upon states to take nationally or through regional agencies or arrangements all measures necessary to facilitate in coordination with the United Nations the delivery of humanitarian assistance in Bosnia-Herzegovina); U.N. SCOR, 47th Sess., 3145th mtg., U.N. Doc. S/RES/794 (1992) (authorising the use of force to establish a secure environment for humanitarian relief operations in Somalia); U.N. SCOR, 47th Sess., 3191st mtg., U.N. Doc. S/RES/816 (1993) (authorising the use of force to protect a no-fly zone over Bosnia established to prevent Serbian assaults from obstructing the transfer of humanitarian aid supplies); U.N. SCOR, 48th Sess., 3217th mtg., U.N. Doc. S/RES/827 (1993) (establishing the war crimes tribunal for the former Yugoslavia); U.N. SCOR, 48th Sess., 3228th mtg., U.N. Doc. S/RES/836 (1993) (authorising the use of force to protect Bosnian safe areas); U.N. SCOR, 49th Sess., 3392d mtg., U.N. Doc. S/RES/929 (1994) (authorising the use of force to protect civilians in the Rwandan civil war); U.N. SCOR, 49th Sess., 3413th mtg., U.N. Doc. S/RES/940 (1994) [hereinafter SCR 940] (authorising member states to form a multinational force and to use all necessary measures to facilitate the military leadership's departure from Haiti, and expressing concern with the significant further deterioration of the humanitarian situation and the regime's systematic violation of civil liberties); U.N. SCOR, 49th Sess., 3453d mtg., U.N. Doc. S/RES/955 (1994) (establishing an international tribunal for the prosecution of serious violations of international humanitarian law in the territory of Rwanda and neighbouring states). See also *Supplement to An Agenda for Peace: Position Paper of the Secretary-General on the Occasion of the Fiftieth Anniversary of the United Nations*, U.N. GAOR, 50th Sess., U.N. Doc. A/50/60 (1995) (discussing the use of United Nations forces to protect humanitarian operations in Bosnia Herzegovina and Somalia as leading to a new kind of United Nations operation). For an analysis of these and other relevant Security Council resolutions, see Fernando R. Tesón, *Collective Humanitarian Intervention*, 17 MICH. J. INT'L L. 323 (1996).

punish aggression,⁴ later actions in Bosnia, Rwanda, Somalia, and Haiti, *inter alia*, have been supported by a very different interpretation of the Security Council's legitimate role. There is now a significant and influential literature arguing that Security Council actions taken since 1990 demonstrate the utility and legitimacy of the notion of collective humanitarian intervention.⁵ These scholars argue that in light of the post-Cold War practice of the Security Council, norms governing intervention should be, or have been, altered to allow collective humanitarian intervention, or intervention by the Security Council to uphold democracy and human rights.

Those critical or anxious about the expanding role of the Security Council have also shifted ground in the years since the Gulf War. Many legal scholars working in the areas of human rights and international humanitarian law were highly critical of the actions undertaken in the

4. See, e.g., W. Michael Reisman, *The Constitutional Crisis in the United Nations*, 87 AM. J. INT'L L. 83, 85 (1993) ("[T]he Council . . . seems remarkably effective, as was most recently demonstrated by the expulsion of an aggressor and the liberation of Kuwait. That was a campaign all could applaud"); Gareth Evans, *The New World Order and the United Nations*, in WHOSE NEW WORLD ORDER? WHAT ROLE FOR THE UNITED NATIONS? 1, 2-4 (Mara R. Bustelo & Philip Alston eds., 1991) ("[W]e have had with the Gulf War a resounding reaffirmation and demonstration of the effectiveness of the principles of collective security . . . there is a particular significance in the successful international effort to reverse Iraq's aggression: the outcome of the Gulf War was a triumphant reaffirmation of the UN's collective security role"); David J. Scheffer, *Use of Force after the Cold War: Panama, Iraq, and the New World Order*, in RIGHT V. MIGHT: INTERNATIONAL LAW AND THE USE OF FORCE 126 (Louis Henkin et al. eds., 1991) ("international law was a winner during the Gulf conflict . . . a powerful precedent has been established that should deter at least some of the aggressive stratagems of lawless rulers"); Abram Chayes, *The Use of Force in the Persian Gulf*, in LAW AND FORCE IN THE NEW INTERNATIONAL ORDER 3 (Lori F. Damrosch & David J. Scheffer eds., 1991); Richard Lee Gaines, *On the Road to a Pax U.N.: Using the Peace Tools at our Disposal in a Post-Cold War World*, 25 N.Y.U. J. INT'L L. & POL. 543 (1993).

5. Those arguing that, in the post-Soviet era and particularly in light of the actions authorized by the Security Council concerning Iraq, Haiti, the former Yugoslavia, Rwanda, Somalia, and even Libya, norms governing intervention should be, or have been, altered, and that a liberal construction of Chapter VII of the United Nations Charter should be employed to authorize collective humanitarian intervention include Tesón, *supra* note 3 (arguing that post-Soviet practice of the United Nations, particularly relating to Iraq, Somalia, Haiti, Rwanda, and Bosnia, supports the principle that the international community has a right to intervene to uphold human rights, and that collective humanitarian intervention is both legally justified and a moral imperative); Mark R. Hutchinson, *Restoring Hope: U.N. Security Council Resolutions for Somalia and an Expanded Doctrine of Humanitarian Intervention*, 34 HARV. INT'L L.J. 624 (1993); Ruth E. Gordon, *Humanitarian Intervention by the United Nations: Iraq, Somalia, and Haiti*, 31 TEX. INT'L L.J. 43 (1996) (arguing that in light of its authorization to use force in Somalia to render humanitarian assistance under SC Resolution 794, the Security Council appears to be moving cautiously in the direction of expanding the definition of threat to the peace to apply to humanitarian crises that do not cause transboundary friction); Tom J. Farer, *Intervention in Unnatural Humanitarian Emergencies: Lessons of the First Phase*, 18 HUM. RTS. Q. 1 (1996); Ved P. Nanda, *Tragedies in Northern Iraq, Liberia, Yugoslavia, and Haiti—Revisiting the Validity of Humanitarian Intervention Under International Law—Part 1*, 20 DENV. J. INT'L L. & POL'Y 305, 335 (1992); David Bills, *International Human Rights and Humanitarian Intervention: The Ramifications of Reform on the United Nations' Security Council*, 31 TEX. INT'L L.J. 107 (1996); W. Michael Reisman, *Some Lessons from Iraq: International Law and Democratic Politics*, 16 YALE J. INT'L L. 203 (1991).

Gulf. Criticisms ranged from analyses of the merely rhetorical nature of the Security Council's commitment to human rights, to criticism of the effects of the bombing and sanctions on the Iraqi people, to concern about the apparent domination of the revitalized Council by the United States.⁶ The response to later interventions, however, has been more ambivalent. There are certainly some legal commentators who continue to express concern about the apparent willingness of a largely unrestrained Security Council to expand its mandate to include authorising the use of force to remedy human rights abuses or "to make every State a democratic one."⁷ Many legal scholars, however, seem haunted by the fear that opposing intervention in Bosnia or Haiti, for example, means opposing the only realistic possibility of international engagement to end the horrific human suffering we witness in those conflicts. The need to halt the horrors of genocide or to address the effects of civil war and internal armed conflict on civilians has been accepted as sufficient justification for intervention, even if other motives may be involved.

Two key assumptions underlie the debate as to whether collective humanitarian intervention is justified. First, both those arguing for and against an expanded doctrine of collective humanitarian intervention accept that the international community faces a choice as to whether or not to take action in states where conflicts arise. The pro-interventionist argument is based upon an assumption that post-Cold War crises are in part attributable to an absence of law, including international law, and a lack of sustained engagement by international organizations. Accordingly, a commitment to humanitarian ideals is seen to demand action from the international community, in the form of intervention. Thomas Weiss, for example, argues that, while humanitarian intervention may be counterproductive to the tasks of democratization and peace-building, ruling out the option of such action will render the United Nations powerless to act, destroy its credibility, and

6. See Philip Alston, *The Security Council and Human Rights: Lessons to be Learned from the Iraq-Kuwait Crisis and its Aftermath*, 13 AUSTRALIAN Y.B. INT'L L. 107 (1992); Rene Provost, *Starvation as a Weapon: Legal Implications of the United Nations Food Blockade Against Iraq and Kuwait*, 30 COLUM. J. TRANSNAT'L L. 577 (1992); Henry J. Richardson III, *The Gulf Crisis and African-American Interests under International Law*, 87 AM. J. INT'L L. 42 (1993); Oscar Schachter, *United Nations Law in the Gulf Conflict*, 85 AM. J. INT'L L. 452 (1991); David D. Caron, *Iraq and the Force of Law: Why Give a Shield of Immunity?*, 85 AM. J. INT'L L. 89 (1991); Judith Gail Gardam, *Proportionality and Force in International Law*, 87 AM. J. INT'L L. 391 (1993); MIDDLE EAST WATCH, *NEEDLESS DEATHS IN THE GULF WAR: CIVILIAN CASUALTIES DURING THE AIR CAMPAIGN AND VIOLATIONS OF THE LAWS OF WAR* (1991).

7. Martti Koskenniemi, *The Police in the Temple. Order, Justice and the United Nations: A Dialectical View*, 6 EUR. J. INT'L L. 325, 343 (1995). See also Richard Falk, *The Haiti Intervention: A Dangerous World Order Precedent for the United Nations*, 36 HARV. INT'L L.J. 341 (1995); Judith G. Gardam, *Legal Restraints on Security Council Military Enforcement Action*, 17 MICH. J. INT'L L. 285 (1996); Orford, *supra* note 2.

condemn it to the fate of the League of Nations.⁸ Weiss presents a stark choice:

Too many pleas for consistency or against inevitable selectivity amount to arguing that the United Nations should not intervene anywhere unless it can intervene everywhere

. . . .
 . . . But in light of genocide, misery, and massive human rights abuses in war zones around the world, should Pontius Pilate be the model for both the American and the international response? The fatalism and isolationism that flow from most objections to humanitarian intervention are as distressing as the situation in the countries suffering from ethnic conflict where such an action is required A purely noninterventionist position amounts to abstention from the foreign policy debate.⁹

Similarly, Fernando Tesón argues that it is better for states to take collective action in favour of the rights and interests of human beings, even if such action may do some harm, than to remain inactive and therefore incapable of providing either relief from brutality or assistance in the achievement of democratic government.¹⁰

It is . . . surprising to be told that the very crimes that prompted the massive, cruel and costly struggle from which the United Nations was born, are now immune from action by the organ entrusted to preserving the fruits of the hard-won peace. The formalism of anti-interventionists thus not only rewards tyrants, but it betrays the purposes of the very international order that they claim to protect.¹¹

Even those who reject the legitimacy of collective humanitarian intervention appear haunted by the fear that failure to act under the auspices of the Security Council may represent a betrayal of our duty to be engaged in the world in the interests of humanity. Richard Falk's critical analysis of the precedent set by Security Council resolutions concerning Haiti provides a good illustration of that concern.¹² While Falk mounts a strong case against Security Council action in Haiti, he

8. Thomas G. Weiss, *On the Brink of a New Era? Humanitarian Interventions, 1991-94*, in *BEYOND TRADITIONAL PEACEKEEPING* 3, 8 (Donald C.F. Daniel & Bradd C. Hayes eds., 1995).

9. *Id.* at 8, 15.

10. Tesón, *supra* note 3, at 342.

11. *Id.*

12. Falk, *supra* note 7. See SCR 940, *supra* note 3 (authorising member states to impose economic sanctions and use force to "facilitate the departure from Haiti of the military leadership" and to return it to democratic rule under President Jean-Bertrand Aristide).

admits to a fear that advocating non-intervention may equal advocating inaction.

Having mounted this case against intervention, a haunting question must be posed: with all of its deficiencies, isn't it better to have confronted and deposed Cedras, to have provided relief to the Haitian people from the widespread daily brutality and to have given them an opportunity to compose a more democratic government that addresses the poverty of the people?¹³

The characterization of intervention as active and productive, and non-intervention as inactive and negative, appears to inform the popular response that we should do something to address the suffering and despair in Bosnia, Somalia, or Rwanda, rather than do nothing. As one commentator notes: "In a world of satellite communications, with television images of suffering broadcast as they occur, few democratic governments are immune to the public clamour to 'do something.'"¹⁴

The sense of frustration felt by some commentators when the option of military intervention is closed off is well illustrated by Thomas Weiss. In a striking metaphor, Weiss describes the United Nations Protection Force for the former Yugoslavia as "eunuchs at the orgy," due to the constraints imposed on their capacity to use force in that conflict.¹⁵

The second assumption made by advocates of an expanded humanitarian role for the Security Council is that the principal threats to human rights, democracy, and security occur at the state or local level.¹⁶ According to those in favour of collective humanitarian intervention, state or local government leaders pose the major challenges to

13. Falk, *supra* note 7, at 357.

14. Shashi Tharoor, *The Changing Face of Peace-Keeping and Peace-Enforcement*, 19 *FORDHAM INT'L L.J.* 408, 413 (1995).

15. Weiss, *supra* note 8, at 8. An analysis of violence as an expression of some forms of masculine subjectivity as suggested by that metaphor is beyond the scope of this Article. For such analyses, see Diana Taylor, *Spectacular Bodies: Gender, Terror and Argentina's "Dirty War," in GENDERING WAR TALK 20* (Miriam Cooke & Angela Woollacott eds., 1993); SUSANNE KAPPELER, *THE PORNOGRAPHY OF REPRESENTATION* (1986).

