

Epoch: Institutional Transformation and the Law

KEYNOTE ADDRESS

Dontay Proctor-Mills: Good afternoon, everyone. Welcome back as we move into the latter part in the end of today's symposium, it is my pleasure to introduce our keynote speaker Professor Justin Hansford, Howard University School of Law Professor and Executive Director of the Thurgood Marshall Civil Rights Center. Professor Hansford was previously a Democracy Project Fellow at Harvard University, a visiting Professor at Georgetown University Law Center, and an Associate Professor St. Louis University. He has a bachelor's degree from Howard University and a juris doctorate from Georgetown University, where he founded the Georgetown Journal of Law and Modern Critical Race Perspectives. Professor Hansford also earned a Fulbright Scholar award to study the legal career of Nelson Mandela, and served as a clerk for Judge Damon J. Keith on the United States Court of Appeals for the Sixth Circuit. In December of 2021, he was elected to the United Nations General Assembly to serve as a member of the United Nations permanent forum for people of African descent.

Justin Hansford: First of all I want to say thank you for inviting me to speak to you at this wonderful conference. For many years I've been an admirer of your law school. Some of the people at your law school have played a major role in my own development as a law professor, scholar, and a teacher. Your current Dean was actually my Dean when I began teaching at St. Louis University. And, of course, the sponsor of the most recent textbook on systemic justice, Steve Bender, is one of my favorite scholars in the legal academy. So, I have to say that it's a great honor to be able to speak to you today.

Also, I'm very thankful that Dontay and others invited me. I want to talk to you about my experiences as a lawyer, activist, and a scholar, and how those three different identities were intertwined at a particular moment in my life when I happened to be living in St. Louis and teaching at St. Louis University. I want to begin here with this picture of myself and explain to you where my journey started on this path of learning about systemic justice.

It started with me in handcuffs. The thing about being handcuffed and ultimately taken to jail is that when you're there there's nothing to do. The novelty wears off after a few minutes. My own cell was maybe ten feet long or eight feet wide with a toilet and faucet. And on the right-hand side was a metal bunk. Everything was made of cold metal. The mattress was thin, hard, worn, and musky. I'd been arrested earlier that day at a Walmart in Maplewood, Missouri just a few miles outside of Ferguson at a protest. I had until then never even seen the inside of a jail cell, not even on a field trip.

At the protest I wore a neon green hat labeled with the words legal observer and had my phone on recording mode. But shortly after the police arrived, the manager of the twenty-four-hour Walmart closed the store. In the eyes of the law, simply by standing in the store after it was closed, I became a trespasser.

Immediately once the police arrived, a police officer came up behind me, jerked my arm, and handcuffed me. I asked what I did, and he replied shut up and then he shoved me out of the store headfirst into this squad car. The metal handcuffs were pinching my wrists. There were five other legal observers also standing next to me in this store, four of them were white and one was Asian. Out of all the legal observers who were arrested that day I was the only Black legal observer, and the only one arrested.

When I was arrested, I sat inside this squad car bent sideways sitting on one leg as the protesters outside continued to chant. In an ironic twist, that neon green legal observer hat that was supposed to serve as my armor against arrest had fallen off and was lost.

During that time, I became interested in a new field of legal scholarship, the field of first amendment studies and free speech rights, specifically as they related to freedom of assembly, for obvious reasons. But as I began to study the first amendment in the context of freedom of assembly, my research revealed to me that oftentimes the protections provided to citizens under the first amendment were provided in a way that was unequal and racially tinged.

I even went so far in my scholarship as to use the language of categorizing the first amendment freedom of speech as a "racial project." *A racial project is a set of actions by those in power to instill racial hierarchy.* This means that, if we consider freedom of speech to be an institutional public good provided to the community through the dissemination of rights, specifically first amendment rights, then we've seen over the course of the twenty-first century, the twentieth century, and of course the nineteenth century that those rights were given to some more than others. *Just like when voting rights were given to some and not others, or the right to use public accommodations was given to some and not*

others, to the extent that unequal dissemination of rights has helped to create more inequality in our country, that rights dissemination pattern could be seen itself as a racial project.

So, indeed I emerged from Ferguson with less confidence in our society's willingness to balance the values of civil rights and equal justice under law, freedom of speech, and public safety.

