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Rethinking Justice: Palestine and the Limitations of International Law

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Brigitte: Welcome to this new episode of the Justice Visions Podcast. My name is Brigitte Herremans and I have the great pleasure of welcoming Professor Noura Erakat. Noura is with us today in Ghent as she is the recipient of the Amnesty International Chair, which is awarded annually by Ghent University to people who made outstanding contributions to the field of human rights. Noura is a prominent legal scholar, a human rights attorney and an activist, and her work has reshaped legal and political discussions on the Israeli-Palestinian conflict. Welcome Noura, it's a pleasure to have you with us today.

Noura: Thank you, thank you Brigitte, I'm very happy to be here.

Brigitte: As you know, of course, we're actually focusing quite a lot on transitional justice and victim mobilization in this podcast. And we're also wondering if you could tell us a bit more about the role of victims and how victims drive justice efforts also in the context of Palestine today, after the genocide in Gaza.

Noura: Well, I love the vision and the commitment to justice that's driven by those who are most affected. I tend to call those who have been affected as survivors, as opposed to relegating them to their injury, as opposed to their resilience in overcoming it. I think at this point, however, we are way, way too early to be able to discuss any kind of transition or the approximation of justice as Palestinians are still enduring a genocide that is in full force and becoming even more extreme. They are very much, and beyond, within Gaza, they are surviving. And I think that that is what merits our attention. And frankly, our awe as a people who are literally besieged in a cage. that they cannot enter or exit, that has been under siege for 17 years, who have been targeted within that cage, like a captured population, without any kind of external support. Forget an iron dome to protect them, not a single airplane to protect them, not a simple third party state to protect them to intervene in the way, for example, that, and this is controversial, but, the invasion of Serbia in order to push back the attack on Bosnia. And obviously, there's the constantly mission creep with NATO, so I could bring up Libya and the eastern province, which is not a

model, but in those instances, we saw intervention in a way we have not seen mobilized now, if anything, against the survival of Palestinians, who have refused, who have refused to surrender or disappear, and instead demonstrated, I think, a kind of humanity that we have, I've, never witnessed before. I've ever witnessed to be displaced dozens of times, to be in makeshift tents throughout multiple seasons and weather, to not have access to educational institutions or hospitals, to be denied employment, and yet still, still to be caring for one another, to be creating, clowns and entertainment for the children, makeshift schools, makeshift clinics, to be cleaning with one another to be feeding one another to maintain that humanity intact. I don't think we've ever seen it before. And so I couldn't tell you what survivors are doing in order to approximate justice in this moment, but I can tell you that they are demonstrating to us the full spectrum of our potential as humans, which is even more striking against the bottomless pit of its deprivation from certainly the genocidal state as well as its Western colonial allies.

Brigitte: Thank you also indeed for resisting this label of victim survivors. It's important to also express the mobilization of survivors and to insist on it and I was wondering if you could tell a bit more on how to not to reduce Palestinians to traumatic experiences to what we see indeed as victims as Mohammed El-Kurd also in his latest books insists on. So I was wondering if I could draw you out a little bit on how to overcome this reduction to traumatic experiences?

Noura: I feel like there's two questions there. One is, and this is what, you know, Mohammed really brilliantly teases out, but it's this constant theme that afflicts, you now, dominated communities, right? That in order to be able to deserve freedom, or to deserve the end of racial domination, or to deserve the end, of state violence, somehow they have to demonstrate that they are worthy, worthy of being free of that violence, as opposed to, by their sheer humanity in existence, are worthy of freedom, and freedom from that violence. And so the way that this trope of perfect victimhood gets deployed against Palestinians in ways that we've seen it deployed, good Muslim, bad Muslim, and others, and certainly with racialized black communities, for example. Or even in the United States, in the discourse around immigrants: which immigrants are actually, have families and, hardworking and raising their children and which who are different than the criminal immigrants, right. There's this constant pivot to demonstrate a worthiness of being spared violence when that pivot is unnecessary. And so and especially for Palestinians, there's almost nothing that Palestinians can do to demonstrate their worthiness. There's this ontological commitment to understanding Palestinians as inherently guilty. And inversely, no matter what they do, and inversely, ontologically understanding Zionists, as inherently innocent, no matter what they do. And we've seen that. No matter

what Israel does, there is never a pivot to culpability. Violations of law, whatever, whatever. If you want to talk about law, you want to talk, about economics, whatever you want, to talk about morality. There's a violation across the spectrum. Nothing has been able to penetrate this ontological position of innocence. It's racist. I think it's racist, it's civilizational and so on, it's colonial, and for that reason... Whether or not Palestinians are marching 30 to 40,000 in the Gaza march of return week in and week out in the largest civil society protest that we've seen in the 20th century by a besieged population.

Brigitte: In 2017, right?

