

## 13. Republican Networked Governance of Transition

The concept of *realpolitik* [is] the denial of the individual conscience, the death of the conscience of a people.

— Xanana Gusmão, Defence Plea, 17 May 1993 (Jardine 1995:65)

Australian strategic planners initially named the peacekeeping force IFET: International Force East Timor. They were soon told that IFET already existed; it was the International Federation for East Timor, a global coalition of activists who had campaigned for East Timorese self-determination for years. Even at the very end, strategists were unaware of the powerful forces that had propelled them into a policy reversal. They renamed their force INTERFET (Fernandes 2008:95).

### Learning about Nonviolence from Timor-Leste

This book has explored how realism was defeated by a politics of hope for Timor-Leste. It shows how sinews were given to that hope by demonstrating a credible capability for armed resistance. Yet real progress flowed from opting for a politics of nonviolence as the principal axis of struggle that utterly rejected terrorism and racial or religious stigmatisation of the enemy and embraced that enemy reintegratively in victory. Its internal history of greater success when it relied more heavily on networked nonviolence contributes to the growing literature showing that nonviolence has a better success rate than armed conflict. Chenoweth and Stephan's (2011; Stephan and Chenoweth 2008:8) study of 323 violent and nonviolent resistance campaigns from 1900 to 2006 found that 'major nonviolent campaigns have achieved success 53 percent of the time, compared with 26 percent for violent resistance campaigns', while Abrahms (2006) found terrorism enjoyed an even lower success rate, achieving its policy objectives in only 7 per cent of its campaigns (see also Cronin 2009). The history of Timor-Leste confirms their reasons for this result:

First, a campaign's commitment to nonviolent methods enhances its domestic and international legitimacy and encourages more broad-based participation in the resistance,<sup>1</sup> which translates into increased pressure

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1 A key moment here was Gusmão's enrolment of the Catholic Church locally and then globally as a crucial supporter of the campaign by pluralising the Maubere movement (embracing UDT), abandoning most aspects of Maoism and negotiating for the 1983 ceasefire.

being brought to bear on the target. Recognition of the challenge group's grievances can translate into greater internal<sup>2</sup> and external support for that group and alienation of the target regime, undermining the regime's main sources of political, economic, and even military power. Second, whereas governments easily justify violent counterattacks against armed insurgents, regime violence against nonviolent movements is more likely to backfire against the regime.<sup>3</sup> Potentially sympathetic publics perceive violent militants as having maximalist or extremist goals beyond accommodation, but they perceive nonviolent groups as less extreme, thereby enhancing their appeal and facilitating the extraction of concessions through bargaining. (Stephan and Chenoweth 2008:8–9)<sup>4</sup>

Note that in Timor nonviolent struggle and a reintegrative shaming of realists (Chapter 3) that ultimately turned democratic publics against realists formed the principal axis and the most effective axis of transformation towards a just peace, not the only axis. There was plenty of violence as well in both the independence fight and the peace enforcement against militias in 1999–2001 and gangs in 2006. One senior New Zealand peacekeeping veteran, who had also served in other war zones, reported that he was asked at a conference why we do not do away with armed peacekeepers and instead send peace-loving people (like the questioner) who are willing to go in wearing T-shirts saying 'I am prepared to die for peace'? He replied: 'Well, that's nice because I know quite a few warlords who would be happy to kill you' (Interview, February 2008).

Other practical elements of Timor's principled struggle for democracy were a clandestine network that supported the wider democracy and human rights movement in Indonesia, an international solidarity movement and international refugee diaspora that was once divided but then unified under Xanana Gusmão and a diplomatic front in New York, Washington, DC, and other Western capitals led by José Ramos-Horta and in Africa by Mari Alkatiri. The Timorese leadership in exile was a fine exemplar of a patient politics of hope supported by these ever-strengthening sinews of nonviolent resistance. After Nelson Mandela was released from prison in South Africa, Xanana's messages to the

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2 The key masterstroke of leveraging internal support was enrolling the Indonesian democracy movement as a supporter by offering the Clandestinos as its front-line troops in challenging Suharto on the streets of Jakarta. Xanana's imprisonment paradoxically increased his capacity, and the capacity of Renetil (Timorese students) leader, Fernando 'La'Sama' Aroujo, who was also imprisoned for years in Jakarta, to accomplish this in conversations with imprisoned democracy movement leaders.

3 Santa Cruz is the key moment here. Almost as important is Gusmão's, Ramos-Horta's and TMR's difficult pushes to hold their fighters in cantonment when their families were being slaughtered in 1999. Unlike 1975, in 1999, Indonesian intelligence was unable to contrive and concoct a media perception that this was a civil war. The American people turned against Indonesia for the first time in 1999 because they saw the slaughter through the lens of a potential genocide rather than the civil war lens.

4 Ramos-Horta's and Alkatiri's long campaigns through the diplomatic front fit this point, the front's rejection of terrorism, rejection of racist vilification and revenge against Javanese, rejection of positioning the war as a fight for survival of Christianity against Islam.

Timorese diaspora from his prison cell (for example, his Christmas message in 1995 [Wise 2006:78]) communicated hope from the remarkable revolution in South Africa. There was a sophisticated subtlety to this politics of hope that could be reinforced when Mandela visited Gusmão in prison in 1997,<sup>5</sup> when Bishop Belo's Nobel Prize seemed to have some parallels with Bishop Desmond Tutu's. Xanana's secreted messages also drew on hopeful developments in places with histories as terrible as Timor's, such as the former Yugoslavia, and even the Middle East, to suggest that this kind of step forward was also possible for them. A Polish Pope who came to pray with the Timorese for alleviation of their suffering nourished that politics of hope in the hearts of young people who attended the papal mass and later lost their lives at Santa Cruz Cemetery.

The organisation of events at Santa Cruz in 1991 was morally flawed, but much less so than insurgency or networked terrorism. Santa Cruz had Gandhian overtones in the sense that people resisted the enemy not with force but by sacrificing their blood to show the sincerity of their cause and the integrity of their nonviolence. The assassin's bullets that ripped into Gandhi's body in 1948 instantly induced a shocked calming of the inter-communal violence that took perhaps two million South Asian lives from 1946, just as the bullets that ripped into Ramos-Horta's body in 2008 ended the 2006–08 period of violence.

Santa Cruz was particularly poignant because many of its martyrs were very young. So much of the international struggle for Timor drew sustenance from human rights discourse and the global movement for human rights and indigenous peoples' rights. Yet in the planning for Santa Cruz, there was undoubtedly abuse of children's rights by the youth leaders, and probably by elite adults of the struggle as well. Our research reveals blemishes in Timor-Leste's most inspiring patriots—Gusmão and Ramos-Horta—and in that other bulwark of competence and persistence in the struggle, Alkatiri. Post conflict, their reputations tarnished more quickly than Mandela's even though they eschewed terrorism more firmly than Mandela. This is because they were less generous than Mandela in sharing power, embracing all elements of civil society and strengthening the separation of powers. Xanana Gusmão's biographer, Sara Niner, put it more sympathetically:

Xanana believed the unity required for the independence movement to succeed could only be achieved by leading alone, above the internal factions, continually brokering political compromise both internally and externally. While some may protest, history has proved him right. He became the man at the centre, often solitary, searching for allies,

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<sup>5</sup> Our interviews with Indonesian diplomats and former foreign ministers suggest that Suharto agreed to Mandela's unusual request because he wanted Mandela's influential support for his leadership of the Non-Aligned Movement.

and soothing grievances and grief: a middle-way leader to use Little's expression. However, this independent leadership style also fostered a propensity toward unilateral and undemocratic decision-making fitting to a military commander during a time of war but harder to maintain in the confines of a modern constitutional democracy that Timor-Leste now struggles to foster. (Niner 2005:40)

Adérito Soares's interview with Prime Minister Gusmão in June 2011 indicated a change of heart on this question. He said that a lesson he had learned was that young leaders for the future should have been embraced and blooded at the centre of political institutions much earlier. And he indicated a determination to put this right now.

