

The Emergency Manager: Strategic Racism, Technocracy, and the Poisoning of Flint's Children¹

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Michigan's fiscal crisis nudged the snowball of Detroit's financial collapse a little farther down the hill. As Snyder pondered how to prevented [sic] an avalanche, he selected the Democratic Michigan Speaker of the House, a financial specialist named Andy Dillon, to serve as the treasurer in his administration. In their search for solutions, they met an investment banker from New York who was born in Detroit and had his sights set on helping to fix his hometown.

– from Nathan Bomey, [Detroit Resurrected](#) (Norton, 2016)

This is a test being looked at by cities across the US - even the world," Charity says. "We will not let water be used as a weapon to remake the city in a corporate image. We will re-establish what it is to live in a democracy, with a water system that is part of the commons, that affirms human dignity and that ensures everyone's access.

-Charity Hicks of the Detroit People's Water Board, quoted in Martin Lukac's June 25, 2014 [article in the Guardian](#), "Detroit's Water War: a tap shut-off that could impact 300,000 people",

¹ This paper is dedicated first and foremost to the *activists* in Michigan, particularly Detroit and Flint, who have fought so hard to retain the jewels of our democracy, our public infrastructure. It is dedicated to the local Michigan investigative journalists who have so brilliantly and courageously followed the story, particularly Curt Guyette, Kate Levy, and Allie Gross. It is dedicated also to the public interest lawyers, who have pushed back against a powerful political class. For thanks, I would like to single out primarily David Goldberg, of Wayne State University, who tirelessly helped me throughout this project. I offered him co-authorship of this paper, but he refused. I owe an enormous debt to Joshua Miller, who saw over a lengthy period the research I had been doing on this topic, and pushed me to write this paper. Elizabeth Anderson sent me written comments on the penultimate draft that were essential to the framing of the conclusion. I owe a significant debt to Kyle Whyte, who steered me early in the project in the right direction, and was always available for consultation. Robert Hockett carefully read the paper and helped invaluablely with suggestions, explanations, and argumentative support. Thanks to an anonymous referee whose comments improved the paper. I am grateful to Kathleen O'Neal, who was my research assistant in the summer of 2016 and helped me immensely with the research on Michigan that made this piece possible. Thanks to my fall 2016 seminar on Language and Power for helping me to work through this material. And thanks to Elizabeth Anderson (again) and Bonnie Honig, who for some reason took it upon themselves to encourage me persistently throughout this project, and aided with advice. My greatest thanks, as always, go to my partner Njeri Thande. Her example is a constant inspiration to me.

Abstract

In April of 2014, the city of Flint, Michigan began using water from the Flint River. The official reason to break Flint's long time contract with the Detroit Water and Sewage Department, DWSD, was financial efficiency; it was presented as a cost-cutting measure. Flint residents began immediately complaining about their water, complaints that were ignored. Thanks to the local activists, it was eventually discovered that the water was indeed corrosive, the city failed to treat it, and lead leached from the pipes into the water drunk by the city's children and families. By September of 2015, the city was acknowledging the size of the health crisis this entailed, and in October of 2015 Flint switched back to Detroit water. It was too late: the damage was done, and Flint's children have shown persistently high levels of lead—poisoned by a series of decisions that would never have been made in a majority white city. It is also now clear that relevant officials knew that the switch to the Flint River was in fact more expensive, both in the short term and the long term, than remaining with DWSD. Using Vesla Weaver's concept of *frontlash*, I argue that a technocratic ideology combined with a certain version of racism, resembling settler colonialism, is the cause of the tragedy.

The Problem

Rick Snyder ran for governor of Michigan as a problem-solving technocrat, with a law degree from the University of Michigan and a successful background as a technology entrepreneur. He spoke of broken systems, wasted money, and the need for financial responsibility. He called for solutions that required the application of a non-ideological business acumen, one that cut through political division and focused on the specific problems that prevented better results, which could be quantitatively assessed. And when he came into office in 2011, he appointed a number of Emergency Managers to displace the mayors and city councils of cities that seemed to many residents of Michigan to have suffered from financially irresponsible decision-making. These city managers were presented as sharing his approach; technocratic “financial experts” who brought hard-nosed no nonsense solutions to public policy with problem solving skills fine-tuned in the corporate world of law or finance. Snyder also announced the formation of the “Educational Achievement Authority”, a statewide school district that would include only schools in the Detroit Public School System, into which some 10,000 students, mostly poor and African-American were transferred. It appeared to many Michigan residents that the state was moving beyond partisan politics, into a non-ideological, technocratic solution to the state's problems, where the value-neutral ideals of financial responsibility and efficiency would guide policy, rather than acrimonious partisan politics.

And what happened? In September, 2014, investigative journalist Curt Guyette wrote an article on EAA, called “The EAA Exposed: An Investigative Report”.² The article showed that EAA seemed to function more like a product testing laboratory for a software company, using its 10,000 children to test its product, “Buzz”, and the taxpayer money of their parents to support the company. The Center for Popular Democracy's 2016 Report, “State Takeovers of Low Performing Schools: A Record of Academic Failure, Financial Mismanagement, and Student Harm”, focuses on three state takeovers of public schools that they regard as particularly significant and problematic, the Louisiana Recovery

² <http://www.metrotimes.com/detroit/the-eaa-exposed-an-investigative-report/Content?oid=2249513>

School District (RSD), Tennessee's Achievement School District (ASD), and Michigan's Educational Achievement Authority. The report's judgment about Michigan's EAA is completely unequivocal; it is presented in a section entitled "Michigan's Education Achievement Authority: A disaster". Detroit has also suffered from a massive foreclosure crisis that falls almost exclusively on its poor black residents.

The greatest tragedy of Snyder's tenure as governor is the poisoning of Flint's children. Under the guise of financial responsibility, Snyder's regime delivered what is technically considered to be hazardous waste to Flint's homes, which Flint's 6000 or so children bathe in and drank for almost 18 months. Citizens' complaints about the water were ignored, and even ridiculed. Though General Motors stopped using Flint water in October, 2014, nothing happened until local Flint activists took the matter into their own hands and attracted national attention. It took one year from the time that General Motors removed itself from Flint's new water supply for those in charge to shift back to the old water supply, by which time Flint's children had been exposed for almost 18 months to levels of lead that hadn't been seen in drinking water in the United States for decades.

How did this happen? How did a hard-nosed, allegedly apolitical problem-solving technocrat oversee consequences on such a tragic scale? For many Americans, the paradigm of reasonable policy discussion has become technocratic and managerial. Technocratic discourse appears value-neutral, and so not biased towards any one perspective. But Michigan belies the value-neutrality of technocratic discourse. In Michigan, technocratic language prevented legitimate democratic concerns from being recognized by public officials. Technocratic thinking and language prevented public officials from seeing the perspectives of Flint residents complaining about their water quality, and was therefore paradigmatically *unreasonable*. Michigan therefore raises the central question of this paper:

How does technocratic language work to exclude legitimate possibilities from policy discussion?

In Michigan, the problems start early, and ultimately benefit from being placed in a long historical context, one tracing back to the strategies employed to throw native people off of their traditional lands. We cannot now go back that early within the narrow confines of a paper. But to understand what happened in Flint it is important to understand the general structures, or ideological formations, which gave rise to it. These are the focus of this paper. It is essential to view Flint as a symptom of a considerably larger problem in Michigan, the description of which involves multiple elements, as well as important elements of Michigan history dating back to the late 1960s.

How could Flint have happened in a modern Democratic state in the 21st century? Given my understanding of its causes, we cannot just focus on Flint. The conditions in Michigan made a disaster of the sort that happened in Flint very likely to occur. If it hadn't happened in Flint, something at least as bad would probably have happened in Detroit, in Pontiac, or somewhere else. And bad enough things are happening in other poor black majority cities in Michigan, such as the disaster that is the EAA, for the same reasons that they happened in Flint. And Flint-like tragedies will continue to happen as long as these causes are not addressed. The first step in preventing such tragedies therefore is to understand these causes.

The first cause is a distinctive kind of managerial ideology of faux financial expertise, what I will call *technocracy*. The role of technocracy in the justification of emergency managers is nicely summarized in an August, 2016 paper by a group of academics based at the School of Social Work at the

University of Michigan at Ann Arbor:³

Procedurally, key components of economic restructuring under EM laws may involve development and implementation of a new financial and operations plan without requiring democratic consent from, or consultation with, the public or its elected officials (Anderson, 2012; Loh, 2015). Thus, some argue that EM laws reflect undemocratic processes that privilege a market-oriented logic that uses technocratic, “expert”- driven (i.e., the state-appointed emergency manager) decision-making processes, as opposed to decisions reached by democratically elected city government officials, who are often local residents and at a minimum are accountable to local residents through the democratic voting process (Lewis, 2013).

Technocracy is an obvious and almost proud rejection of what is perhaps Michigan’s most important historical legacy. Michigan is an iconic labor union state. Michigan’s history showed that labor unions could transform manufacturing jobs into the engines of middle class lifestyles. So the first cause is a repudiation of Michigan’s history. The second cause is a clear continuation.

There is a specific kind of anti-black racist ideology at work now in Michigan, to which Peter Hammer has given the name *strategic racism*. I will argue that the notion Hammer is struggling to describe is straightforwardly to be found in the literature on settler colonialism. The strategic racism of settler colonialism is a second essential element in the explanation. A third is the legal structures of the financial system surrounding municipal bonds and bankruptcy law, together with the 2011 Emergency Manager Law ushered in by Rick Snyder, and its replacement. These factors, I will argue, led almost inexorably to a situation like Flint.

