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Introducing ClassCrits: From Class Blindness to a Critical Legal Analysis of Economic Inequality

ATHENA D. MUTUA†

In 2007, two workshops at the University at Buffalo launched a project bringing together legal scholars interested in exploring the relationship between law and economic inequality.¹ The essays in this collection grew out of the workshops and represent the project's first attempts to think about law and economic inequality, a problem that is growing locally, nationally, and internationally.²

† Athena D. Mutua is a Professor of Law at the University at Buffalo Law School. I would like to thank the following people for their insights on earlier versions of this Essay: Rebecca French, Kenneth Casebeer, Stuart Lazar, Martha Mahoney, Martha McCluskey, Makau Mutua, Stephanie Phillips, and John Schlegel.

1. The University at Buffalo Law faculty has been a rich source of critical legal scholarship, including leadership in the original Critical Legal Studies movement as well as in race and gender critique and also on issues of economic class and labor. These include people such as James B. Atleson, Dianne Avery, Guyora Binder, Lucinda M. Finley, Alfred S. Konesfsky, Elizabeth Mensch, Teresa A. Miller, Frank W. Munger, Stephanie L. Phillips, Judy Scales-Trent, John Henry Schlegel, Robert J. Steinfeld, and past faculty members including Alan Freeman, Bob Gordon, Peter R. Pitegoff, et al.

I would also like to thank the Baldy Center for Law and Social Policy for sponsoring these workshops and being a leader in promoting cutting edge scholarship. In this regard we would like to especially thank Lynn Mather, as well as the former dean, R. Nils Olsen.

2. Between 1979 and 2005, the top five percent of American families saw their real incomes increase eighty-one percent. Over the same period, the lowest-income fifth saw their real incomes decline one percent. See U.S. Census Bureau, *Historical Income Tables—Families, Tbl.F-1: Income Limits for Each Fifth and Top 5 Percent of Families (All Races): 1947 to 2007*,

In light of this growing reality, the ClassCrit project aims to “foreground economics in progressive jurisprudence and to reconsider longstanding assumptions and approaches in legal scholarship and practice” around economic issues.³ In particular, the project proposed to develop an alternative to the predominant discussions of “law and economics”

<http://www.census.gov/hhes/www/income/histinc/f01AR.html> (last visited Nov. 17, 2008).

The richest one percent of U.S. households now owns 34.3 percent of the nation’s private wealth, more than the combined wealth of the bottom ninety percent. LAWRENCE MISCHEL ET AL., *THE STATE OF WORKING AMERICA 2006/2007*, at 251 tbl.5.1 (2007). The top one percent also owns 36.9 percent of all corporate stock. *Id.* at 264 fig.5F.

Between 1979 and 2004, American workers raised their productivity sixty-four percent, while their median hourly compensation rose only twelve percent. *See id.* at 147 fig.3N.

Between 1949 and 1979, the inflation-adjusted average hourly wage for production workers rose seventy-five percent, from \$9.00 to \$15.78. *Id.* at 119 tbl.3.3. Since 1979, the average production-worker wage has risen only two percent, from \$15.78 to \$16.11. *Id.*

All of the income gains in 2005 went to the top ten percent of households, while the bottom ninety percent of households saw income declines. LAWRENCE MISHEL & JARED BERNSTEIN, ECONOMIC POLICY INSTITUTE, *RECENT INCOME GAINS WENT TO THOSE WITH HIGHEST INCOME*, Mar. 28, 2007, http://www.epi.org/content.cfm/webfeatures_snapshots_20070328.

There is rising concern about economic inequality in the U.S. as the following articles demonstrate. *See, e.g.*, JANET YELLEN, PRESIDENT & C.E.O., FED. RESERVE BANK OF S.F., *SPEECH AT THE UNIVERSITY OF CALIFORNIA CENTER FOR THE STUDY OF DEMOCRACY: ECONOMIC INEQUALITY IN THE UNITED STATES* (Nov. 6, 2006), available at <http://www.frbsf.org/news/speeches/2006/061106.pdf>; Greg Ip, *Income-Inequality Gap Widens*, WALL ST. J., Oct. 12, 2007, at A2; Roger Lowenstein, *The Inequality Conundrum*, N.Y. TIMES MAG., June 10, 2007, at 11. However, the last two article focus on income. They do not focus on wealth or wages. There are also new books that are looking at these issues. *See, e.g.*, MICHAEL J. THOMPSON, *THE POLITICS OF INEQUALITY: A POLITICAL HISTORY OF THE IDEA OF ECONOMIC INEQUALITY IN AMERICA* (2007); Bill Moyers, *The Fight of Our Lives*, in *INEQUALITY MATTERS: THE GROWING ECONOMIC DIVIDE IN AMERICA AND ITS POISONOUS CONSEQUENCES* (James Lardner & David Smith eds., 2005); *MOBILITY AND INEQUALITY: FRONTIERS OF RESEARCH IN SOCIOLOGY AND ECONOMICS* (Stephen Morgan et al. eds., 2006).

3. ClassCrits Workshop Call for Participation, Baldy Center for Law and Social Justice, (Apr. 6, 2007), <http://ClassCrits.wordpress.com/2007/04/06/ClassCrits-workshop-call-for-participation.html>. This posting contains the original description of the ClassCrits concept.

grounded in neoclassical economic theory and its denial of “class.”⁴

Historically, discussions of economic inequality often have been discussions about class and the ways it is socially produced and reproduced. However, today in modern America, inequality is discussed as the natural byproduct of the differing interests, talents, and education that individuals bring to that mysterious thing political economists and neo-classical economists alike refer to as the “market.”⁵ This “market,” a complex system involving millions of participants with its abstract features of supply and demand,⁶ is also discussed as if it is a naturally occurring phenomenon, like water, or oil, or trees, one that is outside the control, creation, purview, activity, and even

4. *Id.*

5. I have placed the term “market” in quotes in this section of the paper to highlight its contestability. That is, the market as currently discussed can be seen as simply a sphere that is alienated from the larger economy. The larger economy can be seen as a system through which “people cooperate to provide for their daily and future needs combined with the techniques and materials at their disposal.” Sue Ferguson, *Building on the Strengths of the Socialist Feminist Tradition*, 7 *NEW POLITICS* 26 (1999) (citing Pat Armstrong & Hugh Armstrong, *Beyond Sexless Class and Classless Sex: Towards Feminist Marxism*, in *STUDIES IN POLITICAL ECONOMY: DEVELOPMENTS IN FEMINISM* (Caroline Andrew et al. eds., 2003)). The market, Ferguson suggests by contrast, referring to it interchangeably as the market or the formal economy, is a “sphere of exchange cut off from the acts of production/reproduction [that ground it and] obscure[] that reality . . .” *Id.* at 4. She explains:

The domination of the market is unique to capitalism . . . Rather than understanding [it] as the historical and human organization it is, political economists reify it, imbuing it with a dynamic (the laws of supply and demand) apparently devoid of human relations. This is what Marx identified as the fetishization of commodities and the market, and his critique of political economy is, in fact, an effort at defetishization—that is, an attempt to reveal the social reality behind this narrowly construed economy.

Id.

6. The “market” is complex and because it includes millions of participants, it is unwieldy and difficult to even influence, let alone control. However, unlike water, its very formation and structure is built on past human action, and its operation requires humans to participate, to agree upon its rules, to agree to trade, or at least to acquiesce to its valuations, conditions, etc., functions that may implicate law.

influence of human agency. That is, the market seems impervious to the desires, control, or influence of individuals, governments, or whole segments of its participants.⁷

Not seen, and more often not discussed, is the way that individuals, groups, and governments do significantly influence, if not control, the formation, organization, and regulation of the market and the way these individuals, groups, and governments are often organized by class. The view of the market as natural is one of many ways that social (classed) relations are obscured and society is blinded to the challenges posed by economic power. Ultimately, the questions of class and the roles of institutionalized inequality continue to lurk beneath the surface of most discussions of economics and economic inequality in legal academia.⁸ This is so despite the fact that many legal scholars are now interested in challenging or broadening some of the reigning assumptions based in neoclassical economics. The ClassCrit project hoped to aid this effort.⁹

The essays in this collection in many ways represent three distinct strands of thinking, not yet integrated in any systematic way and divergent in other ways. Nevertheless, we hope they will provide various layers of insight into

7. This sentence is meant to convey two different ideas. One is that the people do not need to intend to participate in or create a market to do so. In this sense, if they simply trade in goods, or go along with the ways in which society is already structured, they will in fact participate. They will have little choice, generally, if they want to eat, have a home, and buy clothes. In this sense the market can and does operate and reproduce itself without the active intention of individuals or even groups. Further, because it includes so many people, a push here may result in a pull there, nullifying the intentional push first initiated. On the other hand, the "market" does not operate and reproduce without humans and human activity. It is dependent on that activity, and as such can be influenced by it. Further, humans acting in concert with others can and do influence the "market" and decide its boundaries, application, and content.

8. ClassCrits Workshop Call for Participation, *supra* note 3.

9. *Id.*

thinking about law and economic inequality.¹⁰ These distinct ways of thinking are influenced primarily by the study of labor law as it relates to class, race law as it relates to class, and gender law and class.

By way of background, however, this introduction provides an overview of the workshops' key understandings and discussions. It suggests that the insights these fields provide, among others, are filtered through a lens of critical legal scholarship that supplies certain understandings about law, about the study of the economy, and about law's role in structuring economic relations. These understandings, I suggest, constitute a set of shared assumptions among the group, and informed its rejection of class blindness, understood, in part, as a blindness to the related existence and use of economic power. I argue that feminist and critical race scholars' critiques of gender and color blindness, in particular, likely further informed the workshop participants' rejection of class blindness and their intuition that class blindness aids in perpetuating economic inequality.

Although the workshop groups did not conclusively define class, I argue that they established the directions in which the analysis might go. That is, they began the work of framing a ClassCrit analysis. Such an analysis employs the outlook and tools of *critical* thought, utilizes a relational

10. The two workshops each consisted of approximately twenty participants drawn from the legal academy. Each participant submitted a three-to-five page "thought-piece" in preparation for the workshop on the topic of law and economic inequality. Many of the essays in this collection represent expanded versions of these "thought-pieces." Not all of those who attended the workshop have essays in this collection. Nevertheless their comments and contributions may be noted in this introduction. The participants were: Frances Ansley, University of Tennessee College of Law, Susan Carle, American University Washington College of Law, Kenneth Casebeer, University of Miami School of Law, Sumi Cho, DePaul University College of Law, Anthony Farley, Boston College Law School, Martha Fineman, Emory Law School, James Gathii, Albany Law School, Angela Harris, U.C. Berkeley School of Law, Laura Kessler, University of Utah, S.J. Quinney College of Law, Martha Mahoney, University of Miami School of Law, Audrey McFarlane, University of Baltimore School of Law, Frank Munger, New York Law School, Jim Pope, Rutgers School of Law, Daria Roithmayr, University of Southern California Law School, Donna Young, Albany Law School, and many University at Buffalo Law School faculty members.

understanding of class and economic inequality, and applies an intersectional approach.

One last note, the consideration of class relations at the time of the discussions seemed a bit strange to some, given that class analyses in the American legal context are viewed as, at best, inapplicable, but in any event, discredited. However, such a consideration now seems far less preposterous, given the near collapse of the financial markets¹¹ in the middle of the 2008 U.S. presidential election, a collapse that revealed in full relief the privileges and excesses of economic power.

Part I of this Essay argues that the workshop participants possessed a number of shared understandings that informed their rejection of a class-blind approach to the study of law and economic inequality. Part II explores why the organizers proposed that the group consider class relations in its analysis of law and inequality and chronicles a number of the key workshop discussions that, I suggest, resulted in framing that analysis. This Part posits that a ClassCrit examination of law and inequality employs a *critical* perspective. Part III examines the meaning of a relational understanding of class and economic inequality. Part IV discusses an intersectional approach to this analysis, suggesting that both an intersectional and relational conception of class and economic inequality aid in unraveling the blinding conflation of class and race. Part V concludes this Introduction.

I. SOME SHARED UNDERSTANDINGS: LAW, THE MARKET, AND CLASS BLINDNESS

The workshop brought together a small group of scholars who reflected the organizers' interest in focusing on economics through the lens of a range of critical legal

11. A collapse only avoided by huge governmental rescue plans, which infused the world economy with "taxpayer" cash. See David Leonhardt, *Perhaps, Time to Play Offense*, N.Y. TIMES, Sept. 17, 2008, at A1; Andy Serwer & Allan Sloan, *The Price of Greed*, TIME, Sept. 29, 2008, at 32.

scholarship movements, such as critical legal studies,¹² critical feminist theory,¹³ critical race theory,¹⁴ LatCrit,¹⁵ and queer theory.¹⁶ The group brought a number of shared assumptions to the table. One was that law was important in effecting, shaping, and structuring social relations, including socio-economic relations, and that law did so through the power of discourse—through cultural power—

12. For a discussion on the Critical Legal Studies (CLS) movement, see, e.g., CRITICAL LEGAL STUDIES (Jones Boyle ed., 1992) and Mark Tushnet, *Critical Legal Studies: A Political History*, 100 YALE L.J. 1515 (1991). See also THE POLITICS OF LAW: A PROGRESSIVE CRITIQUE (David Kauris ed., 3d ed. 1998) (providing a good overview of Critical Legal Studies themes).