## **Lessons about Resisting Tyrannies of Transitional Administration**

The political histories of Timor's leaders are still being written. There is still time for them to become more effective in strengthening separations of powers and in bringing on a younger generation of leaders who will strengthen them further. There is some quantitative evidence that countries that disperse power more widely (mainly through a proportional political system and the 'inclusiveness' of the representation delivered by the voting system) enjoy a lower risk of civil war (Reynal-Querol 2002). When Xanana returned to the embrace of his people after the 1999 devastation, he seemed to be another Mandela (Wise 2006:80). For a period after that, the United Nations held up East Timor as a peacekeeping operation that had succeeded in creating democracy and justice on the ashes of mass murder. The Timor operation's image is tarnished now, but it is retrievable. The next chapters of Timor-Leste's history could be written as one from which future democrats will derive inspiration for sustained struggle against the forces of repressive realism.

Jaret Chopra (2002) was a distinguished, disenchanted critic from within UNTAET who showed that the failure to work at the separation of powers began with the failure of UNTAET to cultivate separations of powers. The most important blind spot was weakness in UN security sector policy that acquiesced in the police and the military becoming political power bases that were in danger of being captured by one or another dominant political faction. This allowed Minister Lobato in time to constitute the police as the best-armed, best-paid part of the security sector, functioning as his private army.

There were structural drivers of this UN failure to secure a separation of powers. UN peacebuilding faces a massive social selection problem. It attracts many

idealistic people who seek a better world, but others who enjoy exercising power, who savour a level of sovereignty few of them could ever exercise at home. UN peacebuilding also faces a problem of being overwhelmed by the number and vast scope of the problems it has to solve. The best way for a UN official to perform credibly in fixing as many of them as can be managed during a posting of six months can be to fix them autocratically, as a UN autocrat who consults as needed with a small clique of local autocrats.<sup>6</sup> The trouble with autocratic problem fixing is that autocratic method makes it less likely that the problem will stay fixed in the long run. UN postings are not for the long run; it is natural for human beings to fix as much as they can for their own period at the helm, as opposed to being focused on fewer fixes that can be sustained in the long term. Pride resides in what is accomplished during our own time in the job. When that unravels later, we tend to blame our successors. These are tricky structural realities for UN peacebuilders to transcend. The Timor-Leste case shows the tragedy of failing to rise to this challenge:

[S]uch missions can contribute to outcomes more negative than if they had not intervened at all. They may undermine indigenous forms of political legitimacy without establishing a reliable alternative and functioning administrative structure. They have often facilitated the strongest player in taking the capital city. It was a habit of UN deployments in the past to follow on the ground the line of least resistance, unable therefore to challenge recalcitrant warlords, or to prevent the largest factions from dictating terms of a peace process. This is why Hun Sen's State of Cambodia, that lost the 1993 elections, never gave up power. This is also why the Northern Alliance dominated the Bonn conference on Afghanistan in November 2001. (Chopra 2002:995; see also Barnett and Zürcher 2009)

One remedy is to triage performance evaluation of UN officials. First, we should continue to evaluate them on how many big problems they fix. Second, we should assess them on how much they have contributed to building local strengths in problem solving in the process of fixing them. That means evaluating UN officials in terms of the degree of collaboration with locals to solve problems jointly. Third, it means evaluating their work in terms of the contribution it makes to building separations of powers.

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<sup>6</sup> Chopra (2002:997–8) argues that this might be a problem of the diplomacy 'culture' of the United Nations as well: 'Not only was the Transitional Administrator not expecting to stay long, and therefore did not invest in engagement of complicated matters, but his background as an international bureaucrat was rooted in a diplomatic context. It is the diplomatic habit to remain removed from local politics and not to participate in the social process behind it. The problem was precisely that the head of the government and the preconstitutional king of the state, or the proconsul of the territory, was not functioning like a politician in contact with the population and their various interests. He was speaking almost exclusively, in an asocial and diplomatic fashion, to a single individual. As important a figure as Gusmão was, the requirements of leadership were far more complex and demanding than a single relationship could provide.'

These evaluation criteria are often in conflict. In contexts where levels of education are low, it is often quicker to fix something oneself than to train someone to fix it. In other cases, when a UN transitional administrator empowers a court to overrule their decision to lock up a troublemaker, this can make it harder to fix problems of disorder and violence in the short term. But fixes forged with local capacity, through processes that constitute separated powers to fix, are more likely to be sustainable fixes. Longer-run time frames for evaluation would be assisted by duration of UN peacekeeping/peacebuilding leadership appointments more akin to the diplomatic postings that states make for periods of years rather than months.

The United Nations in Timor-Leste has been a success in ending violence on the streets and in conducting a referendum on independence and elections in which people mostly cast non-coerced votes in circumstances where many were plotting to coerce those votes. That could have been accomplished with a simple, short peacekeeping and election monitoring operation. It did not require a transitional administration and the most expensive UN multidimensional peacekeeping operation that had been held until that point in history. The United Nations in Timor-Leste failed to institutionalise credible separations of powers that could lay a good governance foundation for an economically flourishing democracy, especially in the security and justice sectors. UN autocracy is unlikely to lay a foundation for post-conflict democracy. It is likely to collaborate with received patriarchs to bequeath a successor autocracy. Even when the UN autocrats are benevolent like Vieira de Mello and the received patriarchs are committed to pluralism (as were Gusmão and Ramos-Horta, and eventually Alkatiri), the Timor-Leste case shows that this risk remains profound. It must be resisted by concrete tactics of pluralisation. It must be regulated by a transparent discipline of democratic audit that affects the future careers of those who are evaluated.

Indiscipline of leaders is a problem in transitions to democracy of societies like Timor-Leste with hierarchical, aristocratic traditions. In our interviews, ordinary people frequently blamed 'democracy' for the nation's problems, for leaders focused on 'stealing each others' chairs' rather than on serving the unity of the society; political parties were institutions that only caused division. Leaders like Xanana Gusmão and institutions such as Fretilin and Falintil are no longer seen as the moral exemplars of virtuous governance that they were in 1999. A particular problem for the fragile democracy is that they are seen as exemplars of impunity. The culture of impunity is now widely entrenched in the consciousness of elites and angry young men on the street alike. *Lisan* justice has contributed greatly at the local level in compensating for the failings of formal justice and also contributed at the national level from late 2006. But at that national level, leaders are seen—more than ever in the aftermath of the impunity for 2006–08—as above both *lisan* justice and the justice of the courts.

One of the ways a future new democratic government must renew the republic is by instituting an end to the culture of impunity. It can be one that leans more heavily on *lisan* justice than on the justice of state courts, but courts must be given a more credible role in the future than in the past. Impunity will continue to be a dire moral hazard for Timor-Leste unless ordinary people see a fresh start in which the independence of the judiciary and prosecutors seems more secure and leaders are seen to put themselves below the law.