In 2007, Vesla Weaver introduced the term "frontlash" to describe "the process by which losers in a conflict become the architects of a new program, manipulating the issue space and altering the dimension of the conflict in an effort to regain their command of the agenda."⁴ Crises or emergencies play a vital role in this kind of strategic maneuvering of political space:

Crises can provide opportunities to frame the introduction of a new problem, allowing the defeated group to “propose[s] a new interpretation of events” and “change the intensities of interest” in a problem...Along with the articulation of a new issue problematic, entrepreneurs seek issue dominance by creating a monopoly on the understanding of an issue, associating it with images and symbols while discrediting competing understandings.

Weaver's concern is with the use of the ideals of law and order in the 1960s. As we shall see in the next section, the vocabulary of law and order was associated with images Black political protest, which in the media were described as "riots". By representing the civil unrest as a crisis, the media and

³ Shawna J. Lee PhD, MSW, MPP, Amy Krings PhD, MSW, Sara Rose MSW, Krista Dover MSW, Jessica Ayoub MSW, Fatima Salman MSW, “Racial inequality and the implementation of emergency management laws in economically distressed urban areas”, *Children and Youth Services Review*, **70** (August, 2016) 1-7,

⁴ Vesla Weaver, "Frontlash", *Studies in American Political Development*, 21 (Fall 2007): 230–265.

political class were able to shift the dominant narrative from social justice, which would have been the right frame in which to address police brutality, to law and order. In other words, by using certain descriptions rather than others, and selectively showing images of Black political protest and civil unrest, politicians were able to command "issue dominance", and shift the national narrative from racial inequality and the fight for Civil Rights, to law and order, which was then able to be strategically employed.

My suggestion is that Flint exemplifies the same structure, but with *technocratic ideals* replacing the ideals of law and order. Black majority cities in Michigan were starved of funds, creating crises, which were labeled "financial emergencies". These crises were linked by the very same political class whose choices caused them, to images of out of control and corrupt black citizens, unable to self-govern or manage their own affairs. This allowed the narrative to be changed from overcoming discriminatory racial practices such as segregation, to a media and political narrative focusing on *financial efficiency*. These ideals were then weaponized, in combination with racist ideology, in an effort to extract wealth, land, and resources from poor black majority black populations in Michigan.

According to Shawna J. Lee and her University of Michigan School of Social Work based colleagues:

African Americans comprised 14% of Michigan's population. Yet, compared to their total representation in the Michigan population, 51% of African Americans in Michigan were under an emergency manager at some point from 2008 - 2013. The Hispanic or Latinos population comprised just 4.4% of the Michigan population. Yet, the Hispanic or Latino population was also overrepresented, with 16.6% of all Michigan Hispanic or Latinos under EM at some point during 2008- 2013. In contrast, during the same time period, although non-Hispanic Whites were 76.6% of Michigan residents, only 2.4% of Whites in the state were under an emergency manager.⁵

The processes of democracy are admittedly messy. They can also seem strangely inefficient. And since efficiency is not a primary liberal democratic value, to some extent liberal democratic politicians will appear to be enemies of efficiency. Yet shaky and inefficient as the democratic processes are said to be, between 2008-2013, 97.6% of the white Michigan population was deemed capable of self-governance by their means. In contrast, the system of emergency management left only 49% of Michigan's black citizens capable of participating in the financial, educational, infrastructural, and legal regulation of themselves.

It is an extreme judgment about a community for the state to impose upon it an externally appointed "emergency manager" who decides on their behalf not only *what debts its citizens would have to pay*, often for decades in the future, to remain in their homes, but also what costs are to be paid if these debts are not fulfilled. It is a surprise that Michigan placed even 2.4% of its white citizens under a system in which a single democratically unelected person decided in a democratically unaccountable

⁵ Shawna J. Lee PhD, MSW, MPP, Amy Krings PhD, MSW, Sara Rose MSW, Krista Dover MSW, Jessica Ayoub MSW, Fatima Salman MSW, "Racial inequality and the implementation of emergency management laws in economically distressed urban areas", *Children and Youth Services Review*, 70 (August, 2016) 1-7, p. 4.

way to whom their future tax revenue would go, and what would happen to their assets, for example their houses, if these debts weren't paid. But Michigan placed *more than half* of its black citizens under this system. The racial meaning of Michigan's Emergency Manager Law is overwhelming and must be understood.

It is important to understand the mechanisms that cause social injustice, as well as those that give social injustice the appearance of legitimacy. This paper is an attempt to contribute to such an understanding of the poisoning of the children of Flint.

Law and Order, protest, "riot"

...when white men rise up against oppression, they are heroes: when black men rise, they have reverted to their native savagery. The uprising in the Warsaw ghetto was not described as a riot, nor were the participants maligned as hoodlums: the boys and girls in Watts and Harlem are thoroughly aware of this...

James Baldwin⁶

Liberal democratic political ideals are supposed to apply to all citizens equally and impartially. But a look at recent history uncovers deeply illiberal *practices*. There are various mechanisms that work to conceal the gaps between ideal and reality; exploring such mechanisms was the goal of my 2015 book, How Propaganda Works. I am going to speak of one concrete instance, a concrete instance of the strategy that Weaver calls "frontlash". It concerns the language politicians and the media have typically used to speak of black political protest. This example is also particularly pertinent to understanding the racial history of Michigan.

Black political protest is regularly described in starkly non-political ways. Such descriptions function ideologically, to justify the kinds of responses we have seen in US history to Black political protest, which are military responses.

We do not feel it is in order to use militarized police against white political protestors, say college students throwing bottles or burning cars. It would be an odd response to political protestors to insist upon "a paramilitary response" as "necessary to regain control of the city." Yet this is how Los Angeles police chief William Parker responded to the protestors who became violent after "the beating and arrest of Rena Price and her twenty-one and twenty-two-year-old sons by a Group of California Highway Patrolmen" in the summer of 1965.⁷ It is odd to call protestors brought to the street for political reasons as "a criminal, lawless element", as Mayor Yorty of Los Angeles did in 1965, or "gangsters" as Parker called them. By calling the black citizens upset over Rena Price "gangsters", and considering their protests to be "riots", Parker was able to legitimize a harsh law and order response to political protest.

⁶ James Baldwin, "Negroes are Anti-Semitic Because They are Anti White"

⁷ Elizabeth Hinton, From the War on Poverty to the War on Crime (Cambridge: Harvard University Press, 2016, pp. 67-8.

The same exact phenomenon occurred in Baltimore in 2015. Protests against police brutality after Freddie Gray's killing were described as "riots" in the national news, rather than "civil unrest".⁸ Describing them as "riots" legitimizes a law and order response rather than a change in public policy to address the underlying causes of the protest.

Over a year after the Baltimore civil unrest over police brutality, on August 10, 2016, a scathing Justice Department Report came out about the Baltimore Police Department.⁹ It stated that the Baltimore Police Department had a pattern of:

- (1) making unconstitutional stops, searches, and arrests;
- (2) using enforcement strategies that produce severe and unjustified disparities in the rates of stops, searches and arrests of African Americans;
- (3) using excessive force; and
- (4) retaliating against people engaging in constitutionally-protected expression.

As with the Justice Department's equally harsh indictment of Ferguson's use of its poor black population to fill its municipal coffers, there appears to be strong evidence that when there is civil unrest by Black urban populations, it is because there are unacceptably racist practices at work. To describe those protesting against unacceptably racist practices as "rioting" is to falsely describe social reality in a way that strengthens an anti-black racist ideology using the racist stigma of Black Americans as violent to mask their justified political engagement. This is one of the ways in which language contributes to oppressive ideologies.

I have not chosen this example at random. One of the iconic examples of this is the civil unrest in Detroit in the summer of 1967, which shaped and formed the politics of Michigan today. The events that occurred in the summer of 1967 in Detroit, as in Los Angeles in 1965 and in Baltimore in 2015, were protests against police brutality. In Detroit, they were initially caused by an excessively violent police break up of a party for returning Vietnam veterans at an after hours club. They took place also in the context of a long history not only of police brutality, but also of discriminatory practices with housing and employment. Eventually 8000 National Guard were brought in to Detroit to impose "law and order".

The civil unrest in Detroit in the summer of 1967 was the largest urban civil unrest in the 1960s until that time. The causes of civil unrest were masked by media images of "looters" and "rioters", which were strategically used by Michigan politicians to avoid addressing the underlying causes of the political protest. The fear-mongering about black Detroit citizens violating law and order in so-called "riots" led to massive white flight from Detroit to its suburbs and surrounding cities, leaving southeast Michigan as one of the most segregated areas in the country. Politicians since that time have

⁸ e.g. <http://www.cbsnews.com/videos/former-baltimore-police-chief-reflects-on-riots-one-year-later/>

⁹ <https://www.justice.gov/opa/file/883366/download>

repeatedly strategically pitted the interests of Detroit, connected in many white Michigan residents' minds with out of control black violation of law and order, against the state.

Our national politics regularly involves the strategic use of racism to create fear and change the subject. But in Michigan, since 1967, such strategic maneuvering has taken the form of a lengthy media war against Detroit, which is associated with the images the media formed of it in the summer of 1967. Michigan was one of the nation's primary locations for the strategy of frontlash, and it remains, perhaps more than any other state, primed for strategic racism in this form.

When describing an instance of frontlash, we need to focus on two factors. The first factor is the ideals that will be strategically misused. In the case of the 1960s, these ideals were law and order. I will argue that in Michigan today, the ideals strategically used are the ideals of technocracy. The second factor in frontlash is the representation of events as *crises*. In the 1960s, these events were political protests, strategically represented as "riots". In present day Michigan, these events were the strategically manufactured "financial emergencies", which then could serve as crises to be dealt with by solutions requiring "financial experts".

