

## CLASSCRITS XIV: FOREWORD

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ClassCrits is an organization made up of scholars, activists, and students that has helped create and shape the field of Law and Political Economy over the last 17 years. The founders of our organization (Angela Harris, Martha McCluskey, and Athena Mutua—the foremothers), recognized that economic inequality in the United States was increasing in ways not seen since the Gilded Age.<sup>1</sup> Indeed, in a February 7, 2024, Reuters article, Howard Schneider wrote, “[t]he inflation-adjusted wealth of white households in the U.S. grew faster than that of Black and Hispanic households from the start of 2019 through the third quarter of last year [2023], with Black households in particular now worse off than they were before the pandemic, a New York Fed study has concluded.”<sup>2</sup>

We categorically reject the conventional wisdom that portrays this wealth inequality as either the natural byproduct (at best) or the unfortunate

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1. Athena D. Mutua, *ClassCrits Time? Building Institutions, Building Frameworks*, J. L. & POL. ECON. 1(2), 333, 336 (2021); Angela Harris et al., *ClassCrits Mission Statement*, 43 SW. L. REV. 651 (2014).

2. Howard Schneider, *US Wealth Inequality Grew Worse Through Current Recovery, NY Fed Study Shows*, REUTERS (Feb. 7, 2024, 7:52 AM), <https://www.reuters.com/world/us/us-wealth-inequality-grew-worse-through-current-recovery-ny-fed-study-shows-2024-02-07/>; A February 5, 2024, paper published by the Federal Reserve Bank of St. Louis confirmed that the wealth gap in the United States is widening. According to the St. Louis Fed, the top 10% of households in the United States has \$6.5 million in wealth and, as a group, hold 66.6% of total U.S. household wealth compared to Black families who own on average approximately 24¢ for every \$1.00 of white family wealth, and Hispanic families who own on average approximately 19¢ cents for every \$1.00 of white family wealth. Ana Hernández Kent & Lowell R. Ricketts, *The State of U.S. Wealth Inequality*, FED. RSRV. BANK OF ST. LOUIS (Feb. 5, 2024, last visited Apr. 14, 2024), <https://www.stlouisfed.org/institute-for-economic-equity/the-state-of-us-wealth-inequality>.

yet unavoidable costs (at worse) of the impartial workings of the “market.”<sup>3</sup> Instead, we believe, among other things, that: (i) class power is inextricably connected to the development of racial and gender hierarchies, as well as other systems of unequal power and privilege and that the law is central to the creation and maintenance of these structural inequalities;<sup>4</sup> and (ii) “the economy is part and parcel of the constructed social fabric of society, and as such is the product of power, politics, rules, processes, dynamics, and intersecting social practices of domination *institutionalized* over time.”<sup>5</sup> In light of our commitments, the ultimate aim of ClassCrits is to promote economic and social justice, through interdisciplinary and critical legal frameworks, which include intersectional and anti-subordination perspectives, that analyze, explain, deconstruct, and solve the socio-political-economic problems confronting all of us.<sup>6</sup>

One of our specific goals as an organization is to “[f]oster discussion among scholars and activists on issues related to class and the intersection of class with race, gender, sexuality and other forms of structural subordination and inequality . . . .”<sup>7</sup> And to advance this goal, we organize annual conferences.

Thanks in large part to the generosity of Darby Dickerson, the President and Dean of Southwestern Law School, ClassCrits XIV, was held at Southwestern Law School in Los Angeles on February 9-10, 2024.<sup>8</sup> The theme for this year’s conference was, “Demanding Justice in the Face of Retrenchment: Finding Common Ground and Building Coalitions Across Borders.”<sup>9</sup> Over 130 people from across the country and different parts of the world came together to share ideas, start discussions, and engage with other people committed to social justice. Just by way of example, some of the conversations at ClassCrits XIV addressed neoliberalism and

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3. Harris et al., *supra* note 1 at 651.

4. *Id.* at 651-52.

5. Mutua, *supra* note 1, at 335.

6. *Id.* at 334, 339; Harris et al., *supra* note 1, at 652.

7. Harris et al., *supra* note 1, at 652.

8. *E.g.*, *ClassCrits XIV – Program*, ClassCrits, [https://www.classcrits.org/content.aspx?page\\_id=22&club\\_id=459418&module\\_id=659083](https://www.classcrits.org/content.aspx?page_id=22&club_id=459418&module_id=659083) (last visited Mar. 27, 2024).

