
**EXPERIENTIAL EXPERTISE IN LAW: WHAT LIVED
EXPERIENCE CAN TEACH**

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INTRODUCTION

Increasingly, there has been a concerted push among activists and scholars for directly impacted people to have a greater voice in public policy and legal decisions.¹ While calls to “look to the bottom” are not new to legal scholarship, framing such intervention as expertise is.² Yet, the exact contours of experiential expertise—what it is, how it is formed, and how it should inform the law—remain disputed.

These questions loom large for me as one of the scholars advocating for the consideration of “experiential expertise” in law and one of the founders of participatory law scholarship (“PLS”).³ They have been particularly pressing as PLS—defined as legal scholarship written in collaboration with authors who have no formal legal training but rather expertise in law’s injustice through lived

¹ See Terrell Carter & Rachel López, *If Lived Experience Could Speak: A Method for Repairing Epistemic Violence in Law and the Legal Academy*, 109 MINN. L. REV. 1, 27-41, 54 & n.213 (2024) (describing the literature in the legal academy that advocates for the incorporation of lived experience into legal decision-making); see also Ngozi Okidegbe, *The Democratizing Potential of Algorithms?*, 53 CONN. L. REV. 739, 748, 774-76 (2022) (arguing for the creation of commissions comprised of people who have lived experience with crime or incarceration to determine “if and on what basis to pretrial algorithmics” should be used for governance); Jocelyn Simonson, *Police Reform Through a Power Lens*, 130 YALE L.J. 778, 851-53 (2021) (advocating for a shift from “traditional” forms of expertise to experiential expertise in the context of police reform); Matthew Clair, *Criminalized Subjectivity: Du Boisian Sociology and Visions for Legal Change*, 18 DU BOIS REV.: SOC. SCI. RSCH. ON RACE 289, 290 (2021) (calling for “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 the insights of “formerly incarcerated people who can speak to their experiences while incarcerated and during reentry” should be incorporated into clemency proceedings); Jules Lobel, *Participatory Litigation: A New Framework for Impact Lawyering*, 74 STAN. L. REV. 87, 94 (2022) (outlining a participatory framework for class-action lawsuits that involves “empower[ing] clients through their active, collective participation” in litigation); M. Eve Hanan, *Invisible Prisons*, 54 U.C. DAVIS L. REV. 1185, 1217 (2020) (explaining that understanding how currently incarcerated people experience prison is critical to defining and understanding punishment); S. Lisa Washington, *Time and Punishment*, 134 YALE L.J. 536, 605-11 (2024) (contending that time as experienced by impacted parents should be considered in the family regulation system).

² See Benjamin Levin, *Criminal Justice Expertise*, 90 FORDHAM L. REV. 2777, 2824 (2022) (“But, it is worth considering some of these recent academic arguments and this third turn to expertise as something new and—at least in part—distinct because of the language of expertise and the adoption of expertise as a frame or vocabulary for advancing antistatist interests.”).

³ Carter & López, *supra* note 1, at 61-67 (describing experiential expertise as a way to show “how [law] really operates on the ground for those most affected by it”).

experience—continues to grow.⁴ The difficulty of these questions is compounded by the fact that my frequent coauthors, Kempis Songster and Terrell Carter, and I developed the field by accident. It was born in a particular moment under a very particular set of conditions that are unlikely to be repeated.⁵ Based on my experience of producing scholarship with them, I can easily identify them as experts. Indeed, they have given me insights into how the criminal legal system operates that were only possible coming from the perspective of someone who has experienced its sharpest edges.⁶ Admittedly, though, I have struggled to explain the exact nature of their expertise. Because we have been working backwards trying to describe and theorize their analytical contributions after the fact, it has felt like starting from behind.

Since standpoint feminism is a theory grounded in similar principles as those driving PLS, this Essay seeks to situate “experiential expertise” within that theoretical framework in order to move the conversation forward and tackle some of the emergent questions about the contours of this form of expertise. Standpoint feminism makes two chief claims: first, that “all knowledge is located and situated,” and second, “that one location, that of the standpoint of women, is privileged because it provides a vantage point that reveals the truth of social reality.”⁷ Here, I rely on these underlying premises, applying them to a broader class of people who have no legal training but rather expertise in the law’s injustice to explain how experiential expertise is formed and can inform the law.

The Essay proceeds in three parts. In Part I, drawing from the work of standpoint feminists who claim that the experience of being marginalized can provide unique insights into how oppression is constructed and maintained, this Essay articulates a theory undergirding claims about the benefits of experiential expertise. Part II describes the process of expertise formation for those with lived experience of oppression. Finally, Part III situates experiential expertise within existing theories of legal interpretation, arguing that it can act as a counterweight to originalism by centering alternative sources of legal authority that aren’t tethered to original meaning at the Founding. In closing, it argues that academic institutions should help to facilitate the material conditions for knowledge production by experiential experts.