Commodifying Public Goods

Many Americans unreflectively think of water as a public good. In Michigan, what we are seeing is an effort to change the ideology, to make people think of water as a commodity, rather than a public good. And since the citizens of Michigan could vote to privatize US access to the Great Lakes, there is special incentive to make citizens think about water as a commodity, since there is special incentive (from many powerful concerns) to get the citizens to accept privatization of such a valuable resource. And that requires getting them to stop thinking of it as a public good.

In the summer of 2014, draconian water shut offs in Detroit attracted international attention. Detroit Water and Sewerage Department, the utility that services Detroit (now the Great Lakes Water Authority), by order of Emergency Manager Kevyn Orr, started terminating service for customers who were more than two months late paying their bills, or owed more than \$150. There are shortages of fresh water all over the world. But Detroit sits next to the Great Lakes, containing 21% of the world's fresh water. Citizens of Detroit are customers of the water utility with the most abundant source of fresh water in the world. Why were so many Detroit citizens deprived of fresh water, in a region where it is in more abundance than anywhere else?

Shutting off water for nonpayment is technically legal. As a matter of public administration, however, rapidly cutting off water to at least 15,000 residents of a city was, at least at the time, extraordinary.¹⁰ Water is in practice considered a common good. But Detroit, under Emergency Manager Kevyn Orr, ruthlessly applied an ideology according to which water was just another commodity.

¹⁰ <http://www.thedailybeast.com/articles/2014/07/26/detroit-shuts-off-water-to-residents-but-not-to-businesses-who-owe-millions.html>

Means

Frontlash and Strategic Racism

In decision making about what policies to adopt, one cannot consider all possibilities. This would prevent any decision from occurring, as we are restricted by limitations such as time. A good decision-making practice involves considering all relevant possibilities, and not considering ones known to be too distant from actuality, or irrelevant. Oppression can take the form of limiting decision making practices illegitimately, typically by appealing to prejudice to exclude certain policies that should be considered (and would have been considered if a dominantly privileged group was their focus).

Frontlash is a version of oppression like this.

Frontlash works by "narrowing the set of alternatives and discounting early conceptions; thus, it may further instantiate the issue understanding and proscribe policy options."¹¹ In 1960s Detroit, civil unrest in response to police brutality was represented as a crisis of law and order. A pervasive media representation of civil unrest as crisis framed the events in Detroit as just apolitical violence. This allowed law and order to be used as the appropriate frame in which to respond, excluding policy solutions that would have addressed its causes. The state of Michigan is quite accustomed to the manufacture of crisis.

Frontlash masks bad decision making-practices about what to do by an appearance of good decision making-practice. Frontlash typically occurs by connecting a conception of good making practice to a specific vocabulary, say the language of law and order, or the language of financial efficiency. Given a racist ideology, such discourse seems to many citizens to legitimate otherwise unacceptably inhumane ways of treating citizens. There are also other ways to mask bad decision practices, e.g. by exploiting context-dependent mechanisms such as presupposition, focus, or quantifier domain restriction in ways that make the badness of the practice difficult to detect. These other strategies are less of our focus here.

An important question raised by the practices of the state of Michigan is how language that has the superficial appearance of being just the right vocabulary to use for good decisions, turns out to play a key role in oppression and exploitation. The very recent literature that has emerged on strategic communication makes the point that it is often masked as cooperative communication. As Nicholas Asher and Alex Lascarides write in their 2013 paper, "Strategic Conversation":

A rhetorically cooperative move is a speech act one would expect from a speaker who fully cooperates with his interlocutor. Rhetorical cooperativity makes a speaker appear to be Gricean cooperative although he may not actually be so. This is a frequent feature of strategic conversations, in which agents' interests do not align.¹²

¹¹ Weaver (2007, p. 236).

¹² *Semantics & Pragmatics* 6.2: 1–62, 2013

This common feature of much communication—that manipulative speakers pretend to be helpful—becomes especially problematic when the manipulative speakers develop powerful rhetorical techniques to fool onlookers and even their interlocutors. As we shall see, Michigan directly raises the problem of strategic communication masked as cooperative communication.

Technocracy as a Democratic Alternative

The ideology shared by Governor Rick Snyder, Michigan treasurer and former head of the state legislature Andy Dillon, Mayor Duggan of Detroit, the emergency managers, and other politicians involved in and responsible for the never ending crises in Michigan is not particularly focused on water. It is rather an ideology that treats *all* common goods as commodities. Snyder and the emergency managers’s ideology, as revealed in the way they talk about policy, is sufficiently distinctive as to deserve attention. Nathan Bomey’s just published book, Detroit Resurrected (obviously written before Flint) presents Governor Rick Snyder and Kevyn Orr as heroes. The book is a celebration of the ideology in question, it essentially urges its readers to get an Emergency Manager immediately for the poor black majority city nearest to them. Bomey dwells on a certain feature of Snyder, brought out by his description of him as a “technocratic Republican.”

The first chapter of Bomey’s book is about Rick Snyder. The title of the chapter is “the Nerd”. Bomey here aptly describes Snyder’s 2010 run for Michigan Governor:

During the Super Bowl in February, 2010, voters were introduced to Snyder as “one tough nerd” in a TV commercial that aired in several Michigan markets. He pledged to employ a businesslike approach to uproot the political paralysis in the state capital. With a bizarre slogan – “relentless positive action” – and a campaign bus named “the nerdmobile”, Snyder appealed to moderates and independents.

At rallies, aides handed out boxes of Nerds candies to emphasize the governor’s academic credentials, techie roots, and obsession with spreadsheets.

The ad in question, “One Tough Nerd”, begins with an announcer intoning “Michigan has tried career politicians, we’ve tried happy talk, and we’re 50th out of 50. Dead last.” Then Rick Snyder appears, in an office with a computer, and says “it’s time for a nerd.” The announcer continues, as we shift to seeing Snyder working on a computer, “his ten point plan to reinvent Michigan is so detailed that, well, it’s likely that no *politician* could even understand it.” Snyder then turns to the screen, saying grimly, “but it’s the way to finally save our state.” It ends with Rick Snyder staring into the camera, “Rick Snyder: He’s one tough nerd.”

The message of this ad is straightforward. The problem is “politics”. And what is politics? Politics is the messy business of democratic governance. Rick Snyder is going to come in and apply “tough solutions” the justification of which you will not understand because they are too technically complicated, and involve “financial expertise” that is beyond ordinary citizens’ capacity to understand. Snyder will impose financial responsibility from above no matter how much complaining results.

Michigan politics and media is filled with praise for those who foster a “business friendly environment” in that state. Michigan’s politicians tout “experts” with “finance backgrounds” as the key to the state’s problems. A standard media piece in the state of Michigan unapologetically advertises ties to finance, in the form of “financial expertise”, as an unabashedly positive background

quality for policy makers. Just to take a very recent example, on September 8, the Detroit News published an op-ed entitled "Is this the Dream Team for DPS Board?"¹³ The article touts three candidates, beginning with Sonya Mays, who returned "from a successful career on Wall Street" to Detroit. We are told:

Mays, a Detroit native and DPS graduate, returned to her hometown from New York to help Detroit through its bankruptcy. She worked as a financial adviser to former emergency manager Kevyn Orr. Mays has remained in Detroit and started the nonprofit [Develop Detroit](#) to offer new housing options and real estate projects in city neighborhoods.

"I feel like I have a specific skill set," Mays says. "I have a strong finance background."

No doubt Mays is a fine human being. But the fact that "a strong finance background" is considered the ideal qualification to serve on the school board of a majority poor black urban school district is a symptom of the ideological deformity present in Michigan politics, which I am calling "technocracy".

Technocratic ideology is widespread and unquestioned in much of Michigan's media. In 2013, Mike Duggan was elected Mayor of Detroit. Duggan is a close ally of Rick Snyder. Snyder had appointed Duggan to the executive board of the Educational Achievement Authority, Snyder's signature program for public schools. Snyder and Duggan attended Michigan Law School together, graduating one year apart. Duggan is standardly described in the same ways as Duggan, as a technocrat, who seeks to craft policy that is friendly to business elites. In a breathlessly positive 2015 review of his year in office, Crain's Detroit Business wrote, "Duggan is a metrics-driven man who likes numbers, likes to measure progress."¹⁴ He has a "a tactical mind, a no-nonsense demeanor and a willingness to play enforcer", and is "excelling at triaging the problems and pushing forward on solutions."¹⁵ The CEO of an energy company described Duggan as a signal that "Detroit was open for business".

What we have repeatedly witnessed over the last several years in the cities and school systems taken over by Emergency Managers in Michigan are problematic decisions disproportionately affecting poor communities of color. These decisions are justified with the use of some kind of technocratic language; decisions are described e.g. as "metrics-driven". A background in "finance" is seen by the media as an unequivocally positive feature of someone seeking to hold public office or craft policy. The language of justification for decisions with terrible consequences for poor communities of color

¹³ HYPERLINK "<http://www.detroitnews.com/story/opinion/columnists/ingrid-jacques/2016/09/08/jacques-dream-team-dps-board/90108518/>"<http://www.detroitnews.com/story/opinion/columnists/ingrid-jacques/2016/09/08/jacques-dream-team-dps-board/90108518/>

¹⁴ <http://www.crainsdetroit.com/article/20150201/NEWS/302019989/duggan-gets-high-marks-in-year-1-challenges-now-turn-more-complex>

¹⁵ <http://www.crainsdetroit.com/article/20150201/NEWS/302019989/duggan-gets-high-marks-in-year-1-challenges-now-turn-more-complex>

in Michigan is *technocratic*. Its use is accompanied, non-accidentally, by open disdain for the democratic process. This is the ideology I will call *technocracy*, and its associated vocabulary, *technocratic vocabulary*.