16. See Tesón, *supra* note 3, at 342 (treating state or local leaders or governments as the actors likely to threaten democracy or human rights); Leon Gordenker & Thomas G. Weiss, *The Collective Security Idea and Changing World Politics, in COLLECTIVE SECURITY IN A CHANGING WORLD 3, 14* (Thomas G. Weiss ed., 1993) (treating "ethnic particularism" as a threat to peace and security); Reisman, *supra* note 5, at 213 (arguing that "tinhorn dictators" and "contemporary tyrants" threaten post-Cold War peace and security); Michael Stopford, *Locating the Balance: The United Nations and the New World Disorder*, 34 *VA. J. INT'L L.* 685, 686, 698 (1994) (suggesting that the breakdown of internal state structures and ancient ethnic and religious tensions are the major challenges to peace and security); Ambassador Madeleine K. Albright, *International Law Approaches the Twenty-First Century: A United States' Perspective on Enforcement*, 18 *FORDHAM J. INT'L L.* 1595, 1597 (1995) (suggesting that we "live in an unsettled age, beset by squabbles, wars, unsatisfied ambitions").

human rights and democracy, and humanitarian crises are largely caused by actions and developments initiated and carried out by local or governmental actors or institutions.¹⁷ Accordingly, pro-interventionist scholars argue that international lawyers should abandon outmoded notions of sovereignty and non-intervention in order to enable states acting collectively to reach those who need their help. Tom Farer, for example, argues in favour of military intervention as a necessary response to ethnic or religious tensions.

Many of the cases that now and might in the future engage international concern involve conflicts among groups that define themselves in ethnic or religious terms It follows from the nature of the conflict that once it has begun, the stronger party will tend to act out genocidal urges unless and until it encounters a disabling force. And even in cases where none of the parties can deliver a knockout blow, all of them are likely to go on clawing at each other unless external actors either club them into submission, break the stalemate by helping one or a coalition of factions, and/or guarantee the safety of those willing to assume a defensive posture. The only truly credible guarantee for peoples in a state of ecstatic mutual fear is a strong force in place with the means and mandate to thwart whoever initiates or renews intercommunal war.¹⁸

Similarly, Fernando Tesón argues that there is a moral imperative for states to act collectively to intervene in such situations, using force if necessary.¹⁹ Tesón argues that the international community must not be swayed by the arguments of those who seek to resist the use of force on the basis that it infringes upon traditional norms of sovereign equality or the principle of non-interference in the domestic affairs of states.²⁰

(T)here would have been no end to the Cold War without the moral defeat of tyranny, without the resolve of the liberal alliance

17. For arguments that humanitarian crises require collective humanitarian intervention and a reconceptualization of the principle of noninterference in the internal affairs of sovereign states, see Tesón, *supra* note 3 (arguing that the domain reserved to the exclusive jurisdiction of the state is quite small, and that matters such as democratic legitimacy are now subject to international scrutiny); Hutchinson, *supra* note 5. For examples of those taking a more cautious approach to abandoning the principle of noninterference in the internal affairs of sovereign states in the post-Soviet era, see Alston, *supra* note 6; Michael J. Glennon, *Sovereignty and Community after Haiti: Rethinking the Collective Use of Force*, 89 AM. J. INT'L L. 70 (1995); Anne Orford, *The Uses of Sovereignty in the New Imperial Order*, 6 AUSTRALIAN FEMINIST L.J. 63 (1996).

18. Farer, *supra* note 5, at 15.

19. Tesón, *supra* note 3.

20. *Id.* at 371.

to resist the internal and external pressures of the various enemies of freedom The rise of collective humanitarian intervention and the shrinking of traditional conceptions of sovereignty and domestic jurisdiction are essential for the preservation of peace in the new international order.²¹

These assumptions underlying the debate about collective humanitarian intervention limit the capacity of international law to develop adequate responses to post-Cold War security and humanitarian crises. I want now to suggest a way forward for the debate that may enable international lawyers to transcend the perceived opposition between action and inaction. To do so, the next Part of this Article examines the ways in which international law and international institutions were present and active in the former Yugoslavia prior to, and during, the humanitarian crisis.

II. LOCATING THREATS TO THE PEACE—THE CASE OF YUGOSLAVIA

As shown above, much of the commentary on post-Cold War security and humanitarian crises assumes that local rather than international institutions, cultures, and actors were largely responsible for the development of such crises, and that a failure to use force or to take measures to respond to such crises equals inactivity on the part of the international community. An analysis of the relationship between the actions of international institutions and the situation in the former Yugoslavia, however, suggests otherwise.

Whether the cause of the disintegration of Yugoslavia is understood to be ancient hatreds or Serbian aggression, those arguing that the Yugoslav conflict illustrates the necessity for collective humanitarian intervention treat international institutions essentially as interveners for security, democracy, and human rights.²² Yet commentators have begun to suggest that the program of economic liberalization and restructuring of the state implemented by the international financial institutions of the World Bank and the IMF during the 1970s, 1980s, and indeed the 1990s contributed to the conditions that inflamed such hatreds (whether ancient or otherwise).²³ Economic policies designed

21. *Id.*

22. For a discussion of the tensions caused by the fact that Britain and France regarded the war in Bosnia as a civil war, while the United States perceived the war as a case of aggression by Serbia, see MISHA GLENNY, *THE FALL OF YUGOSLAVIA* (1992). See also NOEL MALCOLM, *BOSNIA: A SHORT HISTORY xx–xxii* (1996) for an analysis of the way in which leaders such as John Major represented ancient hatreds as the cause of the Yugoslav conflict.

23. See, e.g., SUSAN L. WOODWARD, *BALKAN TRAGEDY: CHAOS AND DISSOLUTION AFTER THE COLD WAR* (1995); James Petras & Steve Vieux, *Bosnia and the Revival of US Hegemony*, *NEW*

to refinance and repay Yugoslavia's foreign debt were a driving force behind major constitutional reforms and redefinitions of citizenship and workers' rights during the 1980s.²⁴ Such policies appear to have played a role in the rise of republican nationalism and the sense that the federal government lacked legitimacy. I want to outline briefly the nature of restructuring in the former Yugoslavia, and then suggest how that project posed a threat to the peace.

A. *The Nature of Restructuring in the Former Yugoslavia*

The people of the former Yugoslavia were subjected to a stringent austerity program during the 1970s and 1980s, partly as a result of decisions made by IMF officials and by economic liberals in the Yugoslav government.²⁵ The process of restructuring began in earnest in 1984, when the Yugoslav government received a new standby loan from the IMF.²⁶ The loan was intended to be used to repay its foreign debt, the interest on which had ballooned during the oil crises of the late 1970s.²⁷ The conditions attached to that loan by the IMF aimed at the introduction of domestic policy reforms which economists believed would better enable servicing of foreign debt.²⁸

LEFT REV., July/Aug. 1996, at 3, 9-11; Michel Chossudovsky, *Dismantling Former Yugoslavia: Recolonising Bosnia*, ECON. & POL. WKLY, Mar. 2, 1996, at 521.

24. WOODWARD, *supra* note 23, at 106; Petras & Vieux, *supra* note 23, at 9-11.

25. For the contrary argument that the austerity program was *not* the result of IMF involvement but rather the "result of domestic policy choices taken in response to external capital market constraints," see Laura Tyson et al., *Conditionality and Adjustment in Hungary and Yugoslavia*, in ECONOMIC ADJUSTMENT AND REFORM IN EASTERN EUROPE AND THE SOVIET UNION 72, 105 (Josef C. Brada et al. eds., 1988).

26. See *Keesing's Contemporary Archives: Record of World Events*, Vol. 30, Jun. 1984, at 32932 [hereinafter *Keesing's*, Vol. 30].

27. See WILLIAM R. CLINE, INTERNATIONAL DEBT: SYSTEMIC RISK AND POLICY RESPONSE 287 (1984). Cline argues that Yugoslavia's debt problem in 1982 was due to the fact that it was shut out of commercial credit markets, largely because the rescheduling of the Polish debt "radically changed the psychological atmosphere for lending to Eastern Europe." *Id.* The "rescue package" negotiated by the Yugoslav government in 1982 included loans of \$1.2 billion and additional credits from foreign banks, the continued disbursements of funds from the IMF under a standby credit approved in 1981, World Bank loans of \$500 million, a \$500 million bridging loan from the Bank for International Settlements, plus bilateral loans from Western governments.

28. See Raymond F. Mikesell, *Appraising IMF Conditionality: Too Loose, Too Tight, or Just Right?*, in IMF CONDITIONALITY 47, 53 (John Williamson ed., 1983). It is difficult to obtain precise information about the nature of the conditions attached to any IMF credits, including those extended to Yugoslavia. IMF conditions are not published, although they do tend to become public knowledge indirectly through governments, commercial banks and the media. Raymond Mikesell notes that IMF agreements are secret, and statements regarding their content are limited to generalities. Nevertheless, he argues that it is possible to judge IMF conditionality packages without seeing them, by evaluating the policies of countries that have been receiving IMF assistance. See *id.* Tyson et al., *supra* note 25, at 73, also observed that:

a veil of secrecy traditionally surrounds IMF agreements with individual countries. Without privileged access, it is nearly impossible to ascertain all of the details of such agreements. Some information leaks into the public domain mainly through the commercial banks and

The original "austerity" program involved cuts in government expenditures, liberalization of trade and prices, cutting of imports, and the promotion of exports.²⁹ Later programs required capping wages, reorienting production towards exports which could compete in OECD markets, recentralizing political and economic decision-making, privatization, and currency deregulation.³⁰ While the reasons for such reforms were always presented as purely economic and technical, the changes required by the IMF were "fraught with political implications."³¹ Both directly and indirectly, the IMF reshaped Yugoslav politics throughout the 1980s and early 1990s.

The direct restructuring of Yugoslav politics occurred through the imposition of conditions requiring constitutional and institutional reforms. During the 1980s, the IMF began to condition access to new credits for Yugoslavia on such reform. The first change required by the IMF related to re-centralization, or the shifting of political and economic authority from republican governments and banks to the federal government and the National Bank.³² Economists considered that the decentralization of policy-making amongst Yugoslav republics that had occurred during the early 1980s was "responsible for Yugoslavia's weak macroeconomic control."³³ Accordingly, IMF conditions attached to use of credits after 1982 included requirements for federal reassertion of economic authority over republican governments.³⁴ Further political changes resulted from the conditions attached to the 1987 and 1988

through the press, but it is always incomplete and sometimes inaccurate. Not all the conditions of agreements with Yugoslavia . . . are known, and even when a particular type of condition is known, quantitative targets . . . generally are not.

29. WOODWARD, *supra* note 23, at 51; *Keasing's Contemporary Archives: Record of World Events*, Vol. 31, Aug. 1985, at 33808-09.

30. See generally CLINE, *supra* note 27, at 281-90; Tyson et al., *supra* note 25, at 91-96; WOODWARD, *supra* note 23; MARKO MILIVOJEVIC, *THE DEBT RESCHEDULING PROCESS* 204-07 (1985).

31. WOODWARD, *supra* note 23, at 50. See also Petras & Vieux, *supra* note 23, at 11.

32. See *Keasing's*, Vol. 30, *supra* note 26, at 32932-33; Petras & Vieux, *supra* note 23, at 11.

33. Tyson et al., *supra* note 25, at 81. See also MILIVOJEVIC, *supra* note 30, at 205.

34. In 1982, the IMF required that control over foreign exchange allocation and operations be returned to the National Bank in Belgrade, after such functions had been decentralised and distributed amongst republican governments and banks five years earlier. In 1986 and 1987, when the IMF "began to tie conditions for new credits to political reform," it focussed on "restrengthening the governing capacity of the federal administration." These economic planners wanted a more competent and effective federal government that could "make and implement tough decisions." In particular, having been critical of the consensual decision-making process that operated at the federal level and within the central bank as a means of ensuring equality between the republics, the IMF required a change in the voting rules of the National Bank from consensus to majority decision-making. Those changes were proposed by the IMF and supported by the federal cabinet. The significance of those changes can be seen in the packages for constitutional reform presented to the Yugoslav parliament as a result. In February 1987, the League of Communists recommended 130 amendments to the 406 articles of the federal constitution. See WOODWARD, *supra* note 23, at 57-74, 82.

IMF packages. In particular, the "May Measures" of 1988 required the destruction of the socialist system of worker participation in firm decision-making, the removal of procedural protections against large-scale unemployment, and the cutting of public expenditure.³⁵

The IMF, economic advisers, and the federal government continued to propose economic and political restructuring from 1988-1989, when the nationalist climate had become apparent and republican resistance to the proposed changes was clear. The federal government continued to be committed to drawing up and implementing new IMF-conditioned stabilization restrictions as part of a process of debt rescheduling with private banks during that period, despite escalations in nationalist rhetoric, nationalist revisions of republican constitutions, mass demonstrations against austerity measures, protests by newly defined "minorities," police harassment of minorities, challenges to the Yugoslav army, and racist attacks.³⁶

At the end of 1989, after a decade of economic crisis, constitutional conflict, and political disintegration,³⁷ the existing political system was ceasing to function,³⁸ and legitimacy of the federal government was being challenged by radical Slovene, Serb, and Croatian nationalism.³⁹ Nevertheless, economic advisers to the Yugoslav government determined that "the effectiveness of the program for global integration depended on speed," and the government announced a "shock therapy" stabilization program to begin in mid-December.⁴⁰ The program aimed at completely removing "political barriers to a market economy."⁴¹ During 1990, even with clear signs of civil war emerging, the federal government continued to attempt to enact the political reforms required by the shock therapy conditions. It did so under intense pres-

35. See *id.* at 96.

36. See *id.* at 93-96.

37. See *id.* at 148.

38. See *id.* at 116.

39. See *id.* at 117.

40. The principal adviser to the government was Harvard economist Jeffrey Sachs, who developed the "shock therapy" model for dealing with states in transition from communism to capitalism. Sachs espoused that model in a famous 1990 article. Jeffrey Sachs, *What is to be done?*, *ECONOMIST*, Jan. 13, 1990, at 19. He has also advised other Eastern European governments, the G7, and the IMF on the shock therapy model. For a critique of that model and its consequences, see Peter Gowan, *Neo-Liberal Theory and Practice for Eastern Europe*, *NEW LEFT REV.*, Sept./Oct. 1995, at 3.

