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# Mapping Civil Society Transplants: A Preliminary Comparison of Eastern Europe and Latin America

BY JULIE MERTUS\*

Attempts to (re)construct the states and territories of Eastern Europe have called into action numerous civil actors, both foreign and local, stridently non-governmental and quietly government-sponsored, geographically-bounded (intra-territory or intra-state) and boundary crossing (inter-territory or inter-state). Despite their seemingly disparate appearances, the great majority of these actors share a common ideology, or at least, a perceived need to accommodate or struggle against a controlling paradigm. Two dominant competing ideologies are at play: liberalism<sup>1</sup> and nationalism.<sup>2</sup> In a complex and dynamic process, civil actors – non-governmental organizations (NGOs), private voluntary organizations (PVOs) and other quasi-governmental civil actors – participate in the ways these ideologies are produced, interpreted, transformed and/or rejected by the local communities.<sup>3</sup> A central role in this

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1. Liberalism is used herein to embody two meanings: (1) the view of the good society based on a body of economic doctrine known as the "Washington Consensus" which, in the words of one recent UN publication, extols "the virtues of market liberalization" and privatization (TAYLOR & PIEPER 7 (1996); see also LUPHART & WAISMAN (1996); AKYUZ (1994)) and; (2) "social democracy," favoring such attributes as the rule of law over the state, citizen participation in community and "rights." Neil MacCormick, *What Place for Nationalism in the Modern World?* in NATIONAL RIGHTS, INTERNATIONAL OBLIGATIONS 34-42 (Simon Caney et al. eds., Westview Press, 1993).

2. Nationalism is used herein in the sense of "ethnic nationalism," that is communities of sentiment, as opposed to civic nationalism, a concept more neatly tied to the need to create a state. WILL KYMLICKA, *MULTICULTURAL CITIZENSHIP* 24 (Oxford Univ. Press, 1995). This definition draws from the work of Max Weber, who explained that the concept of a nation means above all that it is proper to expect from certain groups a specific sentiment of solidarity in the face of other groups." Max Weber, *Political Communities*, in *ECONOMY AND SOCIETY* 921-26 (Guenther Roth & Klaus Wittich, eds., 1968). A full discussion of nationalism is beyond the scope of this paper; for bibliographies on nationalism, see MONTSERRAT GUIBERNAU, *NATIONALISMS: THE NATION-STATE AND NATIONALISM IN THE TWENTIETH CENTURY* (Polity Press 1996); Kymlicka, *supra*; and, DAVID MILLER, *ON NATIONALITY* (Oxford Univ. Press 1995).

3. Chadwick F. Alger, *Local Responses to Global Intrusions*, in *INDIVIDUATION AND*

process is played by a complex and shifting array of “legal fields” – the ensemble of institutions and practices through which law is incorporated into social decision-making.<sup>4</sup>

The presence of outsiders in Eastern Europe, pushing their own agenda for political, economic and social change, is not without precedent. Civil foreign intervention played and continues to play a critical role in the political, social and economic transformation of Latin American countries.<sup>5</sup> To some extent, recent developments with respect to foreign intervention in Eastern Europe appears remarkably reminiscent of earlier efforts in Latin America that have been highly criticized.<sup>6</sup> However, the approach taken by civil intervenors in Eastern Europe has differed greatly from that evidenced in Latin America. This essay suggests the assumptions of foreign intervenors today in Eastern Europe and then suggests ways in which the work of foreign intervenors in Latin America differs. This essay suggests that the main differences are informed by the nature of the relationship of dominant world powers to prior regimes, in particular, the legacy of colonialism in Latin America as opposed to the aftertaste of Cold War politics in Eastern Europe.

Part I discusses each of these three methodological assumptions of civil intervenors in Eastern Europe in turn and suggests counter-orientations. Then, Part II compares this Eastern European civil intervenor template to the approach generally taken in Latin America.

#### PART ONE: METHODOLOGICAL ASSUMPTIONS OF CIVIL INTERVENORS IN EASTERN EUROPE

Despite their best intentions, Western intervenors in the post-Cold War states of Eastern Europe tend to labor under assumptions which undercut their ability to act as a positive, transformative force.<sup>7</sup> Three such assumptions can be identified as follows:

1. Ideologies have converged into one alternative: liberalism.

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GLOBALIZATION: THE TRANSFORMATION OF TERRITORIAL SOCIETIES AND TERRITORIAL IDENTITIES 77-104 (Zdravko Mlinar ed., Avebury 1992).

4. DAVID M. TRUBEK ET AL., GLOBAL RESTRUCTURING AND THE LAW: THE INTERNATIONALIZATION OF LEGAL FIELDS AND THE CREATION OF TRANSNATIONAL AREAS. (GLOBAL STUDIES RESEARCH PROGRAM WORKING PAPER SERIES, 1993). For this process in Eastern Europe, see Harold J. Berman, *The Struggle for Rights in Post-Soviet Russia*, in WESTERN RIGHTS? POST-COMMUNIST APPLICATION 41 (Andras Sajo ed., 1996). See also, Gianmaria Ajani, *By Chance and By Prestige: Legal Transplants in Russia and Eastern Europe*, 43 AM. J. COMP. L. 93 (1995).

5. One of the most influential studies of democratic transitions in Latin America is GUILLERMO O'DONNELL et. al., TRANSITIONS FROM AUTHORITARIAN RULE (1986).

6. See JAMES GARDNER, LEGAL IMPERIALISM: AMERICAN LAWYERS AND FOREIGN AID IN LATIN AMERICA (1980).

7. See Mertus, *supra* note \*.

2. Knowledge is located in one form and one place.
3. Political space can be compartmentalized between the local and the global and the state, the individual and the international.

### A. *The Notion of Convergence*

To date, the dominant program throughout Central and Eastern Europe has been based on the idea of convergence. Convergence is the notion that Communism has been defeated and that all political, legal, economic and social programs are merging into what is now the only available alternative: liberalism.<sup>8</sup> Francis Fukuyama popularized this thesis with his declaration in the *End of History*: "For a very large part of the world," Fukuyama wrote, "there is now no ideology with pretensions to universality that is in a position to challenge liberal democracy. . ."<sup>9</sup> As Rob Walker explains, for many, "the interpretation of specific events [such as the fall of the Berlin wall] affirms a triumphant view of history: the conversion of Them into Us (or U.S.), the final admission that freedom and democracy are to be gained only where the magical logic of Capitalism and modernity are allowed to cast their spell over time and space."<sup>10</sup> Western intervenors have a particularly easy time imagining Eastern Europeans turning into "Us"; after all, we imagine that They are already close kin to Us.<sup>11</sup>

For many states and individual actors in Eastern Europe, maintaining power in an increasingly globalized<sup>12</sup> and regionalized<sup>13</sup> world

8. TONY SPYBEY, *GLOBALIZATION AND WORLD SOCIETY* 48-49 (Polity Press 1996). *See also*, PETER DE CRUZ, *COMPARATIVE LAW IN A CHANGING WORLD* 477-485 (Cavendish Publ'g 1995).

9. FRANCIS FUKUYAMA, *THE END OF HISTORY AND THE LAST MAN* 45 (Free Press 1992).

10. R.B.J. WALKER, *INSIDE/OUTSIDE: INTERNATIONAL RELATIONS AS POLITICAL THEORY* 144 (Cambridge Univ. Press 1993).

11. *Cf.* BENEDICT ANDERSON, *IMAGINED COMMUNITIES: REFLECTION ON THE ORIGINS AND SPREAD OF NATIONALISM* (Verso 1991).

