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SYMPOSIUM

PARTICIPATORY LAW SCHOLARSHIP AS DEMOSPRUDENCE

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Through participatory law scholarship (“PLS”)—legal scholarship written in collaboration with those without formal legal training but expertise in law’s injustice through lived experience—Kempis Songster and Rachel López seek to dismantle the walls upon walls that divide the ideals of law from its lived experience. Building from the experience of coauthoring Redeeming Justice, their award-winning article, and drawing from the expertise of Gerald Torres, a leading scholar in critical race theory and law and social movements, this Essay explores the role that participatory methods in legal scholarship can play in democratizing the law and enhancing the practice of democracy. PLS democratizes the law by making it more accessible to non-lawyers and facilitating greater participation in the process of making legal meaning. This Essay situates PLS within the framework of “demosprudence”—a concept developed by Torres that examines how

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ordinary people, often acting collectively, participate in making legal meaning by shifting societal narratives that inform the law. We argue that legal scholarship is both a venue for studying this phenomenon and also a site for demosprudential genesis.

Specifically, at a time when democracy is facing a stress test that threatens the premises upon which it is based, PLS is one method for addressing the alienation between law and society that is in part to blame for the renewed rise of authoritarianism. The technicalities of the law often make non-lawyers feel disconnected from it and encourage apathy towards it as a vehicle of social change. This mystification of the law inhibits organizing and undermines democracy, because it alienates most of society from law's creation. Traditional legal scholarship sometimes aids and abets this disconnection from the law by favoring a doctrinal focus that can feel so detached from how the law operates on the ground that it is rendered irrelevant to those who experience it most intimately. By contrast, PLS aims to center experiential knowledge as a source of legal expertise such 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 making legal meaning. PLS strives to ensure that people formally educated in the law are not the only people who can engage with legal scholarship and the development of legal theory. Ultimately, PLS seeks to democratize legal knowledge production by validating alternative ways of knowing the law and articulating what changes are needed for the law to realize its full potential.

INTRODUCTION

As we face an election that promises to shape the future of our democracy, recent polls suggest that our country is in trouble. Most Americans have a rather dismal view of the state of justice in the United States. They lack trust in our courts and public institutions and have little to no confidence in any branch of our government.¹ Moreover,

¹ Charles Franklin, New Marquette Law School National Survey Finds Approval of U.S. Supreme Court at 40%, Public Split on Removal of Trump from Ballot, Marq. L. Sch. (Feb. 20, 2024), <https://law.marquette.edu/poll/2024/02/20/new-marquette-law-school-national-survey-finds-approval-of-u-s-supreme-court-at-40-public-split-on-removal-of-trump-from-ballot/> [<https://perma.cc/5YPQ-P8HN>] (finding that only 40% of Americans approve of the U.S. Supreme Court, and that most Americans also lack confidence in the presidency, Congress, and the Department of Justice).

approximately 83% of Americans believe that elected officials do not care what people like them think, and around 32% support some form of authoritarian governance.² These statistics reveal that most people in the United States feel unrepresented in democratic systems and disillusioned by the law and the legal actors who enact and interpret it.

At a time when democracy is facing a serious stress test, the legal academy has often compounded society's alienation from the law and its institutions, producing legal scholarship that is described as irrelevant and hardly read outside of the closely guarded gates of academia.³ This account of irrelevance is more than mere perception. Empirical data also suggests that most legal scholarship has little influence outside the academy.⁴ Indeed, because courts so rarely cite them, law review articles have been analogized to roads that lead to nowhere.⁵

Over the last four years, Kempis Songster and Rachel López have been charting an alternative course for legal scholarship, envisioning it as a vehicle for bridging the divide between law and the society subject to it. This divide is partly to blame for the renewed rise of authoritarianism. Throwing aside many of the conventions of legal scholarship, we have been building, word by word, a rebellious form of legal scholarship—one in which legal elites are not the only ones to inform the making of legal meaning on the pages of law journals.⁶ Instead of being a product of legal

² Richard Wike et al., Pew Rsch. Ctr., Representative Democracy Remains a Popular Ideal, but People Around the World Are Critical of How It's Working 15 (Feb. 28, 2024), https://www.pewresearch.org/global/wp-content/uploads/sites/2/2024/02/gap_2024.02.28_democracy-closed-end_report.pdf [<https://perma.cc/7MHN-LACY>]; Laura Silver & Janell Fetterolf, Who Likes Authoritarianism, and How Do They Want To Change Their Government?, Pew Rsch. Ctr. (Feb. 28, 2024), <https://www.pewresearch.org/short-reads/2024/02/28/who-likes-authoritarianism-and-how-do-they-want-to-change-their-government/> [<https://perma.cc/BV59-4KQP>].

