Article

If Lived Experience Could Speak: A Method for Repairing Epistemic Violence in Law and the Legal Academy

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Terrell Carter grew up only a stone's throw from Drexel University, the institution of higher learning where the other coauthor of this Article, Rachel López, would find her academic home years later. Even as a child, Terrell remembers feeling like other institutions that were miles away, like State Correctional Institution Graterford where he would spend most of his adult life, were much more proximate. Paradoxically, he would later come to learn that behind the walls of institutions like Drexel, academics like Rachel would develop ideas and theory that would shape his fate and define his existence behind other walls. Through Participatory Law Scholarship (PLS)—legal scholarship written in collaboration with those without formal legal training, but expertise

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in law's injustice through lived experience—Terrell and Rachel seek to dismantle the walls upon walls that divide the ideals of law from the lived experience of it.

Building from the experience of coauthoring Redeeming Justice*, their award-winning article that contributed to the liberation of Terrell less than a year after its publication, this Article explores the role that participatory methods in legal scholarship can play in repairing the epistemic harm done by law and by academics to the most marginalized in our society. PLS does this by centering experiential knowing as a source of legal expertise so that those for whom the law is most consequential can see themselves reflected in it and know that they are and can be a part of the making of legal meaning. PLS strives to ensure that people who are formally educated in the law are not the only ones who are able to engage in legal scholarship and the development of legal theory. This approach to legal scholarship is grounded in the belief that the experience of being marginalized by the law uniquely positions someone to critique it. Ultimately, PLS seeks to democratize knowledge production by validating alternative ways of knowing what the law is and what changes are needed for it to realize its full potential.*

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INTRODUCTION

The story of Participatory Law Scholarship (PLS)—or at least one account of it—starts during the heart of the pandemic, when an unprecedented convergence of circumstances sparked an unconventional idea for a research partnership.[1] As part of a clinical project, we had been working to achieve greater recognition of a right to redemption, a legal concept collectively conceived of as a human right by a group of incarcerated men, all sentenced to life without parole, who called themselves the Right to Redemption Committee.[2] The theory of this right was grounded in the group's belief that the capacity to atone is an innate human characteristic and that this should be reflected in the law.[3] Unable to meet due to a prolonged prison lockdown, we searched for another way to carry the work forward. Upon learning that human rights case law supported the adoption of the legal right first articulated by these men on the inside,[4] Rachel López, a law professor and human rights expert, proposed writing a law review article on the right to redemption with two leaders of the group, including Terrell Carter, affectionately known as Rell, who is also one of the coauthors of this Article. The resulting article, *Redeeming Justice*, was then forged through countless 2,000-character messages via the prison messaging portal and fifteen-minute monitored calls that Rell was able to make during the brief moments when he was permitted to be outside his cell. What we didn't know at the time was that this article would usher in a new research partnership, which would push the bounds of what legal scholarship traditionally looks like, and ultimately culminate in Rell's liberation.

But for Rell, this story starts much earlier. And to fully understand the significance of *Redeeming Justice* and its progeny,

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1. For Rachel's account of the development of PLS, see Rachel López, *Participatory Law Scholarship*, 123 COLUM. L. REV. 1795, 1818–36 (2023) (outlining the theory and practice of Participatory Law Scholarship).

2. For Terrell Carter and Kempis Songster's account of the formation of the Right to Redemption Committee, see Terrell Carter et al., *Redeeming Justice*, 116 NW. U. L. REV. 315, 325–31 (2021). For general information about the Right to Redemption Committee, see RIGHT TO REDEMPTION, https://right2redemption.com [https://perma.cc/Z44C-V6AL].

3. *See* Carter et al., *supra* note 2, at 324 ("Behind prison walls, an idea took root that would motivate our lives' mission: all human beings have the innate capacity for change and consequently the right to redemption.").

4. For an in-depth analysis of this case law, see *id.* at 337–45.

we must begin there. Rell grew up only a few blocks from Drexel University, the institution of higher learning where Rachel, the other coauthor of this Article, would find her academic home years later. As Rell discusses more fully in Part I, he remembers feeling like there were invisible walls surrounding Drexel's campus that excluded him and others like him from admission.[5] Other institutions that were miles away, like the State Correctional Institution (SCI) Graterford, where Rell would spend most of his adult life, felt much closer.[6] Paradoxically, behind the walls of institutions like Drexel, academics like Rachel would shape ideas that would impact Rell's fate and define his lived experience behind other more visible walls. Rell's experience of exclusion from the institution of higher learning, which Rachel called her academic home for over a decade, is not an isolated story. In all corners of the United States, and perhaps other parts of the globe as well, academic institutions are displacing neighboring communities at the same time as legal scholars within those institutions are speaking for those same communities.[7] In the process, these academics often evoke the stories of members of these communities without asking them what they think is best for them or making them the authors of their own

5. Rell's experience of exclusion accords with how some legal academics describe law schools as well. *See generally* DUNCAN KENNEDY, LEGAL EDUCATION AND THE REPRODUCTION OF HIERARCHY: A POLEMIC AGAINST THE SYSTEM (1983) (describing how the law school curriculum reproduces hierarchy and reinforces class, race, and gender inequality in society by portraying legal reasoning in judicial decisions as apolitical and neutral); Bennett Capers, *The Law School as a White Space*, 106 MINN. L. REV. 7 (2021) (arguing that law schools are "white spaces" both demographically as well as in what and how they teach law); Amna A. Akbar, *Law's Exposure: The Movement and the Legal Academy*, 65 J. LEGAL EDUC. 352, 369 (2015) ("Many of our students—especially those subordinated by race, gender, sex, and class—come to law school with an acute understanding of law's entanglement with power, our country's violent history, and our unequal present. By refusing to name these realities in the classroom, we ask our students to submerge and forget what they know to be true from their lived experience.").

6. SCI Graterford was permanently closed in 2018 and replaced by a new facility at the same location called SCI Phoenix, where Rell spent the last five years of his sentence. *See SCI Phoenix*, COMMONWEALTH OF PA., https://www.cor.pa.gov/Facilities/StatePrisons/Pages/Phoenix.aspx [https://perma.cc/27XF-W5VS] (providing general information about the facility).

7. *See infra* Part II.B (describing two forms of academic violence).

stories.[8] Then, their extracted stories are guarded behind paywalls inaccessible to them and in some instances, as will be detailed below, used against them as a matter of law.[9]

PLS dreams of a different research paradigm. It aims to dismantle these walls upon walls that divide the ideals of law from the lived experience of it. It centers experiential knowing as a source of legal expertise so that those for whom the law is most consequential can see themselves reflected in it and know that they are and can be a part of the making of legal meaning.[10] Critically, PLS strives to ensure that people who are formally educated in the law are not the only ones who are able to engage with legal scholarship and develop legal theory.[11] While a prior article focused on the experience of cocreating PLS from Rachel's perspective—the academic's perspective—this one centers Rell's experience.[12] Specifically, it situates Rell's experience within the framework of Gayatri Chakravorty Spivak's theory of epistemic violence. In her seminal article *Can the Subaltern Speak?*, Spivak describes the two-handed engine of epistemic violence.[13] Namely, she depicts how epistemic violence against the subaltern—those most marginalized in society—is not only perpetrated by the ruling class, but also by academics who perpetuate other cycles of knowledge suppression by claiming to speak for the subaltern.[14] Spivak criticizes these theorists, particularly those on the left, for rendering themselves invisible as they articulate the subaltern's desires and interests as if they are

8. *See* López, *supra* note 1, at 1803 (noting that legal scholars almost never share authorship with the nonlawyers whose stories are featured in their work (citing Binny Miller, *Telling Stories About Cases and Clients: The Ethics of Narrative*, 14 GEO. J. LEGAL ETHICS 1, 4 (2000))).

9. *See infra* Part II.B.

10. In this sense, PLS is part of a broader movement, advanced by legal academics and activists as well, to center the experiences and insights of directly impacted communities in law-making and adjudication. *See infra* Part III (proposing the valuing of experiential expertise in legal scholarship).

11. López, *supra* note 1, at 1802.

12. *See generally* López, *supra* note 1 (outlining the theory and practice of PLS from the academic's perspective).

13. *See generally* Gayatri Chakravorty Spivak, *Can the Subaltern Speak?* [hereinafter Spivak 1988] (examining the epistemic violence of imperialism and the silencing of the subaltern by the Western intellectuals who claim to speak for them), *in* MARXISM AND THE INTERPRETATION OF CULTURE 271 (Cary Nelson & Lawrence Grossberg eds., 1988).

14. *Id.* at 280–81.

monolithic.[15] In this Article, we reflect on how the two-handed engine is also at work within law and the legal scholarly enterprise.

Part I sets the stage, explaining how we arrived at epistemic violence as the theoretical framework for this Article. It begins by charting the methodology we employed in this Article as an illustration of one approach, but not the only approach, to producing PLS. From there, Rell reflects on his experience of exclusion from the mechanisms of knowledge production and how that informed his experience as a participatory legal scholar. He describes how his knowledge, derived from his lived experience, and that of others like him, has been systematically discredited and how the experience of participating in PLS gave him a platform to shape his own destiny. This Part concludes by connecting Rell's experience to Spivak's theory of epistemic violence, illuminating the harm that academics can inflict when they speak on behalf of the marginalized.

Drawing from this analysis, Part II then applies the framework of epistemic violence to the context of law. Namely, it seeks to show all the ways the voices of the marginalized are muted, not just by law, but in legal scholarship too. Employing the terms *legal quieting* and *legal smothering*, it starts by cataloging the various ways that the law silences the subaltern. Then, it moves to demonstrate how academics have engaged in *academic silencing* when they speak for and about the subaltern, documenting how this legal discourse gets transposed into the law to violent ends. This Part also contextualizes Rell's experience as a neighbor of Drexel, documenting the role that universities play in displacing surrounding communities in the name of knowledge production and innovation across the United States.

Finally, engaging with a broader scholarly debate about the classification of knowledge based on lived experience as

15. *Id.* at 272–75, 293–94. In a 2010 re-publication of *Can the Subaltern Speak?*, Spivak explains how leftist intellectuals reproduce the domination of the ruling class "in and by words" when they evoke lived experience as part of their ideology. Gayatri Chakravorty Spivak, *Can the Subaltern Speak?* [hereinafter Spivak 2010] ("[T]he intellectuals, who are neither of these S/subjects, become transparent in the relay race, for they merely report on the non-represented subject and analyze (without analyzing) the workings of (the unnamed Subject irreducibly presupposed by) power and desire."), *in* CAN THE SUBALTERN SPEAK?: REFLECTIONS ON THE HISTORY OF AN IDEA 21, 26, 34 (Rosalind C. Morris ed., 2010).

expertise, Part III identifies PLS as a project meant to renegotiate traditional notions of expertise in legal scholarship. In this Part, we contend that legal scholarship should employ methods that elevate experiential expertise in order to avoid replicating the harms of epistemic violence. Indeed, here, we argue that PLS should be seen as reparation for ongoing epistemic violence at the hands of academics and academic institutions.

I. THE HARM OF EPISTEMIC VIOLENCE

In this Part we frame the Article, elucidating how we arrived at epistemic violence as the appropriate theoretical frame to contextualize Rell's experience as a participatory legal scholar. We start with our method in Section I.A. In explaining the iterative process that shaped the development of this particular Article, we hope that others, who have an eye toward growing their own PLS projects, can gain insights into what the production of this genre of legal scholarship looks like in practice. At the same time, we are cautious to say that while this process was ultimately generative for us, the production of PLS is necessarily contextual and relational. There is no one-size-fits-all methodology, if it should even be called a methodology at all.[16]

The heart of this Article can be found in Section I.B. Here, Rell recounts his road to becoming a participatory legal scholar, and in the process reveals all the walls, visible and invisible, that have shaped his life. He documents the experience of exclusion, growing up in the shadow of the walls of a university that would one day consume his old neighborhood—the place he most associates with community. In this Section, he also traces his path from living there to living behind the walls of another institution—a correctional one. There, he would later learn that researchers on the other side of the walls of educational institutions, much like the one he grew up alongside, were speaking on his behalf, but without really knowing him. Ironically, his journey ends where it started—yet with a different destination in mind. With his newfound freedom, Rell now studies and teaches at the university that once excluded him as a child. In partnership with Rachel, he also produces legal scholarship that is

16. *See* López, *supra* note 1, at 1825 ("The practice of PLS is probably more akin to an approach or a mindset than a methodology, so those looking for a step-by-step guide to how such partnerships can be realized will be sorely disappointed.").

contextualized by his life experience, opening the door to a new model of knowledge production and exploration that more fully reflects the experience of the law as it is lived. It is legal scholarship not about or for him, but by him. In more ways than one, Rell has breached the walls that threatened to enclose him.

This Part concludes in Section I.C by situating Rell's experience within the framework of epistemic violence. It describes what Spivak calls the two-handed engine of epistemic violence. On one hand, Spivak identifies how the imperial ruling class silenced the subaltern, erasing local forms of knowledge through law and education. On the other hand, Spivak also discusses how intellectual elites perpetuate that muting by speaking for the subaltern and presuming that their interests are identical. Likewise, Rell's voice has been muted not only by criminal law, which incentivizes criminal defendants to remain silent and sanctions them when they choose to speak (as detailed further in Part II), but also by academics who presume to know what's best for all incarcerated individuals and speak on their behalf.

A. METHODOLOGY

As PLS has gained ground in the legal academy, we've often been pressed to deliver a concrete step-by-step method for arriving at the production of a law review article. People, particularly academics, want the "how-to" version of methodology. Yet, the method of PLS is not so easily reduced. As described in *Participatory Law Scholarship*, the methodology of this genre of legal scholarship is intrinsically relational.[17] Driven by a theory of knowledge that emphasizes the discovery of "truth" collectively, rather than singularly, PLS is dialectic.[18] By this, we mean that the production of knowledge occurs in dialogue with others who approach the law from different vantage points—one primarily informed by the study of law on the page and the other by the experience of bearing its bluntest consequences.[19] In the spirit of Paulo Freire, PLS involves praxis—a process of action and

17. López, *supra* note 1, at 1818–20 (describing how the method and epistemology of PLS are fundamentally relational).

18. *Id.* at 1805, 1818–19 (explaining how PLS derives its theory of knowledge from dialectical philosophy, which is inherently more relational and collective than the individualistic logic of the Enlightenment Era).

19. *Id.* at 1805–06, 1813 (arguing that those who bear the bluntest consequences of the law have insights into the law, which are critical to understanding how the law operates in practice and where it might need upending).

reflection to transform the world—through conversation.[20] The method used to arrive at this particular Article illustrates the relational and reflective nature of PLS.

In articulating our method here, we are cognizant of the risk of creating an archetype. The challenge with developing a new method as you practice it is that you don't want your way to be defined as the only way. Ultimately, we believe that there are multiple paths to arriving at critical legal imagination, none more ideal than the other (if traveled in earnest).[21] In this spirit, Rachel López offers her reflections on the process of developing this Article, believing that it can provide a more concrete sense of what this approach might look like in practice as well as what she learned about the challenges associated with this method (and herself) from coproducing this particular Article.

* * *

This Article was meant to be another.

As a follow up to *Participatory Law Scholarship*, which was written from my perspective as an academic coauthor of PLS in order to "reflect on and be transparent about the commitments and epistemology that led me to be part of this enterprise," by contrast, this piece would be written from the perspective of a nonacademic coauthor of PLS.[22] It was meant to address the question often posed to us: Why would nonacademics choose to invest their time and energy into producing legal scholarship?

Much like our past two pieces, Rell and I started this one with a conversation that organically built on past conversations. We set out the basic contours, and, as is our typical practice, I drew up some prompts to focus Rell in the writing process. For example, I developed the following questions based on our conversation:

- Why did you decide to partner to write *Redeeming Justice* and other PLS writing projects?

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20. *Id.* at 1810–11 (discussing Freire's Pedagogy of the Oppressed, which involves learning about the material world through critical reflection and conversation with others, who then take collective action to transform the world for the better (first citing PAULO FREIRE, PEDAGOGY OF THE OPPRESSED 79 (Myra Bergman Ramos trans., 2018); and then citing Wayne Au, *Epistemology of the Oppressed: The Dialectics of Paulo Freire*, 5 J. FOR CRITICAL EDUC. POL'Y STUD. 175, 184–85 (2007))).

21. *See id.* at 1824 (proposing PLS "as one site where these new worlds of law can be imagined").

22. *Id.* at 1809.

- What are your goals in these projects?
- Why engage in legal scholarship instead of some other form of advocacy or law reform effort?
- Do you see PLS as increasing access to justice or democratizing the law?
- What are the benefits of partnering with a law professor as opposed to writing on your own?

As these questions reveal, I conceived of this as an outward facing project, but ultimately, I ended up once again looking backward at myself. The hard lessons reflected on in *Participatory Law Scholarship* were staring right back at me: "PLS is not just about 'changing something "out there"' but is 'also about both changing ourselves and our mental models, and our relationships between the out there and the in here.'"[23]

The original title of this Article was "*The Demosprudential Potential of Participatory Law Scholarship*."[24] Lifting up the ideation of the right to redemption documented in *Redeeming Justice* as an example, I had envisioned this project being a reflection on how PLS can contribute to demosprudence—the study of how ordinary people, often acting collectively, participate in the making of legal meaning by shifting societal narratives that inform the law.[25] The idea had emerged at an event we had organized to "explore the underlying philosophy of PLS and how it relates to other types of scholarship" at Northwestern University's law school,[26] when movement law scholar Amna Akbar

23. *Id.* at 1827–28 (quoting Koen P.R. Bartels & Victor J. Friedman, *Shining Light on the Dark Side of Action Research: Power, Relationality and Transformation*, 20 ACTION RSCH. 99, 103 (2022) (quoting Hilary Bradbury et al., *A Call to Action Research for Transformations: The Times Demand It*, 17 ACTION RSCH. 3, 8 (2019))).

24. This article will be part of a symposium organized by the *Virginia Law Review* and coauthored with Rachel López, Kempis Songster, and Gerald Torres. *See* Kempis Songster et al., *Participatory Law Scholarship as Demosprudence*, 110 VA. L. REV. ONLINE 298 (2024).

25. *See* Lani Guinier & Gerald Torres, *Changing the Wind: Notes Toward a Demosprudence of Law and Social Movements*, 123 YALE L.J. 2740, 2749–56 (2014) (describing demosprudence as an analysis of "the role of citizen mobilizations in authoring new laws, changing the meaning of existing laws, and producing a more democratic understanding of how power functions in representational relationships").

26. Sarah Lawsky, *Workshop on Participatory Law Scholarship—Announcement*, PRAWFSBLAWG (Jan. 31, 2023), https://prawfsblawg.blogs.com/prawfsblawg/2023/01/workshop-on-participatory-law-scholarship

commented that our work was reminiscent of demosprudence. The concept so neatly fit what I understood the project to be that I began researching and thinking about how this Article could take shape.

While I thought that Rell and I shared this understanding, Rell's responses to my questions revealed a much different piece. It was not at all what I expected and did not easily fit into the vision of the Article I had imagined. For him, participating in PLS and the making of the right to redemption was much more personal, intimately bound to his experience of growing up in the shadow of the institution that was my academic home for over a decade and the felt harm of being voiceless in the processes that inform his own destiny. But reading his contributions separately, I struggled to see the connections clearly. Part of the problem was that I didn't want to let go of that initial vision, thinking that if I phrased my question another way, I might elicit a different response. For months, we were stuck in the same conversation. I became frustrated, wondering if I had imagined a different understanding of the project we collectively created. While *Redeeming Justice* nearly wrote itself, this piece couldn't get off the ground.

