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ClassCrits Time? Building Institutions, Building Frameworks[†]

Abstract: This essay chronicles the development of ClassCrits, an organization of US legal scholars that seeks to ground economic analyses in progressive legal jurisprudence. Today, ClassCrits ideas may resonate with a broader audience. I attribute this institutional success partly to ClassCrits' commitment to: an interdisciplinary “big tent” openness, safe and responsive space, and praxis and collaboration. I then explore three key topics in a selection of ClassCrits writings on class and law: (1) neoliberal entrenchment and preservation; (2) class oppression; and (3) the intersecting oppression of class and race. I argue that ClassCrits scholarship on law and neoliberalism is productively viewed through and anticipates Wendy Brown's recent work, and that Erik Olin Wright's approach to class analysis may add more theoretical cohesion to ClassCrits work on law and class. Finally, I suggest that Cedric Robinson's theory of racial capitalism holds promise for ClassCrits scholarship on the intersection of race and class.

Keywords: ClassCrits, legal scholarship, law and neoliberalism, class relations and the law, racial capitalism, Critical Race Theory, Critical Legal Studies, LatCrit

I. Introduction

This essay chronicles the development of ClassCrits, Inc., an organization of left legal scholars interested in the critical analysis of law, inequality, and class, and the ideas that informed its birth. By

* Professor of Law, Floyd H. & Hilda L. Hurst Faculty Scholar, University at Buffalo School of Law, State University of New York. Please direct all correspondence to admutua@buffalo.edu. I dedicate this essay to Catherine “Chubby” Furtado. She once mentioned that she and her family had lived in Cambridge, MA most of her life. In all that time, Chubby commented, she and her husband only knew of one person who ever worked at Harvard University. This person worked in one of the mail rooms, and according to Chubby, even he was fired in short order... As a new mother, Chubby guided my footsteps, watched my children and loved us all. A truly wonderful spirit, may she rest in peace and power.

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[†] Note from the editors: This essay is one in a series of essays commissioned by the *Journal* to reflect on the organizations forming the Law and Political Economy movement's organizational “ecosystem.”

way of introduction, the essay highlights a small but diverse slice of ClassCrits scholarship and proposes frameworks through which this scholarship might be productively viewed.

ClassCrits was launched in two workshops held at the University at Buffalo Law School in 2007 and sponsored by its Baldy Center for Law and Policy (Mutua 2008, 859). Its emergence was motivated by three principal concerns.

First, the founders recognized that economic inequality was increasing both in the United States and abroad. Second, the group noted that in discussions of law and public policy, assumptions about efficiency often trumped concerns about equity and equality, due in part to the dominance of the Law and Economics school in legal scholarship (Mutua 2008; McCluskey 2003). Third, the founders recognized that the dominance of Law and Economics meant that few legal scholars or legal organizations explored the relationship between law and the role of economic power in producing inequality. In response to these concerns, ClassCrits aspired to ground economics in progressive legal jurisprudence (Mutua 2008).

This jurisprudence has its roots in American Legal Realists' analyses of the relationship between law and economics (for example, Hale 1923), and later elaborated by scholars in the Critical Legal Studies (CLS) tradition (for example, Kennedy 1983). Within the tradition of progressive legal jurisprudence, power and politics structure law and law structures politics. That is, while there may indeed be "a difference between arbitrary power and [the] rule of law," progressive legal scholars reject any clear-cut separation between the two (Rabinowitz 1998, 688, citing Thompson 1975). Further, they argue that law is central to shaping, structuring, and justifying economic operations and outcomes. Law plays a significant role in constituting the market, connecting power relations and politics to the economy, and potentially mediating between them.

ClassCrits was also informed by later CLS-related formations, including Critical Race Theory (CRT), feminist critical legal theory ("fem-crits"), Latina & Latino Critical Legal Theory (LatCrit), and queer legal studies. This CLS-related work understands that law shapes and is shaped by the social regimes of economics/class, race, and gender, and that these regimes are intimately intertwined in constructing and constituting structural inequality, including economic inequality. These post-CLS formations informed ClassCrits' institutional practices as well as its substantive stances. For instance, ClassCrits is committed to building community in part through producing knowledge and vice versa, often through the lens of non-mainstream (outsider) thought and practices inherited particularly from CRT and LatCrit (Mahmud et al. 2015; Mutua 2006, 377). In addition, these post-CLS movements inform ClassCrits' dedication to integrating theory with practice, scholars with activists, research with clinical work, and elite with non-elite perspectives, while substantively scrutinizing the exercise of power through the experiences of the less powerful.

Finally, ClassCrits also inherited from these formations a general intersectional antistatist framework that critically supports racial, gender, sexual and economic justice, among other justice stances (Valdes 2002). That is, ClassCrits is committed to challenging the hierarchal and intersecting social relations embedded in the socially constructed regimes of white supremacy, patriarchy, and the like. Consequently, while much of ClassCrits work analyzes legal rules that engage market and economic-focused processes, it is inclined to do so from an intersectional (Crenshaw 1989) and antistatist perspective.

From the beginning, then, the ClassCrits community posited, contrary to dominant views espousing the independence of a “naturally occurring” market and economy, that the economy is part and parcel of the constructed social fabric of society, and as such is the product of power, politics, rules, processes, dynamics, and intersecting social practices of domination *institutionalized* over time. It is thus subject to human agency, contestation, change, and transformation (Mutua 2008). From this perspective, ClassCrits sought to explore, to reveal, and to further map out the largely unexamined relationship between law, economic power, and the intersecting regimes of inequality.

In 2007, this project seemed both inauspicious and absurd to many. After all, the organization’s very name “harkened back to conversations about class and class relations that had ostensibly been discredited and in any event seemed inapplicable to discussions of law” (Mutua 2008, 859). That is, few, if any, legal scholars wrote about economic inequality in terms outside of the efficiency/equity model of Law and Economics, and the word “class” itself raised the scary, seemingly discredited specter of Marx. However, the Great Recession of 2008 (Amadeo 2020; Mathiason 2008) gave pause to any easy dismissal of the group’s work. Although to date ClassCrits’ frameworks and analysis have been slow to take hold in legal scholarship, current social, economic, political, and academic crises suggest they may now resonate with a broader audience.

The events of 2020 alone signaled the possibility of new receptiveness to ClassCrits critique. For example, early proposals issued by contenders for the 2020 US Democratic presidential nomination provided evidence that Americans were increasingly becoming aware of the growing intersecting crises of rising inequality, global finance, and climate change (Milman 2019). Americans had also begrudgingly begun to recognize that money, the concentration of wealth, and the elite classes’ self-centered exercises of economic and political power might be at least part of what ailed American democracy (Igielnik 2020). As a result, policies issuing from Democratic Party politicians embodied social democratic ideas that were barely audible, and thus barely credible, in the public sphere just five years before, even though they would have found (and sometimes did find) a happy home in ClassCrits meetings (Teachout 2014).

Further, the year brought crises in health, because of the COVID-19 pandemic; in the economy, because of the shut-down response to the pandemic; and in social justice, because of continued white private and public violence against Black people captured in part in protests triggered by the police murder of George Floyd. Regarding the pandemic, Americans witnessed the almost complete failure of national political leadership and their fragmented for-profit health care system to either coordinate or facilitate a national response (Boston Globe 2020; Lipton 2020; Lipton et al. 2020). They also witnessed its racialized effects (Bouie 2020; Law 2020; Maqbool 2020).

Economically, Americans observed the near collapse of the economy as workers and consumers went home, with elites apparently unable to help. Because many Americans were “sheltering in place” at home, they had the time to both “see” and “think” about the unfolding events . . . as well as to comment on them (Anzalone 2020). For instance, Lucas Reichennek commented:

Funny how all the consumers and workers staying home brings the economy to its knees and the “job creators” aren’t keeping things running with their amazing boot straps. . . . [It’s] almost as if it’s the people at the bottom who create wealth. (Twitter, March 16, 2020, <https://twitter.com/LReichennek/status/1239601237214937099>)

In addition, Americans witnessed what some referred to as corporate America's outright looting of the public purse (O'Connell 2020; Riotta 2020),¹ as well as its apparent disregard for workers' health. Many on Wall Street and in corporate America called for prematurely opening the economy (Sonnemaker 2020; Cuningham 2020; Dawsey et al. 2020) while pressing for enactment of a law that would shield them from liability for workers who became sick on the job (Swanson and Rappeport 2020). As such, they put profits over people and sought power without responsibility.

And then, triggered in part by the police killing of George Floyd, Americans witnessed a diverse *multitude* of people take to the streets, declaring Enough is Enough, Justice for George Floyd, Black Lives Matter, and Defund the Police. Regarding Defund the Police (Critical Resistance 2017; 8ToAbolition 2020), activists identified a particular budgetary line item—the budget lines for police/military—that could be used to fund their demand that the country invest in communities. In doing so, they not only tied state coercive apparatuses to tremendous violence at home and abroad, but indicated that these apparatuses were so costly that their elimination could finance a massive shift in priorities.

Finally, in addition to these startling changes in the social, political, and economic environment, ClassCrits now occupies a very different scholarly legal scene, including an emerging Law and Political Economy ecosystem that ClassCrits helped to develop.

Today, then, ClassCrits' ideas and analyses may find greater resonance than when the movement was founded. Perhaps, it's ClassCrits time . . .

Part II of this essay discusses ClassCrits' institutional growth and the ideas that informed it, suggesting that ClassCrits developed in two phases. The first phase involved formulating key questions and mapping an intellectual agenda for ClassCrits through the medium of workshops. The second phase involved cultivating community through ClassCrits conferences that enacted three sets of ideas and practices: (1) interdisciplinary, "big tent" openness, (2) safe space and responsiveness, and (3) praxis and collaboration. Hosting conferences not only aided ClassCrits in cultivating community but created opportunities for building theory and frameworks—a practice I seek to perform in this essay.

Part III explores ClassCrits' substantive insights by highlighting the work of a few selected participants.² ClassCrits scholarship is broad and diverse, employing a variety of different approaches to political economy, including varied heterodox economic approaches such as classical political

¹ When government officials and others attempted to paint protesters as looters, some Americans made this connection while commenting on the notion of looting generally. For instance, Davey D posted on Facebook: "I gotta be honest, the worst looting I've seen is . . . when corporations collected over 500 billion dollars in stimulus money while everyone else was left with a \$1200 check and having to decide if they pay food or rent." <https://www.facebook.com/CommunityOfIndependentHumanBeings/photos/davey-d-mrdaveydi-gotta-be-honest-the-worst-looting-ive-ever-seen-take-place-hap/3021850797908424/>. Natalie Shure on May 28, 2020 tweeted: "This must be the looting everyone is talking about," commenting on a CNBC report that "American billionaires became \$434 billion richer during the pandemic." <https://twitter.com/nataliesurely/status/1265967329197899776>. Steve Rustad, @SteveRustad1 tweeted on May 30, 2020, "Looting IS a problem. Trump & the GOP have looted a trillion dollars from workers & handed it to billionaires." <https://twitter.com/CalSunDevil78/status/1266578718576656384>. And finally, Darryl M. Brown, @CalSunDevil78 on May 29, 2020 retweeted a comment on looting by @cromunist commenting: "Looting is wrong' say citizens living on stolen land, built by stolen labor, powered by stolen resources from poor countries." <https://twitter.com/CalSunDevil78/status/1266578718576656384>.