The impunity problem is inextricably linked to the learning about language and legitimacy from Timor-Leste that policing does not work when the police are not fluent in the language of those being policed,<sup>7</sup> and that the courts do not work if trials are conducted in a language most people do not understand. Fretilin in opposition became critical of the government and the United Nations for failing to respect the independence of the judiciary. In one of his interviews with us in 2009, Mari Alkatiri emphasised that the state requires strong central power. This had always been Fretilin's ideology, but now they give more emphasis to a rule of law under a separation of powers. It was only with experience of government that Alkatiri and Fretilin realised how important this was. There is in this hope for a democratic politics that resists the culture of impunity. For example, Mari Alkatiri was critical of then President Gusmão for 'sending notes to the judge who had issued a warrant for [Reinado's] arrest saying he should be free to travel' and critical of the UN security sector leadership for feeling bound to follow the President's wishes in relation to Reinado rather than executing the arrest warrant. 'A "madman" was left armed and at large contrary to the order of the court' (Alkatiri interview, September 2009).

Before we get too gloomy about the failures of the United Nations in institutionalising separations of powers in Timor, we must remember that the United Nations is itself part of the separation of powers that protects citizens from domination during a transition. The fact that ordinary Timorese continued to see it that way is well captured by a result in Higashi's (2009:28) survey looking forward to the 2007 election. When citizens were asked 'Who should mainly conduct the next election in Timor-Leste?', most opted for 'The Timor-Leste government and the UN', with a much smaller proportion opting for 'Only the Timor-Leste government'.<sup>8</sup>

Finally, the United Nations, working with international donors, did a creditable job of sustaining the networks abandoned by the political leadership that had been the lifeblood of CNRT until 1999: the human rights networks, women's networks, youth networks, development networks, and the accountability

7 'Yelling at a person to get down does not help when they don't speak English. Yelling louder does not help either' (Interview with New Zealand Maori military peacekeeper who learnt Tetum, August 2007).

8 A still smaller group opted for 'Timor-Leste government and the International Stabilization Forces'.

NGOs that watched over the Petroleum Fund negotiations and critiqued the underperformance of the justice system and the security sector. One might say that the Judicial System Monitoring Programme (JSMP) was a more impressive institution than the judiciary, that human rights and women's rights NGOs were more impressive than state rights enforcement and rights implementation, that the United Nations performed better in nurturing the watchdog networks that critiqued the institutions UNTAET built than it performed at building the institutions. One reason was that the strength of the movement for the liberation of East Timor was networked strength, not institutional strength.

Great social capital was created in Timor as a result of talented young Timorese working with talented and experienced internationals like Pat Walsh<sup>9</sup> at the interface between the clandestine network and the international solidarity movement. That social capital formation continued to grow in Timor-Leste after 1999 in NGOs in which young Timorese worked side by side with internationals who had more education and experience of democratic institutions, but less knowledge of Timor, though trust in civil society was badly set back by the violence of 2006 (Curtain 2006; Kehi 2007). Over time, Timorese became the dominant players in most of the civil society organisations in which internationals had once been more in charge. Most of the younger people moving into senior positions in politics and the civil service today carry with them social capital formed in that fashion.

As the NGOs became more dominated by Timorese, they became more integrated with rural areas, which internationals who valued hot showers and airconditioning had tended to shy away from. Then the NGOs began to draw in new leaders who had developed their social capital in *suco* governance. Village governance experience was thus deployed through NGOs into the wider challenges of the governance of the state. As in all rural societies, such as the Western democracies of the nineteenth century, in Timor-Leste, competence in governance is mainly constituted in towns and villages; less of it is constituted in the capital city. Republican virtue grows most strongly in the capital when it grows organically from republican virtue learnt in the districts and when national governance enjoys the luxury of choosing the brightest and best from those who learnt from mistakes they were allowed to make in the practice of rural and small-town governance. The United Nations did not set out to pump-prime that virtuous dynamic.

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<sup>9</sup> Pat Walsh has worked for decades in Timorese human rights networks, initially through the Australian Council for Overseas Aid. He became a driving force behind and within CAVR.

## Rethinking Diplomacy

This book can be read as a case study that exposes two large pathologies of contemporary Western diplomacy: it leans too heavily on realist international relations theory and it implements ‘national interests’ in negotiation with cliques of national elites. Diplomacy must adapt to a world where so much of its peacebuilding work is not with pre-given nations and states. It is nation building where who the state elites will be and what the key institutions will become are unknown in advance of the consolidation of institutions. Timor-Leste is a ‘most likely case’ (Eckstein 1975) of the United Nations being able to constitute democracy peacefully through elite statist politics because in Vieira de Mello, Gusmão and Ramos-Horta the United Nations had three individuals to work with who were outstanding diplomats, and were as committed to democratic pluralism as any leaders one could hope to find amongst the ashes of a war. The failures of this ‘most likely case’ of success suggest that realist, top-down elite diplomacy might not be the way to succeed in building a resilient, peaceful democracy.

In a world of such challenges, diplomacy becomes more like a politics of networked governance. Diplomats become people who get mud on their boots in civil society far from the cocktail parties of the capital. The profession of diplomacy is reformable by being weaned off realism, ruling cliques and cocktail parties and weaned onto the mat in the village. We are confident that diplomacy can become a profession as oriented to differentiating power as to deferring to it. Law might be the profession of guardianship over the separation of powers but diplomacy has increasing responsibility for constituting separations of powers. It is often the midwife to sovereignties that are far from pre-given.

Diplomats will protest the unreality of advocacy like Barnett’s (2006) and ours for republican peacebuilding based on deliberative processes that valorize networked governance through unelected bodies that pass two tests: ‘inclusivity, or incorporating diverse groups; and publicity, or making transparent their decisions and the reasons behind them’ (Barnett 2006:102). That protest sees a development like Wikileaks as a crisis for diplomacy—which must be transacted with maximum secrecy—rather than a prod to republican engagement with it. The republican certainly worries about reckless Wikileaks work that puts lives at risk or breaches the rights to privacy of non-public players. Yet the republican regards Wikileaks as a case of the separated powers of the new media doing its job.

Traditional diplomacy understandably sees it as impossible to hammer out a peace agreement with a thousand participants in front of television cameras. The Peacebuilding Compared research on another Indonesian peace process, Aceh,

indeed concluded that it can be necessary to cut a core deal by narrowing the parties to a small number of moderate players each of whom can speak for wider networks. This might involve excluding from the room in the first instance certain powerful players who are determined spoilers. The Indonesian military and intelligence leadership formed one such example in the Aceh peace (Braithwaite et al. 2010a:Ch. 6). Yet our Aceh case study concluded that a weakness of the Aceh process was a failure to expand the peace negotiation table as soon as that core agreement was signed. The insurgent-dominated successor government in the autonomous Indonesian province of Aceh might have been less corrupt and enjoyed more separated powers had wider civil society networks been quickly brought to the table to put flesh on the bones of the framework peace agreement. We also argued that less of the peace agreement might have been dismantled by the militarist factions of the Indonesian Parliament had the Indonesian military leadership also been sitting at that second-stage table.