At the same time, hearing Rell recount his experience of physical and intellectual exclusion from the mechanisms of knowledge production by the place that was my academic home for most of my professional life made me reflect more deeply on the role that I—and academics like me—have played in marginalizing the voices of those who live in the neighborhoods surrounding our campus. Upon sharing these reflections with another academic, Kish Parella, she remarked that she could not help but draw parallels between Rell's experience and Gayatri Chakravorty Spivak's seminal piece on epistemic violence.[27] When I explained the concept to Rell, something clicked into place. It deeply resonated with his experience, and he agreed that it was the theoretical anchoring we needed. From there, the work took on a life of its own and a few weeks later we had nearly a complete draft. In reflecting on the process, Rell recounted his

-announcement.html [https://perma.cc/27BM-NQN8] (announcing a PLS workshop organized by Northwestern University Law Review and Drexel Law Review).

27. *See generally* Spivak 1988, *supra* note 13.

experience in creative writing when he often sets out in one direction only to land in another as he puts pen to paper.

Later, I came to realize that my understanding of the ideation of the right to redemption and the role of PLS in movements was not imagined. Rather, it was informed by the thinking of Kempis Songster, known to us as Ghani, our other coauthor of *Redeeming Justice*. But why had I presumed that Ghani and Rell shared the exact same understanding of and goals for the right to redemption—that the right took shape in the same way for each of them? Did I assume that Ghani and Rell shared the same ethos in their approach to developing the right to redemption? Was I making a Foucaultian mistake of representation described below?[28] If so, how had this happened?

Reflecting on this experience within Spivak's framework of epistemic violence, I realized that I had pushed myself into the same academic box I had been trying to escape. Craving some semblance of generalizability from the PLS project, others have often asked me how I know that my coauthors' lived experience is emblematic of their movement or incarcerated people more broadly. Put more crudely, they seem to be asking, "Are they 'a representative sample' of the subject?" In response to these inquiries, I realized that in the process of trying to translate their thinking into the language of academics, or "transcoding," as Spivak puts it, I was generalizing their experience, transposing one coauthor's thinking for the other.[29] Worse still, by jumping too quickly to find a container—a theoretical box to contextualize Rell's lived experience—I had constructed another set of invisible walls to "frame" the piece.[30]

These insights have helped me to further clarify the methodology of PLS and particularly the role of the academic partner in this genre of legal scholarship. The PLS project is not about

28. *See infra* Part I.C.

29. Ritu Birla, *Postcolonial Studies: Now That's History* ("If 'Can the Subaltern Speak?' unpacked the politics of representation, training in the imagination opens new ways to negotiate those politics, to engage with the other, 'not to transcode,' as Spivak puts it, but to 'draw a response.'" (citing GAYATRI CHAKRAVORTY SPIVAK, DEATH OF A DISCIPLINE 12–13 (2003))), *in* CAN THE SUBALTERN SPEAK?: REFLECTIONS ON THE HISTORY OF AN IDEA 87, 98 (Rosalind C. Morris ed., 2010).

30. Perhaps this speaks to a larger problem with the American system of legal precedent in which lawyers and judges are incentivized to jump too quickly to adopt formulaic legal frameworks and standards that do not reflect the lived experience of law.

creating a generalized ideal of the experience of "subaltern" or "the incarcerated," but rather to disrupt such an ideal. Instead of representing their desires and interests, we need to learn better how to "respond, responsibly"[31] and better "represent . . . ourselves."[32] In doing this, Spivak asks us to develop "an ethics of responsibility—in the sense of cultivating a capacity to respond to and be responsive to the other, without demanding resemblance as the basis of recognition."[33] This is part of the impetus in calling for PLS: it creates space for conversations in which those marginalized can speak in a multitude of voices about their experience, whether it lines up with the majority of society or not.

From this experience, I draw a lesson that serves as the foundation for this Article. As academics we often focus on the injustice "out there" without grappling with the injustice that lurks within. This Article aims to do precisely the latter. We argue that if academics want to rectify epistemic injustice, the process must start within, by renegotiating their own notions of expertise.

B. RELL'S EXPERIENCE OF EPISTEMIC VIOLENCE

In this Section, Rell recounts his experience growing up in the shadow of Rachel's academic home of over ten years. It addresses all the points of exclusion, physical and intellectual, that constructed visible and invisible walls within Rell's life.

* * *

I grew up on 43rd and Ludlow Street a few short city blocks from Drexel University's football field. As a child, Drexel's field was a part of my extended neighborhood playground. This institution of higher learning has always been a part of what I was familiar with, but only in the sense of its name and the fact that it existed within the same space as I did. Although I was aware of its existence, and that we shared the same community space, Drexel was not a part of that community. There was this impenetrable barrier of invisible walls where the criteria for

31. Birla, *supra* note 29, at 98 ("It is also where one learns to respond, responsibly.").

32. Spivak 2010, *supra* note 15, at 42 ("To confront this group is not only to represent (*vertreten*) them globally in the absence of infrastructural support, but also to learn to represent (*darstellen*) ourselves.").

33. Birla, *supra* note 29, at 93.

admittance was a closely guarded secret kept from the people who looked like me.

I was a child living in a materially deprived environment where the very things I lacked were the measuring sticks of my self-worth. It was an extremely deep rabbit hole that had very few avenues of escape. Unbeknownst to me only a few short city blocks away, right behind those barriers of invisible walls, there existed a road to a different kind of life circumstance, but it might as well have been miles and miles away. Growing up next to an institution of higher education, I never saw it as a vehicle for my own advancement. Instead, the unspoken message—communicated through sideways glances and guarded buildings—was that I was not welcome there. But there was another road though, one that was very visible to me, which was the one I ended up traveling on. A road paved with human brokenness that led to my confinement behind other more visible walls made of concrete and steel.

My mother was the oldest out of thirteen siblings—eight boys and five girls. My uncles were my heroes and all of them spent time in prison, so the talk that I was accustomed to included conversations that detailed the names of penitentiaries. So as a boy, prison was not a scary place to me. It was a place that had become normalized. It was a place that some of us believed boys went to become men—a perverted rite of passage. This was the road that I traveled, and it became a thirty-year-long journey.

In 1992, I was tried and convicted of second-degree murder and subsequently condemned to die in prison, a fate I narrowly escaped. While in prison, I found a window that became my getaway. For most of my life, I understood freedom in terms of not being restricted or confined to a space. Since thirty out of my fifty-four years of life on Earth were spent in prison, my life circumstances weighed heavily on my conception of what freedom was. The very idea of freedom for me at the time was limited by the spatial context to which I had been condemned, and it would remain that way for quite some time.

My father passed away in 2000, eight years into my incarceration. But during those eight years while I was blessed to have him in my life, he would always try to get me to broaden my conception of freedom. He quoted this line from a poem to me all the time that said freedom isn't just about iron bars and

concrete walls; freedom is a state of mind.[34] He would continuously say to me: "Terrell, you must write. Writing is the key to your liberation; it can free you." At the time, when he said those things to me, I thought to myself what I need most now is a lawyer, not a pen. This limited conception of freedom imprisoned me. It severely crippled my ability to understand what he was trying to teach me.

It wasn't until after my father passed away that I decided to do what he suggested. Not because I understood it, but rather as a tribute to him. I began to write these reflective pieces and personal essays. After some time, I began to realize that writing allowed me to transcend the boundaries that I had constructed around myself. It allowed my imagination to take flight, to soar high above myself and outside those constraints of fear, self-doubt, and self-pity. Writing allowed me to see myself and all of my insecurities laid bare on the page. It was my truth unadulterated, stripped clean of all the things that were imprisoning me.

It was then that I understood what my father was telling me all those years ago. Writing was the key that unlocked the door to understanding that freedom is much, much more than moving beyond barriers of confined space. Freedom is being able to think, to listen, to be critical of yourself and others without fear, to speak truth to lies. Freedom is the mind breaking free of limitations, both imposed by others and ones imposed by the self. Freedom is poetry, it's jazz, it's freestyle rap, it's being authentically you, it's loving unconditionally, and it's standing up against tyranny when death is a likely outcome. Now I understand what he was trying to get me to see by imploring me to write—what he meant when he was telling me that writing was the key to my freedom. It was a warning, because he knew that we can all place limitations on ourselves that prevent us from reaching our full potential, and if I failed to understand this, life itself would become my prison. And that's the worst kind of prison there is.

My interest in writing led me to pursue a degree from Villanova University while I was incarcerated. This access to higher education gave me a better glimpse at the stranger who lived behind invisible barriers all those years ago in West

34. Richard Lovelace, *To Althea, from Prison*, POETRY FOUND., https://www.poetryfoundation.org/poems/44657/to-althea-from-prison [https://perma.cc/3W7J-5788].

Philadelphia. But much like I didn't know the stranger, I came to realize that he also didn't know me. As I digested as much reading about criminal law as I could swallow, I realized that this stranger was producing scholarship that influenced the laws that governed me. This stranger also seemed to run people through an assembly line of higher education bereft of any direct knowledge of impact or context that the scholarship addressed.[35] And this in turn created a cycle in which people reproduced other people like them who created more scholarship that interpreted laws that ultimately influenced how I and others like me would be treated. As a convicted felon, I was perceived as having no credibility to inform my life circumstances. In this way, my confinement was absolute, stretching far beyond the physical constraints imposed by iron bars and concrete. This was an incarceration of thought and of voice.

Yet, at the lowest point during my confinement, I found a way to breach the invisible walls that separated me from being the author of my own liberation, ultimately allowing me to walk within the forbidden halls of the stranger's house. I had been in prison for twenty-nine years when the world was gripped by the worst pandemic since the Spanish Flu of 1918, and the prison went into sudden lockdown. That meant that we were let out of our cells for fifteen minutes every other day. I had never felt the weight of confinement so acutely. There was no escape, no respite. My brain began to atrophy. Most days during the lockdown, I was encapsulated within a small dehumanizing space—no bigger than some bathrooms—surrounded by impenetrable walls that blocked out all sights and sounds. I felt totally trapped.

When I first agreed to write *Redeeming Justice*, I viewed it as a way to reactivate my mind and feel alive again. I didn't really have any higher purpose than mental stimulation. Soon, however, it became the full realization of my father's teachings. Writing *Redeeming Justice* became my key. It was a key to being free from both my emotional and psychological confinement that

35. Swethaa S. Ballakrishnen and Sarah B. Lawsky point out this cycle is particularly significant in the context of law schools because they operate as "feeder sites for those who create and populate what becomes law in the lived world." Swethaa S. Ballakrishnen & Sarah B. Lawsky, *Law, Legal Socializations, and Epistemic Injustice*, 47 L. & SOC. INQUIRY 1026, 1037 (2022) (first reviewing MEERA E. DEO, UNEQUAL PROFESSION: RACE AND GENDER IN LEGAL ACADEMIA (2019); and then reviewing DEBORAH TUERKHEIMER, CREDIBLE: WHY WE DOUBT ACCUSERS AND PROTECT ABUSERS (2021)).

was suffocating me and later it would become instrumental in my physical liberation as well. It provided me with the vehicle in which my muted voice could be heard. Though we had been developing the concept of the right to redemption for nearly a decade at that point, we had mostly been talking to ourselves. Coauthoring *Redeeming Justice* provided us with a platform to reach out from behind our walls of confinement to a broader audience—our message bolstered by human rights jurisprudence and legal theory.

It also provided me with a vehicle to articulate my own journey towards redemption. Because the right to redemption is a concept initiated by the need for us to recognize the hurt and trauma that we were responsible for, coauthoring *Redeeming Justice* gave me a space to document my own road to redemption. As explained further in Part III, little did I know then that this exercise of self-reflection would set the stage for a year later when I would chart a path to my liberation by explaining my path to redemption to another audience—the Board of Pardons.

For a little over a year now, I've been living outside of those concrete and steel walls that had been my prison for more than half of the fifty-four years that I've been on this Earth. With my newfound freedom, I find myself unfettered by the shackles of fear and self-doubt, traversing the forbidden corridors of academia both as a graduate student and a teacher at the institution that once was a stranger to me.

However, in some respects, the stranger is no longer strange to me. Now upon my release, I've been able to contribute to the growth of a different kind of scholarship, Participatory Law Scholarship. This democratized version of scholarship makes room for the lived experience of people like me, allowing me to contribute to a vision of the law that is informed by context and appreciates the real-world impact of the law. This brand of scholarship threatens traditional norms of exclusion that create strangers in communities of color throughout the country.

As I leave the university and drive home, I ride through my old neighborhood where Drexel University's football field was an extension of my childhood playground. It is a surreal experience because although the neighborhood is still there, it isn't at the same time. For the people who used to reside there are no longer there. Some of the homes and buildings that made up the physical aspects of that community are still there which fills me with

a sense of nostalgia, but many of those structures are gone. Gone is the church where we played tackle football on its lawn; gone are the homes where my extended neighborhood family used to reside; gone is the corner store where we played video games and bought cheesesteaks and hoagies from, all replaced by condos, coffee shops, and wine and spirit stores. The people who populate this new version of my old neighborhood look different as well. I no longer see people who look like me. There is also a feeling of unwelcomeness, as if I am an interloper, as if I do not belong. I'm filled with profound sadness as I drive through, realizing at the same time that my very idea of what community was, is this place, and now it no longer exists.

I also feel like I've come full circle from that young boy who lived in that community in the shadow of a stranger. In some ways, I've become a part of the stranger's home where I have an opportunity to decorate it with ideas that were born out of a place that the stranger has reconstructed. My struggle now is trying to reconcile becoming a part of an institution, both as a student and as a participatory legal scholar, that has encroached upon and erased my childhood home. What gives me solace within this struggle is the knowledge that what was once inaccessible is now accessible through PLS, and with my contribution to that scholarship, my old neighborhood, living vicariously through me, still has a place within the space that it no longer occupies.

C. SPIVAK'S TWO-HANDED ENGINE OF EPISTEMIC VIOLENCE

Rell's reflections on his lived experience of living in the shadows of a university recalls a concept brought to life by Gayatri Chakravorty Spivak in her chapter *Can the Subaltern Speak*?[36] In this seminal piece, Spivak seeks to describe how the subaltern, the lowest strata of society, are deprived of a voice because others in more elite positions assume that they know their interests.[37] Spivak situates her critique within the framework of "epistemic violence," first conceptualized by Michel Foucault as a process by which "a whole set of knowledges" are "disqualified as

36. *See* Spivak 1988, *supra* note 13, at 280–91 (introducing the concept of epistemic violence in postcolonial studies); *see also* Kristie Dotson, *Tracking Epistemic Violence, Tracking Practices of Silencing*, 26 HYPATIA 236, 236, 242–48 (2011) (describing Spivak's understanding of epistemic violence "as a way of marking the silencing of marginalized groups").

37. Spivak 1988, *supra* note 13, at 282–85.

inadequate to their task . . . [and] located low down on the hierarchy, beneath the required level of cognition or scientificity."[38]

Spivak, however, views Foucault's analysis as incomplete, and this is where her biggest contribution can be located. She posits: "But what if that particular redefinition was only a part of the narrative of history in Europe as well as in the colonies? What if the two projects of epistemic overhaul worked as dislocated and unacknowledged parts of a vast two-handed engine?"[39] For Spivak, epistemic violence was critical to the imperial project not just because it imposed Western European thought upon the subjugated colonial subject, but also because it enabled others to speak on behalf of the colonized.[40]

At the time of Spivak's writing, the first hand of the engine was well-trodden territory.[41] Specifically, at that time, many scholars, including those who made up the emerging subaltern studies movement, were exploring how imperial governing forces had hoisted their education and law on their colonies, thereby erasing precolonial knowledge and identity.[42] In Spivak's words, this aspect of the colonial project involved constituting Europe as the Subject and the colonial subject as the Other, which is merely a shadow of the European Subject.[43] In that moment, many scholars in the Subaltern Studies movement as well as

38. *Id*. at 281 (citing Michel Foucault, *Two Lectures*, *in* POWER/KNOWLEDGE: SELECTED INTERVIEWS AND OTHER WRITINGS 1972–1977, at 78, 82 (Colin Gordon ed., Kate Soper trans., 1980)).

39. *Id*. at 281.

40. *Id.*; *see also* ANKE BARTELS ET AL., POSTCOLONIAL LITERATURES IN ENGLISH: AN INTRODUCTION 153 (2019) (describing how the European episteme not only erased and dismissed indigenous knowledge, but also presumed that it understood it completely).

41. *See* Spivak 2010, *supra* note 15, at 35 ("Until very recently, the clearest available example of such epistemic violence was the remotely orchestrated, far-flung, and heterogeneous project to constitute the colonial subject as Other . . . . It is well known that Foucault locates one case of epistemic violence, a complete overhaul of the episteme, in the redefinition of madness at the end of the European eighteenth century.").

42. *See id*. at 36–37 (describing how the British employed law and education to make the "colonial subject" in their image); BARTELS ET AL., *supra* note 40, at 153 ("Spivak took issue with Foucault because according to her, he ignored the violent knowledge production of imperialism.").

43. *See* Spivak 2010, *supra* note 15, at 35 (explaining the process by which Europe centers itself).

those adopting critical radical discourse in the West were focusing their efforts on recovering "the voice" of the subaltern.[44]

Spivak believes that such attempts of recovery are suspect.[45] Why? Because, in addition to imperial silencing, Spivak argues that they constitute the other hand of the engine of epistemic violence—that is, the elites who speak on behalf of the subaltern.[46] In particular, she provides an incisive critique of Foucault and another French poststructuralist theorist, Gilles Deleuze.[47] Spivak points out that these two scholars brandished the "concrete experience" of those in "a factory, in a school, in barracks, in a prison, [or] in a police station."[48] Yet, when it came to evoking that "concrete experience," the intellectual is "the one who diagnoses the episteme."[49] The intellectual renders themselves "transparent," merely a reporter on the oppressed and an analyst of power and desire.[50] As she more bitingly puts in her rewrite of this chapter: "The ventriloquism of the speaking subaltern is the left intellectual's stock-in-trade."[51]

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44. Rosalind C. Morris, *Introduction* to CAN THE SUBALTERN SPEAK?: REFLECTIONS ON THE HISTORY OF AN IDEA 2, 4–5, 11–14 (Rosalind C. Morris, ed., 2010).

45. Spivak 1988, *supra* note 13, at 307 (explaining that her "essay operate[d] on the notion that all such clear-cut nostalgias for lost origins are suspect, especially as grounds for counterhegemonic ideological production").

46. BARTELS ET AL., *supra* note 40, at 153 ("Moreover, she charged [Foucault] with unquestioningly assuming the capability of the Western intellectual to represent the Other.").

47. Spivak 1988, *supra* note 13, at 289–90 ("That Deleuze and Foucault ignore both the epistemic violence of imperialism and the international division of labor would matter less if they did not, in closing, touch on third-world issues . . . . Yet if [the Other's] situation is universalized, it accommodates unacknowledged privileging of the subject. Without a theory of ideology, it can lead to a dangerous utopianism.").

48. Birla, *supra* note 29, at 90–91 ("Foucault and Deleuze resist 'speaking for' the oppressed, but their very presumptions coincide with both a positivist-essentialist assumption of 'real experience' as well as a turning away from the dynamics of representation that must inform the intellectual's 'difficult task of counter-hegemonic ideological production.'" (citation omitted)).

49. Spivak 1988, *supra* note 13, at 275.

50. *See* Spivak 2010, *supra* note 15, at 34 ("[T]he intellectuals, who are neither of these S/subjects, become transparent in the relay race, for they merely report on the non-represented subject and analyze (without analyzing) the workings of (the unnamed Subject irreducibly presupposed by) power and desire.").