12. Numerous definitions of globalization exist. Mlinar, for example, defines globalization as "a process extending the determinative frameworks of social change to the world as a whole." He identifies five dimensions of the globalization: (1) globalization as increasing interdependence at the world level, wherein the activities of people in specific areas have repercussions that go beyond local, regional or national borders; (2) globalization as the expansion of domination and dependence, that is "an inter-connectedness on the global scale, in which *radial* rather than *lateral links* predominate; (3) globalization as homogenization of the world wherein "instead of differences among territorial units which were mutually exclusive, there is now a *uniformity*;" (4) globalization as diversification within "territorial communities" wherein "the level of globalization can be measured by the extent to which narrow territorial units are open and permit access to the wealth of diversity of the world as a whole;" (5) globalization as a means of surmounting temporal discontinuities through "(a) connectedness of the asynchronous rhythms of different activities and (b) temporal inclusiveness resulting from the functioning of particular services to global spaces." MLINAR, *supra* note 3; *see also*, Richard Falk, *Regionalism and World Order After the Cold War*, ST. LOUIS-WARSAW TRANSATLANTIC L. J. 71 (1995).

13. Regionalization is in part a by-product of globalization. Stefan Schirm explains that "transnational actors and systems. . .undermine the ability of national governments to shape

entails propagation and perpetuation of the liberal program. This includes both an investment in both social democracy and the market-economical view of a good society.<sup>14</sup> The liberal program is based on the notion of relatively weak states overseeing free market economies in which land and property have been privatized.<sup>15</sup> The liberal program places the rhetoric of democracy at its core although the practice of democracy may indeed be "thin on the ground."<sup>16</sup> Therein, "new democracies" are to operate through a system of "good governance," which entails a formula of political parties, independent media, open elections, transparency in government and a series of checks and balances in the governing body.<sup>17</sup> Law plays a crucial role in this picture, as relations in government and society at large are to be governed by the rule of law and not brute power. Moreover, the State is to respect individual rights, and legal institutions are to be built to keep this system well-oiled and working.<sup>18</sup> Unification of law is sought to be achieved through international institutions designed specifically to promote such unification, such as the Hague Conference on Private International Law and the UN Commission on International Trade Law, and through transsovereign cooperative arrangements and transsovereign legislation applicable to the members of these groups.<sup>19</sup>

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politics and make national regulations less attractive and viable. Therefore transnational globalization stimulates regional governance." STEFAN A. SCHIRM, *TRANSNATIONAL GLOBALIZATION AND REGIONAL GOVERNANCE: ONE OF THE REASONS FOR REGIONAL COOPERATION IN EUROPE AND THE AMERICAS* (Working Paper Series No.6.2., Harvard Univ. Press 1996).

14. MacCormick, *supra* note 1, at 35.

15. *See e.g.*, JOHNSON ET AL., *STARTING OVER IN EASTERN EUROPE: ENTREPRENEURSHIP AND ECONOMIC RENEWAL* (Harvard Bus. School Press 1991). *See also*, *CONSTRUCTING CAPITALISM: THE REEMERGENCE OF CIVIL SOCIETY AND LIBERAL ECONOMY IN THE POST-COMMUNIST WORLD* (Kazimierz Z Pznanski ed., Westview Press 1992); CHARLES WOLF, JR., *PROMOTING DEMOCRACY AND FREE MARKET IN EASTERN EUROPE* (ICS Press 1992); ADAM ZWASS, *FROM FAILED COMMUNISM TO UNDERDEVELOPED CAPITALISM: TRANSFORMATION OF EASTERN EUROPE, THE POST-SOVIET UNION, AND CHINA* (M.E. Sharpe 1995).

16. JOHN DUNN, *WESTERN POLITICAL THEORY IN FACE OF THE FUTURE 2* (Cambridge Univ. Press 1979).

17. *See e.g.*, GORDON CRAWFORD, *PROMOTING DEMOCRACY, HUMAN RIGHTS AND GOOD GOVERNANCE THROUGH DEVELOPMENT: A COMPARATIVE STUDY OF THE POLICIES OF FOUR NORTHERN DONORS* (Center for Democratization Studies, Univ. of Lees 1995). *See also*, ORGANIZATION FOR ECONOMIC CO-OPERATION AND DEVELOPMENT, *PARTICIPATORY DEVELOPMENT AND GOOD GOVERNANCE* (OECD Publications 1995); B.W.T. MUTHARIKA, *ONE AFRICA, ONE DESTINY: TOWARDS DEMOCRACY, GOOD GOVERNANCE, AND DEVELOPMENT* (SAPES Books 1995).

18. *ROUNDTABLE OF MINISTERS OF JUSTICE FROM COUNTRIES OF CENTRAL AND EASTERN EUROPE, THE ROLE OF THE JUDICIARY IN A STATE GOVERNED BY THE RULE OF LAW* (Council of Europe Publications 1996). *See also*, A.E. DICK HOWARD, *DEMOCRACY'S DAWN: A DIRECTORY OF AMERICAN INITIATIVES ON CONSTITUTIONALISM, DEMOCRACY AND THE RULE OF LAW IN CENTRAL AND EASTERN EUROPE* (Univ. of Virginia Press 1991).

19. DE CRUZ, *supra* note 8, at 485.

Contrary to the notion of convergence and the liberal program that has been built up around it, is the assumption that multiple and even conflicting ideologies can and do exist simultaneously. For example, in the former Yugoslavia, the main competing ideologies are various forms of nationalism. Whereas dominant powers use race as a construct in other parts of the world, in Eastern Europe the category of choice for apportioning benefits and burdens is the "nation." To be sure, nationalisms alone cannot be blamed for the war in Croatia and Bosnia-Herzegovina. Rather, nationalisms were a tool for something else – power and domination – but still nationalisms were a force at play. In the former Yugoslavia, politicians rekindled nationalist tensions in order to create the perceived (and then in some cases real) need for their protection against the "Enemy Other." War then closed the ranks. People throughout the former Yugoslavia were forced to decide who they were among three narrow choices: Serb, Croat or Muslim (Bosnjak). This left four categories of people without any identity: those of mixed parentage or marriage; those who were of another national identity, such as Albanian or Hungarian; those who wanted to identify themselves as something else, either above the nation, such as European, or below the nation, such as a member of a particular neighborhood or organization; and those who did not want to participate in the labeling process. In creating and sanctioning a post-war Bosnia drawn strictly on national lines, the Dayton Peace Accord<sup>20</sup> merely cemented national divisions.<sup>21</sup> Like it or not then, nationalisms are a force to be reckoned with in the former Yugoslavia.<sup>22</sup>

Moreover, the notion of convergence should be rejected as liberalism comes in many varieties. Different models may change their degree of emphasis on the importance of a classic free market; offer alternative analyses of individualism and the countervailing imperative of the collective; and provide their own re-definitions of the public

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20. The Dayton Accord, officially known as the General Framework Agreement for Peace in Bosnia and Herzegovina, is reproduced in UN Doc. A/50/790-S/1995/999 in the form initialed in Dayton on November 21, 1995. It appears in 35 I.L.M. 89 (1996) in the form signed on December 14, 1995, in Paris. The latter version corrected minor errors in the UN printing.