² Most of the work highlighted is the work of ClassCrits members and/or scholars who have attended at least two conferences.

economy, ecological economics, feminist economics, institutional economics, Keynesian and post-Keynesian economics, Marxian economics, and the economics of happiness (Kvangraven and Alves 2019). I therefore focus on a thin slice of this scholarship, one that employs class-related methodologies. I organize this class-related scholarship into three overlapping categories: analyses of law's relationship to (1) neoliberal entrenchment and preservation; (2) class oppression; and (3) the intersecting oppressions of class and race.

II. Building an Institution

ClassCrits, Inc.'s development proceeded in two phases. In its first phase, beginning with its founding in 2007, ClassCrits held three invitation-only workshops with the goals of (1) gauging interest in law and economic justice; (2) formulating an intellectual agenda; and (3) expanding the group's knowledge about the rich variety of heterodox economic traditions.

The second phase, beginning in 2011, registered a shift from the workshop format to the conference model. The conference model had two benefits. First, it allowed ClassCrits to cultivate a broader community of interested scholars, and thereby build the institution's infrastructure; and second, to expand its networks and projects.

By 2014, a core group of ClassCrits participants had emerged. This group began developing the infrastructure of ClassCrits and embracing three sets of intellectual and community commitments.

A. Phase One: The Workshops

Martha McCluskey and Athena Mutua conceptualized and organized the first two ClassCrits workshops (Mutua 2008). Noting that economic inequality was growing both in the United States and abroad, they sought "to foreground economics in progressive jurisprudence and to reconsider longstanding assumptions and approaches in legal scholarship and practice around economics" (ibid., 859). Both considered themselves critical legal scholars. Martha was specifically engaged in the exploration and critique of the many assumptions employed by the Law and Economics movement. Judges increasingly appeared to be using a Law and Economics frame in their rationales, with outcomes that generally seemed to promote inequality (ibid., 887). Martha also routinely participated in Martha Fineman's Feminism and Legal Theory Project, which structured small group meetings around a particular topic.

Athena was interested specifically in developing a critical class analysis to complement her work in Critical Race Theory (from which, in part, ClassCrits drew its name). She suggested, as had others, that although CRT and LatCrit theory had both argued that "the class system in the United States mutually constructs race, gender and other forms of oppression," these groups had not developed "a systematic analysis of the ways in which this happened" (889). She routinely participated in LatCrit conferences and programs, the concepts and practices of which greatly influenced the organization of ClassCrits' later conferences.

Following a workshop model that Athena had developed in other work, she and Martha composed a list of legal academics whom they thought might be interested in the topic, circulated and revised the list, and then invited the listed individuals to participate in the workshop. Most of the invitees were critical legal scholars, with labor law scholars forming a notable part of the group. The first workshop

was meant to gauge interests in the topic and to formulate what an inquiry into law and economic inequality might entail. The second workshop asked participants to identify cases and laws that appeared to promote economic inequality. The 2008 publication of a *Buffalo Law Review* symposium issue memorialized the workshop conversations and announced ClassCrits' formation, its relevance underscored by the sudden chaos in US and world financial markets.

Angela Harris joined the team in 2009, her two-year visit at Buffalo during this time proving both fortuitous and important to ClassCrits' development. Angela had participated in the first ClassCrits workshops. A critical race and feminist scholar, she too had been an active participant in LatCrit projects. She also had already completed the second edition of a co-authored book on economic justice with Emma Jordan (Jordan and Harris 2010). She was interested in articulating a fuller notion of "liberty" (894) and fostering economic justice movements with positive programs. Angela, Martha, and Athena organized the third ClassCrits workshop, which focused on the rich and diverse body of non-neoclassical or heterodox approaches to economics. As before, the organizers crafted and approached a list of potential heterodox economists and invited them to the workshop with ClassCrits participants. The event proved influential for some ClassCrits scholars (for example, Casebeer and Whalen 2011, 141).

Much of ClassCrits' substantive inquiry was shaped by the participants in the first two workshops. The assembled group brought a number of shared understandings to their engagement with law, political economy, and class, including the understandings that legal outcomes were the product of political choices, albeit constrained and often hidden ones, and that law was important in creating and structuring social relations, including economic relations. Additionally, the group shared an understanding that law structured these social, political, and economic relations both through the power of discourse and the coercive power of the state that backs it (Mutua 2008, 864–70). That is, they knew that in addition to state-backed force, law served as a stabilizing ideological force, legitimizing and "making class relations and market institutions seem natural, normal and necessary" (Harris 2015, 626).

Further, the group understood that "the market," on which the field of "economics" (neoclassical and/or mainstream economic theory)³ is centered, is socially and historically constructed through and with society and thus is connected to the household, civil society and the government, as well as to other systems, institutions, practices, and beliefs within society.⁴ Thus from this perspective, the group brought a healthy skepticism toward neoclassical economics upon which neoliberal policies and the

³ Neoclassical economics focuses:

[o]n the market and an entry point, which understands the self-interested, utility-maximizing individual, together with technology and society's resources, as determining the supply and demand for goods and services. The wants, tastes and talents of the utility maximizing individual are treated as exogenous to the market. When the supply and demand created by these preferences and technology operate in a competitive market, free from barriers, then the market process, neoclassicists theorize, is both self-regulating and optimizes social welfare through efficiently allocating scarce resources. A corollary of this framework is that a person's wealth or poverty is determined by his choice—to save, invest, or put his endowed resources, including his "hard" work, to productive use. The theory's primary policy recommendation is that government not intervene in the self-regulating market except in limited circumstances. (Mahmud et al. 2015, 411-12)

⁴ A stronger statement of this thesis is that there is no market or economy in the absence of power and rules, regulations, and custom. And there is certainly no "free market." That is, it is power, politics, and policy all the way down, which is institutionalized. And thus it is policy decisions imposed through power and baked into the system that shape and result in the concentration of wealth. The separation is more real in the realm of ideas and ideology than reality. For a discussion of some of these ideas, see Vogel (2021).

legal field of “law and economics” are based. This skepticism extended to neoclassical assumptions asserting that “market relations are inherently free, voluntary and outside the realm of politics” (Harris 2015, 627). In this vein, ClassCrits today rejects, for instance, the “dichotomy between market freedom and state coercion” (among other dichotomies), arguing that it “misrepresents both forms of governance and their mutual entanglement with legal rules” (Harris 2015, 623).

The third workshop with heterodox economists also confirmed for some and reinforced for others a skepticism toward methodological individualism, the causal method employed by neoclassical economists which insists that individuals are the drivers of economic and social events. While this theory undoubtedly yields some insights about various economic phenomena, it ignores the fact that individuals are social beings shaped and influenced by the community and society within which they live. They are “influenced by factors such as advertising, community standards, job expectations, the judgments of friends and relatives, and ideologies such as consumerism or religion” (see, for example, Albelda and Drago 2004, 55-58), even within the perceived solitude of the voting booth (United States Election Assistance Commission 2011; Antunes 2010, 147). Methodological individualism thus misunderstands, limits, and/or denies group and macro-level phenomena in which the whole may be greater than the sum of its parts and might manifest different and contradictory dynamics (see, for example, Keynes on the “thrift paradox” (1936, 243); and Pouncy discussing group processes and race (2009, 841)).

Interdisciplinary by nature, ClassCrits would take a big tent approach to analytical tools, welcoming a wide breadth of Law and Political Economy methodologies. Nonetheless, the group did insist on the importance of a relational understanding of class. Such an understanding reveals the links and relationships between the wealth of some and the poverty of others—in both the Marxian and the Weberian sense (Mutua 2008, 900).

Finally, the group emphasized that class was not more or less important than the oppressive structures of race, gender, sexuality, etc. All such oppressive structures, for the group, were intimately intertwined, together constituting inequality in general and economic inequality in particular. In light of this recognition, the ultimate aim of ClassCrits is to promote economic and social justice, through critical legal frameworks that employ alternative understandings of “economics,” and in alliance with activists and scholars with similar commitments.

These formative ideas were memorialized in the group’s mission statement, published in 2014 (ClassCrits 2014). The mission statement also sets out the following goals: (1) to foster discussion among scholars and activists on economic justice issues; (2) to provide collegial support for scholarship; (3) to serve as an organizing center for new projects (which would include the *Journal of Law and Political Economy*), and (4) to open new lines of related scholarship (ibid.).

B. Phase Two: The Conferences

The team (or “foremothers” as Angela has referred to Athena, Martha and herself), together with a host of others, including Ezra Rosser of the Washington College of Law at American University, led the planning of ClassCrits’ first full-fledged conference. Entitled “Criminalizing Economic Inequality,” the conference was held at the American University in 2011, with Bernard Harcourt as the keynote speaker. Viewed as a great success, this conference began the process of ClassCrits rotating its annual conferences to different law schools each year.

By 2014, ClassCrits had cultivated a robust community of scholars and begun the process of turning itself into not simply a community of scholars, but also a membership organization. A core group had emerged to advance the growth of ClassCrits' institutional infrastructure, which included mechanisms for staging future conferences, publishing conference work, expanding networks, and, through these, building theory in fits and starts. The group did so through commitments to three sets of ideas: (1) an interdisciplinary, big tent approach; (2) safe space and responsiveness; and (3) praxis and collaboration.

Anecdotal evidence suggests that the ClassCrits conference is a unique space, friendly and responsive. This may be attributed to three sets of interrelated practices and commitments that the group borrowed from LatCrit (see, for example, Montoya and Valdes 2008). The first practice involves adopting a big tent, interdisciplinary approach to law and economic inequality. Procedurally, this means that conference planners accept nearly all presentation proposals, and they intentionally seek out young academics, clinicians, community activists, and students. ClassCrits organizers have honed the skill of making the personal call—personally reaching out to people engaged in interesting Law and Political Economy work in an effort to cultivate interest and community.

Second, conference planners have made a point of creating a safe and responsive space. The idea of safe space is grounded in the ClassCrits commitment to challenging hierarchal social relations, including those generated by patriarchy, white supremacy, and capitalism.⁵ The creation of a safe space welcomes the multitude of social identities, and embraces methods and ideas on economic injustice that may be unconventional and/or less examined within dominant legal academic spaces (Mahmud et al. 2015). The success of this approach can be seen in the work-in-progress program for junior scholars, a program so popular and successful that in recent years it has threatened to overwhelm the conference.

Finally, conference organizing has been informed by the values and practices of praxis and collaboration. Praxis, as a commitment to practice-informed theory and theory-informed practice, manifests in two distinct ways: in participation and in scholarship. ClassCrits seeks the participation of the full range of legal-related actors, other academics and activists, including research and clinical scholars, adjuncts, and practitioners, in addition to community activists, nonprofit professionals, and politicians. This means that the conference offers a plethora of perspectives and strategies to analyze and advance economic justice concerns.⁶ This practice also redounds in the scholarship of individuals and members.

For instance, a conference dedicated to examining corporate law and power included discussions of the participants' advocacy for the rights of persons who are homeless, efforts to combat lead hazards in federally assisted housing, and Green Party activism. Unusual for a conference of legal scholars, ClassCrits conferences also invite the participation of grassroots activists themselves. For example, ClassCrits VIII, which focused on "emerging coalitions," featured representatives from Black Lives

⁵ The idea of safe space has taken a beating in the public domain recently, with many arguing that the concept entails hiding from and refusing to engage opposing views. In fact, safe space provides a reprieve from dominant views that are too often expressed with hostility and intolerance of those with views associated with marginalized communities. Safe space allows marginalized individuals and groups to build projects, knowledge, strategies, and community—efforts that, contrary to the "opposing views" narrative, require frank and honest expression. For some recent popular discussions on the safe space concept, see Roth (2019) and Bell (2015).