51. *Id.* at 27.

According to Spivak, this descriptive role of the intellectual, particularly the leftist intellectual, reproduces the same "division of labor" by placing the intellectual in the role of "speak[ing] for" the subaltern.[52] She exposes an "unrecognized contradiction within a position that valorizes the concrete experience of the oppressed, while being . . . uncritical about the historical role of the intellectual[.]"[53] Most troublingly, in speaking for them, academics portray "the Other" as all having the same interests and desires because they possess a singular experience and identity.[54] Further to this point, she critiques what she calls "native informants for first-world intellectuals interested in the voice of the Other" for portraying the "the colonized subaltern subject" as speaking with one homogeneous voice.[55] As will be discussed in greater detail in Part II.B, legal academics often fall into this trap as well, assuming that all marginalized people have the same set of interests and desires.[56] And even those legal academics who rightly call us to listen to the marginalized often do so in conversation with one another, rather than with those most acutely affected by law's injustice.[57]

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52. Spivak 1988, *supra* note 13, at 272–74, 275–76 (explaining how leftist intellectuals reproduce the domination of the ruling class "in and by words" when they evoke lived experience as part of their ideology).

53. *Id.* at 275.

54. *Id.*; Spivak 2010, *supra* note 15, at 27–28 ("Neither Deleuze nor Foucault seems aware that the intellectual within globalizing capital, brandishing concrete experience, can help consolidate the international division of labor by making one model of 'concrete experience' the model."); *see also* Birla, *supra* note 29, at 88 ("Here, the analysis draws attention to the nearly infinite ways in which what has been cast as Other can become a 'Self,' by appropriating otherness as the basis of an identity and by postulating a unitary subject with agency in the place of the other. The exemplary instance here is that of anticolonial nationalism, where an investment in all that is 'native' and 'authentic' serves to reproduce colonial logics of othering even as the emergent nation-state claims liberation.").

55. Spivak 2010, *supra* note 15, at 38 ("Certain members of the Indian elite are of course native informants for first-world intellectuals interested in the voice of the Other. But one must nevertheless insist that the colonized subaltern subject is irretrievably heterogeneous.").

56. Morris, *supra* note 44, at 8 ("The hundreds of shelves of well-intentioned books claiming to speak for or give voice to the subaltern cannot ultimately escape the problem of translation in its full sense.").

57. *See, e.g.*, Spivak 2010, *supra* note 15, at 23 ("The participants in this conversation [Foucault and Deleuze] emphasize the most important contributions of French poststructuralist theory . . . . Yet the two systematically and

Spivak best illustrates how the two-handed engine of epistemic violence operates through the practice of the *sati*, translated as the "good wife," in India.[58] This practice, which was outlawed during the colonial period, occurs when a widow engages in self-immolation upon the death of her husband.[59] Spivak surfaces the two narratives that emerged about the *sati*, one coming from the British imperial governing power and the other from the patriarchal nativist.[60] The British imperial narrative constructs the *sati* as an innocent victim in need of saving through the criminalization of *sati*, while the patriarchal nativist narrative represents her as wanting to die as a tribute to her husband.[61] Pursuant to either narrative, her voice is constructed, and she becomes an instrument to further the agenda of either male authority.[62] Spivak contrasts these dueling portrayals of widow-suicide with the case of Bhuvaneswari, an unwed young woman who at the age of sixteen or seventeen hung herself in

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surprisingly ignore the question of ideology and their own implication in intellectual and economic history.").

58. *See* Spivak 1988, *supra* note 13, at 305.

59. *Id.* (describing the process of *sati* whereby a widow would commit suicide by burning herself on her dead spouse's deathbed).

60. *See* BARTELS ET AL., *supra* note 40, at 153 (describing the two frameworks identified by Spivak).

61. Spivak 1988, *supra* note 13, at 300 (referencing the few examples in Hindu antiquity that describe self-immolation as "being proofs of enthusiasm and devotion to a master or superior"); *id.* at 305 (describing the criminalization of the practice of *sati* as "white men, seeking to save brown women from brown men"); *see also* BARTELS ET AL., *supra* note 40, at 153 ("British imperialist discourse (which also includes Western feminist voices) constructs the widow as the helpless victim who has to be saved as part of the civilizing mission, while native patriarchy represents her as a willing participant in a time-honored tradition.").

62. Spivak 1988, *supra* note 13, at 306 ("Between patriarchy and imperialism, subject-constitution and object-formation, the figure of the women disappears, not into a pristine nothingness, but into a violent shuttling which is the displaced figuration of the 'third-world woman' caught between tradition and modernization."); *see also* Birla, *supra* note 29, at 89 ("Here the very subjectivity of the female emerges in a process of dissimulation. She appears in this discourse as the subject of choice, a free-willing agent who chooses submission and death. To expose this dissimulation, Spivak charts the ways in which the 'voice' of the female is constructed as instrument, either for indigenous male authority or colonial patriarchy. The subjectivity of the woman here is not only read as the violent and unstable effect of an agency not her own, but she is revealed to us as an instrument of that agency. Indeed, her very instrumentality can be traced to the dissimulations entailed by the idea of her 'choice.'").

North Kolkata in 1926.[63] According to Spivak, she waited until she was menstruating so as to rebuke any suspicions that she killed herself because she had become pregnant out of wedlock.[64] At the time, her act was considered to be "a case of delirium rather than sanity."[65] Decades later, it was discovered that she was part of the Indian independence movement and killed herself because she could not bring herself to commit political assassination—a task entrusted to her in furtherance of the movement.[66]

Drawing from this example, Spivak concludes that the subaltern cannot speak.[67] Spivak comes to this conclusion because Bhuvaneswari's message remained underheard by future Indian women, despite her efforts at speaking "by turning her body into a text of woman/writing."[68] Indeed, Spivak's academic contemporaries found her story uninteresting, and Bhuvaneswari's nieces continued to believe that her suicide was an act of shame over her "illicit love."[69] Her critique in this sense is not geared towards the colonial authorities who enacted law framed by their version of the *sati* story but rather at Bhuvaneswari's descendants and Indian academics who failed to hear her message and take up her fight.[70]

Spivak and other academics drawing from her work further extend this critique to post-colonial and radical academics who claim to speak for the subaltern in several ways.[71] First, when the subaltern speak for themselves, their voices are not

63. Spivak 1988, *supra* note 13, at 307–08.

64. *Id.*

65. *Id.* at 308.

66. *Id.* at 307.

67. *Id.* ("There is no space from which the sexed subaltern subject can speak."); *see* Spivak 2010, *supra* note 15, at 63 ("The subaltern as female cannot be heard or read.").

68. Spivak 2010, *supra* note 15, at 64.

69. Spivak 1988, *supra* note 13, at 308.

70. Spivak 2010, *supra* note 15, at 64 (explaining that she is "not laying the blame for the muting on the *colonial* authorities here," but "pointing, rather, at her silencing by her own emancipated granddaughters").

71. *See, e.g.*, Birla, *supra* note 29, at 93 ("Spivak is concerned in this section of the essay to avoid reproducing the terms of a naive binary between Europe and its Other; she is not repudiating European philosophy in the interest of something that would be more transparently reflective of a subaltern position. Deleuze and Foucault do not stand for all of the European intellectual tradition. Rather, they represent a particular failure, within a particularly promising trajectory.").

recognized as constituting knowledge.[72] Furthermore, when their voices are translated by the elite, they are often co-opted and portrayed as generalizable to the entirety of the subaltern.[73] However, as Spivak emphasizes, there is no one voice that can capture the heterogeneity of their experiences and interests.[74]

While Spivak believes that any conversational interaction between a speaker who is positioned as subaltern and institutionality leads to the speaker no longer being subaltern, she says "this is absolutely to be desired."[75] For Spivak, subalternity is not an identity, but rather situational.[76] The subaltern are defined by their positionality of lacking access to power.[77] When someone ceases to occupy this position, they are no longer subaltern.[78]

As the next Part will describe, Rell has experienced both hands of the engine. The feeling of invisibility that Rell experienced—both as a child living in the shadow of an institution of higher education and then later as a "convicted felon" whose voice was excluded from the legal discourse—is a form of epistemic violence, in that it facilitates the destruction of local knowledge and identity.

II. TWO ENGINES OF EPISTEMIC VIOLENCE IN THE LEGAL ACADEMY

Taking inspiration from and written in conversation with Rell's reflection, Part II seeks to expose how this two-handed engine operates in the legal academy by exploring how the logics

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72. BARTELS ET AL., *supra* note 40, at 153 ("This does, of course, not mean that subaltern women do not have the capacity to utter words—rather, their words cannot aspire to the status of knowledge within the imperial and patriarchal episteme.").

73. *See, e.g.*, Spivak 1988, *supra* note 13, at 308 ("[Jacques] Derrida marks radical critique with the danger of appropriating the other by assimilation. He reads catachresis at the origin.").

74. *See id.* at 273–75.

75. Spivak 2010, *supra* note 15, at 65.

76. *See* Morris, *supra* note 44, at 8 ("Subalternity is less an identity than what we might call a predicament, but this is true in very odd sense.").

77. *Id.* ("For, in Spivak's definition, it is the structured place from which the capacity to access power is radically obstructed.").

78. *Id.* ("To the extent that anyone escapes the muting of subalternity, she ceases being a subaltern. Spivak says this is to be desired. And who could disagree? There is neither authenticity nor virtue in the position of the oppressed. There is simply (or not so simply) oppression.").

articulated by Spivak are at play within law and academic institutions more broadly. Much like the dynamics illuminated in Spivak's seminal essay, the first hand of the engine of epistemic violence is well-documented within the legal academy. Indeed, as Part II.A explicates, legal scholars have frequently acknowledged how law in multiple domains, but especially in criminal law, works to mute the voices of those who bear the bluntest consequences of law. Still, this Part makes an important contribution to this literature by cataloging all the ways the law or legal expectation silences the marginalized. We employ the term *legal smothering* to describe when the subaltern silence themselves either because the law prevents them from speaking for themselves or only recognizes testimony that aligns with the dominant discourse in law. Conversely, *legal quieting* occurs when the subaltern speak, but their speech is discredited by law or in legal practice due to bias and social stigma associated with their status.

At the same time, while numerous academics have written about how the law silences the marginalized, they have failed to acknowledge how their own work perpetuates this silencing. As Rell explains, the academic stranger next door regularly writes about and speaks for him (or people in his situation) without really knowing him. Indeed, scholars often evoke subaltern stories in the service of their own arguments by making claims about what is best for the subaltern based on a generalized notion of their interests or perpetuating narratives of their experience based on stereotypes. The legal academy has yet to fully come to terms with this aspect of epistemic violence—namely, its own role in exacerbating this muzzling. Part II.B documents this second hand of the engine of epistemic violence, which we term *academic silencing*, detailing how scholars "speak for" marginalized communities.

Rell also highlights another dimension of academic violence further explored in this Section: *academic displacement*. Rell bore witness to the dramatic transformation of his community, from a place that nurtured him as a young boy to a commercial corridor that is unrecognizable and unwelcoming to him. Part II.B thus also documents the role that epistemic violence played in that transformation. Like many universities across the United States, responding to government and economic incentives, Drexel partnered with other academic institutions and later real estate developers to change the landscape and demographics of

the neighborhoods surrounding its campus—neighborhoods often studied by its faculty—in the name of knowledge production and innovation. This Part therefore contextualizes Rell's observations through an exploration of the history of academic institutions in displacing and discrediting the episteme of the marginalized communities often at the heart of academic research. Paradoxically, however, this Part also explains how Drexel's unique commitment to "civic engagement" made our research partnership possible, thus exposing both a tension and a promise of a future participatory paradigm for academic institutions.

A. LEGAL VIOLENCE: THE FIRST HAND OF THE ENGINE

In Spivak's seminal essay, the first hand of the engine of epistemic violence is portrayed as institutional, meaning that the destruction of local knowledge and identity is accomplished systemically through governing institutions.[79] This Section explains how the institutional hand of the engine functions today in the United States through law. Legal scholars often document how the law excludes the testimony of the marginalized either de jure or de facto. In this Section, we contribute to this dialogue by explaining how silencing within the law maps onto the diverse types of epistemic violence identified by philosophers.

We are by no means the first to say that the law perpetuates the silencing of the marginalized.[80] Legal scholars have long documented how the law excludes and mutes the subaltern, sometimes using the framework of epistemic injustice, a concept

79. Spivak 2010, *supra* note 15, at 36–37 (describing how the British employed law and education to make the "colonial subject" in their image); BARTELS ET AL., *supra* note 40, at 153 ("Spivak took issue with Foucault because according to her, he ignored the violent knowledge production of imperialism.").

80. *See, e.g.*, Janet E. Ainsworth, *In a Different Register: The Pragmatics of Powerlessness in Police Interrogation*, 103 YALE L.J. 259, 315–19 (1993) (describing how legal doctrine requiring more direct invocation of *Miranda* rights disadvantages women and members of marginalized ethnic groups with different cultural norms around speech); Barbara Bezdek, *Silence in the Court: Participation and Subordination of Poor Tenants' Voices in Legal Process*, 20 HOFSTRA L. REV. 533, 593–96 (1992) (documenting how pro se tenants from socially subordinated groups are silenced in court due to cultural differences in speech and claim-making); Mari J. Matsuda, *Voices of America: Accent, Antidiscrimination Law, and a Jurisprudence for the Last Reconstruction*, 100 YALE L.J. 1329, 1355 (1991) (explaining that while employment discrimination on the basis of someone's accent is illegal, employers often successfully evoke the defense that their accent impedes job performance, thereby permitting accent discrimination in practice).

developed by subsequent philosophers that is analogous to epistemic violence. This Section catalogues this literature, describing the various ways that the law suppresses the voices of the subaltern. Drawing from a framework developed by Feminist philosopher Miranda Fricker, which is instructive in understanding how epistemic violence operates by law, it categorizes the various practices of legal silencing into a typology.[81] Specifically, Fricker distinguishes between two types of epistemic violence: testimonial injustice and hermeneutical injustice.[82] Testimonial injustice occurs when "prejudice causes a hearer to give a deflated level of credibility to a speaker's word."[83] On the other hand, "hermeneutical injustice" describes when "a gap in collective interpretive resources puts someone at an unfair disadvantage . . . [in] making sense of their social experiences."[84] Fricker describes hermeneutical epistemic injustice as "the injustice of having some significant area of one's social experience obscured from collective understanding owing to a structural identity prejudice."[85] Fricker explains that this "exclusion is based on the person's identity as a member of a disfavored social group."[86] In the Subsections that follow, we transpose these concepts into the framework of *legal silencing*, explaining how the law quiets and smothers the speech of the subaltern, as well as systematically delegitimizes the episteme of the subaltern.

1. Testimonial Injustice

According to Fricker, testimonial injustice is a form of credibility deficit, which occurs when a speaker is deemed less credible than she otherwise would be due to prejudice.[87] Fricker is

81. Miranda Fricker uses the term "epistemic injustice," rather than epistemic violence, but definitionally they are nearly identical, with Fricker defining epistemic injustice as "a wrong done to someone specifically in their capacity as a knower." MIRANDA FRICKER, EPISTEMIC INJUSTICE: POWER AND THE ETHICS OF KNOWING 1 (2007). Oddly, however, Fricker, does not cite to Spivak in her book, perhaps a form of epistemic violence in itself. *See id.* at 178–84.

82. *Id.* at 1.

83. *Id.*

84. *Id.*

85. *Id.* at 155.

86. M. Eve Hanan, *Invisible Prisons*, 54 UC DAVIS L. REV. 1185, 1217 (2020).

87. FRICKER, *supra* note 81, at 17, 21–22 ("While her error is epistemically culpable, its ethical non-culpability still seems to prevent the resultant

most concerned with prejudice that results from stereotypes about historically powerless groups, which embody "an *un*reliable empirical generalization about the social group in question" that is not supported by any evidence.[88] Fricker also narrows her focus to those instances of testimonial injustice that are systematic, meaning that they result in harm across multiple social dimensions.[89]

Building from Spivak and Fricker, Kristie Dotson further identifies two ways that testimonial injustice occurs in practice: (1) testimonial quieting and (2) testimonial smothering.[90] Testimonial quieting "occurs when an audience fails to identify a speaker as a knower," whereas testimonial smothering occurs when a speaker censors themselves out of fear that their speech will be misconstrued and chastised.[91] Dotson describes these "two practices of silencing" as being "predicated upon different formations of epistemic violence within a testimonial exchange."[92] According to her, a testimonial exchange is only successful when the speaker has a reciprocal exchange with their audience, meaning that the audience is both willing and able to hear what the speaker is saying.[93] In short, the speaker's ability

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credibility deficit from constituting a testimonial injustice: an ethically non-culpable mistake cannot undermine or otherwise wrong the speaker. It seems that the ethical poison of testimonial injustice must derive from some ethical poison in the judgement of the hearer, and there is none such wherever the hearer's error is ethically non-culpable. The proposal I am heading for is that the ethical poison in question is that of prejudice.").

88. *Id.* at 32 ("Many of the stereotypes of historically powerless groups such as women, black people, or working-class people variously involve an association with some attribute inversely related to competence or sincerity or both: over-emotionality, illogicality, inferior intelligence, evolutionary inferiority, incontinence, lack of 'breeding', lack of moral fibre, being on the make, etc. A first thing to say about such prejudicial stereotypes is that in so far as the association is false, the stereotype embodies an *un*reliable empirical generalization about the social group in question.").

89. *Id.* at 27 (describing how "such a prejudice generates a testimonial injustice . . . [when] that injustice is systematically connected with other kinds of actual or potential injustice" that track "through different dimensions of social activity—economic, educational, professional, sexual, legal, political, religious, and so on").

90. Dotson, *supra* note 36, at 237.

91. *Id.* at 242, 244.

92. *Id.* at 237.

93. *See id.* at 237–38 (describing a reciprocal exchange as one in which the listener understands the speaker's words "as they are meant to be taken" (quoting Jennifer Hornsby, *Disempowered Speech*, 23 PHIL. TOPICS 127, 134 (1995))).

to communicate depends on the audience.[94] When an entire population is denied either type of linguistic reciprocity, epistemic violence results.[95]

Legal scholars have described how the law facilitates both types of testimonial injustice. This next Subsection describes such practices. Extending Dotson's framework to law and legal practice, this Subsection classifies these practices within two types: *legal quieting* and *legal smothering*.

a. Legal Quieting

Analogous to testimonial quieting, *legal quieting* occurs when the law or a legal actor discounts the credibility of a participant in the legal process based on prejudicial stereotyping.[96] For example, as Rell recounts in Part III.A, he experienced *legal quieting* when he was represented in his criminal trial by a lawyer who didn't believe him but still spoke for him. Legal scholars have documented how this practice operates across a range of other legal areas, both as a matter of law and through legal practice.

The testimony of the most marginalized in society is often discredited and discounted due to their social status. This is particularly the case with criminal defendants. While criminal defendants are encouraged to remain silent, as Rell was before his trial, when they do speak, the credibility of their speech is diminished. As M. Eve Hanan has described, people who have been convicted of crimes often experience "identity prejudice" in the sense that their speech is discredited due to their societal status.[97] This discrediting occurs as a matter of law and as a matter of societal prejudice.

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94. *Id.* at 238 (describing "relations of dependence between speakers and audiences," and how "[s]peakers require audiences to 'meet' their effort 'halfway' in a linguistic exchange").