41. WOODWARD, *supra* note 23, at 115, 129-30. While the program appeared successful in economic terms over the first six months, particularly given the fall in inflation rates from 2714% in 1989 to 0% in 1990, economic conditions deteriorated starting in June 1990, with rising prices, falls in exports, overvaluation of currency, heavy taxation, increased insolvencies, and rising unemployment. Despite the aims of the economic architects of the program, it was largely frustrated by republican governments who ignored restrictions on wages and budgets, tax obligations in the federal budget, and monetary restrictions.

sure from the IMF, which was concerned that the commitment to reform was flagging.⁴²

IMF programs had further indirect effects on political institutions and norms within Yugoslavia. The implementation of supposedly apolitical IMF conditions in fact required fundamental changes in Yugoslav politics. The goals of economic policy, for example, required "fundamental changes in the locus of economic decision-making" and thus required constitutional reform.⁴³ Changes necessary to enable these reforms included altering the practice of distributing cabinet appointments on a nationality basis;⁴⁴ changing the composition of the governing board of the fund for development credits;⁴⁵ and shifting the balance of economic policy in favour of particular firms, sectors, and republics.⁴⁶ Successive reformist Prime Ministers and their cabinets took steps to subvert established political processes in order to enable the adoption of unpopular measures supported by the IMF.

The social impact of IMF economic liberalization and shock therapy stabilization programs also had unacknowledged political effects. Those programs arguably fuelled the nationalist dynamic by rapidly restructuring republican and federal levels of government, by implementing policies with divisive social consequences, and by advocating the removal of mechanisms that provided some state support to individuals who would suffer under unrestrained economic liberalism.⁴⁷

B. Threats to the Peace

Commentators on the former Yugoslavia point to a number of conditions that fuelled the republican nationalist dynamic that led to genocide. Those conditions include the destruction of existing federal constitutional arrangements,⁴⁸ the destruction of minority rights guarantees,⁴⁹

42. Chossudovsky, *supra* note 23, at 521–22. In 1990, the federal party collapsed in January, competitive multiparty elections characterized by extreme racism and nationalism were held from April to December, signs of civil war had emerged, and declarations of sovereignty and the right to secede were made by the republics of Slovenia and Croatia in July. By the following June, Slovenia and Croatia announced their independence from the former Yugoslavia, and war had broken out.

43. WOODWARD, *supra* note 23, at 58.

44. *See id.* at 73.

45. *See id.* at 74.

46. *See id.* at 101. In particular, producers in the southern republics tended to have fewer ties to Western markets.

47. *See* Robin Blackburn, *The Break-Up of Yugoslavia*, 45 LAB. FOCUS ON E. EUR. 3 (1993); Petras & Vieux, *supra* note 23, at 11; Chossudovsky, *supra* note 23, at 521–22.

48. *See* WOODWARD, *supra* note 23, at 57–74, 82; Petras & Vieux, *supra* note 23, at 11; Chossudovsky, *supra* note 23, at 521.

49. *See* WOODWARD, *supra* note 23, at 381.

serious unemployment,⁵⁰ falling Yugoslav per capita income,⁵¹ the growing role of nationalism in Yugoslav politics,⁵² the role of the military as a political force,⁵³ and the growing gulf between rich and poor republics.⁵⁴ There are at least four ways in which IMF structural adjustment, stabilization, and later shock therapy programs can be argued to have contributed to those conditions and thus to the political destabilization of Yugoslavia.⁵⁵

First, the programs contributed to a sense of insecurity for the people of Yugoslavia and to resulting social instability.⁵⁶ The destabilizing consequences of the early IMF austerity program introduced in 1982, for example, included inflation, falling real incomes, consumer goods shortages, unemployment and the threat of unemployment, the abandonment of food subsidies, and rising prices for commodities such as gasoline, heating fuel and food, which were affected by import restrictions and the push for exports.⁵⁷

Second, economically motivated political and constitutional reforms destroyed the means of protecting minority rights within the socialist system. That system of protection had been based upon distribution of government jobs according to national status, and state expenditure on cultural rights. Commentators argue that the "multiple political

50. See Blackburn, *supra* note 47, at 3; Petras & Vieux, *supra* note 23, at 10; Chossudovsky, *supra* note 23, at 522.

51. See Valerie Bunce, *The Elusive Peace in the Former Yugoslavia*, 28 CORNELL INT'L L.J. 709, 712 (1995).

52. See *id.* at 715.

53. See *id.* at 710.

54. See *id.* at 712; Catherine Samary, *Behind the Breakup of Yugoslavia*, 45 LAB. FOCUS ON E. EUR. 27 (1993).

55. Woodward suggests a fifth way in which IMF conditions contributed to the crisis. She notes that the demands of the IMF for political change also eroded the state's "political capacity for managing the transition," and that the absence of a legitimate centralized authority meant that such claims could not be successfully mediated. WOODWARD, *supra* note 23, at 379. There she defines democracy as a system that enables peaceful resolution of conflict and entails a willingness to lose. I have less faith in benign central authority, given the absence of a willingness to lose, particularly on economically rational policy issues, among elites in existing democracies. Indeed, I do not see how any authority, benign or malevolent, can oversee a system capable of reproducing and generating such extraordinary inequality and extremes of wealth and poverty, without resorting to violence. I am swayed rather more by the arguments of those who think that the Yugoslav crisis, *inter alia*, demonstrates the need to rethink the logic of late capitalism. Slovenian intellectual Slavoj Žižek, for example, argues that such cycles of racist viciousness are in part a product of capitalism's economy of enjoyment. The answer for me lies with contesting the New Right's logic of efficiency and culture of control, rather than attempting to "moderate" extremes of poverty and wealth maintained by this global system. See SLAVOJ ŽIŽEK, *TARRYING WITH THE NEGATIVE: KANT, HEGEL AND THE CRITIQUE OF IDEOLOGY* (1993).

56. See Andrew J. Williams, *Economic Intervention by International Economic Organizations in Central and Eastern Europe: Will it Lead to More or Less "Security" for the Region?*, in *NEW FORMS OF SECURITY, VIEWS FROM CENTRAL, EASTERN AND WESTERN EUROPE* 103, 109 (Pal Dunay et al. eds., 1995); WOODWARD, *supra* note 23, at 52; Petras & Vieux, *supra* note 23, at 10-11; Chossudovsky, *supra* note 23, at 521-22.

57. See WOODWARD, *supra* note 23, at 51; Petras & Vieux, *supra* note 23, at 10.

arenas" created by Yugoslavia's extensive political decentralization also operated to guarantee the protection of rights and freedoms: "journalists who could not publish in one republic could get an audience in another; people facing discrimination in one republic could emigrate temporarily to another; and social movements repressed in one republic might hope for publicity and outside pressure in another."⁵⁸ These mechanisms for accommodating ethno-national and other differences in socialist Yugoslavia were progressively broken down from 1982 onward. The IMF conditions contributed to the destruction of these mechanisms by requiring fiscal cuts, greater political centralization, and an end to nationality-based distribution of voting and positions.⁵⁹

Third, social polarization, attacks on the protection of minority rights, and constitutional and institutional "reform" resulting from IMF programs contributed to the nationalist dynamic developing during the late 1980s.⁶⁰ These programs played a role in the rise of republican nationalism and the sense that the federal government lacked legitimacy.⁶¹ Critics of IMF programs argue that, while Tito's Yugoslavia functioned as an "imagined community" in the sense described by Benedict Anderson,⁶² that sense of community depended upon the federal government having the ability to provide some level of economic and administrative support. When the IMF imposed the policy of structural adjustment in the 1980s, it led to the state as usual being stripped of most of its functions, except maintaining law and order.⁶³

People began to look to other sources of community, and in that vacuum ethnic nationalism re-emerged to provide a new form of community and a needed structure of identity.⁶⁴ The sense of community that nationalism offers under these circumstances is valued

58. WOODWARD, *supra* note 23, at 381. See also Petras & Vieux, *supra* note 23, at 10.

59. See WOODWARD, *supra* note 23, at 381.

60. See Williams, *supra* note 56.

61. See Chossudovsky, *supra* note 23, at 521–22.

62. See BENEDICT ANDERSON, *IMAGINED COMMUNITIES* (1991). Anderson defines the nation as an imagined community: "imagined" because the members of even the smallest nation will never know most of their fellow-members, meet them, or even hear of them, yet in the minds of each lives the image of their communion," and a community because "regardless of the actual inequality and exploitation that may prevail in each, the nation is always conceived as a deep, horizontal comradeship." *Id.* at 6–7.

63. See Jochen Hippler, *Democratisation of the Third World after the End of the Cold War*, in *THE DEMOCRATISATION OF DISEMPOWERMENT: THE PROBLEM OF DEMOCRACY IN THE THIRD WORLD* 1, 24 (Jochen Hippler ed., 1995) (arguing that often after structural adjustment, the state is only left with "the police, the army and the secret service: the instruments of repression. By their nature, these can't [yet] be privatised or transferred to the North.")

64. See Petras & Vieux, *supra* note 23, at 10–11. See also Hippler's discussion of the ways in which "other forms of identity, ethnic or ethnic-religious, become more important" in states subject to structural adjustment, as the "national state" is stripped of its functions and becomes discredited. Hippler, *supra* note 63, at 25.

not because of the historical persistence and power of ethnic identities and cultural attachments, as the ethnic conflict school insists, but because the bases of existing communities have collapsed and governments are radically narrowing what they will or can provide in terms of previously guaranteed rights to subsistence, land, public employment, and even citizenship.⁶⁵

The attack on established systems of welfare also contributed to the anti-federal, republican focus of the nationalist dynamic.⁶⁶ While the federal government enacted rapid economic and political restructuring designed to meet with the approval of economic advisers, international institutions, and private banks, republican leaders were able to appeal to those people who had to face the serious economic and social consequences of that rapid restructuring.⁶⁷ Nationalist republican governments thus gained popular support for the separatist policies of resisting federal taxation and opposing federal authority.⁶⁸ The "gulf between richer and poorer republics" caused by economic restructuring also fuelled the separatist dynamic.⁶⁹ One major cause of the separation of Slovenia from Yugoslavia, for example, was the desire to abandon those republics that were "slowing down insertion into capitalist Europe."⁷⁰ Local leaders also gained support from ethnic minorities or those in poorer regions who resented the "politics of capital cities" and its neglect of their interests.⁷¹

Fourth, the speed with which restructuring and, by 1990, shock therapy were carried out contributed to the rapid process of political disintegration that began once the Yugoslav crisis entered a "nationalist dynamic."⁷² As the phrase "shock therapy" suggests, economic logic

65. WOODWARD, *supra* note 23, at 17.

66. *See id.* at 384; Chossudovsky, *supra* note 23, at 521-22.

67. *See* WOODWARD, *supra* note 23, at 127; Blackburn, *supra* note 47; Petras & Vieux, *supra* note 23, at 10-11; Chossudovsky, *supra* note 23, at 522.

68. *See* WOODWARD, *supra* note 23, at 384.

69. Samary, *supra* note 54, at 28.

70. *Id.* Susan Woodward also notes that the shift in United States and EC policy in the post-Cold War period played a role in the breakup of Yugoslavia. During the Cold War, Yugoslavia had been central to United States security policy in the region, due to its heavily armed neutrality and capacity to deter Warsaw Pact forces from Western Europe, its political stability and its independence of Moscow. Similarly, it had a special relationship with Europe. After the Berlin Wall fell in 1989, as Central Europeans were seeking to join European institutions, it was made clear to Yugoslavia that it would have to enter the competition without special status. In Western Europe's own version of "ancient hatreds," countries of Central Europe were treated as better able to make the transition from socialism to capitalism, or from "East" to "West," based on historical, religious and cultural criteria. Accordingly, it was in the interest of those parts of Yugoslavia such as Slovenia and Croatia that could claim on "cultural" grounds to be part of the "first tier" that they "begin a campaign to persuade Europe of their deserved eligibility." WOODWARD, *supra* note 23, at 105, 150.

71. WOODWARD, *supra* note 23, at 384.

72. *Id.* at 17.

dictated that speed was of the essence. The federal government and international institutions remained committed to implementing radical and far-reaching political and constitutional reforms to enable a rapid transition from a socialist economic structure to a purely market-based regime, even after the nationalist climate and violent resistance to those radical reforms became apparent.⁷³ As Woodward notes, there was a clear conflict between the conditions necessary to ensure peace and those deemed necessary for economic liberalization. Although time was needed to build "cross-republican, society-wide political organisations" to avoid civil war and genocide, the IMF, banks, and financial institutions considered it essential that economic and political change be rapid.⁷⁴

The genocide in the former Yugoslavia did not, of course, take place without the violence of local actors. The conditions imposed by the IMF and their consequences were not the sole cause of that outbreak of violence. Structural adjustment and shock therapy programs have been implemented in many states without leading to genocide. Nevertheless, international institutions must take account of and responsibility for the reception of the norms and culture they impose. Conditions and processes required or supported by international institutions, when combined with local responses, led to violence in the former Yugoslavia. Responsibility for that violence belongs to both international and local actors, not to local actors alone. Experts acting on behalf of international economic institutions appear to assume that there are no limits to the ways in which local peoples can be required to conform to new economic models and priorities. The disastrous outcome of economic restructuring in the former Yugoslavia is just one example of the impact of the belief held by economic experts that human beings are infinitely and rapidly re-codeable, and that cultures and political systems are infinitely malleable.