³ See, e.g., A Conversation with Chief Justice Roberts, C-SPAN (June 25, 2011), <https://www.c-span.org/video/?300203-1/conversation-chief-justice-roberts> [<https://perma.cc/CXE5-KBQE>] (“Pick up a copy of any law review that you see and the first article is likely to be, you know, the influence of Immanuel Kant on evidentiary approaches in 18th-century Bulgaria or something, which I’m sure was of great interest to the academic that wrote it but isn’t of much help to the bar.”); Adam Liptak, When Rendering Decisions, Judges Are Finding Law Reviews Irrelevant, N.Y. Times (Mar. 19, 2007), <https://www.nytimes.com/2007/03/19/us/19bar.html> [<https://perma.cc/4W8J-VZN9>]; Harry T. Edwards, The Growing Disjunction Between Legal Education and the Legal Profession, 91 Mich. L. Rev. 34, 34–36 (1992).

⁴ Jeffrey L. Harrison & Amy R. Mashburn, Citations, Justifications, and the Troubled State of Legal Scholarship: An Empirical Study, 3 Tex. A&M L. Rev. 45, 55, 83 (2015).

⁵ *Id.* at 83.

⁶ We use the term “rebellious” as a nod to Gerald López’s concept of rebellious lawyering, a model of lawyering which aims to center community activism and empowerment. See

academics alone, Participatory Law Scholarship (“PLS”) is written in collaboration with those who have not been formally trained in the law but who have expertise in law through bearing the bluntest consequences of its injustice.⁷

This symposium and accompanying Essay present an opportunity to collaborate with another rebellious thinker, Gerald Torres, who, along with Lani Guinier, developed a concept deeply connected to PLS called demosprudence.⁸ Demosprudence is the study of how ordinary people, acting collectively, make legal meaning by shifting societal narratives that inform the law.⁹ As a genre of legal scholarship, it seeks to “understand, analyze, and document those social movements that increase the extant democratic potential in our polity, and which do so in a way that produces durable social and legal change.”¹⁰ In developing this canon, Torres and Guinier argue that lawmaking and interpretation should not just be an endeavor for legal elites; rather, it should be and, in fact, already is influenced by non-legal actors and social movements.¹¹

Thinking alongside Torres, in this Essay, we explore the democratizing features of PLS, delineating its connections to demosprudence. Part I of this Essay elucidates the unifying philosophy that binds PLS and demosprudence. Like demosprudence, PLS recognizes and values the role that individuals who are not legally trained can play in informing the

Gerald P. López, *Rebellious Lawyering: One Chicano’s Vision of Progressive Law Practice* 38 (1992).

⁷ Rachel López, *Participatory Law Scholarship*, 123 *Colum. L. Rev.* 1795, 1798 (2023).

⁸ Lani Guinier, *Courting the People: Demosprudence and the Law/Politics Divide*, 127 *Harv. L. Rev.* 437, 442 (2013) [hereinafter Guinier, *Courting the People*] (describing demosprudence as a term coined by Gerald Torres and Guinier to “describe the process of making and interpreting law from an external—not just internal—perspective [that] emphasizes the role of informal democratic mobilizations and wide-ranging social movements that serve to make formal institutions, including those that regulate legal culture, more democratic”).

⁹ Lani Guinier & Gerald Torres, *Changing the Wind: Notes Toward a Demosprudence of Law and Social Movements*, 123 *Yale L.J.* 2740, 2743, 2755 (2014) [hereinafter Guinier & Torres, *Changing the Wind*] (explaining that demosprudence involves “an analysis of how social power circulates and finds its expression in law” and of “the collective expressions of resistance (whether through counter-narratives or paradigm-shifting mobilizations) that test the democratic content of the formal institutions of lawmaking studied by jurists and legisprudents”).

¹⁰ *Id.* at 2749.