95. *Id.* ("The extent to which entire populations of people can be denied this kind of linguistic reciprocation as a matter of course institutes epistemic violence. Epistemic violence in testimony is a refusal, intentional or unintentional, of an audience to communicatively reciprocate a linguistic exchange owing to pernicious ignorance.").

96. The concept of *legal quieting* is analogous to Dotson's concept of testimonial quieting, which "occurs when an audience fails to identify a speaker as a knower." *See id.* at 242. However, *legal quieting* specifically occurs in a legal setting.

97. Hanan, *supra* note 86, at 1185, 1192, 1215.

First, *legal quieting by doctrine* occurs when the law permits or requires the discrediting of an individual's testimony on the basis of their social status. For example, in a series of articles, Anna Roberts has critiqued evidentiary rules at the federal level and in some states that allow for the credibility of a criminal defendant's speech to be impeached based on their prior convictions.[98] These rules are grounded in the premise that an individual's criminal record is predictive of their capacity for telling the truth—something that Roberts questions in light of empirical evidence.[99]

On the other hand, *legal quieting by expectation* occurs when an individual's speech is discounted or diminished in the practice of law, even if not by the letter of the law, due to societal prejudice against them based on their social status. Numerous scholars have documented how pro se petitions by incarcerated people are often presumed to be frivolous.[100] This view is so pervasive

98. *See* Anna Roberts, *Conviction by Prior Impeachment*, 96 B.U. L. REV. 1977, 1992–96 (2016) [hereinafter Roberts, *Conviction by Prior Impeachment*] (questioning the set of presumptions that are used to justify evidentiary rules that allow impeachment based on prior convictions); Anna Roberts, *Impeachment by Unreliable Conviction*, 55 B.C. L. REV. 563, 592–606 (2014) (criticizing the assumption that prior convictions are reliable indicators of guilt); Anna Roberts, *Reclaiming the Importance of the Defendant's Testimony: Prior Conviction Impeachment and the Fight Against Implicit Stereotyping*, 83 U. CHI. L. REV. 835, 860–68 (2016) [hereinafter Roberts, *Implicit Stereotyping*] (describing how implicit bias threatens the presumption of innocence when Black criminal defendants remain silent because negative stereotypes will result in an inference of guilt); *see, e.g.*, FED. R. EVID. 609 (providing the rules for when prior convictions can be used to impeach a witness's character for truthfulness).

99. Namely, Professor Roberts highlights psychological research that disputes the notion that there is such thing as a "character [trait] for truthfulness." Rather, the research suggests that truthfulness or lack thereof is situational. Roberts, *Conviction by Prior Impeachment*, *supra* note 98, at 1996. Moreover, considering the rate of wrongful convictions and convictions obtained through plea bargaining, Roberts questions the presumption that a prior criminal conviction correlates to commission of a different crime. *Id.*; *see* FED. R. EVID. 609(a) ("The following rules apply to attacking a witness's character for truthfulness by evidence of a criminal conviction . . . .").

100. *See, e.g.*, Douglas A. Blaze, *Presumed Frivolous: Application of Stringent Pleading Requirements in Civil Rights Litigation*, 31 WM. & MARY L. REV. 935, 937–38, 950 (1990) (noting that pro se prisoner litigation is largely perceived to be frivolous); Katherine A. Macfarlane, *Shadow Judges: Staff Attorney Adjudication of Prisoner Claims*, 95 OR. L. REV. 97, 114–15 (2016) (describing the view that most prisoner civil rights claims are "frivolous" or meritless); Donald H. Zeigler & Michele G. Hermann, *The Invisible Litigant: An Inside View of*

that it has hardened into more stringent pleading rules and the assignment of different adjudicators for civil rights claims originating from behind bars.[101] In this way, *legal quieting by expectation* can transmute into *legal quieting by doctrine*. In the same vein, even though employment law prohibits discrimination on the basis of having a foreign accent, Mari J. Matsuda has shown that courts tend to deny such claims giving deference to employers' unsubstantiated and subjective perception that the claimant's accent interferes with their ability to communicate—which they portray as a necessary job qualification.[102]

In addition, research shows that the law tends to expect and favor more authoritative and direct forms of speech rather than the "polite" speech often employed by marginalized groups.[103] For example, legal scholar Janet E. Ainsworth has analyzed how some jurisdictions require an unequivocal invocation of the right to counsel in order to successfully exercise *Miranda* rights.[104] Such requirements can disadvantage powerless groups, like women, who often employ "indirect" speech patterns.[105] Other

Pro Se Actions in Federal Courts, 47 N.Y.U. L. REV. 157, 182 (1972) (characterizing most prisoner civil rights complaints as "resentful" and as presenting "distortions of the pertinent facts"); Wayne T. Westling & Patricia Rasmussen, *Prisoners' Access to the Courts: Legal Requirements and Practical Realities*, 16 LOY. U. CHI. L.J. 273, 309 (1985) (suggesting that even meritorious claims in pro se prisoner pleadings are often obscured "in a tangle of facts, extraneous material, unsupported assertions, and fallacious arguments").

101. Blaze, *supra* note 100, at 937–39, 950 (describing how the view that most civil rights litigation filed pro se by incarcerated people is baseless resulted in stricter pleading standards for civil rights cases); Macfarlane, *supra* note 100, at 108–12 (providing evidence suggesting that most prison litigation is adjudicated by judicial staff rather than Article III judges).

102. Matsuda, *supra* note 80, at 1350–51, 1355. Although Title VII prohibits employment discrimination on the basis of having a foreign accent, courts regularly dismiss such claims holding that the claimant's accent impeded their ability to do their job effectively. *Id.*

103. *See, e.g.*, Bezdek, *supra* note 80, at 583–85 (drawing from the research of linguists who study speech patterns among subordinate populations to argue that the so-called "polite" speech, predominate amongst women and the poor, is disadvantaged in landlord-tenant hearings).

104. Ainsworth, *supra* note 80, at 302–06.

105. *Id.* at 263 (predicting based on social science research regarding speech patterns "that legal rules requiring the use of direct and unqualified language will adversely affect female defendants more often than male defendants"); *see also* Alyssa A. DiRusso, *He Says, She Asks: Gender, Language, and the Law of Precatory Words in Wills*, 22 WIS. WOMEN'S L.J. 1, 4 (2007) (exploring the

studies have documented an expectation among white people that speech be "dispassionate and non-challenging" in order to be persuasive; reason and emotion are seen as incompatible.[106] In landlord-tenant court, legal scholar Barbara Bezdek observed how these racialized norms regarding speech disadvantaged tenants in a context where most judges were white and most tenants before them were Black.[107]

In sum, *legal quieting* is sometimes codified into law, but other times is the product of a legal decision-maker's expectations about speech. It occurs when a speaker's testimony is permitted in legal settings, but systemically discounted.

b. Legal Smothering

Conversely, *legal smothering* occurs when the law operates in ways that coerce the marginalized to limit the scope of their testimony in ways that do not fully reflect their lived experience. In short, *legal smothering* occurs when a testifier engages in self-censorship out of fear of the consequences of its speech. Sometimes legal doctrine facilitates this smothering, but other times it occurs because marginalized participants in the legal process must fit their stories within a white heteronormative ideal for their speech to be cognizable to a judicial decision-maker. We refer to the first type as *legal smothering by doctrine* and the second as *legal smothering by expectation*.

As a starting point, the law as written often creates barriers to testimony. This *legal smothering by doctrine* occurs when the law on the page does not match up with the lived experience of those on the ground. For instance, Kimberlé Crenshaw's detailed analysis of anti-discrimination case law demonstrated how courts have been unwilling to engage in intersectional analysis with regards to employment discrimination claims.[108] In order to

relationship between the use of gendered language in wills and the enforcement of those instruments' directives).

106. Bezdek, *supra* note 80, at 594 (describing the research relating to speech patterns amongst Black and white populations).

107. *Id.* at 595–96 (describing instances where the author observed racialized expectations regarding speech patterns in Baltimore's rent court).

108. Kimberlé Crenshaw, *Demarginalizing the Intersection of Race and Sex: A Black Feminist Critique of Antidiscrimination Doctrine, Feminist Theory and Antiracist Politics*, 1989 U. CHI. LEGAL F. 139, 141–48 (analyzing how three Title VII cases—*DeGraffenreid v. Gen. Motors*, 413 F. Supp. 142 (E.D. Mo. 1976), *aff'd in part, rev'd in part*, 558 F.2d 480 (8th Cir. 1977); *Moore v. Hughes*

be successful, Black plaintiffs who identify as women thus must compartmentalize the discrimination they experienced as being either race or sex discrimination, but not both.[109] Accordingly, Black women are forced to smother the aspects of their testimony and other evidence that do not neatly fit into the singular buckets of either racism or sexism.[110]

In other examples of *legal smothering by doctrine*, the law coerces certain marginalized participants to remain silent. As Alexandra Natapoff artfully argued in *Speechless: The Silencing of Criminal Defendants*, the law is constructed to encourage the silencing of criminal defendants.[111] Framed as a right protective of criminal defendants, the accused are warned that their speech can be used against them.[112] However, not speaking has consequences too. Empirical research suggests that when a criminal defendant remains silent, implicit racial bias has the potential to undermine the presumption of innocence because negative

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Helicopter, Inc., 708 F.2d 475 (9th Cir. 1983); and *Payne v. Travenol Labs., Inc.*, 416 F. Supp. 248 (N.D. Miss. 1976), *aff'd in part, vacated in part, rev'd in part*, 565 F.2d 895 (5th Cir. 1978)—failed to recognize intersectional claims of employment discrimination).

109. *See, e.g.*, *id.* at 148 ("Even though *Travenol* was a partial victory for Black women, the case specifically illustrates how antidiscrimination doctrine generally creates a dilemma for Black women. It forces them to choose between specifically articulating the intersectional aspects of their subordination, thereby risking their ability to represent Black men, or ignoring intersectionality in order to state a claim that would not lead to the exclusion of Black men."); *see also id.* at 151 ("Consequently, one generally cannot combine these categories. Race and sex, moreover, become significant only when they operate to explicitly disadvantage the victims; because the privileging of whiteness or maleness is implicit, it is generally not perceived at all." (emphasis omitted)).

110. *See id.* at 149–50 ("Black women's experiences are much broader than the general categories that discrimination discourse provides. Yet the continued insistence that Black women's demands and needs be filtered through categorical analyses that completely obscure their experiences guarantees that their needs will seldom be addressed.").

111. *See generally* Alexandra Natapoff, *Speechless: The Silencing of Criminal Defendants*, 80 N.Y.U. L. REV. 1449 (2005) (arguing that the legal silencing of criminal defendants results in a deficit in discourse about the criminal legal system that ultimately undermines democratic principles).

112. *See id.* at 1449–50 ("From the first Miranda warnings through trial until sentencing, defendants are constantly encouraged to be quiet and to let their lawyers do the talking.").

inferences about culpability are more likely to be drawn absent testimony that individuates the defendant.[113]

In contrast, *legal smothering by expectation* occurs when decision-makers in legal processes uphold certain individuals as more deserving or credible than others because that individual mirrors what they understand to be the idealized victim or plaintiff. Dotson uses the term "situated ignorance" to describe when not knowing is the result of the hearer's social position or epistemic location being different from the speaker.[114] In the examples that follow, situated ignorance creates an expectation of how something will appear (e.g., what a victim looks like or how remorsefulness manifests) that if not fulfilled might result in negative legal consequences for the testifier. As a result, the testifier, or a lawyer "speaking for" their client, smothers their speech so as not to suffer harm.

Rell has intimate knowledge of the impact of this form of *legal smothering*. In a forthcoming article, Rell discusses how the racial discrimination he faced as a young man due to his Blackness was a central reason for the self-loathing that made him seek out other sources of validation.[115] The resulting insecurity and need for external validation contributed to the youthful malfeasance that first landed him behind bars.[116] In the days leading up to his testimony before the Board of Pardons, Rell debated whether to express this aspect of his narrative, fearing that the predominately white Board could never understand the feeling of inadequacy that stems from being a Black man in America.[117]

In her seminal article *Subordination, Rhetorical Survival Skills, and Sunday Shoes: Notes on the Hearing of Mrs. G.*, Lucie E. White documents another compelling example of *legal*

113. Roberts, *Implicit Stereotyping*, *supra* note 98, at 875–77 (describing how individuating information about a criminal defendant can help to combat implicit bias).

114. Dotson, *supra* note 36, at 248 (using the term "situated ignorance" to describe when a gap between differing worldviews results in misunderstanding and failure in testimonial exchanges).

115. Terrell Woolfolk & Kathryn Miller, The Violence of Bright Lines 27–28 (2024) (unpublished manuscript) (on file with the Minnesota Law Review).

116. *Id.* at 28 ("How I thought, and what drove my decisions would be mired in the quick-sand of low self-esteem, a paralyzing shame and the fear of being victimized.").

117. *Id.* at 27–28.

smothering by expectation.[118] In contrast to the prior examples of *legal smothering by doctrine*, in this instance, the law on the page facilitated the speech of the subaltern.[119] Namely, the Supreme Court in *Goldberg v. Kelly* granted all welfare recipients the right to be heard before having their benefits reduced or terminated.[120] White documents the story of Mrs. G., a Black woman who testified at a welfare hearing during which the court threatened to remove her benefits due to an overpayment.[121] Although the formal legal obstacles to her testimony were removed, she muted her voice and altered her story, in part as a device of rhetorical survival.[122] She needed welfare benefits to support her family, and any narrative that put the blame of overpayment on the county welfare workers risked causing her to lose her case and suffering retaliation down the line.[123] Rather, the unwritten expectation was that Mrs. G. would portray herself as a needy mother in order to get a favorable result at the hearing.[124]

Similarly, Leigh Goodmark describes how victims of domestic violence are encouraged by advocates to construct their testimony in ways that fit the prevailing narrative of what a domestic

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118. Lucie E. White, *Subordination, Rhetorical Survival Skills, and Sunday Shoes: Notes on the Hearing of Mrs. G.*, 38 BUFF. L. REV. 1, 21–32 (1990).

119. *See id.* at 2 ("In 1970, the Supreme Court decided *Goldberg v. Kelly*. The case, which held that welfare recipients are entitled to an oral hearing prior to having their benefits reduced or terminated, opened up a far-reaching conversation among legal scholars over the meaning of procedural justice.").

120. *Id.*

121. *Id.* at 21–32 (recounting the author's representation of Mrs. G in her welfare overpayment case).

122. *See id.* at 32–33 ("Mrs. G. had a hearing in which all of the rituals of due process were scrupulously observed. Yet she did not find her voice welcomed at that hearing. A complex pattern of social, economic, and cultural forces underwrote the procedural formalities, repressing and devaluing her voice.").

123. *Id.* at 28 ("The estoppel story would feel good in the telling, but at the likely cost of losing the hearing, and provoking the county's ire. The hearing officer—though charged to be neutral—would surely identify with the county in this challenge to the government's power to evade the costs of its own mistakes."); *see also id.* at 31–37 (describing the intimidation that Mrs. G. must have felt when she was asked at the hearing whether the welfare officer had said anything about how she could spend the insurance award, which caused the overpayment).

124. *Id.* at 28 (describing how Mrs. G. and other poor mothers must grovel and portray themselves as helpless and as the "yes sir" welfare recipient to win their cases).

violence victim looks like.[125] Namely, Goodmark describes how the emergence of the "battered woman syndrome" theory as an explanation for why battered women stay in abusive relationships shifted the image of "the battered woman" from being a low-income Black woman to a helpless, middle-class white woman in need of society's protection.[126] Due to this narrative shift, courts tend to discredit the testimony of those victims who fight back, considering them unworthy of protection.[127] As Goodmark puts it, a "battered woman who fights back simply is not a victim in the eyes of many in the legal system."[128]

2. Hermeneutical Injustice

The testimonial injustice, facilitated by *legal quieting* and *legal smothering*, contributes to another type of epistemic injustice: hermeneutical injustice. Hermeneutical injustice occurs when the systematic silencing of marginalized people undercuts their ability to influence collective meaning-making.[129] Because

125. Leigh Goodmark, *When Is a Battered Woman Not a Battered Woman? When She Fights Back*, 20 YALE J.L. & FEMINISM 75, 77 (2008) ("Concerned about how it would affect her ability to secure a protective order, many, even most, advocates would have dissuaded her from telling that story, editing it to prevent questions about who was the primary aggressor and whether she actually needed protection. The advocates would have counseled her to change her story—not to lie, but to tailor it more narrowly given the objective she sought. In doing so, they would have denied her reality, her truth and her voice."); *see also id.* at 82–92 (describing the paradigmatic victim as passive, white, and straight).

126. *Id.* at 76–77 ("[T]he introduction of 'battered woman syndrome' and its reliance on the theory of learned helplessness to explain why battered women remain in abusive relationships, changed the portrait of the victim of intimate partner violence. The image of a victim of domestic violence morphed from a low-income woman of color to a passive, middle-class, white woman cowering in the corner as her enraged husband prepares to beat her again."); *see also id.* at 82–85 (describing how Lenore Walker's theory of learned helplessness came to inform how society and courts understand domestic violence victims as feeling powerless to leave their abuser).

127. *Id.* at 116 ("Women who fight back enter the courtroom with their credibility in question by virtue of their failure to comply with the prevailing victim stereotype. As evidenced by the stories told above, women who fight back are not seen as needing protection, and their claims are routinely downplayed (particularly in cases of lesbian victims) or dismissed.").

128. *Id.* at 77.

129. Hanan, *supra* note 86, at 1217 ("Powerful groups in society have an 'unfair advantage in structuring collective social understandings,' while disfavored grounds have limited access to contributing their perspectives." (quoting FRICKER, *supra* note 81, at 158)).

the experiences of the marginalized are quieted or smothered, others who share similar experiences cannot draw on common cultural or social understandings that would help them not only to make sense of their own reality, but also to influence how others perceive and treat them.[130] Due to the lack of representation of their episteme, the marginalized have more difficulty locating frameworks to conceptualize their experiences.[131]

Indeed, there is a symbiotic element to hermeneutical injustice. That is, because the marginalized lack power, they cannot participate in the practices or professions that make social meaning (e.g. journalism, politics, academia, and law).[132] Consequently, because they are excluded from those practices, they don't have the power to change the institutions, law, and policies that keep them subjugated.[133] Conversely, dominant groups have disproportionate power to spread common narratives about how the world works according to their lived experiences, which ultimately advantages them in creating structures and law to maintain their societal status and power.[134]

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130. FRICKER, *supra* note 81, at 148 ("One way of taking the epistemological suggestion that social power has an unfair impact on collective forms of social understanding is to think of our shared understandings as reflecting the perspectives of different social groups, and to entertain the idea that relations of unequal power can skew shared hermeneutical resources so that the powerful tend to have appropriate understandings of their experiences ready to draw on as they make sense of their social experiences, whereas the powerless are more likely to find themselves having some social experiences through a glass darkly, with at best ill-fitting meanings to draw on in the effort to render them intelligible."); *see also id.* at 151 ("Her hermeneutical disadvantage renders her unable to make sense of her ongoing mistreatment, and this in turn prevents her from protesting it, let alone securing effective measures to stop it.").

131. S. Lisa Washington, *Survived & Coerced: Epistemic Injustice in the Family Regulation System*, 122 COLUM. L. REV. 1097, 1138 (2022) ("Hermeneutical injustice prevents a knower from participating in the forming of the collective social understanding of something. This leads to the underrepresentation of marginalized perspectives and the lack of frameworks to conceptualize marginalized experiences.").