In conclusion, focusing on international law and international institutions that facilitate economic restructuring suggests that the opposition between collective humanitarian intervention and inactivity is a false one. The international community had already intervened on a large scale in Yugoslavia before the security crisis erupted, through the activities of international monetary institutions. Inactivity, in other words, is not the alternative to intervention. The international community is already profoundly engaged in shaping the structure of political, social, economic, and cultural life in many states through the activities of international economic institutions.

73. See Sachs, *supra* note 40, at 21 (justifying the "need for speed" in restructuring Eastern European political and economic institutions in 1990).

74. WOODWARD, *supra* note 23, at 384.

III. THREATS TO DEMOCRACY AND HUMAN RIGHTS

Part II of this Article argued that "the international" played a role in contributing to the conditions that led to violence in the former Yugoslavia, thus unsettling the assumption that responsibility can be attributed to "the local" alone. In this Part, I want to question the broader assumption underlying the pro-intervention approach, that international institutions are the bearers of progressive human rights and democratic values to a "local" in need of those rights and values in the post-Cold War era.

A. *Defining Democracy and Human Rights*

It is first necessary to consider the meaning of democracy and human rights in the context of the arguments made in favour of collective humanitarian intervention. The current enthusiasm for collective humanitarian intervention can be understood as part of a broader democratization trend, in which "something bearing [the] name of democracy" is "commonly asserted as a global norm."⁷⁵ It is true that the post-Cold War period has witnessed remarkable changes, many of which have subsequently been claimed in the name of democracy, and many of which have led to the adoption of "institutional mechanisms of electoral competition" and a narrow range of civil and political rights.⁷⁶ Whether these changes demonstrate the triumph of liberal democracy and the end of history is, of course, highly contested.⁷⁷

International lawyers make two claims that further the democratization project. First, scholars such as Thomas Franck claim that there is an emerging right to democratic governance against which a governmental system can be judged as legitimate.⁷⁸ Secondly, pro-interventionist scholars go one step further, arguing that international institutions can intervene using force, where a governmental system has been judged to be illegitimate when assessed against criteria of democratic governance or human rights protection.⁷⁹

75. Brad Roth, *Evaluating Democratic Progress: A Normative Theoretical Perspective*, 9 ETHICS & INT'L AFF. 55 (1995).

76. *Id.*

77. See FRANCIS FUKUYAMA, *THE END OF HISTORY AND THE LAST MAN* (1992). Derrida reminds us that the themes of the end of history, the end of man, and the end of Marxism were the daily bread of many in the West in the 1950s. He comments that "[f]or those who abandon themselves to that discourse with the jubilation of youthful enthusiasm, they look like latecomers, a little as if it were possible to take still the last train after the last train—and yet be late to an end of history." JACQUES DERRIDA, *SPECTERS OF MARX: THE STATE OF THE DEBT, THE WORK OF MOURNING, AND THE NEW INTERNATIONAL* 15 (1994).

78. See Thomas M. Franck, *The Emerging Right to Democratic Governance*, 86 AM. J. INT'L L. 46 (1992). See also Fernando Tesón, *International Obligation and the Theory of Hypothetical Consent*, 15 YALE J. INT'L L. 84 (1990).

79. See Tesón, *supra* note 3.

Those arguing in favour of collective humanitarian intervention offer little guidance as to the model of democracy or the particular human rights that are to be guaranteed by abandoning sovereignty or increasing international intervention. Nevertheless, it is clear that pro-interventionists adopt a liberal model of democracy, frequently importing many aspects of nineteenth-century liberal political theory into their assumptions about democracy and the nature of human rights. First, those who support Security Council intervention to restore democracy focus on institutions and mechanisms of electoral competition as the markers of democratic legitimacy, while the broader debates concerning the ends of democracy and the role of such institutions and mechanisms for achieving those ends in particular contexts are glossed over.⁸⁰ Second, pro-interventionists also appear to adopt the liberal assumption that democracy is compatible with a society sharply divided according to race, class, and gender.⁸¹ As a result, collective humanitarian intervention is legitimate if it ensures that the criteria of formal procedural democracy are met even in sharply polarized societies where large groups are excluded from decision-making power.⁸²

Such an understanding of the meaning of democracy assumes a limited role for government and thus for public decision-making. Liberalism treats the role of democracy not as enabling "collective participation in the decisions affecting the life of the governed," but as ensuring "individual freedom to pursue one's own agenda without undue interference."⁸³ Attention to some of the debates about the meaning and desirability of democracy and human rights suggests that the pro-interventionist assumption about the attractiveness of these liberal democratic ends and certain civil and political rights is highly questionable. Yet pro-interventionist literature posits international institutions as the bearers of human rights and democracy as if, in Sylvester's words, "there were a true community of agreement on what these [concepts] mean."⁸⁴

The capturing of the term democracy to legitimise intervention masks both the long tradition of critique of liberal democracies and

80. See Roth, *supra* note 75, at 56. In many cases, ensuring a post-conflict society that incorporates mechanisms for determining that the government is accountable to the people is an essential step. Yet to claim that this is an adequate step, that multi-party elections are markers of democratic legitimacy, and that the lack of such structures necessitates intervention is controversial. For an analysis that questions the utility of multi-party electoral mechanisms without other reforms, see WALDEN BELLO, *PEOPLE AND POWER IN THE PACIFIC: THE STRUGGLE FOR THE POST-COLD WAR ORDER* 7 (1992).

81. See Roth, *supra* note 75, at 58.

82. See *id.* at 56, 59.

83. *Id.* at 61.

84. Christine Sylvester, *The White Paper Trailing*, in *DISCOURSES OF DANGER AND DREAD FRONTIERS: AUSTRALIAN DEFENCE AND SECURITY THINKING AFTER THE COLD WAR* 134, 142 (Graeme Cheeseman & Robert Bruce eds., 1996).

the fierce debates about the privileging of civil and political rights over economic, social, and cultural rights. In particular, the hidden assumptions and triumphalist tenor of pro-interventionist literature hide competing conceptions about the ends of democracy and human rights protection, and debates about what these terms meant and mean in the context of colonialism and globalization. Roth argues that liberal democracy gains much of its moral authority from the older and broader conception of substantive democracy. Substantive democracy, having as its end "the furtherance of broad popular empowerment with respect to the full range of social decisions that condition life in society," embodies values "at the moral core of the democratic heritage."⁸⁵ That conception of democracy has not been greatly furthered by many of the recent developments generally celebrated in pro-intervention and democratization literature.

The nineteenth-century liberal form of democracy poses no risk of empowerment for those excluded or marginalized groups in rigidly stratified societies, nor, as currently practiced, does it carry with it a risk of social reform.⁸⁶ The resources, both material and cultural, of dominant groups allow them to "undermine any electorally based challenge to the status quo."⁸⁷ In societies that are marked by racial, ethnic, gendered, or religious polarization, or where for other reasons "there is a cohesive majority faction intent on plundering the minority," the limited promise of accountability inherent in the liberal model of democracy fails.⁸⁸ That narrow form of liberal procedural democracy can too readily be introduced "not as a component of social reform but as a substitute for it."⁸⁹

Finally, post-colonial or anti-colonial theorists point to the limited utility of reclaiming even the broader notion of substantive democracy without attempting to understand its meaning in the context of colonization, patriarchy, and now globalization.⁹⁰ These critics are cautious

85. Roth, *supra* note 75, at 56.

86. See Ian Duncanson, *Close Your Eyes and Think of England: Stories About Law and Constitutional Change in Australia*, 3(2) CANBERRA L. REV. 123 (1996). See also NOAM CHOMSKY, *DETERRING DEMOCRACY* (1992); KARL MARX, *On the Jewish Question*, in *NONSENSE UPON STILTS* 137 (Jeremy Waldron ed., 1987).

87. Roth, *supra* note 75, at 63.

88. *Id.* at 72. For the argument that these conditions apply in the United States, see LANI GUINIER, *THE TYRANNY OF THE MAJORITY: FUNDAMENTAL FAIRNESS IN REPRESENTATIVE DEMOCRACY* (1994).

89. Roth, *supra* note 75, at 64.

90. There is a growing body of critical scholarship concerned with the problematic nature of the concepts of democracy, citizenship, rights, and representation with respect to marginalized groups. See, e.g., Amarpal K. Dhaliwal, *Can the Subaltern Vote? Radical Democracy, Discourses of Representation and Rights, and Questions of Race*, in *RADICAL DEMOCRACY: IDENTITY, CITIZENSHIP, AND THE STATE* 42 (David Trend ed., 1996); CAROLE PATEMAN, *THE SEXUAL CONTRACT* (1988); *RACE-ING JUSTICE, EN-GENDERING POWER* (Toni Morrison ed., 1993); JAN PETTMAN, *LIVING*

about the claims made by United States and Western European scholars justifying intervention on behalf of democracy or human rights, given the history of those concepts. "The West" has historically been constructed as democratic through representations of a racialized and gendered other as non-democratic or anti-democratic. Democracy should therefore be understood as a relational rather than an absolute category.⁹¹ As Toni Morrison shows, the history and origin of the organising principles of liberal democracy in the United States—freedom and the rights of man—are "permanently allied with another seductive concept: the hierarchy of race."⁹² There is a historical connection, a necessary connection, between such democratic ideals and colonial institutions. Ownership of the term "democracy" by states like the United States depends upon the selective erasure or "motivated forgetting"⁹³ of non-democratic or anti-democratic features of those ideal democratic states, both in the past and in the present. As Dhaliwal argues: "The fact that Britain has a monarchy in [the 1990s] and that this is not read as antithetical to democracy in the ways socialism, for example, is indicative of the Western, especially American, lock on the term, including its definitional boundaries."⁹⁴

These scholars of colonialism and nationalism argue that discourses of democracy were historically used to announce, argue, and promote the cultural superiority of colonising states, to justify "democratising" invasions by colonising powers, and thus to consolidate the power of imperialist states. Proponents of democracy in whatever form, by ignoring the fact that democracy is a modern, racial, and gendered formation, miss the ways in which the discourse of democracy buttresses "colonial and neo-colonial projects."⁹⁵ The racialized and gendered history and appeal of democracy thus require urgent consideration.⁹⁶

The range of human rights to be promoted by collective humanitarian intervention is similarly radically circumscribed to fit this vision of procedural democracy as the end of intervention.⁹⁷ That confident

IN THE MARGINS: RACISM, SEXISM AND FEMINISM IN AUSTRALIA (1992); PATRICIA WILLIAMS, *THE ALCHEMY OF RACE AND RIGHTS* (1993); IRIS MARION YOUNG, *JUSTICE AND THE POLITICS OF DIFFERENCE* (1990); Anne Orford, *Citizenship, Sovereignty and Globalization: Teaching International Law in the Post-Soviet Era*, 6 *LEGAL EDUC. REV.* 251 (1995).

91. See Dhaliwal, *supra* note 90, at 43.

92. TONI MORRISON, *PLAYING IN THE DARK: WHITENESS AND THE LITERARY IMAGINATION* 38 (1993).

93. Michael Rogin, "Make My Day!": *Spectacle as Amnesia in Imperial Politics*, in *CULTURES OF UNITED STATES IMPERIALISM* 499 (Amy Kaplan & Donald Pease eds., 1993) (discussing the operation of "political amnesia" or "motivated forgetting" in United States imperial culture).

94. Dhaliwal, *supra* note 90, at 50.

95. *Id.* at 56.

96. See *id.* at 57.

97. See Tesón, *supra* note 3 (failing to make explicit the content of the category of human

narrowing of the meaning of human rights ignores the lively debate raging about whether civil and political rights should be given priority over economic, social, and cultural rights. There is no agreement that the narrow range of human rights used to justify intervention are core rights, or rights that should be given priority. The meaning of human rights has also been contested in liberal democracies when those people who have traditionally not been constructed as rights holders or the subjects of human rights—women, indigenous peoples, non-citizens—attempt to claim them.

Whatever definition of rights and democracy we adopt, it remains necessary to question the assumption that the powerful international institutions operating in the economic and security areas are the bearers of even these limited liberal versions of democracy and rights in the post-Cold War era. To what extent is that idealization of the international realm based in turn upon selective erasures or motivated forgetting?

B. The Impact of International Institutions on Human Rights and Democracy

There has been little analysis of the ways in which international actors and activities may pose a threat to democracy or human rights, and thus contribute to security or humanitarian crises. Yet the privileging of the international level of governance as the bearer of human rights and democracy does not stand up to scrutiny in the context of at least one major project of international institutions in the post-Cold War era: economic liberalization. There is growing concern expressed by commentators in the human rights and development areas about the impact of international economic institutions on popular sovereignty, substantive democracy, and on a broad range of civil, political, economic, social, and cultural rights.

1. The World Bank and the IMF

To date, the international economic institutions with the most significant effects on domestic policy have been the IMF and the World Bank.⁹⁸ There is a large amount of literature criticising various aspects

rights). See also Franck, *supra* note 78, at 50 (focusing on the right to free and open elections, the right to free speech and the right to self-determination as determinants of democratic legitimacy). For a critique of the failure of those linking security and human rights issues in post-Cold War security discourse to consider the contentious issue of what constitutes basic human rights, see Hilary Charlesworth, *Silences of the Blue Book*, in *THE NEW AGENDA FOR GLOBAL SECURITY: COOPERATING FOR PEACE AND BEYOND* 133, 136 (Stephanie Lawson ed., 1995).

98. Both the IMF and the World Bank are universal multilateral institutions, in that membership in these institutions is open to all states that are willing to subscribe to their charters

and effects of IMF and World Bank policy.⁹⁹ I want to focus here on the impact of the policies of those institutions on human rights and democracy.