⁶ Conference programs can be found on the ClassCrits website at <https://classcrits.org>.

Matter, Healthy and Free Tennessee (which focuses on women's reproductive health), and the Service Employees International Union (SEIU) (Bach and Jewel 2016, ix).

This spirit of inclusiveness runs against the grain of the legal academy. Law can be characterized as conservative by nature, in light of its historical support for social and economic inequality. Moreover, legal education is deeply hierarchal, distributing unequal levels of security, pay, and status among research, clinical, and adjunct faculty and staff within schools, as well as recognizing minute status distinctions between schools. These hierarchies pose numerous challenges to ClassCrits' big tent approach. For example, clinical professors and activists did not participate in the conferences until organizers began to make phone calls and add language to the calls for papers extending them a special invitation. Junior scholars, as well, needed a special invitation to submit works-in-progress. For another example, organizers discovered that publishing symposium issues was more difficult at higher-status law schools.

Despite the challenges, this spirit of collaboration has helped spawn an entire Law and Political Economy ecosystem (Harris and Varellas 2020, 10), including the Association for the Promotion of Political Economy and the Law (APPEAL), of which Martha McCluskey is currently president, and the *Journal of Law and Political Economy* of which Angela Harris is a co-editor-in-chief. As part of an "emerging movement," ClassCrits is collaborating with the Law and Political Economy Project initiated at Yale Law School (Grewal and Purdy 2017, 81), as well as with scholars and advocates involved in the Law and Society Association's new collaborative research network on Law and Political Economy and the Modern Money Network.

ClassCrits scholars have also been active in analyzing the political economy of legal academia itself. For instance, this has been a focus of work by Lucy Jewel (2008; 2013; 2015), the current president of the board of ClassCrits, Inc. Conference discussions about legal education and the academy have centered on law and social status, unequal education, and the corporatization of higher education, including the trends of "adjunctification," vulnerability of university staff, erosion of funding for higher education, and the changing role of education (conferences VI, VIII, IX focused particular attention on these issues).

III. Building Frameworks: ClassCrits Substantive Insights and Work

In this Part, I highlight one slice of ClassCrits scholarship: work focused on law and class, covering themes to which conventional legal scholarship pays little attention. I divide this work into three overlapping categories: law and neoliberalism; law and class analysis; and law and the intersecting oppressions of class and race. In discussing each, I suggest a social or political theory through which this legal scholarship might be productively viewed.

A. Law and Neoliberalism

Today there is a growing consensus that neoliberalism (and capitalism more generally)⁷ is in deep crisis (Jacobs 2019, Fraser 2019b). This crisis stems from both neoliberalism's failure to adequately provide

⁷ Capitalism can be seen merely as an economic system, or much more broadly as a social system. In either case, I understand (the traditional definition of) it as one way of organizing activities meant to provide the material conditions for our shared social existence. It is dynamic and changing over time, but nonetheless has at least three distinctive

for society and in its ongoing damage to the earth. Yet, both neoliberalism's policies and its "governing rationality," as Wendy Brown (2015, 2019) terms it, have been entrenched in law in ways that are likely to prolong its effects despite the sense that it has failed the majority of the people.

ClassCrits scholars analyze both neoliberal outcomes and the discourses that legitimize them, parsing important aspects of neoliberalism's governing rationality. In fact, I suggest that ClassCrits authors have long been engaged in this work, even anticipating in part Brown's critique.

1. Neoliberalism: Economic Policy and Its Governing Rationality

Mahmud et al. (2015, 377) define neoliberalism as the most recent form of capitalism, in which elite classes, seeking to increase their profit margins, sought to reorganize and displace the Keynesian welfare state. In doing so, these elites facilitated the control and hegemony of finance capital over the American and global economy. Neoliberalism, or financialized capitalism, entails not only rolling back the welfare state, but also "breaking the power of organized labor, rendering labor markets insecure, financializing the economy such that the productive economy is subject to the demands of finance capital,⁸ and exponentially expanding debt" (Mahmud et al. 2015, 377; Mahmud 2012). Debt, Mahmud (2012) notes, is meant to sustain aggregate demand for the purchase of goods, fuel liquidity, and facilitate the "enterprising" but debt-ridden individual in economically fending for himself. Drawing on the scaffold of neoclassical economics, neoliberalism promotes market fundamentalist ideology, which insists that government should not intervene in the "self-regulating free market," while actually rearticulating the state's role as primarily that of facilitating the "market." Two of neoliberalism's most widely implemented policy recommendations have been to deregulate business and privatize public goods and services, the latter on the theory that businesses subject to the profit motive can more efficiently provide these services.

Wendy Brown (2015) notes that "neoliberalism is most commonly understood as enacting an ensemble of economic policies with its root principle of affirming [the idea of] free markets" (Brown 2015, 28). However, she argues that neoliberalism is also a governing rationality, one that seeks to extend economic reasoning, values, practices, and metrics to every dimension of human life, including the human subject. This human subject becomes "exhaustingly" a market actor; not just the *homo economicus* of old but reshaped today as "financialized human capital." She explains that the project of this human capital is to "self-invest in ways that enhance its value or to attract investors through constant attention [such as generating Facebook likes] to its actual or figurative credit rating and to do this across every sphere" (2015, 33).

characteristics. First, capitalism is a class system. The class division is between owners and producers, where the property owners/capitalists privately own the means of production and a portion of the propertyless labor force is commodified. Second, there is an institutionalized but decentralized market which coordinates "voluntary" exchanges. Not only are ordinary commodities—goods and services—bought and sold through the market, so too are productive inputs, including labor power. The exchange of labor for wages is voluntary, in many cases, only to the extent that workers are "free" to work or starve. Third, there is the dynamic of capital accumulation, which is the relentless drive for and pursuit of profits. This drive rests in the competition of firms, which must often profit and expand or die. Profit-making is generally only responsive to human and social needs when providing for them is viewed as or rendered profitable. It thus skews what some believe to be the primary purpose of the economy as a set of social institutions—to provide for the material well-being of society and its members, also known as "social provisioning" (Pouncy 2009).

⁸ As an example, consider the pressure that Wall Street put on JetBlue Airlines to adopt policies that enhance shareholder wealth—the wealth generated by holding shares—at the expense of consumer-friendly policies such as providing adequate seating space (Reed 2014; Wu 2014).

In addition to this governing rationality, neoliberalism as conceived by its authors, particularly Hayek, entails a morals program of protecting the traditional family. Explaining Melinda Cooper's work, Brown notes that the market goal of privatizing "social security, health care, and higher education involved 'responsibilizing' individual men, rather than the state, for teen pregnancies, parents, rather than the state, for the costs of higher education, and families, rather than the state, for the provision of every kind of care for dependents—children, disabled, the elderly," (Brown 2019, 11-12)—an expensive proposition. This goal reduces public financial support for families and thereby expands the market purchase and profitability of these services while simultaneously economically coercing "traditional" family formation. The likely result of this neoliberal market-and-morals project is not only increased poverty and inequality, but also a system that continues to slate women into traditionally unpaid or underpaid work while reinforcing white and male superordination (ibid., 13). These probable results are akin to those experienced in developing countries under structural adjustment programs imposed on them by the Global North through the International Monetary Fund and other international organizations in the 1990s and early 2000s (Thomson, Kentikelenis, and Stubbs 2017). In extending the market model to all domains, inequality, a central feature of the market model, becomes normative.⁹

Thus the government's role under neoliberal rationality is primarily to serve and strengthen the market (as currently organized). In doing so, it also seeks to expand so-called traditional family morality, supporting market and family in their respective realms, as if these were completely separate. Yet, it performs this function in the main, the ideology suggests, by refraining from intervening in their "normal" operations.

Law then becomes a "medium for disseminating neoliberal rationality beyond the economic" (Brown 2019, 151), justifying economizing new social spheres (see, for example, Radin 1982) and reinstating traditional patterns of family authority.

2. ClassCrits on Law and Neoliberalism

ClassCrits scholars have been active in fleshing out the role of law in promoting neoliberal policy. For example, Timothy Kuhner (2011) argues that in recent years, judges and legislators have used economic reasoning to effectuate neoliberal goals (see also McCluskey 2003; Mahmud 2012). For instance, Kuhner (whose work Brown approvingly cites) argues that the Supreme Court, in striking down a campaign finance law on the basis of the First Amendment in *Citizens United v. Federal Election Commission*, 558 U.S. 310 (2010), explicitly engaged in what he called "neoliberal jurisprudence, the use of neoclassical economic theory as judicial reasoning," and in doing so "espouse[d] a dogmatic, free market form of economic theory" (Kuhner 2011, 397). In later work, Kuhner elaborates that the Court, through its campaign finance decisions more generally, has erected a regime that imports into the political sphere, for policy purposes, economic values and practices of unequal access, status, and

⁹ Though many people see capitalist markets as neutral and/or facilitating "fair exchanges," I remind people that these markets are, in fact, biased—toward money (and power). If you do not have any money, you cannot play and the more money you have, the more you can play (Mutua 2014). Further, for a host of historical, structural, operational, and other reasons, some of which are explored in this essay, inequality both shapes markets and is created through them, such that inequality is a central feature. For a similar conclusion from a different perspective, see Boghosian (2019). However, inequality is a choice. Different social arrangements may alter this. To do so or not is a political decision.

interest preferences based on wealth. The Court thus displaces the idea of government by the people—democracy, with its values of equal citizenship, one-man/one vote, equal access, self-government—with plutocracy, governance by and for the wealthy (Kuhner 2015, 44).

While the Court, through neoliberal reasoning, essentially deregulated campaign finance law and further enhanced the political power of the wealthy, Linda Coco (2013) explains the relationship between student debt, neoliberal views, and policies on higher education that hurt those with considerably less wealth. She argues that dominant discourses on higher education have gone from viewing education as a public good essential to self-government to characterizing education as an individual private investment. As a result of this framing, she argues, state and federal policies now require students to pay higher tuition prices for education in addition to repaying interest-bearing loans. The result is that many low- and middle-income students either cannot afford to attend college or will have to assume enormous debt to do so.

Finally, Matthew Titolo (2012) argues that the neoliberal “market frame” has become hegemonic. Enmeshed in a cluster of easily absorbed and valued ideas, Titolo explains the frame provides a “powerful, unified storyline,” advising us that “free markets work for the common good, markets are self-regulating, and the private sector is inherently more efficient than government” (Titolo 2012, 509). However, Titolo contends that this story is built on a host of questionable theories, hypotheses, and assumptions that lend uncritical support for privatizing—or contracting out—government services. For instance, policies grounded in conceptions of the separation between the public and private sectors fail to address the reality of new forms of hybrid governmentality. Support, based on assumptions of competitive markets, fails to recognize that no-bid contracts litter federal contracting markets. Efficiency concerns about the government provision of prisons or defense may stifle the necessary and value-laden discussions about whether private actors *should* provide these services and whether the profit motive and administrative capture might distort actual government goals, such as decriminalization. Titolo recommends that society begin to reassess and replace this problematic frame.

Each of these essays, among others, anticipate and largely support Brown’s idea that neoliberalism is not only a set of economic practices but also a governing rationality or, at minimum, a reigning ideology that seeks to extend markets to new social spheres—a market understood as separate from society, non-political and self-regulating. This ideology of market extension comes complete with market models and market reasoning. The effect of the expansion is not only to justify neoliberal goals and practices of deregulation and the appropriation of public goods and services through privatization, but also to increase and normalize social and economic inequality.¹⁰

Moreover, although there is a growing sense that neoliberal policies have failed to work for the majority of people, its embeddedness in law suggests that neoliberalism’s life will continue long after any proclaimed demise. *ClassCrits* analyses that challenge the legal justifications for neoliberal outcomes such as those surveyed here on campaign finance, education, and government contracting aid in deconstructing neoliberalism’s governing rationality.