But interestingly, it was my research and my study of the history of the first amendment going down throughout the twentieth century, from the civil rights movement, down to the New Deal era to Reconstruction time and enslavement, that served only to bolster my sense of unease with the way the first amendment has been interpreted by the Supreme Court and, more importantly, applied by law enforcement. Later developments only served to bolster my beliefs in the racial nature of the first amendment. I'm sure many of you shared my feelings once you saw the response to the George Floyd protests and juxtaposed that to the response to the January 6 insurrection.

But I want to talk to you today about a deeper question. What is the meaning of the first amendment and free speech? And what is the nature of the Free Speech racial project in today's America, especially in the age of Black Lives Matter, when so much institutional transformation is dependent on speech?

The First Amendment essentially says: "Congress shall make no law abridging the freedom of speech or of the press or the right of the people to peaceably assemble and to petition the government for a redress of grievances."

The amendment makes no mention of white or black or any sort of racial ideas. But still, we have a long history of the first amendment and freedom of speech, and when it comes to assembly, being forever tied up with the history of race in this country. The Civil Rights Movement provides the most famous example. Throughout our history of free speech and protest served as a motivator and a generator of institutional change. Professor Derek Bell famously was one of the progenitors, if not *the* progenitor of Critical Race Theory. In his scholarship, he spoke very articulately about this question of the lawful protester's dilemma. The dilemma is this: many protests which changed our society were not sanctioned by law. However, in many cases the protesters did find their arrests overturned by the Supreme Court. Primarily, we saw this take place when protests early in the Civil Rights Movement were geared towards enforcing the 1954 decision of *Brown v. Board of Education*. For example, in *NAACP v. Alabama* involved a state attempt to obtain NAACP membership list so that the police could arrest NAACP members. *Boynnton v. Virginia* involved arrests of citizens when they, the protesters, would sit

in at lunch counters throughout the South in efforts to integrate public spaces. Many of these were cases in which the Supreme Court actually held that the first amendment protects civil rights protesters, and they should be protected under the law. Not always under the first amendment, but oftentimes under some procedural rule or some other rule. This trajectory shifted abruptly in 1966. What also shifted at that time was the nature of the civil rights protests. In 1966 we saw the creation of an organization called the Black Panther Party. In 1966 we saw the rise of the Black Power Movement. Protests no longer focused specifically on enforcing *Brown v. BOE* and integrating spaces. Instead they focused more so on obtaining Black power. Or, they were looking to protest police brutality.

Dereck Bell helps explain this with his Critical Race Theory concept of interest convergence. Essentially, he argues that the interests of Blacks in achieving racial equity will be accommodated only when the specific racial policy interest converges with the interests of whites. Here, in the context of the 1954 decision of *Brown v. BOE*, history revealed that it was not simply an active beneficence but was instead a decision that was made in the context of a cold war. During that period of time, the United States was seeking to project a friendlier image abroad in the context of their contest with Russia for global domination. They saw segregation as a force for negative progress in their goal to spread democracy around the world. As a result, there was an interest that American society had in enforcing *Brown v. Board of Education*. Then, as states throughout the South sought to evade enforcement of *Brown*, the Court wanted to ensure that Supreme Court decisions were respected. So when civil rights protesters sought to bring attention to southern resistance to the Court's mandate to integrate American society, the Supreme Court found a way to uphold the civil rights activists' protest actions. This theory of interest convergence is now a bedrock philosophy in the pantheon of Critical Race Theory.

DISCUSSION

And, as I discussed earlier, I'm looking forward to the discussion with both Dontay and members of the audience. One of the first questions which I would love to discuss is what are some of the implications of this interest convergence philosophy? Is this philosophy useful for us today to seek systemic transformation or institutional transformation, on the grounds of racial justice? What types of factors would help us to come up with a strategy that may allow us to have as much success as civil rights protesters had at that period of time?