So what is technocracy? I take it to be belief in "metrics" and quantitative data as the legitimate responses to policy issues, legitimate because of the supposed "neutral" and "apolitical" character of this approach to policy problems. Bomey, for example, describes Snyder as "non-ideological", explicitly contrasting this with "technocratic". The ideal of technocracy is *financial efficiency*. The vocabulary of democracy is anti-democratic; "financial emergencies", require "financial experts" to replace democratically elected officials.

Technocracy as an Alternative to Democracy

Why is technocracy at all an attractive model for policy making in a democracy? In his 1978 book on technicism, The Technological Conscience: Survival and Dignity in an Age of Expertise, my father, the sociologist Manfred Stanley writes:

In a pluralist society, it is difficult to maintain any consensus on the validity of meanings that cannot be translated into operational terms of common utilitarian significance. (How troublesome it already is to speak of public values in an industrial society apart from formulas like gross national product.)¹⁶

Stanley succinctly explains the attractiveness of technocratic ideology in a pluralist democratic society, containing groups with fundamentally different values, real or perceived, or fundamentally conflicting interests. Technocracy appears to offer a neutral resolution to such conflicts, a neutral set of ideals to negotiate between conflicting parties.

What has occurred in Michigan is classic frontlash, exemplified by the differential application of *technocratic ideals*. As I will argue, Michigan politicians strategically crafted a series of "financial crises" in poor black majority cities. Majority poor black cities were taken to be appropriate vehicles for the carrying out of "ten point plans" that "cannot be understood" by their inhabitants, applied in a way that bypasses democratic accountability. In so doing, one treats black majority cities with a neo-liberal template that does not recognize human values, but only monetary commodity exchange. And these templates are not applied to white majority cities, which by and large are allowed to continue the messy process of self-governance.

They manufactured these crises in order to bring technocratic ideals to bear on majority black communities, displacing democratic self-determination. These ideals are not brought to bear on white communities, because their capacity to self-govern is not placed in question. It is considerably easier to convince white Michigan citizens to look the other way when a majority poor black community's agency is removed. Complaints are much easier to dismiss when political protest can be described as "riots." And it is of course not conceivable to place into question the capacity of affluent white

¹⁶ Manfred Stanley, The Technological Conscience: Survival and Dignity in an Age of Expertise (Chicago, Chicago University Press), p. 205.

communities to democratically self-govern. Despite the glossy sheen of its vocabulary, and the academic credentials of those associated with it, technocratic decision making is not a feature of policy governing white communities in Michigan. Charter schools will not replace Ann Arbor's Pioneer and Huron high schools any time soon.

Motives

Banks, Developers, Private Equity

A rhetorical framework that treats "financial efficiency" and "financial expertise" as neutral values that are the ideals to guide public policy, was used in a strategically racist way to gain power and control over municipalities. In this section, I explore the *material* motives for so doing. Essentially, it is extraordinarily advantageous to have full control and power over a municipality. One could, if one so desired, use that power to greatly enrich one's friends and business partners.

Public infrastructures are the resources municipalities control, and are used to deliver public goods. Public goods are what citizens can expect to receive not from the market, but from their government; examples include clean water, protection from certain dangers such as fire and violence, and education. Public infrastructures are valuable assets of municipalities. Another valuable asset of a municipalities is it can take out bonds from financial institutions, guaranteed by its tax paying citizens, both now and in the future. In other words, the debt incurred must be paid in forms like increased taxes, or increased bills for services. These are usually interim measures, towards some eventual goal, and when governance and policy formation are legitimate, that goal is one that can be expected to be worth, for the citizens of the municipality, the increased financial burden.

Financial institutions make a great deal of profit off of bonds from municipalities. When these bonds have bad terms, terms that exceptionally favor the financial institutions over their clients, their profit is that much greater. Increasingly, private equity has been getting involved in purchasing public goods, from fire departments to school systems. And traditional Wall Street banks, such as Goldman Sachs, have come up with novel "financial instruments" to play the same game (especially with school systems). Traditional Wall Street banks are strongly incentivized both to urge policy makers to take out bonds, whether their terms favor citizens or not. And private equity is incentivized to acquire public infrastructure, which has proven to be very profitable.

Public Act 4, Rick Snyder's original 2011 redrafting of the 1990 Emergency Manager Act, Public Act 72, was quickly voted down by popular referendum. The legislature immediately replaced it by Public Act 436, which is essentially identical. There is a suspicious element to these Public Acts. Emergency Managers are allowed to break almost any contract whatsoever the city has made. Emergency Managers are allowed to break contracts with public unions, fire city workers, and sell the city's services to private equity owned companies. But there is one sole exception: bond holders.

Contracts with bondholders made during the run up to the financial crisis that could have been legally challenged in court by anyone genuinely concerned with the fiscal well-being of Michigan's citizens, are among the chief causes of the financial woes of cities and other public entities that have been placed under emergency management. But *Emergency Managers are forbidden to challenge bond contracts with financial institutions.*

Is there an economic reason to safeguard specifically bondholders? Does, for example, debt to bondholders affect a municipality's credit rating to a qualitatively higher degree than other kinds of debt, for example than pension obligations? This could provide an economic justification for the strange structure of Michigan's Emergency Manager Law.

However, there is no evidence that municipal credit ratings privilege bondholder debt in the way suggested by Public Act 4 and its replacement. Credit ratings are lowered because of *debt*. If a municipality fails to meet its pension obligations, it is at risk for a credit downgrade. If a municipality does not honor its contracts with labor, it also raises credit downgrade risks. Debt to bondholders is not special in the way suggested by Michigan's EM law. The only justification for Michigan's strange Emergency Manager law is a desire to privilege the well being of financial institutions.

This is an illegitimate constraint on policy options. Bankruptcy law is complex and involves many conditions. During the time that the bond deals were made with Detroit and DWSD that led to subsequent problems, financial institutions were engaged in a range of deeply problematic practices (especially in 2005 and 2006). Following the footnotes in standard recent review articles gives one a sense of how bad things were.¹⁷ There was every reason to challenge bond contracts signed in 2005 and 2006, given what we know about the fraudulent practices in the municipal bond market in those years. It is and should be shocking that Michigan's 2011 Emergency Manager Law and its replacement precluded such actions.

But it is also worth emphasizing that we should not, and indeed cannot, simply rely on the point that the legal structure of the bond market and the credit ratings industry does not single out debt with bondholders for special treatment. After all, it is easily imaginable that politicians of the sort that were responsible for Public Act 4 could gain federal power and change the law in the same ways they did in Michigan. We need to be very clear that this would not make Michigan's 2011 Emergency Manager Law suddenly justified. It would merely encode the bias towards capital in the structure of the economic system.

The structure of municipal debt is not biased towards bondholders in the way suggested by Public Act 4 and Public Act 436. But it would be a philosophical error to place too much on this fact. It is a sheer accident that regulatory structures on financial institutions have prevented them from lobbying successfully for laws that privilege them. There is a philosophical moral to be drawn here, familiar from Althusser: ideology is also material.

We see the materiality of ideology at work in the philosophy of the emergency management structure. If a municipality is forced into bankruptcy, then suddenly there is, structurally, a highly limited option space. One does in these cases need a "financial expert", who knows about bankruptcy law. The structural constraint of not being allowed to challenge contracts with bondholders locks policy makers

17

https://www.wilmerhale.com/uploadedFiles/Shared_Content/Editorial/Publications/Documents/2015-04-20-bloomberg-bna-opportunities-risks-municipal-underwritings-and-derivatives.pdf

into a narrower option space, forced to play a structurally rigged game. In a democracy, if we are forced into a policy option space that leads us to take financial efficiency as the guiding ideal, then the right response, indeed the only democratic response, is to return to an earlier point and challenge the limitations that led us there.

We clearly see the structural effects of Michigan's Emergency Manager system at work in the bias to those with "financial expertise" in such matters; the law already contains the essential bias in favor of financial institutions. The Emergency Manager law forbid Detroit's Emergency Manager, Kevyn Orr, from challenging contracts with bondholders. But swap contracts are different. And in 2005, Detroit signed swap contracts with UBS and Bank of America. The swap contracts were intended to protect Detroit's \$1.4 billion municipal bond in case interest rates rose. Interest rates of course dramatically declined during and after the financial crisis of 2008, indeed almost to zero, and Detroit found itself, as Kevyn Orr said in cross-examination with Attorney Jerome Goldberg on January 3, 2014, "very much" on the wrong side of these contracts.¹⁸ One of the great mysteries of Orr's tenure is why he did not challenge these contracts.

Between 2008 and 2013, Detroit paid UBS and Bank of America \$300 million as a result of these contracts. Under the law, Orr was free to challenge these swap contracts in court. Indeed, as Emergency Manager, *only* Orr could have made that decision on behalf of the city of Detroit. Instead of challenging these contracts in court, Orr offered to pay \$165 million to UBS and Bank of America to terminate them. Just paying the termination fee would have cost Detroit 20% of its income tax revenue from 2014 until 2018. If Detroit had successfully challenged the contracts, they would have received their \$300 million back from these two banks, *and* avoided paying a swap contract termination fee.

One of the many mysteries of Kevyn Orr's tenure as Emergency Manager is why he selected the option of sending \$465 million of Detroit's tax revenue to UBS and Bank of America, instead of challenging these swap contracts in court. It is certainly not because such a challenge was unlikely to succeed. These swap contracts, drawn up in 2005, were paradigm examples of the kind of swap contracts that the SEC later concluded were fraudulent, resulting in large settlements with the banks, as Jerome Goldberg makes clear in his cross-examination of Kevyn Orr in January 2014. When Orr is asked about whether he closely followed the SEC actions against these sort of swap contracts, Orr acts only vaguely familiar with SEC settlements over exactly similar swap contracts made under similar conditions:

JG: Are you aware that the report documents seven enforcement actions by the SEC against municipalities in similar situations to Detroit including Jefferson County, Alabama, and Orange County, California, both cities that entered bankruptcy?