¹¹ Guinier, *Courting the People*, *supra* note 8, at 442.

making of legal meaning and democratizing the law.¹² In addition to sharing common principles and aspirations, Part II explains how PLS operationalizes demosprudence, creating a new venue for democratic dialogue and norm generation. For this reason, we identify PLS as a form of demosprudential praxis. In Part III, Kempis Songster, the participatory legal scholar who coauthored *Redeeming Justice*, the law review article that gave birth to PLS, describes how PLS operated as demosprudence in action for the movement he founded.¹³ He explains how *Redeeming Justice* helped to catalyze an international coalition to concretize the right to redemption—a right which he and others serving life without parole (“LWOP”) conceptualized while behind bars—within international human rights law.¹⁴

I. THE COMMON NUCLEUS OF DEMOSPRUDENCE AND PLS

In this Part, we situate PLS within the framework of demosprudence, beginning by explaining this concept as first articulated by Guinier and Torres. We then explore the descriptive and normative commonalities between these two approaches to legal research. One central uniting feature is that both envision a dialogue between legal elites and ordinary people in the service of norm development and democratic accountability.

Guinier and Torres, one of the coauthors of this Essay, coined the term demosprudence to describe how social movements influence the making of legal meaning.¹⁵ Descriptively, demosprudence is the study of how the “demos”—the people—are involved in making and interpreting the law.¹⁶ In their work, Torres and Guinier describe how demosprudence takes shape in practice. For instance, through the examples of the Montgomery Bus Boycott, the Mississippi Freedom Democratic Party, and the United

¹² López, *supra* note 7, at 1820 (“PLS charts a path to developing a more holistic and democratic account of law through collaboration with nonlawyers who intimately know the law by their experience of its injustice.”).

¹³ Terrell Carter, Rachel López & Kempis Songster, *Redeeming Justice*, 116 *Nw. U. L. Rev.* 315, 318–19, 324–35 (2021) [hereinafter Carter et al., *Redeeming Justice*].

¹⁴ For more information about this international coalition and their fight to recognize death by incarceration as a violation of human rights, see *Death by Incarceration Is Torture*, <https://www.deathbyincarcerationistorture.com> [<https://perma.cc/2FXA-PZXE>] (last visited Sept. 1, 2024).

¹⁵ Guinier, *Courting the People*, *supra* note 8, at 442.

¹⁶ Lani Guinier, *Beyond Legislatures: Social Movements, Social Change, and the Possibilities of Demosprudence*, 89 *B.U. L. Rev.* 539, 545 (2009) [hereinafter Guinier, *Beyond Legislatures*] (“Demosprudence focuses on the ways that ‘the demos’ (especially through social movements) can contribute to the meaning of law.”).

Farm Workers in California, Guinier and Torres demonstrate how social movements push the law and the legal institutions that govern society to become more democratic and accountable to the people.¹⁷ Likewise, Guinier explains how Supreme Court dissents can be a site for demosprudence because, through them, judges speak to the public about alternative visions of the law in a way that encourages civic participation and enhances democracy.¹⁸ More pointedly, their demosprudential analysis excavates the dialogues between social movements and legal actors and illuminates how they can inform society's expectations and aspirations for the law.¹⁹ In short, this demosprudential analysis identifies how social movements have led to formal legal changes in real time.²⁰

Normatively, Torres and Guinier also claim that demosprudence has a net positive effect on law and democracy. They ground their claim in the normative belief “that the wisdom of the people should inform the lawmaking enterprise in a democracy.”²¹ Demosprudential thinking is said to “spark a deliberative process that enhances public confidence in the legitimacy of the judicial process itself” and encourages social movement actors to contemplate “what it means for the Constitution to belong to the people and not just to the Supreme Court.”²² By reminding the people that they can and should play a role in shaping the law, demosprudence can be a means of greater democratic accountability.²³ Indeed, Torres and Guinier believe that through this demosprudential

¹⁷ *Id.* (describing “the role of informal democratic mobilizations and wide-ranging social movements that serve to make formal institutions, including those that regulate legal culture, more democratic”); see also Guinier & Torres, *Changing the Wind*, *supra* note 9, at 2743, 2756–57 (documenting how various social movements in the United States “forge[d] new understandings of the status quo . . . [by] creating an alternative narrative of constitutional meaning”).

¹⁸ Lani Guinier, *Foreword: Demosprudence Through Dissent*, 122 *Harv. L. Rev.* 4, 49–50 (2008) [hereinafter Guinier, *Demosprudence Through Dissent*].