⁴ Rachel López, *Participatory Law Scholarship*, 123 COLUM. L. REV. 1795, 1798 (2023) (defining PLS as legal scholarship written in collaboration with people “who have no formal training in the law but rather expertise in its function and dysfunction through lived experience”).

⁵ *See id.* at 1797-98.

⁶ *See id.* at 1797 (noting Terrell Carter and Kempis Songster were serving life sentences without parole); *see also* Kempis Songster, Terrell Carter & Rachel López, *Regarding the Other Death Penalty*, 124 COLUM. L. REV. F. 114, 114-15 (2024) (drawing from the lived experience of Kempis and Terrell to explain why life without parole sentences should be understood as death by incarceration).

⁷ Susan Hekman, *Truth and Method: Feminist Standpoint Theory Revisited*, 22 SIGNS: J. WOMEN CULTURE & SOC’Y 341, 349 (1997).

I. THE NATURE OF EXPERIENTIAL EXPERTISE

Traditional forms of expertise are founded on the claim that an expert's experience or training equips them with "specific knowledge in a *specific* realm that outsiders or non-experts cannot access or cannot have mastered."⁸ For example, vocational experts ground their knowledge in their professional experience, while academic experts base it on their education and research experience.⁹ One might then naturally ask: What is the basis of knowledge of an experiential expert?

Drawing from standpoint feminist theory, this Part seeks to further clarify the nature of experiential expertise, pinpointing both the basis and scope of knowledge of those who ground their expertise in lived experience. Here, I draw inspiration from standpoint feminism to develop a theory of knowledge of experiential expertise, distinguishing it from other types of expertise. This brand of feminism derives from the Marxist insight that positionality provides a lens through which you can see the world more clearly.¹⁰ However, Marx focused on the standpoint of the proletariat and paid very little attention to the intersectional dimensions of identity that might further contribute to marginalization.¹¹ Feminists thus expanded standpoint theory, theorizing that women—having often borne the bluntest consequences of oppression—have unique insights into how our social order is constructed and maintained.¹² Black feminists then further deepened that analysis describing how Black women's experiences of navigating the "interlocking nature of race, gender, and class oppression" can clarify how the different systems of oppression reinforce each other.¹³

⁸ Levin, *supra* note 2, at 2799.

⁹ An expert based on vocation is an "experienced institutional actor," while an expert based on educational training is a "well-educated person." *See id.* at 2819 (describing the features of the traditional modes of expertise in criminal law); *cf. id.* at 2779 (discussing deference to doctors and scientists during the COVID-19 pandemic).

¹⁰ T. Bowell, *Feminist Standpoint Theory*, INTERNET ENCYCLOPEDIA OF PHIL., <https://iep.utm.edu/fem-stan/> [<https://perma.cc/GM9Q-MNHK>] (last visited May 14, 2025) ("Marxist traditions . . . provide the genesis of standpoint theorists' claim that the 'double vision' afforded to those who experience social relations from a position of marginality can, under certain circumstances, offer them epistemic advantage.").

¹¹ *See* Sandra Harding, *Introduction: Standpoint Theory as a Site of Political, Philosophic, and Scientific Debate*, in *THE FEMINIST STANDPOINT THEORY READER: INTELLECTUAL AND POLITICAL CONTROVERSIES* 1, 8 (Sandra Harding ed., 2004) ("Differences between nonbourgeoisie, whether or not they were industrial workers—gender, racial, ethnic differences, for example—were noted in Marxian accounts but not of theoretical interest.").

¹² Bowell, *supra* note 10 ("[F]eminist standpoint theorists argue that the epistemic and political advantages of beginning enquiry from within women's lived experiences are not limited to providing a truer account of those lives, but of all the lives and socio-political relations within which those lives are enmeshed.").