The IMF and the World Bank, with the support of economic liberals in the governments of target states,¹⁰⁰ require states to comply with certain conditions in order to make use of the resources of those institutions.¹⁰¹ Since the early 1980s, these institutions have imposed conditions that constrain the ability of peoples or their representatives to make decisions about wage levels for workers, education policy, health policy, social security provision, provision of services, constitutional reform, levels of unemployment, and federal/state relations within federations.¹⁰²

and to pay a quota or subscription to support functions. Voting and governance of those institutions is, however, determined by reference to capital contributions—that is, by reference to economic power. The World Bank Group comprises a number of institutions. The term “World Bank” usually refers to two members of the World Bank Group: the International Bank for Reconstruction and Development (IBRD) and the International Development Association (IDA). See generally SUSAN GEORGE & FABRIZIO SABELLI, *FAITH AND CREDIT: THE WORLD BANK’S SECULAR EMPIRE* 10–15 (1994).

99. Criticism of World Bank and IMF policies grew during the 1980s. Critics focussed on the environmental, social justice, and human rights impacts of specific bank projects; on the flawed model of development that such projects revealed; on the devastating human and environmental impact of structural adjustment conditions aimed at turning economies into “export machines”; on the ways in which management and the incentive structure of those institutions rewarded lending for huge, expensive projects; on the pressure to lend driven by the limited set of borrowers and the need to cover the enormous administrative overheads of the Bank; and on the undemocratic, top-down, centralized and secretive nature of World Bank and IMF processes. See, e.g., WALDEN BELLO, *DARK VICTORY: THE UNITED STATES, STRUCTURAL ADJUSTMENT AND GLOBAL POVERTY* (1994); WALDEN BELLO ET AL., *DEVELOPMENT DEBACLE: THE WORLD BANK IN THE PHILIPPINES* (1982); JEREMY BRECHER & TIM COSTELLO, *GLOBAL VILLAGE OR GLOBAL PILLAGE: ECONOMIC RECONSTRUCTION FROM THE BOTTOM UP* (1994); SUSAN GEORGE, *A FATE WORSE THAN DEBT* (Grove Weidenfeld 1990) (1988); SUSAN GEORGE, *THE DEBT BOOMERANG: HOW THIRD WORLD DEBT HARMS US ALL* (1992); *THE IMF, THE WORLD BANK AND AFRICAN DEBT VOLUME 2: THE SOCIAL AND POLITICAL IMPACT* (Bade Onimode ed., 1989); BRUCE RICH, *MORTGAGING THE EARTH: THE WORLD BANK, ENVIRONMENTAL IMPOVERISHMENT, AND THE CRISIS OF DEVELOPMENT* (1994).

100. It is important to stress that the activities of the World Bank and the IMF are supported by at least some members of many borrower governments. For an illustration of the relationship between elites in borrower countries and World Bank policies, see the discussion of the Sardar Sarovar dam project and the support that continued World Bank funding for the project received from both the Indian government and other borrower governments in RICH, *supra* note 99, at 150–53, 301–02.

101. No country can become a member of and receive loans from the World Bank unless it also becomes a member of the IMF and becomes susceptible to IMF conditions on, and IMF management of, economic performance. The World Bank in turn regularly appends IMF-like conditions to loans and theoretically will not lend to a country that is in breach of such conditions. The most infamous of those conditions attach to “structural adjustment” loans, which basically require countries to adopt policies of foreign investment deregulation, privatization, cuts to government spending on health and education, labour market deregulation, lowering of minimum wages, and a focus on production of goods for export rather than domestic production. GEORGE & SABELLI, *supra* note 98, at 13, estimate that 15–20% of World Bank loans are structural adjustment loans.

102. From 1986 onward the World Bank, under the new presidency of Reagan appointee and former United States Republican Congressman Barber Conable, began to attach conditions to

These institutions also constrain decisions relating to the more traditional economic issues of monetary policy, export-targeted production and foreign investment levels.

The IMF and the World Bank influence the policies of governments in two ways. First, they directly influence government policy through the imposition of conditions on access to credits and loans.¹⁰³ Such conditions may even relate explicitly to issues of "governance," despite the explicit prohibition in the Articles of Agreement of the Bank against interference in the political affairs of any member state.¹⁰⁴ The IMF and the World Bank are also able to influence the direction of government policies indirectly. First, due to the weight that private banks place on the IMF's approval, such approval determines a country's creditworthiness and thus its ability to access private capital markets.¹⁰⁵ Second, the IMF exercises influence through its role in organising debt rescheduling. Since 1982, the IMF has played a central role in arranging for private banks to take part in concerted or coordinated lending packages.¹⁰⁶ The involvement of the IMF is seen as desirable, not only because it provides extra liquidity, but more im-

structural adjustment or policy-based loans requiring privatization and trade and investment liberalization. While some commentators argue that these conditions were inspired by the debt crises and the need to ensure that borrower countries had export-oriented economies that were able to honor debt repayments, others suggest that the Reagan and Bush administrations were determined to impose their own monetarist policies on developing countries. Certainly, the Bank restructuring of 1987 under Conable signalled a shift away from project lending and toward lending organized around requiring "effective macroeconomic management and a sound policy environment" of developing countries. Reorganizing the Bank: An Opportunity for Renewal, Report to the President from the Steering Committee on Reorganization of the World Bank, Apr. 1987, para. 2.05, 2.06, discussed in GEORGE & SABELLI, *supra* note 98, at 126.

103. See GEORGE & SABELLI, *supra* note 98, at 16-18; IMF CONDITIONALITY, *supra* note 28. The IMF imposes economic targets and structural reforms as a condition on the use of IMF resources. Conditions attached to access to loans or credits typically include requirements for devaluation of the national currency, limitations on government spending, privatization, wage capping and export enhancement schemes. Under the integration policies practiced by the World Bank since 1987, all loans given to a country include conditions designed to contribute to the achievement of the overall World Bank plan for that country.

104. See GEORGE & SABELLI, *supra* note 98, at 142-53. The relevant section of the Articles of Agreement is article IV, section 10, which states "The Bank and its officers shall not interfere in the political affairs of any member; nor shall they be influenced in their decisions by the political character of the member or members concerned. Only economic considerations shall be relevant to their decisions . . ." International Bank for Reconstruction and Development Articles of Agreement, effective Feb. 16, 1989, in IBRAHIM SHIHATA, *THE WORLD BANK IN A CHANGING WORLD: SELECTED ESSAYS* 345 (1991). See also SHIHATA, *supra*, at 53 (arguing that the World Bank can involve itself in political matters where they bear on economic issues).

105. See Tyson et al., *supra* note 25, at 74.

106. See WILLIAM R. CLINE, *INTERNATIONAL DEBT REEXAMINED* 206 (1995); MILIVOJEVIC, *supra* note 30, at 43-45 (discussing the role played by the IMF in Paris Club debt reschedulings from the 1950s to the 1980s—after 1966, the Paris Club, a group of creditor governments and multilateral institutions, would only agree to meet with a debtor government to discuss debt rescheduling if it had "come to an agreement with the IMF to implement an economic adjustment program prior to the meeting").

portantly because private banks assume that a lending package that includes the imposition of IMF conditionality will guarantee better and more stable economic policies in the debtor country.¹⁰⁷

Critics argue that the combination of these factors enables major creditor governments and multilateral institutions to use the debt burdens of states as an instrument to impose policy.¹⁰⁸ In countries subject to IMF and World Bank conditionality, economic restructuring limits the choices available to peoples through their governments. Decision-making power over many areas of policy is thus effectively exercised by IMF and World Bank officials.

The World Bank's 1995 and 1996 World Development Reports give some sense of the extent of the areas of political and civil life and institutions that Bank officials understand as properly falling within the realm of economic and expert, rather than political and popular, decision-making and control.¹⁰⁹ These Reports suggest that government support for areas of activity from teaching to policing is inappropriate government and public intervention into the economic and private life of the country. Decisions about policies governing such vital areas of social, political, and cultural life as education,¹¹⁰ health,¹¹¹ and labour markets¹¹² are presented by the authors of the 1995 Report as

107. See CLINE, *supra* note 106, at 206.

108. See Gowan, *supra* note 40, at 58.

109. THE WORLD BANK, WORLD DEVELOPMENT REPORT 1995: WORKERS IN AN INTEGRATING WORLD (1995) [hereinafter WORLD DEVELOPMENT REPORT 1995]; THE WORLD BANK, WORLD DEVELOPMENT REPORT 1996: FROM PLAN TO MARKET (1996) [hereinafter WORLD DEVELOPMENT REPORT 1996].

110. In the 1995 Report, the World Bank authors deal with education under the headings of "Skills for Development" and "investment" in "human capital." According to these authors, in "primary education free public education usually makes sense," but "for most other human resource programs, free provision more often is not justified." WORLD DEVELOPMENT REPORT 1995, *supra* note 109, at 36-40. At least in that Report, the World Bank does not consider education as providing anything other than increased "human capital." In the 1996 Report, education reform is said to be urgently needed because "the erosion of a country's human capital imposes high downstream costs." "The financing of education should provide incentives for efficiency." Improving education delivery "implies decentralization," "diversification of supply, including private suppliers," and enhancing "individual choice." This requires "a major change in the role of the state." WORLD DEVELOPMENT REPORT 1996, *supra* note 109, at 123-26. The 1996 Report's conclusion lauds "incorporating private provision of education services, particularly in higher and adult education." *Id.* at 145. According to one critic, in those Eastern European countries subject to "shock therapy" regimes, the IMF and the World Bank "have shown not the slightest concern for protecting the educational infrastructures and public research and development budgets, nor in infrastructures for ensuring a future capacity to absorb and diffuse new technologies throughout the economy." Gowan, *supra* note 40, at 47.

111. Gowan notes that each year, spending on health and education in countries subject to "shock therapy" regimes is reduced. In Hungary, for example, "in the spring of 1995, the Bretton Woods institutions required the government to charge fees for higher education and for medical treatment as a condition for providing new loans." Gowan, *supra* note 40, at 47.

112. The extent to which the World Bank considers restructuring appropriate, and the extraordinarily euphemistic language resorted to in justifying the devastation caused by Bank policies, can be seen from the list of changes the Bank recommends in order to create an

within the area of expertise of economists. Decisions about these areas are portrayed as legitimately to be made by economic advisers to achieve economic liberalization. In states undergoing a transition from communism or socialism, like the former Yugoslavia, the IMF has required changes to the political and constitutional framework of the state in the name of economic management.¹¹³

Critics have argued that while the World Bank and the IMF are rhetorically committed to assisting in the achievement of democratization in states subject to structural adjustment programs, the treatment of such a broad range of public activity as properly managed by economic experts rather than by the people, however conceived, suggests such institutions are committed to a very limited model of procedural democracy. The means chosen to achieve that end of market liberalization often infringe on the right to self-determination or democratic governance understood in substantive terms.¹¹⁴

The central economic variables in the impoverished and indebted states of the Third World are often being negotiated today directly between their finance ministers and the World Bank/IMF Third World parliaments, and even prime ministers, are often excluded from the decision-making process and quite often don't even have access to the necessary information.¹¹⁵

Not only do IMF or World Bank officials often decide state budgets, but they "intervene directly in these countries, determining interest rates, deciding on the value, especially the devaluation, of national currency and dictating food and energy prices through cutbacks in state subsidies."¹¹⁶ Further, although major powers and international

"adaptable" labour market. The 1995 Report notes that "major transformations are associated with massive employment restructuring." "Adaptable" labour markets are essential if workers are to benefit from economic recovery. Constraints on labour mobility and flexibility must be removed. Such constraints include legal restrictions, well-entrenched habits, poorly functioning housing markets and land tenancy institutions. Hiring and firing practices must be liberalized. Rural workers must relocate to take advantage of new employment "opportunities." Wages must become more "flexible." Minimum wage levels must be *lowered*. Workers must be retrained, and entrepreneurship supported. WORLD DEVELOPMENT REPORT 1995, *supra* note 109, at 108-14. In the 1996 Report, the World Bank authors approve low unemployment benefits, at a flat rate to all recipients, for a limited period, as improving "work incentives, minimizing costs, and easing administration." Again (as in 1995), constraints on labour mobility and flexibility must be removed—services must be "decoupled" from enterprises (e.g., daycare and housing), poorly functioning housing markets improved, and legal restrictions dropped. The role of trade unions "needs to change" so "unions cannot capture economic rents" and "parties engaged in bargaining face the costs of its outcome" (i.e., there is strong disapproval of pay for striking workers). "A minimum wage" is seen as "particularly problematic for transition economies." WORLD DEVELOPMENT REPORT 1996, *supra* note 109, at 72-77.

113. See *supra* discussion in Part II.

114. See Hippler, *supra* note 63, at 23-25.

115. *Id.* at 24.

116. *Id.*

institutions do not represent themselves as being against democracy in states undergoing restructuring, "they take for granted that, in the South, democracy is subordinate to their own economic and strategic interests, and they try to shape democracy in such a way that it becomes a mere form of free-market management."¹¹⁷

The "shock therapy" economic stabilization programs that have been implemented since the late 1980s throughout Eastern Europe provide one particularly clear example of the impact of IMF and World Bank policies on democratic participation. First, the means by which these programs have been designed and implemented have denied democratic participation in decisions about whether and how to move from a socialist to a market-based political and economic system. Jeffrey Sachs, who developed the "shock therapy" model and advised the Yugoslav and Polish governments, justifies that denial of participation by arguing that the "ends" of transition are not to be decided by the people of Eastern Europe.

(T)he eastern countries must reject any lingering ideas about a "third way", such as a chimerical "market socialism" based on public ownership or worker self-management, and go straight for a western-style market economy The main debate in economic reform should therefore be about the means of transition, not the ends. Eastern Europe will still argue over the ends: for example, whether to aim for Swedish-style social democracy or Thatcherite liberalism. But that can wait.¹¹⁸

While the goals of shock therapy are alleged to include the achievement of democracy and freedom, Sachs explicitly treats such goals as ends justifying economically rational means. Critics of that approach have pointed out that the liberal principle is abandoned during shock therapy. According to that model, as shock therapy is the "only, or best, path to truly democratic, legal and civil institutions,"¹¹⁹ existing forms of government or legal and civil institutions can justifiably be destroyed in order to achieve the goal of true democracy and market economy.