¹⁹ Guinier, *Beyond Legislatures*, *supra* note 16, at 549.

²⁰ See Guinier & Torres, *Changing the Wind*, *supra* note 9, at 2743.

²¹ Guinier, *Courting the People*, *supra* note 8, at 442.

²² Guinier, *Beyond Legislatures*, *supra* note 16, at 559.

²³ *Id.*; see also Guinier & Torres, *Changing the Wind*, *supra* note 9, at 2749 (“Demosprudence focuses on the legitimating effects of democratic action to produce social, legal, and cultural change. Although democratic accountability, as a normative matter, includes citizen mobilizations organized to influence a single election, a discrete piece of legislation, or a judicial victory, we focus on the interaction between lawmaking and popular, purposive mobilizations that seek significant, sustainable social, economic, and/or political change.”).

conversation, “We the People” can become actualized, and the democratic principles espoused in the U.S. Constitution can be given real meaning.²⁴

PLS is both descriptively and normatively parallel to demosprudence. Descriptively, the generative dialogue described by Torres and Guinier as critical to demosprudence is akin to that in the genesis of PLS. While demosprudence understands “lawmaking [as] a collaborative enterprise between formal elites—whether judges, legislators or lawyers—and ordinary people,”²⁵ PLS involves an analogous collaboration between those with lived experience in law’s injustice and legal academics to generate legal scholarship.²⁶ In this sense, PLS and demosprudence also share a common theory of knowledge.²⁷ Both philosophies recognize that legal elites only have a “partial view.”²⁸ Thus, they seem jointly grounded in “fundamentally a relational epistemology,” where knowledge is produced and truth is discovered collectively through dialogue.²⁹ However, while demosprudence explores how the dialogue between legal elites and ordinary people produces legal meaning, PLS considers the pages of law journals to be a venue for this dialogue.

Relatedly, both lawmaking and legal scholarship (the products of demosprudence and PLS, respectively) suffer from a crisis of perception, each being currently understood by the public as efforts undertaken primarily by political or legal elites.³⁰ This is a problem both approaches seek to address. Thus, the normative drive of both demosprudence and PLS is to shift the center of gravity away from legal elites and toward the people. Specifically, demosprudence seeks to understand “lawmaking from the perspective of popular mobilizations” or other “forms of

²⁴ *Id.* at 2744 (explaining that they “believe that it is often by the thick action of concerted social movement through which ‘we the people’—meaning, in our view, the people who reflect a genuine community of consent—discover and legitimize the principles on which our democracy presumably rests.”).

²⁵ Guinier, *Beyond Legislatures*, *supra* note 16, at 545.

²⁶ López, *supra* note 7, at 1807 (“[T]hrough a collaborative process, the goal of PLS is to generate legal theory grounded by the analysis of those with lived experience in law’s injustice, along with technical and research support from legal scholars.”).

²⁷ *Id.* at 1818.

²⁸ Guinier & Torres, *Changing the Wind*, *supra* note 9, at 2797.

²⁹ López, *supra* note 7, at 1818 (“PLS’s guiding philosophy is that knowledge and truth are collectively constructed through dialogue.”).

³⁰ For example, Legal Scholar Jan Komárek describes the legal academy as an “enterprise maintained by (and for) all academics.” Jan Komárek, *Freedom and Power of European Constitutional Scholarship*, 17 *Eur. Const. L. Rev.* 422, 437 (2021); see also Wike et al., *supra* note 2, at 15 (finding that 83% of Americans believe that elected officials don’t care what people like them think).

collective action that serve to make formal institutions, including those that regulate legal culture, more representative and thus more democratic.”³¹ Likewise, in asking those most impacted by the law to analyze legal questions and create legal meaning, PLS shifts the focus away from the elite legal scholar and makes legal scholarship more representative and thus democratic.³² In addition, demosprudence challenges “the privileging of formal sources of authority that discount or minimize the role of social movement activists.”³³ Similarly, PLS challenges the tradition in legal scholarship of only legitimating the perspectives of formally trained legal scholars who purport to speak for the communities they study and presume to understand the interests and desires of those communities.³⁴

II. PLS AS DEMOSPRUDENTIAL PRAXIS

As noted above, in addition to legal scholarship being a venue for the study of demosprudence, we believe it can be a site for demosprudential genesis through PLS. This Part further delineates this argument, demonstrating the common mode of operation that demosprudence and PLS share. In short, this Part argues that, much like Supreme Court dissents, PLS could also be understood as a form of demosprudential praxis. Using the medium of legal scholarship, PLS amplifies the voices often excluded from considering how the law works or even what the law is.

