Laurel E. Fletcher:

Hello and welcome to Borderlines, a show about global problems in a world fragmented by national borders. This is part four in a four-part series of special Borderlines episodes featuring Berkeley law guest hosts Professor Roxanna Altholz, and myself, Professor Laurel Fletcher. We shine a spotlight on human rights champions, all guest speakers in our 2023 Human Rights Practice Workshop, where leading practitioners working in a variety of institutional settings share their struggles against corruption and impunity, the relationship between legal and social justice, and the future of human rights movements.

Today we welcome Justin Hansford. Professor Hansford is a professor of law at the School of Law at Howard University where he also directs the Thurgood Marshall Civil Rights Center. But today we're going to start talking to Professor Hansford about his work at the United Nations. He was elected as a member of the UN Permanent Forum on People of African Descent in December of 2021, and he's currently serving a two-year term. The Permanent Forum is a brand new mechanism, but it has a lineage. So let's get into the lineage and I'll just start. What can you tell us about the origin story of this new body and why you wanted to become part of it?

Justin Hansford:

Super happy to be here. I just walked onto the campus about 10 minutes ago into the sunshine and all the energy of Berkeley really hit me, so thank you again for inviting me. I'm very excited in part because the Permanent Forum, it's a project that people have been waiting for at least 20 years. You could say more than that. I can say officially at the World Conference on Racism in Durban in 2001, discussions began for providing a framework for a look back and looking at things from a transnational lens.

To provide some background, we had the convention to end racial discrimination passed in 1965. You had the creation of a Special Rapporteur on racism in 1993. But in each of those cases, racism is looked at from... I'm a critical race theorist, so I always talk about this idea of colorblindness and using this anti-discrimination language, which really doesn't always speak to aggressive attempts to try to remedy past wrongs or anything like that. It's really just about equal treatment, which I know has not been enough. And oftentimes when you're looking at things from a global lens, you're looking at all of the discrimination which is taking place all across the world, the issues impacting your particular community -- we're talking about people of African descent in this situation, so my community -- you would come up periodically. It would not be on the agenda consistently.

So in 2001, we started to have this global discussion that was a time where people came together from all across the world, indigenous people, people from Asia, Latin America, and the decision was made to create something called a Permanent Forum. I know the listeners are probably saying, "What the heck is a Permanent Forum?" Well, the year before, there was the creation of the Permanent Forum on indigenous people's issues, which essentially served as a platform for people to come together from throughout the world who identified as indigenous and to come up with strategies to fight for the human rights of people in their community.

One of the things that they ended up doing was creating a declaration of rights on indigenous people, which was completed in 2007. Most of the UN signed on to that. That expanded the number of rights that indigenous people have. They came together, talked about all of their different issues, economic issues, issues around healthcare, all of the different issues. Of course, in that case, tribal sovereignty and land were issues for them. So there was already an understanding in 2001 that something similar could be useful for people of African descent.

So other things got created first. We had the creation of the Working Group of Experts on People of African Descent, which is a body that goes around and essentially does country visits and analyzes the

state of people of African descent in different countries. We created the Decade for People of African Descent, which began in 2014, which was supposed to be a platform which sort of concentrated resources around the key themes of the decade, the wish for recognition, justice and development. And that was in 2014. But again, people were still agitating for the Permanent Forum because it was seen as a more comprehensive body than those two.

We got to 2020 and things still had not materialized. And of course we saw the killing of George Floyd and we saw protests erupt all over the world. The energy became palpable enough for there to be a resolution put forward. Chad and Costa Rica put that resolution forward. The United States initially voted against it. Of course that was the previous administration. But in spite of that, we did end up having the creation of this Permanent Forum, which began in 2021 when the mandate was implemented. I was elected by the UN General Assembly in December of 2021. We had our first meeting in December of 2022, so three or four months ago.

So that's sort of a long origin story. I do think that it's good to understand that this is something that people have been excited about for decades, plural. And people have been hoping for this for a long time because where we have had access to the UN to fight for Black liberation and things of that nature, it's been in fits and starts. You think about the Free South Africa Movement of the 1970s and '80s, we had some UN support for that. There was some discussion around Haiti in the early '90s. A lot of that was the work of individual organizations that really became prominent. One of them, TransAfrica Forum or TransAfrica led by Randall Robinson, Global Justice led by Gay McDougall. There are a few of these organizations that I can speak to from the United States' point of view that were prominent in that time period.

