

SEMIOTEXT(E) INTERVENTION SERIES

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Published by Semiotext(e)
PO BOX 629, South Pasadena, CA 91031
www.semiotexte.com

Design: Hedi El Kholti

Inside cover photo: Passers-by looking at bricklayers repairing a hole in Rovigo's jail after militants filled a car with TNT and blew a hole in the wall to allow four women to escape from prison. Italy, 1981. (AP WIRE)

ISBN: 978-1-63590-002-6

Distributed by The MIT Press, Cambridge, Mass.
and London, England

Printed in the United States of America

Jackie Wang

Carceral Capitalism

semiotext(e)
intervention
series □ 21

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Policing as Plunder:

Notes on Municipal Finance and the
Political Economy of Fees and Fines

Outstanding municipal debt held in bonds in the United States has reached over \$3.7 trillion. In news reports on the fiscal crisis in Puerto Rico—which came to a head in August 2015 when the government defaulted on a \$58 million bond payment—journalists note that impending fiscal crises may be on the horizon for many municipalities and states in the U.S. “Across America, dozens of cities, counties and states may be heading down the same financial rabbit hole. Illinois, New Jersey, Philadelphia, St. Louis and Jacksonville, Fla., to name just a few, are all facing their own slowly unspooling financial disasters.”¹ In the media, the cause of municipal and state budget crises is usually attributed to governmental profligacy: robust pension and health-care benefits for public employees, welfare programs, and labor unions are, according to this narrative, sapping government funds.

Local and state governments, we are told, simply do not have any money, and raising property taxes is not a viable political option. To complicate matters further, this problem is coming at a time when municipalities and states are also in dire need of infrastructural improvements. As exemplified in Flint, Michigan, money is needed to maintain and renovate water systems, as well as to chemically treat water that passes through aging lead pipes. Furthermore, one in ten bridges in the U.S. is structurally unsound and long overdue for repairs. In addition to funds needed for infrastructural projects, many economists are predicting that a “pension crisis” will occur as the baby boomer generation retires. According to *The Journal of Economic Perspectives* and the PEW Center on the States, in the U.S., pension programs are underfunded by an estimated \$1 trillion to \$3.23 trillion (with city and municipal pensions needing an estimated \$574 billion).

But can the looming state and municipal fiscal crises be reduced solely to governmental profligacy and deferred costs? By framing the problem this way, the implicit solution posed is to cut back on public spending and embrace austerity measures that disproportionately affect poor people, which is what happened in 2013 when Detroit filed for bankruptcy. In this essay I will examine how finance operates on the municipal level. What are the causes of the urban fiscal crisis? How will cities

generate revenue to meet their contractual obligations to bondholders? Who will suffer if (or when) local governments go bankrupt or default on loans? What mechanisms will be used to generate revenue? How will the fiscal crises affect the lives of people on the ground?

The financialization of municipalities, the loss of key tax revenue streams, deindustrialization, and capital flight are the causes of the fiscal crisis—not reckless public spending. The situation has led to the deployment of socially deleterious methods of revenue extraction that target vulnerable populations, particularly poor black Americans. I will focus specifically on how municipal police departments, and the Ferguson Police Department in particular, use fee and fine farming to generate revenue. Next, I will examine the social consequences of this method of revenue extraction. Although revenue is not a form of capital per se, I will analyze how, given that municipal affairs have been thoroughly financialized, revenue is indirectly used to subsidize the process of capitalist accumulation.

Fees and Fines: Social Nightmares

In September 2015, Judge Marvin Wiggins of Perry County, Alabama, addressed a courtroom packed with people who owed fines or fees: “Good morning, ladies and gentlemen,” he began. “For

your consideration, there's a blood drive outside. If you don't have any money, go out there and give blood and bring in a receipt indicating you gave blood."² According to a *New York Times* article, the judge went on to note that "the sheriff has enough handcuffs" for those who did not want to give blood and could not afford to pay off their fees and fines. Offenders were told to go to a mobile blood bank parked outside the courthouse and to bring a receipt to the clerk proving they had donated a pint of blood. In exchange, offenders would "receive a \$100 credit toward their fines." Campbell Robertson writes, "Payment-due hearings like this one are part of a new initiative by Alabama's struggling courts to raise money by aggressively pursuing outstanding fines, restitution, court costs and lawyer fees. Many of those whose payments are sought in these hearings have been found at one point to be indigent, yet their financial situations often are not considered when they are summoned for outstanding payments."³ The relationship between municipal governments and the public has become so parasitic (or perhaps *vampiric* would be more appropriate here) that when the poorest of the poor have nothing left to give to struggling municipalities, they may be compelled to literally offer up their blood. Even when indigent offenders are not coerced by courts to donate blood (using the threat of jail time),

those who are poor may resort to selling blood to pay outstanding fees and fines. A *Harvard Law Review* article titled “Policing and Profits” describes the case of Tom Barrett, a man from Augusta, Georgia, who was arrested in 2012 for stealing a can of beer. As a result of this offense, Barrett became ensnared in a web of fees and fines:

When Barrett appeared in court, he was offered the services of a court-appointed attorney for a \$80 fee. Barrett refused to pay and pled “no contest” to a shoplifting charge. The court sentenced Barrett to a \$200 fine plus a year of probation. Barrett’s probation terms required him to wear an alcohol-monitoring bracelet. Even though Barrett’s sentence did not require him to stop drinking alcohol (and the bracelet would thus detect all the alcohol Barrett chose to drink with no consequences), he was ordered to either rent this bracelet or go to jail. The bracelet cost Barrett a \$50 startup fee, a \$39 monthly service fee, and a \$12 daily usage fee. Though Barrett’s \$200 fine went to the city, these other fees (totaling over \$400 a month) all went to Sentinel Offender Services, a private company.⁴

During this time, Barrett’s sole source of income was from selling his blood plasma. He notes, “You can donate plasma twice a week as long as you’re

physically able to ... I'd donate as much plasma as I could and I took that money and I threw it on the leg monitor."⁵ Barrett, who began skipping meals to pay off his debts, eventually became ineligible to donate plasma because his protein levels were too low. After his debt to Sentinel ballooned to more than \$1,000, the company obtained a warrant for his arrest, and Barrett was sent to jail for failing to pay off his debt. Increasingly, municipalities (and companies contracted by municipalities) are behaving like businesses, viewing residents as potential sources of revenue, as well as viewing the generation of revenue via fines as a form of *productivity*.