¹⁰ Inequality is justified, so the theory goes, because it results from the hard work of individuals and the preferences for leisure among others (Newhard 2018).

B. Law and Class Analysis

ClassCrits scholars writing on neoliberalism and on class more generally focus on law, legal rules, and legal processes that implicate class relations. However, the notions of class that these scholars employ in their legal writings are varied and many. I suggest that ClassCrits writings on law and class might gain greater theoretical coherence when viewed through the lens of Erik Olin Wright's (2015) integrated class framework.

Wright's integrated approach may be particularly helpful to ClassCrits because his analysis of class relations recognizes what many critical legal scholars have long argued: that law and the economy, including its class character, are mutually constitutive. It is power and law, Wright suggests, that give certain people, groups, or classes effective control over economic resources—particularly over productive property (2015, 6 in figure 1.2).¹¹ Specifically, it is power and legal rules that enforce social closure around jobs and opportunities in the market economy, and it is power and rules that provide access to and control over productive property—or the means of production—to the exclusion of others.

Wright combines composites of the three dominant sociological approaches to analyzing class structure under capitalism. He posits that each analytic approach reveals a different social process, and identifies a key role for each process in the overall production and reproduction of a class society.

1. Overview of Wright's Integrated Class Analysis

Wright (2015, 3) identifies the three most dominant sociological approaches to class analysis as (1) the individual attributes approach to class; (2) the opportunity-hoarding approach; and (3) the domination and exploitation approach. The first approach, he explains, is associated with the stratification tradition, the second with the Weberian tradition, and the third with the Marxist tradition. Ultimately both Weber and Marx view property ownership as the fundamental source of class division under capitalism. And both “see propertylessness as an essentially coercive condition” (Wright 2015, 33)—a reminder that a person with nothing can be made to do anything and thus is not free.

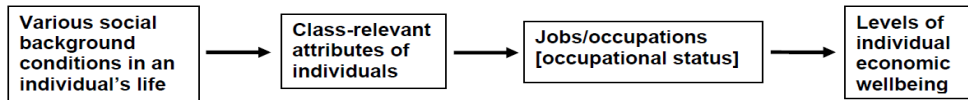
a. Stratification

The stratification approach to class, Wright explains, explores the link between individual attributes and material life conditions. Individual attributes include (but are not limited to) sex, age, race, religion, intelligence, education, geographical location, and class background: “those economically [relevant] attributes of people that shape their opportunities and choices in a market economy and thus shape their material conditions of life” (2015, 4). Wright notes that sociologists' central concern here is to understand how people acquire the attributes that place them in one cluster/class or another, usually by examining their material conditions of life in childhood (class background) and their education, among other factors. Those working from this approach usually identify an upper class, middle class, lower class, and underclass, using methods, such as dividing society into income quintiles, which do

¹¹ Wright's focus on “power” has been criticized by those, influenced by Marx's theory of labor value, who focus on the appropriation of surplus value. However, as I understand and interpret Wright, though he abandons Marx's labor theory of value, his approach need not be totally incompatible with Marxism and its concept of private appropriation of surplus value (Choonara 2017; Resnick and Wolff 2003).

not specify how classes relate to one another. Wright argues that this approach can be seen as identifying the process through which individuals with different attributes are sorted into different jobs and occupations, including the “occupation” of owner of productive property. The stratification approach might roughly correspond and operate at a level in which people act strategically according to fixed rules (Figure 1).¹²

Figure 1. The Individual-Attributes Approach



Reprinted by permission from Wright (2015).

b. Opportunity Hoarding

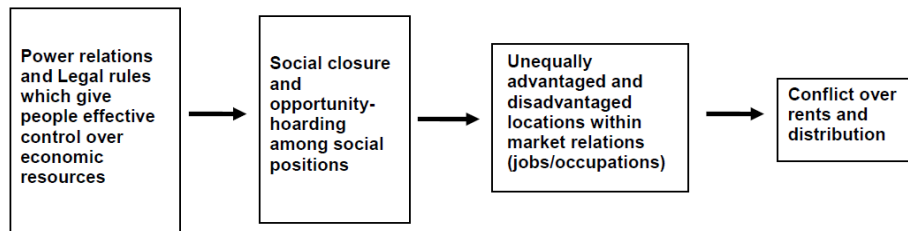
The opportunity-hoarding or social enclosure approach (Wright 2015, 6-8) explores the nature of the locations within the market (jobs and opportunities) into which individuals are sorted. It asks why some jobs are good and others bad, and further examines the processes by which access to a position is reserved for some people and closed to others. The answer lies in institutional practices such as credentialing and licensing. In a legal example, those eligible for the job of “lawyer” are required to have certain levels of schooling (credentials), pass the bar examination, and secure a license. These institutional practices are determined by and through the exercise of authority, which is often defined and regulated by law. The legal rules and authorized discretion that define and structure opportunities are challenged and changed, in this approach, through contests over distribution. For instance, skin color was once an explicit bar to certain jobs that allowed those with white skin to hoard particular jobs and opportunities for themselves. This has changed some through law and political contestation. Institutional devices such as citizenship, however, continue to act as a bar to some opportunities for some people.

Hoarding and the social closure around jobs and opportunities, according to Wright, form a significant structuring aspect of the “economy” and thus in the class configuration of a society. And while the actual economic activities in which individuals are involved may not be related to one another, the conditions of those activities (how one job relates to another), Wright argues, are causally related. In short, “opportunity-hoarding means that the economic advantages people get from being in a privileged class position are causally connected to the disadvantages of people excluded from those class positions—the rich are rich in part because the poor are poor; the rich do things to secure their wealth that contribute to the disadvantages poor people face in the world” (2015, 8). Scholars who use this approach generally identify three broad classes: “capitalists, defined by private property rights in the ownership of the means of production; the middle class, defined by mechanisms of exclusion

¹² Wright also develops a game metaphor that, I believe, not only builds and expands on the integrated framework but deepens some aspects of it. It too has three levels, which I believe roughly correspond to the three functions Wright associates the three approaches to class analysis. They are a micro level, an institutional level and a system level (Wright 2015, Preface).

over the acquisition of education and skills; and the working class, defined by their exclusion from both higher educational credentials and capital” (2015, 8). This institutional level of analysis focuses on the defining rules of the class structure (Figure 2).

Figure 2. The Opportunity-Hoarding Approach



Reprinted by permission from Wright (2015).

c. Exploitation and Domination

The exploitation and domination approach is similar to the opportunity-hoarding approach, but here the focus is on productive property. Wright argues that property rights to the means of production are the most important exclusionary mechanism protecting the privileges and advantages of people as owners under capitalism (2015, 7). Wright describes the exploitation and domination approach “as a form of structured inequality that requires continual active cooperation between exploiters and exploited, dominators and dominated” (2015, 10). The exploitation approach operates at the level of the system.

Exploitation and domination allow a group to “control the laboring effort of [others] for [their] own advantage” (2015, 9). To distinguish between the opportunity-hoarding and exploitation approaches, Wright gives an example drawn from the English enclosure of the commons (Fairlie 2009), a moment identified by historians as central to the development of Anglo-American private property, as well as the class structure of modern capitalism. From the opportunity-hoarding perspective, “large landowners [violently] seize control of common grazing lands, exclude peasants from access to this land, and reap economic advantages from their exclusive control [of the land] for their own use.” From the exploitation and domination perspective, “the same landlords seize control of the grazing lands, exclude the peasants, but then bring some of those peasants back onto the land as agricultural laborers”—thereby not only benefiting from their exclusive control of the land, but also from the exploitation of the peasants’ labor. In doing so, the landowners create an “ongoing relationship between the activities of the advantaged and disadvantaged persons, as well as a relationship between their conditions” (2015, 10).

This example sheds light on modern capitalism as well. Capitalism creates a group of people (owners of capital) who have an interest in keeping another group (workers) in an economically vulnerable and dependent position, since their profits depend upon extracting as much labor as cheaply as possible. In fact, capitalists not only have an interest in controlling labor markets but also have a collective interest in shaping all social institutions to increase their capacity for exploitation, along with an

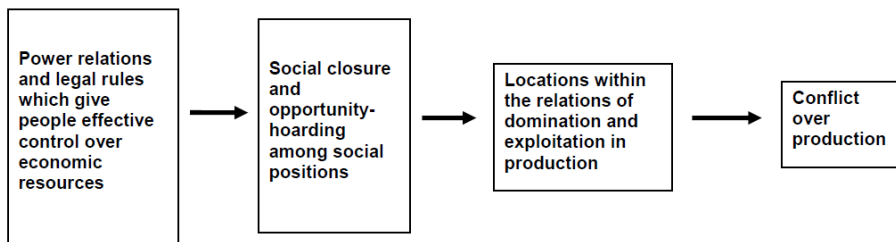
individual interest in winning the incessant competition among themselves for profit (Wright 2010, 27–28; Figures 3 and 4).

Figure 3. The Role of Social Relations in Class Analysis

Approach to class analysis	Economic Conditions	Economic activities
Individual attributes	Non-relational	Non-relational
Opportunity hoarding	Relational	Non-relational
Domination/exploitation	Relational	Relational

Reprinted by permission from Wright (2015).

Figure 4. The Exploitation and Domination Approach

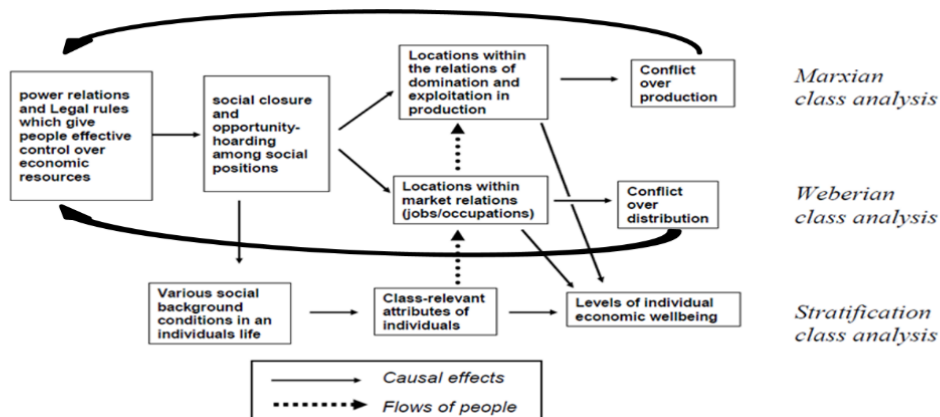


Reprinted by permission from Wright (2015).

d. Summary

A summary of the integration and dynamic interaction of these three different processes of class formation and reproduction is captured in Figure 5.

Figure 5. Combining Wright’s Three Formulations of Class Analysis



Adapted from Wright (2015).

2. Integrating ClassCrits Scholarship into Wright's Framework

Viewing ClassCrits class-related work through Wright's integrated structure pulls these different approaches into a single analytical class frame, which may provide greater insight into the way law contributes to or might disrupt the reproduction of class society, and at what level.