But we need more than the reform of diplomacy as a profession. The best diplomacy in the history of building architectures of separated powers has been done by loose networks of amateurs. This is true even in Aceh where the diplomatic establishment conferred the Nobel Peace Prize on the quintessential diplomat, former Finnish President Martti Ahtisaari.<sup>10</sup>

If Timor-Leste's leaders today can network into the project of redesign of the architecture of governance new generations of women and men of diverse political persuasions then there is hope. If it can network in separations of powers that are attuned to Timorese politics, if it can continue its progress towards reconciliation with itself and with its more powerful neighbours in Indonesia and Australia, there is contextually grounded hope. Timor-Leste's leaders might then lead a state with a uniquely inspiring story of how to build a republic where fears of domination by a terrible war and a man-made famine, by east or west, by men over women, by cosmopolitans over traditional villagers, by dual colonialisms, especially by poverty, become dominations that are defeated one by one during the next century.

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<sup>10</sup> See Braithwaite et al. (2010a:Ch. 6) for an account of the wide network of amateurs who contributed to the peace in Aceh in combination with a network of professionals like Ahtisaari.

## Learning from Timor How to do Better at Separating Powers

We must learn that democracy is the art of disagreeing.

— Agio Pereira (2009:6), Xanana Gusmão's longstanding Chief of Staff

The United Nations should have pushed harder to separate powers. By insisting that CNRT implement its own policy of completely demobilising Falintil, doing without a defence force that consumed 8 per cent of the national budget in 2006 (Kingsbury 2009:135), subsequently increasing to 9 per cent (UNDP 2011), and funding generous reintegration payments to all Falintil members to manage the politics of their resistance to total demobilisation, the United Nations could have saved donors much money later in the decade and freed up substantial resources to fight poverty. Just as important, this could have allowed the nascent Timor-Leste police space to develop their important role in the transitional separation of powers, instead of indulging a politicised arms race with the military. It is interesting to note that this might not have been unpopular with the electorate. In Drysdale's (2007b:81) research, 'Defence' was by far the least popular choice of Timorese for expenditure of monies from the Petroleum Fund, with health, education, water, agriculture, forestry and fisheries the highest priorities.

The idea of the Serious Crimes Unit and the Serious Crimes Panel as hybrid international–domestic institutions was not a bad one in the aftermath of the expensive disappointments of the Rwanda and Yugoslavia international tribunals, the looming disappointments of Cambodia, and in the face of the clever politics of Indonesian resistance to an international tribunal. A hybrid had potential to leave a better legacy of local legal capacity than was left in Rwanda. But the serious crimes process was limply implemented, with funding for it cut off far too soon. Important elements of transitional separations of powers are the responsibility of transitional administrations. One of UNTAET's best decisions in this regard was the 2001 regulation establishing, after consultation with civil society groups, the Commission for Reception, Truth and Reconciliation with a totally Timorese complement of commissioners who served on both sides of the 1975 civil war, and with a contextually distinctive focus on 'reception' (welcome and reintegration: *alcolhimento*) of those who fled to West Timor.

Readers might find it strange to interpret that decision as a great one in terms of establishing a transitional separation of powers, rather than a great decision in terms of justice and reconciliation. During a critical period of the birth of the Democratic Republic of Timor-Leste, CAVR became an important voice independent of the executive government. It defended the Constitution, human rights and other separations of powers during the fragile process of transition.

It was a profoundly participatory institution at a time when civil society participation was being thinned within the new polity. It offered much sage advice in its final report that elites at the commanding heights of the executive government were foolish enough to ignore. How prescient it was, for example, to recommend that '[a]ll political parties make a public commitment that they will never mobilize youth groups for political purposes other than in peaceful and lawful ways' (CAVR 2006:Part 11, p. 31, para. 9.4).

The UN leadership in New York was reckless to distance itself from the CAVR final report when President Gusmão attacked it and initially refused to release it or allow it to be tabled and debated in the Parliament. Influential UN members such as Australia, Indonesia, the United Kingdom and the United States acquiesced in the President's approach to a report that so exposed their realist follies between 1975 and 2006. The job of separated powers in a republic is to contest dominations of executive governments; the job of UN transitional administration is to give transitional separations of powers backbone in that fraught endeavour.

Timor-Leste is not only an inspiring case study of the power of nonviolence and principled engagement in comparison with the bankruptcy of misplaced realism. It is also a depressing case study of corrupted separations of powers. It took 16 years (until 1991) for the greater power of nonviolence compared with armed struggle to become clear in this case. Perhaps it will take more than 16 years before the superiority of separated powers over autocracy realises its potential.

The challenge is not in terms of the Democratic Republic of Timor-Leste catching up to mature republics such as the United States in the separation of powers. The United States does not have a national anti-corruption commission with the powers of that of Timor-Leste. Nor does it have an institution like the Petroleum Fund, which empowers future generations with independent authority over the nation's largest resource so that the current generation of political and business leaders cannot pillage it wantonly. The 2008 global financial crisis laid bare how US political leaders, captured by the leaders of Wall Street, opted for short-sighted profit maximisation, laying waste their economy for the next generation. US internal colonialism crushed the wisdom of the ancestors of its indigenous justice. So the hope is that Timor-Leste can break new ground in the separations of powers over such matters, and much more.

Timor-Leste has a parallel with Nelson Mandela's and Desmond Tutu's education of the world to the virtues of *ubuntu* as a restorative justice value and Gandhi's vision for strengthening *panchayat* justice. There is also greatness in Xanana Gusmão's vision for strengthening the role of *lisan* in Timor-Leste's justice system and holding it accountable to the human rights standards of a republican

constitution. There is a possibility that Timor-Leste will realise richer post-colonial separations of powers than South Africa or India have so far managed. We only put it as a possibility.

Our argument has been that Montesquieu's conception of the separation of powers as between executive, legislature and judiciary is impoverished in comparison with pluralised public-private separations of powers. The global financial crisis of 2008 did not occur because the US executive government crushed a legislature that wanted to implement the regulatory reforms needed to prevent the crisis. It did not occur because the courts were insufficiently independent of the President and the legislature. One reason it did occur was that ratings agencies, which hold the solvency of banks and hedge funds to account, were insufficiently independent of the private interests they were rating. Boards of directors of great banks insufficiently exercised independence of judgment over leveraging, over the hedge fund traders and the housing loan brokers who were making them rich in the short term. Board audit committees failed. Major accounting firms failed to blow the whistle in countless cases—a lesson that should have been learned from the previous, more minor collapse when Arthur Andersen failed to do its job of auditing with independence Enron, Worldcom and other companies that collapsed in 2001 (Braithwaite 2009). So the 2008 financial crisis was not caused by a failure of a tripartite separation of powers in the public sector, but by a failure of powers to be sufficiently separated within the private sector. More profoundly, there was a failure of public powers to be sufficiently separated from Wall Street power in enforcing regulations that required these culpable private powers to be separated. Financial regulators were insufficiently independent of a president and of a legislature captured by a Wall Street that funded their election campaigns. And there was a failure of the IMF to call US monetary imbalance to account in the way the IMF would have if this had been the recklessness of a less powerful economy.