13. For a discussion of critical feminist theory, see, e.g., Deborah L. Rhode, *Feminist Critical Theories*, 42 STAN. L. REV. 617 (1990). The literature in this field is vast in part because feminist theory itself is a critical tradition. To begin to get a grasp of field, see generally MARTHA CHAMALLAS, INTRODUCTION TO FEMINIST LEGAL THEORY (1999); NANCY LEVIT & ROBERT VERCHICK, FEMINIST LEGAL THEORY: A PRIMER (2006); JOSEPHINE DONOVAN, FEMINIST THEORY: THE INTELLECTUAL TRADITIONS (2000); CAROLE R. MCCANN & SEUNG-KYUNG KIM, FEMINIST THEORY READER: LOCAL AND GLOBAL PERSPECTIVES (2003); PATRICIA HILL COLLINS, BLACK FEMINIST THOUGHT (2000); REINA LEWIS, FEMINIST POSTCOLONIAL THEORY: A READER (2003); ADRIEN K. WING, CRITICAL RACE FEMINISM: A READER (2003); GABRIELA F. ARREDONDO & NORMA KLAHN, CHICANA FEMINISM: A CRITICAL READER (2003).

14. For a discussion of the development of critical race theory, see, e.g., Athena D. Mutua, *The Rise, Development and Future Directions of Critical Race Theory*, 84 DENV. U. L. REV. 329 (2006). For basic themes and key early works see, e.g., RICHARD DELGADO & JEAN STEFANCIC, CRITICAL RACE THEORY: AN INTRODUCTION (2001); and CRITICAL RACE THEORY: THE KEY WRITINGS THAT FORMED THE MOVEMENT (Kimberlé Crenshaw, Neil Gotanda, Gary Peller & Kendall Thomas eds., 1995).

15. LatCrit literature is readily available at the LatCrit Web site. See Latina and Latino Critical Theory, Inc., <http://www.latcrit.org> (last visited Nov. 24, 2008) (listing, *inter alia*, seventeen colloquia and symposia on LatCrit among other work). See generally, THE LATINO/A CONDITION: A CRITICAL READER (Richard Delgado & Jean Stefancic eds., 1998).

16. NIKKI SULLIVAN, A CRITICAL INTRODUCTION TO QUEER THEORY (2003); JUDITH BUTLER, UNDOING GENDER (2004); MAX H. KIRSCH, QUEER THEORY AND SOCIAL CHANGE (2000); LGBT STUDIES AND QUEER THEORY: NEW CONFLICTS, COLLABORATIONS, AND CONTESTED TERRAIN (Karen E. Lovaas, John P. Elia & Gust A. Yep eds., 2006); Laurie Rose Kepros, *Queer Theory: Weed or Seed in the Garden of Legal Theory?*, 9 LAW & SEXUALITY REV. 279 (2000); Francisco Valdes, *Queers, Sissies, Dykes, and Tomboys: Deconstructing the Conflation of "Sex," "Gender," and "Sexual Orientation" in Euro-American Law and Society*, 83 CAL. L. REV. 3 (1995).

as much as it did through the threats and exercise of state power and coercion. But the participants were critical of this legal discourse, particularly its blindness to the structural aspect of economic relations, the way these structures shape various interests, and the role economic privilege and power plays in shaping them. As such, they brought a second set of assumptions questioning an economic discourse that seemed to naturalize economic functions. Further, these scholars likely shared understandings about gender and color blindness that influenced their thinking toward a class blind approach to their examination of law and economic inequality.

A. *Understandings of Law and Markets*

As lawyers, the group shared assumptions and understandings that not only led to a class analysis but a critical legal analysis of economic inequality. Many of the participants shared understandings that emanate from the critical legal studies (CLS) movement. That is, they understood law as not simply mediating between social and economic conflicts but shaping, defining, and structuring social groups—framing people's understandings, identity, and actions—and the relations between them.

Further, the group understood that the outcomes law produces are the product of political choices, albeit constrained and often hidden choices.¹⁷ These outcomes are justified and legitimated by law, which also casts an air of legitimacy over the institutions and systems of which law is a part. It accomplishes this structuring, justifying, and legitimating of its outcomes through deploying a “distinct and elaborate discourse and body of knowledge,” at times perceived as scientific, but which constrains and masks the inevitable political choices that influence any given decision, a decision then “popularly perceived as objective and apolitical,” or fair.¹⁸ As such, law shapes and structures economic and social outcomes, as much through the power of discourse—through cultural power—as it does through

17. Mutua, *supra* note 14, at 343-45.

18. *Id.*

the threats and exercise of the state power and coercion that backs it. The group was thus prone toward understanding cultural power, discursive power, not simply as a reflection of material circumstances as some Marxist analyses of law suggest, but saw law as a force that helps to shape those circumstances. In this sense, the group brought a critical legal understanding to their analyses. They also brought to their analyses the methodology of deconstruction; a methodology honed in the critical legal studies movement, which counsels digging into and behind the underlying power relations to the hidden choices in policy decisions.¹⁹

This view too, for instance, informed shared understandings about the social rather than scientific nature of the field and practices of economics. Here, economics, typically conceptualized as human trade and exchange—as the study of “markets”—is understood not as a science as that word is typically understood, but as the study of a social activity. Nor are “markets” some naturally occurring phenomenon, like water, oil or the growth of trees, outside the construction, regulation, and ordering of human agency over time. The market is socially and historically constructed. This is so no matter how many graphs, mathematical equations and the like are employed to represent it.²⁰ Rather, subject to human agency, markets and even for instance oil prices—supposedly reflecting the market for oil, a natural resource—are the product, not just of supply and demand in the abstract, but of concrete political choices by groups of people, communities, etc., about production, distribution, and consumption. Even more often, these choices reflect the interests and preferences of

19. Critical Legal Studies was in part grounded in a Marxist, or critical Marxist, approach. Thus, though this methodology of revealing hidden choices seems consistent with analyses counseled in Marxism, it was likely drawn from it. See Alan Freeman, *Legitimizing Racial Discrimination Through Antidiscrimination Law: A Critical Review of Supreme Court Doctrine*, 62 MINN. L. REV. 1049 (1978) (presenting an example of what appears to be a critical Marxist approach in CLS).

20. Martha McCluskey, Thought Piece (undated) (unpublished manuscript submitted to ClassCrits Workshop, Baldy Center for Law & Social Policy) (on file with author).

powerful groups frequently for their own sakes.²¹ These markets are organized and governed in part by law, a system itself that lends an air of legitimacy to the frequently hidden political choices that aid in constructing and regulating these markets, as well as legitimating the study of markets as something distinct from the people and relations that produce them.

In addition, some of us were inclined to understand the economy not as some reified notion of markets detached from the household, civil society, or government,²² but as a system through which “people co-operate to provide for their daily and future needs, combined with the techniques and materials [such as resources] at their disposal.”²³ Such

21. So, for instance, our current continuing dependence on oil may best reflect the interests of oil companies rather than the desires of the American people. See, e.g., John M. Broder & Marjorie Connelly, *Public Says Warming Is a Problem, but Remains Split on Response*, N.Y. TIMES, Apr. 27, 2007, at A20 (citing a survey that found “broad” support for alternative energy sources such as ethanol or solar power to reduce dependence on oil).

22. This point about the reification of the market is important because such reification of the market obscures the human activity, decision-making and relations that underlie it. In this sense, reification performs a similar move that law does. Law camouflages the ways in which legal decision-makers make political choices even as their decisions are constrained by past human decisions and activity and the reasoning they employ. Additionally this point is important because in obscuring the underlying human relations it obscures the fact, as Sue Ferguson makes clear, that the market is dependent on these underlying relations in many forms and in particular is dependent on the home and communities that reproduce labor daily and inter-generationally. Said differently, the market does not produce the labor on which it depends, rather, it must rely on families and communities to produce this. In this sense conceiving of the economy as including households, communities/civil society, and governments, and the reproduction of them both in their human and institutional forms, rather than being just the “market,” makes the concept of the economy holistic and coherent. Further, while a reified market facilitates the privileging of profit making, while obscuring the people that benefit from it along with the decisions that facilitate that profit making, a holistic view of the economy centers the goal of human sustainability. See Ferguson, *supra* note 5.

23. *Id.* (discussing the “social reproduction theory” and quoting Armstrong & Armstrong, *supra* note 5). Ferguson in this article suggests two primary goals and opportunities that social reproduction theory might provide. First, it potentially explains the materialist foundations of patriarchy and sexism. Here she suggests the theory implies that the division of labor arises because communities of women and men share attempts to provide for their sustenance and that of their children, building upon their different biological

an understanding sees the economy as a historical intergenerational human organization that includes *reproduction* and production; and is larger than the structures of trade and exchange in the market within it.²⁴ This understanding places people and their needs for sustenance at the center of economic activity. It recognizes

reproductive capacities. I would argue here, that systems of domination did not need to arise upon these divisions but they often did. Further, these labor divisions are culturally and community organized such that different cultures assign different rules to the sexes. For instance, part of the roles and duties assigned to Masaai women in Kenya is that of thatching roofs, but thatching roofs is decidedly a male role in the nearby ethnic group of the Kenyan Kikuyu. See SAFEGUARDING THE GAINS FOR WOMEN UNDER THE DRAFT CONSTITUTION: TRAINING MANUAL (Fed'n of Women Lawyers (Kenya), Inst. for Educ. and Democracy, Kenya Human Rights Comm'n, & The League of Kenya Women Voters eds., 2003).

Second, Ferguson suggests that social reproduction theory, if further developed, might provide an "integrated" material theory of capitalism, patriarchy and racism. She criticizes dual (or multiple) theory analysis of racism, patriarchy, and capitalism, which understands these as separate systems intersecting and shaping one another. Instead she argues that there is one system, complicated, complex, and manifesting sometimes contradictory impulses, but one system all the same.

I am not sure that the difference between an integrated theory and a theory of multiple intersecting systems is of great consequence. For instance, I tend to think of law as a semi-autonomous system within a single society and system. For me it is not a great leap to think of patriarchy, racism, and capitalism as separate systems with semi-autonomous dynamics within current societies. There is something to be said, however, for an integrated theory which suggests that, for instance, while patriarchy predates capitalism, capitalism re-shaped this dynamic, separating male labor from the home, and rendering the home a place for women's invisible and subordinated labor. In this sense capitalism at its inception is both capitalistic and patriarchal. At the same time, it seems to me that family and kinship relationships lay at the bottom of ethnic communities which later group and regroup often by force to form ethnocentric nation-like formations and that these predate "races." But capitalism, in part creates "races" and racism based upon the coercive economic relations of slavery and colonialism between these previously existing ethnocentric nation-like formations (with different-looking human bodies) at the beginning of capitalism and the Age of Europe. These conditions in part contribute to the development of racism (both materially and culturally) and contribute to the racist, gendered capitalist states that we see today. I believe that scholars such as bell hooks who talk about the "white supremacist capitalist patriarchy" are seeking to convey the idea that there is one system with various and sometimes contradictory aspects. See BELL HOOKS, *KILLING RAGE: ENDING RACISM* 78 (1995).

24. Ferguson, *supra* note 5.

that people need sustenance to reproduce themselves daily and intergenerationally and they need to labor (even in trade) in order to provide that sustenance, without which they can neither labor nor sustain themselves currently or intergenerationally. It also makes clear that the market does not produce the labor upon which it is dependent, even though it shapes that process. It thereby brings to the fore the necessity (and value) of household labor—feeding, cleaning spaces that allow for rest and recreation, buying groceries and clothing, people-care, etc., which often becomes the second shift, too often relegated in both ideology and practice to the work of women. Some workshop participants were inclined toward this definition of the economy because they also shared “insights into the relationship between power and the construction of social roles, as well as the unseen, largely invisible collection of patterns and habits that make up patriarchy,”²⁵ given the work they have done in the field of feminist legal theory.