Many, perhaps most, American legal scholars who employ the language of class do not treat class as relational. Instead, most American legal work that references class employs the stratification approach, seeing class as a cake-like formation, divided perhaps into quintiles. This scholarship does not make claims that either the conditions of the opportunities or the activities in which people are engaged are related to one another (Mutua 2008, Mahoney 2003).

a. Stratification: Poverty and the Supreme Court

Julie Nice provides an example of the stratification approach. In her article entitled "Whither the Canaries: On the Exclusion of Poor People from Equal Constitutional Protection" (2012), Nice argues that the US Supreme Court has de-constitutionalized protection of poor people's rights by sleight of hand, subjecting poor people's equal protection challenges to government regulations that discriminate on the basis of poverty to the most deferential judicial standard of review, the "rational basis" test.¹³ As Nice explains, the Court justifies its use of this review standard for these kind of claims on the assertion that its prior cases have determined that poverty and wealth(less)-based government line-drawing are not suspect classifications subject to enhanced scrutiny.

Nice explains that poor people's equal protection claims often challenge punitive regulations, such as subjecting welfare applicants to suspicionless home searches or prohibiting individuals previously convicted of drug related offenses from receiving food stamps. The effect of the Court's weak standard of review is that such regulations often pass judicial muster without any real analysis of the concrete conditions or injustices that poor people face. As a consequence, Nice argues, equal protection jurisprudence not only justifies government regulation of poor people's lives—regulations that too often keep people poor—but also effectively renders their claims unintelligible.

There is little in Nice's essay to indicate that she is making a relational class claim, that some people are poor because others have hoarded opportunities or exploited them. This stratification approach is not unusual. Reviewing Matthew Desmond's book *Evicted: Poverty and Profit in the American City* (2016), Ezra Rosser notes that "scholarship about poverty tends to focus almost entirely on particular groups of poor people and not on the relationship between the poor and the non-poor" (Rosser 2017, 460).

¹³ Generally, there are three different standards that the Supreme Court employs in reviewing cases involving an alleged violation of the equal protection clause of the Fourteenth Amendment (a question of constitutional law). These three standards are (1) rational basis, (2) intermediate scrutiny, and (3) strict scrutiny. Rational basis is the most lenient (and widely used) standard, in which *the challenger* of a government law or action *has the burden* of persuading the Court that the action is not *rationaly related* to a (conceivable) *legitimate state interest*. It usually applies to laws involving economic and social regulations, and involves considerable deference to the legislature. Under intermediate scrutiny, *the government has the burden* of proving that the action or law is *substantially related* to an *important government interest*; this standard applies, for example, to laws requiring differential treatment according to gender or legitimacy. Strict scrutiny, the most demanding level of review, applies to *infringements of fundamental rights* such as those contained in the Bill of Rights and those determined under the due process and equal protection clauses of the Fourteenth Amendment. It also applies to laws employing "*suspect classifications*" such as race, national origin, and alienage. Here, *the government has the burden* of demonstrating that the law or action is necessary (*narrowly tailored*) to a *compelling state interest*.

Rosser explains that *Evicted* differs from other work exploring poverty in that it claims that the low-income housing market is marked by exploitation. And he concurs with Desmond that exploitation is “a word that has been scrubbed out of the poverty debate. It is a word that speaks to the fact that poverty is not just a product of low incomes. It is also a product of extractive markets” (Rosser 2017, 459 citing Desmond 2016, 305-6).

Yet Nice’s analysis provides important insights about law’s role in shaping and constructing poverty. Her argument underscores that the people who pursue these kinds of suits have been (and will likely continue to be) sorted into what are likely low-paying jobs, and observes that the Court’s failure to protect them contributes to keeping them poor.

Who benefits from poverty, how, and why? The stratification approach provides no direct answer. However, the beauty of integrating the sorting function implicit in the stratification approach into a larger system is that it begins to provide an answer. Envisioning a system that confers on a small (elite) group of people the rights, power, and incentive to keep large segments of the population economically vulnerable begins to answer the question of why the Supreme Court might participate in a system that keeps people poor.

b. Opportunity Hoarding: The Middle Class and Workers

In “Framing Middle-Class Insecurity: Tax and the Ideology of Unequal Economic Growth” (2016), Martha McCluskey argues that in this moment, when the shrinking middle class is increasingly required to take on more risk to prevent insecurity, neoliberal tax policies and ideology suggest that it should support large corporations and business elites through lower taxes and subsidies. The neoliberal argument is that these businesses are responsible for economic growth, development, and job creation, but this claim obscures a far more complicated reality, made apparent when workers and consumers go home to “shelter in place” during a global pandemic. Government support for large corporate firms include not only federal tax cuts, but also local tax subsidies meant to attract employers. Such subsidies, however, are often unavailable to the small and local businesses owned by middle-class Americans (McCluskey 2016, 2709).

In contrast to the image of large firms as job creators, neoliberal ideology paints the American middle class as the beneficiary of non-productive “redistribution,” or as “consumers” of public goods. These goods include benefits such as retirement security, healthcare and education services—for which, the middle class is told, they should be willing to pay higher taxes or forgo. McCluskey determines, drawing on modern money theory, that these practices and ideology mask the fundamental, *productive* and *leadership* roles of the tax and spend functions of government.

Michele Gilman, in her essay “En-Gendering Economic Inequality” (2016), notes that while many people understand that increasing inequality results not simply from market forces but also from government practices, they often overlook the fact that inequality is not uniformly experienced. She explains that women get paid less than men in comparable jobs, have higher poverty rates, and are disproportionately represented in low-wage labor markets. Further, she notes that working-age women’s participation in the American labor force has been declining, unlike that of women in other developed countries.

Gilman applies feminist economic insights to three Supreme Court cases dealing with low-wage workers (*Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338 (2011); *Harris v. Quinn*, 573 U.S. 616, 134 S. Ct. 2618 (2014); and *Burwell v. Hobby Lobby Stores, Inc.*, 573 U.S. 682, 134 S. Ct. 2751 (2014)), all cases that, according to Gilman, represent trends in the Court's jurisprudence. She argues that the Court entrenches gender inequality by employing simplified assumptions from neoclassical economics and reinforcing gendered stereotypes about women's "place" both inside and outside the home. For instance, the Court employs neoclassical ideas of market competition to suggest that discrimination is not widespread, and engages in rhetoric that glorifies corporations. At the same time, the Court devalues women's care work by promoting narrow corporate conceptions of efficiency over a wide range of other values including human well-being and those of care, while also ignoring power imbalances in the workplace. Feminist economists have critiqued each of these moves, promoting instead an intersectional approach that recognizes that women, as a group, are subordinated, and that they are also classed, raced, etc., and thus experience increasing inequality differently.

Viewed through Wright's lens, McCluskey (2016) uses a relational analysis to make two claims, both of which conform to Wright's institutional opportunity-hoarding approach. She does not claim that capitalists exploit the middle class or workers. Rather, she argues that law facilitates, first, the reduced opportunities for small businesses to access tax support, in favor of large businesses' access to such support. Second, she suggests that not only does tax support for big business hurt small businesses, but it also hurts the middle class, the working class, and poor people, by reducing overall tax support in the form of, for example, social safety net provisions. In short, McCluskey's analysis employs a relational frame in which both law and neoliberal rhetoric facilitates and justifies capitalists seizing and hoarding public resources for their private profitable use at the expense of smaller businesses and society as a whole.

Gilman, too, makes a relational claim, but not a claim about harmful class relations between owners and the propertyless. In fact, to the extent Gilman's examination is embodied in Wright's class analysis, she seems to see low-wage work as a given, employing a stratification approach instead of a classed relational approach as some feminist do (Young 2005; Federici 2012; Bowman 2016). Instead, Gilman sees binary gender as a class system in which men as a class benefit in two ways. First, men generally benefit from women's unpaid care work, as does capitalism as a whole. Second, men benefit from being placed in a position to hoard better economic opportunities. In making these points, Gilman demonstrates a potential limitation of Wright's framework: Wright's framework does not appear to recognize the potential diversity of interests within class formations. This is so even though the framework recognizes that identity may affect how a person is sorted.

c. Exploitation and Domination: Workers and the Precariat

Kenneth Casebeer focuses on workers—those who “directly produce the wealth of the society by the expenditure of their time and energy (lives) in relation to the social use of their products, and their welfare” (2017, xi). In his edited collection, *American Labor Struggles and Law Histories* (2017), Casebeer discusses the history of worker collective actions, not only through collective bargaining, but also through “rebellions, politics, boycotts, picketing, social movements, and especially strikes” (ibid., xi)—actions taken to combat economic and social domination.

In compiling this book, Casebeer not only sets out to center workers' collective actions, but also to challenge two trends in modern legal teaching and writing on labor law. One trend is a focus on

“discourse,” as opposed to the actual conditions and actions of labor struggle. The second trend involves the “unexamined assumption of the legitimacy of State protection of ‘business unionism.’” Here the focus is on collective bargaining as the central site of labor struggle (2017, xii). Casebeer argues that this latter focus—on the state protection of unions and labor law—“shortchanges not only the range of collective activities of workers, but the wide range of legal rules and practices brought to bear on labor struggles” (ibid.), including, among others, criminal law (think of the criminalization of secondary strikes and boycotts), property law, injunctions, petty arrests, and repression by the police and military.

Matt Dimick, in a series of essays, including his article “Counterfeit Liberty” (2019a), advocates for workers’ freedom to forge “the most cohesive, inclusive, and self-conscious class for itself” (Dimick 2019b). He, too, takes up labor law’s unexamined presumption of legitimacy regarding the state’s role in protecting business unions. He suggests that even when the presumption is examined, labor scholars often focus on the content of the laws rather than on the question of whether the law should be used to regulate labor relations at all. Dimick argues that given the particular development of the US labor movement under the 1935 National Labor Relations Act, law as social regulation in this area is a highly statist form of labor-relations management. As such, it tends to substitute its own material and legal ideological resources and goals for those of the working class. As a result, the law not only often undermines working-class goals, but also endangers working-class formation. Further, he posits that these scholars also make an instrumentalist error, supposing that workers can use the law as effectively as capitalist employers.

Instead, Dimick sees workers’ collective action as a more desirable form of labor regulation. Under this form of social regulation, he argues, strikes and other concerted activities are not merely means towards the end of workplace gains, but are also “moments in the process by which workers constitute themselves as a class,” a process that embraces building solidarity, creating their own institutions, and discovering their own forms of class power (2019b). Ultimately, he argues for a kind of workers’ freedom that would enable them to regulate labor relations, rather than the state.

Tayyab Mahmud’s article, “Precarious Existence and Capitalism: A Permanent State of Exception” (2015), focuses not simply on worker precarity, but on the precarity of the “non-capital-owning classes” more generally. Precarity, defined as employment and/or income insecurity, is a fundamental feature of capitalism, Mahmud argues—the norm, rather than the exception, in capitalist production. Mahmud explains that precarity operates through ongoing accumulation by dispossession, the creation and maintenance of a reserve labor pool, the informal economy, and waged work. For example, Mahmud observes that when people are dispossessed of resources and opportunities for subsistence, not all of them find work. They then become part of the reserve labor pool and must work in the informal economy to sustain themselves until such time, if ever, they are employed and exploited through the wage contract.

Mahmud argues that in the era of neoliberal globalization, undocumented immigrant labor represents the condition of “hyper-precariety,” a condition, he argues, that ensures their super-exploitability (Mahmud 2015, 701). The hyper-precariety of the undocumented rests on their status as non-citizens, and relies not only on the division of labor into citizen and immigrant, but also on racializing, criminalizing, and often denying immigrant workers civil and political rights. As a result, a “condition of deportability is created and reproduced” that facilitates their “induction and super-exploitation with impunity when needed, and expulsion without consequences when this labor becomes unnecessary” (722).