The last case here on my list of cases is *Walker v. City of Birmingham*, which involved the protests in Birmingham in 1963,

featuring Martin Luther King Jr. and the Birmingham campaign. We saw the images that were blasted around the world that brought awareness to not only segregation, but the plight of police brutality in the United States. During that time, as Dr. King sat behind bars under arrest for violating an injunction sought by Bull Connor to try to stop Dr. King from engaging in that march, he had several beautiful ideas that have stood the test of time. He wrote them out in a letter from his Birmingham jail cell. He contrasted just laws with unjust laws, arguing that law breaking was justified when the law that is being broken is an unjust law. He agreed with St. Augustine the theologian's view that an unjust law is no law at all. I mention this because if we conclude that the First Amendment Freedom of Assembly is a racial project, then we need to find our own standard of morality for when we should protest or not, instead of being guided by what the law is. There are several theoretical questions in protests that also speak to this question of appropriateness of engaging in first amendment activity even when it is not sanctioned by law. Dr. King would debate this question with many moderate white preachers, and others, including Harvard Law Professor Charles Fried, who believed that you were going to go down a slippery slope if you condone people breaking laws based on their own sense of morality.

Dr. King famously turned himself in when he was found to be a law breaker in the eyes of the Alabama authorities. He believed that he needed to do so to justify his law breaking. Other scholars, including Howard Zinn, who wrote "A People's History in the United States," argued that you did not have to acquiesce the law and turn yourself in for your law breaking to be justified. So I raise this question also.

Again, I want us to think critically about the first amendment and recognize that, if indeed the first amendment is a racial project, how do we move forward in the context of an open space where we cannot obtain our sense of right and wrong from the law itself? What role does law play in a democracy?

These Debates bring me to the work of a scholar I greatly admire, Professor Lani Guinier, who recently passed away. Professor Guinier was as a scholar of the highest magnitude, in my eyes. She is known primarily for her work on democracy, perhaps most famously for her work in voting rights. But I want to discuss a project that she worked on with Professor Gerald Torres called *Changing the Wind: Notes Toward a Demos prudence of Law and Social Movements*. I have so much admiration for this article. I went on to write my own article using the same term, "demos prudence," to explain my experiences as a lawyer and protester in Ferguson.

In this article, Professor Guinier focuses on the social movements that were critical to the legal changes that formed the core of our democracy, like the Civil Rights Movement. The strong claim that she makes is that social movements of the Civil Rights era were actually sources of law. The weaker claim she makes is that the social movements deeply influenced the formal legal changes represented by statutes and Supreme Court decisions. They constituted a moment that sent a message so convincingly that change was inevitable.

And to make this claim stronger, Guinier demonstrates how social movements made some legal conclusions so more likely that, for all intents and purposes, they were inevitable. It's clear that the way the Court interpreted existing racial justice jurisprudence and was responsive to the Constitution understandings of elite actors like Dr. King in the Civil Rights Movement, which had their high watermark in the fifties and sixties. But according to Professor Lani Guinier, we can come up with an almost arithmetically clear equation to explain how indeed one could change the wind.

Think about the winds of change. Think about the beliefs and ethics that must in a society to allow for legal and institutional changes to take place. According to Professor Guinier, and this is my interpretation her work, the Civil Rights Movements created the winds of change in part through the strength of its counter narratives. At the time, there were some who made the argument that Black people in the south were okay with segregation. It was peaceful and everybody was happy to be in their separate spheres. In contrast to that the narrative was the reality of deep seated and unhappiness and impatience with segregation shown during the civil rights protests which were broadcast on televisions everywhere. Those images were jarring to the world and were grounded in narratives of justice articulated by Dr. King. Those narrative contrast combined to change the wind.

Another example was when John Lewis was assaulted on the Edmund Pettus Bridge. His demonstration of courage resulted in institutional transformation, changing the law, changing the wind. Only a few months later, after the Edmund Pettus Bridge incident, John Lewis was with the President of the United States being handed the pen used for the signing of the Voting Rights Act.

So that brings me to our current moment, the moment of retrenchment in the age of Black Lives Matter. We have seen after the killing of George Floyd a racial reckoning, a changing of the wind. We have created a holiday, changed sports team names, and we also have a conviction of George Floyd's killer for police brutality. We had another

conviction this week in the trial of Ahmaud Arbery's killers. And to a lesser extent we have had some policy changes on the issue of policing.

