

## preface

Writing this book has been on my mind since Mary Robinson visited Dili in East Timor in 1999. Indonesia's brutal occupation had recently ended. Robinson, at the time UN high commissioner for human rights, opened a two-day workshop designed to embed East Timor's pledge to uphold international human rights law. Her speech was titled "Building the Future of East Timor on a Culture of Human Rights." Each of 160 participants received a kit containing all the major human rights documents and a badge that carried the words "Human rights: know them, live them, defend them," written in the local language, Tetun.<sup>1</sup>

For twenty-five years, since 1975, the East Timorese had fought a guerrilla war against the Indonesian military and militias. Civilian deaths from hunger, illness, killings, and disappearances during this period are conservatively estimated at more than one hundred thousand. This was out of a population of under a million. Numerous human rights abuses were committed.<sup>2</sup> Somehow, led by future president Xanana Gusmão, the armed Timorese resistance kept the fight alive as the international community made empty, rhetorical protests. Even the international human rights activists and journalists who highlighted East Timor's cause made little impact.

Gusmão's liberation fighters always seemed to me exemplary human rights defenders. What they knew was that no one else was coming to save them. Through their own tight communal bonds, shoulder-to-shoulder with people on whom they depended and who in turn depended on them, they defeated a threat to their very existence. During this time, the United States continued to train some of Indonesia's top army officers.<sup>3</sup> One of them, former president Suharto's son-in-law

General Prabowo, accused of masterminding systematic human rights abuses in East Timor, is now a leading candidate for the 2014 Indonesian presidential election.<sup>4</sup> More than ten years after Indonesia was driven from the country, there has still been no accounting for the crimes committed under occupation.<sup>5</sup>

The East Timorese knew what human rights were: they had fought and died for them every day. The arrogance of the high commissioner's lecture and those badges still seems to me obscene. All she should have come with was an apology. International human rights had failed East Timor when it mattered. Grotesquely, having resorted to violence to protect their own lives and freedom, East Timor's guerrillas would not be considered true "human rights defenders" at all by international agencies. How could the heart of global human rights advocacy be so cold and so naive in the face of such courage? This book is an attempt to answer that question. To do so is to reject overly idealistic accounts from within the human rights discourse and to ask searching and critical questions of this ubiquitous language of global rules and norms.<sup>6</sup> After all, human rights advocates proselytize in the name of humanity, and that means they claim to speak for me and for you.

In truth there were two forms of human rights at work in East Timor. One is the local and transnational networks of activists who bring publicity to abuses they and their communities face and who try to exert pressure on governments and the United Nations for action, often at tremendous personal cost.<sup>7</sup> This form of activism I'll term *human rights*, with lowercase initials. In combating violence and deprivation, any language is useful that helps to raise awareness, generate transnational activism, put pressure on governments, facilitate legal redress, and attract funds for campaigning, whether it is that of human rights, compassion, solidarity, freedom, brotherhood, sisterhood, justice, religion, grace, charity, kin, ethnicity, nationalism, pity, love, or equality. The endtimes can never come for this form of "human rights" in the same way that nothing can stop people banding together to demand their own freedom or justice in whatever language they prefer. These ethical and political claims are rooted in our shared interest in fair and equal treatment. The call for human rights at this instinctive level is really the demand "No more, stop, enough!"—the name of the report produced by East Timor's truth and reconciliation commission

("Chega!" in Portuguese).<sup>8</sup> Human rights can be used tactically to help prevent torture, disappearances, or extrajudicial executions or to demand economic and social rights to food, water, and health care. It is a flexible and negotiable language. It does not "defend human rights," it defends the person. It is a means, not an end in itself.

None of this is what Mary Robinson meant by human rights. She was talking about *Human Rights*, capitalized. Human Rights is a global structure of laws, courts, norms, and organizations that raise money, write reports, run international campaigns, open local offices, lobby governments, and claim to speak with singular authority in the name of humanity as a whole. Human Rights advocates make their demand that all societies adopt global norms on the basis of a uniquely universal and secular moral authority. Often highly legalized, Human Rights norms are not flexible and negotiable. They are a kind of secular monotheism with aspirations to civilize the world. The East Timorese, heavily Catholic, had rooted their fight as much in everyday Christianity as any abstract secular norm.<sup>9</sup> The arrival of a UN transitional authority now subjected East Timor to the regime of Human Rights norms that had so conspicuously failed it before. Of this global regime, Mary Robinson was the highest of high priests.