"Policing and Profit" describes three ways that residents are used to generate revenue: 1) through usage fees imposed by criminal courts, 2) through private probation supervision, and 3) through civil forfeiture (the seizure of someone's property). The article pays particular attention to the role law enforcement plays in extracting revenue from the poor. Debt is imposed on residents through criminal proceedings. Private companies contracted by municipalities to provide probation "services" also have the power to impose more fees and fines. Thus, a situation has emerged where the government is essentially creating a captive market for companies providing probation supervision, which have very little oversight (companies are not even required to report their revenue).

In a *New York Times* op-ed, Thomas B. Edsall described this parasitic relationship to the poor as “poverty capitalism,” though I would add it might be imprecise to call municipal revenue “capital,” as the revenue collected covers government expenditures and does not directly facilitate the expansion of capitalist production. However, given that government bodies are increasingly reliant on credit to finance their activities (as tax collection has not grown to keep pace with expenditures), a growing portion of revenue is going toward making payments to creditors. Furthermore, municipalities are increasingly serving the interests of the private sector to the detriment of the people local governments are supposed to serve through their contracts with private companies. Government bodies outsource services to private companies as a way to cut costs and improve efficiency, but these deals often backfire when companies find a way to overcharge governments for services. Private-public partnerships in the arena of criminal justice can also give companies monopoly access to potential revenue streams. Edsall notes that Sentinel Offender Services, the company that oversaw the monitoring of Barrett’s alcohol intake, has contracts with more than two hundred government agencies. Edsall also emphasizes that forcing the poor to bear the burden of funding municipal activities is politically appealing because the poor (and criminal offenders

in particular) lack political power, and extracting revenue from disenfranchised people enables local governments to generate revenue without raising taxes. The social cost of the use of fees and fines to generate revenue is enormous. As Edsall notes, “This new system of offender-funded law enforcement creates a vicious circle: The poorer the defendants are, the longer it will take them to pay off the fines, fees and charges; the more debt they accumulate, the longer they will remain on probation or in jail; and the more likely they are to be unemployable and to become recidivists.”⁶ In short, the poor become ensnared in a cycle of debt and incarceration that is difficult to overcome and can derail their lives in profound ways.

Derwyn Bunton, the chief of the public defender’s office in New Orleans, describes how petty offenders fund the court system in New Orleans. In a *New York Times* editorial titled “When the Public Defender Says, ‘I Can’t Help’” Bunton notes that *fines and fees account for two-thirds of the public defender system’s budget*, with the rest coming from the state. While Louisiana spends nearly \$3.5 billion a year to “investigate, arrest, prosecute, adjudicate and incarcerate its citizens,” less than 2 percent of that amount is spent on providing legal defense for indigent individuals.⁷ The disproportionately high amount of money spent on prisons and police, when held against the meager amount

set aside to legally defend poor individuals, reveals that when it comes to government expenditures, it is not so much a question of whether to spend or not, but of how government spending is distributed: Which activities are even legible as public expenses, and which expenditures are invisible because they cover activities that are considered the legitimate and necessary functions of the state?

In New Orleans, much of the money that goes toward funding public defenders comes from fines for traffic offenses and from poor people themselves in the form of court fees. As Bunton notes, “Poor people must pay \$40 to apply for representation, and an additional \$45 if they plead guilty or are found guilty. No other states lean so heavily on fines and fees paid mostly by the poor.”⁸ Given that Louisiana’s budget is organized such that the New Orleans public defender’s office must rely so heavily on fines from criminal proceedings, the revenue stream being tapped here simultaneously creates a higher demand for public defenders. The end result is a highly inefficient, clogged, and ineffective court system that is unable to provide adequate legal representation to poor people, who are in turn used to generate revenue. Bunton suggests that this might be one reason why “Louisiana has the nation’s highest rates of incarceration *and* exoneration for wrongful convictions.”⁹ He calls on the state to reform its system of funding such

that it does not rely on revenue generated from fees and fines.

As these articles and editorials demonstrate, the public has begun to scrutinize the widespread use of fees and fines to generate municipal revenue. This has largely been catalyzed by the findings of the U.S. Department of Justice's investigation of the Ferguson Police Department following the murder of Michael Brown, the unarmed black man who was fatally shot by Ferguson police officer Darren Wilson. In 2013, municipal fees and fines accounted for 20.2 percent of Ferguson's \$12.75 million budget. The report, released on March 4, 2015, noted:

The City's emphasis on revenue generation has a profound effect on FPD's approach to law enforcement. Patrol assignments and schedules are geared toward aggressive enforcement of Ferguson's municipal code, with insufficient thought given to whether enforcement strategies promote public safety or unnecessarily undermine community trust and cooperation. Officer evaluations and promotions depend to an inordinate degree on "productivity," meaning the number of citations issued. Partly as a consequence of City and FPD priorities, many officers appear to see some residents, especially those who live in Ferguson's predominantly African-American neighborhoods,

less as constituents to be protected than as potential offenders and sources of revenue.¹⁰

The report quotes email correspondence between the Ferguson finance director/city manager John Shaw and Chief of Police Thomas Jackson that reveals how Shaw and Jackson collaborated to boost revenue generated through fees and fines. In March 2010 Shaw wrote to Jackson, “unless ticket writing ramps up significantly before the end of the year, it will be hard to significantly raise collections next year. What are your thoughts? Given that we are looking at a substantial sales tax shortfall [caused by the economic recession that began in 2008], it’s not an insignificant issue.”¹¹ Law enforcement responded accordingly. From 2011 to 2012, revenue generated from municipal fees and fines increased more than 33 percent, from \$1.41 million to \$2.11 million.