Timor-Leste is not the sophisticated economy that would be able to show the rest of the world how to better separate powers over financial domination, though it did manage to keep its banks out of the crisis of 2008–09 and record double-digit growth in 2009, and there are lessons the world could learn from its Petroleum Fund in how a 'resource curse' that is lootable by the present generation can be entrusted to future generations. Timor-Leste did this at the same time that many European economies bequeathed national insolvency to the next generation. The more interesting leadership Timor-Leste is showing is in securing independent authority of past generations over the present. In Chapter 11, we saw that following a *juramento* (blood oath) to refrain from future violence and fear of causing disrespect to the ancestors and their values of communal harmony are significant motivators of nonviolence and respect for the human rights of other citizens. Readers will doubtless find it even stranger for us to frame the *juramento* as a separation of powers than our framing of

the CAVR and the Community Reconciliation Process as effective separations of powers. The key idea of a separated power is that it be a check and balance that is independent of the power with the greatest capacity to dominate citizens (normally an executive government, a dictator, a monarch, but sometimes Wall Street). Functionally, why does it matter that the separated power that checks abuse of power is ancient and spiritual rather than modern and institutional?<sup>11</sup> More fundamentally, it is a flawed justice practice to have foreign lawyers design a 'modern' justice system to displace custom that locals shun in droves because it has less legitimacy than the *lisan* legitimated by the ancestors. The more productive role for Western-style courts is as a check and balance on the more dominant justice of *lisan*.<sup>12</sup> We have used the work of Daniel Fitzpatrick and his colleagues on land law (Chapter 10) as a case study of Timor-Leste's potential to deliver rural agricultural efficiency through traditional justice in most land disputes, while empowering state courts to carve out contractual exceptions and state land exceptions that allow private market investment and state provision to flourish. Within that framework, space is institutionalised for the justice of *lisan* to percolate up into the land law justice of the courts and for the justice of state law (such as that which guarantees women's rights) to percolate down into land disputes settled on the mat.

At the traditional national reconciliation of 6 December 2006 described in Chapter 10, the only power above President Gusmão that was able to call the President to account that day for his hubris was the ancestors, their spirit embodied through rural men who were traditional spiritual leaders sitting on the mat. How interesting that he was redeemed by confessing that hubris in their presence and taking a solemn oath to them not to repeat those errors, to listen on the mat in future in deliberative processes that the spirits and the laws of the ancestors oversee. We see this as a fit with the republican principle of commitment to deliberative processes that are agreed to be legitimate in a particular society, which, because they are perceived as legitimate, can work in calling power to account (Barnett 2006). This is not to deny the importance of more modern institutional accountabilities such as elections. Gusmão faced the people in an election in the next year and won. It is to say that an extra check

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11 One referee answered: 'I guess the question could be posed, it might matter because it may not be sustainable as the country modernises further and the salience of traditional values etc. diminishes. What would replace it?' Our reply would be that it might be replaced with separated powers that have meaning to people with the values prevalent under that new 'modern' circumstance. At every point in history, as beliefs change, the separations of powers that attract legitimacy will also change, and republics must be nimble at adapting to this. There is also a conservative element to republican thought in this regard. If a separation of power is working in humbling power, we should be cautious about dispensing with it (see Krygier 2002).

12 Deliberative balance is needed here of course. One Timorese Catholic leader strongly made the point that the government should be learning from functioning democracies. 'We should not be inventing any wheels here. We do not have people with enough experience. We do not have our own experts. We should be doing an external not an internal review of the government. The justice process should not be excluded. Traditional reconciliation is good, but justice is needed' (Interview, December 2006).

and balance on power that enjoys popular legitimacy, so long as it is not such a dead weight on efficient governance as to cause poverty, enhances freedom as non-domination (Pettit 1997).

With respect to freedom as non-domination for women, as argued in Chapters 10 and 12, this means relenting to *lisan* as the 80 per cent default justice that soaks up the impossible backlog of land disputes, male-on-male violence and petty crime so that it is logistically possible for much greater numbers of rape and domestic violence cases to be accommodated in the courts. The agenda suggested in these chapters was not the impossible one of persuading all or most Timorese women to abandon village justice for dealing with gendered violence, but to persuade a greatly increased number to do so in those cases where village justice crushes women's rights; and to persuade them on the basis that state justice can perform in the future in ways that redeem the failures of its past. It has been a past of women continuing to suffer violence while their case sits in a prosecutor's in-tray, and then not being able to understand the proceedings (the language of justice) if the case did go to court. Dominant village justice that is checked and balanced in this way by the justice of state courts might then better serve those women who view *lisan* as the justice that affirms their Maubere identity, which they fought for against Indonesian justice.

The separated powers of state and non-state justice might then compete with each other to better serve the interests of women in justice. As we argued in Chapter 12, however, both must be checked by feminist and human rights NGOs when they dismiss women. And we have seen that a feminist and rights-conscious civil society has flourished in Timor-Leste on the foundations of the student underground of the long war. While the power of women as a balance on the power of men has a long way to go in Timor-Leste, accomplishments such as a police force that is 20 per cent female, that has a gender violence unit in every police district in the country, traditional justice through *suco* councils with growing and mandated female participation and a national parliament that is 29 per cent female (IPU 2011) are impressive beginnings in any internationally comparative frame. They are also impressive beginnings to separations of powers between institutions dominated by males and institutions where women's voices are more heard.

No institution has failed the Timor-Leste republican revolution more than the police. Instead of functioning as a bulwark of the separation of powers, it surrendered its independence to a criminal politician; it crushed political diversity in civil society. It has barely begun to learn that in policing 'the power of the tongue is greater than the power of the fist' (UNPOL interview, September 2009). On the positive side, we have argued that many rural Timor-Leste police today are enriched by a dual accountability to their Police Commissioner in Dili and local luminaries of *suco* governance and *lisan* justice. They consult

*chefe d'aldeias*, *chefe de sucos*, *suco* councils, victims and offenders to reach consensus on which cases should follow the dominant track of *lisan* justice and which should be diverted to state justice. In this and the previous volume of *Peacebuilding Compared*, on Solomon Islands (Braithwaite et al. 2010c), we have concluded that in village societies many of the conflicts that overwhelm the capital start as rural conflicts. Then they migrate to the city, especially through the agency of gangs of migrant unemployed rural youth in the capital. The newly self-confident rural justice that is checked by growing accountability to state justice and human rights institutions working collaboratively with local constables seems a set of institutional settings with promise. There is hope that it might manage the future conflicts that will inevitably erupt across rural landscapes so traumatised by past atrocities at one another's hands.

Contemporary Western societies such as the United States and Australia have weak alternatives to state justice in comparison with *lisan* justice. These are societies with once rich indigenous justice alternatives that have been largely destroyed, causing despair and alienation among those who suffered that loss of identity. Our argument here is that more than preservation of identity is at stake in nurturing *lisan* in the way Xanana Gusmão advocates. Preservation of more functional and continuously improving separations of powers is also at stake. Most of the UN, foreign lawyer and Fretilin elite in the early 2000s saw the justice agenda as one of building a modern state legal system in which justice would be enacted in courtrooms. Corruption was one area where the United Nations, the Inspector-General, the Provedor, the police and other institutions referred many dozens of corruption investigations to the Prosecutor-General during the first decade of the new nation's existence only to have no cases proceed, because of either the overwhelming weight of court backlogs or political pressure for nothing to happen, or both.

Prime Minister Gusmão always had a more legal-pluralist agenda and this is the agenda that has become more ascendant as UN legal hegemony has faded. The new Anti-Corruption Commission that Adérito Soares now heads is part of that institutional pluralisation. Towards the end of their period in government, Fretilin leaders also learned that they were expecting too much of the courts and had excessively politicised the justice system. Fretilin too became more sympathetic to legal-pluralist policies. The work of Daniel Fitzpatrick and his colleagues shows why it is not impossible for a more vibrant separation of powers for state and non-state land law to emerge from the early years of chaotic and patrimonial Timor-Leste land disputation. A hybrid separation of powers over land could sustain both productive village economies and productive market economies driven by business investment. We have also argued that it could help tackle one of the biggest root causes of corruption.