9. *Id.*

economics,<sup>10</sup> constitutional law,<sup>11</sup> history,<sup>12</sup> workers' rights and labor unions,<sup>13</sup> immigration,<sup>14</sup> social movements and organizing in the 21<sup>st</sup> century,<sup>15</sup> and coalitions.<sup>16</sup>

This year's ClassCrits conference was co-sponsored by the Southwestern Law Review and the Southwestern Journal of International Law. Each of the Southwestern journals graciously agreed to publish papers in two separate symposium issues that were solicited from ClassCrits XIV participants.

The essays in the Southwestern Law Review symposium issue are rich in so many ways.<sup>17</sup> First, the context in which the authors situate their work varies widely, but includes: Civil War America (Crawford), present day United States (Hart), the administrative state (Joo), homelessness and poverty (Logan), financialization and debt (Sousa), terrorism enhancement statutes (Benlloch), criminal law (Conner), and summary evictions (Hale).

Second, given that this is a ClassCrits symposium, it was not surprising to see that a couple of the essays critique neoliberalism (Logan, Sousa) or that several of the essays ground their arguments using theories of power

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10. *E.g.*, *ClassCrits XIV – Program*, ClassCrits, [https://www.classcrits.org/content.aspx?page\\_id=22&club\\_id=459418&module\\_id=659083](https://www.classcrits.org/content.aspx?page_id=22&club_id=459418&module_id=659083) (last visited Mar. 27, 2024) (Concurrent Panel 4D: Economic Regulation, Enforcement, & the Administrative State and Concurrent Panel 8C: Economics at Work).

11. *E.g.*, *ClassCrits XIV – Program*, ClassCrits, [https://www.classcrits.org/content.aspx?page\\_id=22&club\\_id=459418&module\\_id=659083](https://www.classcrits.org/content.aspx?page_id=22&club_id=459418&module_id=659083) (last visited Mar. 27, 2024) (Concurrent Panel 8B: Critical Constitutional Reinvention: A Proposal for Reimagining America's First Principles).

12. *E.g.*, *ClassCrits XIV – Program*, ClassCrits, [https://www.classcrits.org/content.aspx?page\\_id=22&club\\_id=459418&module\\_id=659083](https://www.classcrits.org/content.aspx?page_id=22&club_id=459418&module_id=659083) (last visited Mar. 27, 2024) (Concurrent Panel 5C: Before the Movement: The Hidden History of Black Civil Rights and Concurrent Panel 6D: Legal History & Race).

13. *E.g.*, *ClassCrits XIV – Program*, ClassCrits, [https://www.classcrits.org/content.aspx?page\\_id=22&club\\_id=459418&module\\_id=659083](https://www.classcrits.org/content.aspx?page_id=22&club_id=459418&module_id=659083) (last visited Mar. 27, 2024) (Concurrent Panel 6B: The History and Future of the Labor Union Movement and Concurrent Panel 8A: Workers, Unions, & Marx).

14. *E.g.*, *ClassCrits XIV – Program*, ClassCrits, [https://www.classcrits.org/content.aspx?page\\_id=22&club\\_id=459418&module\\_id=659083](https://www.classcrits.org/content.aspx?page_id=22&club_id=459418&module_id=659083) (last visited Mar. 27, 2024) (Concurrent Panel 2A: Immigration—Identity, Violence, & Mobility and Concurrent Panel 7C: Inverting Immigration Exceptionalism).

15. *E.g.*, *ClassCrits XIV – Program*, ClassCrits, [https://www.classcrits.org/content.aspx?page\\_id=22&club\\_id=459418&module\\_id=659083](https://www.classcrits.org/content.aspx?page_id=22&club_id=459418&module_id=659083) (last visited Mar. 27, 2024) (Concurrent Panel 1A: Race, Work, and Twenty-First Century Organizing and Concurrent Panel 2B: On Law Breaking, Defiance, and Non-Compliance).

16. *E.g.*, *ClassCrits XIV – Program*, ClassCrits, [https://www.classcrits.org/content.aspx?page\\_id=22&club\\_id=459418&module\\_id=659083](https://www.classcrits.org/content.aspx?page_id=22&club_id=459418&module_id=659083) (last visited Mar. 27, 2024) (Concurrent Panel 3A: Demanding Justice Via Private Law: A Space for Coalitions and Concurrent Panel 7A: Coalition Building & Movement Lawyering).