Though the Ferguson report does not interrogate the economic context that encourages the adoption of fine farming as a way to boost revenue, the report does raise questions for me about the inner workings of municipal finance. What gaps are municipalities trying to fill when they resort to fine farming to generate revenue? Where does the revenue go? What types of borrowing are municipalities engaged in these days, and how does the need to remain solvent shape municipal politics?

To begin to answer some of these questions, I turn now to analyses of the 1975 New York City fiscal crisis and the 2013 Detroit fiscal crisis.

The Financialization of Municipalities: From New York City to Detroit

In the 1960s and 1970s, as David Harvey notes, New York City began rapidly deindustrializing, and many jobs went overseas or to the suburbs. This created an unemployment crisis that the city attempted to solve by expanding the municipal sector and hiring more public employees (namely people of color), using funds provided by the federal government. During this period there was also a surplus of capital that needed to be reinvested somewhere. One way to fend off a crisis caused by overaccumulation is to implement a program of urbanization. Harvey refers to this method of absorbing surplus capital as the “spatial fix”: the need to absorb surplus capital catalyzes a building boom, investment in real estate, and rapid urban development. This is what took place in New York City in the 1960s and 1970s, until the property market collapsed in 1973 after the real estate speculation bubble burst. During the same period, Richard Nixon stopped giving federal money to the city in an attempt to undermine Lyndon B. Johnson’s Great Society programs and inaugurate

an era of “fiscal responsibility.” New York City began to borrow heavily to compensate for the revenue gap created by the property market crash and the withdrawal of federal funds, but in 1975, the investment bankers decided to stop lending money to the struggling city. Without any liquid funds to cover its high operation cost, the city experienced a dramatic fiscal crisis.

According to Harvey, the investment bankers decided to stop lending money to the city as a way to gain political influence and have more control over the city’s fiscal affairs. As many scholars, including Harvey, have noted, the 1975 bankruptcy of New York City ushered in a neoliberal model for handling fiscal crises: city budgets would be reorganized to reflect a program of austerity. Harvey, in his writings on neoliberalism, details the influence finance has on dictating public spending when cities run out of money. In New York City, Harvey notes, there was a “financial coup against the city ... authority over the budget was taken away from the elected officials and given to the Municipal Assistance Corporation (MAC), later called the Emergency Financial Control Board.”¹² The MAC used money to pay off bondholders, and whatever was left over went into the city budget. This led to massive cuts in spending for public services, widespread unemployment, and the weakening of labor unions, which were often blamed for the crisis.

Harvey puts it bluntly: “If there is a conflict between the well being of financial institutions and the well being of the population, the government will choose the well being of the financial institutions; to hell with the well being of the population.”¹³ What Harvey is describing is a political state of exception created by a financial crisis. Governance by elected officials is suspended. The crisis authorizes the seizure of the decision-making power of the local government by emergency managers, who act on behalf of the financial sector by prioritizing the interests of creditors.

Yet Joshua Freeman notes that while New Yorkers suffered greatly after the implementation of austerity measures, the neoliberalization of New York City as a project was not carried out in full, at least not to the extent it has been carried out in recent years in Detroit. While Congress and the Obama administration did not even consider a federal intervention to prevent Detroit from going bankrupt, corporations and banks considered too big to fail have been bailed out by the government. Freeman notes that the 1979 bailout of Chrysler and the handling of the New York City fiscal crisis “was an example of aggressive corporatism—using public credit to bail out private interests while making labor accept austerity. It again proved the power of using debt relief as a weapon to change social and economic relationships to the detriment

of workers and to the benefit of large corporate and financial interests.”¹⁴

According to L. Owen Kirkpatrick, the “new urban fiscal crisis”—a term used to characterize the 2013 bankruptcy of Detroit—resembles the crises that took place from the 1970s to the 1990s but is different in two main ways. In recent years, municipal affairs have been financialized and municipal politics have become de-democratized. Municipalities have increasingly relied on high-risk forms of borrowing. Instead of issuing general obligation municipal bonds that mature at a fixed interest rate, municipalities have attempted to cut costs on interest rates by entering into variable-rate interest agreements with banks. However, it is possible that these financial instruments were designed to be opaque and deliberately ensnare municipalities in cycles of debt.