And so there were these movements that took place around particular causes. But here we had an opportunity to have a presence on a consistent basis. We didn't have to wait for the next major cause to really gather the momentum to force the UN's hand. We have sort of a seat at the table that is permanent in the language of the mandate.

Laurel E. Fletcher:

I wonder if you could speak a little bit to how being an independent body within the UN gives you opportunities but also creates particular challenges to get stuff done.

Justin Hansford:

That's a great question. The challenges are in front of my mind right now. One of the things that you see is that you do have to do a lot of negotiation, more than I understood before taking on the job. I'm looking for support. I don't work for the United States, so the United States doesn't pay me anything, nor does the UN. Things as basic as funding to go to meetings in different places are things we need to fundraise for. I'm the fundraising chair for the Permanent Forum. And I had some experience doing that from my work at the Thurgood Marshall Center, but it is humbling to know that, at least for me, my capacity to do work varies with the amount of exams I have to grade. I've had some interns help me, which has been fantastic, but I'm going to be on a sabbatical this upcoming year, so that may help as well.

Work capacity is something that you have to find capacity. I'm not working for any of these organizations. Number one, that means I'm not being paid by the US or the UN. Number two, as political as the United Nations, and I know one misconception people may have is that this is about human rights and everybody at the UN is a do-gooder there to save the world, but truth is this is diplomacy and almost you can think of it as global competition and political maneuvering happening on behalf of nation states with the only exception that they're using the UN as their platform.

Laurel E. Fletcher:

Let's get a little spicy.

Justin Hansford:

Okay.

Laurel E. Fletcher:

Can you give an example of what's on the Forum's agenda? What's one sort of policy initiative or pillar that you all are trying to promote that is encountering some of these obstacles? Give us a sense of kind of concretely, what does it look like to try and push something that you all care about through this international gangly, ungainly, and yet the only international institution that's set up to do the kind of work that you want to do?

Justin Hansford:

We are still new, so there are a few things that I'm sure are upcoming. One of the things that I could talk about is the discussion around reparations. That was a major part of our first session's agenda. It should be part of our second session's agenda as well. It's a global conversation, which your listeners probably are aware of. And in many ways it's gone farther in other parts of the world. Namibia has had a really successful campaign. Of course we know about historically with the Truth and Reconciliation Commission in South Africa. But many people may not be aware of the fact that one of the reasons that we're just now getting the Permanent Forum now 20 years after the Durban Declaration, is that the United States pulled out of the Durban process in 2001 in part because of the portion of the process which involves concluding that slavery was a crime against humanity and that reparations would be necessary.

I think about Europe and some of the opposition that has come from Europe, still ongoing. We're in this place where reparations is one of those issues that unites the diaspora. People in the Caribbean are advocating for it fiercely. South America, the vice president of Colombia is a big proponent of reparations, our first Black woman to be vice president of Colombia. The president of Ghana has come out in support of reparations. And at the same time, there's something that's been a fear we would say of colonial powers for many years that they would be put in that position and there's a lot of avoidance of that issue.

The other interesting issue, it's not always the players who you would suspect on different sides of debates. Reparations look differently for the Caribbean countries that are looking for state to state reparations. So they're looking at reparations in terms of debt forgiveness for their government, controversies around how much of that reparation actually trickles down to the average citizen as opposed to here in the United States where we're talking more so about reparations inside of a government within one state. And so there's the fear of being divisive to your citizens.

There's discussions around the Africa and the African diaspora. The relationship there has been one that we need to improve as we have been a mechanism that has looked at fighting racism and fighting discrimination. Oftentimes that's considered to be something that is done inside of a nation state's borders between its citizens. But of course if you say Rwanda and you don't want someone necessarily meddling with your balance around Hutu and Tutsi right now, so that question around ethnic conflict and taking a stance on that has been an ambivalent issue for African nations, which don't have the same framework for racial tensions as you'll see in the United States or Brazil or Europe.