132. FRICKER, *supra* note 81, at 152 (using women's position relative to men at the time of second wave feminism as an example of hermeneutical injustice).

133. *Id.* ("Women's powerlessness meant that their social position was one of unequal hermeneutical participation, and something like this sort of inequality provides the crucial background condition for hermeneutical injustice.").

134. Hanan, *supra* note 86, at 1217 ("Powerful groups in society have an 'unfair advantage in structuring collective social understandings,' while disfavored groups have limited access to contributing their perspectives." (quoting FRICKER, *supra* note 81, at 147)).

Legal scholars have also illuminated how this form of epistemic injustice operates through law. In *Invisible Prisons*, Hanan explored how the systematic diminution and exclusion of incarcerated people's voices "removes them from the hermeneutical project of defining collective meanings of punishment, including understanding the severity of punishment."[135] She argues that the absence of their account leads to impoverished evaluations of sentencing disparities, which are required by law.[136] Namely, as Hanan points out, the severity of punishment is often measured in years, rather than the lived experience of it.[137] Hanan contends that in order to appropriately evaluate the proportionality and parsimony of a sentence—for instance, as part of a determination of whether a sentence is cruel and unusual—courts must consider "prison-as-experienced."[138] And while those who have been or are currently incarcerated are primary sources of evidence about "prison-as-experienced," their insights on prison conditions are often overlooked due to their social status.[139]

In another context—the family regulation system—the "insights" of directly impacted parents are only credited when they align with stereotypical assumptions about victims of domestic violence and their decision-making.[140] To the court, an

135. *Id.*

136. *Id.* at 1198–200 ("Generally, criminal statutes set up a system of ordinal ranking in which longer prison sentences may be imposed for more serious crimes . . . . The obsessive focus on time also eclipses another important aspect of the severity of punishment: prison's cruelties.").

137. *Id.* at 1197–200 ("The severity of the punishment of incarceration—as it is commonly understood among sentencing authorities—can be described in this equation: *Loss of Liberty x Number of Years = Punishment*.").

138. *See id.* at 1199 n.66 (citing Eighth Amendment jurisprudence requiring an analysis regarding the proportionality of different sentences); *see also id.* at 1204 ("In general, my argument is that failure to consider prison's cruelties increases the gap between the express purpose of the sentence and its actual impact on the person sentenced. This gap—or lack of reality check—also results in sentences that lack proportionality and parsimony.").

139. *See id.* at 1204 ("Despite widespread accessibility of information about prison-as-experienced, sentencing authorities nevertheless appear to discount, ignore, or deem it irrelevant to punishment decisions . . . . Epistemic injustice theory illuminates how and why this happens. Certain groups are excluded from producing knowledge due to disinterest or distrust of those groups.").

140. Washington, *supra* note 131, at 1159 ("Further, the 'lack of insight' narrative has hermeneutical injustice implications. Survivors are excluded from shaping the narrative around what safety and well-being could look like for

unwillingness to cooperate with the family regulation system or the criminal legal system signals a "lack of insight" into how domestic violence is impacting their children, rather than a mistrust that these systems have their best interest at heart.[141] Such a "lack of insight" can result in removal of children from the home, delay of family reunification, and even termination of parental rights.[142] S. Lisa Washington thus "argues that the family regulation system facilitates damaged knowledge production by requiring false or inauthentic victimhood narratives and excluding alternate knowledge."[143] According to Washington, this coerced testimony amounts to hermeneutical injustice because "[s]urvivors are excluded from shaping the narrative around what safety and well-being could look like for themselves and their families."[144] If the lived experience of marginalized parents was centered, Washington contends that the discourse on child safety would center a family's housing, employment, and healthcare needs, rather than the individualized failures of parents and their "lack of insight" into their own circumstances.[145]

As the next Section will describe in more detail, hermeneutical injustice is also facilitated by legal scholarship, which generally excludes the voices of those most impacted by the laws discussed on the pages of law journals. When Rell began to study criminal law and read academic writing prescribing solutions to his daily reality, he became acutely aware that "[a]s a convicted felon, [he] was perceived as having no credibility to inform [his] life circumstances."[146] Compounding the physical bars that confined him, he felt "an incarceration of thought and of voice."[147] Even though he and fellow members of the Right to Redemption Committee developed a collective framework to explicate their common circumstance, they were unable to influence collective

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themselves and their families. Instead, they are expected to reproduce existing knowledge and confirm stereotypical assumptions. In this way, they are kept from adding their perspective to the collective pool of knowledge.").

141. *Id.*

142. *Id.* at 1150 ("The concept of 'insight' is utilized to articulate a barrier to family reunification or to justify a removal at any stage of a family regulation case. In the context of domestic violence, it is often discussed in termination proceedings.").

143. *Id.* at 1107.

144. *Id.* at 1159.

145. *Id.* at 1140.

146. *Supra* p. 17.

147. *Supra* p. 17.

meaning-making in society at large because they could not reach a broader audience.[148] According to Rell, "we had mostly been talking to ourselves."[149]

B. ACADEMIC VIOLENCE: THE SECOND HAND OF THE ENGINE

Despite the growing recognition amongst academics of the harms of epistemic injustice through law,[150] most, including the academic coauthor of this article until relatively recently, have not grappled with how their own practices have inflicted epistemic violence on marginalized communities. This Section provides a framework for conceptualizing the injury that the most marginalized in our society have suffered at the hands of academics and academic institutions. Specifically, this Section focuses on two forms of *academic violence*, defined as the epistemic violence inflicted by academics and their institutions in the name of knowledge production.

First, in line with Spivak's critique, it argues that legal academics have engaged in *academic silencing*, using the tools at academics' disposal to suppress or alter subaltern knowledge. Legal academics regularly speak for the marginalized, articulating how the law could better serve them but rarely ceding space or resources so that the subaltern can speak for themselves. Worse still, as this Section details, academics often rely on or even develop stereotypes that are later used by politicians and judges to further marginalize and subjugate the subaltern.

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148. *Supra* p. 4 ("As part of a clinical project, [they] had been working to achieve greater recognition of a right to redemption, a legal concept collectively conceived of as a human right by a group of incarcerated men, all sentenced to life without parole, who called themselves the Right to Redemption Committee.").

149. *Supra* p. 18.

150. *See, e.g.*, Hanan, *supra* note 86, at 1217 ("The hearer misses the opportunity to learn the information the speaker provides or, on a structural level, information and ideas are 'blocked' from circulation. This kind of harm affects our ability to gain knowledge."); Washington, *supra* note 131, at 1149 ("Epistemic injustice causes individual and collective harms."); Michael Sullivan, *Epistemic Justice and the Law* (describing how bias informs how testimony is received and evaluated at trial), *in* THE ROUTLEDGE HANDBOOK OF EPISTEMIC INJUSTICE 293, 293–302 (Ian James Kidd et al. eds., 2017); Rebecca Tsosie, *Indigenous Peoples and Epistemic Injustice: Science, Ethics, and Human Rights*, 87 WASH. L. REV. 1133, 1150–63 (2012) (arguing that the episteme of indigenous people is often discounted in legal systems which treat them as objects to be studied rather than fully autonomous human beings).

Second, this Section chronicles how academic institutions often justify their displacement of the low-income communities of color surrounding their campuses—the same communities often studied by academics at those institutions—as being in the service of creating space for knowledge production and fostering innovation. We employ the term *academic displacement* to describe this form of academic violence. Here, we draw attention to this form of epistemic violence, which is rarely acknowledged by legal academics.

1. Academic Silencing

Although much scholarship deals with legal harms experienced by those at the margins of society, legal scholarship as an enterprise tends to be exclusionary, keeping out the very same people it professes to protect.[151] While other disciplines have embraced research resulting from collaborations between academics and communities who have been directly impacted by the subject of their study, such participatory methods have yet to take root in the legal academy.[152] Some legal scholars even believe that academic exclusion is necessary in order to fulfill their commitment to truth and objectivity.[153] In that vein, to resist the "activist impulse," one prominent legal scholar suggests that scholars should retreat from the material world as they discover "truth" in their research process.[154] However, as critical scholars

151. *See* Benjamin Levin, *Criminal Justice Expertise*, 90 FORDHAM L. REV. 2777, 2790 (2022) (noting that legal scholarship is "notoriously hostile to outsiders and interlopers"); Jan Komárek, *Freedom and Power of European Constitutional Scholarship*, 17 EUR. CONST. L. REV. 422, 437 (2021) (describing the legal academy's academic freedom as an "enterprise maintained by (and for) all academics").

152. López, *supra* note 1, at 1803; *see also id.* at 1809–18 (situating PLS within the broader cross-disciplinary Participatory Action Research (PAR) movement, which aims to reposition subjects of research as partners in research).

153. *See* Mark Tushnet, *Legal Scholarship: Its Causes and Cure*, 90 YALE L.J. 1205 (1981) (arguing that law scholars' commitment to law's objectivity is what makes legal scholarship marginal to other disciplines); Tarunabh Khaitan, *On Scholactivism in Constitutional Studies: Skeptical Thoughts*, 20 INT'L J. CONST. L. 547, 548–49 (2022) (arguing that scholars should strive to be objective in order to fulfill their moral obligation to truth).

154. *See* Khaitan, *supra* note 153, at 555 (arguing that the research and theory-building phases risk being corrupted by scholars' own activist impulse); *id.* ("Framing the question, determining the appropriate method, literature survey,

have underscored and as the following examples illustrate, supposed neutrality often masks a white heteronormative subjectivity and reproduces structural racism.[155] And as Amna A. Akbar has argued, this exclusionary ethos limits the imaginary potential of legal scholarship as well.[156]

Some might take issue with the use of the term "violence" to describe the harm that legal academics inflict.[157] This Section seeks to show why the terminology is not hyperbole. It focuses narrowly on the risks academics pose when they conduct research and develop theory devoid of context, pointing to specific examples of when academics have informed the law through their own narrative-shifting research in discriminatory and harmful ways. Specifically, it points to narratives that informed prescriptions in the law that were based on stereotypes and racist tropes in part contrived with the aid of research by academics.

For example, the racist trope of the "welfare queen" built off narratives constructed by sociologist Daniel Patrick Moynihan, while he was serving in the United States Department of Labor.[158] In 1965, Moynihan authored a report entitled *The Negro Family: The Case for National Action* (commonly known as "the Moynihan Report"), which attributed high crime rates to the

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evidence gathering, argumentation, writing, workshopping, revising—these are all scholarly activities that must be undertaken with a deep commitment to intellectual virtues shaped solely by the goal of knowledge creation.").

155. *See, e.g.*, Kimberlé Williams Crenshaw, *Foreword: Toward a Race-Conscious Pedagogy in Legal Education*, 11 NAT'L BLACK L.J. 1, 3 (1988) ("[W]hat is understood as objective or neutral is often the embodiment of a white middle-class world view.").

156. *See* Amna A. Akbar, *Toward a Radical Imagination of Law*, 93 N.Y.U. L. REV. 405, 410 (2018) (arguing that the Movement for Black Lives "offers transformative, affirmative visions for change designed to address the structures of inequality—something legal scholarship has lacked for far too long."); *see also id.* at 424–26, 477–78 (arguing that the narratives and solutions put forth in most legal scholarship addressing policing is out of step with how policing is understood by many communities of color who regularly interface with police).

157. *See, e.g.*, Carissa Byrne Hessick (@CBHessick), X (formerly TWITTER) (Oct. 28, 2023), https://x.com/CBHessick/status/1718250690902925415?s=20 [https://perma.cc/6BMP-NA2S] (characterizing the "violence" terminology as "corrosive").

158. Shanta Trivedi, *The Adoption and Safe Families Act is Not Worth Saving: The Case for Repeal*, 61 FAM. CT. REV. 315, 326–27 (2023).

prevalence of single mothers in the Black community.[159] In the years that followed, Moynihan's report was "selectively used and amplified by those who latched on to the idea of Black people as degenerate freeloaders" to advance their own political agendas.[160] Consequently, the federal government enacted a series of laws that were designed to punish single Black mothers for "abusing" the welfare system, such as the Temporary Assistance for Needy Families (TANF) and the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA).[161]

Likewise, the laws permitting juveniles to be sentenced to life without the possibility of parole (LWOP) were a vestige of the myth of the "superpredator," a term coined by a Princeton professor named John DiIulio to describe a subset of teens who were vicious, conscience-less killers.[162] During the 1990s, rhetoric about "superpredators" was rampant in the news media and

159. DANIEL P. MOYNIHAN, THE NEGRO FAMILY: THE CASE FOR NATIONAL ACTION 48 (1965) ("[F]amily disorganization has been partially responsible for a large amount of juvenile delinquency and adult crime among Negroes." (quoting E. Franklin Frazier, *Problems and Needs of Negro Children and Youth Resulting from Family Disorganization*, 19 J. NEGRO EDUC. 269, 276–77 (1950))); *see also* Thomas Meehan, *Moynihan of the Moynihan Report*, N.Y. TIMES MAGAZINE (July 31, 1966), https://archive.nytimes.com/www.nytimes.com/books/98/10/04/specials/moynihan-report.html [https://perma.cc/3A8E-WK7U] ("[T]here is one unmistakable lesson in American history: a community that allows large numbers of young men to grow up in broken families, dominated by women, never acquiring any stable relationship to male authority, never acquiring any set of rational expectations about the future—that community asks for and gets chaos. Crime, violence, unrest, disorder . . . are not only to be expected, they are very near to inevitable." (quoting Daniel Patrick Moynihan)).

160. Trivedi, *supra* note 158, at 327; *see also* Meehan, *supra* note 159 ("Moynihan has been one of Washington's most influential behind-the-scenes figures in the creation of the President's Great Society programs.").

161. Trivedi, *supra* note 158, at 329–30 (describing the enactment of TANF and PRWORA in the 1990s); *id.* at 329 ("[M]any in America viewed Black mothers—and particularly single Black mothers—as one of only two things: a welfare queen or a crack addict . . . . [T]his led to fear that was magnified by the media and politicians, culminating in a series of policies in the 1990s designed to 'fix' the problems plaguing the Black community, punish deviant behavior, and reduce dependence on government.").

162. John DiIulio, *The Coming of the Super-Predators*, WASH. EXAM'R (Nov. 27, 1995), https://www.washingtonexaminer.com/weekly-standard/the-coming-of-the-super-predators [https://perma.cc/CXX2-YD7G] ("On the horizon . . . are tens of thousands of severely morally impoverished juvenile super-predators . . . . So for as long as their youthful energies hold out, they will do what comes 'naturally': murder, rape, rob, assault, burglarize, deal deadly drugs, and get high.").

frequently evoked by political actors in support of their carceral policies.[163] Informed by this racist trope, laws scaling back protections for children and allowing them to be sentenced to LWOP were passed in nearly every state.[164]

However, by the time the U.S. Supreme Court considered the constitutionality of LWOP for children in *Graham v. Florida* and *Miller v. Alabama* in the early 2000s, the science behind the phenomenon of "superpredators" had been debunked.[165] Even DiIulio submitted a brief in *Miller* disclaiming his earlier findings.[166] The Court's decisions in these cases, whose holdings reinstated some protections against LWOP sentences for children, reflect this shifting narrative about "superpredators."[167] In evaluating the constitutionality of LWOP sentences for juveniles, the U.S. Supreme Court, first in *Graham* and later in *Miller*, noted that "[d]eciding that a 'juvenile offender forever will be a danger to society' would require 'mak[ing] a judgment that [he] is

163. *See* Carroll Bogert & LynNell Hancock, *Analysis: How the Media Created a 'Superpredator' Myth that Harmed a Generation of Black Youth*, NBC NEWS (Nov. 20, 2020), https://www.nbcnews.com/news/us-news/analysis-how-media-created-superpredator-myth-harmed-generation-black-youth-n1248101 [https://perma.cc/N3CR-MWXZ] ("State legislatures were already busy dismantling a century's worth of protections for juveniles when the fear of 'superpredators' gave them a new push.").

164. *Id.* ("By the end of the 1990s, virtually every state had toughened its laws on juveniles: sending them more readily into adult prisons; gutting and sidelining family courts; and imposing mandatory sentences, including life sentences without parole."); *see also The Superpredator Myth, 25 Years Later*, EQUAL JUST. INITIATIVE (Apr. 7, 2014) [hereinafter *Superpredator Myth*], https://eji.org/news/superpredator-myth-20-years-later [https://perma.cc/Z7C6-TDHT] ("Twenty-five years ago, the 'Superpredator' myth led nearly every state in the country to expand laws that removed children from juvenile courts and exposed them to adult sentences including life without parole. . . . Much of this frightening imagery was racially coded.").

165. Bogert & Hancock, *supra* note 163 ("In 2001, Di[I]ulio admitted his theory had been mistaken, saying 'I'm sorry for any unintended consequences.'"); *Superpredator Myth*, *supra* note 164 ("As DiIulio and Fox themselves later admitted, the prediction of a juvenile superpredator epidemic turned out to be wrong. In fact, violent juvenile crime rates had already started to fall in the mid-1990's. By 2000, the juvenile homicide rate stabilized below the 1985 level.").

166. *See Superpredator Myth*, *supra* note 164 ("DiIulio and Fox were among the criminologists who submitted an amicus brief in support of the petitioners in *Miller v. Alabama*.").

167 Miller v. Alabama, 567 U.S. 460, 479 (2012); Graham v. Florida, 560 U.S. 48, 74–75 (2010).

incorrigible,'" something that is incompatible with youth.[168] These decisions, however, left intact a broader principle that some adults are irredeemable, which we contested in *Redeeming Justice*.[169] In the Supreme Court's own words, an LWOP sentence "forswears altogether the rehabilitative ideal."[170]

Relatedly, the broader public's abandonment of the rehabilitative ideal can also be traced back to academic research that has since been walked back.[171] In 1974, sociologist Robert Martinson authored a very influential article which concluded that all efforts at rehabilitation are ineffective.[172] Despite numerous challenges to his methodology and Martinson's own renunciation of some of his earlier findings,[173] his and others' research like it led to "an astonishingly sudden draining away of support for the ideal of rehabilitation."[174] Such societal shifts also influence judicial decision-making. For example, in deciding that a court cannot lengthen a sentence to accommodate rehabilitative programming, the Supreme Court noted that "[l]awmakers and others increasingly doubted that prison programs could 'rehabilitate individuals on a routine basis.'"[175]

As the above examples illustrate, the law is informed by narratives, and at times, racist narratives that were manufactured

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168. *Miller*, 567 U.S. at 472–73 (alteration in original) (quoting *Graham*, 560 U.S. at 72–73).

169. Carter et al., *supra* note 2, at 318 (noting how the Supreme Court describes LWOP as representing "an irrevocable judgment about [an offender's] value and place in society" (quoting *Graham*, 560 U.S. at 74)).

170. *Graham*, 560 U.S. at 74; *Miller*, 567 U.S. at 473.

171. Robert Martinson, *New Findings, New Views: A Note of Caution Regarding Sentencing Reform*, 7 HOFSTRA L. REV. 243, 252–54 (1979) (retracting some of his claims about the value of rehabilitative programing).

172. *See generally* Robert Martinson, *What Works? Questions and Answers About Prison Reform*, PUB. INT., Spring 1974, at 22 (arguing that rehabilitative programming has "no appreciable effect" on recidivism).

173. *See* Martinson, *supra* note 171, at 253–54 ("My conclusion was: 'With few and isolated exceptions, the rehabilitative efforts that have been reported so far have had no appreciable effect on recidivism' . . . . On the basis of the evidence in our current study, I withdraw this conclusion.").