As a starting point, the process of generating demosprudence described by Torres and Guinier is strikingly similar to the process of generating PLS described by López. According to Torres and Guinier, “[d]emosprudence as a lawyering practice involves a transformation of the lawyer / client relationship to build sites of democratic accountability internally and externally.”³⁵ Demosprudence in practice thus “depends

³¹ Gerald Torres, *Legal Change*, 55 *Clev. St. L. Rev.* 135, 135–36 (2007).

³² López, *supra* note 7, at 1816 (“[W]hile PLS is inherently collaborative, the default position of legal scholars should be to play a supportive role as organic jurists engage in critical reflection and theorize solutions.”).

³³ Guinier & Torres, *Changing the Wind*, *supra* note 9, at 2799.

³⁴ Terrell Carter & Rachel López, *If Lived Experience Could Speak: A Method for Repairing Epistemic Violence in Law & the Legal Academy*, 109 *Minn. L. Rev.* (forthcoming 2024) (manuscript at 4, 7), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4741795# [<https://perma.cc/MRB5-YTJU>] (describing how academics often speak for the communities they study, presuming to know what is best for them).

³⁵ Guinier & Torres, *Changing the Wind*, *supra* note 9, at 2753.

upon a participatory, power-sharing process within the lawyer/client relationship.”³⁶ PLS demands a similar transformation of the traditional relationship between the researcher and the research subject.³⁷ Or more accurately put, it requires the dismantling of the researcher-researched dichotomy.³⁸

In contrast to other forms of scholarship in which academics often speak for marginalized communities and tell them what they need, PLS necessitates collaboration and camaraderie between the legal academic coauthors and those with expertise in law through firsthand experiences of its injustices.³⁹ The academic coauthor of PLS must work to shift power from legal elites, including themselves, to those most impacted by the law throughout the writing process.⁴⁰ To accomplish this, legal academics participating in PLS must develop a “partnership mentality, which necessitates valuing the expertise of those who are directly impacted, and at times harmed, by the law.”⁴¹ They do this by not editing out the voice of or speaking for their non-academic coauthors, building ideas together, and ensuring that solidarity and trust are the foundation of the collaboration.

Moreover, the ethos that lawyers and judges must embody as they engage in demosprudence is analogous to that of the academic coauthors of PLS. According to Guinier, “[m]ere public grandstanding” or “self-indulgence” cannot motivate a judge to author a demosprudential dissent because the practice must be a “pedagogical opportunity to open up space for public deliberation and engagement.”⁴² Likewise, PLS requires that academics demonstrate “epistemological humility” by “decentering institutional benchmarks of expertise” that often characterize the legal academy.⁴³ Centrally, the academic partner must not be driven by their

³⁶ *Id.* This practice is similar to what Yxta Maya Murray describes as “The Practice of ‘Being With’ the Community.” Yxta Maya Murray, *Detroit Looks Toward a Massive, Unconstitutional Blight Condemnation: The Optics of Eminent Domain in Motor City*, 23 *Geo. J. on Poverty L. & Pol’y* 395, 449–50 (2016).

³⁷ López, *supra* note 7, at 1827–31.

³⁸ *Id.*

³⁹ *Id.* (describing how academic coauthors of PLS must engage in constant self-reflection to ensure that they are not “reenact[ing] the relations and norms that uphold the repressive legal order they aim to unsettle”).

⁴⁰ *Id.* at 1815–16 (“Coauthorship is one way that PLS redistributes power between academic and nonacademic partners.”).

⁴¹ *Id.* at 1836.

⁴² Guinier, *Demosprudence Through Dissent*, *supra* note 18, at 51.