KO: As I said I haven't read the report. I'm aware there were enforcement actions.

¹⁸ <http://detroitdebtatorium.org/jerome-goldberg-questions-em-kevyn-orr-over-giveaway-to-bank-of-america-ubs-on-jan-3-2014/>

In the cross-examination, Goldberg also runs through the many features of the 2005 swap contracts with Detroit that would have been found deeply problematic by the SEC, such as the fact that the banks had "superior knowledge to the city when they entered into this complex financial transaction with the city," which they withheld from the city despite "a duty to make it clear;" "that they misrepresented that there was a low risk of default and termination in connection with swaps," "that they did not explain to the city the potential dangers that a termination event would mean for the city, that they could have called in tens of millions or hundreds of millions in interest payments," and other characteristic features of the swap contracts that banks proliferated among municipalities in 2005 and 2006 that were later found to be fraudulent and led to settlements rather than payments. During the cross-examination, Orr has no good answer to why he chose to send \$465 million of Detroit tax payer money to two banks deeply involved in the sub-prime mortgage crisis that led to Detroit's foreclosure crisis.

At another point in the trial, Orr does claim that he "considered" the matter of suing the banks:

Mr. Orr testified that he had in fact considered suing the two banks to get out of the swaps, and even had his staff draw up a complaint. But in the end, he decided that such a lawsuit had just a 50-50 chance of success...¹⁹

At the end of the trial, Federal Judge Stephen Rhodes rejected Orr's plan to pay a \$165 million swap contract termination fee to UBS and Bank of America, saying "it was just too much money" to pay these banks, who had after all already received \$300 million from Detroit. The judge, like most other close spectators of the situation, also just could not understand Orr's reasoning in choosing not to take UBS and Bank of America to court. As the New York Times summarizes the decision:

Detroit planned to use \$165 million from the Barclays loan to cancel the swaps contracts, which would free up the casino money. That would leave \$120 million to help run the city.

But Judge Rhodes refused to sign off on the deal, saying it was "reasonably likely" that Detroit could succeed if it challenged the swap transaction head-on by suing the two banks.²⁰

Of course, if the *real* purpose of the Emergency Managers in Michigan were to serve the interests of banks, private developers, and private equity, Orr's strange choices as Emergency Manager of Detroit would make sense. As usual, that too is not conclusive.

There is a clear incentive from the financial industry to protect any challenges to contracts that have been made. Given that incentive, the unproblematic way in which experience on Wall Street is touted unabashedly in the Michigan media as a chief asset for public office is concerning. What about public

¹⁹ <http://dealbook.nytimes.com/2014/01/16/judge-rejects-detroits-deal-to-exit-swap-contracts/>

²⁰ <http://dealbook.nytimes.com/2014/01/16/judge-rejects-detroits-deal-to-exit-swap-contracts/>

infrastructure? Are there business interests who would similarly benefit from access to it? What would those interests be?

There is an additional reason to think that Michigan is vulnerable to an especially damaging loss of its common public infrastructure, a loss with national and indeed international implications. One of the pieces of Michigan's public infrastructure is the water utility with access to our nation's main supply of fresh water. A private entity that controlled this access would have extraordinary power.

Michigan has a general environment that encourages privatizing public infrastructure, with technocratic justifications; for example, it leads the nation in the number of for-profit charter school companies.²¹ We begin first with the most political forces in Michigan, and their impact on this aspect of the state's current political ideology.

The Michigan Center for Technocracy

Michigan has many examples analogous to Flint, technocracy in the service of business interests, using poor communities of color as a source of profit by seizing their resources, or just callous disregard for human flourishing under Emergency Manager rule. In this section, we consider the *ideological* motivations for these situations.

The Mackinac Center for Public Policy is a think tank devoted to the pure form of technocratic ideology and privatization I have been attributing Rick Snyder and the others around him. A glance at their website in September 2016 reveals banners switching between advertisements for three messages, an announcement of the 2016 Michigan School Privatization Survey, and two upcoming hosted at the Center, “How Pensions are bankrupting Cities and States and How to Fix It”, and an “Issues and Ideas Forum”, called “Worker’s Choice: Freeing Unions and Workers from Forced Representation.”

The Mackinac Center largely steers clear of the divisive social conservative 'culture war' issues in which many of its funders are also deeply involved. But this should be viewed through a strategic lens, the lens of technocracy. According to technocratic ideology, fiscal policy is supposed to be guided by "metrics", by "financial expertise", whose benefit is sold as a value-neutral way to adjudicate policy. If the Mackinac Center were seen to be involved in a socially conservative cultural agenda, it would thoroughly undermine its identity as a think tank devoted to technocratic thinking. The fact that the Mackinac Center for Public Policy is not deeply involved in the culture wars is therefore to be expected. The best way to advance the interests of the funders of the Mackinac center is by supporting a technocratic agenda through one set of venues, and advancing cultural conservatism via another set of venues.

Who are the funders of the Mackinac Center? As Mother Jones [reports](#), it receives “funding from the foundations of conservative billionaire Charles Koch, the Walton family, and Dick DeVos.” DeVos is particularly instructive here. There is little doubt that the DeVos family is an important, if not the most important, influence on the agenda of the Mackinac Center for Public Policy. Richard DeVos Sr., the

²¹ http://www.mlive.com/education/index.ssf/2013/11/national_charter_school_report.html

co-founder of Amway, is worth an estimated 6 billion dollars. He is, according to Mother Jones, “a life-long Christian conservative and crusader for free markets and small government, values he passed down to his four children.” In that [2014 Mother Jones article](#), “Meet the new Kochs: The DeVos Clan’s Plan to Defund the Left” the DeVos family’s national influence is made clear:

The DeVoses sit alongside the Kochs, the Bradleys, and the Coorses as founding families of the modern conservative movement. Since 1970, DeVos family members have invested at least \$200 million in a host of right-wing causes—think tanks, media outlets, political committees, evangelical outfits, and a string of advocacy groups. They have helped fund nearly every prominent Republican running for national office and underwritten a laundry list of conservative campaigns on issues ranging from charter schools and vouchers to anti-gay-marriage and anti-tax ballot measures. "There's not a Republican president or presidential candidate in the last 50 years who hasn't known the DeVoses," says Saul Anuzis, a former chairman of the Michigan Republican Party.

According to the New York Times, the DeVos family founded Michigan’s “most pugnacious protector of the charter school prerogative.”²² The DeVoses have extraordinary power in the state of Michigan:

Nowhere has the family made its presence felt as it has in Michigan, where it has given more than \$44 million to the state party, GOP legislative committees, and Republican candidates since 1997. "It's been a generational commitment," Anuzis notes. "I can't start to even think of who would've filled the void without the DeVoses there."

Governor Rick Snyder is not a social conservative. Snyder vetoed a bill that would have barred health insurance companies from bundling coverage for abortion with the rest of their package, fought the Republican legislature and won on Medicaid expansion, and has had some other initiatives that are not characteristic of a hard liner of his party. Nevertheless, his policies with respect to Emergency Management eerily correspond in precise detail with the Center’s long time agenda. In 2005, one of its fellows, Louis Schimmel, published a report for it called “Can Detroit’s Problems be Solved by an Emergency Manager?”²³ This report is a kind of blueprint for what follows in Michigan. In 2011, an article in Mother Jones, "Behind Michigan's Financial Martial Law: Corporations and Right-Wing Billionaires", accurately described the Mackinac Center’s central ideology:

The Mackinac Center’s is a fervent advocate of privatization—its scholars support outsourcing everything from public school districts to Amtrak to state prisons—and backs anti-union legislation for Michigan. In 2007, the center published "A Collective Bargaining Primer," advocating against mandatory unionization and automatic dues deductions for public school teachers and other public employees. Collective bargaining for teachers, the Center claims, "has become a significant

²² <http://www.nytimes.com/2016/06/29/us/for-detroits-children-more-school-choice-but-not-better-schools.html>

²³ <http://www.mackinac.org/7451>

deterrent to educational quality." In other words, if you outsource as much as you can and kneecap the unions, the quality of education—and presumably city services—increases.²⁴

Snyder's first appointment as an emergency manager, to the city of Pontiac, Michigan was Louis Schimmel, the author of the 2005 report for the Mackinac Center. Schimmel was appointed with a salary of \$150,000 per year and an indefinite tenure. By privatizing most of the city's services, Schimmel laid off 480 out of 500 city employees, resulting in a 96% loss of public sector jobs. It's hard to see why that would be a positive benefit for Pontiac, but Pontiac was eventually released from emergency management, its finances now overseen by a state board. Its municipal assets, however, are in the hands of companies owned by private equity.

Settler Colonialism and Strategic Racism

If the *conscious* ideology of Michigan's disasters is technocracy, its *unconscious* ideology is the kind of racism that accompanies settler colonialism; Peter Hammer's "strategic racism". Between 2008 and 2013, Emergency Managers were appointed in ten Michigan cities. Five of these cities, Detroit, Flint, Pontiac, Highland Park, and Benton Harbor, are majority Black. Four of the other cities, Three Oaks, Allen Park, Hamtramck, and Lincoln Park, are majority white.

Between 2008 and 2013, almost as many white majority cities as black majority cities were placed under emergency management. But this is hardly racial equality. Only 14% of Michigan citizens are black. But it is most instructive to compare the five black majority cities placed under emergency management with the four white majority cities. The comparison is both revealing and disturbing.