B. Rejecting Gender Blindness, Colorblindness, and Class Blindness?

The presence of scholars who specifically pursued work in feminist and critical race legal theory informed the discussions about an analysis of law and economic inequality in a number of ways.²⁶ Specifically, however, the work done in these fields on gender and color-blindness, likely further informed the group’s shared assumptions and its intuition that class-blindness, including the use and misuse of economic power and its relationship to other economic formations in society, was a problem that in part allowed the unchecked growth of economic inequality. This is likely so because it can be argued that gender, color, and class-blindness, though different structures, operate in a number of similar ways, five of which stand out.

25. Richard Delgado, *Crossroads and Blind Alleys: A Critical Examination of Recent Writings About Race, Crossroad, Directions, and a New Critical Race Theory*, 82 TEX. L. REV. 121, 123 (2003).

26. See *infra* Part III on intersectionality.

First, while ideas both of gender and color blindness were developed initially to encourage equality, each of these ideas has been practiced and interpreted in a way to render law blind to the structured nature of inequality historically constructed. In other words, gender, color, and class-blindness encourage law and society, with law reflecting and influencing society,²⁷ to ignore the various factors that determine structure and shape the differences and inequalities between women and men, people of color and white people, and poor and affluent people, or more precisely, those people with the economic power to direct and manage large corporations.²⁸ Second, they reinforce and recommend assimilation to the hidden and privileged norms of maleness, whiteness, and wealth or middle-classness. Third, they make efforts to redress inequality and

27. Here the idea is that law may or may not initially formulate a statement encouraging blindness as the appropriate frame, but once blindness is framed, the law generally through a neutral, sameness standard influences and continues to shape the blindness frame. So for example, the color blindness frame, in the modern era, may well have arisen from society and garnered support from a reading of Martin Luther King's reference to the aspiration that his kids might one day be judged by the content of their characters rather than the color of their skin. But law has worked to cement that frame and further define it in a way that allows courts and legislatures to ignore the ways in which society has structured racial privilege and subordination in very observable ways, such as in residential and, as a result, school segregation. Take for instance, the majority's decision in *Parents Involved in Community Schs. v. Seattle Sch. Dist. #1*, 127 S.Ct. 2738, 2768-69 (2007), in which the Court carefully parses the distinction between de jure and de facto discrimination as a basis for rejecting the use of race as a remedy of past discrimination and thereby ignores the fact that current school segregation is built on the continuation of past residential segregation, as detailed in Justice Breyer's dissent. Note that this careful parsing of de jure and de facto segregation is not matched by the equally careful parsing of the distinctions between "odious" and "benign" discrimination.

28. Although I refer to this group as "affluent" or "wealthy," my focus is really on those who control the wealth of the nation through, as Michael Zweig notes, controlling the few thousand largest corporations. Michael Zweig, *Introduction: The Challenge of Working Class Studies*, in *WHAT'S CLASS GOT TO DO WITH IT?: AMERICAN SOCIETY IN THE TWENTY-FIRST CENTURY* 1, 5 (Michael Zweig ed., 2004). He makes a distinction between the rich and those who control industry and finance, explaining that when Vice President Cheney invited a select group to help him formulate the U.S. energy policy he did not invite "rich" people but those who controlled far more than their personal wealth. People were invited because they controlled industries and such people only account for about two percent of the U.S. labor force.

subordination difficult because such efforts are made to appear as if those so subordinated are getting something extra or asking for something more than those who are privileged, presumably because those who are privileged already have whatever it is that the subordinated need or are seeking. Fourth, when all else fails and the group differences of inequality and subordination are noticed, this inequality is then portrayed as natural, arising because of choice, culture, or natural talent. Fifth, what are often missing from these discussions are the power, privilege, and actions of the privileged group.

Law, as part of the larger hegemonic order that both reflects and influences structures around gender, race, and class, currently facilitates this blindness through its discourse and commitment to formal equality. Formal equality not only renders law neutral as between individual men and women, whites and blacks, etc., and treats them the same in all cases even though they are not socially situated the same, but also pretends that they are already equal and have always been. This is in contradiction to a commitment to a notion of substantive equality, which would see the existing inequality and then try to bring about actual equality. Law further facilitates this blindness by focusing on the individual and ignoring the fact that in the social context of gender, race, or class, that individuals are harmed or privileged by virtue of their membership in groups. Law does so even though privilege and power itself is a group phenomenon institutionalized throughout the economic, political, and social arenas and "is something an individual can have only if society provides it."²⁹

29. Athena D. Mutua, *Theorizing Progressive Black Masculinities*, in *PROGRESSIVE BLACK MASCULINITIES* 16 (Athena D. Mutua ed., 2006). As Hannah Arendt notes:

Power corresponds to the human ability not just to act but to act in concert. Power is never the property of an individual; it belongs to a group and remains in existence only so long as the group keeps together. When we say of somebody that he is "in power" we actually refer to his being empowered by a certain number of people to act in their name. The moment the group, from which the power originated to begin with . . . disappears, "his power" also vanished.

HANNAH ARENDT, *ON VIOLENCE* 44 (1970).

1. *Gender Blindness*

Feminists have argued that gender blindness obscures male privilege and power but also perpetuates it.³⁰ First, it does so by blinding society to the factors that determine difference, inequality, and disadvantage between men and women in the first place. For example, law generally takes a gender-blind approach, counseling that gender is irrelevant and should not be used as a factor to disadvantage (or potentially advantage) women. This gender-blind approach to equality calls for women and men to be treated the *same*. In doing so however, society and law blind themselves to the fact that in the workplace, for example, both law and society have constructed an environment which centers men as the ideal worker, by, for instance, initially and historically limiting women's participation in wage labor,³¹ steering women into separate, segmented, lower-paying jobs once they were allowed into the wage labor force, and organizing the workplace in a way that privileges workers without responsibilities for providing care to dependents while simultaneously relegating to women responsibility for such dependent care. Such legal and social happenings produce inequality that remains in effect and structures the workplace of today. Ignoring gender therefore has the effect of ignoring the factors of difference that structure and determine inequality; thereby ignoring gendered inequality itself. Thus when law, with its commitment to formal equality, treats individual men and women the same, ignoring gender and thus the way in which individuals are socially gendered, structured, and situated differently and unequally, it perpetuates the privilege of men and the disadvantage of women. Second, when law is called upon to

30. See Tracy E. Higgins, *Job Segregation, Gender Blindness, and Employee Agency*, 55 ME. L. REV. 241 (2003); Michael R. Evans, *The Case for All-Female Health Clubs: Creating a Compensatory Purpose Exception to State Public Accommodation Laws*, 11 YALE J.L. & FEMINISM 307, 323-29 (1999); Lucinda M. Finley, *Sex-Blind, Separate But Equal, or Anti-Subordination?: The Uneasy Legacy of Plessy v. Ferguson for Sex and Gender Discrimination*, 12 GA. ST. U. L. REV. 1089 (1996).

31. See, e.g., *Bradwell v. Illinois*, 83 U.S. (16 Wall.) 130, 139 (1873) (holding that Illinois had properly exercised power to bar married women from the practice of law).

address gender inequality as between women and men, it often does so in reference to men, asking whether women are the same as or different from men, reinforcing this dominant and privileged norm and addressing best those areas where women more closely approximate the standards set by and embodied by men as well as standards based on men, maleness, and/or dominant masculinity.³²

Third, such standards and norms also force women to assimilate, or to have the same needs that men have or to engage in the same actions in which they engage. However, when women have different needs, including the resources or actions that would redress their disadvantage, these get perceived as something extra because of course men do not need them. In other words, this redress gets dressed-up as special preferences. So for instance, when women demand that social institutions provide them birth control, this gets perceived as something extra that they are requesting both because men are perceived and structured as not needing birth control, but also because it often is already provided for them.³³ Similarly, where women seek affirmative action to ensure they are represented in various social institutions, such as schools or high level jobs, this is perceived as a special preference in part because men, already over-represented in these spaces, do not need this policy. Fourth, where inequality is frontally recognized, the law sometimes notices gender and acknowledges the socially constructed nature of this inequality but nonetheless often responds by dressing this inequality up as a natural outcome of different choices. So for instance in the case where women challenged

32. CATHARINE A. MACKINNON, *FEMINISM UNMODIFIED: DISCOURSES ON LIFE AND LAW* (1987), at ch. 2 (*Difference and Dominance: On Sex Discrimination*) (discussing the sameness and difference approaches to sex equality law, which, she argues, reinforces the male norm and male dominance, and rarely addresses the most serious problems that confront women. She advocates for a dominance approach.).

33. Presumably both women and men require birth control when they are sexually active but do not want to have children. But because society is structured in a way that assigns childcare to women, women are perceived as needing birth control and men are not. Also many insurance companies provide coverage for Viagra, a medicine for men with erectile dysfunction, but do not provide coverage to women to control their ability to give birth.

the Sears company's practices of steering women into lower paying jobs, the reviewing court understood the unequal outcome as the product of women's choices—to be in lower paying positions.³⁴ And finally, fifth, when these discussions focus on women, as they often do, then the actions, power and privilege of men, particularly the actions of elite men, are overlooked. This has begun to change.³⁵

2. *Color Blindness*

Similarly, critical race scholars have argued that colorblindness, particularly in law, perpetuates the racialized subordination of people of color while privileging white people. They argue first that law does not merely reflect and mediate pre-existing racialized social conflicts and relations, but rather it constitutes, constructs and produces races and race relations in a way that supports white supremacy.³⁶ They drive home their point by explaining that law historically produced race through defining whiteness. So for example, “in order to perpetuate a white state, judges defined whiteness through case law to determine whether a Japanese man was white for purposes of citizenship, whether a Chinese person was black or Indian for the purpose of determining whether he could testify against a white and whether Mexicans were white

34. *Equal Employment Opportunity Commission v. Sears Roebuck & Co.*, 628 F. Supp. 1264 (N.D. Ill. 1986) (hiring and promotion policy was not discriminatory because women were not as interested in the higher-paid commission sales positions due to competitive environment and because evening hours would conflict with family obligations).

35. See, e.g., Scott Coltrane, *Theorizing Masculinities in Contemporary Social Science*, in *THEORIZING MASCULINITIES* 39, 42 (Harry Brod & Michael Kaufman eds., 1994) (discussing, among other things, the development of Masculinities Studies based in part on feminist thinking).

36. Mutua, *supra* note 14, at 334.

and thus entitled to serve on juries.”³⁷ These laws structured and produced races.

But then they suggest that color-blindness, adopted, arguably, in part to redress racial oppression of past years, nevertheless continues to perpetuate white privilege because it counsels—even more strictly than gender blindness—that racialized identity is largely irrelevant.³⁸ It then operates as if a colorblind society already exists and has always existed in the U.S. It thereby, ignores, cements and blinds itself to the historical factors that determine, shape and continue to structure the racial caste system that law and society constructed in the first place.³⁹ In other words, colorblindness sees any racial classification as bad and ignores the privilege often bought by whiteness and the disadvantage often attached to blackness.⁴⁰ The effect of ignoring racial identity is that it allows society to also

37. Mutua, *supra* note 14, at 334, 359. See also Neil Gotanda, *A Critique of "Our Constitution is Colorblind,"* 44 STAN. L. REV. 1 (1991); DELGADO & STEFANCIC, *supra* note 14, at 21-22; MICHAEL K. BROWN ET AL., *WHITEWASHING RACE: THE MYTH OF A COLOR BLIND SOCIETY* (2003); EDUARDO BONILLA-SILVA, *RACISM WITHOUT RACISTS: COLOR-BLIND RACISM AND THE PERSISTENCE OF RACIAL INEQUALITY IN THE UNITED STATES* (2006).

38. See, e.g., *Adarand Constructors, Inc. v. Peña*, 515 U.S. 200, 201-02 (1995) (holding that racial classifications must be reviewed under the “strict scrutiny” standard, whether imposed by federal, state, or local government and noting that “[A]ll governmental action based on race—a group classification long recognized as in most circumstances irrelevant and therefore prohibited—should be subjected to detailed judicial inquiry to ensure that the personal right to equal protection has not been infringed.”). *But see* *Grutter v. Bollinger*, 539 U.S. 306, 331 (2003) (noting that “[c]ontext matters when reviewing race-based governmental action under the Equal Protection Clause . . . that strict scrutiny must take ‘relevant differences’ into account . . . that [n]ot every decision influenced by race is equally objectionable,” and thus allowing race to be taken into consideration as a factor in admissions for the purposes of diversity in the higher education context).

39. Mutua, *supra* note 14 at 335-36. Cheryl I. Harris, *Whiteness as Property*, 106 Harv. L. Rev. 1707, 1768-69 (1993) (colorblind theory disconnects notions of race from historical practice and meaning).