¹³ Patricia Hill Collins, *Learning from the Outsider Within: The Sociological Significance of Black Feminist Thought*, 33 *SOC. PROBS. (SPECIAL THEORY ISSUE)* S14, S19-S20 (1986) (describing how the standpoint of Black women "shifts the entire focus of investigation from

Standpoint feminism helps to shed some light on how we might conceptualize experiential expertise. Inherent in standpoint feminism is a critique about how the production of knowledge is inherently skewed toward the viewpoints of the powerful, who are usually men.¹⁴ Dorothy Smith explains this phenomenon with respect to sociology, but her insights extend far beyond her field. Specifically, she argues that the field's "methods, conceptual schemes, and theories" are all socially constructed "within the male social universe."¹⁵ Because the male point of view dominates, it is portrayed as natural, objective, and apolitical, even though it perpetuates patriarchy and maintains hegemony.¹⁶

In contrast to this ideal of objectivity in research, standpoint feminists argue that "all knowledge is socially situated," meaning that all knowledge is located in a particular sociohistorical context.¹⁷ In short, no researcher is neutral or disinterested with respect to their research subject.¹⁸ Indeed, the very act of research is a political act in the sense that access to research jobs, training, resources, and publications is a product of a political process, particularly for state institutions and really any research entity that receives government funds.¹⁹ Living through this current political moment, when academics and their institutions are under political threat, is an acute reminder of that truth.

In contravention of the notion that the "best" research must be objective and neutral, standpoint feminists believe that women and other marginalized groups should be understood as having an epistemic advantage.²⁰ From the experience of being marginalized, these groups gain insights into social and power relations that can only be seen from the position of the oppressed.²¹ As bell hooks explains, "[l]iving as we did—on the edge—we developed a particular way of

one aimed at explicating elements of race or gender or class oppression to one whose goal is to determine what the links are among these systems").

¹⁴ See Harding, *supra* note 11, at 5-7.

¹⁵ Dorothy E. Smith, *Women's Perspective as a Radical Critique of Sociology*, in THE FEMINIST STANDPOINT THEORY READER, *supra* note 11, at 21, 22.

¹⁶ See *id.*; see, e.g., Aziza Ahmed, *Medical Evidence and Expertise in Abortion Jurisprudence*, 41 AM. J.L. & MED. 85, 87 (2015) (analyzing how abortion decisions "often treat medical evidence and expertise that supports conservative claims as objective and neutral").

¹⁷ *Bowell, supra* note 10.

¹⁸ Harding, *supra* note 11, at 7 ("[K]nowledge is always socially situated.").

¹⁹ *Id.* at 6 ("Political engagement, rather than dispassionate neutrality, was necessary to gain access to the means to do such research—the research training, jobs in research institutions, research funding, and publication.").

²⁰ *Id.* at 7-8 ("[S]tandpoint theories map how a social and political disadvantage can be turned into an epistemological, scientific, and political advantage."); *Bowell, supra* note 10 ("Feminist standpoint theorists point out that, in order to survive within social structures in which one is oppressed, one is required to understand practices of oppression, to understand both oppressed and oppressor; but, this epistemic bi-polarity is neither required of, nor available to, the dominant.").

²¹ *Bowell, supra* note 10.

seeing reality. We looked both from the outside in and from the inside out. . . . We understood both.”²²

From this critique, a prescriptive methodology was forged to guide future research that had a feminist orientation.²³ While some have claimed that bringing politics into research is counterproductive to the production of scientific knowledge (and I’m sure such claims will be made with respect to law too), standpoint feminists argue that political commitments, such as feminism, can sometimes stimulate, guide, and inform thought and theory.²⁴ Understanding power relations and how they affect the production of knowledge is a key feature of this method and can enhance learning.²⁵ As Sandra Harding puts it, “[a]fter all, knowledge is supposed to be based on experiences, and so different experiences should enable different perceptions of ourselves and our environments.”²⁶ Now, standpoint feminists writing in a range of disciplines have taken up this method, arguing that there is immense epistemic advantage to engaging in scientific inquiry from the perspective of the lived experiences of women.²⁷ This move is grounded in the belief that a standpoint can help to expose the false logic undergirding seemingly neutral research as well as unearth suppressed truths.²⁸ Below, in Part III, I outline how a similar move could be made in the legal arena.

II. THE PROCESS OF EXPERIENTIAL EXPERTISE

If expertise is based on experience, what then is the experience that is foundational to experiential expertise? Some skeptics of experiential expertise have characterized it as based on “everyday experience,” but merely experiencing something is not enough to cultivate expertise.²⁹ Much like you do not become a botanist by attending a floral arrangement class, you do not become an expert in the machinations of the carceral state by visiting a prison.

²² BELL HOOKS, *FEMINIST THEORY: FROM MARGIN TO CENTER*, at xvii (Routledge 2015) (1984).

²³ Harding, *supra* note 11, at 1.

²⁴ *Id.* at 1-2.

²⁵ Bowell, *supra* note 10 (“The normative aspect of feminist standpoint theories manifests firstly in a commitment to the thesis that the ways in which power relations inflect knowledge need not be understood as with a subjectivity that threatens their objectivity; rather that socially situated knowledge can be properly objective.”).