21. Julie Mertus, *Prospects for National Minorities Under the Dayton Accords – Lessons from History: The Inter-War Minorities Schemes and the "Yugoslav Nations,"* 23 BROOK. J. INT'L L. 793 (1998).

22. See e.g., Vojin Dimitrijevic, *Ethnonationalism and the Constitution; The Apotheosis of the Nation-State*, 3 J. AREA STUDIES 50 (1993); Zagorka Golubovic, *Nationalism and Democracy: The Yugoslav Case*, 3 J. AREA STUDIES 65 (1993); Dusan Janjic, *Socialism, Federalism and Nationalism in (the Former) Yugoslavia: Lessons to be Learned*, 3 J. AREA STUDIES 102 (1993); Shkelzen Maliqi, *Albanian Self-Understanding Through Non-Violence: The Construction of National Identity in Opposition to Serbia*, 3 J. AREA STUDIES 120 (1993); Renata Salecl, *Nationalism, Anti-Semitism and Anti-Feminism in Eastern Europe*, 2 J. AREA STUDIES 78 (1993).

sphere, fundamental rights and civic culture.<sup>23</sup> Indeed liberalism can be and is combined with other ideologies, including nationalism.<sup>24</sup>

Liberalism and nationalism are usually posited as irreparably at odds with one another, as the claims of the nation often infringe upon the currently recognized borders of existing sovereign states.<sup>25</sup> Nations clash with states in many ways. The legitimization of states stems from geographic boundaries; in contrast, the legitimization of nations stems from "communities of sentiment," from imagined and real histories of belonging.<sup>26</sup> State sovereignty traditionally stresses the link between the state authority and a set of political institutions that serve individual political beings;<sup>27</sup> national sovereignty stresses the link between the national authority and a defined population united as a self-identifying group.<sup>28</sup>

This is not to suggest that liberalism and nationalism are inevitably incompatible; they could in fact be combined as *liberal nationalism*. Underlying nationalism, as Yael Tamir argues, is a range of perceptive understandings about the human situation, of what makes life meaningful and creative, as well as, a set of praiseworthy values.<sup>29</sup> Tamir reasons that by nature individuals are members of communities of sentiment and belonging.<sup>30</sup> Outside such communities, "their lives become meaningless; there is no substance to their reflection, no set of norms and values of light of which they can make choices and become the free, autonomous persons that liberals assume them to be."<sup>31</sup> This vision of nationalism complements liberalism:

Liberals can acknowledge the importance of belonging, membership, and cultural affiliations, as well as the particular moral commitments that follow from them. Nationalists can appreciate the value of per-

23. Cf. SEYLA BENHABIB, *SITUATING THE SELF: GENDER, COMMUNITY AND POSTMODERNISM IN CONTEMPORARY ETHICS* (Routledge 1992); THOMAS BRIDGES, *THE CULTURE OF CITIZENSHIP: INVENTING POSTMODERN CIVIC CULTURE* (State Univ. of New York Press 1994); Stephen Gardbaum, *Liberalism, Autonomy, and Moral Conflict*, 48 *STAN. L. REV.* 385 (1996); RICHARD T. PETERSON, *DEMOCRATIC PHILOSOPHY AND THE POLITICS OF KNOWLEDGE* (Pennsylvania State Press 1996); J. ROGERS HOLLINGSWORTH AND ROBERT BOYER, *CONTEMPORARY CAPITALISM: THE EMBEDDEDNESS OF INSTITUTIONS* (Cambridge Univ. Press 1997); JEFFREY H. REIMAN, *CRITICAL MORAL LIBERALISM: THEORY AND PRACTICE* (Rowman & Littlefield Publishers 1997).

24. Yael TAMIR, *LIBERAL NATIONALISM* (Princeton Univ. Press 1993).

25. ERIC HOBBSBAWM, *NATIONS AND NATIONALISM SINCE 1780*, at 31-32 (Cambridge Univ. Press 1990).

26. Samuel J. Barkin & Bruce Cronin, *The State and the Nations: Changing Norms and Rules of Sovereignty in International Relations*, 48 *INT. ORG.* 107, 112 (1994).

27. See DAVID HELD, *POLITICAL THEORY AND THE MODERN STATE* (Cambridge Univ. Press 1991); KENNETH DYSON, *THE STATE TRADITION IN WESTERN EUROPE* (Martin Robertson 1980).

28. Barkin & Cronin, *supra* note 26, at 112.

29. TAMIR, *supra* note 24, at 7.

30. *Id.*

31. *Id.*

sonal autonomy and individual rights and freedom, and sustain a commitment for social justice both between and within states.<sup>32</sup>

The desire of liberals to protect individual autonomy could benefit from the efforts of nationalists to promote the culture and status of the group. Thus, the notion of convergence should be rejected not only because nationalism exists as an alternative ideology to liberalism, but also because liberalism itself may appear in many forms.

### B. *A Single Form of Knowledge*

The second assumption commonly acted upon, although rarely acknowledged by foreign intervenors, is the idea that there is one form of knowledge – a universal, transtemporal, abstract, objective truth.<sup>33</sup> According to this orientation, the search for universal truth is an unavoidable dilemma for those who believe in human rights and social change.<sup>34</sup> In searching for principles that can guide their work, foreign actors tend to behave as if knowledge has its situs exclusively in the spheres of the powerful, and not in the realm of the “subaltern,” that is from those who have been subordinated according to any system creating a hierarchy of difference based on relations of domination and subordination.<sup>35</sup> Under this scenario, outside “experts” (such as the election monitor or human rights observer) play a particularly important role in knowledge formation. In the privileged position of “objective” messenger and observer, the foreign “expert” delivers the message to the locals (for example, the message about human rights) and then reads the locals for consumption back home.

Alternative ways of thinking about knowledge challenge this limited vision. First, knowledge exists in many sites. Alternative forms of knowledge can be read from below, from the experiences of those in the subaltern.<sup>36</sup> Competing claims to truths can be seen within states and communities. At times, competing truths can be found in the main “public sphere,” that is the “institutionalized arena of discursive interaction.”<sup>37</sup> Yet often the institutionalized public sphere is not truly open to all voices, and some interlocutors are muted in their attempts to speak.

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32. *Id.* at 6.

33. See, PETERSON, *supra* note 23.

34. See e.g., Francesco Belvisi, *Rights, World-Society and the Crisis of Legal Universalism*, 9 *RATIO JURIS* 60 (1996).

35. Dianne Otto, *Subalternity and International Law: The Problems of Global Community and the Incommensurability of Difference*, 5 *SOCIAL AND LEGAL STUDIES* 337 (1996); Gayatri Chakravorty Spivak, *Can the Subaltern Speak?*, in *MARXISM AND THE INTERPRETATION OF CULTURE* 271-313 (Nelson & L. Grossberg eds., Univ. of Illinois Press 1988).

36. Cf. Mari J. Matsuda, *Looking to the Bottom: Critical Legal Studies and Reparations*, 22 *HARV. C.R.-C.L. L. REV.* 323 (1987).