In Marxist and post-Marxist analyses of economic crisis, there are two main types of crises: one having to do with the industrialization and production process, the other having to do with the dynamics of financial markets. In the first type of crisis, markets are destabilized because of, according to Costas Lapavistas, falling rates of profit caused by “contradictory tendencies of accumulation in the sphere of production,” such as the introduction of new technologies that displace workers.¹⁵ Some Marxists who have theorized the causes of crises

emphasize the importance of “realization” problems in the sphere of circulation (rather than the sphere of production), such as the problem of underconsumption. Overall, type one crises are variously attributed to overaccumulation, liquidity hoarding, overproduction, disproportionality among different sectors of the economy, and underconsumption, which all lead to falling rates of profit. On the other hand, type two crises “emerge entirely due to the malfunctioning of monetary and credit mechanisms.”¹⁶ Though the mechanisms of the market weren’t nearly as complex when Marx was writing as they are now, Marx did analyze instability in the sphere of finance, mainly by examining British monetary policy from the 1830s to 1850s. In the fifth part of the third volume of *Capital*, Marx examines the role of credit in crises. During boom periods, banks lend money capital freely to capitalists who need liquid funds to expand production. In the later stages of the boom, banks engage in speculative lending, which is followed by a credit crunch. As Lapavitsas describes it:

The overextension of credit (both trade and banking) contributes to overaccumulation and overproduction, resulting in inventory accumulation and excess supply in commodity markets.... For Marx, the appearance of commercial crisis has a decisive impact on the overextended mechanisms

of credit. Inability to sell finished output implies inability to honour maturing bills of exchange on the part of borrowing capitalists. Consequently banks begin to accumulate non-performing assets. As the quality of bank assets falls and the creditworthiness of borrowers declines, banks become reluctant to lend. The restriction of banking credit occurs at a moment when liquid money capital is heavily demanded by functioning capitalists pressed by the difficulty of selling.¹⁷

The new urban fiscal crisis has many features in common with type two economic crises described by Marxists in that, when revenue contracts, government bodies cannot honor maturing bills of exchange. However, the main distinction between the type of crisis described by Lapavitsas and the new urban fiscal crisis is that local governments are not private companies, and revenue is not capital. Nonetheless, the financialization of municipal affairs has led to fiscal crises caused mostly by the dynamics of financial markets. Take, for example, the fiscal crisis that hit Detroit in 2013. Kirkpatrick notes that “Detroit’s dramatic trajectory is not uncommonly attributed to the corruption and ineptitude of local officials, the greed of municipal unions and pension holders, and general government profligacy.”¹⁸ However, Kirkpatrick argues that these factors were not the primary cause of the

fiscal crisis—that it was the type of borrowing Detroit engaged in prior to the 2008 financial crisis. During the bull market, many municipalities, including Detroit, entered into interest-rate swap agreements with banks, which municipalities believed would save money. However, these swaps would be beneficial to municipalities only if the LIBOR (London Interbank Offered Rate) interest rate continued to rise. Given that municipal bonds generally mature over a very long period of time, often decades, banks stipulated in their contracts that the fee to terminate these swap agreements would be astronomically high. When interest rates plummeted after the 2008 financial crisis, hundreds of municipalities began losing money on those interest-rate bets made during a market boom period. From 2003 to June 2009, 107 Pennsylvania school districts entered into swap agreements.¹⁹ Because of these agreements, the school district of Bethlehem, Pennsylvania, had to pay JPMorgan Chase & Company \$12.3 million. Los Angeles has to pay around \$20 million a year for a 2006 swap agreement that was made to fund the city's wastewater system.²⁰

In the years leading up to the 2008 financial crisis, Detroit engaged in swaps on pension bonds issued in 2005 and 2006. When interest rates dropped, Detroit owed huge monthly payments to several banks. Between 2009 and early 2014 alone,

these swap agreements cost Detroit taxpayers some \$200 million. The swaps would continue to cost Detroit about \$4 million a month unless they paid \$288 million to terminate the swap agreements. The emergency manager (EM) who took over Detroit's finances attempted to "pay the swap termination fees [in total] outside of the bankruptcy process."²¹ In April 2014 a settlement agreement was reached in court, and Detroit had to pay \$85 million to USB AG and Bank of America Corporation to terminate the swaps. The use of variable-rate instruments, such as swaps, to finance debt was the single "biggest contributing factor to the increase in Detroit's legacy expenses."²² Kirkpatrick notes that as municipal finance becomes more speculative, local fiscal affairs become vulnerable to crisis. Prior to the 2008 crisis, Detroit entered into a series of complex agreements with banks amounting to a total of around \$1.6 billion. Although general obligation bonds mature at a fixed rate over a lengthy period of time, the variable-rate instruments used by Detroit to finance its debt made the city vulnerable to the vagaries of the market. When Detroit filed for bankruptcy, the EM prioritized the interest of finance over the interest of the people, and harsh austerity measures were implemented with the goal of eventually making Detroit solvent. It is hardly surprising that in the Bloomberg *Visual Guide to Municipal Bonds*—a guidebook for investors

published a year before the Detroit bankruptcy—Robert Doty attempts to reassure investors that bond markets are safe by reminding them that in the event there is a fiscal crisis, the people will pay, not the investors: “Yet, in the midst of the noise, you should understand that it is taxpayers, rate payers, and the general public served by state and local governments, not their investors, who will suffer from fiscal distress and even mis-management.”²³ Thus, the consequences of debt-financed governance are disproportionately borne by those who are supposed to be the beneficiaries of government services.

Marxism and Financialization

According to Marx, capital must constantly circulate if it is to expand and accrue surplus value. For Marx, the general expression for this is M-C-M, which represents “the transformation of money into commodities, and the change of commodities back into money.”²⁴ M-C-M becomes, in Marx’s notation, M-C-M’ when the commodity is sold for more than the cost of producing the commodity (the apostrophe or “prime” on M’ represents the surplus value that is added to the original sum M). This circuit is repeated ad infinitum, with the goal of turning money into more money through the mediation of the commodity. Marx refers to the amount of excess over the original value as “surplus

value,” which, he emphasizes, is not derived from the commodity’s circulation on the marketplace or through its consumption, but is produced by labor-power. As he notes in *Capital*, “Moneybags must be so lucky as to find, within the sphere of circulation, in the market, a commodity, whose use-value possesses the peculiar property of being a source of value.”²⁵ If labor-power is needed to produce surplus value, then the capitalist needs the mediation of the commodity to turn money into more money.