⁴³ López, *supra* note 7, at 1837.

desire to advance their academic goals. This posture is necessary because the process of collective reflection and dialectic production of knowledge is critical to any PLS partnership.⁴⁴

Relatedly, Torres suggests that lawyers can be agents of democracy when they work “to enhance opportunities for building and shifting power so that non-elite actors get to participate in making the decisions that affect their lives . . . constantly asking: what do we need to do to bring more people into the exercise of democratic power.”⁴⁵ Instead of the lawyer guiding movement activists about how to navigate “the thickets of law,” demosprudence focuses on how movement actors can alter the way that the broader public and legal actors think about law and thus create new legal landscapes.⁴⁶ In this spirit, PLS is a form of demosprudential praxis because it recognizes that non-legal actors who have experience with the law’s injustice have unique expertise in the laws that govern them and should play a foundational role in transforming them for the better.⁴⁷

Finally, demosprudence and PLS can enhance democracy by “institutionaliz[ing] channels for dissent.”⁴⁸ As described by Guinier and Torres, one of the fundamental goals of “demosprudence is to understand the ways that social movements enable those who are shut out of a majoritarian political process to nonetheless open up nodes in the decision-making practices of a democratic society.”⁴⁹ Guinier explains that judges, speaking out in their dissents, often spark this contestation by “engag[ing] dialogically with nonjudicial actors and . . . encourag[ing] them to act democratically.”⁵⁰ By speaking directly to the public and identifying “flaws in our democratic structure,” demosprudential dissents

⁴⁴ *Id.* at 1810–11 (describing how Friere’s process of collective action and reflection informs PLS).

⁴⁵ Torres, *supra* note 31, at 142.

⁴⁶ Guinier & Torres, *Changing the Wind*, *supra* note 9, at 2752 (“Rather than focus on the multiple ways in which lawyers guide movement activists through the thickets of law, we want to focus on the ways in which movement activists and a mobilized community can change thinking about the *content* of law and thus the horizon of the possible and sustainable.”).

⁴⁷ López, *supra* note 7, at 1810 (explaining how Participatory Action Research (PAR) and PLS “share a fundamental belief that research should be driven by ‘disenfranchised people so that they can transform their lives for themselves’”).

⁴⁸ Guinier, *Demosprudence Through Dissent*, *supra* note 18, at 51.

⁴⁹ Guinier & Torres, *Changing the Wind*, *supra* note 9, at 2757. This understanding of the importance of contestation to democratic governance accords with the theory of contestatory democracy, which argues that dissent and resistance is healthy for democracies because they can be a method of keeping state repression in check. Jocelyn Simonson, *Police Reform Through a Power Lens*, 130 *Yale L.J.* 778, 843 (2021).

⁵⁰ Guinier, *Demosprudence Through Dissent*, *supra* note 18, at 15–16, 50.

encourage and create a pathway for non-legal actors to challenge the majority.⁵¹ Through demosprudential dissents, judges educate the public about the court’s process in coming to a decision, rendering the legal reasoning more transparent and thereby inspiring those left out of the court’s calculus to engage in “collective problem-solving” to make the law work better for them.⁵² Social movements can then leverage demosprudential dissents to “challenge, and, if successful, change governing norms, creating an alternative narrative of constitutional meaning.”⁵³ In sum, demosprudential dissents do not “persuade or instruct”⁵⁴ the public but rather open a “critical dialogue.”⁵⁵ Then, the resulting dialogues between legal actors and social movement activists legitimize “new meanings for lawmaking and thus challenge existing centers of power in service of democracy.”⁵⁶

Like demosprudential dissents, PLS creates an institutional pathway for non-lawyers with expertise in how the law has produced injustice to challenge the status quo by crossing the borderlines that have traditionally kept non-legal actors out of legal scholarship. Similar to demosprudential dissents, PLS demystifies legal processes, empowering those marginalized from the law to challenge legal conclusions and reasoning. Indeed, PLS envisions legal scholarship as one site where the “critical dialogue” described by Guinier and Torres as central to demosprudence can occur. In PLS, the law-trained scholar is similarly not meant to instruct the organic jurist; rather, together they forge a space in academia to be in dialogue with one another. In this sense, a PLS collaboration should be educational for both parties. PLS asks scholars trained in the law to give the organic jurist context that will help them form legal arguments, and the organic jurist gives the scholar insight into how practical experience shapes their reasoning.

⁵¹ *Id.* at 15–16, 51–52.

⁵² *Id.* at 49–50.

⁵³ Guinier & Torres, *Changing the Wind*, *supra* note 9, at 2757.

⁵⁴ Guinier, *Demosprudence Through Dissent*, *supra* note 18, at 132.