## Gandhi plus Nehru

In India, Jawaharlal Nehru's centralist socialist ideology of an industrialised economy (not so different from that of the younger Mari Alkatiri) prevailed over Gandhi's vision of village agricultural economies with rural justice. Today, India is prone to Maoist insurgencies that appeal to some of the rural majority of the nation which has been cast aside by the Indian urban middle class. Gusmão is a leader who seems to understand that it is not necessary to choose between Nehru and Gandhi in this regard. A dual legal system that simultaneously nurtures vibrant growth in rural agriculture and a vibrant market economy (in the difficult circumstances of limited opportunities) is not impossible (as we saw in Chapter 11). The Community Empowerment Project disappointed because it was both prematurely sequenced (in advance of even minimal local governance infrastructure to support it) and sabotaged by UN bureaucratic centralists who vandalised the attempt at more devolved separations of powers over development. We argued in Chapter 11 that efforts are being made to retrieve village-based empowerment by shifting control over development decisions out of Dili with support from the UNDP and bottom-up leadership from *sucu* councils.

So, we conclude that UN transitional administration sometimes attracts oligarchs who overconfidently impose their view of what is best for another country. Guerilla war leaders who assume state power tend to be seduced by oligarchy—unaccustomed to accommodation with civil society, unwilling to be called to account—and pass blame to the United Nations and other internationals when things go wrong. Even so, there is no Iron Law of Oligarchy (Michels 1966) in peacebuilding. Just as international analysis of prospects for Timor-Leste in the early 2000s tended to be excessively rosy, after 2006, they became excessively gloomy. After a decades-long civil war, we should not expect a transition to peace and democracy to be free of violent and oligarchic setbacks. Networked struggle of the younger generation of Timorese to demand greater accountability from their institutions and their oligarchs remains vibrant. Leaders such as Gusmão, Ramos-Horta and Alkatiri have manifested complex mixes of pluralist virtues punctuated with periods of descent into oligarchy. The 1975 generation and UN leaders supported barely enough of the basics of a separation of powers for it to be struggling to strengthen rather than weaken. More importantly, it is leavening with ingredients of a diversity that many Western societies cannot boast. Separations of powers that are not regularly tested by episodes of oligarchy are never likely to learn to become resilient. No-one can doubt that Timor-Leste has been sorely tested by tussles with many tyrants and by being on a civil war footing in 1974–99 and 2006–08. So we should not fail to hope that it might emerge one day from these tests with separations of powers as strongly networked as any republic.

The violence and burning of 6000 homes in 2006 seemed to make such hope forlorn among what one observer described as a culture that is

strongly opinionated, impulsively antagonistic...[with a] high rate of posttraumatic disorder syndrome, a poor notion of citizenship and the good citizen...[lacking] plurality of perspectives and critical analysis, severe practices of corruption and nepotism, dependency syndrome, emerging potentially conflicting ideas of political identity and a high illiteracy rate. (Boavida 2001)

Yet 2006 can be seen as a moment ripe with anomie in which leaders learnt from their irresponsibility in failing to abide by the rules of the game. They had followed the rules only up to the point that they worked for them, only far enough to keep the Constitution they fought for intact. Beyond that point they resorted to mob rule (Kingsbury 2009:168). Kingsbury argues that in the transition between autocracy and republican democracy 'there is a moment at which leaders are politically exposed, having to let go of one system but not quite being established in the other. Very few of East Timor's political leaders were prepared to face this vulnerability, especially if their competitors did not do the same' (p. 168). All their reputations suffered from their decisions to deploy gangs on the streets to defend their political interests. After that near return to civil war, leaders and the common people today have a better quality of national conversation about the separations of powers needed to secure their belief in nonviolence as the better part of their legacy.

In this book, we have frequently used the expression 'separations of powers' to reflect the pluralised form of the concept we have advanced as supportive of peace with justice. At different points, we have made a case for the importance of the following separations of powers.

- The classic tripartite separation of the legislature, judiciary and executive.
- The power of the people in elections conducted by an electoral commission independent of the legislature, judiciary and executive.
- The legitimate role of the crowd in history to protest in streets secured by a rule of law.
- Separation of control over the means of violence from politics (even if it is a non-state military as in Gusmão's genius in separating Falintil from Fretilin)—a military and police regulated and authorised by democratically appointed civilians, by a constitution that separates the military and the police from politics and regulates them under a rule of law enforced by civilian powers.

- In transitional administration, a United Nations that uses the military force at its disposal to prevent domination of a post-conflict military and police by any one political faction.
- A police separated from the control of the military; community policing as a civilian function that imposes higher thresholds on coercion upon the citizens of the republic than those allowed by military rules.
- Separation of the office of the prosecutor from the offices of the constable and the judge.
- Separated powers over justice that in combination guarantee that no member of any elite may believe that they enjoy impunity from the rule of law.
- Separations of powers within the judicial and legislative branches among lower courts and layers of appellate courts, perhaps different houses of parliaments, parliamentary committees, and legislative drafting services with responsibilities to detect and publicly report breaches of rights in draft laws.
- Separated powers for survivor advocacy institutions (up to truth commissions and the UNHCR for refugees).
- Separated powers for human rights, gender equity and complaints-handling units within key institutions such as the police.
- Accountability to international institutions such as international law, the regulatory enforcement of UN human rights institutions, the International Criminal Court, the IMF, the Basel Committee with bank reserves, the International Civil Aviation Organisation for rights to safe air travel. These international institutions must each in turn institutionalise their own separations of powers.
- UN peace operations must be constituted to avoid the loss of legitimacy that comes with domination by any one regional state power or one great global power.
- Separation of public accountability institutions—the ombudsman (provedor), auditor-general, inspector-general, anti-corruption commissioner, civil service board—from the state institutions they hold to account.
- Comparable separations of private accountability institutions: company auditors, board audit committees, corporate compliance and corporate integrity units, ratings agencies, stock market self-regulators, public regulators of markets, the Forest Stewardship Council, the UN Global Compact.
- Separated powers of anti-monopoly regulators with the authority to prevent commercial monopolies from exercising such unfettered power that they are above the legislature, the judiciary and other powers; ensuring the media is

not monopolised, that there are micro banks that lend competitively to the poor and not just monopoly banks lending only to the rich.

- Where private monopolisation thwarts anti-monopoly law in a domain where freedom as non-domination is at risk, such as micro-finance or broadcasting, the state should support public provision of these services in competition with private monopolies.
- Where public monopolisation of services vital to freedom as non-domination, such as education, becomes corrupt, separated private provision in competition with public providers (of, say, education) is needed so that donors have the alternative of channelling support for this institution through private or charitable providers.
- Separating the power of the military and the police from the power of commerce; rigorous anti-corruption commission enforcement against police or military protection rackets in commerce.
- Separated powers of professions such as law, medicine, architecture, diplomacy and accounting to self-regulate professional integrity standards, including the functioning of such professionals at the commanding heights of the state and commerce.
- Separated powers of the mass media that are not dominated by the state or big business, and of the profession of journalism.
- Separated powers for universities and artistic institutions that build new knowledge and new art with independence of thought.
- Separated powers of telecommunications: independent telecommunications regulators that cannot be dominated by the executive government to deny that free exchange of words and images on the Internet that has emerged as a new accountability of the concentrated power of militaries, police, ministers and corporations.
- Separated powers of future generations over the present generation: a petroleum fund and a central bank independent of the elected government of the moment that have charters to protect future generations from excessive burdens of indebtedness, monetary imbalance and inflation.
- Separated powers in national and international civil society that become progressively more plural—the power of the clandestine movement, the international solidarity movement and churches that created the Democratic Republic of Timor-Leste; women’s empowerment groups, trade unions, environmental groups, civil liberties groups, anti-poverty campaigns, and, yes, authoritarian anti-republican civil society voices as well.
- Separated powers of elected village councils to control village development budgets that are not under the control of the national executive government.