37. Nancy Fraser, *Rethinking the Public Sphere: A Contribution to the Critique of Actually*



In such cases, the subordinated groups create their own fora for expression. Nancy Fraser describes these fora as "subaltern counterpublics," that is "parallel discursive areas where members of the subordinated social groups invent and circulate counter discourses, which in turn permit them to formulate oppositional interpretations of their identities, interests, and needs."<sup>38</sup> Where the subaltern fear retribution for exercising their voice, they may create coded means of expression.<sup>39</sup> Although the foreign observers may not be able to hear or understand them, the subaltern nearly always find some way to speak.

It follows that the outside "expert" does not have a privileged claim to objective knowledge. Rather, the reading of the "expert," like all readings, is filtered through his/her own cultural/social/political preconceptions.<sup>40</sup> Moreover, just as "experts" read their subjects, the subjects read the "experts." Locals carefully select the information they disclose to visiting "experts," calculating how best to serve their own agendas. Acknowledging locals as subjects and not mere objects can be disturbing for "experts." "The realization that 'they' can read 'us,'" Jean Franco writes, "spreads like glaucoma over the once confident imperial eye."<sup>41</sup> In the exchange of information and the location, perpetuation and manipulation of truths, locals are every bit as active as "experts."

Through their failure to engage in a two-way exchange of experience, many foreign intervenors unwittingly promote an image of themselves as the beneficent outsider and their "clients" as the passive recipients. They, thereby, draw a line between the knowing and the needy. The foreign intervenors give their "clients" the programs they want to give, often to actors that they have created or that still exist only in their imagination, and they extract the information they had imagined they would find. Few see their "clients" as actors with their own agendas, and even fewer imagine that they could learn something from their "clients" that could help transform their own societies. Yet just as foreign "experts" leave their mark on the societies they encounter, the

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*Existing Democracy, in* POSTMODERNISM AND THE RE-READING OF MODERNITY 198 (Francis Baker, et al. eds., Manchester Univ. Press 1992).

38. *Id.* at 210.

39. JAMES C. SCOTT, *DOMINATION AND THE ARTS OF RESISTANCE: HIDDEN TRANSCRIPTS* (Yale Univ. Press 1990).

40. See Renato Rosaldo, *Culture & Truth: The Remaking of Social Analysis* (Beacon Press 1993); CLIFFORD ET. AL. EDS., *WRITING CULTURE: THE POETICS AND POLITICS OF ETHNOGRAPHY* (Univ. of California Press 1986); WOLFGANG FIKENTSCHER, *MODES OF THOUGHT: A STUDY IN THE ANTHROPOLOGY OF LAW AND RELIGION* (J.C.B. Mohr 1995).

41. Jean Franco, *Globalization and the Crisis of the Popular, in* THE LEGACY OF THE DISINHERITED: POPULAR CULTURE IN LATIN AMERICA: MODERNITY, GLOBALIZATION, HYBRIDITY AND AUTHENTICITY 265 (Tom Salman ed., CEDLA 1996).

experience changes the experts: they will never return home again quite the same.

"Experts" are disarmed in yet another manner: localisms challenge universalisms. One can believe in "core values" or "universal truths" common to all faiths and cultures and still acknowledge the impact of localisms in translating the message of the outsider (i.e. the message of human rights) into something that makes sense locally. Foreign interventions, from humanitarian aid to democratization programs, often exacerbate individuation<sup>42</sup> and particularism, instead of promoting universalisms. Rather than leading to the construction of some "global community,"<sup>43</sup> "world without borders"<sup>44</sup> or "global culture,"<sup>45</sup> outside interventions spark the creation of reactive, fortified local communities. As Lash and Urry note with respect to the political economy, "Broadly speaking. . . local powers tend to be reactive, to resist decisions from centers, and to devise institutional and policy responses through identifying niches in existing forms of social organizations."<sup>46</sup> Moreover, by creating and privileging selected local organizations, the intervenors create new boundaries within society between those who have and those who do not have foreign contacts and capital. Those left out often react by retreating to an insular group, which gains its identity through opposition to the privileged.

In times of economic crisis, as in many countries of Eastern Europe, external intrusions are especially likely to be regarded as threatening, leading to withdrawal and closure of the niches of family, ethnicity, nation and religion.<sup>47</sup> These niches attempt to preserve their distinctiveness on the basis of "frontal insulation" ("disassociation" or "delinking")<sup>48</sup> and distance themselves from the global forces through

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42. By individuation, I refer to "the process of increasing the autonomy and distinctiveness of the actors at both the collective and individual levels." MLINAR, *supra* note 3. Mlinar identifies the dimensions of individuation as: (1) the weakening of predetermination on the basis of origin; (2) the weakening of determination on the basis of territory; (3) increasing the diversity of "time-space paths" (that is, not being limited to the role and position of individuals in space at a specific moment in time); (4) increasing control and decrease of (random) intrusions from the external environment (wherein actors assert greater control over the impulses from the environment); and (5) increased authenticity of the assertion of identity (more direct assertion of identity without the use of intermediaries or representatives).

43. Mary Catherine Bateson, *Beyond Sovereignty: A Merging Global Civilization, in* CONTENDING SOVEREIGNTIES: RETHINKING POLITICAL COMMUNITY 145-58 (R.B.J. Walker & Saul Mendlovitz eds., 1990).

44. LESTER RUSSELL BROWN, *WORLD WITHOUT BORDERS* (Random House 1972).

45. MIKE FEATHERSTONE ED., *GLOBAL CULTURE: NATIONALISM, GLOBALISM AND MODERNITY* (1990).

46. LASH ET. AL., *THE END OF ORGANIZED CAPITALISM* 284 (Univ. of Wisconsin Press 1987).

47. Henry Teune, *Multiple Group Loyalties and the Securities of Political Communities, in* MLINAR, *supra* note 3, at 105-114.

48. MLINAR, *supra* note 3, at 2.

(re)creation of their oppositional local culture. These reactions may represent positive developments in that they may help preserve local culture. However, they may at times forewarn of regressive developments as the threatened local also often attempts to preserve its identity by lashing out against a local enemy "other."

In their interpretation of the universals promoted by outsiders, locals draw from their own historical and contemporary experiences. Dov Shinar notes that, "blueprints for social change cannot be copied or imposed in their entirety; and particular cultural identities have to be considered."<sup>49</sup> With no alleged universalism, this is truer than with democracy. As Rob Walker observes, "principles of democracy have been worked out with any degree of conviction only in relation to a particular somewhere. . ."<sup>50</sup> Thus, "place" still plays an important role, preventing the move from particularity to homogeneity.<sup>51</sup>

In Eastern Europe, in both the institutionalized public sphere and the subaltern counterpublic, locals craft truths to address (that is, to fit or challenge) the competing ideologies of nationalism and liberalism. All of these truths are claims to power that shape human behavior. What matters most is that people believe them, not that they are universal, static, objective or even factually true. Many "rule of law" and "democratization" intervenors rely too heavily on the creation of institutions and the propagation of good laws. They fail to recognize that individual and group perceptions about international law shape behavior and model social change more than the positive law itself.<sup>52</sup> Locked into believing in one form of universal, objective knowledge, intervenors often fail to hear these perceptions and competing truths. As a result, outside plans to transplant universalisms do not take root, but instead bring about unintended and often ill-fated consequences.