This book is about the endtimes of Human Rights. It is an argument, not a history.<sup>10</sup> By making my claims in bold terms, I endeavor to cut through some of the hype with which Human Rights advocates often surround themselves. I will argue, in contrast, that we are on the verge of the imminent decay of the Global Human Rights Regime. Through my previous work with Amnesty International I know only too well how many hardworking, well-meaning people of good faith are active all over the world for human rights.<sup>11</sup> They work, however, within global Human Rights institutions that have permanency, organizational interests, and ambitions that far outweigh the impulse many of us share to stand up for the abused or cheer the end of tyrants. Taking care that this global regime remains true to its core principles requires us to understand just what those principles are: What is it that gives Human Rights its moral authority? This question is harder to answer than you might think. But without an answer, how do Human Rights advocates, who assume unto themselves the right to speak for everyone, mobilize the faithful and legitimate their demands?

Organizations tend to stifle protest, nonhierarchical and even violent disruption often a more effective strategy for provoking change, as the Arab Spring showed, than disciplined and institutionalized resistance which is the stock in trade of global advocacy.<sup>12</sup> The tension between top-down fixed authority and bottom-up (spontaneous, diverse, and multiple) authorities is exactly that between Human Rights and human rights. For all that several influential accounts stress the transnational linkages between these two worlds, I suggest that the global inevitably structures, disciplines, channels, institutionalizes, and eventually colonizes the local reproducing hierarchies of power and influence familiar from the worlds of domestic politics and of interstate relations.<sup>13</sup> This is partly because the transnational space is structured by a political economy that is almost wholly controlled by global Human Rights centers (in western Europe and the United States). But it is also because the singularity of the Human Rights message resists local adaptation on any basis other than a transient and tactical one. What is at issue is who gets to decide global rules and to define legitimate *exceptions* to them. This is the essence of sovereign power—setting, and breaking, the rules.<sup>14</sup> To become the supreme authority—a court of law above all politics, national and international—is the inner logic of Human Rights.

My argument is simple: humanism (the cultural precondition for Human Rights) was a secular replacement for the Christian god. Nineteenth-century middle-class Europeans elevated it into a set of social practices and institutions, most prominently the International Committee of the Red Cross (ICRC). The importance of this transformation cannot be underestimated. It is only as a strategy for coping with what Nietzsche called “the death of god” in the West that we can begin to understand the real social function of humanitarianism and human rights in the twentieth century. The ICRC was, I argue, the first international human rights organization. It was a secular church of the international. The laws it wrote and the humanitarian activism it undertook were grounded by a culture of transcendent moral sentiment with strong Christian components. At the heart of this was the suffering innocent, a secular version of Christ.<sup>15</sup> In other words, bourgeois Europeans responded to the erosion of religious authority by creating authority of their own from the cultural resources that lay scattered around them. And then they globalized it via the infrastructure that the imperial civilizing project bequeathed to them.

This project came crashing to the ground in 1939. The Holocaust and the Second World War destroyed the moral legitimacy and political power, if not the ideological ambition and cultural arrogance, of Europe. It was an existential crisis that involved “the very survival of our Western Christian civilization, if not of mankind,” as the international lawyer Josef Kunz wrote at the time.<sup>16</sup> A desperate attempt was made between 1945 and 1949 to create even more ambitious global institutions, particularly in international law, to repair the devastation done to European claims to superior authority. But the center of gravity of world affairs had permanently shifted. Power passed to the United States and the Soviet Union and slowly, over several decades, to liberated former colonies and subaltern states. Attacks on the legacy of the European civilizing project gathered pace. Postcolonialists targeted the murderous arrogance of imperial ideology, while postmodernists attacked the whole basis on which self-righteous Europeans claimed to have discovered definitive answers to questions of truth and freedom. This postwar malaise was the milieu for the creation of the first modern global human rights organization, Amnesty International, formed in London in 1961. It was, I have argued elsewhere, a look back to the past, not a vision of the future.<sup>17</sup> In its secular religiosity it was more like the social rescue project of the ICRC than the herald of a brave new world to come.