40. See generally THOMAS M. SHAPIRO, *THE HIDDEN COST OF BEING AFRICAN-AMERICAN: HOW WEALTH PERPETUATES INEQUALITY* 9 (2004) (noting that despite presumed successes of civil rights movement and trend toward colorblindness, “Similar achievements by people of similar abilities often do not yield comparable results.”).

ignore the way that identity is socially structured and positioned. So for example, blindness to the socially structured construction of racial identities of workers in the context of layoffs where people of color were the last hired due to discrimination, and because they were the last hired, were the first fired, perpetuates white privilege and nonwhite disadvantage while appearing to be fair to all workers.⁴¹ Again by being blind to the structural inequities of racial privilege and disadvantage, and treating black and white individuals (while the same as humans) as if they were socially situated in the same way, the law perpetuates the racial inequalities already in place and is blind to those newly created.⁴²

Second, law's colorblindness does little to challenge the hidden and privileged norm of whiteness, whether it is dressed up in universalized standards of beauty, for example, or merit.⁴³ In either case, treating people of color the same as white, or rather, as if they were white, reinforces whiteness and ignores the socially constructed disadvantage inherent in the standards based on whiteness (as in beauty) or white access historically structured (as in merit for educational success based on access to "good schools" in "safe neighborhoods" in the K-12 years). Third, colorblindness also renders request to waive or redefine the standards as well as demands to access resources,⁴⁴ which would enable people of color to meet the standards, as special preferences, in part because whites presumably

41. See, e.g., *Wygant v. Jackson Bd. of Educ.*, 476 U.S. 267 (1986) (race-based layoff clause in collective bargaining agreement violated Equal Protection Clause).

42. *Mutua*, *supra* note 14, at 334. In fact I argue Supreme Court decisions that operate in this way were meant to protect white people by claiming they were innocent (lacking intent) at the expense of justice for black individuals. See *id.* *Finley* makes a similar claim. *Finley*, *supra* note 30.

43. See *Daria Roithmayr, Policy, Politics & Praxis: Deconstructing the Distinction Between Bias and Merit*, 85 CAL. L. REV. 1450, 1452 (1997) ("[M]erit standards disproportionately exclude people of color and women because the standards historically have been developed by members of dominant groups in ways that end up favoring them.").

44. These resources might include such things as a good education, a healthy educational and living environment, and resume-building opportunities.

already have access to these resources,⁴⁵ and thus do not need policies that provide them. Here, again affirmative action in contracting is an example.⁴⁶ Fourth, when the subordination of nonwhite identity is noticed, as in recognizing the disproportionate poverty among black people, two things happen. One, society ignores the way in which poverty has been racially structured over time; and two, the disadvantages are explained away as the result of cultural deficiencies, or dismissed, again particularly in law, because some individual white person did not intentionally cause them.⁴⁷ And finally, a focus on the actions and conditions of people of color often lets off the hook the actions and privileges of whites, particularly those in positions of power. This too is beginning to change.⁴⁸

3. *Class Blindness?*

In addition to the groups' familiarity with the work of authors like Karl Klare,⁴⁹ as well as authors such as Angela

45. Except that some whites do not have access to these resources because of their class; they are poor.

46. See, e.g., *City of Richmond v. J.A. Croson Co.*, 488 U.S. 469 (1989) (in which the Supreme Court struck down a city plan that required city contracts to subcontract thirty percent of the contract's value to businesses owned by minorities. The plan was based upon findings that there was racial discrimination in the industry, that minorities received less than one percent of public contracting even though they constituted almost fifty percent of the population, that there were almost no minority contractors in city and state associations, and that a congressional study had found that past discrimination had stifled minority participation in the construction industry nationally.) Individualistic colorblindness apparently dictated that this history be ignored, or that it was irrelevant, or that, in any event, it could not be remedied.

47. See, e.g., *McCleskey v. Kemp*, 481 U.S. 279 (1987) (involving a Georgia sentencing system in which the Supreme Court rejected the use of the statistical reports to document discriminatory effect in the absence of proof of intentional discrimination).

48. See, e.g., Richard Delgado & Jean Stefancic, *Introduction*, in *CRITICAL WHITE STUDIES: LOOKING BEHIND THE MIRROR* xvii-xviii (Richard Delgado & Jean Stefancic, 1997) on the development of critical white studies.

49. See, e.g., Karl Klare, *The Horizons of Transformative Labour & Employment Law*, in *LABOUR LAW IN AN ERA OF GLOBALIZATION: TRANSFORMATIVE PRACTICES & POSSIBILITIES* 3, 3-29 (Karl Klare et al. eds., 2002).

Harris,⁵⁰ Martha Mahoney,⁵¹ and Thomas Ross,⁵² among others, who have challenged class blindness or its effects in other ways, this work of unpacking the effects of gender and color-blindness may well have helped fueled the workshop group's intuition that class-blindness contributes to economic inequality. Class-blindness operates and has effects similar to those of gender and color-blindness, but it is slightly more complicated at first blush,⁵³ in part, because the reigning ideology about class and economic difference has been so successful.

So for starters, according to the dominant ideology, class does not exist in the U.S. If class does not exist then one certainly cannot see it. However, while class arguably does not exist, economic differences do exist. These economic differences, unlike gendered and racialized differences, can be noticed, but are, nonetheless, irrelevant. That is, gender-blindness and color-blindness counsel us not to see gender or color and thereby allows us to ignore the structured inequalities inherent in them, because these differences are irrelevant and thus not appropriately noticed or taken into account. However, with economic differences, we can, should, and do see these differences, these inequalities, at least to a point, and may in fact call them "class," but they are, in any event, not relevant. Thus, at first blush, class is complicated, involving at least three issues that must be clarified before the rest of the analysis can proceed. These three issues involve the questions: do

50. See, e.g., ANGELA P. HARRIS & EMMA COLEMAN JORDAN, *ECONOMIC JUSTICE: RACE, GENDER, IDENTITY AND ECONOMICS* (2006); ANGELA P. HARRIS & EMMA COLEMAN JORDAN, *A WOMAN'S PLACE IS IN THE MARKETPLACE: GENDER AND ECONOMICS* (2006).

51. See *infra* discussion accompanying notes 89-103.

52. See, e.g., Thomas Ross, *The Rhetoric of Poverty: Their Immorality, Our Helplessness*, 79 *GEO. L.J.* 1499 (1991).

53. While there are differences between gender and color structures, people often feel that there are significant differences between these and class differences. First, class is not an "immutable" trait. While the idea of assigning immutability to race and gender constructs is problematic because features of these constructs change, class is clearly mutable and people can move from one economic status to another. I do not address these here. My central point is that the factors that shape and determine race, gender, or class are often ignored.

we, in American society, see class?; which classes do we see?; and, when we see them, are they relevant?⁵⁴ Answers to these are shaped by the dominant ideology.

Class is said not to exist in the U.S. and yet we often talk, at least, about the middle class. Is not this a recognition that class exists in the U.S.? The assertion that class does not exist is a statement about the lack of antagonism between classes as typically described by Marx and others. In the U.S., so the dominant ideology tells us, there is no structural tension between classes; we all work together for the greater good. Thus, there is no issue of class in the U.S. Further, our recognition of the middle class is not the recognition of a class that is related to other classes and thus might be in tension with them. It is the recognition of economic differences, differences that we can see but where, as the dominant ideology explains, "my wealth is in no way related to your poverty," and thus our relations are not antagonistic. These differences, instead, are simply the results of naturally occurring variations, variations that are the results of our different interests, talents, and educational accomplishments. Class, thus, in the U.S., is a status in the economic world.

Second, generally, we see very few classes in the U.S. Generally we see and talk about the middle class and then the poor. But the status of the poor, again, has little to do with the wealth or comfort of the middle class; that is, the claim is: there exists little to no structured impoverishment that relates to structured privilege. Further, we talk only infrequently about the working class, because as a practical matter, the working class, an economic class that labors for its survival and exercises little control over the workplace in

54. By "relevant" I mean to question whether financial power, standing, or ability should be taken into account. Obviously these observations are general. For instance, the way we organize the tax code takes into account economic differences. However, as I attempt to demonstrate in my discussion of the 2008 presidential election, even the organization of the tax code has been challenged by our dominant ideology. I thank Stuart Lazar for reminding me of this.

modern America,⁵⁵ often sees itself as part of the middle class. In addition, while the middle class largely works for its survival and may exercise a little more control over their working environments than do the working class, the middle class not only houses the working class but also the wealthy. The latter results because the wealthy often appear in practice as the middle class and thus are rarely seen or acknowledged as even existing.⁵⁶ However, when they are seen, and seen as *wealthy and possessing economic power*, the dominant ideology chastises us for noticing their wealth (it is inappropriate) and accuses us of engaging in “class warfare.”⁵⁷ At the same time, this ideology informs us that “the current economic arrangements [are] necessary and natural,” that “the maintenance and creation of the rich are indispensable and beneficial to the rest of us,” and “that policies which put the well-being of the vast majority of humanity at the center of economic ordering and development are destructive.”⁵⁸ So for instance, the U.S. government was quick to bail out Wall Street during the 2008 financial collapse but was initially reluctant to bail out Main Street by restructuring homeowner mortgages even though devaluations in the housing market on Main Street seemed in part a root cause of the problems occurring on

55. See Erik Olin Wright, *Foundations of a Neo-Marxist Class Analysis*, in *APPROACHES TO CLASS ANALYSIS* 4, 4-21 (Erik Olin Wright ed., 2005) (discussing the different classes in America and in some ways describing the working class in these terms).

56. See Michael Kimmel, *Toward a Pedagogy of the Oppressor*, in *PROGRESSIVE BLACK MASCULINITIES*, *supra* note 29, at 63, 68 (discussing how the wealthy often downplay their wealth and appear and act like the middle class while the poor or working class dress toward their aspiration of middle or upper class-ness).

57. So for example, some have accused President Obama of engaging in class warfare in his campaign pledge to lower taxes for the middle class and implicitly to raise taxes for the wealthy—those making over \$250,000 in income. But acts such as banks advocating for Congress to tighten the rules governing the declaration of bankruptcy for everyday people (or workers) are rarely seen as acts of class warfare. *But see* Elizabeth Warren, *Vanishing Middle Class*, in *ENDING POVERTY IN AMERICA: HOW TO RESTORE THE AMERICAN DREAM* 38 (John Edwards, Marion Crain & Arne L. Kallberg eds., 2007).

58. Mutua, *supra* note 14, at 386-87.

Wall Street.⁵⁹ Further, not seeing the wealthy, whose existence is presumed to be of benefit to us all, also results in our not seeing the historically constructed advantages that empower them, or their use of that power to create and maintain for themselves these structural advantages. That is, ignoring the class of people with economic power allows us to ignore the structures that shape and determine their wealth and power. Most of our conversations about class, therefore, are about the middle class (encompassing the wealthy, the middle class, and the working class) and then the poor.

And, finally, the third clarifying question of whether class is relevant, garners a response that repeats some of the answers above, and then answers, particularly in law: No. That is, economic differences are not relevant (we should treat the poor the same as the middle class); and even if they are relevant (we should do something about the poor), your poverty is not related to my wealth and we cannot do much about poverty, a complex problem, anyway.⁶⁰

This analysis, shaped by our dominant ideology, thus proceeds: There is no class but there are economic differences, and unlike gender and color blindness, we can see these differences, differences between the middle class and the poor (mostly). However, these differences are not relevant, and thus can be ignored because one difference is not related to any other difference, they are the product of our different interests and talents, and in any event, cannot be changed. Upon this basis, the rest of the perils of class blindness then can proceed in much the same way as gender and color blindness do: First, structural economic inequality

59. In popular culture, the financial sector was referred to as Wall Street while the problems of average Americans were referred to as problems of Main Street. The point here is that help to the affluent always seems forthcoming because their welfare is viewed as vital to the country while the welfare of average Americans—the working class perhaps—is at best secondary. Thus help to them is viewed as debatable and ultimately destructive to the system. Similar insights are garnered from an analysis of the assumption of “trickle-down economic theory. See sources *supra* note 11.