Three Oaks, Michigan is a majority white city placed under emergency management during these years. Indeed, it has only 26 Black residents. But its total population is only 2,574. Hamtramck is 53% white and is also on this list; its population is 22,423. The largest white majority city on this list is Lincoln Park, with a population of 38,144. Now compare the size of these cities with the Black majority cities on the list.

The largest Black majority city on this list is Detroit, with a population of 713,777, 82% of whom are Black. Flint is majority black, with a population of 102,434. Pontiac is majority black, with a population of 59,515. If someone deliberately tried to choose a representative set of very small white majority cities to place into emergency management as a method of masking its racially biased application, they could not have done a better job than picking the four white majority cities Michigan placed into emergency management between 2008 and 2013.

In *Discourse on Colonialism*, Aimé Césaire quotes a Rev. Mullur, who maintains that "Humanity must not, cannot allow the negligence and laziness of the uncivilized peoples to leave idle indefinitely the wealth which God has confided them, charging them to make it serve the good of all." [cite] Césaire describes colonialism as making "it lawful to apply to non-European peoples 'a kind of expropriation for public purposes' for the benefit of nations that were stronger and better equipped....".

²⁴ <http://www.motherjones.com/politics/2011/03/michigan-snyder-mackinac-center>

By and large, Snyder's government treats white citizens of Michigan as having an agency and autonomy that must be respected. It would be unthinkable for many white Michigan residents to see a community like theirs placed in perpetual financial servitude, like the citizens of Flint and many in Detroit, or see their students removed from historic neighborhood schools to serve as child guinea pigs for software companies in privately owned charters. This explains why the effects of technocratic restructuring after "crises" in Michigan have, to an extraordinarily disproportionate degree, fallen on the shoulders of its black citizens.

Jane Gordon and Lewis Gordon summarize the legal outcomes to Native American legal challenges to the use of their land for free plunder as follows:

The outcome in the United States, Canada, and Australia is articulated well in two U.S. Supreme Court cases, *Worcester* (1831) and *Cherokee Nation v. Georgia* (1831), the latter initiated by the legal resistance of the Cherokees to their forced removal. The former announced "new and different rule" for Native Peoples in U.S. territories, and since the combination of the U.S. and Canada comprised nearly all of North America, *Cherokee* provided the conclusion of Native nations being "wards," in a "state of pupilage," of the "guardian" U.S., a view adopted also in Canada. Justice John Marshall stated that rather than a "foreign state" as Cherokees claimed they were, the tribe was "peculiar," in Rogers Smith's words, "in some sense a nation [but] not fully so."²⁵

When the financial emergencies disproportionately affect black populations, who are robbed of their autonomy, the concern naturally arises about whether these communities are being thought of as "wards", who are in a "state of pupilage".

Charles Mills, describing colonialism, writes "[w]hite men who are [definitionally] already part of society encounter non-whites who are not, who are 'savage' residents of a state of nature characterized in terms of wilderness, jungle, wasteland. These the white men bring partially into society as subordinate citizens..."²⁶ Mills provides the following quote from "the French Imperial theorist Jules Harmand (1845-1921)":

Expansion by conquest, however necessary, seems especially unjust and disturbing to the conscience of democracies...But to transpose democratic institutions into such a setting is aberrant nonsense. The subject people are not and cannot become citizens in the democratic sense of the term...It is necessary, then, to accept as a principle and point of departure the fact that there is a hierarchy of races and civilizations, and we belong to the superior race and civilization...The basic legitimation of conquest over native peoples is the conviction of our superiority, not merely our mechanical, economic, and military superiority, but our moral

²⁵ Jane Anna Gordon and Lewis Gordon, *Of Divine Warning: Reading Disaster in The Modern Age* (Boulder, Paradigm Publishers, 2009), p. 75.

²⁶ Charles Mills, *The Racial Contract* (Ithaca: Cornell University Press, 1999), p. 13.

superiority. Our dignity rests on that quality, and it underlies our right to direct the rest of humanity.²⁷

It is the logic of colonialism that is at work in Michigan's decisions to use its Emergency Manager Law almost exclusively to displace the democratic structure of black majority cities. More specifically, it is the logic of The Racial Contract, as Mills here describes it:

...the Racial Contract is calculatedly aimed at economic exploitation. The whole point of establishing a moral hierarchy and juridically partitioning the polity according to race is to secure and legitimate the privileging of those individuals designated as white/persons and the exploitation of those individuals designated as non-white/subpersons. (pp. 32-3).

Here is a telling passage from *Detroit Resurrected*, Nathan Bomey's breathless advertisement for the ideology that led to all of these disasters under Snyder in Michigan. The passage is from the chapter on Kevyn Orr, the person Snyder chose to be Emergency Manager of Detroit by Snyder, and installed in 2013 (it was Orr who made the draconian water shut off decisions). The scene is before a meeting with the law firm Jones Day, where Orr was an attorney. Jones Day was seeking to serve as the restructuring law firm for the City of Detroit, and as Bomey notes, "Orr viewed the Motor City's financial troubles as simply another opportunity for his employer to land a high-profile legal deal." Here is what Bomey writes about the difficulty of finding the right person:

"They would have to be prepared to lead in a combat environment," Buckfire said. "This is like going to war."

Race was a key consideration too.

"We strongly believed that the emergency manager should be an African American," Buckfire said. "Clearly, given the political tensions and history of race relations in the city, if the emergency manager was a white person, and even if they were the most qualified candidate, people would characterize the choice as, 'Whitey's taking over the city again'"

Further down the page, Bomey writes:

The Reverend Malik Shabazz, a civil rights activist in Detroit, had already inflamed tensions nearly a year earlier by calling on citizens "to burn down the city of Detroit before letting the state take over," labeling the potential appointment of an emergency manager an act of "white supremacy." [cite]

These passages suggest that the governor and his people were thinking of the Emergency Manager as a hostile takeover in a "combat environment". A black emergency manager was needed, not because black self-determination is a value, but because "more qualified" white candidates would arouse greater suspicion and resistance. Finally, we are given an out of context quote by Reverend Malik Shabazz, which makes it seem incendiary. Bomey explicitly links the phrase "civil rights activist" to acts of violence. Shabazz is clearly calling for political action, but in Bomey's prose his call is

²⁷ Ibid. p. 25.

transformed into what many white Americans may see as a nightmarish image of black out of control violence.

Wayne State Law Professor Peter J. Hammer's July 18, 2016 Written Testimony Submitted to the Michigan Civil Rights Commission Hearings on the Flint Water Crisis, is called "The Flint Water Crisis, KWA and Strategic-Structural Racism". It spells out the causes of Flint both on the level of ideology and that of detailed empirical fact. Hammer ends the introduction by summing up the conclusions he will reach:

The water crisis in Flint needs to be understood from a perspective of strategic and structural racism. These perspectives substantially change how one thinks about the underlying problem of municipal distress, the tool of Emergency

Management, initial decisions relating to Flint's participation in KWA, bond financing for the KWA project, the financially driven decision to use the Flint River as an interim source of drinking water, and the political environment that failed to recognize and respond to the mounting crisis.

Hammer argues that structural racism is the backdrop of the various municipal crises in Michigan, and strategic racism is at work in various applications of the EM Law, including in Flint.

What is strategic racism? Hammer defines it as follows:

The forces of intentional racism, structural racism and unconscious biases are strong in American society and can be manipulated for political and economic purposes. Strategic racism is the manipulation of these forces regardless of whether the actor has express racist intent, although the very act of engaging in strategic racism is itself a form of racist behavior.

Hammer argues that strategic racism is one of the essential concepts in understanding the history of Emergency Management in Flint (and not only Flint). My suggestion is that strategic racism is nothing other than Mills's Racial Contract.

Having the full resources of a city to sell to developers and private equity, for example, by taking out bonds out in the name of that city, to be paid by its citizens in taxes later, without any democratic accountability whatsoever, is an enormous advantage for whoever the recipients of the largesse would be. So there is obvious incentive for a range of business interests to supplant democratically elected officials with an emergency manager. Here is where the strategic use of racism discussed by Peter Hammer plays a central role.

Hammer argues that structural racism in Michigan has led to a situation in which black majority older urban cities have little power. And because of its history, Michigan is even more prone to anti-black racist ideology than most states. This leaves the residents of these poorer, black majority citizens as targets of exploitation. The governor, relying on structural racism resulting in differences in power, and a strong current of anti-black racism, has the ability to convince citizens in Michigan that black majority cities and school districts are not capable of self-governance.

Opportunity

The Manufacture of Crisis

Frontlash requires, for its implementation, a crisis, or an emergency. My hypothesis is that the various "financial emergencies" in Michigan were strategically planned. My goal here is to make a case for this hypothesis; any such case will of course be somewhat speculative.

As we have seen, Michigan's history, more than any other state, is a story of white flight from supposedly "out of control" black majority cities, leaving white suburban areas and several black majority cities, Michigan was already fertile ground for convincing citizens that poor black majority cities could not self-govern. But the state could not simply claim financial emergency and seize cities. There had to be a process that began with convincing citizens in the state that their tax money would be wasted going to such communities. What we see in Michigan is a multi-year plan to starve these cities of state revenue. The cities could then be presented as in financial emergency, and in need of emergency management. So we would expect that the case for cities like Detroit and Flint being placed into emergency management would have begun years before, by a state legislature led effort to slash state revenue sharing with these cities to create future artificial financial crises. And this is exactly what happened in Michigan.

Wallace Turbeville's Demos Report is the best writing and research on Detroit's supposed "bankruptcy".²⁸ In Turbeville's summary of his lengthy report on the causes of Detroit's financial woes, he emphasizes that there was no good reason to treat Detroit as bankrupt at all:

Detroit's emergency manager, Kevyn Orr, asserts that the city is bankrupt because it has \$18 billion in long-term debt. However, that figure is irrelevant to analysis of Detroit's insolvency and bankruptcy filing, highly inflated and, in large part, simply inaccurate. In reality, the city needs to address its cash flow shortfall, which the emergency manager pegs at only \$198 million, although that number too may be inflated because it is based on extraordinarily aggressive assumptions of the contributions the city needs to make to its pension funds.