Viewed through Wright's framework, Casebeer's and Dimick's essays warrant categorization under his exploitation and domination rubric. Both scholars center their analysis in production, and argue that the law hinders the power of the working class to engage in types of collective action that would force fairer distribution and investment of socially and collectively produced wealth. While categorizing these essays in this way is a fair interpretation of the work, most American labor law scholarship does not make the claim that capitalists exploit workers and the exploitation arises out of capitalists controlling both the conditions and activities of workers. Indeed, it is not totally clear that the Casebeer and Dimick articles themselves make this claim. Further, it is unclear whether the collective worker actions that Casebeer and Dimick endorse would overcome rather than reinforce the class structure of society, or if these worker actions could transform society, given that in these essays Casebeer and Dimick do not contemplate the diversity of workers and their interests in terms of race, gender, etc. Thus, although much of their analyses suggest that they are working under Wright's exploitation rubric, they could also be seen as using the opportunity-hoarding framework, understanding the relation between workers and employers as hoarding efforts around wages, profit sharing, power-sharing, and benefits within the institutional framework of capitalism.

Mahmud's analysis critiques the capitalist system as a whole. However, Mahmud also discusses the divisions between workers and workers in waiting, as well as the division between citizen workers and undocumented workers. He thus exposes working-class divisions that potentially put different groups of workers with potentially different interests in competition with one another. In doing so, he, like Gilman, introduces the problematic factor of diverse workers and the relationship between class and socially constructed identities—issues that, as I have noted, Wright's framework fails to address.

d. Summary

Viewing ClassCrits class-related work through the lens of Wright's integrated framework potentially strengthens this scholarly project. First, by centering law and power with the drive for profits as forces through which capitalism structures class society overall, Wright's framework reinforces the common link of law that these analyses already share. Second, the framework demonstrates the value of different analytic approaches to class, assigning important roles to each and thereby potentially diminishing debates over which type of method is best, one of Wright's stated goals (2015, 1–2). Its adoption is also consistent with, and in fact facilitates, ClassCrits' big-tent commitment to scholarship on Law and Political Economy.

Third, the framework helps to link this slice of ClassCrits work not simply around its legal focus, but around what Wright has constituted as a single analytical class frame, integrating legal scholarship and sociological scholarship. Further, because law operates at multiple levels, Wright's framework may aid in locating the level and processes through which law fosters or disrupts the reproduction of class and class relations, generating insights about effects, struggles, potential changes, and compromises. In other words, it may aid ClassCrits in mapping its work, thereby aiding scholars, activists, and others in identifying policy and research gaps and assessing the trajectories of such work.

However, while Wright, like Marx (1992 [1867]), appears to have focused primarily on the processes of private capital accumulation accrued on the backs of waged workers, accumulation can be achieved in other ways, such as dispossession, super-exploitation, or expropriation. Theorizing these concepts may better capture the diversity of workers as well as their varying interests. As Michele Gilman (2016)

notes, economic inequality “emanates from at least a tripartite structuring of labor and capital—by race, gender and class” (Gilman 2016, 8, quoting Geier et al. 2014). I turn next to concepts of expropriation and class diversity in terms of race, captured in the theory of racial capitalism.

C. The Intersection of Race + Class = Racial Capitalism?

ClassCrits scholars, like critical legal, race, and feminist scholars before them, have always explored the imbrication of race and class, rejecting assertions that either class, race, or gender is more fundamental in analyzing social systems of domination.

Below, I suggest that ClassCrits analyses of the intersection of race and class potentially inform the ongoing development of racial capitalism theory, by demonstrating the way in which capitalism and race or white supremacy mutually create, recreate, and operate through one another while also demonstrating the way in which law shapes both. I incorporate Wright’s insights and composite chart into a brief description and tentative diagram of some of the major components and insights of racial capitalism.

1. Racial Capitalism

Racial capitalism is a relatively new and promising area for legal scholarship, offering important insights about the relationship between class and race, and providing both a structural and a larger global historical account of the ways in which the two are linked. Racial capitalism suggests that capitalism operates through race, which Charles Mills (2003) suggests is a sociopolitical system. As such it rejects the notion that free waged labor is the sine qua non of capitalism, recognizing instead that capitalism has always relied on unfree, unpaid, and underpaid labor of those generally racialized as inferior, consistent with capitalism’s central goal and logic—the accumulation of surplus value or profit. Although many scholars have expounded on racial capitalism, and I rely on them, the understanding provided below draws primarily on the work of political scientist and Black studies scholar Cedric Robinson (2000 [1983]), sociologist Aníbal Quijano (2000),¹⁴ and critical theorist and philosopher Nancy Fraser (2016; 2019; Fraser and Jaeggi 2018, 39-47, 100-108).

First coined in South Africa, the concept of racial capitalism was adopted and more broadly developed in the United States by Cedric Robinson and other scholars operating in what Robinson referred to as the Black Radical tradition, including scholars such as W.E.B. DuBois, Oliver Cromwell Cox, C.L.R. James, and Eric Williams. They argued in a variety of ways that white supremacy and its technology of race were historically and structurally linked to capitalism.

Racial capitalism makes two major claims. The crux of both claims, I suggest, is this: Modern racism and capitalism were born conjoined out of the same historical trans-national processes involving the brutal colonialization of the Americas (Quijano 2000), and they are linked structurally through the dual operations of exploitation and expropriation based on a racialized division of labor, the effects of which are now spread throughout the global economy (Fraser 2016; Quijano 2000). That is, racial capitalism emerged from the violent European conquest and colonialization of the Americas, with its practices of genocide, massive land seizure and slavery. As a developing global system, racial capitalism

¹⁴ I thank Carmen Gonzalez for introducing me to Quijano’s work and to the descendants of a line of work I had not engaged in a long time. Quijano provided for me the structural link for which I had long looked.

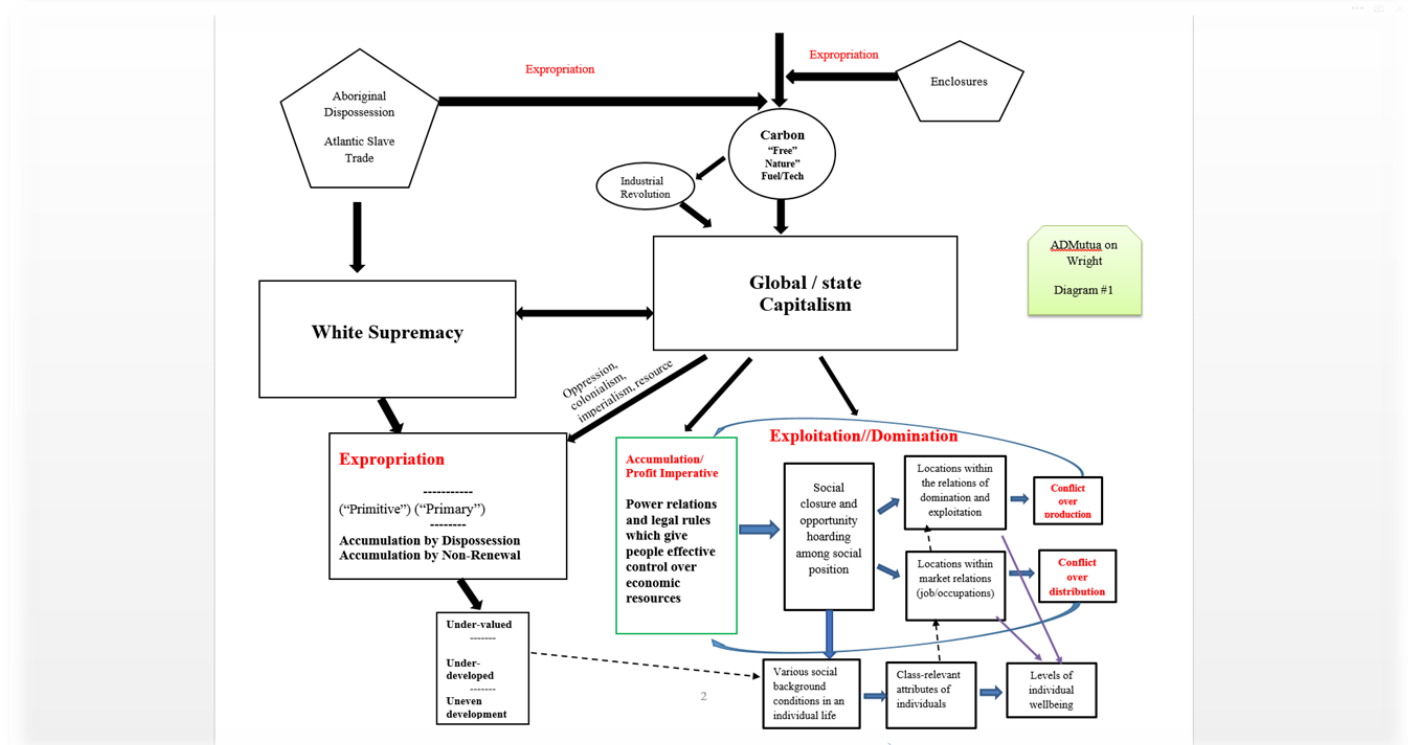
was further entrenched and rendered a dominant social formation with the European and American colonization of and imperial practices in India and parts of Asia and Africa (among other regions of the world), and it both facilitated and persisted through their industrializations (Quijano 2000).

From this perspective, the racial and capitalist orders that constitute racial capitalism, though dynamic and changing, are modern phenomena. This is so even though racial practices and capitalism both have longer histories. For example, Robinson (2000 [1983], 67) explains that racial thinking and racial hierarchy infused European feudalism, a system out of which capitalism grew. According to Quijano, capitalism, understood as a class society in which labor is commodified, likely emerged around the eleventh or twelfth century in Europe, and perhaps earlier in the Islamic world (2000, 544, 550).

The theory's first major claim is that Europe's violent colonization of the Americas set in motion the development of white supremacy as a worldwide socio-political system of domination. It divided humanity into European and non-European, superior and inferior (Quijano 2000, 533-35, 572). Quijano argues that "the codification of the differences between conquerors and conquered" (533), is one of two fundamental axes of power that operates as a socially structuring force, through which, he notes, race became the "fundamental criterion for the distribution of the world population into ranks, places, and roles in the new society's structure of power" (*ibid.*, 535). An entire package of Eurocentric values, beliefs, knowledges and practices were also imposed and dispersed virtually throughout the globe, and remain dominant today (*ibid.*) (Figure 6).

While racialization occurs through the marking of bodies as superior and inferior, this marking does not only occur through a color hierarchy. Rather, depending on the varying colonial histories in a number of world regions, racial hierarchy can be constructed through various markers, including ethnicity, indigeneity, language, culture, religion, and others (Grosfoguel et al. 2014, 636; 2016, 10). For instance, in the colonial history of Ireland, the British constructed their racial superiority over the Irish through religion (Grosfoguel 2016, 11). Later in the US, immigrant groups, recently including Latinx/Hispanics and Muslims, have been racialized through both religion and ethnicity.

Figure 6. Origins of Racial Capitalism



The second major claim is that modern capitalism, in its incessant drive for profits, does not operate only off the back of waged labor, through which capitalists may legally loot and appropriate the lion's share of socially produced wealth (Fraser 2019). Capitalism also operates through what has variously been called accumulation by dispossession (Harvey 2004; 2005), racial exploitation (Mills 2003) super-exploitation, or, the term I adopt, expropriation (Fraser 2016), though these concepts are differently defined.¹⁵ Expropriation is the dispossession, theft, and confiscation of human, material, and natural resources (Fraser 2016; 2019). Like racialization, expropriation grew out of the seizure of the Americas, in what Quijano explains is the second fundamental axis of power and socially structuring force. This was a new structure of labor control that reoriented all previously practiced systems of labor control—slavery, serfdom, indentured servitude, small independent commodity production, and reciprocity, as well as waged labor—toward the production of commodities for a world market in service of capital (Quijano 2000, 534–5). The reorientation was accomplished, Quijano argues, by having differently racialized people performing different work in different locations but all geared toward the production of commodities for a world market.