⁵⁵ *Id.*; Guinier, *Beyond Legislatures*, *supra* note 16, at 560 (explaining that “demosprudential dissenters invite the people, not their judicial colleagues, to become activists in service of democracy”).

⁵⁶ Guinier & Torres, *Changing the Wind*, *supra* note 9, at 2752.

III. REDEEMING LEGAL SCHOLARSHIP

In this Part, Kempis Songster, affectionately known as Ghani, describes the demosprudential potential of PLS from his perspective as a PLS coauthor with lived experience in the law's injustice. Though not trained in the law, Ghani drew from his lived experience to conceptualize a legal right called the right to redemption. In collaboration with López, a legally-trained scholar with expertise in human rights, Ghani situated that right within constitutional and human rights law in a law review article called *Redeeming Justice*.⁵⁷ That article informed the legal argument of a coalition, which has now appeared before the United Nations in Geneva to advocate for the right to redemption's recognition under international law.⁵⁸

Here, we argue that the collaborative process between Ghani and Rachel was demosprudential for two reasons. First, it involved a "critical dialogue" that merged the lived experience of death by incarceration with existing legal principles to argue that life without parole sentences amount to cruel and unusual punishment under the U.S. Constitution while also violating human rights law.⁵⁹ Through their collaboration, Ghani's perspective on the law's injustice was hoisted into the legal academy, making "it harder for elites to say [the law] means something other than what those on the street thought it should mean if it were talking to their experience."⁶⁰ Second, their collective work has informed a movement that is changing the face of human rights law. Remarkably, due to this coalition's advocacy, several United Nations bodies have recognized death by incarceration as a violation of human rights.⁶¹

⁵⁷ Carter et al., *Redeeming Justice*, supra note 13.

⁵⁸ *Death by Incarceration Is Torture*, U.N. DBI Complaint 4 & n.4, 19 & n.132 (Sept. 15, 2022), https://www.deathbyincarcerationistorture.com/_files/ugd/22acfc_8b4c9394670c44099f562da0481cd2d1.pdf [<https://perma.cc/98EW-PS72>]; Edwin Rios, U.S. Civil Rights Groups File Complaint Against 'Death by Incarceration' to UN, *The Guardian* (Sept. 15, 2022, 3:39 PM), <https://www.theguardian.com/us-news/2022/sep/15/civil-rights-us-death-incarceration-united-nations-solitary> [<https://perma.cc/KK7J-PY2X>].

⁵⁹ Carter et al., *Redeeming Justice*, supra note 13, at 321–23.

⁶⁰ Guinier & Torres, *Changing the Wind*, supra note 9, at 2800.

⁶¹ See Robert Saleem Holbrook, *I Faced Death by Incarceration. The UN Heard My Plea to Abolish Life Sentences.*, *Truthout* (Nov. 29, 2023), <https://truthout.org/articles/i-faced-death-by-incarceration-the-un-heard-my-plea-to-abolish-life-sentences/#:~:text=This%20is%20the%20first%20time,that%20the%20U.S.%20has%20ratified.&text=These%20acknowledgements%20from%20the%20UN,pressure%20can%20make%20a%20difference> [<https://perma.cc/QS6R-FU98>]; see also *Statements by the United Nations on Death by Incarceration, Death by Incarceration Is Torture*, <https://www.deathbyincarcerationistorture.com/statements-by->

What follows is Ghani's account of that experience.

* * *

A group of condemned men huddled up in the bowels of a state prison to split atoms about what it might take for us to be heard by the world, and the human capacity and desire to be better considered, even if we might never be seen by the world. Our studies and experiences convinced us that no place for redemption existed in the law that had condemned us. We were not confident about appealing to the sensibilities of a system that rarely showed any to people from our communities, especially those of us who had committed the ultimate trespass. Our only hope rested in how the world at large might see us; and one thing the world at large had in common was a belief, in some description or another, in the concept of redemption. Not a buying back, as in the Western legal sense, but something more. We required a deeper investment of ourselves in learning to account for the irreparable harms we had caused and explore ways to fulfill our obligations to atone for those harms and put things more right. We yearned for acceptance back into the embrace of the human family. We concluded that the legal aspect of our appeal must be in the language of the global community, i.e., human rights law. For that reason, we made part of our mission an appeal to the United Nations Human Rights Council to recognize that the condemnation of human beings to die in prison denies the human capacity for redemption and violates a core human right.