Second, not only have international institutions advocated undemocratic means of achieving liberalization, but the ends of the liberalization process in Eastern Europe appear to assume liberal democratic models. As Roth notes, "'democratisation' has so far sought to reverse those few features that, from the standpoint of substantive democracy, are favorable: relative social equality and the concentration of economic

117. *Id.* at 26.

118. Sachs, *supra* note 40, at 21.

119. Gowan, *supra* note 40, at 47.

resources in the hands of a public sector that might potentially be held accountable to collective decision making."¹²⁰

Decision-making over ever larger areas of what was once considered to be central to popular sovereignty and substantive democracy is now treated as legitimately within the province of economists in institutions such as the IMF and the World Bank.¹²¹ The supposedly economic and technocratic changes required by those institutions shape the policy choices available to governments, alter existing constitutional and political arrangements, determine the extent to which people in many states can access health care, education, pensions, and social security, and shape labour markets—thus affecting functions that go to the heart of political and constitutional authority. The shifting of decision-making authority from governments to international economic institutions affects both popular sovereignty and substantive democracy. In some cases, IMF and World Bank conditions have also challenged existing constitutional and governmental arrangements. Such conditions clearly impact upon political participation, popular sovereignty, and substantive democracy.

World Bank and IMF policies have also been criticized from a human rights and social justice perspective. Structural adjustment loan conditions requiring the cutting of public expenditure on health and education, labour market deregulation, export-oriented production, and privatization, have led to increased income disparity, human rights abuses, and marginalization of the poor and rural populations in many countries.¹²² Specific projects funded by the World Bank, such as the Sardar Sarovar dam project in India, have also been criticized for causing human rights abuses and social devastation.¹²³ Economic experts have authority and decision-making power, represented as legitimate, over many areas of political and social activity. As a result in part of the activities of the IMF and the World Bank, it could be

120. Roth, *supra* note 75, at 66.

121. That is not to say that *states* are weakened through economic restructuring. Indeed, certain areas of state activity must be strengthened in order to provide secure and stable conditions for foreign investment. Instead, many aspects of what we once understood as *sovereignty* is now vested, not with "the people" however understood, but with economic experts.

122. *The Realization of Economic, Social and Cultural Rights, Final Report Submitted By Mr. Danilo Turk, Special Rapporteur*, U.N. ESCOR Hum. Rts. Comm., Sub-Comm. On Prevention of Discrimination and Protection of Minorities, 44th Sess., Provisional Agenda Item 8, U.N. Doc. E/CN.4/Sub.2/1992/16 (1992) (outlining human rights violations including an increase in infant and child mortality rates as a result of World Bank and IMF policies and projects).

123. The Sardar Sarovar project involved the displacement of 200,000 poor and indigenous people without adequate compensation or resettlement plans. Its human rights and environmental impacts are discussed in RICH, *supra* note 99, at 150–53; GEORGE & SABELLI, *supra* note 98, at 175–82. See also the highly critical conclusions of the independent review into the project, BRADFORD MORSE & THOMAS R. BERGER, *SARDAR SAROVAR: REPORT OF THE INDEPENDENT REVIEW* xi–xxv (1992).

argued that many peoples are unable to exercise the right to self-determination.

2. Multilateral and Regional Trade Agreements

While the World Bank and the IMF have, since their inception, influenced the policies of many governments, it appears that a new institution, the World Trade Organization (WTO), will influence the capacity of peoples in all states to make decisions about the conditions affecting their lives in the future. Trade and financial liberalization conducted through multilateral and regional trade regimes has begun to limit the degree to which people are able to shape the economic, social, and cultural policies of their governments.

Concerns about the ways in which trade agreements operate to constrain state action and to reorient domestic politics first emerged in commentary about the effects of regional trade arrangements such as the European Community (EC) and the North American Free Trade Agreement (NAFTA). Commentators note, for example, that the rhetoric of a united Europe serves to obscure the fact that European integration is in fact not a politically neutral ideal, but a project based on integration into a market.¹²⁴ As a result, one consequence of European union has been to represent an increasingly broad range of issues as apolitical and technical.¹²⁵

Similarly, commentators argue that NAFTA operates to limit the choices available to democratically elected parliaments over a wide range of policy areas.¹²⁶ According to Majorie Cohen, for example, NAFTA contains requirements "that could so change our notion of what a public sector should do, that it would be unrecognisable as an agent to meet people's needs."¹²⁷ Cohen points to NAFTA provisions that facilitate privatization of public entities, and that require government entities to "act solely in accordance with commercial considerations," which are defined to mean "those that are consistent with the normal business practices of privately held enterprises in the relevant business or industry."¹²⁸ As Cohen notes, the very rationale for the

124. See Joseph H.H. Weiler, *The Transformation of Europe*, 100 YALE L.J. 2403, 2479-80 (1991).

125. *Id.* See also David Kennedy, *Receiving the International? What's the Public/Private Distinction Got to do With It?* 45 (Mar. 3, 1995) (paper presented at the New York University Institute for Law and Society) (arguing that the EU has "institutionalized the parliament as a promise," resulting in a "broad political culture with a technocrat and legal face, in which politics is treated as having somehow already happened elsewhere").

126. See Majorie Griffin Cohen, *The Return of the Robber Barons*, 49 REFRACTORY GIRL 40 (1995).

127. *Id.* at 43.

128. *Id.*

public sector, that it provide goods and services that the private sector cannot, is undermined by such an agreement.¹²⁹

These criticisms have now begun to surface at the global level, in the aftermath of the Uruguay Round of GATT trade negotiations.¹³⁰ The Uruguay Round outcomes significantly expanded the range of activities encompassed by the GATT regime to include trade-related aspects of intellectual property,¹³¹ trade in services¹³² and trade-related investment measures,¹³³ and greatly increased the enforcement powers of the regime through the establishment of the WTO.¹³⁴ In other words, the language of "free trade" is being used to facilitate two processes that are far removed from the traditional GATT goal of liberalising trade in goods: first, the removal of barriers to foreign direct investment and, second, the re-conceptualization and international protection of information as private property rather than as a public good. Both of these processes have implications for substantive democracy and human rights protection.

TRIPS and GATS in particular have been criticized for the effects they are likely to have on poor and rural populations, particularly in the South.¹³⁵ These agreements radically limit policy options available to many governments over an extremely wide range of issues and interests. Many aspects of what were once conventional areas of government control and policy are, in the aftermath of the Uruguay Round, now characterisable as illegitimate non-tariff barriers to trade.

129. See *id.* at 43–45. Cohen gives examples of the ways in which NAFTA has been used to support the interests of United States corporations and limit the scope of activity of Canadian federal and provincial governments.

130. The Final Act Embodying the Results of the Uruguay Round of Multilateral Trade Negotiations was ratified by over 120 countries at Marrakesh on April 15, 1994.

131. See Agreement on Trade-Related Aspects of Intellectual Property Rights, Apr. 15, 1994, 108 Stat. 4809, 4815, 32 I.L.M. 1197 [hereinafter TRIPS].

132. See General Agreement on Trade in Services, Apr. 15, 1994, 108 Stat. 4809, 4815, 33 I.L.M. 1168 [hereinafter GATS].

133. See Agreement on Trade-Related Investment Measures, Apr. 15, 1994, 108 Stat. 4809, 4815, in LAW AND PRACTICE OF THE WORLD TRADE ORGANIZATION, TREATIES BOOKLET 1, RELEASE 95-1, at 161 (Joseph F. Denny ed., 1995) [hereinafter TRIMS].

134. See Agreement Establishing the World Trade Organization, Apr. 15, 1994, 108 Stat. 4809, 4815, 33 I.L.M. 1144 [hereinafter WTO Agreement]. See also Understanding on Rules and Procedures Governing the Settlements of Disputes, Apr. 15, 1994, 108 Stat. 4809, 4815, 33 I.L.M. 1226.

135. See CHAKRAVARTHI RAGHAVAN, RECOLONIZATION: GATT, THE URUGUAY ROUND AND THE THIRD WORLD (1990). See also Hugh C. Hansen, *International Copyright: An Unorthodox Analysis*, 29 VAND. J. TRANSNAT'L L. 579 (1996); Khor Kok Peng, *Intellectual Property: Tightening TNC Monopoly on Technology*, 3 THIRD WORLD RESURGENCE 22 (1990); Chakravarthi Raghavan, *The Real Issues in Uruguay Round*, 7 THIRD WORLD RESURGENCE 6 (1991); Peter Drahos, *Global Property Rights in Information: The Story of TRIPS at the GATT*, 13 PROMETHEUS 6 (1995); Bruce Lindsay, *GATT: Development and Intellectual Property*, 3 ARENA J. 33 (1994); Krysti Justine Guest, *Exploitation Under Erasure: Economic, Social and Cultural Rights Engage Economic Globalisation*, 19 ADELAIDE L. REV. (forthcoming 1997).

There are three ways in which these agreements narrow the areas of political, economic, and social life over which people can participate in making decisions.

First, the new investment liberalization agenda that is being furthered by free trade agreements entrenches a relationship between states and transnational corporations (TNCs) that favours those corporations over local peoples and communities. Such agreements “curb the right of governments to intervene in the economy for the benefit of their people while expanding the ‘space’ for TNCs.”¹³⁶ TRIPS, for example, obliges states to implement patent and copyright laws and to provide infrastructure to support such regulatory schemes. One illustration of the democratic impact of that agreement is the requirement in Article 39 of TRIPS that contracting parties establish legal and institutional protection for trade secrets of investors. Critics fear that this requirement will operate to entrench the type of unaccountability of TNCs to local communities that was evidenced in the Bhopal disaster.¹³⁷ Internationalising the protection of the trade secrets of TNCs involves a corresponding increase in the secrecy of technological, production, and manufacturing processes.¹³⁸ Such an increase in secrecy affects democratic entitlements by making it impossible for local communities or peoples to have knowledge of the likely risks of processes, thus increasing the likelihood that they will have to bear the burden of damage when accidents occur. These agreements affect the capacity of communities to participate in making decisions about whether or not hazardous industries should be allowed, where they should be located, and on what terms.¹³⁹ By denying local people the capacity to make informed decisions about investments, private interests are privileged over human rights such as the right to self-determination.

Second, TRIPS shifts the boundary between public good and private interest in favour of the private interests of transnationals, a shift that has profound implications for the utility of liberal concepts of democracy and human rights in the public sphere.¹⁴⁰ The effect of the investment liberalization now being furthered by post-Uruguay Round trade agreements has been to privatise much of what has been understood since the nineteenth century as public—utilities, education, libraries, information, hospitals, and roads. The idea underlying liberal

136. Raghavan, *supra* note 135, at 40.

137. Indira Jaising & C. Sathyamala, *Legal Rights . . . and Wrongs: Internationalising Bhopal*, in *CLOSE TO HOME: WOMEN RECONNECT ECOLOGY, HEALTH AND DEVELOPMENT WORLDWIDE* 88 (Vandana Shiva ed., 1994).

138. *Id.*

139. *Id.* at 98.

140. See John Frow, *Information as Gift and Commodity*, *NEW LEFT REV.*, Sept./Oct. 1996, at 89, 105.

notions of human rights and democracy—the guarantee to individuals of formally equal access to public goods and participation in public decision-making—is undermined by the process of investment liberalization combined with the privatization and commodification of information. By reconceptualising aspects of the public sphere as private and thus outside the realm of liberal democracy, agreements like TRIPS limit the relevance of such concepts as equality, citizenship, or human rights, which imply power-sharing, claims to resources, and entitlements against the state. The redrawing of boundaries between public and private operates to confine egalitarianism to an ever declining public sphere.

Third, TRIPS may impact upon the protection and promotion of economic, social, and cultural rights. The nature of intellectual property regimes in the United States and Europe is such that traditional community-based knowledge about seeds and plants is not patentable, while innovative individually based knowledge produced by scientific researchers, but derived from traditional knowledge, *is* patentable.¹⁴¹ According to John Frow, TNCs patent the genetic properties of seeds which were developed over generations to be insect resistant or to have medical properties, and are then able to exploit the intellectual property rights to that genetic material as a commodity in the countries from which the knowledge and seeds were first taken.¹⁴² That practice is particularly widespread in the agrochemical and pharmaceutical industries. As a result, access to information about food and medicines becomes privatised and those goods are made more expensive.¹⁴³ Human rights, such as the right to health or the right to adequate food, thus are made significantly less relevant.

Finally, these agreements have an impact upon democracy and human rights because the capacity to participate effectively in government and the market is premised upon access to information. Under regimes put in place by agreements like TRIPS, information is increasingly commodified and thus is *not* publicly accessible.¹⁴⁴ That tension is evaded through a constant promise that perfect access to information will one day be available through new technology. Access to the information needed to participate in political decision-making is perpetually deferred.

In these ways, the liberal promise of human rights and democracy is radically circumscribed. The current agenda of multilateral and regional trade agreements limits the possibility of achieving substan-

141. *See id.* at 98.

142. *See id.*

143. *See Lindsay, supra* note 135, at 38.

144. *See, Frow, supra* note 140, at 102.

tive democracy and makes a mockery of the guarantee of rights based on participation and resource allocation in the public sphere.