### C. *Compartmentalization of Political Space*

The traditional Western political map is highly compartmentalized, "highly linear, incredibly precise (at least in appearance), partitioned into distinct parcels, and continuous in the sense that, with only a few exceptions. . .it is entirely 'filled'. Moreover, the separate compartments are perceived as being imbued with a sense of independent integrity and

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49. Dov Shinar, *'Re-Membering' and 'Dis-Membering' Europe: A Cultural Strategy for Studying the Role of Communication in the Transformation of Collective Identities*, in *GLOBALIZATION, COMMUNICATION AND TRANSNATIONAL CIVIL SOCIETY* 63-87 (Sandra Braman & Annabelle Sreberny-Mohammadi eds., Hampton Press 1996).

50. WALKER & MENDLOVITZ, ed., *supra* note 43, at 142.

51. JOHN AGNEW, *PLACE AND POLITICS: THE GEOGRAPHIC MEDIATION OF STATE AND SOCIETY* (Allen & Unwin 1987).

52. JULIE MERTUS, *KOSOVO: HOW MYTHS AND TRUTHS STARTED A WAR* (1999).

internal homogeneity.”<sup>53</sup> Acting within this framework, foreign intervenors most often presume dichotomies between the local and the global and between the state and the global. While the intervenors may view themselves as part of a larger global project (of human rights, democratization, liberalization, humanization, etc.), they often understand their role in affecting change as limited to the local. They perceive social change as connected to place that is to the local actors and existing institutions. For its part, the State may see itself as an actor in the global scene, but it conceals and overlooks the local by reifying the local as a “dimension of the state or of pre-political civil society.”<sup>54</sup>

This compartmentalization of political space must be rejected in favor of a more fluid vision of global, local and state and with a decreased role for the increasingly porous state. This section examines the impact of globalization on the changing role of the state and the local. Although the discussion treats the state and the local separately, their transformations are interrelated and overlap.

### (1) THE STATE

Supporters of the Statist paradigm argue that a state-based system must be preserved in order to promote world security. According to this argument, individual rights are best protected through a system of relatively strong states; transsovereign activities, such as international financial and labor markets are best policed through the negotiation between sovereign states. The Dayton Peace Accords, for example, sought to perpetuate at least the notion of a Bosnian state, if not a functioning state.<sup>55</sup>

The state-centric view of international law and social organization has come under reconsideration from many commentators, and for this reason, it will be dealt with briefly here.<sup>56</sup> As a formal matter, interna-

53. See WALKER & MENDLOVITZ, *supra* note 43, at 130. See also, EDWARD W. SOJA, *POSTMODERN GEOGRAPHIES: THE REASSERTION OF SPACE IN CRITICAL SOCIAL THEORY* (Verso 1989).

54. Warren Magnusson, *The Reification of Political Community*, in WALKER & MENDLOVITZ, *supra* note 43, at 45-60.

55. The post-Dayton Republic of Bosnia-Herzegovina — a shell which is less than the sum of its component parts, the Serbian entity of Republika Srpska and the Bosnian-Croat entity of the Federation of Bosnia-Herzegovina JULIE MERTUS, ED. ET AL., *THE SUITCASE: REFUGEE VOICES FROM BOSNIA AND CROATIA* (Univ. of California Press 1997) — serves the interest of world powers and those who can retain power in the new creation, not most locals. The existence of the state of Bosnia helps assuage the guilt of many international actors for failing to act during the war. Also, by perpetuating the statist paradigm, Dayton furthers the liberal agenda.

56. See, e.g., Richard K. Ashley, *Untying the Sovereign State: A Double Reading of the Anarchy Problematique*, 17 *MILLENNIUM: J. INT'L STUDIES* 227 (1988); THOMAS J. BIERSTEKER & CYNTHIA WEBER, *SOVEREIGNTY AS A SOCIAL CONSTRUCT* (Cambridge Univ. Press 1996); Joseph A. Camilleri, *Rethinking Sovereignty in a Shrinking, Fragmented World*, in WALKER &

tional and regional legal systems and mechanisms are indeed state-centric, but in practice, states are often weak and transitional, and state boundaries are increasingly permeable.<sup>57</sup> Instead, power has shifted to forces above and below traditional state boundaries. On the one hand, power has moved *down* to sub-state grouping, such as national groups and other entities of identification and belonging, and, on the other hand, *out* to the transsovereign forces impervious to state boundaries. In turn, the loyalties of individuals and groups are torn away from the state to these dichotomous forces of sub-states and transsovereigns. For many, to be an individual living in Europe these days means to be European and a member of their national group, and only then a citizen of their country.

As a concomitant of their integration into and participation in transsovereign actors, states experience limitations on their classical sovereignty.<sup>58</sup> So, for example, such states face restrictions on their ability to guard their borders against intrusions from an increasing number of external regulations, including human rights and humanitarian laws. Today's market endeavors are also characterized by a culture of postmodernity,<sup>59</sup> including enhanced mobility in capital and labor. A new paradigm would "have to take into consideration the whole gamut of nonstrategic and nonnuclear factors that now imperil the functioning of states big and small, from food and energy price rises to the pollution of the environment in which we live, threats that do not respect either the boundaries or the sovereignty of states."<sup>60</sup>

The rise of alternatives to the state paradigm is not likely to threaten state security. After all, perpetuation of the state paradigm itself is multi-edged – it serves the interest of some and is as likely to preserve peace as it is to spark conflict.<sup>61</sup> In their study of a state-bound concept of sovereignty and a notion of sovereignty linked to nation, Barkin and Cronin found that "the degree of violence 'defined as total physical harm that comes to people' is not necessarily any greater with any given understanding of sovereignty."<sup>62</sup> Only the sites of violence have changed, from inter-state to intra-state violence. In many parts of Central

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MENDLOVITZ, *supra* note 43, at 13-44; ROBERT H. JACKSON, *QUASI-STATES: SOVEREIGNTY, INTERNATIONAL RELATIONS AND THE THIRD WORLD* (Cambridge Univ. Press 1990); WALKER & MENDLOVITZ, *supra* note 43.

57. LEO LOUIS SNYDER, *GLOBAL AND MINI-NATIONALISMS: AUTONOMY OR INDEPENDENCE?* (Greenwood Press 1982).

58. MLINAR, *supra* note 3, at 23.

59. FREDIC JAMESON, *POSTMODERNISM OR THE CULTURE OF LOGIC OF LATE CAPITALISM?* (Duke Univ. Press 1991).

60. JOHN HERZ, *THE NATION STATE AND THE CRISIS OF WORLD POLITICS* 19 (1976).

61. WALKER, *supra* note 10, at 139.

62. Barkin & Cronin, *supra* note 26, at 130.

and Eastern Europe today, we see intra-state violence because the legitimacy and status of nations has grown and the power and authority of states has declined.

Foreign intervenors must still deal with the states of Eastern Europe. After all, the states grant visas, permission for foreigners to work in the country, and allow the passing and importation of equipment and supplies. Nonetheless, foreign intervenors must also deal with actors that exist above and below the state. For example, diaspora groups (governmental and non-governmental), military complexes and arms dealers, and trade bodies and transsovereign NGOs act as forces above the state influencing politics and society within that state. Below the state, intervenors may work both with groups that are part of the dominant power and those of the subaltern.