Detroit was facing a \$198 million cash shortfall. Michigan taxpayers just backed priorities other than Detroit. For example, Michigan taxpayers had taken out a \$250 million bond to help pay for a hockey stadium for the Detroit Red Wings, owned by Illich family, who have a net worth of \$5.2 billion. Michigan made a choice to prioritize a bond for a multi-billionaire family's hockey stadium over bailing out Detroit.

Turbeville finds that Detroit's basic cash flow problems are a function of several factors, none of which was the official reason given, which was "an increase in obligations to fund pensions". The first was the debt service on the "risky financial instruments" Wall Street sold to the city of Detroit, which account for about a third of the shortfall. The largest part of the long-term Detroit outstanding debt figure of 18 billion given by Orr is the \$5.8 billion debt of the Detroit Water and Sewerage

²⁸ <http://www.demos.org/publication/detroit-bankruptcy>

Department. It is not clear why Kevyn Orr included this debt in Detroit's overall debt. As Turbeville writes:

The emergency manager includes \$5.8 billion of the Water and Sewerage Department's debt as a liability of the city, even though the Water and Sewerage Department serves more than 3 million people all across southeastern Michigan, an area far larger than just the city of Detroit, which has just 714,000 residents. This debt is not a liability of the city's general fund; and, even if it were, only a fraction of it would allocable to the city.

How does this debt compare to the official reason given for Detroit's bankruptcy, underfunded pension plans? Orr's own estimate of the debt from pension funds is 3.5 billion dollars, a figure that has been regarded to be massively exaggerated. Turbeville writes that this number is "based on calculations that use extreme assumptions that depart from most cities' and states' general practice." Orr's claim that Detroit needed to go into bankruptcy because of pension fund obligations has always been questioned. In July, 2013, Cate Long called Orr's figures "pension voodoo".²⁹ An article published in August, 2013, "Everything You Need to Know about Detroit's Fight between Investors and Retirees", nicely summarizes expert reaction to Orr's claims about the official reason for Detroit's bankruptcy:

...the size of the pension shortfall is in dispute. Before Kevyn Orr was appointed emergency manager, the pensions were well funded. The police and firefighter fund had assets worth 99.9 percent of its liabilities in 2011, and the general retirement fund was 82.8 percent funded. As recently as February, the city was \$650 million short on the two accounts. But when Orr commissioned private actuaries to examine the city's books, that unfunded pension debt jumped to \$3.5 billion.³⁰

DWSD's enormous debt is due to bond obligations to banks. Orr assumed this debt on behalf of Detroit. He then guaranteed that the debt would be paid back by citizens of Detroit, rather than challenged or shared. In a 2013 interview at Bloomberg's New York headquarters, Orr said this about the enormous debt of DWSD, which he as Emergency Manager incorporated to Detroit's debt (despite the fact that the vast majority of DWSD customers were outside Detroit):

"Water and sewer, we're going to honor those," Orr said yesterday in an interview at Bloomberg's New York headquarters. "They are unimpaired, they are paid according to their terms, and we are current on all our obligations with our secured debt."³¹

It's instructive to compare Orr's decisions with an analogous case, the largest municipal bankruptcy in American history before Detroit, Jefferson County, Alabama. I do not pretend that this comparison is conclusive. But then again hardly anything is conclusive.

²⁹ <http://blogs.reuters.com/muniland/2013/07/26/inflationnumberitis/>

³⁰ <https://thinkprogress.org/everything-you-need-to-know-about-detroits-fight-between-investors-and-retirees-a93cf17908da#.2110kwqcq>

³¹ <http://www.bloomberg.com/news/articles/2013-07-26/detroit-s-86-cent-water-debt-seen-delivering-profit-muni-credit>

Jefferson County, Alabama's most onerous bonds were also to its sewerage utility, which took out bonds worth 3.14 billion. Jefferson County went to court, where bondholders were forced to take a large loss: "Creditors, including JPMorgan Chase & Co., agreed to forgive \$1.4 billion of the county's \$3 billion sewer bonds."³² The decision to go to court also resulted in a settlement with bondholders:

In 2009, JPMorgan agreed to a \$722 million settlement with the U.S. Securities and Exchange Commission over payments that the agency said its bankers made to people tied to county politicians to win business. It also provided more than \$900 million in concessions to allow the county to end its bankruptcy.³³

What about pensions? Did the previous largest municipal bankruptcy in history involve slashing pensions? It did not. In her 2013 blog post for Reuters, Cate Long, wondering why Orr exaggerated Detroit's pension obligations, thought to contact Ken Klee, the municipal bankruptcy attorney who led Jefferson County's path out of bankruptcy, about just this point:

Why is Orr doing this? Does he believe that the pension funds are not adequately counting their future liabilities? I don't think so. Ken Klee, one of the smartest municipal bankruptcy attorneys in the nation, who lead Orange County, California out of bankruptcy, lead the Jefferson County, Alabama bankruptcy case. Did attorney Klee go after Jefferson County's pension fund, which was funded at almost the same level as Detroit's Police Retirement System? I knew the answer was no, but I wanted to confirm with the Birmingham News reporter who covered their bankruptcy trial since the start.³⁴

In the same article, Cate Long reproduces her Twitter exchange with the reporter, Barnett Wright. She asks him whether public pension funds were cut during the Jefferson County bankruptcy process. His response was, "Nope. Not one penny."

It remains unclear why Kevyn Orr assumed DWSD's debt obligations for Detroit, and declared them secured. It certainly helped Orr make the case for bankruptcy. If one simply follows the money, as it were, who benefits from this decision, two parties immediately leap to mind. The first is the bondholders for this debt. The second are the multinational corporations or private equity firms who might be interested in purchasing DWSD.

Orr's actions guaranteed that none of the contracts that led to this debt would be challenged, and were safe bets to be paid back in full. And if one's ultimate goal was to make the best possible case for privatizing DWSD, one would want to keep its debt burden ever growing, its rates ever increasing. This would be the best method to convince Michigan citizens that "financial efficiency" demanded that one must sell it into private hands. After all, the strategy used in Flint to justify moving away from DWSD to a new source of water was precisely the impossibly high rates attributed to DWSD.

³² <http://www.bloomberg.com/news/articles/2013-11-22/jefferson-county-s-bankruptcy-left-few-winners-as-debt-forgiven>

³³ Ibid.

³⁴ <http://blogs.reuters.com/muniland/2013/07/26/inflationumberitis/>

So one central factor in Detroit's cash shortfall was its assumption of \$5.8 billion in debt from DWSD, an entirely voluntary decision by Orr, and the annual payments that this decision made part of the calculus of Detroit's cash shortfall. Another factor was Orr's decision to keep paying the banks for swap contracts similar to the ones for which other municipalities received settlements. But according to Turbeville, the largest factor in Detroit's \$198 million cash shortfall preceded Orr's tenure. *This was Michigan's decision to cut \$67 million per year in state revenue sharing.* In other words, Turbeville documents a clear pattern taken by state politicians between Schimmel's 2005 paper for the Mackinac Center, and Snyder's administration, of starving Detroit of funds.

The case is exactly the same in Pontiac and Benton Harbor, two other cities placed under Emergency Management. They were thrust into fiscal crisis by drastic reductions in state revenue sharing. And this is also clearly so in the case of Flint. Turbeville accuses Michigan of manufacturing Detroit's fiscal emergency; Peter Hammer makes this accusation with Flint in even stronger terms:

What was the State's response to Flint's structural financial problems? Between 2006, the last year Flint ran a budget surplus and planned FY 2012, on the eve of it being placed under an Emergency Manager under PL 4, state revenue sharing fell 61% from \$20 million to \$7.9 million. The inference is clear. The primary, non-structural reason Flint was in financial distress was the direct result of state revenue sharing policy. This fact does not get the public attention it deserves. *The State of Michigan created the very financial distress in Flint and other cities that it then used to supposedly justified the need for Emergency Managers.*

Of course, Rick Snyder could not have been involved in the process of manufacturing these crises, as he was then not in elected office. However, Andy Dillon was throughout this time the powerful Michigan Speaker of the House, and would have been centrally involved in these decisions. And as soon as Snyder assumed office, he brought Dillon into his administration, as his administration's state treasurer.

In September, 2016 a lawsuit was filed by "public interest attorneys and local government officials."³⁵ The lawsuit "says the state has been violating the Headlee Amendment to the state constitution by denying local governments their fare share of state sales tax revenue". The amount in question, according to the lawsuit, is four billion dollars per year. This is in addition to the official revenue slashing discussed by Turbeville and Hammer. In addition to the fact that state revenue to Detroit, Flint, and other municipalities was dramatically slashed in the years preceding the declaration of financial emergencies in these municipalities, the lawsuit alleges a massive additional slashing of revenues to these municipalities.

I have argued that the conditions in Michigan naturally lead to situations like Flint's. Indeed, we have already extensively discussed Detroit's "bankruptcy", which is such a situation. We now turn to Flint.

³⁵ <http://wmuk.org/post/lawsuit-says-state-short-changing-local-governments-4-billion-year>

Flint

Since 1967, Flint had been receiving water from DWSD, water that was then distributed to the rest of Genesee County. From 2005-9, the Flint average monthly water bill was not dramatically out of line with other municipalities in Michigan, averaging \$27.17.³⁶ From 2009-11 it went up to \$39.09. The most dramatic rise in Flint's monthly water bill came between 2011-2013, when it leapt to \$59.37 in fiscal year 2013 (Ibid.). Governor Snyder placed Flint under Emergency Management in 2011.