²⁶ Harding, *supra* note 11, at 7.

²⁷ *See* Bowell, *supra* note 10 (noting interventions in “social and scientific enquiry,” such as archaeology).

²⁸ *Id.* (“The realities of women’s lives, then, can provide sites of enquiry that lead to new, more complete, less partial, and more objective knowledge.”).

²⁹ Carter & López, *supra* note 1, at 62; *cf.* Levin, *supra* note 2, at 2824 (quoting BETH E. RITCHIE, *ARRESTED JUSTICE: BLACK WOMEN, VIOLENCE, AND AMERICA’S PRISON NATION* 130 (2012)) (characterizing experiential expertise as the “[p]rivileging” of “everyday knowledge” or deferring to the expertise of “those who experience a circumstance”).

There is a practice and process that hones expertise over time, and that is no different for experiential experts.

Thus, to understand what distinguishes mere experience from experiential expertise, we must look more closely at the nature of the experience itself—its duration, intensity, and the reflective practices that accompany it. Experiential expertise is not simply a matter of exposure but of sustained engagement, critical analysis, and shared inquiry.

This is precisely the kind of experience my coauthors embody. Namely, my coauthors honed their analysis of the carceral state by experiencing the daily oppression of living in a human cage. As they described in prior work, their analysis was not just based on their lived experience—as that alone does not necessarily translate into expertise—but also on their collective work with other men who were sentenced to die in prison, reading, thinking, and reflecting together about their collective situation for decades.³⁰ Through this process, they developed an analysis of the carceral state and associated rights claims.³¹ My coauthors are not alone. As Seema Saiffee documented in *Decarceration's Inside Partners*, many people in prison have come together to brainstorm innovative solutions to mass incarceration, drawing from their lived experience.³² Such realizations rarely occur in isolation.³³

Here again, standpoint feminist theory sheds some light on why collective reckoning is so generative to developing a sociopolitical analysis. As numerous standpoint feminists have theorized, women are often estranged from the insights that come from their positionality. This occurs, because in order to be perceived as objective and survive in a man's world, women must develop a "bifurcation of consciousness," detaching from their own perspectives and encounters as women.³⁴ That is, women must separate themselves from their lived experiences in order for their knowledge to be recognized as legitimate.³⁵ To the outside world, women must assume those qualities that are valued by other dominant groups and only are able to be their full selves in private.³⁶ Uma

³⁰ Terrell Carter, Rachel López & Kempis Songster, *Redeeming Justice*, 116 NW. U. L. REV. 315, 325-37 (2021).

³¹ *See id.*

³² Seema Tahir Saiffee, *Decarceration's Inside Partners*, 91 FORDHAM L. REV. 53, 59 (2022) ("With limited to no resources, formal education, or social interaction, some people held in cages have initiated ambitious legal and conceptual strategies to reduce prison populations.").

³³ *See* Patricia Hill Collins, *The Social Construction of Black Feminist Thought*, 14 SIGNS: J. WOMEN CULTURE & SOC'Y 745, 763 (1989) ("For Black women, new knowledge claims are rarely worked out in isolation from other individuals and are usually developed through dialogues with other members of a community.").

³⁴ Smith, *supra* note 15, at 27-28 (describing the "daily chasm which is to be crossed" between research and teaching, on one side, and domestic responsibilities, on the other).

³⁵ *Id.* (characterizing the discipline of sociology as embodying the male frame of reference and requiring women to suspend sex and self-knowledge).

³⁶ Bowell, *supra* note 10.

Narayan calls this the “dark side” of bifurcated consciousness.³⁷ Black feminists have broadened this theory applying it to those who have identities, often intersecting identities, that place them in the category of “other,” whose status is only defined by their relationship to dominant groups.³⁸

Accordingly, because women and other marginalized groups must suspend their identities to gain legitimacy and status in the material world, one of the only ways to gain full consciousness of their positionality vis-à-vis the powerful—in other words, for a standpoint to be constituted—is through struggle against oppression.³⁹ When the marginalized resist their position of oppression, they can more easily recognize how social order is constructed and maintained to preserve the status quo.⁴⁰ From this standpoint, they are able to see certain aspects of sociopolitical relations in the material world that in turn “generate the kinds of questions that will lead to a more complete and true[r] account of those relations.”⁴¹ Consequently, they can also develop a power analysis and theory of change that is deeper than can be gained by watching the world as it goes by.⁴² Patricia Hill Collins calls this awakening the development of an “oppositional consciousness.”⁴³ And for those at the margins, the act of developing this consciousness—of not allowing yourself to be defined by the other—is by its nature a political act.⁴⁴

Some erroneously characterize a standpoint as being taken from one individual’s perspective, but “a standpoint is not equivalent to a social location . . . it is rather earned through involvement in collective political struggle.”⁴⁵ Indeed, the process of forming an oppositional consciousness is often engendered through dialogue and reflection with others in a similar

³⁷ Uma Narayan, *The Project of Feminist Epistemology: Perspectives from a Nonwestern Feminist* (describing noncritical adaptations to bifurcated consciousness, including strict dichotomization and conformity to dominant groups), in *THE FEMINIST STANDPOINT THEORY READER*, *supra* note 11, at 213, 221-23.