But the changing of the wind has been blunted by the reality of another core Critical Race Theory notion—the reality of the pattern of reform and retrenchment. If you look at the history of racial justice movements, whether it was the Civil Rights Movement or other movements, after forward steps, there are backward steps. After progress there is pain. After abolition, reconstruction, there was always Jim Crow, and lynching, not far behind. After the Civil Rights Movement there was mass incarceration. And here we see after the racial reckoning of 2020, we have seen several power policy losses on several issues that seem to be taking us in a backwards direction on police reform. We've seen restrictions on voting rights taking place around the country, we've seen anti-protest laws spread around the country, including the creation of felony charges to make it so that when somebody is arrested for a protest they can no longer obtain student loans.

All of this has taken place in the shadow of the banning of Critical Race Theory and discussions of racial justice in states across the country.

There are three different types of speech. Of course, there's protest speech, which is the beginning of my interrogation. But also, speech in the classroom and speech at the ballot box are types of First Amendment protected speech that are being restricted and, in the context of retrenchment, and if you look at a map, you will see some geographical similarities in the areas in which these bills are passing. That is not a coincidence.

Let's look at these takeaways and try to apply some of these core Critical Race Theory ideas to current realities. Let's review the idea interest convergence theory and how it applies today. Let's review the idea that the first amendment is race neutral and colorblind, and acknowledge instead that it really isn't, it is in actuality a racial project. Let's review Ideas around the lawful protester's dilemma, and this question as to whether or not we should continue to see the first amendment as a source of moral authority. I want us to think about what institutional change really means in the context of retrenchment. These are the types of questions that I hope you continue to ask yourself as students and scholars.

I hope I've been able to make the case to you today that speech is integral and important to change. In all of our historical examples here, there were instances of protests and instances of speech that lead to change and it's not a coincidence. If we think of free speech as a place of contestation, a place where we can make our claim for institutional transformation, and if that location itself is a racial Project, a battleground, how do we move forward with systemic change? In the vein of some of

the wonderful scholars who teach at your university, how do we move forward as a society to obtain real public goods, such as racial justice?

Thank you for your time. I'm happy once again, to be able to share these ideas with you. I would love to talk to you further about any issue that is on your mind. Thank you again for your time.

Dontay Proctor-Mills: Thank you Professor Hansford for the very rich insight. I do want to turn to our Q and A section, because we do have a question here from one of our participants. What do you think is driving the negative press slash discussion against Critical Race Theory and some of the conservative political circles?

Hansford: I think it's clear that the racial reckoning of 2020 was threatening to many. The discussions that took place in 2020 represented great change and, of course, great change creates great fear. It's also clear to me that in the aftermath of that racial reckoning, we're seeing Critical Race Theory being used as a political tool to energize conservative constituencies. Politically, to drive their voters the polls. We've seen this work well for conservatives in the past.

Professor Ian Haney López has used the term of racial fusion politics and race class fusion. Some of the traditional issues that have driven political energy on the right have been immigration, which is a racial issue; crime or in law and order, which is a racial issue. And here we have this issue of education, where the idea is to frame the discussion around parental rights. But once again, we have turned education into a racial issue, and so it has been a platform for political manipulation as a political tool. In the history of our racial discourse in the United States we've seen race being used as a political tool to divide the working class and to ensure that the white working class sees itself in competition with the black working class.

This is then used as a political tool to drive energy for the upcoming election. I think if you combine the realization that there was real discomfort around the prospect of systemic change in 2020 and the effort to use that discomfort for political gain, I think you can begin to reveal the motives behind this anti-CRT crusade that many are on across the country.

Proctor-Mills: Thank you for a really great answer. I'm seeing some parallels from somebody's earlier presentation where you know this politicization of CRT is used to kind of ignite free speech right and in terms of a poll on one political spectrum, but also to suppress it on another end of the spectrum in terms of kind of taking you out of schools, so thank you so much. We also have another question for you. So some academics say that a crucial element of civil disobedience is accepting the consequences of breaking the unfair laws, otherwise it is not civil disobedience, do you agree?