So there's a lot of dynamics that are just surprising for the onlooker who may not be familiar with some of the reasons behind the slowness and failure of the UN to act. I think at least many of us in this international law sphere are familiar with being frustrated with the UN and it's failure to live up to all of its promises. And in this position, I do get to see the reason why to a greater extent than most.

Laurel E. Fletcher:

Colonial reparations. I guess one thing to check in about is there are colonial legacies that happen in other parts of the world, right? I'm thinking Asia, Southeast Asia, that are going to manifest differently than for peoples of African descent. I understand the conversation that the Forum is having is specific to peoples of African descent. And I wonder how the conversations, the transnational movement that supports the Forum, what are those conversations looking like among non-state actors? Is there a movement, given the different histories and different conversations about what reparations should look like in different contexts? How cohesive is that movement? Does solidarity extend to contexts? Are there conversations about reparations that are happening outside of the African continent and the African diaspora?

Justin Hansford:

How cohesive is the movement for reparations outside of the official channels and the civil society channels? We have a working group on the Permanent Forum that is comprised of 60 or 70 nonprofit civil society organizations, churches, community groups from all over the world, including Europe, including Latin America, including Canada. I've talked to many of them. They've reached out to me, of course, to get my feelings on things. And I have been struck by a couple of things on that note. Number one, the framing of these issues differs widely. For example, in Brazil right now, they don't talk about reparations as much as they talk about the affirmative action issues. And to some degree, you can make the argument that when the term reparations does come up, some activists complain that we're trying to take an American conversation and impose that on Brazilian activists. There's a lot of discussion around the way that the voices of American civil society members take up more space than is appropriate sometimes in these global conversations.

It's really interesting to meet people in different parts of the world and you're like, "Well, don't you want reparations?" Like, "No, why?" They're offended that you would ask that. It's been interesting. So I myself before I was in this position was an activist. Still am an activist, to be honest. I just put on this hat from time to time. Just the interaction between Black American human rights activists and other Black human rights activists throughout the Global South also follows that pattern where there's a concern about the Americans taking up too much space and you're closely identified with your Americanness, which is a new experience for many of us. It's a really interesting experience.

I don't think I was highly attuned to the dynamics between civil society actors throughout the diaspora before this because if I was going to the global platform, I was doing so to advocate for Black Lives Matter or reparations or other issues where I saw things from my lens, which I'll admit is a uniquely American lens. I'm someone descendants of people who are enslaved on both sides of my family from Forsyth, Georgia and North Carolina. I'm also someone who's a critical race theorist. And as much as we hear about that, that is also a movement that emerged out of the United States American legal academy. So when people talk about colonialism and decoloniality as a framework, when people are interested in reparations, not on a citizen basis, but on the nation state basis, these are things that I need to learn more about. It's a humbling experience in many ways. Not every framework is appropriate for every context.

Laurel E. Fletcher:

What do you think Black American activists and their allies in this space can learn from what you've just described as other contexts that see themselves as part of a Black liberation struggle? I mean, you've talked about that moment of realization that as you say, your Americanness leads in ways you were not conscious of or did not intend. You have that moment of confrontation. I certainly have experienced in other contexts that moment of confrontation. And I wonder from your experience, what would you want to say to your own solidarity networks within the United States if you could address them from a perspective of, "Hey, here's what I learned from that moment of confrontation, from a perspective of solidarity with other Black liberation movements"?

Justin Hansford:

You gain a lot from exchanging ideas. We oftentimes strike out against American exceptionalism, but there is a sense of American exceptionalism in the American human rights activist community, and it's something that we're often not even aware of. But once we can transcend that feeling, there's a lot to learn. What I was saying earlier, for example, moving from a critical race theory lens, maybe putting on a pair of glasses that focuses on our issues from a colonialism, anti-colonialism approach, I've had to think about things from a new perspective. Locally, we're advocating for Black Lives Matter, but we don't talk about the importance of land, we don't talk about the importance of culture, but we don't talk about some of the other elements of our struggles going back to the reparations conversation for example.