³⁸ Collins, *supra* note 13, at S18 (noting how people of color and women are classified “in terms of their position vis-a-vis this white male hub”).

³⁹ See Smith, *supra* note 15, at 27-28; Bowell, *supra* note 10 (providing the example of women scientists, who must “suppress their identity as women and as feminists in order to pass as scientists”).

⁴⁰ See SANDRA HARDING, *WHOSE SCIENCE? WHOSE KNOWLEDGE?: THINKING FROM WOMEN’S LIVES* 150-51 (1991) (explaining how the standpoint of “outsiders within” is especially revealing of broad societal contradictions).

⁴¹ Bowell, *supra* note 10.

⁴² See *id.*

⁴³ Collins, *supra* note 33, at 757 (explaining the oppositional consciousness in the context of Black women’s experiences).

⁴⁴ Collins, *supra* note 13, at S24 (“[W]omen who in their consciousness choose to be self-defined and self-evaluating are, in fact, activists. They are retaining a grip over their definition as subjects, as full humans, and rejecting definitions of themselves as the objectified ‘other.’”).

⁴⁵ Bowell, *supra* note 10.

position that result in mutual recognition and acknowledgment of shared circumstances.⁴⁶ This process enables the oppressed to think more deeply about and name their experiences, sometimes resulting in a set of collective demands and calls for a greater role in decision-making.⁴⁷

While a standpoint is often collectively formed, it does not mean that every member of the collective shares the exact same experiences.⁴⁸ Rather, as Patricia Hill Collins describes, being a Black woman may produce “commonalities of outlook” that result in common themes; however, the expression of those themes—and how they are experienced—might be quite different based on class, religion, age, and sexual orientation, to name a few dimensions of difference.⁴⁹ Part of the work of developing experiential expertise is thus identifying the common threads from diverse experiences to produce theories that resonate with the broader collective who share a particular experience of oppression.⁵⁰ Put another way, the process of forming experiential expertise helps marginalized groups reflect on and develop a common consciousness about their oppression.

In this way, the process of developing and amplifying experiential expertise is one method for combatting hermeneutical injustice, a concept developed by Miranda Fricker.⁵¹ Hermeneutical injustice is a phenomenon that occurs when social and political structures undermine marginalized peoples’ abilities to make collective meaning of their circumstances and social experiences.⁵² Because of

⁴⁶ *Id.* (describing the emergence of standpoints through recognition, self-assertion, and challenging of imposed identities).

⁴⁷ *See id.*

⁴⁸ Carter & López, *supra* note 1, at 22 (citing Gayatri Chakravorty Spivak, *Can the Subaltern Speak?*, in *MARXISM AND THE INTERPRETATION OF CULTURE* 271, 275 (Cary Nelson & Lawrence Grossberg eds., 1988)) (“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.”).

⁴⁹ Collins, *supra* note 13, at S16 (“[U]niversal themes included in the Black women’s standpoint may be experienced and expressed differently by distinct groups of Afro-American women.”).

⁵⁰ *See id.* (“Therefore, one role for Black female intellectuals is to produce facts and theories about the Black female experience that will clarify a Black woman’s standpoint for Black women.”).

⁵¹ MIRANDA FRICKER, *EPISTEMIC INJUSTICE: POWER AND THE ETHICS OF KNOWING* 1 (2007) (defining hermeneutical injustice as something that occurs “when a gap in collective interpretive resources puts someone at an unfair disadvantage when it comes to making sense of their social experiences”).