Hansford: I can't. Protesting the consequences of the unfair law to me is part of the process of civil disobedience. That goes directly to one of the questions raised by Dr. King, and you know the Professor Zinn disagreed with him sharply. In that disagreement, I have to say that I agree with professor. I don't think you eliminate the impact of your protest by fighting the charges. I understand the moral and ethical and inspirational impact behind seeing someone willing to face the consequences for their civilly disobedient actions. But at the same time, if one truly does not believe in the fairness of a law, it's not necessarily noble to subject yourself to consequences of that law.

I don't think that you must subject yourself to unjust consequences for the sake of obtaining the so called moral high ground. This is a philosophical idea, which many philosophers like Dr. King have debated, but I think, from my perspective, I think it does not necessarily follow that I must subject myself to unjust consequences. When breaking unjust laws, however, I do recognize that the moral authority gained from being willing to demonstrate that one is so passionate and so sure is so that he is convinced of the justice of his cause that he is willing to pay the price. To demonstrate that to the community is very inspirational. It's an important decision to make that decision from a pragmatic perspective that in terms of helping your movement for institutional change, perhaps you should be willing to subject yourself to that penalty to inspire the movement. However, I don't think it makes you a bad person to fight that charge and deny the fairness of that penalty, because that your challenge and disagreement represents your true honest analysis of the law at hand. Thank you for that great question.

Dontay Proctor-Mills: Thank you and forgive me, I want to give credit to my colleague, Fernandez for those last two questions. Let's move forward to our next question from Dean Clark. In thinking about how to fight against racially motivated free speech restrictions, do you advocate for using interest convergence theory, or do you find it difficult to do that, because it makes progress dependent on appeasing whites and buying into white supremacy?

Hansford: Thank you. I just wanted to say, I admire your work so much, and thank you for attending this talk and thank you for all the work that you've done at this wonderful university over the years. The answer is yes, I believe that interest convergence is a fundamental element of any sound analysis and push for institutional change. I don't think that anyone truly seeking to obtain transformation in American society or any society in the world can ignore the strategic benefits of using interesting analysis philosophy.

In recent weeks, I have become more involved in international affairs with some of my work at the UN. And I have recognized that almost every diplomat that you talk to who is involved in international affairs also engages in a very complex interest analysis based strategic planning period before engaging in this serious international work. This is a philosophy that continues to be useful at the highest levels of international diplomacy.

And on the domestic stage we have seen that the interest convergence analysis continues to be relevant in our movements. So, for example, during the Black Lives Matter Movement in the early days you saw a great push towards the use of body cameras as a possible solution to the problem of racialized policing. Many of were enthusiastic about a possible technical solution that could solve this messy human problem. But, as we saw some of the other options fall by the wayside, we had to start to wonder why is there is less energy around gaining convictions for police officers and less energy around civilian review boards that had real power, and less energy around some of the changes to the use of force standards, and less energy around data collection? The reason, of course, was that, out of all those different options that were on the menu for police reformers, the option of body cameras was the only one in which the interest interests clearly converged. With body cameras police could protect themselves from any sort of untrue allegations because they had their behavior on the camera. However, at the same time, we know that oftentimes this footage was used to gather evidence against people as a surveillance tool. We also know that those who created these body cameras were often police affiliated companies, so there was the profit motive for police. The company taser was one company continues to be one of the bigger sellers of body cameras. Also with body cameras, oftentimes since the police still hold and control the camera itself, they can simply turn off the camera when they are about to do something illegal and turn it back on when that illegal activity is over. We've seen consistently that even with the presence of body cameras, most of our footage of police brutality, including the footage of George Floyd, was footage captured by bystanders. The body cameras get turned off when the dirt happens. The millions and millions of dollars invested in the body cameras have ultimately done more to support the interests of law enforcement officers, as opposed to the interest of those who are police reformers or citizens. So I believe that the interest convergence principle continues to help us to explain contemporary events when it comes to our social movements.

Dontay Proctor-Mills: Thank you so much again for a really fantastic answer we have another question again from my colleague, indeed really coming through with the solid questions here. How should

some middle school and high school teachers teach racial issues to their students, especially in the deep South and how would you counsel these teachers when perhaps their jobs and academic freedom might be threatening?

Justin Hansford: Teachers must teach the truth. That's the first principle. They must be able to teach the truth. I would counsel them to do so. However, I also would counsel them to be aware that there are political battles around this question of "what is the truth?" Whether or not projects like the 1619 projects represents the truth.