- And, most poignantly and importantly, in learning from founding the Democratic Republic of Timor-Leste, ancient ancestral separations of powers that grant a large sphere of power to customary land law, traditional justice on the mat (*nahe biti*), reconciliations that provide an account of making right and making just to ancestors. Within the sphere of *lisan*, there resides a whole set of new layers of separations of powers—for example, among the *lia nain*, the *chefe d'aldeia*, the *chefe de suco* and the *suco* council.

While republican separations of powers have a universal quality, their meanings are constantly transformed in conversation with citizens; their content is recurrently vernacularised by new, disparate voices. The power to vernacularise is itself an important separated power and a fountain for dynamism in all separated powers.<sup>13</sup>

Vernacularisation can be spatially asymmetric, as can formal separations of powers. We have seen that different separated powers over land, for example, can be applied in a modern city from separations that apply under traditional rural governance—different separations in one province (for example, Quebec) compared with all other provinces. While spatial asymmetry adds complexity as it balances power, it can add legitimacy and therefore decisiveness, clarity and certainty to the exercise of authority.

While there are many facets of the variegated separations of powers that constitute a republican ideal, it is an ideal that lends itself to incrementalism (Barnett 2006:112). No republic has fully realised it and none has ever approached the attainment of all its variegated virtue during the first century of its history. Republics, we have argued, should be continuous improvement architectures, with every generation seeking to strengthen the republican architecture bequeathed by its forebears. That continuous improvement across separation-of-powers virtues should be regularly measured and discursively evaluated by UN transitional administrations, by the UNDP Human Development Report, UN human rights institutions, Transparency International, the Freedom House Index, by Human Rights Watch and Amnesty International, by discursive books like this one, and most of all by a republic's own national conversation in newspapers, blogs, universities, parliamentary debates and *suco* council deliberations. Republics require the humility to take stock and seek counsel from other nations that have continued to purge domination and expand freedom at

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13 Dynamism is a neglected topic in discussion of the separation of powers. One of the things republican revolutions have done throughout history is dis-entrench separated powers, such as the powers of kings and dictators. 'Destabilization rights' (Sabel and Simon 2004; Unger 1986, 1987) and 'democratic experimentalism' unsettle and open up state institutions that persistently fail to fulfil their functions. Destabilisation rights are dynamic checks on failures of institutionalised checks to do their job. Rights to public law litigation to destabilise defunct structures and to appeal to the United Nations under its Responsibility to Protect doctrine by destabilising the Libyan military are examples, as is a common law that adapts and evolves novel doctrines over time. Networks are needed to deliver experimental innovation in the invigoration of separations of powers because of state propensities to rigidity.

a more rapid pace. The United Nations has a legitimate role in brokering that exchange of learning from democratic experience. One reason, given the UN mission of promoting peace, is the evidence from Goldstone and Ulfelder's (2005) multi-year, multi-author study that peace and stability are strongly promoted by fair and open political competition and constrained chief executive power (at least when the executive is not an unelected dictatorship). This is part of the context in which we look forward to the time of F-FDTL and PNTL not just as learners, but also as teachers on future UN peace missions.

## Inefficiency

It might be said that such a long list of separations of powers would be a drag on economic efficiency. In Chapter 8, we made the case that a well-crafted separation of powers actually increases decisiveness in decision making. The judge, the police officer, the prosecutor, the general, the auditor, the central banker, the anti-corruption commissioner get on with their job without fear of interference from a president or a business powerbroker who is a 'master of the universe'. This is the idea that the separated powers of a polity can secure together an independent sphere of action for each power that cannot be dominated by any one power calling the shots above all others. Of course there are situations where a dictator who calls the shots can increase economic efficiency by overruling a court, a competition regulator or an environmental authority that is needlessly slowing an investment that would benefit the nation. The experience of history, however, is that autocrats more often exercise their domination for corrupt and patrimonial purposes that reduce the efficiency of national resource allocation. So in the long run many separations of powers that seem inefficient to the politically naive are in practice economically efficient.

Part of the efficiency dividend from separations of powers that are attuned to local realities is from a more efficient division of labour. Because central bank board members focus their intelligence and training on the large and intricate challenge of securing monetary balance for an economy, they are likely to make better decisions of this specialist kind than are the generalist politicians of the cabinet. Because police training is in community policing that enrolls the community to do most of the serious business of crime control, they can become much better at it than the military with their training and experience in the use of maximum force. Our Timor-Leste narrative has well illustrated the provocation and inefficiency that can arise when the military takes over public order policing. It also revealed that even when the police (PNTL) were better equipped with modern weaponry than the military (F-FDTL), the specialised training and experience of the military meant that the police were outmatched in the project of taking over a country.

Our interviews exposed how the interference of the Prime Minister in the business-licensing decisions of regulators who should be at arm's length from him has undermined investment confidence. We have seen that one reason for the shocking backlog in prosecutors' in-trays is that legislators persistently interfere in the work of prosecutors. This when legislators are not getting on with their own job of settling land law, competition law, telecommunications law and other facets of the rule of law vital for economic development. The result when one branch of governance devotes energy to seeking to dominate another branch for which they have no training or experience is that the business of law making and law enforcement becomes less efficient, sapping business confidence that their investments and their employees will be protected by a rule of law.

The sheer inefficiency of prime ministers seeking to dominate other separated powers was well illustrated by the moment when indicted criminal of the Suai massacre Maternus Bere was released on the occasion of the tenth anniversary of the independence referendum. Our understanding of what happened on the official dais that day was that the Prime Minister received a call from the Indonesian Foreign Minister to say he would not attend unless Bere were released. The Prime Minister then requested the President of the Appellate Court to overrule the indictment—a request that was declined because the President of the Appellate Court had no power to overrule another judge in this way. The Prime Minister then instructed his Justice Minister to order the release of Bere from prison to the care of the Indonesian Embassy, which the Justice Minister did even though she also had no legal authority to do so. What happened was objectionable to most Timorese because it put on stage the fact that their sovereignty was still hostage to the domination of their powerful neighbour. It showed that impunity prevailed for even the most shocking of crimes against humanity. The point under discussion here in response to critics of the inefficiency of separations of powers is that not only was it objectionable, it was also inefficient to keep the entire Timor business elite, the government, diplomatic, UN donor and NGO elites, all of whom have important work to get on with for the development of Timor-Leste, waiting endlessly in the sun while the Prime Minister sorted out a problem that was not his business with other leaders whose business it also was not. The inefficiency is of course a trivial part of what was wrong with that conduct. Our bigger point is that the most outrageous breaches of the separation of powers are so often among the most inefficient processes a society can witness.