But what about the formula M-M? Can money beget money without the surplus value produced by labor-power through the mediation of the commodity? Can value be generated simply by transferring money? In section five of *Capital*, Volume III, Marx addresses this question as it relates to credit systems, moneylending, and interest: “With the development of interest-bearing capital and the credit system, all capital seems to double itself, and sometimes treble itself, by the various modes in which the same capital, or perhaps even the same claim on a debt, appears in different forms in different hands. The greater portion of this ‘money-capital’ is purely fictitious.” Thus, fictitious capital is not actually existing capital; it is a title of ownership or a marketable (legal) claim to “a share in future surplus value production.”²⁶ For Marx, the portion of this “money-capital” that is

real is the liquidity that is consumed by the borrower. In Chapter 29 he writes specifically about government bonds. Here, I quote him at length:

The state has to annually pay its creditors a certain amount of interest for the capital borrowed from them. In this case, the creditor cannot recall his investment from his debtor, but can only sell his claim, or his title of ownership. The capital itself has been consumed, *i.e.*, expended by the state. It no longer exists. What the creditor of the state possesses is 1) the state's promissory note, amounting to, say, £100; 2) this promissory note gives the creditor a claim upon the annual revenue of the state, that is, the annual tax proceeds, for a certain amount, *e.g.*, £5 or 5%; 3) the creditor can sell this promissory note of £100 at his discretion to some other person. If the rate of interest is 5%, and the security given by the state is good, the owner A can sell this promissory note, as a rule, to B for £100; for it is the same to B whether he lends £100 at 5% annually, or whether he secures for himself by the payment of £100 an annual tribute from the state amounting to £5. But in all these cases, the capital, as whose offshoot (interest) state payments are considered, is illusory, fictitious capital. Not only that the amount loaned to the state no longer exists, but it was never intended that it be expended as capital, and only by investment as capital could

it have been transformed into a self-preserving value. To the original creditor A, the share of annual taxes accruing to him represents interest on his capital, just as the share of the spendthrift's fortune accruing to the usurer appears to the latter, although in both cases the loaned amount was not invested as capital. The possibility of selling the state's promissory note represents for A the potential means of regaining his principal. As for B, his capital is invested, from his individual point of view, as interest-bearing capital. So far as the transaction is concerned, B has simply taken the place of A by buying the latter's claim on the state's revenue. No matter how often this transaction is repeated, the capital of the state debt remains purely fictitious, and, as soon as the promissory notes become unsaleable, the illusion of this capital disappears.²⁷

In this passage Marx does not elaborate a theory of the state or the relationship between the state and finance. The state is conceptualized as a spendthrift, while the lending institution is conceptualized as a usurer. However, I want to emphasize that the state is no ordinary borrower; it is a borrower endowed with the legal power to loot the public to pay back its creditors.

Marx uses the analogy of the spendthrift and the usurer to understand state debt because he

wants to highlight that this form of lending (which seeks to generate profit from interest) is not the same thing as investing capital to expand capitalist production, and thus cannot be “transformed into a self-preserving value.” Marx emphasizes that when a government issues a bond to borrow money, the only real capital is the money that is immediately used up by the borrower (the state). The bond has no value in itself; it is merely a debt claim—in this case, a claim to a portion of revenue generated through taxes (although, as I’ve argued in this essay, governments increasingly generate revenue through fees and fines). The bond (or title of ownership) appears to have value because it can be traded on the bond market, but the price of this so-called commodity is established in a different way. The “value” of the bond fluctuates because of several factors, including the “reliability of the proceeds to which they afford legal title.”²⁸ In the case of municipal bonds, their value is partially determined by the creditworthiness of the municipality, which is reflected in the credit ratings they are given by agencies such as Moody’s Investors Service. In 2015, Ferguson’s bonds were downgraded by Moody’s to “junk” level, the agency saying that the city may become insolvent as soon as 2017.²⁹ Moody’s listed “declining key revenues” as one of the main factors precipitating the rating drop, which indicates that Ferguson’s inability to generate

revenue through fees and fines after the Department of Justice investigation damaged the city's financial standing. This, in turn, suggests that a municipality's financial standing (or its credit-worthiness) is partly tied to its *ability to remain solvent by using the police power and court system to extract revenue from citizens*. Yet the deployment of police power to serve the interests of finance at the expense of the public is an inversion of the purported function of the police and municipalities. Police power is usually defined as the power to make laws and enforce them for the protection of the safety, health, morals, prosperity, comfort, convenience and welfare of the public. The duty of municipal corporations is also to promote the well-being of the community. However, to maintain a good credit rating during periods when revenue is lagging, municipalities must fuck over residents by implementing austerity measures such as firing public employees, cutting pension funds and health-care benefits, weakening the power of labor unions, cutting the education budget, and so forth. As demonstrated by the case of Ferguson, in order to remain solvent, municipalities develop a parasitic relation to the people they are supposed to serve.