⁵² *See* José Medina, *Varieties of Hermeneutical Injustice*, in *THE ROUTLEDGE HANDBOOK OF EPISTEMIC INJUSTICE* 41, 42 (Ian James Kidd, José Medina & Gaile Pohlhaus, Jr. eds., 2017) (summarizing Fricker’s characterization of hermeneutical injustice as “structural” and “epistemic”); *see also* Hanan, *supra* note 1, at 1217 (“Powerful groups in society have an ‘unfair advantage in structuring collective social understandings,’ while disfavored groups

unequal resources and discrimination, the marginalized often lack platforms where they can share their common experiences.⁵³ Consequently, “the marginalized have more difficulty locating frameworks to conceptualize their experiences.”⁵⁴ This deficit influences both how marginalized groups conceive of themselves and how they are perceived and treated by others.⁵⁵ Hermeneutical injustice is thus “a structural, large-scale phenomenon that happens at the level of an entire culture.”⁵⁶

This concept is intertwined with how we might understand the basis of experiential expertise. Specifically, this brand of expertise’s value is found in its capacity to overcome hermeneutical injustice—that is, experiential expertise is grounded in the ability to make collective meaning of a group’s circumstances and social experiences in a way that resonates with others from that group. The expertise that is formed thus belongs to the group, not to any one member. The designation of any member of the group as “an expert” depends on how effective that individual is at making meaning from the collective’s shared experience. It is the collective’s recognition of that person’s articulation of their shared experience that is the basis of expertise. This is not all that dissimilar to how experts are identified among academics. When an academics’ work becomes broadly accepted, they are deemed to be experts in their field.

This framing of experiential expertise also helps move us away from the “politics of deference” that concerned Olúfẹ̀mi Táíwò.⁵⁷ Táíwò describes the “politics of deference” as a phenomenon where deference is given to the person “already in the room”—be it the classroom, boardroom, or White House Situation room—who “appears to fit a social category associated with some form of oppression—regardless of what they have or have not actually experienced, or what they do or do not actually know about the matter at hand.”⁵⁸ In contrast, the concept of experiential expertise articulated here is grounded in a deep analysis of oppression developed and honed in rooms with the least power and privilege. Rather than experiential expertise being embodied in one person, its strength lies in its resonance with a collective of people who share similar

have limited access to contributing their perspectives.” (quoting FRICKER, *supra* note 51, at 147)).

⁵³ See also FRICKER, *supra* note 51, at 148 (“[R]elations of unequal power can skew shared hermeneutical resources so that the powerful tend to have appropriate understandings of their experiences . . . whereas the powerless are more likely to find themselves having some social experiences through a glass darkly . . .”).

⁵⁴ Carter & López, *supra* note 1, at 38.

⁵⁵ FRICKER, *supra* note 51, 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.”).

⁵⁶ Medina, *supra* note 52, at 42.

⁵⁷ OLÚFẸ̀MI O. TÁÍWÒ, ELITE CAPTURE: HOW THE POWERFUL TOOK OVER IDENTITY POLITICS (AND EVERYTHING ELSE) 69-72 (2022).

⁵⁸ *Id.* at 70.

experiences and organize to amplify a shared theoretical framework that challenges the status quo.

III. THE LEGAL THEORY OF EXPERIENTIAL EXPERTISE

This last Part is devoted to explaining the relevance of experiential expertise to law. It frames how experiential expertise intersects with the law, offering, as a theoretical matter, a set of suggestions for how to conceive of its contributions to lawmaking and interpretation. Employing the methodology of standpoint feminists and drawing from examples of PLS work that has transformed the law, it proposes three contributions that experiential experts can make to law.

First, experiential expertise can elevate a different set of legal questions to be explained and explored, particularly in the realm of legal scholarship and policymaking. Legal scholars and policy advocates often start from the vantage point of the law, filling in legal frameworks with the lived experiences of their clients or others who have been harmed by the law when it is relevant to their argument.⁵⁹ Experiential expertise locates a different starting point. Rather than using lived experience to fill in the gaps in preexisting legal frameworks, when the starting point is from the perspective of the marginalized, lived experience frames the questions that should be asked of the law.⁶⁰ The importance of this shift cannot be overstated. It lifts the legal gaze, which informs which facts are relevant, and instead prioritizes the lived experiences of the marginalized to understand what law is and where it is in need of transformation.⁶¹

Second, and relatedly, experiential expertise can expose and disrupt the dominant discourse that often undergirds the law. As I have explained elsewhere, the law is informed by scripts about how the world works that often