3. Democracy, Human Rights, and the Idea of Internationalism

International law and the actions of international economic institutions also reduce the policy choices available at the state or local level, even where states are not directly subject to conditions imposed by such institutions or constrained by trade agreements.¹⁴⁵ The role of international activity and institutions in contributing to the erosion of substantive democracy, popular sovereignty, and protection of human rights is somewhat more complicated where citizens elect economically rationalist governments which then proceed to restructure the state. A particular representation of globalization and the "international" plays an important role in limiting the scope for political action in democratic countries that have adopted rationalist economic policies.¹⁴⁶

Many governments of industrialized states and their economic advisers argue that globalization and the attendant need to attract newly mobile capital necessitates significant restructuring of political, social, and cultural life and institutions.¹⁴⁷ The perception of "unlimited options for capital exit"¹⁴⁸ as a result of the deregulation of investment measures and financial markets acts as a constraint on economic, social,

145. For a discussion of the "constraints upon [states'] freedom of action in the political, economic and other spheres, which result from the globalisation process," see Philip Alston, *Reform of Treaty-Making Processes: Form over Substance?*, in *TREATY-MAKING AND AUSTRALIA: GLOBALISATION VERSUS SOVEREIGNTY?* 1, 12 (Philip Alston & Madelaine Chaim eds., 1995). Alston points to the impact that the downgrading of a government's credit rating by an international agency, such as Moody's Investors Services, can have on the range of economic policies perceived to be available to a government, or the impact that regular reviews of government policy undertaken by the OECD can have on national policy debate.

146. For valuable analyses of the democratic deficit of such restructuring and its implications for civil society and community life, see JANE KELSEY, *ECONOMIC FUNDAMENTALISM: THE NEW ZEALAND EXPERIMENT—A WORLD MODEL FOR STRUCTURAL ADJUSTMENT?* (International Labour Series, Pluto Press 1995) (discussing restructuring in New Zealand); MICHAEL PUSEY, *ECONOMIC RATIONALISM IN CANBERRA* (1991) (discussing Australia); WILL HUTTON, *THE STATE WE'RE IN* (Vintage 1996) (1995) (discussing the UK).

147. While many governments of industrialized states have been quick to reshape domestic law and institutions according to international economic law and the dictates of international financial institutions, they have been reluctant to incorporate into the domestic realm those aspects of international law that might subvert the aims of economic rationalists. On the willingness to restructure law and institutions according to economic interests, see PUSEY, *supra* note 146; HUTTON, *supra* note 146; Hilary Charlesworth, *The Australian Reluctance About Rights*, in *TOWARDS AN AUSTRALIAN BILL OF RIGHTS* 21 (Philip Alston ed. 1994) (on the reluctance to incorporate rights into the domestic realm); Duncanson, *supra* note 86 (arguing that to the extent Australian governments have been willing recently to celebrate human rights and citizenship, that rhetorical commitment operates to gain public support for the project of reconstitution of the state between local and global to facilitate economic restructuring).

148. Frances Fox Piven, *Is It Global Economics or Neo-Laissez-Faire?*, *NEW LEFT REV.*, Sept./Oct. 1995, at 107, 109.

industrial, and cultural policy-making, and thus on human rights, labour standards, and environmental protection in industrialized states. Governments make use of an "internationalist discourse" about the need to adjust to a changing world economy in order to ensure that citizens endorse "the modernizing actions taken by the state on [their] behalf."¹⁴⁹

The idea of a globalized economy legitimises the development of a culture in which political decisions that would once have been at least theoretically within the realm of parliamentary decision-making, popular sovereignty, or democratic government, are now made by experts in economics. Internationalism serves to reinforce this political culture based on "continual assertion of the magic of expertise" and the authority generated by an "exquisite mastery of [economic] data."¹⁵⁰ Government such as those which came to power in the United Kingdom, Australia, New Zealand, and the United States during the 1970s and 1980s make use of a sense of national crisis in the face of global economic changes in order to delegitimize popular participation in decision-making about vital political issues, which are now re-characterized as purely economic and technical.¹⁵¹

The inability of most people to contest and challenge decisions about many issues that shape their lives is presented as inevitable and natural, as a consequence of the disciplines and requirements of international competitiveness and globalization. The result is the ascendancy of a technocratic vision of "democracy-as-management,"¹⁵² in which governments and experts are engaged in management of the economy and "politics is treated as having somehow already happened elsewhere"¹⁵³

IV. POWER, KNOWLEDGE, AND INTERNATIONAL INTERVENTION

Those arguing in favour of expanding the humanitarian role of the Security Council present an image of international institutions and international law as agents of democracy and human rights. That representation operates to reinforce the identity of international institutions and of major powers, particularly the United States, as the bearers of those progressive values.¹⁵⁴ The United Nations and other

149. Meaghan Morris, *Ecstasy and Economics (A Portrait of Paul Keating)*, in *ECSTASY AND ECONOMICS* 17, 76 (1992).

150. *Id.*

151. *See id.* at 79.

152. Kennedy, *supra* note 125, at 46.

153. *Id.* at 45.

154. For a useful analysis of the post-Cold War construction of "the West and the rest" that

post-World War II institutions have embodied the faith of many people in the ability of international institutions to protect ideals of universalism, humanitarianism, peace, security, and human rights. Multilateralism has seemed to offer an escape from unrestrained self-interest and power politics.¹⁵⁵ That faith has, if anything, grown stronger in the post-Soviet era, with commentators treating multilateral institutions, particularly the Security Council, as essentially benevolent and able to bring not only peace and security, but also human rights and democracy, to the world.¹⁵⁶ Yet by representing international intervention as essentially humanitarian, pro-interventionist literature forecloses a number of important debates.

First, democracy and human rights are treated in that literature as if there were agreement about what these concepts mean. It is assumed that all debates about the values, ends, and means of democracy are already resolved in favour of liberal, procedural democracy. Yet, as I have argued, the meanings of democracy and human rights are subject to radically contradictory interpretations: There is no agreement about what is meant by democracy and human rights or what values give moral or political weight to those concepts, and thus no agreement as to how we will know that progress towards such goals has been achieved. Pro-interventionist literature subsumes such competing claims into a triumphalist rhetoric about the entitlement of the democratic members of the international community to intervene by whatever means necessary to bring democracy and human rights to the world.¹⁵⁷ It is particularly important to remember the debates that are subsumed by such general appeals to democracy and human rights, when such appeals are used to justify the use of violence against people in the interests of their democratic and human rights entitlements. The stakes

focuses on Samuel Huntington's "clash of civilisations" thesis, see Jacinta O'Hagan, *Civilisational Conflict? Looking for Cultural Enemies*, 16 *THIRD WORLD Q.* 19 (1995).

155. See Ruth Wedgwood, *The Evolution of United Nations Peacekeeping*, 28 *CORNELL INT'L L.J.* 631 (1995). Wedgwood argues that

in international law circles, an enthusiasm for multilateralism sometimes brings a suspension of judgment. Even international lawyers who admit the deep interweaving of law and morality, drift towards a "multilateral positivism"—the presumption that if a decision is reached multilaterally, it can't be wrong The ordinary inquiry appropriate to the intervention of one country into another country's affairs, a scepticism or burden of persuasion for unilateral intervention, turns to credulity if the action is multilateral.

Id.

156. Links between the ideals informing the creation of the United Nations in 1945 and the post-Cold War role of the Security Council are made in many texts supporting an expanded role for the Security Council. See, e.g., Albright, *supra* note 16, at 1605–06.

157. As Roth notes, democracy "still admits of radically contradictory interpretations." Roth argues that the dominant approach taken in democratization literature "exaggerates democratic progress, encouraging an unjustified triumphalism that is both messianic (with respect to those states that have not yet achieved polyarchy) and complacent (with respect to those that have)." Roth, *supra* note 75, at 56.

of such legal debates are high, as lawyers are appealing to the values that underlie the moral significance of democracy and human rights in order to convince their audience that violence should be resorted to, or that its use in a particular instance was justified.¹⁵⁸

Second, the focus on the role of international institutions and international law in intervening for human rights and democracy obscures the role played by international institutions and laws in contributing to economic liberalization. By focussing only on norms of international law that relate to public issues, international lawyers fail to make visible the norms and institutions that facilitate the making of a global market. That failure contributes to the sense that economic liberalization is natural and inevitable. Global economic restructuring becomes a given, and our role as humane international lawyers is only to consider norms relating to intervention, or issues such as the limits of self-determination. Accordingly, the conduct of business as usual appears both natural and politically neutral. While international lawyers have successfully politicised the making of international government, we now have to politicise the norms and institutions that facilitate the market.¹⁵⁹

In [the dominant legal] view, only international government must be made; the international market makes itself Of course, as has been recognised since the last century, this approach dramatically obscures the process by which a market is constructed—the ongoing choices required to elaborate, enforce, and interpret the background norms of private law, and the financial and other service institutions which must be put in place. It not only makes the State seem too active, too able to will (as all international institutionalists insist), it also underestimates the politics of the private.¹⁶⁰

Third, by failing to evaluate the relationship of the activities of international institutions to security and humanitarian crises, interna-

158. Walter Benjamin argues that the rule of law is established and sustained by a dimension of force or violence that holds the place of the missing foundations of law. He argues that in democratic societies, where the foundational or constitutive role of violence regarding the rule of law is most fervently disavowed, the open secret of sanctioned police violence is particularly disturbing. That "outlaw" dimension of law is apparent in debates about the use of violence by states to bring democracy or human rights to those against whom that violence is directed. See Walter Benjamin, *The Critique of Violence*, in REFLECTIONS, ESSAYS, APHORISMS, AUTOBIOGRAPHICAL WRITINGS 277 (Peter Demetz ed., 1986); ERIC L. SANTNER, MY OWN PRIVATE GERMANY: DANIEL PAUL SCHREBER'S SECRET HISTORY OF MODERNITY 9–12 (1996) (discussing Benjamin). See also Jacques Derrida, *Force of Law: The "Mystical Foundation of Authority,"* in DECONSTRUCTION AND THE POSSIBILITY OF JUSTICE 3 (Drucilla Cornell et al. eds., 1992).

159. See Kennedy, *supra* note 1.

160. *Id.* at 372.

tional lawyers avoid assessing the threats posed to security, human rights, life, substantive democracy, health, and justice by economic restructuring. While the activities of international economic institutions, United States and European economic advisers, and private banks have arguably contributed to security crises, and certainly have substantial effects upon sovereignty, self-determination, statehood, the right to democratic governance, and the protection of human rights, little or no attention has been paid to the relationship of the activities of those institutions to security and humanitarian crises. Those institutions and laws have emerged untouched from the wholesale re-assessment of norms and re-evaluation of the adequacy of international institutions that has taken place in light of these crises.¹⁶¹

In other words, the project of economic liberalization, an enormous and influential area of international engagement and intervention, appears sacrosanct when it comes to considering how a new world order might better guarantee peace, security, human rights, respect for humanitarian norms, prevention of genocide, and democracy. It appears that the World Bank, for example, still does not question either the ends or the means adopted in the process of adjustment and shock therapy. According to the 1995 World Development Report, the first policy choice to be made by those countries that "have embarked upon transformations" due to the "collapse of a development strategy" is "*when to start adjustment*."¹⁶² Whether to start adjustment is clearly not considered to be a relevant or useful question.

In the case of the Yugoslav conflict, the failure to consider the possibility that the causes of the crisis might be related to the activities

161. International lawyers have responded to post-Soviet humanitarian and security crises by re-evaluating most relevant areas of international legal activity, reconceptualising international legal norms, and critically assessing the performance of international institutions. Commentators have, for instance, argued that in the post-Soviet era and particularly in light of international legal responses to crises in the former Yugoslavia, Rwanda, and Somalia, rules of intervention should be or have been altered, and that a liberal construction of Chapter VII of the United Nations Charter should be employed to authorise collective humanitarian intervention. See *supra* note 5. Others have argued that such crises require a reconceptualization of the principle of non-interference in the domestic affairs of states. See *supra* note 17. International lawyers have argued that the Yugoslavian crisis requires a reassessment of the application or utility of fundamental international legal norms, such as the right to self-determination and the concept of *jus cogens*. See Martti Koskenniemi, *National Self-Determination Today: Problems of Legal Theory and Practice*, 43 INT'L & COMP. L.Q. 241 (1994); A. Mark Weisburd, *The Emptiness of the Concept of Jus Cogens, as Illustrated by the War in Bosnia-Herzegovina*, 17 MICH. J. INT'L L. 1 (1995). The theory and practice of peacekeeping and peace enforcement have been subjected to detailed scrutiny, and many commentators have argued that international institutions need to be reformed to enable them to deal with new challenges and threats to world order and global security.

162. WORLD DEVELOPMENT REPORT 1995, *supra* note 109, at 98, 101 (emphasis added). Similarly, in the 1996 report, where the emphasis is on transition rather than adjustment, the question is whether transitional "reform" should be rapid or gradual, not whether "transition" to a fully fledged market economy should occur. WORLD DEVELOPMENT REPORT 1996, *supra* note 109, at 143.

of international institutions or the influence of international law has meant that, rather than examining the role played by the international community in contributing to this situation, outside actors continued to understand the causes of the conflict as "ethnic" or "nationalist" in a premodern sense. Despite the lessons that might have been learned about the nature of international engagement from the former Yugoslavia, international institutions continue to cling, albeit somewhat more grimly, to the agenda of economic liberalization and the facilitation of a global division of labour.¹⁶³ Rather than reconsider their policies of economic restructuring or address the growing regional insecurity generated by the end of the Cold War, the international community appears to consider only whether, when, and how new forms of intervention should take place.

Fourth, the use of force appears as a necessary response to security and humanitarian crises where such crises are understood to be caused purely by local ethnic or nationalistic tensions. The international community depicted the Yugoslav conflict principally in ethnic or nationalist terms and ignored the role that international institutions and outside actors had played in contributing to the causes of that conflict. The result of constructing the crisis in those terms had significant results for policies of intervention. The lessons learned from the Yugoslav crisis turn upon how early and to what extent force should be resorted to in such situations.