I want to take a moment to return to Marx's distinction between fictitious capital and real capital as it relates to the agreements Detroit entered into with banks leading up to the 2008

financial crisis. First, I would argue that using the relationship between the spendthrift and the usurer (as Marx does) is not a good analogy for thinking through the relationship between government bodies and lending institutions such as banks. Government bodies—unlike individuals—have the power to generate revenue not only through taxation, but through the police power and court system as well. Some people have labeled coercive revenue-generating practices such as municipal fine farming as a regressive form of taxation, but it would more appropriately be described as an *expropriative* tax. Second, Marx's analysis of state debt is not particularly useful for thinking through the current moment, as modern banks and financial institutions have enough political influence to force their illusory capital to be converted into actual money capital (liquidity) through the creation of a fiscal crisis. As Detroit had to devote more and more of its budget to paying off debts incurred by the interest-rate swaps, they became less capable of balancing their budget and freely borrowing money. The shortage of money forced the city into bankruptcy. Yet the financial mechanisms used to lend money to Detroit made it so that the city, rather than the banks, took on the risk burden (and ultimately, the city offset the risk onto the Detroit residents). Rather than getting stuck with toxic assets, banks

were able to convert their illusory money (a claim to future revenue based on interest rates) into money capital through termination fees. Overall, the swaps cost Detroit taxpayers around \$285 million (\$200 million in interest-rate payments and \$85 million in termination fees). This is similar to what happened during the 2008 financial crisis, when the federal government, hoping to avert a financial catastrophe, created the Troubled Asset Relief Program (TARP), a \$700 billion bailout plan that allocated \$500 billion to purchase mortgage-backed securities as a way to inject liquid funds into failing banks. A Federal Reserve System audit done by the U.S. Government Accountability Office revealed that during and after the 2008 financial crisis, the Federal Reserve gave about \$16 trillion in loans to banks and corporations.³⁰ This was not a bailout plan designed to help people keep their homes; it merely fostered the transfer of wealth to the financial sector. In both cases, money culled from public coffers was used to prop up the interests of finance. If one believes that a function of the state is a modicum redistribution of wealth from the rich to the poor, then in these examples the role of the state has been inverted such that wealth is being redistributed upward. In the wake of the 2008 crash, it is important to analyze the domain of finance not just as an “unproductive” sector outside the “real” economy,

but as a domain where accumulation by dispossession occurs using the assistance of the state.

Theorizing the Kapitalistate

The examples I have cited above raise the question: What is the relationship between the state and capitalism? As I have argued, in recent years the state has propped up capitalism through the massive transfer of public funds to the financial sector. However, Marxist-influenced urban political economists and sociologists writing in the wake of the 1975 bankruptcy of New York City have also highlighted other ways that the state has subsidized the capitalist accumulation process. To unpack this process, I turn now to the analytic of the “kapitalistate,” Ann R. Markusen’s Marxist theory of metropolitan government, and Walter Johnson’s analysis of the political economy of Ferguson.

In the 1970s, when cities such as New York City and Detroit were experiencing severe fiscal crises, the sociologist James O’Connor developed the analytic of the “kapitalistate,” which also became a journal that published “working papers on the capitalist state.” This framework provided a Marxist theory of the state grounded in an analysis of the urban fiscal crisis of their day. In this framework, the kapitalistate “acts as a stop gap for the crises caused by dysfunctional aspects of the capitalist

system.”³¹ Proponents of this framework argue that the root of fiscal crises is not government profligacy, but tax breaks for corporations. Given that we are living in an era when capital is highly mobile, there has been a “fiscal race to the bottom” whereby politicians desperate to attract private investment in their municipalities and states must offer tax incentives and subsidies to these companies. Since the private sector shoulders a relatively small tax burden in recent decades, the burden of funding states and municipalities has been shifted onto the poor and middle class. Increasingly, state and local governments also rely on borrowing (in lieu of taxing).

The kapitalistate framework also posits that two primary functions of the state in a capitalist society are to facilitate the accumulation process and to legitimize capitalism. The accumulation function refers to the state’s facilitation of the investment process through economic incentives. The state also supports the accumulation function when it subsidizes low wages with social programs, absorbs externalities (such as environmental cleanups), provides infrastructure that benefits private industries, protects private property, and provides security through policing. The legitimation function refers to the state’s role as mediator between workers and employers, as enforcer of labor laws, and as provider of a social safety net.

One way that the constituents of struggling municipalities subsidize the capital accumulation process is through tax increment financing, or TIFs. TIFs, in theory, are supposed to jump-start urban renewal by creating incentives for the private sector to invest in the development of areas that are considered “blighted.” When a municipality designates an area as a TIF district, the amount it collects annually from property taxes is frozen for a fixed period of time (in Chicago it is frozen for twenty-three years). If the property tax revenue rises, additional revenue goes into a TIF fund. TIF funds can be used to fund public or private projects that, in theory, benefit the public. Municipalities can also issue TIF bonds to fund development projects, such as infrastructural upgrades that are used to entice businesses to set up shop in the district. Critics of TIFs note that truly blighted areas rarely benefit from the creation of TIF districts (as these districts are generally created in areas where development is already under way). Furthermore, tax dollars that could go toward schools, parks, and other budgets are siphoned off and put into a TIF fund, which some argue functions as a slush fund or shadow budget. Given that there is no mechanism to hold the private sector accountable to the public (Who actually benefited from the project? Did it create as many jobs for residents as it said it would?), TIFs often are a way to use public funds to

serve the interests of private companies. The idea that economic development (achieved through capital investment) is the only path to community growth and well-being authorizes a tax regime that benefits corporations. As Johnson notes in his discussion of TIFs in Ferguson, if revenue lags because a private enterprise does not do as well as expected, it is the residents who pay. As Johnson writes, “If the revenue falls short of projections, the debt has to be covered by local citizens. Not by the banks—they’re insulated because they have not loaned money directly to the under-performing retailers. And not by the retailers—they’re protected because the city has paid for the capital improvements of the area, limiting their sunk-cost investment in the area. It’s the taxpayers (and fine payers) who have to make up the difference.”³²

TIFs are just one of many of the complex political and economic mechanisms that have created a crisis situation in Ferguson, where poor black Americans are relentlessly harassed by police and exploited as a source of revenue. Johnson asks why, in a city that is home to a Fortune 500 company (Emerson Electric), does the city rely so heavily on squeezing poor people? He notes that, in addition to TIFs, racist housing policy and segregation, rock-bottom tax assessments, tax abatements, and regressive tax structures all contribute to this problem.