174. DAVID GARLAND, THE CULTURE OF CONTROL: CRIME AND SOCIAL ORDER IN CONTEMPORARY SOCIETY 8 (2002). For an example of challenges to Martinson's research, see Ted Palmer, *Martinson Revisited*, 12 J. RSCH. CRIME & DELINQ. 133, 150 (1975) (arguing that Martinson overlooked his own data points that identified treatment methods as successful for some offenders).

175. Tapia v. United States, 564 U.S. 319, 324 (2011) (quoting S. REP. NO. 98-225, at 40 (1983)).

by academics. But through PLS, academics could co-create research and amplify non-dominant interpretations in order to make the law more democratic. As described in Part I.B, Rell and the other members of the Right to Redemption Committee felt that they had mostly been talking to themselves.[176] No one else was listening. The right to redemption remained a legal concept lost in translation because there was no testimonial exchange with an audience that was willing and able to hear them. Through *Redeeming Justice*, however, they were able to engage with Rachel, who collaborated with them to put their legal analysis in conversation with other academics and legal doctrine. Consequently, the message of the Right to Redemption was heard both in courts of law in the United States as well as in international forums.[177]

2. Academic Displacement

Rell's experience also speaks to another dimension of academic violence. Namely, academic institutions often displace the very marginalized communities that are the subject of their scholarship in the name of fostering "knowledge" and "innovation." In this way, academia is implicated in another form of epistemic violence that disregards their neighbors as producers of knowledge and engines of ingenuity: *academic displacement*. This Section situates Rell's experience both within the history of *academic displacement* in West Philadelphia and also documents how his experience is emblematic of academic development across the United States.[178]

Rell grew up near the university that Rachel called her academic home for over a decade in an area of West Philadelphia often referred to as the Black Bottom, a predominantly African-American neighborhood that scholar Laura Wolf-Powers

176. *See supra* Part I.B.

177. López, *supra* note 1, at 1803 (describing how *Redeeming Justice* has been cited in filings submitted to the Pennsylvania Supreme Court, the Pennsylvania Board of Pardons, and the United Nations).

178. *See, e.g.*, Brandi Kellam, *Task Force to Consider "Restorative Justice" for Black Families Uprooted by Virginia University's Expansion*, PROPUBLICA (Jan. 29, 2024), https://www.propublica.org/article/christopher-newport-university-black-community-uprooted-task-force [https://perma.cc/ETX3-QU87] (explaining how Black communities have been displaced by universities in Denver, Colorado, Athens, Georgia, and Newport News, Virginia).

characterizes as "a twice-cleared place."[179] The first displacement occurred during the post-New Deal era of urban renewal between 1950 and 1970—just as Rell was entering the world—when a conglomerate of academic institutions, led by the University of Pennsylvania and including Drexel University, developed a plan to create "University City District."[180] This brand of development project was not unique to these institutions or Philadelphia, but rather was occurring in cities across the United States, including New York, Chicago, Buffalo, Pittsburgh, and Columbus.[181] These projects took advantage of funding available under the Federal Housing Act, which allowed municipalities like Philadelphia to count investments made by universities and hospitals toward the local match needed to secure federal dollars, which in turn supported development projects in the areas surrounding university campuses.[182] The University City District project was touted as a vehicle to make Philadelphia "a brains capital of the world" and a "city of knowledge."[183] It was to become "the nation's first inner-city urban research park."[184]

At the same time, archival research reveals that part of the plan involved purging the surrounding areas of their long-standing residents, who were mostly Black, and replacing them with "a responsible type of citizen," all while using federal tax dollars

179. LAURA WOLF-POWERS, UNIVERSITY CITY: HISTORY, RACE, AND COMMUNITY IN THE ERA OF THE INNOVATION DISTRICT 1–18 (2022) (documenting the local impact of five decades of planning in and around the communities of West Philadelphia's University City from mid-twentieth-century urban renewal to innovation district development today).

180. *Id*. at 7, 26 (quoting a brochure created by the group of university leaders, which points to the goal of creating an environment that will draw "a responsible type of citizen" to the community).

181. *Id*. at 10–11 (recounting authorities' transformation of urban dwellings and establishments into academic facilities).

182. *Id*. at 24 (explaining the history and application of the Act's 1959 reauthorization, in which University of Pennsylvania administrators were involved as advisors); *see also* DAVARIAN L. BALDWIN, IN THE SHADOW OF THE IVORY TOWER: HOW UNIVERSITIES ARE PLUNDERING OUR CITIES 30–31 (2021) ("Dubbed the 'Section 112 credits program,' this initiative triggered a two-to-one federal matching grant for any urban renewal project on or near a college or university up to five years before the project even began . . . . Municipal leaders clamored to make their schools the showpiece of an urban renewal scheme that could generate so much federal aid.").

183. WOLF-POWERS, *supra* note 179, at 25 (quoting Mayor James Tate).

184. BALDWIN, *supra* note 182, at 33.

to do it.[185] In addition, the universities sought to demolish buildings that housed and served these residents, characterizing them as "blighted" and "incompatible with their institutional aspirations."[186] The language employed by the leaders of the project reveals how universities perceived their neighbors as incompatible with their stated objective of becoming the "brains capital of the world." Specifically, leaders of the project described the need to rid the area of the "infection" of dilapidated houses and "wip[e] out the worst slums in University City," not just to improve its economic base, but also to improve "morale."[187] In this way, these projects themselves were predicated on epistemic violence, justifying the displacement of poor Black communities in the name of fostering the innovation and knowledge production of others.[188] Evidently, at this time, the university and their municipal partners did not recognize or value the ingenuity and entrepreneurship already embedded in the communities neighboring these universities' campuses.[189] When everything was said and done, all that remained of the original Black Bottom were

185. *Id.*; *see also* WOLF-POWERS, *supra* note 179, at 37–38 (describing the demolition of old neighborhoods and creation of "University City").

186. WOLF-POWERS, *supra* note 179, at 7, 11.

187. *Id.* at 27 (first quoting a document drafted for a 1958 West Philadelphia Corporation (WPC) meeting; and then quoting a 1961 letter from the WPC executive vice president to a University of Pennsylvania professor who also served as the Philadelphia Planning Commission Chair).

188. *See id.* at 74 ("Penn was heavily implicated in the displacement of poor and working-class African Americans . . . ." (quoting JOHN PUCKETT & MARK FRAZIER LLOYD, BECOMING PENN: THE PRAGMATIC AMERICAN UNIVERSITY, 1950–2000, at 340 (2015))).

189. *See id.* at 46–49, 63 (describing how the Young Great Society supported Black-owned businesses and cultivated leadership skills in teenagers in the neighborhood); Julie Hawkins et al., *A Fragile Ecosystem: The Role of Arts & Culture in Philadelphia's Mantua, Powelton Village and West Powelton Neighborhoods*, DREXEL UNIV. 2–3 (2014), https://drexel.edu/~/media/Files/westphal/dept/aadm/ArtsAndCultureReport.ashx?la=en [https://perma.cc/SH3E-KXLV] (finding there is a high number of resident artists in the neighborhoods surrounding Drexel's campus); Peter Crimmins, *Why Parts of West Philly Not Getting the Boost from Attracting Artists*, WHYY (Aug. 29, 2014), https://whyy.org/articles/why-parts-of-west-philly-not-getting-the-boost-from-attracting-artists [https://perma.cc/38X6-7MYE] (stating the number of resident artists in these neighborhoods was comparable to the number of resident artists in more popular art-hub neighborhoods, such as Northern Liberties and Old City).

eight houses where thousands of residents once lived.[190] In Mantua, another predominantly Black neighborhood adjacent to Drexel's campus that survived because it fell outside of the University City District, "educational attainment remained low," with invisible walls separating young men like Rell from the institutions of higher education next door.[191] The Black residents who grew up in these neighborhoods were not envisioned as part of the project of knowledge production propagated by universities.

The second round of university-driven development occurred around the turn of the twenty-first century.[192] Yet, this time, a different set of government incentives, mostly tax exemptions and abatements instead of direct cash investment, changed the face and nature of the displacement.[193] Other than providing tax incentives, federal and local government played a *de minimis* role in the projects.[194] Instead, financing of new development mostly came from private investors who saw a real estate opportunity in the economic activity generated by universities, and so entered into public and private development partnerships with universities.[195] Once again, these projects were cast as engines of innovation and knowledge production, implying that these qualities were absent prior to development.[196]

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190. WOLF-POWERS, *supra* note 179, at 38 (recounting the paring down of the Redevelopment Authority's original commitment to develop replacement housing).

191. *See id.* at 63–65 (tracing Mantua's history from the development of the University City District to the present).

192. *See id.* at 11 (describing "new kinds of public and private partnerships").

193. *See id.* at 11, 69–70 (cataloging all the ways that such developments are able to capitalize on tax credits, abatements, and exemptions).

194. *See id.* at 67, 70 (chronicling the growth of private sector investments in higher education, buoyed by development incentives and tax abatements from governments).

195. *See id.* at 11 (explaining that through these partnerships, investors hoped to take advantage of the wealth and disposable income of those who were associated with the university as well as develop "desirable destinations for coveted empty-nesters and young professionals" who are drawn to the amenities of urban life).

196. *See id.* at 12, 68–69 (describing how the impetus for these projects is grounded in research which has found that creating social spaces where innovation activity can flourish is critical to the success of enterprises and economic growth).

Still, these newer projects have a quality that was lacking during the urban renewal era: community participation.[197] Hoping not to replicate the mistakes of the past, Drexel in particular ushered in an agenda that centered community engagement, which resulted in significant resources being invested in affordable housing, education, and crime prevention.[198] Under the mantra of becoming "the most civically engaged university in the nation," Drexel created two centers whose aim was to bring the university resources and expertise to bear in the surrounding community.[199]

Over the past decade, Drexel's investment would help to break down some of those invisible walls described by Rell, paving the way for a new type of community partnership like the one between Rachel and him. It stands to reason that PLS might not even exist but for Drexel's commitment to community engagement. In fact, Rachel first met Rell nearly a decade ago at a state prison outside of Philadelphia where he was leading a training for Drexel faculty on community-based learning, which was organized by one of those centers, the Lindy Center for Civic Engagement. It was at this training when Rachel first learned of the right to redemption—the concept that would later form the basis of their first coauthored article, *Redeeming Justice*.[200] They came to work together again when the legal clinic that Rachel directed, which is located in another Drexel center, the Dornsife Center for Neighborhood Partnerships, partnered on an advocacy project with a group of incarcerated men led by Rell.[201]

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197. *See id.* at 12 (describing how during the era of urban renewal universities largely ignored the demands of local residents and community organizations and contrasting that with the approach to development in the 2010s, when community organizations had a seat at the table and inclusion became central to Drexel University's mission).

198. Drexel President John Fry had been involved in the urban renewal era development in the 1960s and 70s and hoped to make social inclusion a cornerstone of his tenure at Drexel in an effort to do better by the neighborhood this time around. *Id.* at 9, 11, 72, 74; *see also id.* at 88–90 (describing Drexel's campus development plans).

199. *Id.* at 100, 103–07 (describing the development of the Dornsife Center the Lindy Center for Civic Engagement).

200. Carter et al., *supra* note 2.

201. López, *supra* note 1, at 1797, 1833 (describing the origins of the Right to Redemption (R2R) Committee); *see Andy and Gwen Stern Community Lawyering Clinic*, DREXEL UNIV., https://drexel.edu/law/academics/kline-difference/clinics/community-lawyering-clinic [https://perma.cc/YL7A-ZY43] for more information about the clinic.

Yet, as scholar Wolf-Powers points out, to some extent, Drexel's goal of community engagement is in tension with its recent university-sponsored development efforts.[202] One of the stated goals of university-driven development is to "transform" the neighborhood by bringing in new housing, retail stores, restaurants, and other amenities, which would draw outsiders to the neighborhood.[203] Drexel's development plan is grounded in academic research, which has found that innovation is "the prime source of capitalist economic dynamism."[204] Specifically, recent studies have found that having a high concentration of innovative activities coupled with a rich social environment, characterized by amenity-rich centers in a specific geographic locale, tends to yield economic growth.[205] Moreover, the success of these projects depends not just on product development or research innovation but on property development.[206] And Wolf-Powers is careful to point out that these new urban spaces are geared toward those who are already economically advantaged and provide only limited benefits to the existing residents.[207] Yet such projects depend on foregone government revenue in the form of tax exemptions, which arguably could have gone to

202. WOLF-POWERS, *supra* note 179, at 114 (characterizing the leaders of the Mantua neighborhood as "feeling they had participated in a dance choreographed by others"); *see also* BALDWIN, *supra* note 182, at 41 ("Well-meaning civic engagement programs talked about campus neighborhoods as sites of democratic citizenship. At the same time, city leaders and universities discussed the same places as investment environments.").

203. In 2012, Drexel's Strategic Plan was called "Transforming the Modern Urban University" and Drexel University President John Fry, in a speech highlighting this plan, discussed the university's ambition to "transform our very surroundings in University City." WOLF-POWERS, *supra* note 179, at 66.

204. *Id.* at 68–69 (summarizing research concluding that spatial concentration of innovative activity can be a major driver of economic development).

205. *Id.* at 69–70 (explaining that creating spaces for residential and leisure activities is equally if not more important to this model than generating groundbreaking discoveries and innovations).

206. *Id.* at 70 (arguing that although the end goal is to house successful businesses in urban spaces, "property investment (rather than product development) is the turnkey").

207. *Id.* at 97 ("Urban economic development did not develop their communities, and it often harmed them.").

preserve and stabilize housing in the neighborhood rather than threaten it.[208]

To some extent, Rell embodies this tension. He now works at the Lindy Center for Civic Engagement, one of the centers established in the second phase of university development in the 2000s, facilitating faculty trainings on how to effectively engage in community-based learning and shedding light on how the criminal legal system functions in practice in the classroom. Still, as Rell notices on his drive to Drexel's campus, the same university that now employs him has contributed to a dramatic shift in the character and the racial composition of his old neighborhood, rendering it nearly unrecognizable.[209] This is not unique to Drexel.[210] Rather, in response to the tax incentive structures in place, such demographic and commercial shifts have been orchestrated by universities in concert with private investors and are being replicated in cities around the country.[211] As of 2020, there were over fifty "innovation districts" across the United States.[212]

The harm experienced by marginalized communities, often Black and Brown, resulting from the *academic quieting* and *displacement* described in this Part, is often unrecognized by academics who otherwise promote justice and fairness in their scholarly work. Yet it is deeply felt in their regular exclusion from the vehicles of knowledge production that have the power to alter their material conditions and also in the rupture of the fabrics of their communities through academic sprawl. Honoring the expertise of those most harmed by academic violence in legal scholarship is one method of repair—a way to visibilize the

208. *Id.* at 132–33 (explaining that University City's redevelopment "was only financially viable because of layers of foregone government revenue" from various sources).

209. *See supra* Part I.B.

210. *See* BALDWIN, *supra* note 182, at 6 ("In times of meager state funding, colleges and universities have had to find new ways to shore up their fiscal stability. Urban development is higher education's latest economic growth strategy. And building profitable UniverCities helps schools offset drop in state funding. Campus-expansion projects meet the increased demands for upscale housing, high-tech laboratories, and plentiful retail options that will attract world-class students, faculty, and researchers.").

211. *See* WOLF-POWERS, *supra* note 179, at 66 (explaining that the public-private partnership to develop mixed-use development undertaken by Drexel is becoming "an increasingly prevalent phenomenon in North American cities").

212. *Id.* at 146.

contributions and episteme of those silenced and displaced by universities across this country, and maybe even the world.

III. EXPERIENTIAL EXPERTISE

Recognizing the endemic legal silencing documented in the last Part, and experienced by Rell first-hand, numerous academics are calling for greater inclusion of directly impacted people in policy and legal decisions,[213] with some expressly framing such interventions as expertise.[214] Just as when Spivak wrote her seminal piece, the exploration by academics of the first hand of the engine of epistemic violence is becoming well-trodden territory. Many academics are acutely aware of how the law silences the subaltern, but most have yet to fully grapple with the second

213. Levin, *supra* note 151, at 2782 (explaining that some legal scholars "have sought to reconstruct and reimagine a new vision of expertise and a new set of experts—people from marginalized communities who have been harmed by violence and/or the criminal system"); *see also* Hanan, *supra* note 86, at 1192 ("To this end, incarcerated people must be active participants in shaping public, collective understanding of prison's cruelties."); Matthew Clair, *Criminalized Subjectivity: Du Boisian Sociology and Visions for Legal Change*, 18 DU BOIS REV. 289, 290 (2021) (introducing a concept he calls "legal envisioning, defined as a social process whereby criminalized people and communities imagine and build alternative futures within and beyond the current legal system"); Rachel E. Barkow & Mark Osler, *Designed to Fail: The President's Deference to the Department of Justice in Advancing Criminal Justice Reform*, 59 WM. & MARY L. REV. 387, 459 (2017) (arguing that clemency boards should incorporate "formerly incarcerated people who can speak to their experiences while incarcerated and during reentry"); Jules Lobel, *Participatory Litigation*, 74 STAN. L. REV. 87, 94 (2022) (arguing for a participatory framework for class-action lawsuits that involves "empower[ing] clients through their active, collective participation" in litigation).

214. Cynthia Godsoe, *Participatory Defense: Humanizing the Accused and Ceding Control to the Client*, 69 MERCER L. REV. 715, 715 (2018) ("[E]mpowering defendants' families to assist or even challenge defense attorneys . . . is truly radical. It shifts notions of expertise and questions deeply-embedded power structures between attorneys and clients."); Jocelyn Simonson, *Police Reform Through a Power Lens*, 130 YALE L.J. 778, 852 (2021) ("Rather than looking for expertise from social scientists or veterans on the police force, the people with expertise on what democratic policing should look like may instead be those who are subject to the domination of the police on a regular basis."); James M. Binnall, *Carceral Wisdom*, INQUEST (Oct. 15, 2021), https://inquest.org/carceral-wisdom [https://perma.cc/M7E2-57W6] (calling for greater attention to "experiential carceral knowledge"); Amna A. Akbar, *Toward a Radical Imagination of Law*, 93 N.Y.U. L. REV. 405, 425 (2018) (articulating "a vision to imagine expertise very differently than law scholarship"). *But see* Levin, *supra* note 151, at 2821 (noting that calls for greater participation by marginalized groups in lawmaking "are not necessarily framed or phrased as 'expertise'").

hand of the engine of epistemic violence—that is, their role in the silencing of the subaltern. This Part proposes the valuing of experiential expertise in legal scholarship through PLS as one form of reparation for the harms inflicted by the *legal* and *academic violence* documented in the prior Part.

Rell sets the stage for this Part with a reflection on the moment when he spoke for himself in the face of the law and his realization of the expertise that only he had into his own situation and the insights he could provide to a legal system lacking context. This experience informs his understanding of the value of PLS to the legal academy as well. From there, this Part turns to an argument in favor of viewing experiential expertise as an antidote to *academic silencing*. It situates PLS within a broader movement to legitimize the interventions of those with lived experience in law's injustice. In doing so, it casts PLS as a reparative response to epistemic violence in legal scholarship. Framing PLS in this way is in itself revealing of this genre of legal scholarship's ethos and teleological values. Finally, it engages with those who question whether framing the interventions of directly impacted people as being grounded in "expertise" is the right approach.

A. BECOMING AN EXPERT IN ME

Throughout most of Rell's life, the message from educational, legal, and correctional institutions was that his insights were inconsequential, and he should remain silent. Here, Rell shares his reflection on the moment when he spoke for himself, instead of lawyers or academics speaking for him. Namely, he reflects on the moment before the Board of Pardons when he realized that he was an expert in himself and how valuable that expertise was in a criminal legal system usually devoid of context. That day, his insights and expertise became the lynchpin of his liberation.