The apparent focus on the use of force as a response to security and humanitarian crises is problematic, both because it ignores the role that international institutions and policies of, *inter alia*, the EC and the United States, played in creating the conditions that led to violence, and because it appears that United States and other governments are in any case reluctant to commit troops for collective security purposes. For a variety of reasons, citizens of states like the United States may not be willing to support military intervention, and thus force may in any case no longer be reliably available to contain crises resulting from the destabilising and oppressive consequences of economic restructuring. Accordingly, it seems timely to consider other

163. See CLINE, *supra* note 27, at 366 (discussing the fact that after the war, Yugoslav successor states cannot expect anything other than a modest amount of debt forgiveness, as debt indicators do not show particularly heavy indebtedness); Hermine Vidović, *Yugoslavia's Successors, in ECONOMIC TRANSFORMATION IN EAST-CENTRAL EUROPE AND IN THE NEWLY INDEPENDENT STATES* 209 (Gabor Hunya ed., 1994) (considering the successors to the assets and liabilities of the former Yugoslavia, the possibility of future debt servicing and the likelihood of any of those successors regaining membership of the IMF). In a triumph of technocratic analysis, Vidović suggests that "[t]aking into account the deep rooted political and economic problems—occupation of a part of the country's territory, armed conflicts on Croatian borders, the high number of refugees and displaced persons, the transition to a market economy—it seems rather unrealistic to expect a substantial upswing of the Croatian economy in the near future." *Id.* at 211.

ways in which changes to the policies of international institutions might contribute to peace and security.

The principal lesson we should have learned from Yugoslavia was, in other words, not that we need a United Nations rapid deployment force, but that intellectuals and activists concerned about democratic and human rights issues should lobby their government representatives and directors to oppose this model of economic liberalization and marketization in Eastern Europe. By structuring the debate around the use of force, we never get around to talking about those other issues.

In summary, "the international" in pro-interventionist literature becomes that which major powers wish to claim or own—peace, democracy, security, liberty—while "the local" becomes that for which major powers do not wish to take responsibility. It is impossible, however, to talk meaningfully about "local causes" of conflict or "local" threats to democracy and human rights in a world where the international, whether through institutions like the IMF and the World Bank facilitating lending by private banks, or through the WTO facilitating investment opportunities for multinational corporations, restructures the nature of daily life for most human beings.¹⁶⁴

This Article has entered into the contest for the meaning of stories told about intervention in international legal texts. It traced some of these stories, in order to open them up to contest, to show that the telling of these stories draws upon certain experiences of the world and not others, and to suggest that these stories have political consequences. Texts written by international lawyers, along with newspaper reports, television news, films, and other cultural forms, are sites of the production of knowledge about the conditions which make intervention desirable, where dominant stories about our cultural identity and myths about heroic destiny are formed.¹⁶⁵

As I have shown, the dominant story told today in collective security discourse leads to a troubling conclusion. The story so far is that, for a brief moment at the end of the Cold War, it seemed that the dream of a new world order was to be realised. In 1990, the world was offered the second chance this century for rebirth, the first opportunity having

164. See Jim George, *Quo Vadis Australia?: Framing the Defence and Security Debate Beyond the Cold War*, in DISCOURSES OF DANGER & DREAD FRONTIERS, *supra* note 84, at 10, 33.

165. See Susan Jeffords, *The Patriot System, or Managerial Heroism*, in CULTURES OF UNITED STATES IMPERIALISM, *supra* note 93, at 535; Lynda Boose, *Techno-Muscularity and the "Boy Eternal": From the Quagmire to the Gulf*, in CULTURES OF UNITED STATES IMPERIALISM, *supra* note 93, at 581; PATRICIA J. WILLIAMS, THE ROOSTER'S EGG: ON THE PERSISTENCE OF PREJUDICE (1995). On the relationship between imperialism and cultural practices, see generally EDWARD W. SAID, CULTURE AND IMPERIALISM (1993); MORRISON, *supra* note 92; KRISTIN ROSS, FAST CARS, CLEAN BODIES: DECOLONIZATION AND THE REORDERING OF FRENCH CULTURE (1996); ANNE MCCLINTOCK, IMPERIAL LEATHER: RACE, GENDER AND SEXUALITY IN THE COLONIAL CONTEST (1995); CULTURES OF UNITED STATES IMPERIALISM, *supra* note 93.

come with the creation of the United Nations after World War II. Despite the promise demonstrated through the decisive and "effective" actions of the "revitalised" Security Council during the Gulf War, we have seemingly failed to recognise that potential to date, due to a lack of political will and the lack of resources provided to the United Nations, in particular to peacekeeping forces. Accordingly, there will inevitably be continued threats to world security as a result of violent clashes caused by "ethnic" or even "tribal" differences, accompanied by the return home of the global Cold War cops, and the lack of power exercisable by the United Nations. The conclusion reached by many commentators is that the United Nations must step in earlier and intervene in domestic disputes, actual or anticipated. Preventative diplomacy, along with the creation of a standing United Nations force, is now the favoured option in policy documents.

The story told about the collective security crisis facing "the world" today draws upon the pleasures offered by other older and terribly familiar stories. Today, as in the late nineteenth century, imperial subjects experience many of the pleasures of imperialism, perhaps the most insidious being "a self-forgetting delight in the use of power—the power to observe, rule, hold, and profit from distant territories and people."¹⁶⁶ As with classical imperialist culture, arguments in favour of intervention are combined with an "intellectual blotting-out of what 'we' do in the process" of intervening in the interests of humanity.¹⁶⁷ There remains little analysis in international legal texts, for example, of the violence rained on the Iraqi people by forces authorized by the Security Council during the Gulf War, little analysis of rapes by peacekeepers even in official reports to the Security Council by the Secretary General,¹⁶⁸ and little attention to the effect free trade agreements have on workers.

Imperialist culture invited Europeans to understand themselves as saviours through sharing in stories about Europe's civilising mission. As Edward Said notes, "the lasting social meaning imparted to the fact of color (and hence of race) by philosophers like John Locke and David Hume, made it axiomatic by the middle of the nineteenth century that Europeans ought always to rule non-Europeans."¹⁶⁹ Imperialism and colonialism were impelled by the ideology that "certain territories and people *require* and beseech domination."¹⁷⁰ The production of knowledge about the inability of non-Europeans to govern themselves "al-

166. SAID, *supra* note 165, at 158.

167. *Id.* at 348.

168. See Orford, *supra* note 2.

169. EDWARD SAID, *THE QUESTION OF PALESTINE* 75 (1992).

170. SAID, *supra* note 165, at 8. See also WILLIAMS, *supra* note 165; MORRISON, *supra* note 92; Ross, *supra* note 165.

lowed decent men and women to accept the notion that distant territories and their native peoples *should* be subjugated," for their own good.¹⁷¹ Despite the focus on salvation and redemption, the "civilising mission" was never in fact conducted benevolently, but "was always accompanied by domination" and exploitation.¹⁷²

Justifications for military and monetary intervention draw strongly upon these stories of those who cannot govern themselves, who beseech dominance.¹⁷³ For the dominant groups whose opinions influence domestic and foreign policy, such representations shape our sense of our role, both domestically and internationally, as legitimate and benevolent. Such benevolence is certainly far preferable to the ruthless policies of economic rationalism sponsored by international financial institutions, yet "the rhetoric of power all too easily produces an illusion of benevolence when deployed in an imperial setting."¹⁷⁴ For those of us who live in European settler cultures or in metropolitan imperial centres, imperialist pleasures and illusions are dangerously ready to hand.

V. CONCLUSION

The consequences of economic restructuring require international lawyers to rethink what it means to engage with the international. While international institutions and laws do embody a commitment to achieving peace, security, human rights, and democracy, "internationalism" is equally the realm of a market-oriented and technocratic approach to government that is far removed from the rights-based and participatory model dreamed of by idealistic international and human rights lawyers. It is not possible to say that the political culture encouraged by international law and promoted by international institutions is inevitably more rational, democratic, or participatory than that inspired by domestic law and institutions. The exploitative international regime that already exists in the "forms of power and sites of choice accompanying the international market"¹⁷⁵ is as much a product of internationalism as is respect for human dignity or the right to democratic governance.

The aim of this Article is not to institute another hierarchy by romanticizing the local and vilifying or stigmatising all that occurs at the international level. An enormous range of activities undertaken at the international level do further human rights, democracy, and hu-

171. SAID, *supra* note 165, at 10.

172. SAID, *supra* note 165, at 131.

173. See WILLIAMS, *supra* note 165, at 204–08.

174. SAID, *supra* note 169, at xix.

175. Kennedy, *supra* note 1, at 374.

manitarian goals. United Nations humanitarian and relief agencies, human rights treaty bodies, aid organizations, peace activists, indigenous peoples, human rights and environmental NGOs, refugee organizations, advocates of alternative development models, and many other actors and networks are working at the international level to achieve participatory democracy, full protection of civil, political, economic, social, and cultural rights, environmental justice, and disarmament. The object of my critique is not those poorly resourced and funded areas of international activity. Rather, I have focussed here on the ways in which human rights and democratic claims may operate to legitimise economic and military projects and actions that are less clearly humanitarian in effect.¹⁷⁶ My analysis suggests that the international as a level of governance is the site of both emancipatory and oppressive values and projects, and that threats to democracy and human rights exist at the international as well as the local level.

The alternative to the current neo-liberal agenda does not have to be, as some commentators appear to fear, a return to a narrow, insular, or xenophobic nationalism. Indeed, the reemergence of an insular nationalism in many states is to some extent a reaction to a perceived elite commitment to internationalism at whatever cost, that would leave marginalised and unrepresented groups to make the sacrifices deemed necessary for global competitiveness.¹⁷⁷ It is, therefore, just as

176. For a similar critical approach to the ways in which international institutions make use of human rights and democratic rhetoric to achieve less emancipatory ends, see Alston, *supra* note 6 (arguing that the Gulf War demonstrated that major powers appear to prefer using ad hoc interventionist responses to human rights crises, rather than supporting and strengthening less-coercive existing multilateral mechanisms for promoting and protecting human rights, since such ad hoc approaches are less principled and create fewer precedents that might constrain action in the future).

177. As Daniel Bensaid argues in the French context: "The choice is not limited to a liberal Europe running into a wall or withdrawal down the nationalist-populist blind alley. A different Europe, democratic and social, could obtain the popular legitimacy whose absence is so glaringly apparent in the case of Maastricht policy." Daniel Bensaid, *Neo-Liberal Reform and Popular Rebellion*, *NEW LEFT REV.*, Jan./Feb. 1996, at 109, 114. See also Mona Harrington, *What Exactly Is Wrong with the Liberal State as an Agent of Change?*, in *GENDERED STATES: FEMINIST (RE)VISIONS OF INTERNATIONAL RELATIONS THEORY* 65, 72 (V. Spike Peterson ed., 1992) (arguing that the most passionate advocates of protectionism and nationalism tend to be those who have some economic and political influence, though not enough to shape events, and thus seek the identity of the nation to enlarge and bolster their own identities, while the most powerful groups in modern societies on the other hand "are least nationalist in outlook and identity"). Harrington notes that historically in the United States the strongest isolationists have been those whose economic ground is relatively local, while the strongest internationalists are groups benefiting from the international economy. "[G]roups based on family farms and small town commerce, places once central to both the economy and the social virtues of the United States but now marginal and chronically insecure, profess an almost desperate attachment to the nation." *Id.* In other words, the "ethic of competition and control takes one form in insecure groups and another among the economically powerful." *Id.* Harrington also points out that the most deeply insecure and impoverished groups do not identify strongly with the nation, with the international or with politics in general. See *id.*

likely that broad popular support for humanitarian actions could be gained by working towards international institutions that do not legitimise technocratic or militaristic projects in the name of addressing human suffering. In order to be able to work for a world where substantive democracy, social justice, empowerment of women, racial harmony, and the end of poverty are the goals promoted at all levels of government, however, we have to subject the current military and monetary priorities and activities of international institutions to scrutiny, particularly where they are conducted in the name of human rights and democracy.¹⁷⁸

While international lawyers should remain committed to the ideal that lies behind the notion of "collective humanitarian intervention," what is required today is to put "into question again . . . the very concept of the said ideal."¹⁷⁹ This Article has offered a different context in which to understand post-Cold War security and humanitarian crises. Those international lawyers seeking to contribute to the realization of substantive democracy and to the protection and promotion of human rights could better do so by acknowledging and seeking to prevent the destructive effects of international law and multilateralism as they operated in the former Yugoslavia and continue to operate in much of the world today. It is important for international lawyers to make the links which are within our areas of expertise—links, for example, between the obligations imposed by the GATT Uruguay Round agreements and the narrowed scope for the operation of democracy and human rights in many states, or between the conditions of World Bank loans and the growing insecurity of people in many parts of the world. We need to take a wider view of international legal action, opening up to scrutiny the activities promoted by international institutions in the name of peace, development, human rights, and democracy. Such a view suggests that measures other than increased military intervention are demanded of the international community in the name of humanitarian action in the post-Soviet era.

178. For examples of those arguing for alternative models of "globalisation from below" that build on decentralized transnational networks or alliances of communities, rather than the dominant model of "globalisation from above" which is built on secretive, centralized, elitist institutions and bureaucracies, see BRECHER & COSTELLO, *supra* note 99, at 167–84; Richard Falk, *The Complexities of Humanitarian Intervention: A New World Order Challenge*, 17 MICH. J. INT'L L. 491, 512–13 (1996); George, *supra* note 164; Gayatri Chakravorty Spivak & David Plotke, *A Dialogue on Democracy*, in RADICAL DEMOCRACY, *supra* note 90, at 209.

179. DERRIDA, *supra* note 77, at 87.