This racialized division of labor marks the central structural convergence of white supremacy and capitalism, a convergence that gives rise to the emergence of racial capitalism. While exploitation through waged labor was historically reserved primarily for whites in the core countries of Europe,

¹⁵ For instance, David Harvey's (2005) definition of accumulation by dispossession entails accumulation of capital assets or wealth already formed. He argues that accumulation by dispossession does not produce anything; rather it redistributes wealth already produced in the process of centralizing (concentrating) wealth. It works primarily through privatization and commodification, financialization, management and manipulation of crises, and state redistribution efforts. It is different from accumulation accomplished through the expansion of wage labor in industry and agriculture (159-178).

expropriation has historically been reserved for non-white/non-European populations, viewed as inferior, performing unfree, unpaid or underpaid work in spatially segregated spaces in the American South or in colonies across the world (Gonzalez 2020). Today, these expropriated workers too often live in segregated neighborhoods and neo-colonial states.

While expropriation is a central mechanism for accumulating wealth through non-white race-making (Fraser 2019), both mechanisms of wealth appropriation—exploitation and expropriation—are suffused with racial processes that infect all aspects of the ideological and institutional structure of society. The key difference between waged and expropriated labor, as Fraser suggests, is that the waged labor force theoretically earns enough money for its social reproduction, while the expropriated labor force does not, even if the exchange has a legal or commercial façade. In addition, while those subject to exploitation are characterized as free rights-bearing individuals and citizens entitled to state protection, those subject to expropriation are often seen as dependent and have minimal, if any, state protection. As such, they are vulnerable to public and private harm, militarized police abuse, and the elements of early death. Today, the two processes may be converging, as evidenced by, for example, the large and racially diverse number of Americans carrying excessive debt to make up for inadequate wages while paying interest on that debt, intermingling exploitation and expropriation (Fraser 2019).

In charting (modern) white supremacy and capitalism as racial capitalism, I mark its global entrenchment as having occurred after the English land enclosures, the beginning of the Atlantic Slave Trade, and the English Industrial Revolution, including the inaugurating use of “free nature” in the form of fossilized or carbon energy. The latter is important because the continued use of fossil fuels currently threatens the very earth on which we live and the attitude, which views nature as both a free resource and free dump, marks capitalist extraction across industries through expropriation. I appropriate the term Anthropocene to capture these dynamics (but see Moore 2016) (Figure 7).¹⁶

¹⁶ Figure 8 also indicates where patriarchy might fit, with the entire system relying on women’s care work and their devalued waged work sorted through the expropriation process. However, I believe gender may constitute an entirely different interrelated face of capitalism captured in a multi-faced structure.

Figure 7. Racial Capitalism in the Anthropocene

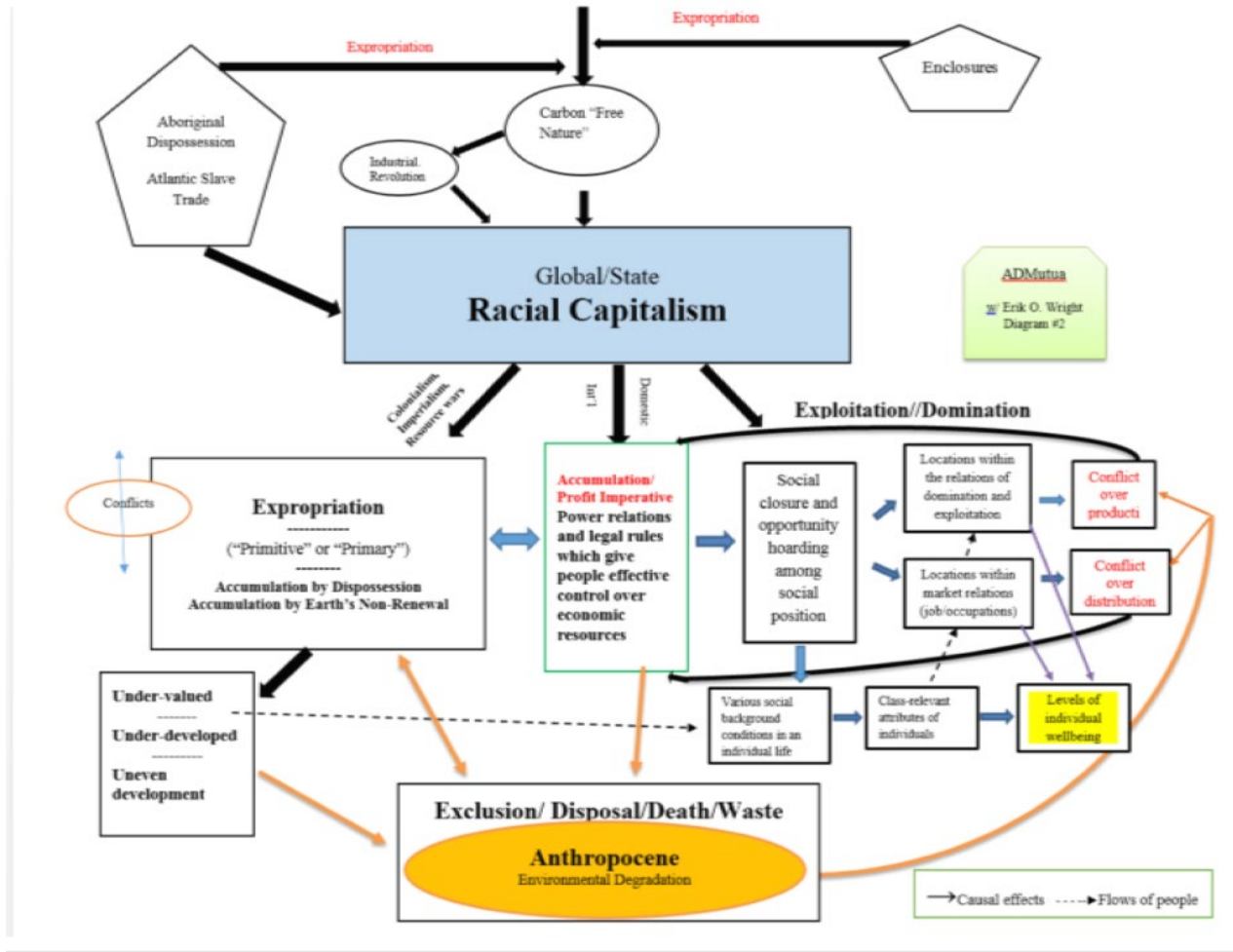
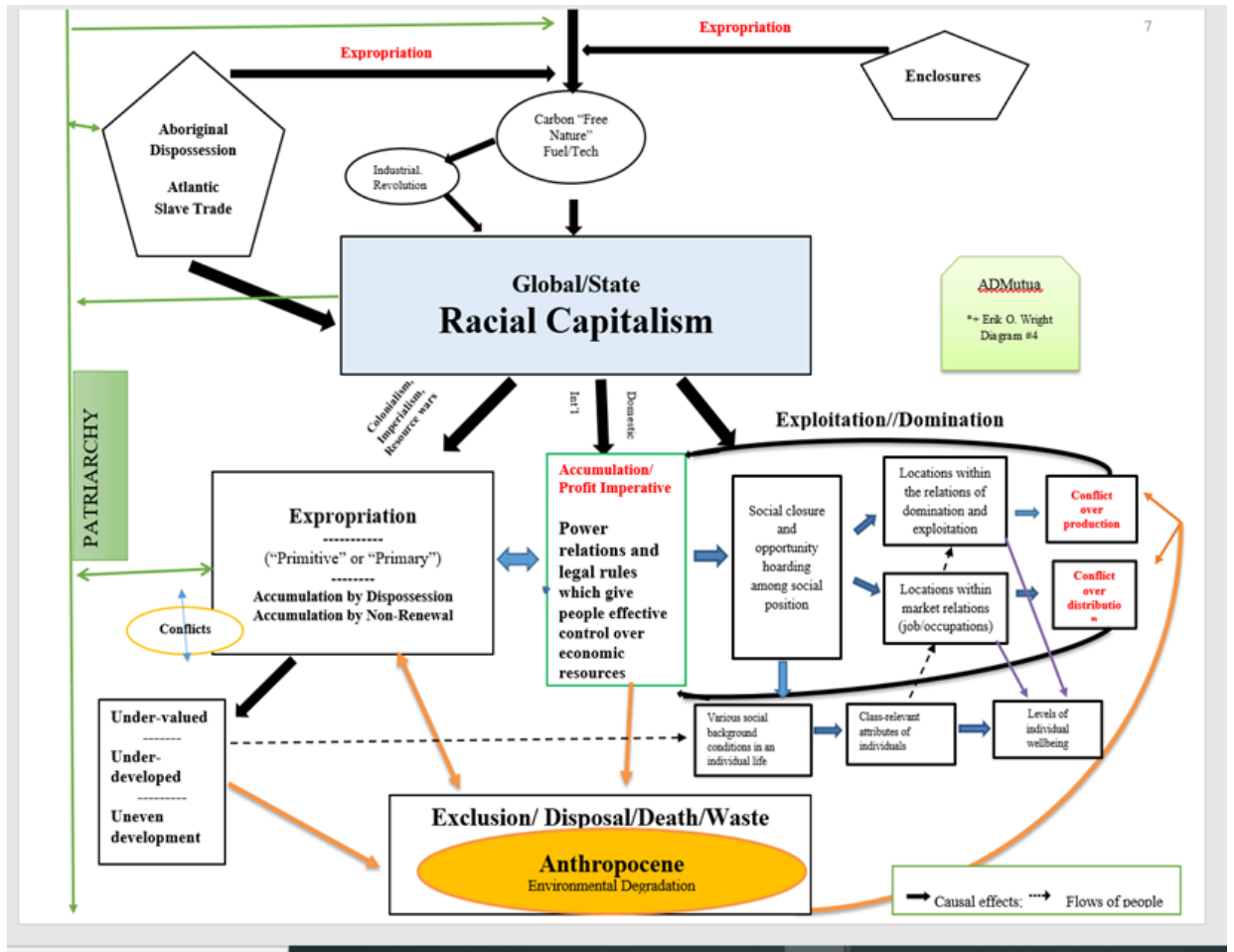


Figure 8. Racial Capitalism + Patriarchy



2. ClassCrits Explorations of the Intersection of Race and Class

In this section, I highlight the work of four ClassCrits scholars who explore the intersection of race and class. These articles suggest fruitful directions for research and analysis of law and racial capitalism.

a. Freeman on the Credit Card Industry

At the height of concerns about Americans carrying enormous amounts of debt, including credit card debt, Andrea Freeman, in “Payback: A Structural Analysis of the Credit Card Problem” (2013), importantly shifted the focus of analysis from one centered on consumer behavior to one focused on the credit card industry. Freeman found that credit card companies profit handsomely from structural inequality, increasingly making their money off the poor and disadvantaged. Their strategy is to target low-income or “subsistence” credit card users, those who need access to credit not for luxury goods or convenience but rather to meet basic needs. The companies offer these vulnerable consumers predatory or inferior products with high interest rates on revolving balances and high fees for late payment, among other penalties, on the theory that they are poor credit risks. The result, Freeman argues, is that 80 percent of credit card industry profits now come from interest payments and late fees, rather than from annual and interchange fees (2013, 154). Freeman concludes that the very business model of credit card companies, facilitated by changes in the law, depends on socially structured inequality for its profitability. In a follow-up article, “Racism in the Credit Card Industry” (2017), Freeman focuses on the African American experience, and finds that more than 40 percent of Black credit card users qualify as subsistence users. She also highlights several studies concluding that even when disaggregated from socioeconomic status, race has “a significant effect on a user’s ability to obtain a credit card and on which terms they receive” (Freeman 2017, 1098).