* * *

The shackle shuffle is what I call it. It's an old man gait, bent over at the waist, sliding your feet back and forth to propel your body in whatever directions you need to go. It's because of the chains and handcuffs that restrict your movement by painfully biting into your flesh if you lift your feet up. So you're forced to shuffle in order to move your body from one spot to the next. It's been over a year now, but I recall the day as if it were

yesterday. As I think back to when I went to the Department of Corrections to see the Board of Pardons for a one-on-five interview, this is the first thing that pops into mind, getting off the prison van and painfully shuffling into the building.

The second thing that I can remember is the Correctional Emergency Response Team, a prison guard unit created in response to the 1989 Camp Hill riots to quell any future prison uprisings.[215] They were lined up outside the prison van, a gauntlet of intimidation that added to the already high levels of anxiety that we, the seven of us going to these interviews, felt. That was the moment my heart began to pound. It was a bass drum, rattling and pounding my body. I can remember wondering if everyone was feeling what I was feeling. The stakes were extremely high—what I said at this interview would determine the rest of my life. This day would not be like my trial. At that hearing, I sat quietly as my lawyer, who I could tell didn't believe me, spoke for me. I silently watched the proceedings like a frightened spectator as the judge analyzed my actions and who I was as a human being based on someone else's account of one tragic day out of my then twenty-two years of existence. On the day I interviewed with the Board of Pardons, my words, my expertise, would be the determining factor of whether I would get to go home or die in prison.

When I entered the interview room, I felt alone amongst several DOC officials as I continued towards where I would be seated. I spotted Rachel and one of her students, who were representing me in my case. Only this time, instead of a lawyer speaking for me, I would speak for myself. So, there I sat at a table facing a large TV monitor, waiting for my virtual interview to begin. The screen blinked on and there were five faces staring at me. The Lieutenant Governor spoke first. He asked me if I was nervous. I responded in the affirmative. At this point my heart pounding had reached a crescendo. It was beating so hard it made my voice shake. It was then that the first Board of

215. Matt Miller, *Camp Hill Prison Riots Echo Through Pa.'s Corrections System 30 Years Later: 'It Looked Like Vietnam,'* PENNLIVE (Oct. 24, 2019), https://www.pennlive.com/news/2019/10/it-looked-like-vietnam-30-years-later-the-camp-hill-prison-riots-still-echo-through-pas-corrections-system.html [https://perma.cc/GW5Q-C66M] (stating that the creation of a "corrections emergency response team" was one of the changes made after the Camp Hill riots in 1989, according to a Pennsylvania Department of Correction spokesperson).

Pardons member, the only person of color and woman began questioning me. Everyone in the room ceased to exist, it was just me and the person asking me questions. It was in the moment that I began to answer that my heart rate decreased, and I was enveloped in a tremendous calm. I knew at that point that there was no need for me to be nervous, for the questions that were being asked were about me.

For the past thirty years I had been trying to figure out why my life had turned out as it did. I never considered myself a bad person, so how had I ended up in prison convicted of ending someone's life? That question drove me to better understand myself and why I made some of the decisions I had made that fateful day. After thirty years of this reflective work, I had become an expert in myself. I had grown into a person who was able to accept myself, the good as well as the not so good. There was no shame, nothing to hide. The love that I gained for myself allowed me to be vulnerable even in the face of strangers. That vulnerability opened doors of understanding that only getting to know myself made possible. This understanding allowed me to provide a perspective to the Board that was highly personal and intimate—one that no one other than me would have been able to articulate. With this insight, the Board of Pardons members could ground their decisions about my fate within the broader context of my life. Choices do not exist in a vacuum; there are reasons why human beings decide to do what they do. By engaging in this reflective work about myself—becoming an expert in all things Terrell—I gained an understanding of why, which allowed me to articulate myself in a way that allowed others to judge me in a more holistic, or dare I say, just way. As a result of this, I was able to get through the interview that day, feeling good about leaving nothing left unsaid.

I live my life today believing that there is no such thing as failure. In the high stakes circumstance of the Board of Pardons interview, for me, the goal of liberation was extremely important, but just as important was the opportunity to share my expertise gained through my lived experience. It was essential because it served to inform the Board's judgment about me regardless of the outcome. There were lessons to be learned no matter the result. Lessons that could mitigate any feelings of failure. This in and of itself is a success because it lends to learning more about the ever-evolving self which could only add to the expertise of my lived experience. This is what experiential

expertise consists of, and that expertise is what's needed in order for a more democratized version of legal scholarship to exist.

B. EXPERIENTIAL EXPERTISE

In many respects, the democratized version of legal scholarship that Rell calls for is in line with a broader movement in the legal academy to center the experiences and insights of people who have borne the bluntest consequences of law's injustice. As described more fully below, legal scholars and activists alike are turning to marginalized people with lived experience in law's injustice as sources of knowledge and expertise rather than merely as objects to be studied.[216] This Section documents this turn to experiential expertise. Drawing from Spivak's theory of epistemic violence, it then argues that this turn should not be limited to legal practice and policymaking, but should be extended to legal scholarship as well in the form of PLS. It further argues that viewing PLS as reparation for epistemic violence helps to address many of the concerns raised by skeptics of experiential expertise.

1. The Turn to Experiential Expertise

As documented in Part II.A, the law regularly silences the marginalized, either muzzling them entirely or only crediting speech that aligns with the law's or society's expectations. For a growing number of academics, greater deference to directly impacted communities in making, interpreting, and enforcing the law is a justified response to this legal quieting and smothering.[217] Central to such a move is a reexamination of the structures and sources of knowledge. This approach is not unprecedented and accords with "critical race theory, postcolonial theory, and other poststructural approaches to law and knowledge production,"[218] as well as with emerging abolitionist

216. *See* Levin, *supra* note 151, at 2824 ("That is, scholars and activists appear to be moving beyond seeing lived experience as producing objects of study or even producing alternative frames for acquiring knowledge to suggesting that lived experience should be seen as producing *authority*."). For additional sources, see *supra* note 213.

217. *See supra* note 213.

218. Levin, *supra* note 151, at 2783.

theories.[219] It also resonates with "standpoint epistemology,"[220] "which asserts that . . . systematically oppressed group[s] have superior knowledge of the character of their oppression than other individuals [and] . . . [t]his knowledge allows them to see social inequality and to challenge it where others cannot."[221]

Some advocates frame the turn to experiential expertise as a much-needed antidote to the overreliance on the traditional knowledge of experts, who derive their authority from their professional experience or higher education.[222] Under this view, the impetus for this turn to experiential expertise is motivated by a broader disillusionment with experts.[223] Indeed, concerns about the elitism inherent in the designation of experts as well as the false neutrality of expert-based decision-making abound.[224] Benjamin Levin argues, for instance, that "the interpretive and analytical tasks that experts or technocrats . . . undertake are inherently political" as they are "rooted in a deeper set of values and assumptions about how the world works and should work."[225] Likewise, Bernard E. Harcourt has argued that the choice of what to study has "deep political implications that are masked precisely by the purported scientific nature of the method."[226]

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219. *Id*. at 2822 ("Indeed, this turn to lived experience as expertise has been a staple of recent abolitionist theory and praxis.").

220. *Id.* at 2823 (quoting Olúfẹ́mi O. Táíwò, *Being-in-the-Room Privilege: Elite Capture and Epistemic Deference*, PHILOSOPHER (2020), https://www.thephilosopher1923.org/post/being-in-the-room-privilege-elite-capture-and-epistemic-deference [https://perma.cc/TZ4E-KT6B]).

221. *Id*. (quoting Laura T. Kessler, *Transgressive Caregiving*, 33 FLA. ST. U. L. REV. 1, 7–8 (2005)).

222. *See, e.g.*, *id.* at 2782–83 (describing how traditional expertise is derived from on-the-job vocational experience or alternatively from specialized education).

223. *See id.* at 2782 (recounting the "deconstruct[ion]" of the "potential elitism and false neutrality of expert-based decision-making").

224. *See id.* at 2782 ("Activists, advocates, and scholars who reject the traditional metrics or markers of 'expertise' (i.e., educational credentials, professional experience) have begun to deconstruct the potential elitism and false neutrality of expert-based decision-making.").

225. *Id.* at 2804 (arguing that even though expert decision-making is purported to be apolitical, it is necessarily situated in political, social, and cultural contexts).

226. Bernard E. Harcourt, *The Systems Fallacy: A Genealogy and Critique of Public Policy and Cost-Benefit Analysis*, 47 J. LEGAL STUD. 419, 433 (2018).

The criticism of experts is being waged from both sides of the aisle. On the right, there is a growing distrust of elite credentials and academic institutions.[227] On the left, some have found experts to be "woefully unprepared to address deep, systemic injustice."[228] In the criminal law context in particular, some believe that deference to academics and professionals cannot be divorced from "the construction and maintenance of the carceral state."[229] Those who advance this perspective believe that experts have aided in the ballooning of mass incarceration.[230]

2. Centering Experiential Expertise in Legal Scholarship

This Section situates PLS within this broader project to disrupt traditional notions of "expertise," extending the logic of experiential expertise articulated by others to the domain of legal scholarship. Here, we advance our argument for why such an extension is warranted, by first pinpointing what knowledge PLS

227. *See, e.g.*, Fabiola Cineas, *Conservatives Have Long Been at War with Colleges*, VOX (Feb. 1, 2024), https://www.vox.com/politics/2024/2/1/24056238/conservatives-culture-war-colleges-universities [https://perma.cc/R5NN-FTET].

228. Levin, *supra* note 151, at 2779–80 (pointing out how in the wake of George Floyd's murder by police, calls to abolish police and prisons supplanted traditional demands for better training for police officers).

229. Seema Tahir Saifee, *Decarceration's Inside Partners*, 91 FORDHAM L. REV. 53, 58 (2022).

230. *See, e.g.*, *id.* at 56 ("Prosecutors have fueled the rise of prison populations."). However, there is a cadre of academics who believe that the turn to traditional experts will help to shield criminal law from the harmful ratcheting up and perpetual moral panics of penal or punitive populism. *E.g.*, Malcolm M. Feeley & Jonathan Simon, *The New Penology: Notes on the Emerging Strategy of Corrections and Its Implications*, 30 CRIMINOLOGY 449, 453–54 (1992) (arguing that in response to demands for "rationality" and "accountability," there has been a turn to a "managerial perspective" on criminal law, meaning that increasingly the administration of the criminal legal system is driven by statistics and other actuarial assessments); BERNARD E. HARCOURT, LANGUAGE OF THE GUN: YOUTH, CRIME, AND PUBLIC POLICY, at xi (2006) ("Rather than use the research to draw law and policy inferences, use the research to expose the assumptions about human behavior that . . . underlie the law and policy proposals." (emphasis omitted)); Tracey L. Meares & Bernard E. Harcourt, *Foreword: Transparent Adjudication and Social Science Research in Constitutional Criminal Procedure*, 90 J. CRIM. L. & CRIMINOLOGY 733, 735 (2000) ("[U]se of empirical evidence will produce a clearer picture of the existing constitutional landscape and spotlight the normative judgments at the heart of criminal procedure cases." (emphasis omitted)).

centers and then explaining what gaps it fills in legal scholarship.

a. What Constitutes Experiential Expertise?

In order to locate the source of the knowledge PLS centers, it is helpful to ground our discussion in what traditionally connotes expertise. Namely, notions of "expertise" are typically based on vocational or educational training.[231] These forms of traditional expertise are founded on the claim that an expert's training equips them with "specific knowledge in a specific realm that outsiders or non-experts cannot access or cannot have mastered."[232] What then constitutes the "specific knowledge" and "specific realm" of an experiential expert?

As a starting point, in accordance with other legal scholars who advocate in favor of experiential expertise, PLS centers the knowledge of those with expertise in law's injustice through lived experience, but who, due to social stigma or discrimination, have traditionally been excluded from the dominant discourse in law and legal scholarship alike.[233] Our position is that living law's oppressive forces and suffering law's harms uniquely situates someone to be able to critique it and determine how it should be transformed.[234] In other words, it is the lived experience of bearing a particular law's harm that equips an experiential expert with "specific knowledge in a specific realm that outsiders or non-experts cannot access."[235] Based on their lived experience, an experiential expert has specific knowledge of the harm caused by a specific realm of law. As specified in Rachel's prior article and elaborated on in the next Subsection, incorporating this type of lived experience into legal analysis allows us to see the law

231. An expert based on vocation is "an experienced institutional actor," while an expert based on educational training is a "well-educated person." Levin, *supra* note 151, at 2819 (describing the features of the traditional modes of expertise in criminal law); *see also id.* at 2779–80 (discussing deference to doctors and scientists during the COVID-19 pandemic).

232. *Id.* at 2799 (emphasis omitted).

233. *Id.* at 2823 (explaining how 'directly-impacted' people tend to have little political power and are excluded from public participation in the criminal legal system).

234. López, *supra* note 1, at 1824 ("PLS creates space for those directly impacted by law's injustices to have a role in shaping future laws through their own narratives and *nomos* and to delegitimize legal structures that marginalize or dehumanize them.").

235. Levin, *supra* note 151, at 2799.

more clearly, not just what it says on the page or how theory tells us it should function, but how it really operates on the ground for those most affected by it.[236] In this way, experiential expertise supplements other types of expertise by exposing the blind spots created by only understanding the law from a particular vantage point.[237] Without the specialized insights of those most acutely affected by the law, lawmakers can easily miss the mark by constructing versions of the law that conform to their lived experience, but don't reflect how most people experience it.[238] Moreover, the intent of law can be different than the effect and experience of it. Thus, PLS is informed by the belief that the law is best understood, and informed, by viewing it holistically from different angles.[239]

We further clarify that the intimate knowledge that comes from experiencing the bluntest consequences of the law is distinct from merely bearing witness to law's harm at a distance. In contrast to how some scholars characterize it, we take the view that experiential expertise is more than just "everyday knowledge."[240] While experiential expertise is grounded in lived experience, merely experiencing something is not enough to be an expert.[241] As discussed in *Participatory Law Scholarship* and as underscored by Rell in his reflection, it is the process of critical reflection on one's own experience, usually with others who have similarly been harmed by law, that facilitates critical insights and builds expertise.[242] PLS thus necessarily involves the

236. López, *supra* note 1, at 1820–23 (explaining how participatory methods create fuller accounts of the law and combat laws made by a narrow group of elites that can reflect a reality different from their daily lives).

237. *Id.*

238. *Id.* at 1823 ("The problem is that when a narrow group of elites . . . develop the law through their own *nomos* and narratives, the law can reflect a version of reality that is inapposite to the way people experience it in their daily lives.").

239. *Id.* at 1814 ("[PLS] widens the scope of our understanding of social issues, broadens the evidence we consider, and expands the ways that we express our finding to the world.").

240. Levin, *supra* note 151, at 2824 (characterizing experiential expertise as the "privileging" of "everyday knowledge" or deferring to the expertise of "those who experience a circumstance").

241. *See* López, *supra* note 1, at 1818 ("[H]uman knowledge is by its nature, imperfect.").

242. *Id.* at 1818–20 (discussing how human knowledge is imperfect, but dialogue with others can improve awareness of what we know and what we fail to perceive).

reimagination of the law or legal systems collectively through praxis—a process of action and reflection.[243] Such critical reflection about one's own material circumstances in conversation with others helps experiential experts to develop a critical consciousness and generate knowledge and liberatory theory that when acted upon can alter their realities.[244] For example, the group that Rell led, the Right to Redemption Committee, reflected collectively on their common condition of confinement and theorized a new right—the right to redemption—that sought to alter the dominant discourse in law about whether there are some human beings who are irredeemable.[245] Most recently, a coalition of advocates elevated the Committee's analytical framework by evoking it in filings before the United Nations, which in turn has adopted that framework in some of its official statements.[246]

Other scholars share our view that marginalized people often develop specialized knowledge that can help inform more robust understandings about law. For instance, in *Decarceration's Inside Partners*, Seema Saifee documents how many people behind bars "who experience the daily violence of the law spend their days reckoning with how the law thinks about them."[247] In this process of critical reflection on their experience, they "have opposed—and produced ideas to expose—the enduring narratives and structures that land them and others behind bars, generating theories, analyses, and actions directed to transformative decarceral ends."[248] Likewise, building from Antonio Gramsci's concept of "organic intellectuals," the authors of *Subversive Legal Education: Reformist Steps to Abolitionist Visions* aim to advance the voices of "organic jurists," which they define as those who study, analyze, and comment on the law, despite

243. *Id*. at 1808 (citing PAULO FREIRE, PEDAGOGY OF THE OPPRESSED 51 (Myra Bergman Ramos trans., Bloomsbury Academic 2018) (2000)).

244. *Id*. at 1801 (describing how artificial agents of academic assimilation, as opposed to experiential experts, can produce formulaic scholarship devoid of innovation and conviction).

245. Carter et al., *supra* note 2, at 325–31 (summarizing how the Right to Redemption Committee reframed their incarceration to develop the right to redemption).

246. For more information about this coalition's advocacy and how it is informed by the Committee's analytical framework, see generally Songster et al., *supra* note 24.

247. Saifee, *supra* note 229, at 59 (emphasis omitted).

248. *Id.*

not having been formally trained in the law.[249] In her seminal article, Mari Matsuda similarly advocated for "looking to the bottom," believing that "those who have experienced discrimination speak with a special voice to which we should listen [and] . . . can assist critical scholars in the task of fathoming the phenomenology of law and defining the elements of justice."[250] Monica Bell has also argued that "as subordinates of the criminal justice system, members of marginalized communities are especially knowledgeable about systemic injustice and thus especially capable of and responsible for rectifying it."[251]

These thinkers share our view that the most marginalized members of society have unique insights into how the law functions, and rather than passive recipients of the law, they should be appreciated for their expertise. Indeed, we believe that their contributions will build a law better equipped to address our society's most pressing problems.

b. The Need for Experiential Expertise in Legal Scholarship

In this final Subsection, we extend other academics' arguments about the value of experiential expertise, turning those arguments back to them. Specifically, we contend that this specialized knowledge is critically needed in legal scholarship too as a means to fill in missing context and make loud the silences covered by a presumption of neutrality in and authority of the law.

First, the same arguments that are advanced for incorporating experiential expertise into law-making pertain to legal scholarship too. As Rell and others contend, similar to policymakers, scholars often lack nuanced understandings of marginalized communities, which are also frequently criminalized.[252] In fact,

249. Christina John et al., *Subversive Legal Education: Reformist Steps Toward Abolitionist Visions*, 90 FORDHAM L. REV. 2089, 2092 (2022).

250. Mari J. Matsuda, *Looking to the Bottom: Critical Legal Studies and Reparations*, 22 HARV. C.R.-C.L. L. REV. 323, 324 (1987).

251. Monica C. Bell, *The Community in Criminal Justice: Subordination, Consumption, Resistance, and Transformation*, 16 DU BOIS REV. 197, 208 (2019).

252. *See, e.g.*, Monica C. Bell, *Safety, Friendship, and Dreams*, 54 HARV. C.R.-C.L. L. REV. 703, 710 (2019) ("Most legal and policy approaches that proceed under the banners of racial justice and economic justice reveal a breathtaking cluelessness—or, perhaps, willful flattening—of the nuanced realities that ghettoized African Americans face on a daily basis.").

as described in the prior Subsection, the movement to center experiential expertise is largely fueled by frustration with academic experts' failure to recognize context.[253] In this sense, legal scholarship is a venue particularly well-positioned for the task of addressing these failures by providing greater context to inform the production of legal theory before it becomes embedded in law.