17. *See generally* 53 SW. L. REV. 361 (2025).

based on Foucault's (Logan, Hale), Gramsci's (Hart), or both theorists' (Sousa) work.

Third, employing a traditional "OUTCrit"<sup>18</sup> practice, many of the essays expose and deconstruct problems confronting us on the micro and macro levels in American society. Michael Sousa's essay, *Personal Debt and Disciplinary Power*, analyzes the disciplining role that the neoliberal financialization of debt plays on a micro level, namely, in individual debtors' lives.<sup>19</sup> More specifically, Sousa interviewed thirty-six individuals with crushing amounts of debt and on the verge of filing bankruptcy to explore how they grapple with their debt load before and after deciding to file bankruptcy.<sup>20</sup> Situating his study within Foucault's governmentality framework, Sousa documents the ways in which overwhelming individual debt burdens harm these debtors materially and psychologically.<sup>21</sup> He then argues that "debt as disciplinary power is both normalizing and correcting, leading wayward individuals to re-center themselves as future responsabilized consumers of personal debt" when they emerge from bankruptcy.<sup>22</sup>

In her essay, *Challenging the Criminalization of Homelessness with the 8<sup>th</sup> Amendment: Johnson, Martin, and the Future of Poverty Governance*, Jenny Logan uses two recent Ninth Circuit Court of Appeals cases that held that depriving homeless people from sleeping violates the 8<sup>th</sup> Amendment as the basis for her project that both traces and challenges the social construction of class inequalities as natural, normal, and necessary.<sup>23</sup> Logan then situates her social construction argument within a larger critique of neoliberalism.<sup>24</sup> She argues that anti-homeless ordinances and administrative rules, like the ones struck down in *Martin* and *Blake*, respectively, are part of the "broader neoliberal agenda of disciplining poor people in an effort to create 'compliant and competent worker-citizens.'"<sup>25</sup> Unfortunately, the United States

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18. "OutCrits" include legal scholars aligned with "outgroups," like Critical Race Theory, Queer Legal Theory, ClassCrits, etc. Francisco Valdes, *Theorizing "OutCrit" Theories: Coalitional Method and Comparative Jurisprudential Experience—RaceCrits, QueerCrits, and LatCrits*, 53 U. MIA. L. REV. 1264, 1270 (1999) ("The 'OutCrit' denomination is an effort to conceptualize and operationalize the social justice analyses and struggles of varied and overlapping yet 'different' subordinated groups in an interconnective way. By 'OutCrit' I thus mean . . . those scholars who identify and align themselves with outgroups in this country, as well as globally.").

19. Michael Sousa, *Personal Debt and Disciplinary Power*, 53 SW. L. REV. 504 (2025).

20. *Id.*

21. *Id.*

22. *Id.*

23. Jenny Logan, *Challenging the Criminalization of Homelessness with the 8<sup>th</sup> Amendment: Johnson, Martin, and the Future of Poverty Governance*, 53 SW. L. REV. 489 (2025).

24. *Id.*

25. *Id.*

Supreme Court disagreed with Logan’s cogent and compelling arguments when it ruled last term in the *City of Grants Pass, Oregon v. Johnson*<sup>26</sup> case that “[t]he enforcement of generally applicable laws regulating camping on public property does not constitute ‘cruel and unusual punishment’ prohibited by the Eighth Amendment.”<sup>27</sup> Notwithstanding this constitutional setback, Logan reminds us that “unhoused individuals and homeless rights advocates will continue to fight for dignity, survival, and material resources long after the Supreme Court’s decision in *Johnson*.”

In his essay, *Uneven Development and Racial Capitalism in Urban Criminal Law Formation*, Brendan M. Conner exposes what he calls hybridized criminal laws to describe what police and prosecutors have done in urban spaces.<sup>28</sup> More specifically, Conner argues that the police and prosecutors have repurposed land-use and zoning remedies and principles in ways that facilitate the flow of financial capital and law enforcement capital to low-income and racialized neighborhoods.<sup>29</sup> These hybridized criminal laws not only permit the strategic deployment of police to depressed urban hot spots, they also cloak the police with expanded authority to target individuals in those urban spaces and the “problem properties” where they live and work.<sup>30</sup> Conner then uses human geography and political economy to explicitly link hybridized criminal laws to racial capitalism and to explain the interrelationship between the rise of profit driven and order maintenance policing.<sup>31</sup>