A more economically consequential separation of powers allows the kind of asymmetric separations of authority over land law discussed in the scholarship of Daniel Fitzpatrick and his collaborators. As complex and inefficient as it might seem to have a patchwork of rural carve-outs from urban land law, our argument in Chapter 10 was that this can fuel dual-economy development where both

urban capitalist investment and traditional subsistence agricultural economies can become more efficient, each under rather different rules of law. Hence, there is no simple template for highly attuned, highly separated powers. In the course of economic development, they must be retuned as societies change to respond to inefficiencies that emerge.

Nevertheless, in the aggregate, the path to more pluralised separations of powers is a path to greater, not lesser, economic development. A final reason for this is our classic republican argument that separating powers is conducive to non-domination and therefore to a subjective experience of justice and legitimacy of governance among citizens. In turn, our theory is that such experience of non-domination reduces the prospects of civil war. And few things set back economic development as much as a civil war (Collier 2007). Indeed, as Timor-Leste's sharp economic contraction of 2006 shows, even civil disorder that induces fear of civil war is economically catastrophic. In the years ahead, the Peacebuilding Compared project will code diverse separations of powers on more and more post-conflict polities so that ultimately we will be able to examine quantitatively whether post-conflict societies with more variegated separations of powers of different kinds have lower odds of another war and higher economic development. Case by case, we will also continue to diagnose this theme qualitatively in the way we have attempted in this volume.

## Gridlock

Our argument has been that, for most tasks of modern governance, networks get things done better than hierarchies. Well-designed networks of power are not only mutually checking upon bad uses of power; they are also mutually enabling of good capacities for power. Networks must be coordinated and sometimes—not always—the state is the best candidate to supply a key node of coordination. For most problems, strengthening state hierarchy to solve problems is not as effective as strengthening checks and balances on hierarchy as we also strengthen private–public partnerships, professions with technocratic expertise on that problem, civil society engagement and vigilance, and other networks of governance, while at the same time strengthening coordination of networked governance. The most effective governance is rarely centrally monopolised; it is usually messily attentive to multiple accountabilities.

This is not to deny that there must be agreement on who will make the final call on matters that have not reached resolution after deep contestation under a separation of powers. Elections are one such state institution with this usefully ultimate capacity to break a logjam (without violence). So are state courts. On legal matters, as valuable as it is to have a rich tapestry of legal pluralism

where the national rugby judiciary regulates most violence on rugby fields, it is also valuable to have state appellate courts that have the legitimacy to make ultimate decisions on the basis of a synoptic view of all the adjudication that has occurred across that tapestry.

There is a widespread myth, grounded in the scholarship of Max Weber, that the state can be defined as an institution that enjoys a monopoly of force. In all societies today there are huge armed cadres of private security organisations; in many there are foreign military bases, UN peacekeepers, armed criminal gangs that are immune from state military or police power, terrorist training camps awaiting deployment into the lands of an enemy or private armies of warlords or of political parties. In the most advanced economies, the military machine is as powerful as it is because of the way it is networked with an innovative, technologically sophisticated private defence contracting industry (Dorf and Sabel 1998). Indeed, for great powers, and even for minor powers that can deliver weapons of mass destruction, networked private defence industries constitute the military power of the society much more than the state military organisation.

It is not that the state has, or should have, a monopoly of force. What most states have, and should have, is a capacity to lawfully subdue private controllers of the means of violence. The executive government should have an ultimate authority over the use of force and the state legislature over writing laws on use of force and the state judiciary on implementation of those laws. It is an overarching oversight and regulatory role that the state must have on really big questions like national security. These must allow generals to act decisively within their sphere of competence without interference from politicians who think of themselves as generals, but with budgetary oversight, monitoring for compliance with the laws of war, rules of engagement and so on.

Gridlock is a risk of separated powers. Often it is more important that things are settled than settled right. Paralysis and disengagement in the face of great problems are profound risks, not only in times of war. Executive government has an oversight responsibility for ensuring that really big problems do not fall between the cracks. This is not the same as saying the government should fix them. It is to say that the state has a responsibility to take a synoptic view of a society, and to catalyse action when lesser actors are paralysed by the enormity of the challenge. We see this need most acutely at times of great natural disasters when so many leaders of civil society are busy bailing out their house or looking for lost families. One of the great examples of a chief executive with synoptic vision in the twentieth century was China's Deng Xiaoping when he saw in 1978 that the institutions of state production were bogged down. He opened

up the Chinese economy to private institutions that broke through many of the production bottlenecks and bureaucratic gridlocks that were grinding the economy to a halt.

We might even say that the most important role of state political leaders is to be gridlock breakers: to get that budget through the legislative contestation process, to issue an ultimatum to an enemy state of a kind that has less meaning when only a general issues it. Yet the ultimate power to break gridlock resides with the people when they take to the streets in a revolutionary moment in which they persuade the media or the military to side with the revolution. Republicans hope these will be revolutionary moments that dis-entrench bad power and entrench new separations of powers that secure freedom from domination.

## Learning to Resist Domination

Accomplishing a republic is not a deadly simple mechanics of getting the separation of powers right. It is an interplay between cultural commitment and ethical education in republican values of freedom as non-domination and governance structures that create an enabling environment for further education in which new citizens learn to be democratic. It is what Anthony Giddens (1984) called a process of 'structuration' whereby agents are enabled and constrained to act by social structures, yet through action create and change structures. In this context, structuration means that cultural commitments to non-domination motivate political struggle to institutionalise structures of non-domination; those structures can nurture enhanced political and cultural commitment to non-domination, which in turn can push forward a new cycle of structuration of non-domination, continuing recursively. That is the ideal republicans strive for. The reality they deal with is more punctuated by crisis and regress, as Timor-Leste's history has illustrated.

Republicanism is of course not just about continuous improvement in separations of powers. It is also about continuous improvement in the struggle against poverty, and in equality for women and people of all races, classes and castes. We have argued that separations of powers are not enough to secure that; tax administration, land law, welfare policy and many other institutions have central parts to play. Republicanism is about forging a society that depends less and less on coercion to achieve its aspirations and more and more on dialogue. And when it reluctantly must resort to coercion, a republic refuses to exercise it arbitrarily; coercion must be sanctioned by the rule of laws written under democratic consent.

Republican coercion also comes with the promise of future commitment to reconciliation and reintegration. While justice must sometimes be coercive,

because injustice hurts, justice must heal. It does best when it takes the restorative dimension of justice seriously (Braithwaite and Parker 1999). Democratic conversation can be nuanced and creative under the republican ideal when it is not dominated in accordance with that ideal. Most of all, republics continuously improve in how they flourish with fruits of freedom that are less about material things and more about creative and spiritual diversity born of rich conversation. The *tais* women weave in remote villages are for Timor-Leste one of the highest forms of that creativity, valorizing survival and identity in a republic of many colours and patterns

Just peace is never approached in a direct line from blood and injustice. It emerges in contests with tyrannies and twists and turns of a nation's history. People without realist power who network nonviolently for justice and peace often appear to be losers. They seem like history's losers because most of the time they are losing. Timor teaches us again that all tyrannies end, but not all republics end—at least not until a nuclear conflagration or environmental catastrophe. Autocracies end so long as we refuse to be realists in cowering under them. One reason that not all separations of powers end, not all democracies disintegrate, is that resilient democracies have powers that are separated, checking and balancing the dominations that disintegrate. Global anti-domination networks attuned to local civil society networks that reach from the capital down to the villages are drivers for dividing powers. We hope the contribution of this book has been in helping us see republican politics, feminist politics and nonviolence through the wider-angled lens of Timor's journey.

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