Our article, *Redeeming Justice*, is an illustration of how this might operate in practice.[254] That article drew from a vision for the law, forged behind prison walls in a correctional facility outside of Philadelphia by those who were sentenced to die there.[255] Later on, this group's vision for a right to redemption was grounded in human rights jurisprudence in *Redeeming Justice*, which then became part of the legal basis for a successful advocacy campaign before the United Nations, just as the Committee had envisioned it would.[256] The realization of this vision has now come full circle in service of those left behind the walls, with U.N. experts intervening as *amici curiae* in a case pending before the high court of Pennsylvania that is poised to abolish mandatory life without parole for second degree murder.[257]

Second, as Rachel describes more fully in *Participatory Law Scholarship*, incorporating the insights and knowledge of members of communities most marginalized by law into legal scholarship helps to paint a fuller picture of how the law operates on

253. *See supra* Part III.B.2.a.

254. *See generally* Carter et al., *supra* note 2.

255. *Id*. at 325–31 (documenting how the Right to Redemption Committee forged the idea for the right to redemption).

256. *Id*. at 325 (quoting the Right to Redemption Committee's mission statement, which appeals to the United Nations for redress); *see also* Songster et al., *supra* note 24; U.N. Hum. Rts. Comm., Concluding Observations on the Fifth Periodic Report of the United States of America, ¶¶ 46–47, U.N. Doc. CCPR/C/USA/CO/5 (Dec. 7, 2023); *Statements by the United Nations on Death by Incarceration,* DEATH BY INCARCERATION IS TORTURE, https://www.deathbyincarcerationistorture.com/statements-by-the-un [https://perma.cc/3PY6-UAEF].

257. *Amicus Curiae* Brief of the Special Rapporteur on Contemporary Forms of Racism and the Expert Mechanism to Advance Racial Justice and Equality in Law Enforcement (EMLER) in Support of Petitioner, Commonwealth v. Lee, No. 3 WAP 2024 (Pa. Apr. 26, 2024), https://ccrjustice.org/sites/default/files/attach/2024/04/UN_Experts_Amicus_Brief_0.pdf [https://perma.cc/PF4V-M7ZF] (arguing death by incarceration contravenes international human rights law).

the ground and where it is in need of up-ending.[258] Drawing from Robert Cover's seminal article *Nomos and Narrative*, *Participatory Law Scholarship* details how those with the power to make and interpret laws are rarely the same as those most directly affected by them.[259] For these reasons, laws can often be ill-equipped to address the problems they are meant to address.[260]

Moreover, these decision-makers issue their judgments about law from the vantage point of their own cultural frameworks.[261] Since the legal profession is not at all representative of the broader public, much less those who bear law's bluntest consequences, law often reflects a white heteronormativity.[262] As both Bennett Capers and Swethaa Ballakrishnen have underscored, even those in the legal profession who do have first-hand experience with marginalization may alter their speech to fit the expectations of the predominantly white legal profession.[263] More troubling still is what remains hidden in the law due to this smothering of speech. Indeed, law is often portrayed as neutral or "perspectiveless."[264] Yet, nascent in the law are narratives that support its propositions. Judicial decisions weave together stories that support judges' claims to what the law is and should be; legal doctrine also communicates a narrative of how society

258. López, *supra* note 1, at 1820–24 (explaining the legal theory undergirding participatory law scholarship).

259. *Id.* at 1820 (citing Robert M. Cover, *The Supreme Court, 1982 Term—Foreward:* Nomos *and Narrative*, 97 HARV. L. REV. 4 (1983)).

260. *Id.*

261. *Id.* at 1823 ("The problem is that when a narrow group of elites—whether lawmakers, judges, or scholars—develop the law through their own *nomos* and narratives, the law can reflect a version of reality that is inapposite to the way people experience it in their daily lives.").

262. *Id.* at 1843–44 (first citing ELIZABETH MERTZ, THE LANGUAGE OF LAW SCHOOL: LEARNING TO "THINK LIKE A LAWYER" 1 (2007); then citing Crenshaw, *supra* note 155, at 3; and then citing Kimani Paul-Emile, *Foreword: Critical Race Theory and Empirical Methods Conference*, 83 FORDHAM L. REV. 2953, 2956 (2015)).

263. Capers, *supra* note 5, at 17 (describing how succeeding in law school often involves assimilation to white spaces); Swethaa Ballakrishnen, *Law School as Straight Space*, 91 FORDHAM L. REV. 1113, 1117–18 (2023) (describing how genderqueer persons are marginalized in law schools, which are often straight spaces).

264. Crenshaw, *supra* note 155, at 2.

operates and what should be forbidden.[265] Consequently, PLS is desperately needed because it will help to expose what is being silenced and bust the myth of the neutrality of law by excavating the moral and political judgments that undergird it.

C. RESPONDING TO CRITIQUES OF EXPERIENTIAL EXPERTISE

While some scholars have raised some legitimate concerns with labeling those with lived experience as experts, we embrace this framing, particularly in the context of PLS where it can be understood as one intervention to remedy the ongoing epistemic violence at the hands of academics and academic institutions. This Section describes and addresses some of the concerns raised by those who are otherwise sympathetic to the idea that we should center the voices of the marginalized in legal processes, but question the wisdom of framing these insights as "expertise."

Namely, some scholars have raised concerns that characterizing interventions by directly impacted people as expertise is antithetical to the broader goals of participation and inclusion at the heart of such proposals. For instance, Benjamin Levin worries that such framing will reify elitism in policymaking.[266] He argues that any move to situate those with lived experience as experts is by its nature exclusionary as "some set of voices would be epistemically superior to others."[267] For this reason, Levin challenges the notion that valuing experiential expertise can be democratizing.[268] In addition, he raises concerns about any one

265. Jane B. Baron & Julia Epstein, *Is Law Narrative?*, 45 BUFF. L. REV. 141, 142–43 (1997) ("Many other communications within law can also be understood as stories. Judicial opinions select from among the many facts adduced at trial those 'relevant' to what is deemed to be the case's issue to construct a statement of the case; the resulting rendition of 'the facts' can thus be seen as a story crafted to support the court's holding. Were the issue framed differently, or were the court to reach a different result, different facts might be selected, and another story told." (footnote omitted)).

266. Levin, *supra* note 151, at 2833 ("Expertise as a frame and vocabulary implies exclusivity: calling someone an expert both presumes and also establishes that others are nonexperts. Indeed, the power of the expertise claim generally rests on its exclusivity. Expertise presupposes that expert knowledge is of worth because other nonexperts do not possess it.").

267. *Id.* at 2784 (raising his concern that any effort to reconstitute expertise by its nature replicates the problematic dynamics that warranted dismantling traditional notions of expertise in the first place).

268. *Id.* at 2829–30 ("To the extent that the arbiter of expertise remains some relatively elite or powerful actor (e.g., a politician, an agency, an academic, or an advocate in a leadership position), then how democratic is it, really?").

voice speaking on behalf of an entire community.[269] Similarly, Seema Saifee worries that relying on the expertise framework reifies hierarchy because it characterizes certain types of knowledge as exceptional and worthy of greater deference.[270] She fears that adopting the language of expertise instantiates the notion that experts are sources of "infallible truth."[271]

As a starting point, neither Levin nor Saifee seems to be suggesting that we scrap the "expertise" frame altogether.[272] While both are troubled by the hierarchy of knowledge implicit in expertise, they are reticent to abolish the modes of expertise based on professional experience or education altogether.[273] But as long as the traditional modalities of expertise remain intact, the hierarchy of knowledge does as well, and those with insights into law's injustice grounded in lived experience will inevitably start from behind. Indeed, because they will be challenging the status quo and exposing the contradictions in the dominant discourse, they will likely face harsher scrutiny.[274] Absent additional credentials, their insights and knowledge will be discredited as lacking the authority and legitimacy of traditional

269. *Id*. at 2834 ("[T]his vision continues to raise questions about relative marginality, the homogeneity of 'the community,' and who should be authorized to speak on behalf of a larger group as expert.").

270. Saifee, *supra* note 229, at 120 (claiming expertise "reifies the status quo").

271. *Id*. at 119 ("[T]he very notion of expertise suggests that there is some 'correct' response to complex social problems and that experts are the ones to 'solve' them.").

272. *Id*. at 117 ("To be clear, I do not mean to oppose the role or value of 'experts' who hold traditional academic credentials to advance decarceration."); Levin, *supra* note 151, at 2785 ("[I]n raising questions about expertise as a frame, I don't mean to reject out-of-hand the importance and value of 'experts' of many different models.").

273. Saifee, *supra* note 229, at 117 ("The 'deceptive allure' of expertise that wrests uncritical judicial deference across a range of doctrines also infiltrates our processes for social change."); Levin, *supra* note 151, at 2785 ("[T]here's good reason to be skeptical that simply choosing the right experts will address deep-seated cultural attitudes about punishment and the proper scope of criminal law.").

274. Ballakrishnen & Lawsky, *supra* note 35, at 1040–41 ("Normative or ideal actors acting out of ideas that support themselves or their homogenous peers typically are not similarly viewed because their ideas are often already reflected within the logics of the institutions they are challenging. Thus, they are seen as 'neutral,' whereas minority actors can rarely escape the identities that they are speaking on behalf of, which then consistently calls into credibility their motivations and positionality.").

experts.[275] Consequently, instead of reifying the hierarchy of knowledge inherent in expertise, the PLS project disrupts it, contesting the subjugation of knowledge generated from members of marginalized and subordinated communities.[276]

More to the point, as Jocelyn Simonson argues in the context of policing, recognizing experiential expertise should be understood as a form of reparations for past injustice because of the power shifting inherent to such recognition.[277] Reparation has been described as appropriate in "cases where there is a need for repair for past [harms] against groups," especially when current harms are being compounded by past ones.[278] Given the history of harms inflicted by epistemic violence at the hands of academics and academic institutions, there is an especially strong case for the centering of experiential expertise in legal scholarship.

Specifically, we contend that valuing the insights of experts who study legal systems that harm marginalized communities at a distance, over those who experience that harm first-hand, is a form of epistemic violence, whether it be in the courtroom or on the pages of law reviews. And denying this particularized knowledge the label of expertise would just perpetuate the logic of epistemic violence already at work in the legal academy, which discounts the episteme of the very disadvantaged communities that many academics study, as Section II.B underscored. This repudiation would facilitate academics' treatment of marginalized people as objects to be studied rather than human beings with agency and diverse ideas about how to solve the challenges facing their communities. Furthermore, as discussed in Section II.B, academic institutions have financial incentives to perpetuate this objectification, since the premise of so-called innovation

275. *Id.* at 1041 ("[T]hose who question [the status quo] have an additional burden of proving wrong what has been taken for granted and running the risk of being seen as having an agenda (which they do!) and therefore being biased.").

276. Michel Foucault, *Two Lectures* ("[B]y subjugated knowledges one should understand something else . . . namely, a whole set of knowledges that have been disqualified as inadequate to their task or insufficiently elaborated: naive knowledges, located low down on the hierarchy, beneath the required level of cognition or scientificity."), *in* POWER/KNOWLEDGE: SELECTED INTERVIEWS AND OTHER WRITINGS 1972–1977, at 78, 82 (Colin Gordon ed., Colin Gordon et al. trans., 1980).

277. Simonson, *supra* note 214, at 830–38 (summarizing methods of reparations through downward powershifting to those who have experienced and are experiencing harm).

278. *Id.* at 831.

districts is predicated on the view that academic institutions are the sole or primary proprietors of knowledge. In short, they benefit from their monopoly on knowledge production, which their custody of expertise, at the exclusion of the marginalized, licenses. Relatedly, failing to recognize those with lived experience as holders of expertise gives credence to those in the legal academy as well as the legal profession writ large, who already discount identity-based work in legal scholarship.[279] It may also inadvertently bolster those who criticize critical race theory and feminist writings as based on unverifiable stories.[280]

Both Levin and Saifee also share a concern about the exclusionary nature of expertise, fearing that it will require elevating certain voices over others and those voices will not be representative of "the community" or represent communal interests. To this concern, framing PLS as a response to epistemic violence again generates a useful way to approach this challenge. Viewing this concern in light of Spivak's critique of leftist academics relieves PLS of the burden of identifying one representative voice and instead adopts a pluralist approach to knowledge. Instead of requiring one voice as the authority for the subaltern, Spivak helpfully explains that the subaltern is multifaceted and that requiring that the marginalized speak in one voice is itself a form of epistemic violence.[281] In this way, instead of reifying the hierarchy of expertise, we adopt a more pluralist understanding of expertise in which traditional experts and experiential experts coming from diverse perspectives can be in conversation.[282] In accordance with other advocates of greater public

279. Ballakrishnen & Lawsky, *supra* note 35 at 1032 (describing the ways faculty members may discount identity-based scholarship).

280. *See, e.g.*, DANIEL A. FARBER & SUZANNA SHERRY, BEYOND ALL REASON: THE RADICAL ASSAULT ON TRUTH IN AMERICAN LAW 73–74 (1997) (claiming that "radical scholars" and the use of storytelling they advocate for threaten to degrade legal scholarship's function as a "reality check"); *see also* Richard A. Posner, *The Skin Trade*, NEW REPUBLIC, Oct. 13, 1997, at 40, 40–43 (criticizing CRT scholars for "forswearing analysis in favor of storytelling" (reviewing FARBER & SHERRY, *supra*)).

281. Spivak 1988, *supra* note 13, at 288–89.

282. Bell, *supra* note 251, at 712 ("How do we hold space for both the (bounded) expertise of academics and technocrats and the (bounded) expertise of the people who could benefit most from the achievement of racial and economic justice, those who will suffer most if it continues to elude us?"); *see also* Levin, *supra* note 151, at 2833 ("The former suggests a commitment to pluralism or to opening up the process of criminal policymaking: individuals and

participation in policymaking, we don't see experiential expertise as a replacement for other types of expertise, but rather as a foil that can help to reveal the assumptions, biases, and political commitments inherent in expert opinions that otherwise might be portrayed as neutral or apolitical.[283] In fact, this pluralist approach to expertise accords with Levin's argument for denaturalizing expertise to expose the political and moral judgments that underlie seemingly neutral or objective reasoning. Specifically, Levin argues that we need "a new understanding of expertise—one that recognizes that expertise, like the other institutions of the criminal system, is in need of denaturalizing so that we (whoever we may be) can confront and contest the values, politics, and decisions that undergird it."[284] Indeed, academic writing often conceals a multitude of views, sometimes unstated, about what the purpose of criminal law is or should be.[285] As Levin strikingly points out, expert treatment of criminal law often belies disagreements about the first principles of criminal law that should not be the province of experts.[286]

While we do not find the notion of expertise problematic on its own terms, when defined in the conventional sense of having specialized knowledge of a particular subject, we share Levin's concern that classifying an opinion as expertise carries the risk of portraying political judgments as "neutral" or "objective" and therefore beyond reproach. As numerous scholars have pointed out, no expert can completely divorce themselves from their context. But we see the incorporation of experiential expertise into legal scholarship in the form of PLS as one way to disrupt law's dominant discourse, often built on the back of faulty

communities who previously were systematically excluded should instead be seen as valued (and necessary).").

283. Levin, *supra* note 151, at 2788 ("And, many proponents of greater public involvement frame that involvement as complementary to—not a replacement for—governance by experts, insiders, or professionals.").

284. *Id.* at 2837.

285. *Id.* at 2806 ("Academic and judicial treatments of constitutional criminal procedure similarly reflect common themes or statements of purpose: efficiency, fairness, accuracy, and some concern about curbing illegitimate state power. And, more radical or critical treatments of the criminal system suggest other more explicitly nefarious purposes—perhaps social control, maintenance of societal hierarchies, or legitimation of inequality or the dominant social order.").

286. *Id.* at 2807 (arguing that first-principle questions are not for experts to answer and moving choices to neutral technocratic territory is unlikely).

conventional expertise, as Section II.B illustrated.[287] Accordingly, experiential expertise can act as a counternarrative to the dominant discourses advanced by traditional experts, exposing the assumptions and biases that lurk beneath, and thereby unearthing them and denaturalizing expertise. Levin himself concedes this point, acknowledging that experiential expertise can itself challenge experts' false claims of objectivity and neutrality.[288]

Our pluralist vision of expertise also accords with Simonson, who like Rell believes that centering experiential expertise advances democracy, rather than threatens it.[289] Specifically, drawing from a theory of contestatory democracy, Simonson argues that healthy democracies should invite and facilitate some forms of dissent and resistance that are "within the bounds of current political structures."[290] She further posits that such contestation is needed as a method to check aspects of state power which are repressive.[291] Consequently, the goal of democratizing reforms should be to create processes and structures that facilitate the expression of countervailing interests and views.[292] In line with Spivak, Simonson is careful to note that the views expressed through such processes need not be uniform or easily reconcilable, since the concept of "we the people" includes many

287. As Rachel explained more fully in *Participatory Law Scholarship*, undergirding the law are "nascent narratives about how the world works" and what is needed to improve it. López, *supra* note 1, at 1805.

288. Levin, *supra* note 151, at 2784 ("The turn to lived experience—in some sense—responds to these concerns by highlighting the contingent, politicized, and contextual way in which society and legal institutions interpret truth claims. By expanding the class of experiences and backgrounds that qualify a person to participate in policymaking or 'official' discourse on criminal law, this deconstructive move highlights the politicized project of selecting experts in the first place and denaturalizes experts' privileged status.").

289. Simonson, *supra* note 214, at 843 (arguing contestatory democracy allows for resistance to subordinating state power and creates a legitimate governance arrangement).

290. *Id.* at 843–45.

291. *Id.* at 843–44 (Simonson defines contestation as "any form of political action that involves direct opposition to reigning laws, policies, or state practices").

292. *Id.* at 845 ("[Contestation] enables dominated groups to share governing power and hold government and elites accountable.").

people holding divergent viewpoints.[293] Understood in this light, PLS can thus be seen as a vehicle for elevating dissent and resistance to oppressive laws and in this way is democratizing.

CONCLUSION

While legal scholars regularly tell the stories of the marginalized in the process of making their own arguments, they rarely engage with the thinking of the communities they study or regard them as thought leaders in their own right.[294] Even scholarship which calls for shifting power to the subordinated often cites to other scholars as sources of knowledge and legal authority, rather than the subaltern. In today's legal scholarship, the subaltern often do not speak for themselves. But how can academics expect other institutions to recognize the knowledge and hear the voices of directly impacted people if they are not able to do so?

As a response to this epistemic violence, PLS asks legal academics to follow their own lead by shifting who they are in conversation with and creating space for directly impacted people to speak for themselves in legal scholarship. In addition to co-authorship, which is a core feature of PLS, an epistemically just approach would also require a broader shift in attribution and sourcing of ideas. This shift would signal a recognition that those most severely harmed by the legal systems that academics regularly study have unique insights into their own realities. In short, the subaltern can speak for themselves and academics should listen.

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293. *Id.* at 846 (arguing that the "ideal is a pluralist conception of the demos in which there is no one 'people' or 'community' to whom the state should be beholden, but rather multiple publics with contrasting ideas about justice (and policing) that cannot easily be reconciled").

294. Saifee, *supra* note 229, at 61 ("Despite routine narration of their stories—usually starting with a crime—and vast study of prisons and jails, legal scholars rarely consider people in prison to be thought leaders, let alone equal partners, in progressing toward a decarceral future.").

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