## (2) THE LOCAL

Just as globalization has altered the meaning and power of the state, it has changed the meaning of the local. With the development of new technologies, forms of communication and ease of movement, the notion of local has lost its geographic meaning. The media plays a crucial role in the blendings of local and global, and thus local life is no longer separate from “the world out there.”<sup>63</sup> “Modernity thus simultaneously liberates time and space from the particularities of place, allowing distanced interaction via the modern social organization.”<sup>64</sup> This does not mean that the local has lost its importance, rather only that the local now can be understood more in a phenomenological sense as the “habitual settings through which an individual physically moves.”<sup>65</sup>

The phenomenological understanding of local is especially relevant in the case of Eastern Europe, an area from which so many people are on the move, as refugees, displaced people, guest workers, asylum seekers and immigrants. The place of culture and the location of truth is constantly shifting,<sup>66</sup> and thus “the local” can be found both at home and abroad.<sup>67</sup> Intrusion of external forces and the process of individuation may still result in the (re)creation of social units tied to the geographic environment – what Mlinar terms “reterritorialization.”<sup>68</sup> Nevertheless,

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63. John Tomlinson, *Global Experience as a Consequence of Modernity*, in BRAMAN & SREBERNY-MOHAMMADI, *supra* note 49, at 71.

64. *Id.* at 66; ANTHONY GIDDENS, *MODERNITY AND SELF-IDENTITY: SELF AND SOCIETY IN LATE MODERN AGE* 189 (Polity Press 1991).

65. Tomlinson, *supra* note 63, at 66.

66. HOMI BHABHA, *THE LOCATION OF CULTURE* (Routledge 1994).

67. Cf. Jost Delbruck, *Global Migration—Immigration—Multi-ethnicity: Challenges to the Concept of the Nation-State*, 2 *IND. J. GLOBAL LEGAL STUDIES* 45 (1994).

68. MLINAR, *supra* note 3, at 25.

unlike the socio-spatial differentiations in the past, the resulting entity will be flexible, temporary and less bounded by fixed boundaries.<sup>69</sup> There is an experience of global in the everyday, "situated" lives of people in the local. As Giddens observes:

In conditions of late modernity we live "in the world" in a different sense from previous eras of history. Everyone still continues to live a local life, and the constraints of the body ensure that all individuals, at every moment, are contextually situated in time and space. Yet the transformations of place, and the intrusion of distance into local activities, combined with the centrality of mediated experience, radically change what "the world" actually is . . . Although everyone lives a local life, phenomenal worlds for the most part are truly global.<sup>70</sup>

At the same time, the international now has domestic content.<sup>71</sup> The nature of this experience is complex. To the extent that the liberal agenda has become part of a global movement, it has found its way to the local level of everyday life. Interwoven in this experience in Eastern Europe is the local phenomena of nationalism working its way back to the global. For example, the global agenda of liberalism has concrete and immediate impact on many day to day realities in Eastern Europe, from the types of produce offered in the grocery, to the possibility of working abroad, to the purchasing power of one's weekly paycheck. The local phenomena of nationalism has an impact on global matters by influencing such issues as which workers go abroad, the number of people filing for amnesty or refugee status, and the amount of financial and strategic resources international, regional and state security forces spend in the upcoming year.

"Cross-level linkages" further break down the division between local and global. Alger writes that "local people have invented a variety of ways to cope with [the foreign] intrusions."<sup>72</sup> When government or the institutionalized public sphere fails to address the global intruders, local people may take matters into their own hands, establishing their own contacts with transsovereign actors. Indeed, in Eastern Europe

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69. Refugees from the former Yugoslavia, for example, may create enclaves of identity based on many factors, such as the areas from which they came, the place to which they have come, the place to which they want to go, and/or their national identity. At times, one or a combination of these factors may take precedence over all others. The exact priority allotted to the factors and degree of forgiveness the group gives to people who do not fit the requirement changes over time. See, MERTUS, *supra* note 55.

70. GIDDENS, *supra* note 64, at 187.

71. Bruce Andrews, *The Domestic Content of International Desire*, 8 INT'L ORG. 321 (1984).

72. Alger, *supra* note 3, at 100; see also R.B.A. DiMuccio & James N. Rosenau, *Turbulence and Sovereignty in World Politics: Explaining the Relocation of Legitimacy in the 1990s and Beyond*, in MLINAR, *supra* note 3, at 60-76.

many such "cross-level linkages" exist between local people and global systems and actors, from black market economic activities to refugee rights advocacy.

By recognizing that their actions have both global and local ramifications, foreign intervenors can act with an eye to the interwoven consequences of their actions and better serve their "clients."<sup>73</sup> In addition, breaking down compartmentalization will help intervenors to recognize cross-level linkages that exist between global and local and, thus, to discover new sources for exchange of information and experience.

#### PART TWO: COMPARISONS WITH CIVIL INTERVENTIONS IN LATIN AMERICA

The trends described above apply to Latin America with a twist, a twist informed by geopolitics and by the different sets of assumptions intervenors make about the people, actors and institutions of Latin America versus Eastern Europe. This section outlines some of the main points of departure for an assessment of the Latin American experience with foreign interventions and raises questions for further exploration.

Perhaps the most significant variable in forming the work of outside intervenors in societies in transition is the relationship of Western world powers (or, more accurately stated, the U.S.) to prior regimes. In general, Western intervenors have been more willing to work with the remnants of the old regimes in Latin America than those in Central and Eastern Europe. In marked contrast with the experience in Latin America, Western intervenors in Eastern Europe have been more willing to support lustration laws designed to keep members of the prior regime out of office.<sup>74</sup> This is not surprising given that the U.S. helped to establish and maintain many of the old regimes in Latin America while prior regimes in Eastern Europe were branded as the enemy in accordance with Cold War rhetoric.

Another justification commonly given for the difference in treatment is that pre-transition governments in Latin America (for example in Argentina, Uruguay and Chile) were hierarchically-led military regimes and authoritarian in nature, while the governments in Eastern Europe were totalitarian in nature.<sup>75</sup> Totalitarian governments are arguably more

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73. Here, "clients" refers to donees.

74. See Herman Schwartz, *The Lustration Decisions of the Central European Constitutional Courts*, in 2 CONSTITUTIONALISM & HUMAN RIGHTS 137 (Andrzej Rzeplinski ed., 1995); Mark F. Brzezins, *Constitutionalism And Post-Communist Polish Politics*, 20 LOY. L.A. INT'L & COM. L. J. 433 (1988).

75. For explanation of these terms, see Alfred Stephan, *Paths Toward Redemocratization: Theoretical and Comparative Considerations*, in O'DONNELL, TRANSITIONS FROM AUTHORITARIAN RULE, *supra* note 5, at 64-84.



likely to taint the next regime with their prior bad acts than authoritarian governments.<sup>76</sup> Under totalitarian regimes, little separates the party from the State. Those who favor lustration laws and other measures to censure party leaders of prior regimes argue that these harsh steps are necessary to purge a formerly totalitarian state of its nondemocratic elements. After all, the bureaucracy and coercive elements of totalitarian governments are recruited in line with political criteria that define the old regime. Party membership was required for a large number of nomenklatura jobs in Eastern Europe while in Latin America far fewer jobs were based on political criteria defined by the old regime. By design, the imprint left by the totalitarian line in Eastern Europe will take longer to fade.