In his essay, *New Canaries, Old Coal Mines: United States v. Jessica Rae Reznicek (2022)—A Case Study on the Creeping Expansion of the Federal Terrorism Sentencing Enhancement*, Vincent Benloch argues that much more attention needs to be paid to the currently unmitigated discretion and authority of judges to unilaterally categorize criminal acts as “terrorism.”<sup>32</sup> Benloch uses the *Reznicek* case to illustrate the problem he sees in criminal law (plea deals specifically) and the application of the federal terrorism sentencing enhancement statute.<sup>33</sup> In *Reznicek*, the federal terrorism enhancement statute was used against an environmental activist

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26. 144 S. Ct. 2202 (2024).

27. *Id.* at 2204.

28. Brendan M. Conner, *Uneven Development and Racial Capitalism in Urban Criminal Law Formation*, 53 SW. L. REV. 398 (2025).

29. *Id.*

30. *Id.*

31. *Id.*

32. Vincent M. Benloch, *New Canaries, Old Coal Mines: United States v. Jessica Rae Reznicek (2022), A Case Study on the Creeping Expansion of the Federal Terrorism Sentencing Enhancement*, 53 SW. L. REV. 369 (2025).

33. *Id.*

who vandalized the construction sites of a private company associated with the Dakota Access Pipeline.<sup>34</sup> Benlloch argues that the use of the terrorism enhancement statute in these circumstances could have adverse implications (a disciplinary function?) for future acts of civil disobedience and property damage against private actors.<sup>35</sup>

Fourth, the symposium essays force us to rethink what we think we know and reassess where we are in this present moment. Malachi Crawford's essay, *Dispossessing Copperhoods, Bushwhackers, and Slaveholding Rebels: African American Testimony and Self-Emancipation Politics in Civil War Border States*, asks us to reevaluate our understanding of race relations in Border States during and after the U.S.<sup>36</sup> Civil War and to rethink the agency of enslaved individuals during this time period.<sup>37</sup> Crawford tells us that enslaved individuals took advantage of opportunities to testify on the loyalty of citizens living in these Border States.<sup>38</sup> This testimony not only contributed to the dispossession of the personal property of white Southerners aligned with the Confederacy, it also helped secure individual freedom for those who testified. Crawford argues that, by engaging strategically with the legal systems then in place, African Americans helped dismantle the infrastructure that sustained the institution of slavery and shaped their own destinies in a tumultuous yet pivotal moment in American history.<sup>39</sup>

In my thought piece, *In This Moment*, I take a look at several problems currently confronting us in 2024 (e.g., abortion restrictions, anti-trans violence) and use Antonio Gramsci's concept of an "organic crisis" to explain what I think is happening in the United States right now.<sup>40</sup> More specifically, I argue that we are currently in a crisis that challenges the very fundamentals on which our society is built, because it is premised on long-simmering antagonisms and fears that have deeply entrenched roots in our

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34. *Id.*

35. *Id.*

36. Malachi D. Crawford, *Dispossessing Copperhoods, Bushwhackers, and Slaveholding Rebels: African American Testimony and Self-Emancipation Politics in Civil War Border States*, 53 SW. L. REV. 404 (2025).

37. *Id.*

38. *Id.*

39. Malachi Crawford's essay echoes the work of Professor Dylan C. Penningroth in his new book, *BEFORE THE MOVEMENT: THE HIDDEN HISTORY OF BLACK CIVIL RIGHTS* (Liveright, 2023). Professor Penningroth essentially rewrites the conventional narrative of Black civil rights by documenting the ways in which African Americans have thought about, talked about, and used what Penningroth calls "rights of everyday use" even as far back as slavery. Professor Penningroth's book was the subject of an author-meets-reader panel organized by Professor Hila Keren at ClassCrits XIV.