We're in a very capitalist-focused environment, so most people think about reparations, they think about a check, they think about the financial aspect. But from the United Nations perspective, there are five different portions of reparations. There's the promise to non repeat, to change your policies. There's the promise of education satisfaction. There's the promise of different types of compensation, both trying to rehabilitate and trying to make things right. I mean, there's so many different elements of it. Because I know one thing that for example has struck me is the value of your culture being able to be seen as valuable and sacred. The degradation of Black American culture is, I think it's a part of the afterlife of slavery and it shows up in small things.

I was at the UN in February with someone from UNESCO, and it occurred to me really while on stage that there are very few sacred sites in the United States that value a part of our Black American heritage as something that could be seen like a UNESCO World Heritage site. I thought about the Edmund Pettus Bridge, and I thought about these different things that naturally you would think of as the equivalent of that as a sacred cultural site, but it's not represented as such.

Interacting with these other societies, you see the value and the wealth and the richness that they receive from some of these other elements of their experience. You understand that you may be lacking in some of those moments of recognition. And that's something we don't think about a lot as a form of reparations that we should be fighting for. We think a lot about the financial part, and I think it's because of the culture we're in. So interacting with people from different cultures, they have different priorities. Those different priorities are things that lead to different outcomes. And it's valuable. It's interesting because you're talking about people of African descent from different places, so what that looks like for an Afro-Colombian or Afro-Brazilian is different from a Jamaican, different from South African. But that's really interesting to see how people approach the struggle from different vantage points, all seeking the same thing at the end, but really taking on the challenge from a different starting point.

Laurel E. Fletcher:

Let's go back to reparations. That conversation has taken different forms in the United States at different times, and it's become more active on the national stage and less active on the national stage. Since the murder of George Floyd, there's been renewed attention to the issue of anti-Black racism generally, but reparations as a piece of that. And yet it's also coming up at very local levels, as though communities are saying, "We can't wait to move the national government," which under the Trump administration seemed like an obvious non-starter. There's been just a huge number of localized efforts. I wonder about your reflections about this moment that we're in around the conversations of reparations in the United States. And are you hopeful about it? How should we be thinking about it? Where do you think it's going to go?

Justin Hansford:

I'm very hopeful. I think we are going to have these reparations commissions happen around the country. I think it's better for this to happen locally as opposed to happening on the national stage because on the local level, people get to tell their stories, and the stories revolve around local histories. So one of the reasons I'm in town is because we had an event with the San Francisco Human Rights Commission on Friday, which we called the State of Black San Francisco that involved people who were on the San Francisco reparations, the task force or commission, and they were talking about some of the things happening around the Fillmore District and talking about wealth and income inequality and the houselessness crisis. These are particular challenges that are unique to this region that call for a reckoning with this unique history of these communities and will call for solutions that are also tailored to the particular problems that are happening here.

I've taught constitutional law for multiple years as well. And I also have to say that if you do want to have a reparations program that passes any sort of 14th Amendment challenge, it's a good idea to have a program that's narrowly tailored to a specific set of harms that you detail in a very thoroughly researched report. And it's much easier to do that on a local level like you saw in San Francisco and California, 500 page report, which can then guide any reparations program which will speak specifically to the harms detailed and proven and be able to, in my view, it's more likely that those programs will be seen as constitutional.

I also help to provide some legal support for the city of Evanston, Illinois, which was the first city to actually pass a reparations program in 2021. People did receive their reparations for housing discrimination in Evanston. So that is something that is a national situation that I think has to be played out on the local level. I think that that's the best way to go. And then in my perfect world, every state that has a significant population and history around anti-Black racism would have a commission. They talk about the issues and face their history. Then you can have a national conversation because invariably in these conversations you will see that the federal government did play a sizable role as well. So did the state government, so did the city government, the city of Evanston. The city admitted that between 1919 and 1969, their city councils worked very closely with lenders to create a redlining program that ended up with a segregated city. And it was not by accident that the city turned out that way. So there is liability on behalf of this city.

Now we know the FHA also participated in that, so there's liability on behalf of the federal government. There's probably liability on behalf of some of these mortgage companies as well. And I believe that it should be very detailed and exact and appropriate levels of scrutiny given to those records. The records are here, and we should be able to have very specific and appropriate remedies. And that also allows people to have conversations, right? So it allows people to actually come to the town hall, speak to their city council, people speak to their commissioner and participate. I think that you're not going to get a critical mass of public support for a program like reparations unless people are able to really get

educated in terms of what has happened. And people keep saying, "Well, it wasn't my family. I didn't do this, I didn't do that." But when you get local and you see that, "Well, it was our city council. Well, it was these businesses on this block." You can really point to the evidence in a much more particular way when it's local as opposed to something abstract and on a national level.