Theorizing Municipal Governance and the Racial Kapitalistate

The kapitalistate provides a broad theoretical framework for thinking through fiscal crises and the relationship between the state and capitalism. Now I want to briefly turn to the municipal and city level. In “Class and Urban Social Expenditure: A Marxist Theory of Metropolitan Government,” Markusen analyzes the fragmented urban government structure of the United States, which she describes as a “uniquely American phenomenon.”³³ She writes that “few other capitalist countries grant states or localities such extensive political autonomy.”³⁴ The article examines the history of how semiautonomous jurisdictions were created on the periphery of industrial cities, and how these spatially and politically insular municipal units enabled (and continue to enable) class reproduction.

In the period after 1850, the expansion of capitalist production accelerated the growth of U.S. cities. Physical infrastructure—such as roads, power, and water systems—were needed to facilitate the accumulation of capital. Over time, local governments assumed responsibility for providing infrastructure, which off-loaded part of the cost of production onto taxpayers. Between 1865 and 1900, the municipal “home rule” movement—

which advocated local autonomy using the rhetoric of self-determination and Jeffersonian democracy—gained political traction. In 1873 Brookline, Massachusetts, was established as the first “well-documented appearance of an independent political suburban government.”³⁵ The semiautonomous political units that emerged on the East Coast became a model for metropolitan government structure throughout the country. As Markusen notes, “Detroit had no politically independent suburbs until World War I, but then developed forty-odd such entities in the next forty years.”³⁶ As the localist model became entrenched, jurisdictional consolidation and annexation of peripheral communities by cities became exceedingly difficult.

Markusen argues that this government structure serves the interests of the middle and upper class. “Democracy in the United States is subverted at the local level by a unique development—the cordoning off of various subclasses into political units populated by their own kind wherein constituents equally escape the costs that might be imposed by participation of those worse off.”³⁷ According to Markusen, municipalities on the periphery of a city have a parasitic relationship to the city, whereby the suburban municipalities can evade having to shoulder a portion of the social cost of low wages and unemployment, ensuring that their tax

dollars go toward reproducing their social class (through well-funded schools and a clean and safe living environment) rather than toward “unproductive” expenditures such as welfare programs, public housing, and policing. However, what Markusen misses in her analysis of metropolitan government is the racial dimension of the fragmentary metropolitan political structure. When she notes that boundaries of jurisdictions are drawn around neighborhoods that have a homogenous class composition, it would be more accurate to say that municipal political units are segregated by race. Thus, I would add that a Marxist analysis of metropolitan governance is inadequate if it does not take into account how race is spatially produced by the capitalist state on the city and municipal level. The Department of Justice investigation of the Ferguson Police Department revealed that methods used to extract revenue from residents disproportionately targeted black residents. Johnson, citing the report, notes:

85 percent of traffic stops there involved black motorists, even though the city is only 67 percent black, and that its roads are traveled by a large number of white commuters. After being stopped, black residents were twice as likely to be searched and twice as likely to be arrested as white residents—despite the fact that, in the

event of a search, whites proved to be two-thirds more likely to be caught with some sort of contraband. Municipal violations for having an unmowed lawn, or putting out the trash in the wrong place at the wrong time, were issued overwhelmingly to black residents. Ninety-five percent of the citations for the “manner of walking in the roadway” and “failure to comply” were issued to African Americans.³⁸

Johnson also notes that middle-class and prosperous nearby white communities, such as Kirkwood and Ladue, only draw about 5 to 10 percent of their revenue from municipal fines, which demonstrates that these techniques of extraction are racialized. Racial segregation is particularly stark in the St. Louis metropolitan area. Johnson’s article discusses the policies and events of the last hundred years that have made St. Louis “one of the three or four most segregated cities in the country.” He adds that St. Louis is so segregated that “African Americans can go months at a time without seeing a white person in their neighborhoods—apart, that is, from policemen patrolling their beats, or municipal court judges collecting fines.”³⁹ Thus, when analyzing the political economy of municipal finance, it would be much more analytically useful to speak of the *racial* kapitalistate rather than merely of the kapitalistate. When one is mired in

the technicalities of municipal finance, it is easy to lose sight of the racial dimension of this problem. It would not be politically feasible for the police to use the same methods on middle-class white residents that it uses on (often poor and politically disenfranchised) black Ferguson residents. Racism is not an epiphenomenal aspect of this story about the relationship between municipalities and the financial sector. As Chris Chen notes in his essay “The Limit Point of Capitalist Equality,” “On the one hand, ‘race’ is a form of cultural stigmatisation and misrepresentation requiring personal, institutional, and/or state recognition. On the other, ‘race’ is a system of wage differentials, wealth stratification, and occupational and spatial segregation.”⁴⁰ In this view, the organization of municipalities into racially segregated political units that are subjected to wildly different police and financial practices is an example of how “‘race’ is not only a system of ideas but an array of ascriptive racialising procedures which structure multiple levels of social life.”⁴¹ As the examples of Ferguson and Detroit demonstrate, de facto segregation exposes black Americans to hyper-policing, municipal fine farming, and harsh austerity measures. At the same time, these practices make it so that poor black Americans are the ones who are subsidizing the accumulation process, compensating for revenue gaps created by corporate tax

abatements, and paying for the debts incurred by municipalities as a result of high-risk borrowing. Given that the wealth of white Americans was generated through slavery and the expropriation of Native land, these mechanisms continue to ensure that black Americans do not accumulate wealth and contribute to what George Lipsitz calls “the possessive investment in whiteness.” The practices that accompany the contemporary racial kapitalistate continue to reproduce racial inequality by harvesting revenue from racially segmented populations as subsidies for private enterprise and bloated police budgets.