What changed, what turned human rights into Human Rights, was American power. From the 1970s onward, a new kind of advocacy emerged that sought to pressure the American state into using its vast resources to coerce, cajole, and induce improved human rights abroad. New organizations, of which by far the most successful has been Human Rights Watch, were the product not of a popular movement but of elite mobilization. The language of human rights soon took root, creating a large constituency of supporters, but these new activists were only in some cases like the solidarity-inspired members of the postwar years. Seismic shifts had taken place in transforming the narrow middle class of old Europe into a wide, transnational class of consumers. The majority adopted human rights as a kind of lifestyle choice, joining and campaigning for human rights as a global language of freedom and justice rather than for any specific cause with which they were personally linked. They were a paying audience as much as an activist base. The *global membership* model Amnesty International had pioneered proved a singular one, and while it persisted it was not replicated.

Despite internal differences between the expansionist liberalism of neoconservatives under Ronald Reagan and the liberal internationalists of Human Rights Watch, human rights were intimately tied to the export of neoliberal democracy using American state power. This “democracy first” approach can be contrasted with Mary Robinson’s formulation at her East Timor workshop: “Human rights must be guaranteed because they are the foundations on which democracy, the rule of law and sustainable economic and social development are built.”<sup>18</sup> Her formulation is naive, as we will see. It is only as a by-product of American power and money that human rights have been globalized, and for American advocates democracy comes first. For European human rights supporters this is not the case. Amnesty International, for instance, has had no position on the desirability or otherwise of democracy. All regimes are expected to respect human rights before any question of legitimate government can be addressed. That neoconservatives and liberal internationalists in the United States both supported intervention in Libya in 2011 is a sign of the ground they continue to share even under the Obama administration.<sup>19</sup>

The high point of this new world of Human Rights was from 1991 to 2008—the “unipolar moment” of American post-Cold War dominance. An alliance between international advocates and the United States established international criminal tribunals in 1993 for the former Yugoslavia and in 1994 for Rwanda, the momentum of these eventually leading to the creation of an International Criminal Court that began work in 2002. It was followed by a new doctrine of human rights-led humanitarian intervention, the “Responsibility to Protect,” which got increasing international attention after 2005. These global Human Rights institutions seemed to mark the beginning of the golden age of international humanism, but in reality decline had already set in.

The old model, secular religiosity, anchored moral authority on detachment from power politics, a detachment that infamously led the ICRC to keep silent about the Holocaust. Amnesty International has always been skeptical about governments and corporate money, seeing its moral mission as the very antithesis of power. But this secular religiosity had very limited capacity to affect world politics in any deep way. Its achievement was to keep open the idea of impartial, neutral space over and above politics and conflict. Yet this virtue was also its weakness in terms of impact, assisting individuals a symbolically powerful but

politically ineffectual form of activism against determined opposition. Unsurprisingly, most American advocates were far keener to harness state power to the task. But the alternative, siding with liberal states to reform the world, has I will argue an even more truncated shelf life. Once the alliance was made with money and liberal power, the core of moral authority, acting without self-interest, was gone. What had been seen as moral norms—applicable to all and justified as beyond ideology—were revealed to be social norms that advanced one conception of what constituted a good society. The opportunity to build global normative institutions using state power comes with a caveat, in other words: when the sovereign changes its mind and declares itself and its clients exempt from its own rules, the Global Human Rights Regime is left bereft of moral authority, its claim to universal legitimacy undermined, its compliance with power exposed. It is not credible to name and shame a government with which you consistently align. Human Rights, hand-maiden to neoliberal democracy, are unveiled as ideological, opening a legitimacy gap that has allowed their opponents to make increasing inroads against them.

This decline has been accelerated because the United States itself is losing power. It is first among equals in a system where other states have started to assert their sovereignty, declaring their right to make exceptions, whether in terms of the International Criminal Court, torture, suspension of civil liberties, or targeted assassinations. Even if there was a time when the United States might have supported multilateral liberal norms outside the trade arena, it has passed. The rise of China, but also of states like India and Brazil, and the sustained influence of Russia, make the post-2013 world “neo-Westphalian.” Sovereignty will be reaffirmed, global markets will be extended, and some forms of transnational culture will grow, but global liberal norms will stagnate and even contract in terms of meaningful impact on the daily lives of ordinary people, the only kind of impact worthy of the name.