60. See generally Ross, *supra* note 52.

or the factors that determine, shape and cause economic difference—wealth, financial comfort, or poverty—can be ignored because not only are there no class relations but, by definition, the factors that determine differences are the product of our differing interests, talents, and education and so are “natural.” Thus there is no reason to treat anyone or any group differently because of economic differences. In fact we should treat them the same; that is we should treat the poor like we treat the middle class in all cases and presumably not disadvantage them (but neither provide them the resources to in fact become middle class because this would be an unfair advantage).⁶¹ Second, this comparison reinforces the norm of middle-classness,⁶² and thus allows us to relegate both the middle class and the poor to sleep under bridges or to evacuate a flooding city, without recognizing that precisely because the middle class are financially able, they will be able to forgo sleeping under the bridge or will be able to evacuate the city while the poor will not. And third, when the poor ask for resources to make them like the middle class, they are perceived as asking for special preferences—like welfare or jobs—a preference to rectify a situation that they are not entitled to, according to our dominant paradigm, because, fourth, when their poverty is noticed, it is explained as resulting from lack of talent or hard work, or even bad luck, but in any event is

61. *San Antonio v. Rodriguez*, 411 U.S. 1 (1973) (holding that a Texas local property tax system that financed public schools and resulted in fewer educational resources for children residing in districts with lower property values did not violate the equal protection clause). See Donald Judges, *Bayonets for the Wounded: Constitutional Paradigms and Disadvantaged Neighborhoods*, 19 HASTINGS CONST. L.Q. 599, 604-05 (1992) (describing the *Rodriguez* case as the “Dred Scott decision for the underclass”); JONATHAN KOZOL, *SAVAGE INEQUALITIES* 223-229 (1991) (describing the children attending the San Antonio schools featured in the *Rodriguez* case as still poor and continuing to attend separate and unequal schools twenty-three years after the decision). In future work, I hope to write a socio-legal historical narrative about the development and operation of class blindness. The narrative would center Supreme Court cases and explore the Court’s role over time in the development of the rights of the corporation, the limits on workers’ rights and the treatment of the poor.

62. The middle class is not so much hidden as it is normative. In fact the middle class is very visible. What is hidden is what it includes and the ways in which those classes that are included might be in conflict. And finally, if the middle class is the norm and normal, what in the world is wrong with the poor?

not related to anyone else's wealth and is a situation that is difficult to change. Finally what is missing from this analysis is a discussion of the wealthy class itself and the power they exercise often on their own behalf to maintain and structure that wealth; an analysis ClassCrits hopes to provide.

The near collapse of the financial market and the 2008 presidential election, which focused on the status of the economy, is an example of how part of this thinking works. The financial market collapse began to peel back the blinders on class, however, thereby exposing the underbelly of our dominant economic ideology.

The collapsing market involved the failure and near failure (the failure avoided only by a government rescue plan) of the largest insurance company in the world, a host of the largest investment banks (Lehman Brothers, Merrill Lynch) and a host of failing banks that had invested, through the use of debt (borrowing the money to invest), in stock tied to the falling housing market (bursting housing bubble). It rocked the global financial market. In doing so it revealed a number of important class-related factors.

First, it revealed the existence a class of people who work in and control huge institutions and who treat themselves very, very well through bonuses and executive pay. Second, this class of people in the past have and continue to treat themselves well, regardless of whether the institutions they run are successful or not, and regardless of whether the collapse of these institutions might hurt the rest of us. Third, while we are told this class is indispensable to us, this class is dependent on the hard-earned savings of regular people and small businesses in addition to the capital of other big companies and wealthy people. Fourth, this class likely had access, through "lobbyists," among others like Vice President Cheney,⁶³ to the mechanisms of state power to further orchestrate their work and well being. The government's attempt to privatize Social Security, which would have provided this economically

63. Here Cheney's connections with Halliburton and Blackwater come to mind, as do President Bush's connection with oil.

powerful class of financiers access to play with the pension funds of all in the country, seem to support the latter two points.⁶⁴ And finally, neither the market nor this group of people seemed to have exhibited much of that famed “rationality” that society hears so much about, at least with regard to investing through debt in these housing related securities.

Despite the extremely high visibility of this class during the collapse of the financial sector, an event that occurred within the last two months of the 2008 presidential election, the discussion of the economy and “class” during the presidential election, reflects the ways in which class is masked, the way in which structured inequality between the rich and poor is ignored, and the way in which the status of the middle class is the norm and is reinforced. Both the election and the market rescue provide evidence by way of omission, for the way resources for the poor were overlooked while the privilege and power of the affluent was largely minimized but nevertheless secured.

Both Obama and McCain’s campaign revolved around changing the way Washington works, particularly the way “lobbyists” behave. While the revolving door of lobbyists between industry and government is itself an issue, this issue masks potentially antagonistic class relations. That is, it masks the fact that lobbyists are simply the errand boys and girls of the economically powerful who control big business in the country, it masks their power to influence and control the rules which govern their operations, and it masks any relations between the way they live and are protected and the rest of American society.

Further, the campaigns reinforced the idea that the middle class is the norm in the U.S. Both campaigns, but particularly Obama’s campaign, primarily talked about the middle class and proposed the ever handy “tax cuts” for them. The working class made a minor appearance in the last days of the campaign, primarily through “Joe the

64. The government rescue package (put forth with the overwhelming support of Democrats) with its minimum control over executive pay seemed to be further evidence of this class’ influence. See sources *supra* note 11.

Plumber” and Obama’s vice presidential candidate, Joe Biden, from “working class Scranton.” But even these in some ways got dressed-up as the middle class because “Joe the Plumber” liked the idea of buying a business and Biden, well, was the vice presidential candidate for the Democrats. The economically powerful, though highly visible because of the financial market collapse, too only made a minor appearance, primarily through Obama’s policy regarding taxes and the rich, “those making over \$250,000 a year, and they made a stealth appearance through McCain’s policy that no one should pay additional taxes. He sought to protect the pocketbooks of all Americans, even those most privileged by the organization of American society.

The poor or the conditions and relations that keep them poor, save their own irresponsible behavior, rarely even surfaced during the campaign and were largely ignored. This was presumably because the normative middle class was under siege and those things that might help the middle class might also help the poor. However, it is not clear whether tax cuts would help the poor, as many of them do not now pay taxes. Nevertheless, the society having long decided, particularly through welfare reform, that the poor do not need “special preferences,” seemed poised through the election of one or another of McCain or Obama to forward this policy and ideology of class blindness while the bailout secured the interests, power, and well-being of the wealthy.

With some of these and other understandings in mind, the ClassCrit participants began their consideration of employing a class analysis in their study of law and economic inequality.

II. FRAMING A *CRITICAL CLASS ANALYSIS*: THE ORGANIZERS’ ORIGINAL PROPOSITIONS AND THE WORKSHOP DISCUSSIONS

The workshop participants struggled with the organizers’ proposal to engage a class analysis in their examination of law and economic inequality. In doing so, the groups both contested but nevertheless began to frame the contours of a ClassCrit analysis of law and economic inequality. The crucial insight was that this was to be a

critical analysis. This section highlights some this work and these discussions.

A. *Examining Law and Economics Theory and Class*

The initial intuitions of the group were that a more grounded understanding of class relations would aid in exposing the existence and the nature of economic power to which a number of analyses seemed blind. Martha McCluskey, one of the two principal organizers, in her ongoing development of a critique of Law and Economics, had argued that the development of law and economics had not arisen simply out of intellectual interests. Rather, it had come about, in part, because those who were likely to benefit from its many findings that economic inequality was “necessary, inevitable, and good,” *invested* in its development.⁶⁵ Her analysis seemed to suggest that the investors were pursuing their class interests. She made this argument more explicit in the essay in this collection discussing the Supreme Court’s decision in the *State Farm* case.⁶⁶ She argues here that State Farm itself, its practices, and its claim about the unfairness of punitive damages for multi-state abuses,⁶⁷ represented the organization of elite interests and power in extracting profits out of economically vulnerable people. The Court’s decision, she suggests, not only rendered the corporate claim valid but “equate[d] the protection of these upper class interests with ideas of “fundamental fairness, essential to neutral legal process.”⁶⁸

65. Martha T. McCluskey, *The Substantive Politics of Formal Corporate Power*, 53 BUFF. L. REV. 1453 (2006). See also Martha T. McCluskey, *Thinking with Wolves: Left Legal Theory After the Right’s Rise*, 54 BUFF. L. REV. 1191, 1212-28 (2007).

66. Martha T. McCluskey, *Constitutionalizing Class Inequality: Due Process in State Farm*, 56 BUFF. L. REV. 1037 (2008).

67. *State Farm Mut. Auto Insurance Co. v. Campbell*, 538 U.S. 408 (2003). State Farm challenged the imposition of punitive damages awarded to insurance policy holders for State Farm’s systematic violations of their contractual rights. The Supreme Court overturned the award, limiting it. See generally McCluskey, *supra* note 66.

68. See McCluskey, *supra* note 66, at 1037.

These essays provide a number of provocative thoughts. First they suggest that the economic inequality that potentially results from these events is not just a naturally occurring phenomenon, but instead, is the product of human agency and groups of people organizing to protect their economic power and interest. Second, these interests are potentially class interests, elite class interests. Third, these interests are not simply protected through winning certain *economic* contests—offering the best price for a product or improved quality—but are also fought and won through contests over ideas about what works or what is right in the cultural realm. Fourth, law is implicated and employed in these struggles both in mediating the contests and in ideologically legitimating one side or another while potentially structuring and shaping the nature of both the contestants (here law is essential in creating and legitimating the corporate form known as State Farm) and the contest itself. These insights seem to cut against discussing simply the different income levels of individuals and groups in social or economic life or simply discussing the formal assertions of equality or equal opportunity in law and economic life. Instead they seem to call for discussions about the unequal distribution of wealth and power; they seem to call for foregrounding and making visible issues of class.

In general, McCluskey argues that Law and Economics is a “theory aimed at making economic inequality seem legitimate, inevitable and even beautiful, smart and just.”⁶⁹ She analyzes how concepts like “efficiency” and “economic growth” mask conflicting class interests and problematic ideology, turning problematic policy choices into neutral and inevitable forces of “nature.”⁷⁰ While

69. McCluskey Thought Piece, *supra* note 20. Specifically McCluskey argues that this theory justifies and whitewashes economic inequality and subordination and it does so by employing what she called a master narrative. This narrative juxtaposed “economics” or “efficiency” (meant to mean a growing economic pie) or some other economic concept against some policy meant to bring about equality, justice, or fairness. The narrative then delivered a three-part message meant to diminish and discredit efforts geared toward bringing about justice, equality, or fairness. See McCluskey, *supra* note 20.

70. *Id.*

McCluskey admits that the benefit of Law and Economics is that it asks for every move, how much will it cost and who pays; it often leaves out who benefits, who loses, who decides, and how.⁷¹ A class analysis often emerges from these analyses.

B. *Critical Race Theory and Class*

While McCluskey's work emerges from an engagement with Law and Economics, my work, representing the other principal organizer, grows out of my engagement with critical race theory (CRT),⁷² and my concern about the underdevelopment of its analysis of the role of class. Critical race theory has always argued that the "class system in the U.S. mutually constructs race, gender and other forms of oppression."⁷³ But critical race theorists (race crits) have failed to develop a systematic analysis of the ways in which this happens. In fact, although CRT recognizes that the system of racial formation is a pillar of American society that has both material and cultural bases, much of the scholarship seems to focus on the cultural aspects of this phenomenon—on "texts, narrative, ideas and meanings," which convey ideas that certain groups are unworthy—rather than the material aspects of racial subordination. Richard Delgado, drawing on much of Derrick Bell's work, chastises that "while text, attitude, and intention may play important roles in our system of racial hierarchy, material factors such as profits and the labor market are even more decisive in determining who falls where in that system."⁷⁴

71. *Id.*

72. *Mutua*, *supra* note 14, at 379.

73. *Id.*

74. Delgado, *supra* note 25, at 123 (reviewing DERRICK BELL, *ETHICAL AMBITION: LIVING A LIFE OF MEANING AND WORTH* (2002)). Delgado discusses many of Bell's earlier works in this piece, including DERRICK BELL, *RACE, RACISM, AND AMERICAN LAW* (4th ed. 2000) and Derrick Bell, *Racial Realism*, 24 *CONN. L. REV.* 363 (1992).

Specifically I suggested that the addition of critical class analyses would aid in further understanding racial structure and might aid in promoting racial justice. That is, I suggested that the racialized economic production and allocation of material resources accumulated over the last several hundred years was “unlikely [to] be eliminated without addressing the structural and economic foundations of class. Thus, an understanding of the operation of class was necessary. At the same time, it was not clear that the economic harms of lower class suffering would be eliminated without addressing both the material and psychological seductions embodied and structured by race; structures in which the poorest of the poor of whites, in part, endure their impoverishment as long as they are “not black,” or, for that matter, “not in China.”⁷⁵

From this perspective, I am also inclined to ask why societies are producing Viagra and not malaria pills. Who decides? Who benefits? What is lost? Or, why 40,000 children starve each day if the global society can produce enough food to feed all the people in the world—what is wrong with our production and distribution system? And finally, why in both of these scenarios are people of color and women likely the first and the worst harmed? While the simple answer to some of these questions was simply that one is more profitable than another, a critical class analysis seemed poised to more thoroughly explore these issues.