40. Danielle Kie Hart, *In This Moment*, 53 SW. L. REV. 446 (2025).

socio-economic-political system.<sup>41</sup> I suggest (and warn) in my essay that we may be witnessing the formation and deployment of what I call the “White Identity movement.”<sup>42</sup>

Fifth, the essays provide contrasting views of the role of the State, which reminds us that the State, including the law in general, often plays different roles in the pursuit of social justice.<sup>43</sup> Zachary Hale examines the summary eviction process in his essay, *The State of Evictions: Public Power and Rental Value*, to illustrate the coercive and constitutive powers of the State that structure the residential rental market in the United States.<sup>44</sup> By providing landlords with the summary eviction process, Hale argues that the State prioritizes and practically guarantees returns on investment in the form of rental income.<sup>45</sup> The resulting financial gains from this State-created and enforced process are narrowly concentrated in the hands of property owners, but the costs are socially diffused and contribute to, among other things, income inequality in the broader society.<sup>46</sup> Hale argues that, as a result of the State augmented threat of eviction, the summary eviction process becomes a tool for debt collection and tenant discipline.<sup>47</sup>

In contrast to Hale, Thomas Joo’s essay, *Antitrust Enforcement and Labor Markets Under the Biden Administration*, highlights the positive role the State can play in protecting the public from anticompetitive conduct.<sup>48</sup> Joo informs the reader that antitrust enforcement has historically focused on anticompetitive behavior by firms as sellers in the product markets, which

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41. *Id.*

42. *Id.*

43. “Dual consciousness” is a concept articulated by Critical race theorists in the 1980s. Building on W.E.B. Du Bois’ concept of “double consciousness,” “dual consciousness” recognizes that the law can be both a source of oppression and liberation for oppressed groups in American society. *See, e.g.,* KIMBERLÉ CRENSHAW ET AL., CRITICAL RACE THEORY: THE KEY WRITINGS THAT FORMED THE MOVEMENT xxiv (1995) (“We wanted to acknowledge the centrality of rights discourse even as we recognized that the use of rights language was not without risks.”); Susan K. Serrano, *Dual Consciousness About Law and Justice: Puerto Ricans’ Battle for U.S. Citizenship in Hawai’i*, 29 *CENTRO J.* 164, 174 (2017) (“ . . . critical race theorists also embraced W.E.B. Du Bois’ concept of ‘double consciousness,’ which describes the way in which African Americans held two perspectives at once—the majority perspective (which demonized and despised them) as well as their own . . . . Critical race theorists therefore maintain that oppressed groups can have a profound cynicism about law and legal process while acknowledging the historical and social role that rights have played in both liberating (even if imperfectly) and elevating the psyche of subordinated groups.”) (ellipses in original).

44. Zachary Hale, *The State of Evictions: Public Power and Rental Value*, 53 *SW. L. REV.* 421 (2025).

45. *Id.*

46. *Id.*

47. *Id.*

48. Thomas Joo, *Antitrust Enforcement and Labor Markets Under the Biden Administration*, 53 *SW. L. REV.* 470 (2025).

usually benefits competitor firms and consumers by preserving price competition.<sup>49</sup> But, the Biden Administration expressly promised to enforce antitrust law in labor markets, which, if done, would police anticompetitive behavior by firms as buyers in the market.<sup>50</sup> This switch in policy by the Biden Administration, therefore, could benefit workers who are the sellers of labor.<sup>51</sup> To counter detractors' arguments, Joo concludes by arguing that the antitrust statutes do not need to have a unified basis in economic theory to justify their application and instead can serve multiple theoretical and policy goals, including preventing buyers and sellers from unfairly obtaining market power.<sup>52</sup>

And finally, some of the essays offer solutions to or ways forward with some of the problems they identify. To address the private gains and public costs that summary evictions generate, Zachary Hale proposes several different solutions, including providing tenants with legal services in eviction proceedings, enacting legislation that restricts the grounds for eviction, and enforcing existing housing codes.<sup>53</sup> I use my essay as an opportunity to remind everyone about two OutCrit practices, namely, critical self-reflection (Lopez) and narrative storytelling (Montoya).<sup>54</sup> I think we need these practices as much now as we ever have.

This foreword cannot do justice to the essays in this ClassCrits XIV Southwestern Law Review symposium issue. The synopses provided above, however, should give the reader an indication of the breadth, scope, and richness of the issues raised and analyzed in the ten collected essays. Together, the essays in this symposium add to the growing body of ClassCrits work and to the ongoing social justice discourse that ClassCrits is committed to fostering and supporting. In solidarity.

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49. *Id.*

50. *Id.*

51. *Id.*

52. *Id.*

53. Hale, *supra* note 44.

54. Hart, *supra* note 40.