Emboldened by the cracking moral authority of Human Rights, religious authorities have also made a comeback. The increasing use by advocates of the language of “dignity” to anchor human rights can be understood as an attempt to hold ground in the face of eroding authority, but resurgent gods have spoken the language of dignity for centuries. In the end, the decline of Europe means the decline of the vision of universal and nonnegotiable global rules authorized in a secular way. In

other words, it means the eclipse of *jus cogens*, that is, of laws of humanity which may *never* legitimately be broken. The United States has not been a reliable supporter of such rules, and with its focus moving rapidly to Asia-Pacific, its interest in Europe is waning all the time. The space for norms has narrowed: it was built after 1863 by the European bourgeoisie—carved through sacrifice and courage out of political space—and as the power of that class has dispersed and globalized, so the moral authority they created has fractured.

This is not bad news for the original humanist social practice: unconditional Good Samaritan-style humanitarian assistance. This is much more human rights than Human Rights. Reciprocity was a mechanism that gave states an incentive to treat other nationals according to agreed minimum standards, and that timeless logic works today. In addition, the expertise of relief workers is as useful for states suffering a catastrophe as the hiring of any professional to provide specialist equipment or services you cannot provide for yourself. Once we enter the post-crisis development phase, however, we will see pushback everywhere, except in the most fragile states such as Haiti. If the “humanitarian wing” of the humanist international gets less attention in this book, it is largely because the last three decades have been the era of global Human Rights norms. These have, I argue, colonized international humanitarian law. The ICC, for example, is supposed to be a humanitarian law court but is to all intents and purposes founded on human rights law. The Russian international lawyer and Red Cross delegate Fyodor Martens, whose preamble to the Hague Conventions of 1899 and 1907 is an iconic statement of the underlying moral narrative of humanism, believed that there was but one law running through the history of nations, “the principle of respect for the human person.” As early as 1882 he wrote: “It is our conviction that once the human being as such is recognized by the State to be the source of civil and political rights, international life will reach a high degree of development, law and order.”<sup>20</sup>

Reduced ambition will help create a more sustainable space for human rights as locally owned and interpreted principles for political action. In the end politics trumps law, and the local trumps the global. Once it was stable, East Timor was overseen until 2002 by a UN transitional government whose administrator was Sergio Vieira de Mello. His next job would be following Mary Robinson as United Nations high commissioner for



human rights, until his assassination in 2003 in Baghdad. Just five months before his death, he told delegates at the Commission on Human Rights in Geneva:

The culture of human rights must be a popular culture if it is to have the strength to withstand the blows that will inevitably come. Human-rights culture must be a popular culture if it is to be able to innovate and to be truly owned at the national and sub-national levels.<sup>21</sup>

De Mello's capacity for striking a deal rather than sticking dogmatically to a prescribed set of norms was one of the things that made him successful as a UN troubleshooter. He had even negotiated with the Khmer Rouge. During his time in East Timor he had learned to speak the local language, and on hearing of his death, President Gusmão released a statement expressing deep sadness:

Sergio Vieira de Mello endeared himself to the people of East Timor with his common touch, sensitivity, sense of humour and charisma. As a leader he fought tirelessly for democracy, human rights and sustainable justice for the people of Timor-Leste and represents the men and women of the international community who dedicate their lives to the pursuit of peace and the service of humanity.<sup>22</sup>

In his complicated legacy, de Mello represented Human Rights but understood them as human rights. To work they had to belong to the people. He combined the pragmatic search for a political solution with a commitment to the *idea* of global norms. What mattered was reaching a workable compromise which real people would actually endorse. Complexity in his own life nurtured perhaps a sympathy within him for the complicated reality of any and all human endeavor. As Human Rights lose their force in the neo-Westphalian world of declining American power, so local interpretations of what rights are and which rights might be sustainable will be essential if human rights are to flourish. To achieve this, democratizing Human Rights (that is, transforming it into human rights) is an essential first step.<sup>23</sup> We return to de Mello later. Before that we begin by considering how this global regime of liberal norms came about in the first place.

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