Questioning the outcomes of the rescue debacle of Hurricane Katrina brought some of these ideas to the fore. It also raised a second potential need and justification for pursuing a class analysis. Race questions in popular culture are increasingly reduced to questions of who did what

I have also suggested that a critical class analysis might have something important to say about the modern social economic processes which over the last several years have shaped segmented joblessness and stagnating wages for the overwhelming majority of the population, which has occurred in the face of increasing productivity, a growing economy, staggering profits, and incomprehensible executive pay as mediated by the corporation and justified by an array of people institutionally and otherwise placed. Mutua, *supra* note 14, at 389.

75. Mutua, *supra* note 14, at 389.

where—a question about an individual's racist intent; as opposed to an analysis of the structured, material, and economic conditions of race and class. I posited four questions based on the media's framing of the issues surrounding Hurricane Katrina.

First: Whether the governments' slow, seemingly disinterested response and inadequate rescue of the mostly African American people stranded in the flooded city of New Orleans was a result of racism. I noted that this was a typical race consciousness question.

A second question was: Why so many black people stayed behind or found themselves stranded or left behind in New Orleans during the Hurricane. I posited that they did not stay behind because they were black but rather because they were poor. This, it seemed to me, was the class question.

The third question asked: Why the majority of the poor people [left behind] in New Orleans appeared to be overwhelmingly black when they constituted only a little over a third of the metropolitan area's 1.3 million people, and when most others got out of New Orleans before the storm. This question seemed to implicate the intersection and interaction of both class and race as they developed over time in New Orleans.

And finally the fourth question contemplated: Why the policy that promoted simply the evacuation of the city seemed blind to the realities of poverty in New Orleans. Here it seemed the answer was that a norm of adequate wealth, of middle class status, in part, drove this reality. A class analysis, complete with an understanding of the ways in which it operated, appeared important to society generally, and particularly important to understanding racial formation and the structuring of race.

C. The Labor Law Perspective

Several of the workshop participants had come to the question of class from their expertise in labor law. Consideration of class has been much less visible within law than it has in some other disciplines such as sociology and history, and, to the extent that class analyses may be

visible, it is often cabined in the area of labor law.⁷⁶ But the study of labor law itself has been struggling to maintain visibility and influence, as union participation has declined.⁷⁷ Both developments likely contribute to the blindness to class that seems prevalent.

These scholars were in a unique position to inform our discussions because labor law has historically addressed the ways in which unequal economic power manifests in laws that constrain the power and benefits of workers and the ways in which people's control over, or lack of access, to economic resources positioned them vis-à-vis others and the state. Further, these particular scholars also brought a variety of theories and understandings about class and how it works. They urged us not only to center class in our analysis of the impact of law on economic inequality but they joined a chorus of others in advocating that our understanding of class be grounded in a *relational* understanding of class.

D. *Confronting Notions of Equality*

Not all of the participants agreed to a specific class focus in the group's analysis. For instance, Martha Fineman, entering the discussion from a feminist perspective, advocated for the group to ground its investigation of economic inequality in the development of a substantive understanding of equality.⁷⁸ Formal equality, as all too often practiced and advocated in law, tends to treat all people the *same* regardless of the context and conditions that make them different in the first place. Formal equality is an improvement over a time when law failed to recognize the basic humanity of all people, instead distinguishing them for the purposes of elevating and providing access to

76. I thank Martha McCluskey for this insight.

77. Martha R. Mahoney, *Class and Status in American Law: Race, Interest, and the Anti-Transformation Cases*, 76 S. CAL. L. REV. 799, 845 (2003).

78. Fineman, *supra* note 20. Her position was in some ways pragmatic in that equality is universal and individualistic and in this way mirrors American law's protection of individual groups. But equality, she also argued, did not divide groups into opposing sides even if the reality reflected opposing sides with unequal power.

resources for the individuals of some groups, and disadvantaging and limiting access to resources for other groups—men distinguished from and over women, white people distinguished from and over black people. The current tendency, however, is to ignore the ways these historically created inequalities remain and are recreated today through a variety of social structures, systems, and ideologies.

Instead, Fineman advocated for a substantive concept of equality that would encompass a range of factors along with economics. She urged a concept that would seek to spread the benefits and burdens of society including its economic benefits more broadly and more equally; one that would take into account the social and material contexts as well as the social conditions and choices that made people unequal in the first place; and one that would recognize that the problem was not simply discrimination, for which the same treatment might be the solution, but rather was the unequal production and allocation of resources and status. In short she sought a substantive concept of equality that would recognize, account for, and address the relative differences in privilege and power of individuals and groups and the way they are socially structured and organized. Fineman also argued for a rejection of understanding equality through a narrow concept of autonomy. She urged the group, rather than viewing equality through the lens of autonomy—as individual independence and self-sufficiency—to develop a substantive view and commitments to equality as inclusive, through which to ensure that people have what they need to be autonomous.⁷⁹ That is, she urged a view that would view autonomy through equality.⁸⁰

79. *Id.* Fineman notes :

In . . . exploring equality in the context of balancing against other values, I think we must begin the hard work of constructing in and for the American context a viable and credible alternative concept of equality, moving beyond a formal to a more substantive one. The project here is to shift the frame from autonomy back onto a focus on equality. This framing process is not only descriptive, it is normative; a way to give a different meaning to a series of issues and help redefine them in a more progressive manner. If the frame were equality rather than autonomy, then perhaps our first question would not be how we

E. *What about Liberty?: Aren't We All Just Liberals?*

The workshop discussions also identified a number of additional issues in trying to further define the project. The group identified current understandings of liberty and autonomy, as well as a more general commitment to liberalism, as obstacles to addressing the challenges that class may pose. In doing so, the group was urged to re-define "liberty," and to wrestle with the nature of the project in terms of whether it sought a "classless society," an end to all inequality, or whether it was largely reformist, committed to some level of inequality among individuals, if not also groups. Further, the group explored the question of Marxism, and what role it might play in their analyses more generally. The group, however, did decide that their approach to a class analysis of law and inequality would be a critical interdisciplinary approach and one committed to praxis.

Angela Harris asked that we consider redefining the concept of "liberty," echoing Martha Fineman's comments about autonomy. Liberty is currently understood as the right to be left alone, to be separate, to be autonomous and self-sufficient. This understanding seemed blind to the fact

can define equality in terms that are consistent with the dictates of autonomy (the individual perspective). Instead, we might pursue how society must ensure autonomy as a basic guarantee, a foundation necessary for and consistent with our primary commitment to equality (an inclusive perspective).

Id.

80. *Id.* Fineman's thoughts in many ways make clearer the areas on which all the participants appeared to agree. First, Fineman's use of the terms "equality," "discrimination," even "autonomy," targeted a group of lawyers whose central strength was likely to be in exposing the way in which law shapes, structures, and legitimizes, in economic terms, the current or alternative patterns of production and allocation of resources. Second, given that economic inequality is brought about through the way in which society organizes the production and allocation of material resources, the group was interested in both context and choice. That is, the participants were interested in a substantive structural view of economics and economic inequality that would expose collective structures, coercion, and interests, in addition to intention and choice. Third, they were interested in the role economic privilege and power plays in economic inequality both in determining certain patterns (of production and allocation) and in blocking alternatives.

that economic deprivation is coercive and that it is difficult to be self-sufficient and to implement individual choice when one does not have the resources to do so. In other words, a person who has nothing can be made to do anything. She suggested the group work on redefining liberty to include having the necessary resources—food, health care, the freedom from the coercion of want—that provide individuals the basis to be relatively autonomous, to exercise their choices. Such a view also would take into account that the things that people have and receive are socially produced and allocated and thus can be produced and allocated differently than they now are.

Related to this idea, Harris challenged the vision of the project more generally. She asked whether, despite the decision to focus on class, weren't we all simply "liberals" and whether we were okay with that. Her question seemed to reference liberalism not as commitment to political democracy, or to the protection to individual liberty as the basis of the both society and law, but rather liberalism as a commitment to a capitalist or market economy centered around the protection of private property. Under this commitment to a market economy one could be "conservative—stressing negative rights for protecting individual liberty, free markets, and rejection of government intervention in the economy; progressive—stressing positive rights, and government intervention in the economy for the provision of individuals' well being," or anything in between.⁸¹

In other words, Harris challenged the group to cede the point that this was basically a reformist project. Although not all the participants would agree, most of the participants were likely to admit that they were committed to transforming through reform the market exchange economy rather than seeking to eliminate or overthrow it. This position, however, cedes to some level of economic inequality, even if one thinks that "human flourishing

81. Athena D. Mutua, *Restoring Justice to Civil Rights Movement Activists?: New Historiography and the "Long Civil Rights Era"* (2008), available at http://works.bepress.com/Athena_Mutua/1 (suggesting that liberalism encompasses these three ideas: political democracy, individualism, and a commitment to a market economy).

would be broadly enhanced by . . . [an] egalitarian distribution of the material conditions of life.”⁸² That is, at least at the individual level, if two people start off in exactly the same position but one works harder, then the person who has worked harder is viewed as “justly” better rewarded, even as such rewards lead to inequality between the individuals.⁸³

From this discussion it appeared that the group’s concern with inequality was that it represented a real amassing and monopolization of the world’s material resources by the few, depriving most people of any resources at all; and thereby cementing and widening historical patterns of exploitation, subordination, and marginalization for large groups of people. For many, there seemed a concern that these increasing levels of inequality have been built on and have created an economy in the U.S. and the world that is fundamentally unfair.

82. Wright, *supra* note 55, at 6.

83. Erik Olin Wright, in providing a stripped down overview of Marxist normative commitments, explains three theses. These are in unqualified form:

1) Radical Egalitarian thesis: Human flourishing would be broadly enhanced by a radically egalitarian distribution of the material conditions of life

2) Historical possibility thesis: Under conditions of a highly productive economy, it becomes materially possible to organize society in such a way that there is a sustainable radically egalitarian distribution of the material conditions of life

3) Anti-capitalism thesis: Capitalism blocks the possibility of achieving a radically egalitarian distribution of the material conditions of life.

Wright, *supra* note 55, at 6-7. He then notes the standard response to these theses; He says:

Against the *radical Egalitarianism* thesis two sorts of arguments are frequently raised; First, even if it is true that equality promotes human flourishing, the redistribution of resources needed for material equality is unjust since it deprives some people of material advantages which they have rightfully acquired; and second, far from creating conditions for a flourishing of human potential, radical material equality would generate passivity, laziness, and uniformity.

Id. at 8 n.6.

Further, the project seemed poised to explore the way in which economic power controls people and the market, and distorts the market and the state. This notion included exploring and exposing the ways in which class structures are obscured in part through the denial that they even exist. It included exploring the claims that the market is naturally occurring, that it is fair, that it can solve all problems, that all people have equal access to it, and that the market is a fair judge of merit as opposed to biased toward those with money, wealth, and power. In addition, the project seemed poised to question whether such power may block the state from fulfilling its role of regulating and organizing the society on behalf of all while ignoring that the state, whether it chooses to regulate the market or not, is nonetheless a huge market actor. And it would focus in part on the ways in which these concerns were shaped and structured by law.

Finally, the project seemed open to the suggestion that the economically powerful need not be seen to operate in one particular way. Rather, there seemed room to understand the organization and interests of classes, including elite classes, as variable, even if they are understood as inclined toward accumulating and hoarding resources, understood as being in tension with laboring classes, and inclined toward pursuing primarily only those avenues viewed as profitable.⁸⁴ These ideas seemed to provide a way forward for challenging, halting and transforming the patterns of increasing inequality.

F. Specters of Marxism

Harris' question helped raise another issue. To what extent was the group prepared to employ Marxist analysis per se? Much of the second workshop was spent on this and related questions, as well as reviewing a number of Marx-influenced works. Some in the group argued that the project should be post-Marxist, in part already an inclination, given

84. I thank Makau Mutua for this insight. Said differently, this sentiment rejects the idea that actions of the economically powerful are pre-determined even if they are pre-disposed to act in certain ways.

the group's orientation toward the role of culture and ideology in economic relations. However, others, for instance, Anthony Farley, commented, to roars of laughter, that most of us could not be post-Marxist because we were never Marxists in the first place. He urged at least some real engagement with Marxist text and ideas.

Yet, what became obvious in the discussion was that the fear of engaging Marxist analysis frontally and publicly was only outstripped by the lack of detailed knowledge surrounding it by a notable size of the group. Though a number of people had studied Marx and other class theorists quite broadly, it was clear that a not insignificant part of the group, a group that represented some of the most well-educated and privileged members of the American society as part of the intellectual elite, had never been exposed to any significant study of Marxist themes.