Noura: 18. Or we see them as, you know, taking up arms in order to attack the military installations that maintain them forever captive. Doesn't matter. It doesn't matter in both instances, it was the lack of passivity of Palestinians to simply constantly be beat up, and stomped upon that troubled this notion, right? And so I really do appreciate Muhammad's provocation to us in a very forceful way to not to succumb to that temptation or to that line of thinking. How do you hold the line? Now, there's another thing that you mentioned, which is about how are we not reduced to our injury? And this is tremendous. Because we are not defined by what Israel does to us. We are defined by who we are. We are defined by what we do, what we produce, what we write, how we love one another? There's this tendency of how we can think about this. Part of our victory is not merely for the cause and our liberation, but it's living for our liberation and being able to have joy with one another. It's being able to celebrate life. It is really being able to accomplish things with one another. And that is a horizon of our liberation that we can manifest that. We are not defined by how we are harmed. We are defined by who we are despite that harm and how we respond to it. If anything, you can judge us by that, but not by what's done to us. That's not our story. That's a story about Israel. They should be defined by how horribly and sadistically and violently and inhumanely they treat Palestinians. That's not our story.

Brigitte: The story of Palestinians is one, as you also describe aptly in your book, *Justice for Some, Law and the Question of Palestine*, one of sumud, enduring, resisting, but also an act of love and imagination. And I find that so touching also about your work that it is about this love, this care, this imagination. I wanted to also ask you maybe how you tie that into other causes because your work is also very strongly linked to other decolonial, indigenous struggles. How do we care for one another taking Palestine on board and transforming other causes?

Noura: Yeah, no, I appreciate that. I think that there's a way in which, how I approach this, right, with this wanting to have this radical vision that we are

morally superior to our oppressors. And that moral superiority is unmovable. It's the power that we have. And I, because of that, and my selfishness, to guard my moral superiority refuse to fall into this trap of a mutually exclusive equation. But instead, because of that position, I have the power to imagine, to practice a radical imagination of our possibility. And I can also see how this won't resonate with everyone. And of course not, it's certainly, in this moment, it's hard to even tap into that as our babies are being shredded and picked up into rice bags and weighed, right? What imagination, I mean, we haven't even had the space to mourn. So this isn't predicated on any kind of naivety on my part, but it's a stubbornness on my part. It's a stubborn commitment to that moral superiority and to that freedom dream of who we can all be. I mean, that's a very personal, very, very personal how I get to that. But I will tell you that part of when you mention how is it rooted in this kind of ... It's obviously not limited to Palestinians, but I am Palestinian. I mean part of that story is the fact that I come into the world, I become conscious of the world that I live in, first as a girl in the world. And second, as a Palestinian, right? I knew what it was to be a girl in the world. And from that consciousness, set in ... I thought, yeah, something's not right. Something's not, right, somehow people are telling me that by virtue of my biological kind of designation - and I identify as cisgender woman - but by that biological designation that somehow there is, I have particular skills. I have a particular trajectory, I have a role, and it's limited to the private sphere. Should it exist in the public sphere, it's an addition to all the other things I should be, but not in the way that men are expected to regulate our public life. Right. That sits on really as a kid. It just planted the seed of doubt that, yeah, somebody's lying to us. This must be constructed. My mother at some point tried to tell me God created us this way. And I was like, there's no way I don't that's even less compelling than the story that everybody else is telling me. Right. It was that kind of primary seed of doubt and coming into consciousness as a woman in the world that really became the framework, like a feminist lens to question any kind of naturalized maldistribution of power and any kind of naturalized domination on any grounds, was constructed by us.

Brigitte: Very simple.

Noura: Very simple. And it was that lens that I understood Palestine when I visited for the first time at age seven. Right? It was that lens that later I understood class and poverty, very early on, this can't be a charity case. There must be conditions and systems that produce this, in the United States, the differential between... you know, the haves and the have nots, so to speak, is vast and grotesque. But it was also the framework that motivated me to think about racism and anti-blackness. And in fact, when I choose, there's a particular moment, I actually make an intellectual, a conscious choice. I'm

going to primarily fight for Palestine. Growing up, I thought that I would become the first woman Secretary of State in the United States before Madeleine Albright takes that altar. And before I decide, oh my God, I'm not just going to diversify empire. There's nothing to be gained here. I have no interest. But it was in college. And everything that I had already had doubts about now like crashing into my face as I'm in classrooms and seeing the world and it becomes really difficult to hold all of it. I begin to feel that my mere existence, right? And the consumption that I make and the extraction on the earth is hurting somebody somewhere, right. It becomes almost this existential dilemma that my existence is the problem and getting out of that was a difficult journey. But once I got out of and committed. There are ways thinking about Alice Walker, who says that our rent for living on this earth is how we fight to make it better than how we found it, right? It's that commitment. And then for Palestine in particular, I was shocked in college when I realized that nobody knew what Palestine was. For me, it's my world. It's just this natural thing I went there, I see and... If I understand it as really messed up, then everybody understands it. We understand colonialism is bad and violence is bad. But I got to college and I was like, oh, this isn't as pervasive and widely known as I thought. And so then I made a choice and thought to myself, there's a lot of people working on a lot other things, but there's very few and not enough working on Palestine. And that's how I make the decision. And it was probably my freshman year in college. And it was not because I didn't believe everything else was worthy, equally worthy, but only because I thought, what is the distribution of labor? And so hence, it continues for me to be part of really an interconnected struggle for liberation.