I would also counsel them to be aware of the laws in their particular jurisdiction regarding the teaching of so-called divisive concepts. Of course, very few teachers on a K-12 level will ever be able to teach Critical Race Theory. I want to make that clear upfront for those who do not already know that some of these ideas that I've discussed: interest convergence, color blindness, those ideas are not likely to be concepts that third graders would be able to understand. But I do think that people should not be running away from teaching about racial injustice because of this current fear of critical race theory.

There's also a movement afoot to fight back against the anti-CRT push. I can put into the chat a link to a campaign called *The Truth Be Told Campaign* that is ran out of the African-American policy forum at Columbia University, headed by Kimberly Crenshaw. I also do work with this free online class called the justice initiative. One of the things that we've done is to assist in creating know your rights documents, so that teachers in different states can be clear on exactly what is being banned and what is not being banned. Also, we are creating a hotline to that effect. At Howard our Thurgood Marshall Center has created a hotline for any teacher who is threatened with negative employment action or threatened physically because of their involvement in teaching Critical Race Theory. They can literally call us. Some of our students will receive the call and put them in touch with lawyers in the state where they are calling from who can work with them on a pro bono basis to try to fight back against any negative consequence of teaching the truth. We are setting up an infrastructure to support and protect those who are seeking to teach the truth to our youth across the country.

Dontay Proctor-Mills: That's fantastic really and great. This question is kind of related to your work with the Thurgood Marshall Center. What other projects are you working on that have the potential for institutional system, a transformation?

Justin Hansford: I'm happy to talk about the Thurgood Marshall Center. We've got several projects that have touched issues involving the first amendment, police brutality, and also reparations. One of the projects

that I am perhaps most proud of is the creation of the African American Redress Network. We created this project, along with Columbia University, in 2020. This is a local reparations movement support campaign. We provide legal support and research for local reparations efforts. If you look at this map that we have created on our website, you'll see that there are reparations actions happening on the local level all across the country. People know about some of the reparations efforts at Georgetown University with the 272 project. And you know some of the things that you heard maybe coming out of Tulsa, Oklahoma in the aftermath of the Tulsa race riots in 1921.

In addition to helping to document these actions and reparations campaigns happening locally across the nation, we provide legal support. A good example of that is the city of Evanston, Illinois. In 2019 it became the first city in the country to pass an ordinance to give reparations to its residents, because of the aftermath of redlining in the city which was very well documented. What we did to support the effort in Evanston was draft an impact study, where we talked about the history of redlining and demonstrated the continual effects of that past housing discrimination and how it helps to create the wealth gap in this city of Evanston. This helped to create interrelated effects in terms of health, education, and incarceration. In addition to that we have provided legal support because, as you might have guessed, there are opponents of reparations who are seeking to argue that the reparations effort in Evanston is an unconstitutional violation of the fourteenth amendment because it would provide benefits to Black residents, based on race. So, we have been working to draft legal arguments and do work that provides studies for Evanston to help them overcome any sort of legal challenge. I'm very excited about this prospect. There are eleven other cities around the country with African American mayor's, including the city of St. Louis where I spent so much time, that have announced their plans to implement similar studies to obtain local reparations for people in their city based on local harms. Out of all the different discussions that we're having on the racial reckoning, I think this is the most fruitful discussion. I think these discussions need to be led by local communities, so they can talk about their specific histories and get to a place where we can have true healing, reconciliation, remedy, and ultimately reparation. That is the vision of reparations that I believe is not only the most inspirational vision, but the most pragmatic vision for reparations. From a legal perspective reparations on the local level not only addresses people who are culpable on the local level with the businesses and city government other actors, but also it's easier to overcome a fourteenth amendment challenge. In order to survive a fourteenth amendment challenge, the remedy for the

harm has to be narrowly tailored to the specific past harm. It's easier to narrowly tailor a remedy on the local level, based on local histories, than it is to narrowly tailor a national reparations program on the federal level. I hope that both can take place, I do not believe that one program is to the exclusion of the other.