Foreign intervenors reason that much more of the state apparatus from authoritarian regimes is “‘available’ and usable by the new democratic forces.”<sup>77</sup> This argument, however, ignores the fact that in many cases in Latin America the military was essentially the State and “the military establishments [of Latin America] often bear direct responsibility for the repression and policies of the authoritarian regime.”<sup>78</sup> Ignoring the deep imprint left by military regimes, foreign intervenors reason that much more of the state apparatus from authoritarian regimes is “‘available’ and usable by the new democratic forces.” While expressing regret at the inability of Latin American countries to deal with human rights offenses committed under prior regimes, foreign intervenors in Latin America seem to have less of a problem dealing with the remnants of the prior regimes in Latin America than in Central and Eastern Europe.<sup>79</sup> Consequently, their programs in Latin America are more likely to involve the support and participation of political leaders regardless of their relationship to the prior regime.

The nature of foreign interventions in societies in transition is further defined by the perception of local and foreign actors of the relationship between state, democracy and human rights. What is the relationship between these three variables – state, democracy and human rights – as they are perceived by both insiders and outsiders? The perceived relative strength of the State and its participation in the reform

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76. JUAN J. LINZ & ALFRED STEPHAN, PROBLEMS OF DEMOCRATIC TRANSITION AND CONSOLIDATION: SOUTHERN EUROPE, SOUTH AMERICA AND POST-COMMUNIST EUROPE 249-252 (Johns Hopkins Univ. Press 1996).

77. *Id.* at 252.

78. Russell Bova, *Political Dynamics of the Post-Communist Transition*, in LIBERALIZATION AND DEMOCRATIZATION: CHANGE IN THE SOVIET UNION AND EASTERN EUROPE 113-138 (Nancy Bermeo ed., 1992).

79. See THOMAS CAROTHERS, IN THE NAME OF DEMOCRACY: U.S. POLICY TOWARD LATIN AMERICA IN THE REAGAN YEARS (1991).

effort plays a key role in answering this question. Where foreign intervenors perceive that the general populace needs a strong state, more effort will go into state-building. Where intervenors think that a strong state and democracy must come before human rights, some human rights violations will be overlooked in the reform effort. This has been the general trend in Latin America, at least whenever the strong state was thought to be more favorable to the U.S. than an alternative entailing long- or short-term instability.<sup>80</sup> By contrast, where human rights are made a priority, undemocratic elements and weak state boundaries will be overlooked in reform efforts. Such is the experience in many parts of Eastern Europe when the human rights violations at issue involved civil and political rights.<sup>81</sup>

Given their different political histories, the local understanding of "civil society" differs for the people of Eastern Europe and Latin America. Dissident groups in some parts of Eastern Europe cultivated their own brand of "civil society against the state." In Poland and Czechoslovakia in particular, dissidents used the moral discourse of "truth" and the existential claim of "living in truth." They sought to cultivate an ethical civil society that lay not only outside the state but also against the state, a "politics of anti-politics." This ethical civil society held the belief that what is essential to a just order is not a benign government and good people in power, but rather a vital, active, aware, self-governing and creative society. Most foreign intervenors, particularly those from Western traditions, have a much different view of civil society, that is civil society as groups acting in the own self-interest (not in the interest of a higher "truth"), striving to direct the State, at times even working with the State. For outside intervenors then, anti-politics, civil society groups pose a danger to their agenda of reform.

Although anti-politics, civil society was a factor in some palacts in Latin America, such as post-transition Brazil, in general, it was far more prevalent in Eastern Europe than in Latin America. In Latin America, other problems with the definition and operation of civil society confounded outside intervenors. Illegal political parties had created some of the movements self-identified as "civil society." Once these political parties became legal, they no longer were interested in the mobilization of civil society but rather they became coopted by the new State. These

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80. See, e.g., *id.* at 120-125; LARRY DIAMOND, ET. AL. EDS., *CONSOLIDATING THE THIRD WAVE DEMOCRACIES: REGIONAL CHALLENGES* 37 (Johns Hopkins Univ. Press 1997).

81. See Mertus, *supra* note 21, at 806. See generally, Fionnuala Ni Aolain, *The Fractured Soul of the Dayton Peace Agreement: A Legal Analysis* (on file with author) (perhaps one of the most extreme examples of this is the case of Bosnia-Herzegovina where the international community promoted minimal human rights guarantees while tolerating a weak state with many defects in its democratic structure).

and other differences in the understanding of civil society have a tremendous impact on the degree to which local groups are receptive to the "civil society" projects of foreign intervenors. In addition, local understanding influences the ways in which the foreign transplants are adapted, assimilated or applied locally.

A related problem, which holds particular relevance for foreign intervenors interested in transporting Western constitutional law are the differing conditions and possibilities for constitutionalism in Eastern Europe and Latin America.<sup>82</sup> The historic time period and political context in which constitutional formulas are adopted goes a long way toward explaining whether they reflect the efforts of outside intervenors and, if so, which ones. Choices for constitutional reform may include: restoration of a previous democratic constitution (Uruguay and Argentina not used in Eastern Europe); creation of a provisional constitution with great outside influence (witnessed throughout Eastern Europe and parts of Latin America); retention and revision of old constitution (as seen for a short time in Yugoslavia and Czechoslovakia); imposition of a constitution imposed by outside actors (i.e. post-Dayton Bosnia-Herzegovina).<sup>83</sup> To some extent it seems as though provisions in Western European (and to a lesser respect, U.S.) constitutions are readily transported to Eastern European countries. These countries desperately want to castaway the influence of the Soviet Union and to join the Western World. In light of this, French and German constitutions provide particularly good models for many countries as their legal system is grounded in the Romano-Germanic legal family. In contrast, countries in Latin America are eager to disengage themselves from "traditions of vertical dependence and exploitation [by European countries and, later, the U.S.]."<sup>84</sup> Historically derived social contexts presented Latin Americans and Eastern Europeans each with a different set of opportunities and incentives.<sup>85</sup>

Another major difference between Eastern European and Latin American transitions is the challenge faced in Eastern Europe of making

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82. See, e.g. INTERNATIONAL INSTITUTE FOR DEMOCRACY, ED., *THE REBIRTH OF DEMOCRACY: 12 CONSTITUTIONS OF CENTRAL AND EASTERN EUROPE* (2d ed. 1996); RETT R. LUDWIKOWSKI, *CONSTITUTION-MAKING IN THE REGION OF FORMER SOVIET DOMINANCE* (1996).

83. See generally Paul C. Szasz, *The Quest for a Bosnian Constitution: Legal Aspects of Constitutional Proposals Relating to Bosnia*, 19 *FORDHAM INT'L. L.J.* 363 (1995); LARRY DIAMOND, ET. AL. EDs., *supra* note 80, at 219-224; YOSHI SHAIN & JUAN J. LINZ, *BETWEEN STATES: INTERIM GOVERNMENTS AND DEMOCRATIC TRANSITIONS 20-21* (Cambridge Univ. Press 1996); Mertus, *supra* note 21; Aolain, *supra* note 81.

84. ROBERT PUTNAM, *MAKING DEMOCRACY WORK: CIVIC TRADITIONS IN MODERN ITALY* 179 (1993).

85. *Id.* Robert Putnam makes this point not with respect to Latin Americans vis a vis Eastern Europeans but Latin Americans vis a vis North Americans.

political and economic transformations at the same time. "In Eastern Europe and the Soviet Union, in addition to making a political transition to democracy, the countries have simultaneously had to make a transition to market economies."<sup>86</sup> Foreign intervenors in Latin America and Eastern Europe provide different answers to the riddle: which comes first, the market or the democracy? In Eastern Europe we see widespread acceptance of the paramount importance of the market and the notion that the market will legitimize democracy. In Latin America, in contrast, the pyramid was inverted and in general, democracy was said to legitimate the market.<sup>87</sup> This initial point of orientation has a profound effect on the entry point of foreign intervenors into the two regions.