⁵⁹ See Binny Miller, *Telling Stories About Cases and Clients: The Ethics of Narrative*, 14 GEO. J. LEGAL ETHICS 1, 4 (2000) (“Yet surprisingly, while clients are in the forefront of many law review articles, they are almost invisible in the decision making process about which story to tell or whether to tell a story at all.”); Christine Zuni Cruz, *[On the] Road Back in: Community Lawyering in Indigenous Communities*, 5 CLINICAL L. REV. 557, 561-63 (1999) (discussing how Native people are “subjected to study and inappropriate disclosure of information” by legal academics); Lori D. Johnson & Melissa Love Koenig, *Walk the Line: Aristotle and the Ethics of Narrative*, 20 NEV. L.J. 1037, 1043 (2020) (“Specifically, scholars active in the current Applied Legal Storytelling movement have ‘encourage[d] scholars to use storytelling to enhance their understanding of what skills lawyers practice and how to improve those skills.’” (alteration in original) (quoting Carolyn Grose, *Storytelling Across the Curriculum: From Margin to Center, from Clinic to the Classroom*, 7 J. ASS’N LEGAL WRITING DIRS. 37, 38 (2010))); Carter & López, *supra* note 1, at 26 (describing how “legal quieting” and “legal smothering” silence marginalized voices).

⁶⁰ Bowell, *supra* note 10 (“Theorists argue that experiences of the marginalized reveal problems to be explained; problems that can become research agendas or policy issues/initiatives and are a source of objectivity-maximizing questions.”).

⁶¹ López, *supra* note 4, at 1806 (“In lifting up these critical stories, PLS seeks to pull out common threads shared by those who bear the consequences of law in order to expose where the law might be missing its mark and in need of upending.”).

do not reflect the lived experiences of those who encounter law's bluntest consequences.⁶² This mismatch arises when members of the legal profession engage in what sociologists call "thinking as usual," adopting a common paradigm—defined as an "entire constellation of beliefs, values, techniques, and so on shared by the members of a given community."⁶³ That is, sociologists have determined that group insiders who share educational and professional training can develop a common worldview that its practitioners take for granted.⁶⁴ This is especially true if insiders also have "similar social class, gender, and racial backgrounds."⁶⁵ This groupthink also applies to legal practitioners who enact, interpret, and practice the law. Thus, part of the power of experiential expertise is in its ability to contradict and discredit the invisible scripts, which these groups take for granted and embed in the law.⁶⁶

When experiential expertise gains purchase, it can be picked up by movements that can be vehicles for legal transformation. Take for example the development of the term "death by incarceration" by my coauthors and individuals who had been condemned to die in prison. In *Redeeming Justice*, Ghani and Rell describe the process of conceptualizing the term as follows:

We became acutely aware of how labels and their connotations can define the entirety of who we are by a tragic moment that only lasted for a flash out of a lifetime and, as a result, imprison us more effectively than iron bars or stone walls ever could. Our lives in prison were filled with stereotypes, classifications, labels, and oversimplifications of individual human beings created for convenience, expediency, and even political and economic advantage: "criminals," "superpredators," and "convicted felons." These words denied who we were as human beings and left no space for alternative narratives.

. . . .

As a result, we stopped referring to ourselves as "convicts," "lifers," "prisoners," "inmates," or any other self-deprecating label that imprisons us within the worst expression of ourselves. We stopped describing our condemnation as life without parole. We concluded that there is a beauty represented in the word "life" that our damnation would corrupt. So

⁶² *Id.* at 1805-06, 1824 (describing harms that result from laws being "constructed and interpreted by those who are not directly affected by the problems the laws are meant to address").

⁶³ THOMAS S. KUHN, *THE STRUCTURE OF SCIENTIFIC REVOLUTIONS* 175 (3d ed. 1996); Collins, *supra* note 13, at S25.

⁶⁴ Collins, *supra* note 13, at S25-S26.

⁶⁵ *Id.* at S25.

⁶⁶ See Richard Delgado, *Storytelling for Oppositionists and Others: A Plea for Narrative*, 87 MICH. L. REV. 2411, 2413-15 (1989) (noting that "stories can shatter complacency and challenge the status quo" by providing counternarratives and disrupting mindsets).

instead, we chose a term that more accurately represented our wretched situation: death by incarceration.⁶⁷

That terminology—death by incarceration—has now birthed a nationwide coalition of people who were ordered to serve that sentence along with advocacy groups that support them.⁶⁸ This coalition took their message to the United Nations, and now four U.N. human rights expert bodies have expressly referred to life without parole as “death by incarceration.”⁶⁹ These same U.N. experts have now intervened as amici curiae in a case pending before the Supreme Court of Pennsylvania that seeks to abolish death by incarceration for second degree murder.⁷⁰

Finally, experiential expertise could also act as a counterweight to originalism in legal interpretation.⁷¹ We find ourselves in a moment when judges’ understandings and interpretations of the law are increasingly tied to its original meaning at the Founding.⁷² Courts are deciding whether the people of today have certain rights and what statutes mean based on “history and tradition.”⁷³ Some legal theorists and jurists who are committed to a more contemporary and forward-looking law have adopted a “pragmatic” approach to legal

⁶⁷ Carter et al., *supra* note 30, at 327-28.