Brigitte: I completely understand and I think you talk about it so compellingly also because it is true that Palestine became a transnational cause, not only when it comes to the failure of international law. And I want to talk a little bit about that because you find of course the whole international legal framework damning. I mean in your analysis you're damning about it and you point out to the failure. But you also point out that the law is not set in stone. And it's not only in Palestine where we see that the law is failing. What good is the law if it's not for punishment? Because a lot of people would think the law is about punishing and you draw us out ... Of course the law's about much more than punishing. What good can the law do for Palestine in genocidal times?

Noura: My analysis on the law is very much, I come from it, especially international law, as a third world approach to international law framework to understand it as a site of colonial domination and something that developed really in the service of expanding empire, right? So the core of international law is infected, so to speak. And then we see it develop across time in order to have new meaning, especially when colonized peoples become accepted into

the international community and recognized as agents of international law, or subjects of international law, I should say. And so there's a way in which, though, for most people, for the lay person, we understand, and I say we, because I don't want to separate myself from the body of people, understand international law as somehow superseding state sovereignty and thus nobody is above the law because it is above state sovereignty, and where sovereignty can be derived and protected. But I think as a critical scholar, what's really clear is that state sovereignty actually supersedes the law. States are only bound, ... What is international law if you think about, you know, article 38c of the ICJ statute defined as, you know, comprised of four elements. The two primary ones are custom and treaty. Well, both of these things have to be, have to, be accomplished through the, you know, at least treaty is the explicit consent of states and custom through the implicit consent of states. But what's apparent in both is consent. States' consent to their regulation and how they will be treated and what they will be treated. And then there's, you know, the attenuation through reservations, understandings and declarations of what they'll abide by and how they will abide by it, right? So by the time, and then that's, that's even before we get into the ... that the problem of a lack of an enforcement mechanism on the international level, because the only place where there is a source of coercive force at the international level, as Chapter 6 and Chapter 7 authority both within the exclusive purview of the Security Council, where the five permanent members can exercise a veto to undermine the will of all the other states. From the get, from the outset, we know that the game is rigged, right? Okay, once you understand that the game is rigged.

Brigitte: What do you do about it?

Noura: What do you do about it? And I think, you know, I'm very, very, very sympathetic to those who think that the law is the problem and should be dismantled. I'm sympathetic to that. I then think, OK, but then dismantled to do what? Dismantled with what? Replaced with what, right? I tend to think of the law like any other structure of power, whether it be the maldistribution of military power, right? Or it be, the mal-distribution of economic power, and certainly, the mal distribution of political power, the mal distributed here of legal and access to the law and to its benefits for your national interests, so to speak, right. It's the same structure that's weighed up against us. There's no escape from that structure, as far as I'm concerned. I mean, there might be. There are models of maroonage, and were we to completely go off the grid and regulate ourselves through other forms and mechanisms, I'm down for that. I'm down for that, but I don't see that happening in mass yet. Not impossible. There's also a way to basically capture power. And I'm not opposed to that either. I support it. But short of these goals, how then do you use a framework that is stacked against you to your advantage? And here I think very much like

an activist. I think like an activist. And I think, like a guerilla, right? Guerillas are inherently disadvantaged militarily and so on and so forth. But the object of the guerilla fighter is to turn their weaknesses into strengths and to turn their adversary's strengths into weaknesses. With that, how do you then mobilize what's available to us? And so that's the way that I approach it. And there's no fidelity to the law. And at any point, we should abandon it when it works against our interests. There's no fidelity, right? It's a tool. But that's in a big, big picture sums up my own approach.

Brigitte: Thank you so much. I wanted to end our conversation with a question that we ask all of our interviewees. And that is a question about where you draw hope from. I think it's quite obvious in the sense that you already talked a lot about inspiration, hope, love, and imagination. But very briefly maybe, where do you get your inspiration from to do this so passionately?

Noura: Can I give you three answers? One answer is what other choice do we have? Will we collectively self-annihilate? No, we have one choice here, right? And even if this world burns around us, knowing that that hope is inside of us means that we are seeds to be planted when the ground is more fertile. So that's one. The other one, and I very much believe this, right, is that I come from a lineage of ancestors who have brought us this far and refuse to give up. And after me, I will become somebody's ancestor to a future I haven't seen, and that is a commitment that I have, to be that bridge and not break that chain. And then the last one, especially in these times, has been just the responsibility. If Palestinians who have been placed in a cage and basically shot at with the most advanced weapons technology is a form of experimentation and without mercy have not given up. What right do I have to give up?

Brigitte: Thank you so much for these three very compelling answers and for sharing all of your expertise and also your pessoptimism, but mainly the optimism. Thank you.

Noura: Thank you very much, Brigitte