Tracing the development of socially structured racial inequality from slavery to the present, Freeman argues that the current 20:1 white-Black wealth gap is not the result of individual or Black cultural traits vis-à-vis whites, but rather results from the systemic institutionalization of Black economic disadvantage. Black poverty has stoked the demand for credit to meet subsistence needs. The credit card industry’s response is not only the product of intentional bias; it is also structural, reflecting rational economic decisions by profit-seeking corporations—the logic of capitalism.

Freeman’s work might be seen as applying Wright’s opportunity-hoarding approach. But it also goes further, exposing the operation of expropriation in financial relations and the ways in which new data mining technologies act on the sedimentation of racialized segregation and inequalities that racial capitalism constructed. Through geographic proxies for race, such as zip code, credit card companies are able to profit at scale from expropriation without explicitly dabbling in discrimination.

b. Pope on White and Black Workers

In his article, “Why Is There No Socialism in the United States? Law and the Racial Divide in the American Working Class, 1676-1964,” James Pope (2016) challenges the argument that white workers in the United States have forgone the economic benefits of cross-racial working-class solidarity in order to maintain the psychological benefits of whiteness (see DuBois 1935). Pope does not argue that white workers have not been racist. Nor does he deny that there may have been real economic

benefits in choosing white racial privilege over cross-racial, Black-white, working-class solidarity. Rather, he argues that white workers' decisions were not made in a vacuum and that law, and particularly the Supreme Court, has played a significant role in shaping their choice to favor white racial alignment across class. Pope argues that whites and Blacks engaged in significant episodes of working-class solidarity before and after the founding of the United States, as Bacon's Rebellion in colonial Virginia attests. Pope identifies two noteworthy facts about the aftermath of that rebellion. First, planters used law to constitute poor whites as an "intermediate social control stratum between elite planters and slaves." Second, until the racial divide was written into law, workers had prioritized class solidarity over racial distinctions; although "color prejudice was widespread . . . it did not prevent white servants from joining with black slaves and servants in the struggle for freedom" (2016, 1562).

Pope suggests that the Reconstruction era held the most promise for cross-racial class solidarity. This period saw many cross-racial efforts in part because Blacks were free and enfranchised, constituting majorities in three states and holding pluralities in several other states. The new power to vote meant that Blacks could now support unions as well as strike, making their participation in labor actions more valuable to whites. Blacks' vibrant post-slavery organizational activity, both in unions and in multipurpose formations, helped demonstrate the power of cross-racial solidarity. Although Congress enacted and supported the enforcement of laws meant to counter the post-bellum violence organized by planters to reassert control over Black labor, the Supreme Court stifled these enforcement efforts in *United States v. Cruikshank*, 92 U.S. 542 (1876). In *Cruikshank*, the Court overturned the convictions of whites involved in the massacre of Blacks over voting results in Colfax, Louisiana. Based on this decision, Pope argues that the Court was instrumental in the violent end of Reconstruction and the emergence of Jim Crow segregation and oppression (Pope 2016, 1568; Pope 2014, 392, 447). The long-range impact of *Cruikshank* on prospects for cooperation between poor white and poor Black workers became clear during the later failed efforts by the Knights of Labor and the American Federation of Labor to unite whites and Blacks in a working-class movement in the early twentieth century.

c. Munger and Seron on Raced Policymaking in the Context of Political Economy

Frank Munger and Carroll Seron, in their article, "Race, Law, and Inequality, 50 Years After the Civil Rights Era" (2017), survey law and social science research that explores the policy mechanisms by which racial inequality and Black subordination are maintained. They integrate three theoretical approaches to the empirical study of policymaking: studies of interest group agendas and legislative strategies; studies of racial formation in coalition-building; and the policy context, which Munger and Seron define as the exogenous social and economic field upon which policy struggles play out. Bringing these literatures together, they analyze processes that have shaped the fortunes of the working class, including the Black working class, and the Black middle class.

Munger and Seron review, for example, research exploring the historical exclusion of Blacks from a variety of New Deal protections, and how later civil rights legislation proposals were weakened. Powerful interest groups with a stake in maintaining racial hierarchy, such as Southern Democrats in the New Deal period, have had a pervasive influence on American democracy, its legal institutions, and even the structure of government. Munger and Seron argue that the Great Depression economy deeply influenced and shaped these interest groups. A racial formation example is the 1980s attack on affirmative action for people of color, which was effectuated in the name of "racial equality" and

through the legal discourse of “colorblindness” and helped construct the present-day conservative coalition. In working to maintain racial hierarchy by denying Blacks government aid in accessing education, this coalition formed in a backlash to the Civil Rights Movement, which in turn emerged in the context of the expanding post-World War II economy. Munger and Seron suggest that in the current era of economic globalization and massive immigration, policies affecting racial inequality are now organized more explicitly along class lines, favoring the wealthy, disadvantaging the white and Black poor, and destabilizing the Black middle class.

Pope, Munger, and Seron demonstrate how white elites use law in their efforts to, on the one hand, maintain their class prerogatives by weakening the working class through racial division, and, on the other hand, subordinating Black and Brown communities to the advantage of all whites. These writers employ an opportunity-hoarding approach, again, identifying the privileges that accrue not only to elites (mostly white) but also to whites generally at Black peoples’ expense: better jobs in Pope’s essay, and educational resources in the Munger and Seron essay. However, like Freeman’s work, these articles also provide an account of racialized class interests. They also might support the notion that racial capitalism does not simply create class divisions in a racialized class structure, but rather creates multiple classes.

d. Pruitt on Welfare Queens and White Trash

For a last example of recent ClassCrits scholarship on race and class, Lisa Pruitt, in “Welfare Queens and White Trash” (2016), analyzes conservative voters’ opposition to government support for poor people. Pruitt notes a common argument that the media-produced face of American poverty is Black, and that racism against these presumed beneficiaries of public support—as captured by the racist trope of the Welfare Queen—conflates Blackness and poverty. Pruitt agrees that both the media and the academy focus on poor people of color, and agrees that this focus renders white poverty invisible even though in 2013, “two thirds of America’s poor self-identified as white” (Pruitt 2016, 303). However, she contests the idea that more awareness of white poverty will increase public support for the social safety net. The reason, she argues, is the existence of the intra-racial but racist, classed trope of Poor White Trash.

Pruitt observes that there is a long history of privileged whites displaying visceral contempt for poor white people. However, while the term “white trash” was historically reserved for unemployed whites, today it appears all too often to include white working-class people who are poor. Although middle-class Blacks remain connected to, concerned about, and empathic with poor people, including poor whites, white people across class are unsympathetic to the white poor. Pruitt attributes this lack of sympathy to two phenomena. First, for elite whites, poor whites sully the image and association of whiteness with self-sufficiency, autonomy, and affluence, what Pruitt argues is the flip side of the black/dependency/poverty conflation. Second, as to those whites who could potentially benefit from the social safety net but often oppose it (including whites in the working class, the lower middle class, and the second lowest quintile of the income ladder), Pruitt reviews research suggesting that these whites may be engaged in a virulent form of social distancing. That is, they may be trying to dissociate themselves from those whites who do not work or those seen to be at the very bottom of the economic pile—people too close for comfort. She concludes that “if the welfare queen construct fuels racist stereotypes among more conservative voters, the white trash construct fuels different but equally racist stereotypes among white voters across the political spectrum and up and down the socioeconomic hierarchy” (2016, 310).

Pruitt explores the cultural mechanisms that facilitate and justify practices that leave both white and Black poor people increasingly dispossessed. Employing the stratification approach within Wright's framework, her essay also potentially contributes to a theory of racial capitalism, by exploring the ideological complexities of expropriation: classed conceptions of those raced as Black, raced conceptions of whites classed as poor, and the potential impact of these ideological frames on both groups' material conditions.

Each of these essays contributes important insights about law's function within racial capitalism. As ClassCrits scholars begin to actively engage with racial capitalism literature in other disciplines, their work opens new frontiers in the scholarship of Law and Political Economy.

IV. Conclusion

Despite its humble origins, ClassCrits now occupies a different social and political environment, one in which more Americans are beginning to clearly see the severe human and social costs of increasing inequality. These costs include a shrinking middle class and economic insecurity for all but the wealthy, with disproportionate detrimental effects on people of color and women.

At the same time, ClassCrits is now part of an academic ecosystem in which more scholars and activists are exploring law's role in the political economy that has spawned such costs. They do so with a view toward discerning how this system might be improved and changed.

Perhaps it's ClassCrits Time.

ClassCrits' commitment to building community and creating an open, safe, responsive space dedicated to the rigorous engagement of Law and Political Economy issues has not only constructed a warm environment capable of welcoming a broad range of people; it has also seeded the growth of this environment in the legal academy through its collaborative efforts. Further, it has played a role in cultivating scholars who work, write, and theorize in this area. Consequently, it has a broad body of work that it claims as its own.

I have argued that this literature and its various definitions and conceptions of class might be enriched and made more cohesive with Erik Olin Wright's integrated class framework. The beauty of Wright's approach is that it values differing approaches to class while providing a comprehensive account of the economic processes that (1) sort people; (2) structure the field of opportunities into which they are sorted or have access; and (3) structure production around the incessant urge for profits, structured and facilitated by law. Employing Wright's framework is not always straightforward for legal scholars, who tend to focus on technical strategies. Nevertheless, using it might provide scholars some guidance about the level of change at which their interventions and recommendations operate: altering rules for individuals, altering institutional fields of opportunity, or enabling systemic change.

At the same time, while Wright's framework recognizes that race, gender and other identity positions may affect how people are sorted or embedded in rules or opportunity structures, his framework does not provide a systematic account of diversity within classes. Nor does Wright contemplate the idea that identity may be constructed by capitalist economic processes such as expropriation, as well as by political and social forces. Incorporating his framework into a developing theory of racial capitalism

begins to address these concerns. ClassCrits scholarship begins to reveal racial capitalism's historical development in colonial America and beyond, its sedimentation over time, its operation in various areas of the economy, and its ideological power, especially as wielded by elites with access to legal institutions.

Racial capitalism, as I describe it, incorporates the exploitation of waged work. But it also asserts that capitalism operates through unpaid and underpaid work. Exploitation and expropriation are each thoroughly racialized, with the latter historically associated with those devalued/structured as inferior, a devaluation that follows them into processes of waged work. The developing theory of racial capitalism also recognizes the expropriation of women's labor, hints at the system's reliance on this labor, and hints at women and others' devaluation under capitalism's incorporation of the patriarchal sex-gender regime. Integration or expansion of feminist and other scholarship is needed here to make these links clear.

In any event, it appears Americans and the world stand at a precipice. We must make choices. Whether we make the kind of choices that boldly take us into a sustainable future remains to be seen. But these choices may indicate whether people, both inside and outside the academy, want to act on the insights embodied in ClassCrits work.

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