But I feel that our lane at the Thurgood Marshall Center and my lane, in particular, is with the local reparations movement around the country. So I'm very excited about that work in addition to the work we're doing with the efforts of the fight against Critical Race Theory and other things that we're doing. I think that the Thurgood Marshall Center is just such a wonderful place for people to be able to collaborate with on their racial justice campaigns. I'd love to collaborate with Seattle University in some way, shape or form, if that is possible.

Dontay Proctor-Mills: We'd also love that I'm sure there's some folks in the room that can make that happen. I'm moving on. I mean discussions are already extremely rich and we touched on Critical Race Theory on a number of different areas. Could you elaborate, how that is related incredibly cool I mean it's hot that is Critical Race Theory is related to institutional transformation and the law?

Justin Hansford: think that the point of Critical Race Theory is in its truest sense, institutional transformation. That is one of the more important things to remember about Critical Race Theory. It is not a philosophy that aims to accuse individual people of holding or fostering racial bias. It is more so a focus on institutional systemic racial projects that create any inequality over the course of time and space, consistently, automatically, in a way that reproduces inequality without one particular actor having to play an intentional role in creating that inequality.

So Critical Race Theory is about institutional change that can include issues as varied as housing, employment, policing, and education—all of these are different systems and there are many different institutions that this analysis is relevant for. For example, interest convergence as your Dean mentioned. Interest convergence analysis is integral to institutional change in any of those categories. Also important is an analysis which helps to acknowledge that the effort to be colorblind while opposing racial inequality is likely to be a futile effort. Avoid affirmative action, avoid reparations, avoid even mentioning race, (the mention of race makes you racist right?) All of that is denying reality. These two core ideas and Critical Race Theory are not just helpful for institutional transformation, but are the bedrock of any institutional transformation that will result in racial reform.

How important is it that we get this right? I'd go ahead and go on out on a limb, to say that I do not think that we can have the type of societal

transformation that will make America a better place without having a racial reform. Because, as I mentioned earlier, so much of our political gridlock is driven by racial dynamics that aren't acknowledged. Whether it's on issues like education or immigration or law enforcement or issues like healthcare, so many different issues have racial implications that are not acknowledged and that drive our politics.

I'll give you an example, there was a push to provide a certain level of paid parental leave in the Build Back Better Act. And during that debate, there was a comment by Senator Joe Manchin, who blocked that effort, saying that he thought that people would use that money to buy drugs. Now when he said that, he didn't want to pay out this so called welfare money because people would buy drugs, he didn't say that these would be welfare queens or poor Black people that would be buying drugs but, clearly, he was not talking about his constituents in West Virginia. He was talking about a certain subset of people that he had in his mind. Over the course of our history, we have seen in American politics, we continue to have a very weak social safety net. This is because the crafters of that social safety net oftentimes believe that the people who would receive the welfare benefits, were irresponsible people of color or women who did not deserve the welfare benefits in the first place.

So the way our society is structured from a fundamental basis is all is always influenced by racial narratives, whether we acknowledge it or not. I guess that's a long way of saying that not only do I believe that Critical Race Theory is helpful in the effort to create institutional transformation or racial reform or racial justice in America, but you can't really have an effectively functioning democracy without a racial analysis like Critical Race Theory.

Dontay Proctor-Mills: Thank you. Thank you for sharing insightful answers. We want to ask another question that I have for you. What is the relationship of legal scholarship and legal teaching proxy to institutional systemic reform, in your view?

Justin Hansford: I want to shout out the new book by Professor Bender. On the first page, he mentions a scholar named Paulo Freire who wrote the *Pedagogy of the Oppressed*. He said that practice needs theory and theory needs practice, just like fish need clean water, practice needs theory and theory needs practice. Pick up your copy today on Amazon. That's such an important quote because it is so important for our teaching and for our activism to be driven by scholarship and it's so important for our scholarship to be informed by pragmatic organizing on the ground. It's so important for there to be an interplay and dialogue between these two elements of our thinking, our acting and our community building. In the Thurgood Marshall Center's mission statement we articulate that when we

approach our projects we say we use our head our hands and our heart. We use our head in the sense that we base our work in scholarship like Critical Race Theory, we get our hands dirty with lawsuits or policy advocacy using the law for social change, but we also use our heart that we are always going to connect with community organizations and community groups and all of our projects. So all of our projects have to have community partners, so that the grassroots are connected. We must use law, because we are a law school and we must use scholarship to drive our thinking, because we are at a university. But I think those three elements, the acting and the thinking and the organizing, they go hand in hand, and you could actually say that the more closely intertwined these different elements are, the better, so the best legal work to me is legal work that combines those three.