⁶⁸ Kempis Songster, Rachel López & Gerald Torres, *Participatory Law Scholarship as Demosprudence*, 110 VA. L. REV. ONLINE 298, 311 (2024).

⁶⁹ See *id.*; *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/TA7Q-HB7W>] (last visited May 14, 2025) (listing references to Death by Incarceration by various United Nations bodies).

⁷⁰ Amici Curiae Brief of the Special Rapporteur on Contemporary Forms of Racism and Expert Mechanism to Advance Racial Justice and Equality in Law Enforcement (EMLER) in Support of Petitioner at 3, *Commonwealth v. Lee*, 3 WAP 2024 (Pa. Apr. 26, 2024) (arguing that death by incarceration contravenes international human rights law).

⁷¹ See Saifee, *supra* note 32, at 58 (explaining the necessity to “confront[] how law *thinks* about violence”).

⁷² See, e.g., Levin, *supra* note 2, at 2819 (noting how the “expansion of sources and forms of knowledge about the criminal system” led to a shift away from “doctrinal accounts of substantive criminal law’s development” toward a “focus on the politics and institutions of the carceral state”).

⁷³ *Dobbs v. Jackson Women’s Health Org.*, 597 U.S. 215, 231 (2022) (quoting *Washington v. Glucksberg*, 521 U.S. 702, 721 (1997)) (finding that any right guaranteed by Fourteenth Amendment must be “deeply rooted in this Nation’s history and tradition”); *New York State Rifle & Pistol Ass’n v. Bruen*, 597 U.S. 1, 22 (2022); *Kennedy v. Bremerton Sch. Dist.*, 597 U.S. 507, 546-47 (2022) (Sotomayor, J., dissenting) (arguing that the majority “rejects longstanding concerns surrounding government endorsement of religion” and instead employs a “new ‘history and tradition’ test”). For a full discussion of the meaning of “history and tradition” as used by the U.S. Supreme Court, see Randy E. Barnett & Lawrence B. Solum, *Originalism After Dobbs, Bruen, and Kennedy: The Role of History and Tradition*, 118 NW. U. L. REV. 433, 440-45 (2023) (tracing the use of “history” and “tradition” as constitutional concepts).

interpretation. As Justice Breyer, one of the leading champions of this approach, put it, pragmatic interpretation “requires dedication, sensitivity, and an awareness of the variety of the human needs and relationships that underlie our American legal institutions as they seek to help now more than 330 million Americans live together peacefully and productively.”⁷⁴ According to pragmatists, the law should thus be understood to be “an untidy body of understandings among groups and institutions, inherited from the past and open to change mostly at the edges.”⁷⁵ Its interpretation is achieved through “detailed study of cases, institutions, history, and above all, the human needs that underlie them.”⁷⁶ But how then do we determine, as a matter of law, what humans need? This Essay proposes experiential expertise as one basis upon which to ground an analysis of this question. Instead of defining law as a relic of the past, experiential expertise enables a vision of law informed by how it operates today and paints a clearer picture of how it might be more just tomorrow.

CONCLUSION

Experiential expertise offers a powerful and necessary counterbalance to traditional legal authority that can reshape how we understand law, justice, and policymaking. By drawing from the lived experiences of those directly impacted by law’s injustice, we can expose the limitations of dominant legal frameworks and introduce new perspectives that challenge entrenched assumptions embedded in law.

The process of forming experiential expertise is not merely about elevating one individual’s experience—it is a collective endeavor that emerges from struggle, reflection, and dialogue. As demonstrated by participatory law scholarship and movements like the campaign against “death by incarceration,” those who have borne the weight of systemic injustice are uniquely positioned to critique, reimagine, and transform the law.

Beyond expanding legal interpretation and policymaking, experiential expertise also offers a necessary corrective to originalism, grounding legal decision-making in contemporary realities rather than historical constraints. Recognizing and legitimizing this form of expertise is not just a scholarly exercise; it is an imperative for building a more just and equitable legal system.

To that end, academic and legal institutions must play an active role in fostering the conditions for experiential experts to contribute meaningfully to legal discourse. This entails not only amplifying experiential experts’ voices but also providing the material support necessary to sustain their knowledge production. Only by doing so can we fully realize the transformative potential of experiential expertise in law.

⁷⁴ Stephen Breyer, *Pragmatism or Textualism*, 138 HARV. L. REV. 717, 720 (2025) (footnote omitted).

⁷⁵ *Id.* at 719.

⁷⁶ *Id.*