This discussion further revealed that though engagement with Marx has been historically and systematically discouraged politically in the U.S., with few courses across the nation that even teach it, the fear surrounding it, as evidenced by the conference discussion, keeps that exclusion in place. This likely contributes to the overall picture of class blindness that emerges in the U.S.⁸⁵ Further, in many ways this lack of knowledge made an assessment of Marxist application to the project challenging. Yet, because there is over a hundred years of scholarship around class and political economy analyzing Marxist, Weberian, and other insights, and this scholarship has continued to build in almost every part of the world including the U.S., though widely discouraged, the group ventured forward.

G. Scope and Application

As another important part of the discussion that framed a critical perspective, the group agreed that it was important to bring an interdisciplinary analysis to the

85. See generally Mutua, *supra* note 14.

question of law and inequality.⁸⁶ Critical analysis of law recognizes that law is not autonomous but must be related to history, politics, culture, language, narrative, and other fields of study. Although the prominent “Law and Economics” approach is interdisciplinary, this dominant approach takes a narrow orthodox approach to economics. ClassCrits would seek to bring in the work of progressive economists left out of that orthodox economics.

And finally, the group agreed that a critical analysis of law and economic inequality should be informed by the actual practice and social justice efforts occurring throughout the country, and that the group would make its work accessible to such groups. In other words, the group was committed to praxis and to actively doing something about inequality. Praxis in this sense meant a commitment to working with people who might “benefit in a reasonably immediate and material way from a change in existing economic inequality.”⁸⁷ As a practical matter, the group talked about ensuring the participation of community activists who worked on these and related issues to the group’s conferences. The group also committed to ensuring that some portion of their written work was accessible to the general public.

III. EMBRACING A RELATIONAL UNDERSTANDING OF CLASS

Two points emerged from our discussions of what it would mean to explore economic inequality through the lens of class. First, the analysis must go beyond poverty. Second, an analysis of economic class or inequality must be relational rather than status-based.

86. It was eventually decided that the very next gathering would be a conference that took an interdisciplinary approach and which would invite scholars across a range of fields to participate. Some folks were particularly interested in involving progressive economists. And the group committed to drawing on the wealth of material out there on class.

87. Frances Ansley, Thought Piece (undated) (unpublished manuscript submitted to ClassCrits Workshop, Baldy Center for Law & Social Policy) (on file with author).

First the group agreed that the study of law and economic inequality was not simply about the study of law and poverty or the poor. Though the group expressed a concern for those who are economically disadvantaged, and a commitment to study the nature and structure of that disadvantage, the group decided that exploration of economic inequality involved exploring the way law contributed to or abated economic inequality experienced by both those who were privileged by that inequality as well as those who were disadvantaged by it. The study of poverty, some suggested, was often the study of status, not class. That is, poverty was often viewed as a status that deviates from middle class norms, and the middle class itself as a status, rather than a class. In other words, the study was pursued as if the status of poverty or the status of the poor was unrelated to the status of the privileged, as opposed to related to it, and thus for a variety of reasons blinded the society to the nature and exercise of power which was implicated in the existence of poverty.

The second insight, building on the first, was that the study of class implicated the *relational* nature of inequality; that the power of some to decide what, when, and how economic resources will be produced, distributed, and used, and to reap the benefits from that organization and those decisions, is related to and dependent on the exclusion of and possibly the control over unequal others.⁸⁸ The notion that economic inequality, and thus class, is relational arose from multiple perspectives at the workshops.⁸⁹ However,

88. Frank Munger, Thought Piece (undated) (unpublished manuscript submitted to ClassCrits Workshop, Baldy Center for Law & Social Policy) (on file with author).

89. For instance, although labor law can be, and often is, discussed in terms of employer/employee relations without any significant reference to or theories about class relations, the labor law scholar's present emphasized relational class arguments that in part structure labor relations. See Kenneth Casebeer, *Of Service Workers, Contracting Out, Joint Employment, Legal Consciousness, and the University of Miami*, 56 BUFF. L. REV. 1061 (2008); James Pope, *Class Conflicts of Law I: Unilateral Worker Lawmaking versus Unilateral Employer Lawmaking in the U.S. Workplace*, 56 BUFF. L. REV. 1097 (2008). Others engaged Marxian/Weberian relational understanding of class analysis more directly; see, e.g., Anthony Farley, *The Colorline as Capitalist Accumulation*, 56 BUFF. L. REV. 955 (2008); while others drew from a variety of

particular reference was made to Martha Mahoney's article analyzing what she called the anti-transformation (race) cases.⁹⁰ In the article Mahoney notes that popular notions of class in America understand class as status-based, reflecting in cake-like fashion various stratified income levels and lifestyles that have little to do with one another. She urged that legal theoreticians reject these "vulgar status" conceptions of class, which divorce the socio-economic status of individuals from group relations of capital, production, and power, as readily as they reject "vulgar Marxism," which refers to "a crude economic determinism."⁹¹ Instead, she had advocated for a relational understanding of class, arguing that status-based notions of class reinforced assumptions, and made inevitable and natural, understandings that the white working class is and should be attached to whiteness and the unearned privilege it provides; a point I will return to later.

Frank Munger, a workshop participant, explains that a class perspective emphasizes the relational nature of inequality under capitalism, in which the wealth and power of some depends on the subordination and poverty of others.⁹² This idea is in direct opposition to a neoclassical approach, which asserts that, as Munger notes:

My power or wealth has nothing to do with your poverty. Differences are natural—something we bring to the market that cannot be blamed on the system itself. The system will do the best job of redistributing control of resources, given the differences among individuals' needs, interests and wealth. The system has no way of taking accounting of human rights—the rights essential

other class theorists such as Bourdieu; see, e.g., Lucille Jewel, *Bourdieu and American Legal Education: How Law Schools Reproduce Social Stratification and Class Hierarchy*, 56 BUFF. L. REV. 1157 (2008); Martha Mahoney, *supra* note 75.

90. See Mahoney, *supra* note 75, at 799.

91. *Id.*

92. Munger, *supra* note 88. This is so even though it is readily believed that the economy, and particularly the global economy, implicates the interconnectedness, relatedness and dependence of one country to another, demand for oil in China relates to and impacts the supply, demand, and price of oil in the United States—or the wealth of one is related to and dependent on the poverty of others, albeit in a complex and shifting sort of way. *Id.*

to individuals as human being. *The analysis overlooks the distribution of wealth and power that gives meaning and form to the market.*⁹³

In other words, whether under a Marxian or Weberian influenced understanding, a relational understanding of class and economic inequality recognizes that the ownership and control over material resources by some individuals and groups is related to the exclusion of control over those same material resources for others.⁹⁴ For instance, the ownership of land by some people excludes others from controlling and possibly using that same land for their sustenance.

Sociologist Erik Wright clarifies that a relational understanding of class contemplates social relations that determine, over time, the patterns of rights and powers of individuals and groups to and over the material resources used in the production of goods and services for the sustenance of and consumption by (primarily) humans.⁹⁵ Concerned with the material stuff, these social relations are economic relations of power. Four ideas are important here.⁹⁶ They are:

1) that productive resources are material resources such as oil, trees, water, land, equipment, etc., which are put to productive use;

2) that the rights and powers⁹⁷—ownership or relative control—over those material resources are determined, structured and patterned over time through human activity and social interaction, whether out of the barrel of a gun, the constrained consent of the population, or otherwise;

93. *Id.* (emphasis added).

94. Wright, *Foundations of a Neo-Marxist Class Analysis*, *supra* note 55, at 23-28 (discussing the similarities and differences between Marxist and Weberian class analyses).

95. *Id.*

96. This is my interpretation of Wright.

97. Rights and powers over material resources relate to the relative control an individual or group has over that resource. *See* Wright, *supra* note 55, at 26-30.

3) that the social relations which determine ownership and control over productive resources provide economic and political power for some at the exclusion of others—control of land for some is *related* to the exclusion of that same land for others as well as possibly the exploitation, marginalization and subordination of those excluded from significant control over those productive resources;

4) That control and ownership or the exclusion from control over material resources determine where one is located within the market of exchange and/or within the productive process,⁹⁸ such that at the micro-level “what you *have* determines what you get . . . [and] what you *have* determines what you *have* to do to get *what you get*”⁹⁹—*the work you have to do to keep from starving and to live*. That is, that one’s standing or location in the class structure determines your life chances, and in part, what kind of action in concert with others you might take . . . what power you have.¹⁰⁰

Here, according to Marx, exists another level of relational structures, structures of exploitation. Specifically the idea is that capitalist profits are not only related to, but dependent upon, the labor of the workers. In other words, the capitalists and workers are structurally related whereby the capitalist’s wealth and power are dependent on the control and products of the labor of unequal others, the worker’s labor. The more the capitalist can exploit the worker, the higher he likely profits. In this sense, capitalists

98. *See id.*

99. *Id.* at 22.

100. *Id.* at 26-30. At the same time those with the rights and powers to control material resources and to yield such resources productive or profitable—the owners of capital—have an objective interest in ensuring that some portion of the population remains vulnerable to some level of material deprivation in order to ensure those so vulnerable will provide the labor they need to render the resources they control productive. In other words, they hope to ensure that there are people available to work. In addition, they have an interest in accumulating as much of the material resources as possible—the more they have, the more they can put to productive use for profit. At the same time, the more they accumulate the more they may be able to further deprive additional others of those same resources. In doing, so they make larger pools of people vulnerable and in need of work. These are elite class interests.

need workers. And because capitalists need workers, the workers themselves have some form of potential power in class terms. They may have other kinds of power as well, such as rule-making power in a democratic society, assuming the concentration of economic power has not bought and sold political actors and thus overwhelmed the democratic process.¹⁰¹ But here workers have class power to the extent that they can organize around work.¹⁰²

The rights and powers of individuals and groups over the material resources needed to sustain human life as they develop over time implicates not only the relations between individuals and groups but also the social practices, contests, and rules, both formal and informal, that help to structure and cement those relations. In other words, it implicates law. As legal academics, the group was particularly interested in this understanding of class because it aided in foregrounding what Litowitz called the background rules, the hegemonic economic code of law in the U.S. under capitalism. This code of background rules consist of rules that privilege “private ownership of property, employment at will, inheritance, freedom of

101. See, e.g., JONATHAN R. MACEY, GEOFFREY P. MILLER, RICHARD S. CARNELL, *BANKING LAW AND REGULATION* (2001) (providing a historical overview of banking law and discussing the debate between Alexander Hamilton and Thomas Jefferson over the establishment of a national bank and noting that Jefferson feared the concentration of economic power and viewed all corporations as problematic). See also NOBLE E. CUNNINGHAM, *THOMAS JEFFERSON VERSUS ALEXANDER HAMILTON: CONFRONTATIONS THAT SHAPED A NATION* (2000).

102. These are not the only class relations that exist in a society like the United States. For example, there exist huge pools of vulnerable people who do not have work. While their relations with other classes are structured around their exclusion from controlling material resources, they have little power to bargain over work, although they can disrupt work and the society as a whole through, for instance, riots. At the same time, the production of goods and services is not the only way to make a profit; one can be a lender of money, a lender of resources, which will allow for profit making. Financiers, a part of the capitalist class, are particularly important in modern society. And then, there are still others, workers with specialized skills and managers and consumption patterns around education, for instance, that yield these positions. These are all part of the complex class structures, among others, that currently exist and around which sets of complex rules and laws have emerged both producing and structuring these relations. Wright, *supra* note 55, at 26-30.

contract, limited liability for business organizations, patriarchy, and a regime of negative rights that ensures that individuals must secure their own health care, day care, and other benefits." These background rules constitute the legal framework that helps to organize the rights, powers and exclusion of individuals and groups over the material resources needed to sustain human life.

Ultimately, a relational understanding of class and economic inequality thus also centers relations of power, bringing this power to the fore when other analyses are blind to it. Such an understanding of class primarily focuses on those groups with access and control over material resources, particularly productive resources, and those without; and the ways in which those with control have power to influence the production, distribution and consumption of those resources, as well as to influence the rules that help to structure that production, distribution, and consumption.

Mahoney makes two other points that are relevant to this discussion. The first is that even though a relational understanding of class is structural, the way in which groups of people understand this structure, discuss it, and are informed by it, is a cultural phenomenon. For an analogy, the way in which the different sexes are embodied is structural, biological, but what we make of those differences is cultural. Where the analogy fails is that class structures, the system of class relations, are not biological or natural, but the product of past human action. Further, to the extent that what we make of the relations of class is cultural, it is contestable. That is, the interest can be defined, seen, and experienced a vast number of ways and we often struggle over it. Further, the rules of law as a distinct discourse and a way of organizing groups and contest is one way of both culturally and structurally shaping the way in which we define our interests as classes and groups.¹⁰³

103. Mahoney, *supra* note 75, at 829. Here Mahoney argues that law dresses many of the class cases up as race cases. On agency she notes: "The lack of a language of class, the status/stratification concept of inequality, and the

The second point Mahoney makes is that for class to form culturally, there must be concerted action by groups of individuals. They must organize around class or their different economic interests. And, whether groups of people so organize or not, is contingent. That is, they may organize around class, or they may organize around other factors that seem more relevant or salient to their lives, such as race, gender, or sexuality.