Also, I believe that the best scholarship that is not just purely theoretical, it's the work in community with practitioners and the work that gains insight from the practitioners work, being in community with people who are on the ground actually putting these ideas into practice. Not even limiting themselves to the law, but even going into the streets if necessary.

Dontay Proctor-Mills: Again, thank you so much. I feel like you tied a couple in a couple of references for me, but I think you know the name of our symposium here is *Epic Spotlight Symposium* and that words exist in my vocabulary, because you have the chance to look into his work and then also you know the work and the reading and studying about that and, alongside Professor Vendor. And examinations having a better understanding of Critical Race Theory as a whole, so bringing those two things together was great. I appreciate you.

And as we move into kind of the last moments and minutes of our presentation in short on questions in our Q and A I just want to ask if you could be mindful of this practitioners and law students, you know, in the room, with this kind of USA charging and outlook in a way to move forward, you know, keeping in mind in our objective and our goal of institutional transformation.

Justin Hansford: Going back to the theme of my presentation. Our speech matters. We have to speak out. Our speech changes things. Voting is a type of speech. Teaching is a type of speech. Protest is a type of speech.

And remember the power of the word. Professor Charles Lawrence wrote a brilliant law review article speaking about the power of the word to create change. I'll see if I can put a link to that article in the chat. He quotes a very inspirational teacher named Vincent Harding who was a speech writer for Martin Luther King. Harding famously said that the Black Freedom Movement is like a river. We are partaking in our part of

a long stream of those actors who are participating in something that is not ours to own but it's only ours to cultivate and to celebrate for a short period of time. Here's the PDF to this article.

The Word and the River: Pedagogy as Scholarship as Struggle, if you have a chance to read this, you will be inspired.

For those of you seeking to create institutional change, my advice is to believe in the power of your ideas. To make change, believe in the power of your ideas to not just inspire but to provide strategy, to provide guidance, and to ultimately use your ideas to change the law. To provide the way forward for the next generation that is going to build on this racial reckoning of 2020 and 2021. We're living in a time that historians will talk about for generations. I hope that we take advantage of this moment to make sure that we remember that our words matter Professor Bender's book matters. The work that we're doing is doing more than simply expressing ourselves, which is in of itself is meaningful. Our expression is meaningful, but our expression in protest and in social justice movement work also is part of a long river of people who have been struggling to make the world a better place. We are part of a long river of people who come and they work and they leave and there is evidence in what they left behind that they did make a difference.

Even if it didn't seem like they're making progress in the short run, in the long run, it is apparent that they have and this is apparent that I believe that we will also, in the long run, look back at and will experience a sense of accomplishment for what we did in 2020, 2021, and 2022. We will be proud of ourselves as long as we remember that we are part of a long river of struggle for social justice and there are a lot of people that are in it with us. We're not in it alone. I am in solidarity with you all and I'm thankful and I'm hoping that we continue to work together to fight to use the law for social change.

Dontay Proctor-Mills: Thank you, Professor Hansford for really putting the ball on that for us. Something that you said that really resonated with me is that we're in a long river struggle for racial justice. I can speak for myself and my colleagues that coordinated and worked on this symposium in our second year, now that we definitely sit in on shoulders of giants it's not lost on me that it was a student led effort right that put you know ethnic studies and African American studies and institutions across this country right sitting and other efforts, and I feel like we are in the shadow and sitting on the shoulders of those individuals. As we continue and try to make this symposium annual a big thank you for the time. I believe we still got a couple of more minutes, though. We have no questions, so I think we might kind of wrap up here. I want to thank you for taking the time to virtually travel across the country at least 3000 miles

and helping to support and provide some wisdom and guidance. Thank you.

Justin Hansford: Well, thank you so much for having me. I hope you guys enjoy the rest of your evening and I've been tuning in this was a wonderful conference and congratulations to you all for completing this project. Thank you.