While foreign intervenors in Eastern Europe are most likely to ride in on a market reform bandwagon, intervenors in Latin America were often more interested in the electoral process. Although intervenors in Eastern Europe also hold courses in political parties and free elections, their efforts are more likely to be packaged with economic incentives. To some extent the differences are a sign of the times and a product of post Cold-war politics and globalization, but they also stem from deeper differences in conceptualization about "the south" versus "the east" as posited against "the west". The different treatment also may be explained by its racial dimension – i.e. the notion that some people are more easily "led" than others – and a post-colonial element in that the different treatment in Latin America stems from the legacy of colonialism of the South whereby Europeans established and controlled Latinos and indigenous peoples.

The Eastern European identity captured in the minds of Western intervenors is markedly different from their perception of Latin American identity. A rhetoric of primordialism, for example, clouds the Western imagination about the people in the Balkans. Politicians shrug their shoulders over the Balkans, sighing that these people have been killing each other for years and years, it is "in their blood" and there is nothing we can do about it.<sup>88</sup> Acceptance of this thesis in the Balkans may explain some of the ways in which western aid to the Balkans has differed from that in Latin America. For example, when Milan Panic challenged Slobodan Milosevic in the December 1992 Presidential elections, the West sent fewer than thirty election observers, apparently because the West accepted the notion that support for a greater Serbia was so

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86. LINZ & STEPHAN, *supra* note 76, at 244.

87. See CAROTHERS, *supra* note 79.

88. See, e.g., ROBERT D. KAPLAN, *BALKAN GHOSTS: A JOURNEY THROUGH HISTORY* (St. Martin's Press 1993).

strong that Milosevic was unbeatable (Panic did end up with 42 percent of the vote despite a Kosovo Albanian boycott of the elections and alleged election fraud on behalf of Milosevic).<sup>89</sup> In contrast, in the 1988 plebiscite in Chile that led to the defeat of Pinochet, there were thousands of western election observers, many of whom arrived months before the election.<sup>90</sup> While we do not hear the same “Balkan primordialism” rhetoric in Latin America, intervenors in the development area have historically differentiated between “primitive” and “evolved” populations there: the primitive were incapable of development; the evolved were suited to their projects. Additional misconceived notions held by outside intervenors stand in the way of effective contributions to reform efforts in that region. Misconceptions about the desires of indigenous populations, the role of race in society and the role and nature of Catholicism in Latin America are included.

Foreign intervenors also construct the identity of their subjects by negotiating the rhetoric of complexity versus the rhetoric of simplicity. In Eastern Europe, and in particular, the Balkans, Western politicians have long contended that the situation on the ground is simply too complex to comprehend who is doing what to whom. As a result, would-be foreign intervenors decline to “take sides,” refusing, for example, to call the Yugoslav and Serbian military the aggressor in such clear-cut cases as the attack on Vukovar in Croatia. In Latin America, the United States has a history of accepting an opposite rhetoric of simplicity, labeling the sides “bad” and “good.” Even in the face of proven human rights abuses, the U.S. remains steadfast in its support of the designated “good guy.” The competing rhetoric of simplicity and complexity have had a profound influence on the ways in which the neoliberal agenda has been exported to Latin America and Eastern Europe. In general, programs in Latin America have centered upon support for the designated good guy while Eastern European programs have tended to reach out broadly – or at least to those not directly connected to the prior regime.

Another point of departure for considering the role of foreign intervenors rests in their relationship to what Juan Linz and Alfred Stephan call the “stateness problem.”<sup>91</sup> As explained above, in many countries in Eastern Europe the liberal agenda competes with nationalism and, as a result, there are “profound differences about the territorial boundaries of the political community’s state and profound differences as to who has a right of citizenship in that state.”<sup>92</sup> It is well accepted by convergence

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89. LINZ & STEPHAN, *supra* note 76, at 434 n. 1.

90. *Id.*

91. *Id.* at 16.

92. *Id.*

thinkers that in Central and Eastern Europe the model of a liberal, market-oriented democracy cannot be transplanted to any degree until the “stateness problem” – i.e. who is in and who is out – is resolved. The same commentators do not see the need for the resolution of the stateness problem in Latin America. Linz and Stephan contend that the literature on transitions in Latin America did not give much thought to the “stateness problem” because “the challenge of competing nationalisms within one territorial state, or the question of who was a citizen of the new democratic polity, was on the whole not a salient issue.”<sup>93</sup> This explanation is only half true. Struggles between identity groups in Latin America were never traditionally framed as competing nationalisms, but still the question of who was entitled to be a full citizen of a new democratic polity and the territorial boundaries of that polity was very much in dispute, if not acknowledged by commentators. Instead of a national dimension, tensions over state formation and operation in Latin America had a racial or indigenous dimension, for example pitting Latinos against Indians, and/or a colonial dimension, pitting the colonial rulers against the colonialized.

In both parts of the world, “resolution” of the “stateness problem” has frequently been far from satisfactory. For the people of Eastern Europe, the creation of a state of any kind has traditionally portended conditions under which the politically powerful national and/or numerically significant nation will rule over political and numerical minorities.<sup>94</sup> For the people of Latin America, state creation and transformation has meant perpetuation of the legacy of colonialism and/or subjugation of politically powerless indigenous and racial groups. To what extent can these struggles be analogized? How can these historic trends explain local reluctance to embrace the specific offerings of foreign intervenors? These are crucial inquiries that must be made in order to understand differences in civil foreign interventions in Eastern Europe and Latin America.<sup>95</sup>

#### CONCLUSION

The concept of legal transplants via civil society, rule of law, and democratization projects has new currency today as foreign intervenors hasten to create new societies in Eastern Europe. The concept of legal

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93. *Id.* (quoting O'DONNELL et. al., *supra* note 5).

94. *See generally* LISA LUKKARI, EL SALVADO, INTERNATIONAL HANDBOOK OF HUMAN RIGHTS 117 (Jack Donnelly & Rhonda E. Howard eds., 1987); Jacques Lambert, *Latin America: Social Structure and Political Institutions*, in *COMPARATIVE LAW: WESTERN EUROPEAN AND LATIN AMERICAN LEGAL SYSTEMS* (John Henry Merryman & David S. Clark eds., 1978); Mertus, *supra* note 21.

95. Further work of the author develops these thoughts further.

and political transplants in Eastern Europe has been under-theorized and, as a result, we have failed to see the assumptions made in such endeavors. This essay begins to fill the void by offering a framework of assumptions and counter-assumptions. Additionally, the analysis of the liberal agenda in Eastern Europe has also tended to be ahistorical, wholly lacking any comparative element to previous and contemporary interventions elsewhere. Yet, the notion of reforming worlds has a distinctly old taste. The people of Latin America have experienced foreign intervenors for years, first as imperial and colonial powers trying to reshape Latin America to serve their purpose and, then, as a wave of U.S. democratization intervenors who continue to carry out this goal. This essay suggests some of the ways in which interventions in Latin America are quite distinct from the interventions taking place in Eastern Europe today. These observations are intended to form a point of departure for continuing a dialogue about how foreign programs of intervention can become a more supportive tool for positive social change in societies in transition.