Both points lead Mahoney to the central idea, drawing on E.P. Thompson, that class is not a thing but rather a happening, something that must be done.¹⁰⁴ This seems particularly true for working class groups whose subordination seems to emanate from a variety of different sources, unlike that section of the elite whose economic interests are directly tied to the control over subordinate groups and workers and thus who see their own immediate interests quite clearly.

dynamics of racial privilege and subordination are all important to the ways Americans understand themselves and each other." *Id.* at 829.

"Class" is generally invisible in American legal discourse. The term is used constantly ("class action," "classification") in reference to issues other than social and economic inequality and power. When used in law with regard to economic inequality, the term usually refers to gradational rather than relational concepts. Legal discussions of structural inequality seldom use the term "class," instead discussing "race," "poverty," "employee," or "labor," none of which adequately replaces the concept of class. In different ways, each of these terms addresses some questions of power, but none directly addresses the relationships of power between social groups. Since law more easily recognizes race and gender rather than class issues, the need to shape *legally* cognizable claims has also tended to diminish consciousness of and arguments about class. Recent proposals to use "class" instead of race as the basis for affirmative action have not explored the meaning of class in any relational sense and in reality concern more or less elaborated status-based criteria.

Id. at 842-43.

104. *Id.* (citing E.P. THOMPSON, MAKING HISTORY: WRITINGS ON HISTORY AND CULTURE 222 (1994)). Kenneth Casebeer agrees, in part, noting that because in part "of the need to legitimate particular social relations, from fashions to family life, many cultural assumptions and instrumental social actions contribute to class distinctions." Kenneth Casebeer, Thought Piece (undated) (unpublished manuscript submitted to ClassCrits Workshop, Baldy Center for Law & Social Policy) (on file with author).

IV. INTERSECTIONALITY OF CLASS, RACE, AND
GENDER AND THE BLINDING CONFLATION OF
RACE AND CLASS STATUS

The other major tenet that the workshop agreed upon was that the intersection of race and gender (including sexuality)¹⁰⁵ was central to discussions and practices of class. For many of us, this point was obvious. For instance, although both slavery and Jim Crow, as well as today's oppressive racial spatial isolation, were racial systems that oppressed and offended human dignity, they also were economic systems meant to facilitate the exploitation of black labor, to deny black material well-being, and to assist the few in hoarding the resources created by the many. This racial system relationally also privileges whiteness both materially and psychologically through the full range of social systems and institutions including the economy, political system, educational system, etc., setting up a hierarchy of the "races" that renders black racial identity, among others, a racial status within a caste-like system where large numbers of blacks are part of the working poor but in which almost all blacks, even those of the black middle class, are both materially and expressively subordinate.¹⁰⁶

Further, we knew that gender relations support the limitation of women's opportunities while privileging men. And, they render invisible the production and reproduction of labor in the domestic sphere done (and required) mostly of women while simultaneously diminishing the value of the

105. Here I am positing that sexuality is more closely related to gender than to racism or class oppression, drawing on Harry Brod & Michael Kaufman, *Introduction*, in *THEORIZING MASCULINITIES*, *supra* note 36, at 5. *See also* Mutua, *supra* note 29, at 12-16 (on the sex gender system and masculine socialization).

106. For instance, the black middle class (from an income status perspective) is significantly less wealthy than not only the white middle class, but generally have less wealth than the white working class. *See, e.g.*, MELVIN L. OLIVER & THOMAS M. SHAPIRO, *BLACK WEALTH/WHITE WEALTH: A NEW PERSPECTIVE ON RACIAL INEQUALITY* 8 (1995) (describing a difference in financial assets of \$25,794 when a black household has the same educational and occupational attributes as the average white household); *see generally* DOUGLAS S. MASSEY & NANCY A. DENTON, *AMERICAN APARTHEID: SEGREGATION AND THE MAKING OF THE UNDERCLASS* (1993).

labor such production requires. The gender system relationally privileges males both materially and psychologically through the full range of social systems and institutions including economically, politically educationally, etc., setting up a hierarchy of the genders that renders women, and the feminine more generally, a gendered status within a caste-like system where women are disproportionately poor, potentially exploited but in any event, subordinate.¹⁰⁷

Moreover we knew that each individual and group was not only raced and gendered but also classed. That is, that race, gender, and class intersect. What became clear, however, was that a relational understanding of class provided many in the group with another tool of analysis, a tool that we could use together with our understandings of race, gender, and intersectionality, which would aid us in unraveling a blinding conflation in the American setting, a conflation of class with race. Exposing this conflation potentially opens space for the possibility of solidarity.

Race and gender are typically understood as status-based systems. That is, those disadvantaged by race or gender are often seen as situated in a status hierarchy or caste-like system where cultural ideas about their identities mark them for various forms of subordination, super-exploitation, and limited opportunities. In this sense, caste is not class. Yet as Forbath notes, though class and status hierarchies [castes] are analytically separable, they are not distinct social phenomena.¹⁰⁸ In practice, in real life, “they

107. Again, much is written about the way in which law often operates in a manner that supports patriarchy and diminishes the needs, bodies, lives, and opportunities of women. However, not only are all men privileged by gender relations, but elite men are vastly disproportionately privileged by this system. This is so because they control productive material resources and can rely on systems that undervalue women's labor in the workplace and therefore render them a cheaper labor pool. Further, the mass reproduction of human capital and labor on which elite organized production is dependant can be had without being responsive to or in any significant way responsible for supporting that reproduction and production. So while all men benefit, elite men (and sometimes women) with access and power over productive resources benefit the most.

108. William E. Forbath, *Caste, Class, and Equal Citizenship*, 98 MICH. L. REV. 1, 16 (1999).

overlap and shape one another.”¹⁰⁹ Intersectional theory aids in demonstrating this.

Intersectional theory, which developed in the context of explicating black women’s lives, begins to get at the idea that multiple systems shape individuals and group’s life chances. Intersectional theory rejected a single axis framework for analyzing black women’s lives. It rejected the idea that black women were oppressed by race OR sexism but posited instead that black women’s lives were oppressed by both gender and racism, as well as by class. Each organization of hierarchical power relations inherent to the different systems of class, race, and sex shape and constrain both black women’s material and expressive conditions. And they shape them in ways that are different from those of, for example, black men or poor whites.

When a relational understanding of class is added to these analyses, the conflation of class and race at the intersection of class and race is exposed and solidarity at least becomes more plausible. In this, Mahoney’s article is again instructive.

Mahoney explains that conversations about class in the U.S. often are really conversations about an individual’s socio-economic status, perhaps related to consumption, but unrelated to control over productive material resources.¹¹⁰ This is class status as opposed to relational class. Status, she explains, tends to be a zero-sum game; so that providing increased status to one group automatically lowers the status of another group. In addition there are often only two statuses discussed in the U.S. These are the middle class and the underclass status. But further, both of these statuses are racialized, such that the middle class (really a status) is white and the underclass is black (or of color). Here lies the conflation of class as race at the intersection of race and class. Under this understanding of class as status,

109. *Id.*

110. And even then there are only really two such statuses worth discussing, the middle class (really status) and the underclass, both of which are racialized; the middle class is white and the underclass is black or Latino. See Mahoney, *supra* note 75, at 829.

whether race prejudice is present or not, race privilege is status enhancing and attachment to it seems natural.

In this context then, the white working class' "economic" interests are primarily concerns about race status?¹¹¹ So for instance, as Martha Mahoney elaborates, calls to eliminate raced based affirmative action programs in the workplace and to replace them with class based considerations are not concerns about working class issues which presumably might benefit all workers, but rather are concerns about protecting the status of the white working class. They are calls to protect white (racial) privilege. These are demands to protect the status quo of white privilege built on the foundations of white supremacy in which neither poor Chinese or working class Indians in the world, nor underemployed African Americans or Latinos in the U.S., should live as well as whites. These calls suggest—assuming, uncritically, limited resources—that only whites should live well, including working class whites, or at least that this segment of the working class, whites, should live better than all others. Thus the calls and cases pit the white

111. Martha Mahoney notes:

The process of "making class" involves agency and cultural and economic relationships. In "making class," therefore, white privilege is crucially important. If class is "a happening," not "a thing," then the very "happening" of class is shaped by both conscious and unconscious white choices. Since whiteness is *also* an interaction between the material world and our experience of it, class interest is one of the most important ways in which shared identity can affect the experience of self, identity, and interest for white working people. In other words, strong working class identity can help whites be less defined by their positioned perspective or by attachment to privilege.

Conversely, attachment to privilege diminishes solidaristic identification. Both privilege and positioned perception shape "men's ideas and values . . . actions, choices, and beliefs" by distributing benefits and by justifying them. Whiteness can therefore facilitate the sense of "middle class" status expressed by many American workers. Race is part of the construction of class-as-status in America, and status-consciousness is part of what defeats the development of solidaristic consciousness.

working class against people of color, undermining any solidarity that might arise or be cultivated to improve the life chances of all working people.¹¹² This is so even though the status quo apparently does little for the well being of the white working class, even as it is protected—i.e., it reaps some benefit from white privilege—and might live better than all the others.¹¹³

Less visible in this status-based understanding of the white working class' interests is the notion that both the lives of white working class people and the lives of working people across racial, ethnic and gender lines might all be better served if they struggled together on an anti-racist, anti-sexist basis and on the basis of equality, thereby increasing their numbers and power and thereby potentially expanding their control over material resources.¹¹⁴ Blindness is perpetuated here because status is unrelated to the wealth or poverty of other economic classes but is related to race such that an increase in the economic status of one racialized group is a decrease in the status of the other. Nor is there room in this status understanding of class for the idea that grouping the white working class with more economically powerful elite whites might mean that working class issues go unaddressed, in part, because it is not in the immediate economic interest of elite whites to improve working conditions for anybody, including the white working class.¹¹⁵ Ideologically, then, the conflation of class and race at the intersection of both blinds society to

112. *Id.*

113. The question here, as with the points that follow, is that both things may be true and in contradiction to some extent. Poor whites likely reap some marginal benefit from racism. At the same time they might reap some benefit, the bet is more, from class solidarity where they might, with others, effect change in the economy.

114. Here one might question why an anti-racist or pro-feminist position might be necessary given the potential development of worker's identities. As a practical matter, it is not clear a worker identity will hold where there is strident racism and sexism. As a theoretical matter, blacks and whites, for example, are not socially situated in the same position, such that racial solidarity among blacks might serve the larger multiracial group in a way that white solidarity does not given the history of race relations in the U.S.

goals and opportunities of class solidarity as opposed to white racial solidarity. A relational class understanding, in contra-distinction to this, de-naturalizes white attachment to white privilege rendering it more variable; it makes economic privilege and power more apparent, and it makes the possibility of class solidarity more possible.

CONCLUSION

What emerged from the conference was a shared intuition that economic inequality was not only perpetuated by the ways society structures the production and allocation of resources but that it in part was accomplished by creating a certain blindness to these structures. For example, naturalizing the market through discussions primarily about supply and demand in terms of allocation blinds people to issues of what is produced, who decides, and why. This also entails certain blindness to the economic privilege and power of some to effectuate particular types of production and allocations that primarily serve their economic interests. Further, this blindness is embedded in law through its adherence to formal equality, making it easy not only to relegate both those who are economically powerful and the poor to sleep under bridges—same treatment—but to do so without recognizing that precisely because the economically powerful are rich and powerful that they will not have to sleep under the bridge. In addition, ignoring the impact of those with power likely also cements and enlarges these privileges, increasing economic inequality, in part by blocking a fuller analysis of the problems.

The group, therefore, embraced a class-aware approach, but one that was critical. It also suggested that class relations, and not simply class status, was important to the exploration of law and economic inequality. It did so, on the basis of past work, shared assumptions, and the workshop discussions. It similarly found that an intersectional analysis of the ways class relations mutually shape and are shaped by race and gender status were important to understanding what were readily observable phenomena; namely, that racial systems have class as well as gender components and that gender processes are both raced and classed. In analyzing these distinct systems, and

the way they intersect, the ClassCrits project hopes not only to explain social reality in a way that better reflects its operation and to make visible some blind spots, but also to contribute to change, solidarity, and better policies.

The essays that follow spring from our work and our discussions. They examine these and other ideas from a number of different perspectives and angles. Though they do not yet form a systematic body of work, they represent a hunch that there is more to the phenomenon of increasing economic inequality than supply and demand.