So there's so many reasons why I think the local approach is a better approach, and that's why we started the African-American Redress Network with Columbia University, which provides support for local reparations campaigns. We provide the legal support at the Thurgood Marshall Center. Columbia's Human Rights Institute helps to do sociological historical research for community groups, sometimes cities that would like to find out what exactly happened in their city so that they can determine what the appropriate remedy would be. It's been one of the things I'm most proud of doing. So I think it's a real possibility and probability that by 2035, or let's see, let's find a nice round number, to 2043. So in 20 years, I think we will have had many dozens of local reparations projects already implemented. I think it'll be a better country as a result.

Laurel E. Fletcher:

That is a wonderful vision. And I also wonder what your thinking is about, to what extent should we think of reparations as a goal or as a practice? In other words, reparations is not something that we do and then we're done with systemic anti-Black racism, but that we might learn tools and forge connections and start conversations that will continue to address the issues of anti-Black racism. So another way to ask the question is, does anti-Black racism end when the last reparations check has been cashed?

Justin Hansford:

Right. And I think that's why the global frame is so helpful because the UN does define reparations as much more than a check. That includes process of healing that doesn't take place overnight, and it does not magically happen once the check is cashed. It includes things in the government's public policy commitments to make sure that things do not happen again. There are many different elements to the process that have to happen in addition to any sort of payment or check. I think that's the significant part of this. I always say that to me, reparations is what justice looks like in 2023. In the past, we thought about equality. The Supreme Court says equal justice under law, and many of us thought that was enough to provide equal opportunity or to try to level the playing field. This is how our advocates talked 50 or 60 years ago. We've had that experience and we're seeing that the societal healing did not suffice under that framework.

So we're trying to create a new social justice framework, and I think what we're going to find is we're looking at restorative justice frameworks from a different lens. Nowadays, people are talking about things like abolitionists. I think we're in a transition point where we're changing the way we think about justice. I think reparation is going to be a new way of understanding justice going forward. I think that it's going to be seen as a more demanding process than what we thought justice was in the past. It's one of those ideas that has the possibility to really change the whole way we think about what social justice looks like in our society.

In the same way, abolition also is a new way of thinking about all of our core issues. It's a lens that can be applied through a number of subjects from immigration to child welfare, to racial justice. So there's a lot of learning for us to experience as a society, and that's hard. That's something that we didn't do when we simply said, "Okay, well, we're going to stop segregating or stop enslaving, and now you're on your own." Or even to say, "Well, we're going to try to make sure that there's non-discrimination." Going back to some of the things I was talking about in the beginning with CERD in 1965. We had the

non-discrimination conversations, and it wasn't enough to create social justice. So we know we have to go beyond non-discrimination for social justice to get to reparation.

I think it's beautiful that reparations is a hard sell. And as a result of that, you have to talk about your history. And people have to learn about the society in which they are living and what they've inherited. That's a conversation that most people have never had. So as an educator, I think that anything that forces you to go through that learning process is going to make you a better community and a better nation. Similar to what we saw in these... I think it was maybe 2015 or '16 when we saw the movement for the confederate flags to come down, people were renaming university buildings and they were learning for the first time who was it that this building was named after, what does that crest really stand for. And it was beautiful that people were digging into the history of the institutions around them and understanding their environment. People woke up during that process, and I think that was really valuable.

Laurel E. Fletcher:

All of these conversations are opportunities of confrontation, reassessment, and reaffirming our values, who are we, what do we stand for, and where are we going to go forward as the community. I want to thank you, Professor Hansford, for sharing your work and your wisdom with us today. And we hope to have you back on this podcast very soon. Thank you so much.

Justin Hansford:

Wonderful. All right. Thanks for having me.

Laurel E. Fletcher:

Thank you for listening to this special episode of Borderlines, part four of the Human Rights Practice Workshop series. Don't miss the other episodes. Be sure to subscribe to Borderlines.