The Right to the City and the Liberation of Urban Space

[T]he question of what kind of city we want cannot be divorced from the question of what kind of people we want to be, what kinds of social relations we seek, what relations to nature we cherish, what style of life we desire, what aesthetic values we hold. The right to the city is, therefore, far more than a right of individual or group access to the resources that the city embodies: it is a right to change and reinvent the city more after our hearts' desire.

—David Harvey, *Rebel Cities* ⁴²

My motivation for writing this essay is to draw attention to the possibility that a fiscal crisis may be on the horizon for many municipalities across the country. When the new urban fiscal crisis arrives (which it already has in Detroit and now Dallas), how will cities and municipalities cope with the crisis? What new borrowing mechanisms will be used to finance failing municipalities, and what government techniques will be adopted to make up for revenue shortages? In this essay I have attempted to 1) debunk the myth of “profligacy” as the cause of fiscal crises and demonstrate how the financialization of municipal affairs destabilizes municipalities, 2) examine some of the financial mechanisms used to transfer public funds to the private sector and subsidize the accumulation process (interest-rate swaps, tax increment financing, and so forth), and 3) examine the social consequences of some of the methods used to generate revenue, such as municipal fine farming. It is my hope that this essay will serve as a kind of clarion call: when and if the fiscal crisis arrives, we must analyze and resist the racialized extractive mechanisms adopted by the state as “solutions” to keep the machine running.

With these issues in mind, using Ferguson as an example, I would like to conclude by thinking through some of the ways that municipal finance affects the lives of people on the ground. In

Ferguson, the excessive use of fines and fees to generate revenue had an overwhelmingly negative impact on the quality of life of the city's black residents—creating an atmosphere of fear, disrupting the lives of residents, ensnaring people in a cycle of financial and legal misery, and limiting people's mobility. Municipal fine farming is much more than just an unsavory method of boosting revenue; it essentially turns the space the residents inhabit into a *carceral space*. A Ferguson resident told the *New Yorker* journalist Jelani Cobb, "We have people who have warrants because of traffic tickets and are effectively imprisoned in their homes ... They can't go outside because they'll be arrested. In some cases people actually have jobs but decide the threat of arrest makes it not worth trying to commute outside their neighborhood."⁴³ Not only are residents unable to control how resources are distributed in their city, they do not feel free to move about the city they inhabit—or even to go to work because of outstanding warrants and/or the fear that they will be slammed with more tickets and fines. In many jurisdictions around St. Louis, "debt from criminal courts carries interest and late fees, thereby multiplying the financial burden solely on those debtors who are least able to pay. When probation or parole terms require payment of these fees, inability to do so can foreclose housing, welfare assistance, and

employment options.”⁴⁴ Residents may also lose their jobs because of time missed for court appearances, as well as time spent in jail because of arrest warrants for unpaid fines.

In the film *The Prison in Twelve Landscapes*, a woman named Charisse Davidson from the St. Louis area describes her experience of spending time in jail after refusing to pay a steep fine for the crime of having a trash can lid that was not properly affixed. Her case is not an isolated one: residents of more than a dozen majority-black municipalities in St. Louis County have sued the cities on the grounds that the revenue-generating schemes that ensnare residents in cycles of debt—and then jail them when they cannot pay—amount to a kind of debtor’s prison. Although these lawsuits have curbed the most extreme forms of predatory fine farming in the St. Louis area, lawyers at ArchCity Defenders—who succeeded in getting the Jennings Municipal Court to pay \$4.7 million for its predatory revenue-generating practices—say that despite the state of Missouri’s new 20 percent cap on how much revenue can be generated through fees and fines, fine farming is still common and that the media has overstated just how much has changed. Newer research has also revealed that these practices are not limited to the St. Louis area, but are common in majority-black cities around the United States.

What we see happening in Ferguson and other cities is not the creation of livable spaces, but the creation of living hells. When a person is trapped in a cycle of debt, it also can affect their subjectivity and temporal orientation to the world by making it difficult for them to imagine and plan for the future. What psychic toll does this have on residents? How does it feel to be routinely degraded and exploited by the police? When municipalities develop a parasitic relationship to residents, they make it impossible for residents to actually feel at home in the place where they live, walk, work, love, and chill. In this sense, policing is not about crime control or public safety, but about the regulation of people's lives—their movements and modes of being in the world. Lacking the resources and opportunities to exercise control over their lives or even to comfortably move through space, their surroundings become hostile and alienating. In contexts such as Ferguson—where there was an average of three arrest warrants per household—indebtedness and fugitivity as an existential condition have been forced on the people who reside in these carceral municipalities. But the performance theorist and black studies scholar Fred Moten reminds me that in the interstices of this relentless assault on black life, an insurgent black sociality exists. I would like to conclude this essay with a quote by Moten, which is an important reminder

of what mechanisms are really at work when police try to limit black mobility and meet black social life with hostility and violence. As Moten says in a conversation with Robin D. G. Kelley:

We need to understand what it actually is that the state is defending itself from and I think that in this respect, the particular instances of Michael Brown's murder and Eric Garner's murder are worth paying some attention to because what the drone, Darren Wilson, shot into that day was insurgent Black life walking down the street. I don't think he meant to violate the individual personhood of Michael Brown, he was shooting at mobile Black sociality walking down the street in a way that he understood implicitly constituted a threat to the order he represents and that he is sworn to protect. Eric Garner on the everyday basis initiated a new alternative kind of marketplace, another mode of social life. That's what they killed, ok? So when we say that Black lives matter I think what we do sometimes is obscure the fact that it's in fact Black life that matters. That insurgent Black social life still constitutes a profound threat to the already existing order of things.⁴⁵

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