Years of arguing and collective reflection on various concepts of redemption from around the world would later bring us into close collaboration with human rights law professor Rachel López. Our understandings of redemption later melded with López's to birth a unique legal treatise entitled *Redeeming Justice*.⁶² In it, we argued that the right to redemption is a human right based on international law and that sentences such as life without parole / death by incarceration, which two of *Redeeming Justice*'s authors had been condemned to, violated that law. *Redeeming Justice* eventually found a welcoming home in the *Northwestern University Law Review* and birthed a concept called participatory law scholarship.

the-un [<https://perma.cc/W3G8-NQFP>] (last visited Apr. 4, 2024) (listing references to Death by Incarceration by various United Nations bodies).

⁶² Carter et al., *Redeeming Justice*, *supra* note 13.

The seeds *Redeeming Justice* was sowing sprouted praise and criticism in the legal field as well as in movement spaces. Perhaps the ultimate bloom was in the formation of a coalition of organizations, including the Abolitionist Law Center, The Center for Constitutional Rights, Amistad Law Project, The Sentencing Project, Release Aging People in Prisons, Drop LWOP Coalition, and others. This coalition credits *Redeeming Justice* as one of the inspirations behind their formation and filing of the first complaint before an international body to name life without parole as what it really is: death by incarceration.⁶³ The coalition's human rights advocacy precipitated multiple occasions for people directly impacted by death by incarceration to address the United Nations.⁶⁴ The greatest of those occasions was when the coalition was able to send a delegation to Geneva, Switzerland, to testify before the United Nations Human Rights Committee against death by incarceration and any other prison sentence that exceeds life expectancy.⁶⁵ Consequently, for the first time, a human rights body of the United Nations recommended that the United States ensure parole eligibility and accessibility for all, including those sentenced to life, effectively endorsing an end to death by incarceration.⁶⁶ In addition, as a result of the coalition's advocacy, three other statements by human rights bodies at the United Nations referred to life without parole explicitly as death by incarceration.⁶⁷

And with this pronouncement, the term death by incarceration had also thereby officially gone global. As opposed to the term life without parole, which was created and used by the State, death by incarceration is movement parlance, first used by those most impacted by the sentence, the condemned themselves, and then later in our article, *Redeeming Justice*. The term death by incarceration is now in some of the most reputable law reviews in the country and has become part of the vocabulary of the United Nations. The exercise of demosprudence has galvanized more hope in the hearts and minds of directly impacted people

⁶³ Read the coalition's complaint, which it submitted on September 15, 2022. See *Death by Incarceration Is Torture*, supra note 58.

⁶⁴ See *Death by Incarceration Is Torture*, supra note 61.

⁶⁵ Holbrook, supra note 61.

⁶⁶ U.N. Hum. Rts. Comm., Concluding Observations on the Fifth Periodic Report of the United States of America, paras. 46–47, U.N. Doc. CCPR/C/USA/CO/5 (Dec. 7, 2023), <https://documents.un.org/doc/undoc/gen/g23/232/66/pdf/g2323266.pdf> [<https://perma.cc/YC4H-S8YH>].

⁶⁷ See *Death by Incarceration Is Torture*, supra note 61.

than decades of appealing to a law in which they could not hear their voices ever could.

CONCLUSION

Drawing from the tradition of demosprudence, we argue that healthy democracies should invite and facilitate some forms of dissent and resistance to check aspects of state power that are repressive and warrant transformation. Regrettably, lawmaking and the production of legal scholarship have become insular while, at the same time, many Americans are questioning the core values of democracy. At this critical juncture, as Torres has previously argued, we need “power shifts” that “bring the voices and bodies of non-elites into the discourse” about the future of our democracy.⁶⁸ Remembering that discourse is not just a way of talking is essential. It is the entire ensemble of social practices that create and recreate meaning. PLS promises to be one such demosprudential intervention that can shift power away from legal elites because it recognizes that non-legal actors who have experience with the law’s injustice should inform legal reasoning and illuminate the places where the law is failing to live up to the ideals of justice. We believe that opening legal scholarship to the people can be a small but necessary step towards promoting more democratic legal reasoning and, therefore, lawmaking.

⁶⁸ Torres, *supra* note 31, at 142.