It was under emergency managers Michael Brown and then Ed Kurtz that the most dramatic rise in Flint's monthly water bill occurred. The rapid rise in the water bill for Flint in the 18 months before the decision to move to DWSD curiously did not affect the rest of Genesee county. The blame for the rise has been placed, not on DWSD, but on the Flint emergency managers during this time:

Governor Snyder's appointment of Andy Dillon, Governor Snyder's Emergency Managers in Detroit and Flint, who both had a hand in the switch, the former by jacking the rates and the latter by approving the move, all share in the blame.³⁷

Flint's 2013 monthly water bill is shocking, compared to other municipalities in Michigan. Flint has roughly the same customers as Ann Arbor (29,805 vs. 26,816). Yet Ann Arbor's 2016 average monthly water rate was \$13.76 (Ibid., figure ES.9).

2013 was also the year when the decision was made, for cost reasons, to move Flint from DWSD to a new source of water provided by the Karegnondi Water Authority (Karegnondi or KWA). According to its website, KWA was incorporated in 2010 and had its first fiscal year begin October 1 of that year. Its CEO is Jeff Wright, who is the Genesee County Drain Commissioner, i.e. the drain commissioner for the county in which Flint is located. In June, 2013, construction began on K.W.A.'s new pipeline from Lake Huron.

On March 25, 2013 the City Council of Flint agreed to move from DWSD to KWA, citing "projected costs...less than 25% of the projected water costs from Detroit."³⁸ Governor Snyder's spokesperson and others repeatedly have placed the blame for the move to the Flint River on this City Council decision. But that is false. Though the City Council signed the agreement, Flint at that time was under Emergency Management, which meant that the Emergency Manager was the one making the decisions, as well as setting water rates, and providing information about relative cost.³⁹ And most damningly, it is not even true that the City Council voted to use the Flint River as an interim water

³⁶ See Figure Es.5 of

http://www.michigan.gov/documents/snyder/Flint_Rate_Analysis_Final_Raftelis_Report_May_13_2016_524463_7.pdf

³⁷ <http://www.michiganpopulist.org/snyders-email-reveals-andy-dillon-made-ultimate-decision-on-flint-water-switch/>

³⁸ <http://www.eclectablog.com/wp-content/uploads/2016/01/Flint-City-Council-KWA-resolution.pdf>

³⁹ <http://www.freep.com/story/opinion/columnists/nancy-kaffer/2015/11/21/flint-water-crisis/76060708/>

source. City Council President Joshua Freeman has made clear that the vote was to switch to KWA as soon as the pipeline was available, not to use the Flint River in the meantime.⁴⁰

The decision to switch to the Flint river while the KWA pipeline was being built was made subsequently, in April, after DWSD expressed reluctance to keep Flint as a customer until the completion of the pipeline. There is no mention, in the City Council agreement of March 25, 2013, of using the Flint River in the meantime. The clear assumption was that Flint would continue with DWSD. No state official has taken responsibility for the decision to move to the Flint river in 2014, but some fingers have been pointed at state treasurer Andy Dillon.⁴¹

Was it cheaper for Flint to move from DWSD to KWA? In December, 2012, a report was submitted to the Dillon's office, the Michigan treasurer's office, by an engineering firm Tucker, Young, Jackson, Tull, Inc. (TYJT), assessing the relative costs of remaining with D.W.S.D. and moving to K.W.A (the report was released in February, 2013). The definitive finding of this report was that remaining with D.W.S.D., even at its then rates, was cheaper.⁴² Why was this report not heeded? In an article from February, 2016, Investigative journalist Allie Gross writes:

In a treasury email describing a January 28, 2013 meeting with members of the Michigan Department of Treasury, Flint officials, the Genesee County Drain Commissioner/KWA CEO Jeff Wright and engineers for the pipeline, Kurtz said he felt like the KWA option was the cheaper option and, as the email explains, "He also stated that he believed that the Mayor and City Council will support the KWA Project."

Kurtz's statement was likely influenced by Rowe Engineering (the company tasked with building the pipeline) and Genesee County Water and Waste Services (read: Mr. Wright) who both had stakes in the KWA pipeline coming to fruition and were both asked, by the state, to provide analyses of the TYJT analysis prior to the January 2013 gathering. As you can imagine, they both came to the KWA plan's defense. With Rowe's CEO writing that it was a "credible" project.⁴³

There does not seem to be a record of concern about the potential conflict of interest of having the CEO of KWA, Jeff Wright, play a role in this crucial decision.

Subsequent revelations have proven damning. On Monday, April 15, 2013, Sue McCormick of DWSD sent a sixth and final offer, designed to retain Flint as a customer. In it, she notes that the new

⁴⁰ http://www.mlive.com/opinion/flint/index.ssf/2015/10/city_council_president_emergen.html

⁴¹ <http://www.michiganpopulist.org/snyders-email-reveals-andy-dillon-made-ultimate-decision-on-flint-water-switch/>

⁴² See p. 17 of http://mediad.publicbroadcasting.net/p/michigan/files/201512/water_report.pdf

⁴³ <http://www.metrotimes.com/Blogs/archives/2016/02/13/emails-reveal-flint-should-never-have-joined-kwa-andnbspit-was-never-about-saving-money>. DWSD's full April offer is here <https://www.scribd.com/doc/298602330/DWSD-offer-to-Flint>.

proposal “saves \$800 million or said differently saves 20% over the KWA proposal.”⁴⁴ Indeed, by late April, 2013 that DWSD’s offer was cheaper was a matter of public record.⁴⁵ So the question is: why did Flint move to KWA, using the Flint River as a temporary source of water, when the move was known to be considerably more expensive? To quote again from Allie Gross’s February, 2016 article:

As one email from DSWD candidly put it: "the KWA pipeline can only be attributed to a ‘political’ objective that has nothing to do with the delivery – or the price – of water."

So what was this political objective? What follows is, of necessity, speculative, and indeed based on the speculation of others.

First, and most obviously, KWA needed the additional funding to start on its pipeline project. Allie Gross’s February, 2016 article emphasizes that articles from 2012 suggested that a bond from Flint was necessary for the KWA pipeline project to move forward. KWA had secured some or most of the needed almost \$300 million required to begin construction on its pipeline. But it still required considerably more. Flint’s decision to take out an \$81 million bond to be paid for by present and future Flint taxpayers solved any remaining funding problems that existed. Jeff Wright was the CEO of KWA, and the Genesee County drain commissioner, and so was incentivized to push Flint in that direction.

This raises the question of why the state seemed so eager for the K.W.A. pipeline project to go through. The amount of water that Flint—under emergency management—was requesting from K.W.A. exceeded Flint’s needs. Gross calls attention to a suggestive line in a 2013 article, “the board chairman has promoted the pipeline as a key to the region’s future economy.”⁴⁶ One speculation is that the additional water is perhaps for fracking, which requires large amounts of water, or it might be sold onwards to other municipalities, with KWA now a truly private competitor for DWSD.

A second motivation connects to the general ideology of privatization. The central goal of the emergency managers, and Snyder’s administration, is to privatize as much as possible of Michigan’s public infrastructure. And the prize here would be DWSD. Flint was a vital revenue source for DWSD; cutting Flint off from DWSD only drives DWSD further into debt. Whether intentional or not, having Flint withdraw from DWSD makes the case stronger for its privatization.

In Detroit Resurrected (pp. 186-7), Nathan Bomey quotes Detroit emergency manager Kevyn Orr:

⁴⁴ <http://motorcitymuckraker.com/2016/01/23/gov-snyder-lied-flint-water-switch-was-not-about-money-records-show/>

⁴⁵ http://www.mlive.com/news/flint/index.ssf/2013/04/spokesman_for_gov_rick_snyder.html

⁴⁶

http://www.mlive.com/news/flint/index.ssf/2013/02/genesee_county_commissioners_t_10.html

[Kevyn Orr] solicited bids for private operators to run or purchase the water system, which would have enormous consequences for the counties. “This was in the beginning of 2014 when all those nastygrams were going back and forth between us and Bob Daddow and Brooks,” Orr said. “I finally got to the breaking point and said, ‘Fuck it. It’s outta here. We’re doing it because we have to do it.’”

The city identified Chicago-based water operator Veolia as a leading candidate to take over the system in a privatization....[U]nder a private operator, water rates would be hard to control. A private operator would squeeze superfluous costs out of the system, potentially laying off workers and maximizing profits at the expense of taxpayers.

As I have earlier suggested, the water shut-offs were part of this plan. By showing that Detroit citizens were already prepared to think of water as a commodity, Orr was making DWSD more attractive for privatization.

It would certainly be frightening to be told that access to the world’s largest source of fresh water was being prepared for sale to a multi-national corporation. Describing Veolia as a “Chicago-based water operator” makes Veolia sound very American. But Veolia is not an American company. Veolia (formerly Vivendi) is a giant multi-national company based in France, with annual revenue of around thirty billion dollars per year. Only its North American headquarters are based in Chicago. One wonders why Bomey’s description makes it sound like a small business in Chicago, as American as apple pie.

The name “Veolia” is familiar to those who have followed the story of the poisoning of Flint’s children. In February, 2015, Veolia was hired as Flint’s water quality consultant. In June, 2016 Michigan Attorney General Bill Schuette filed a civil suit against Veolia. In his words:

Veolia was hired as Flint's water quality consultant, hired to fix the problems at the water treatment plant. Veolia hired an interim report on Feb. 18 of 2015 that completely misrepresented the quality of the Flint water. Veolia stated that the water, quote, was safe. Veolia also callously and fraudulently dismissed medical and health concerns by stating that quote, some people may be sensitive to any water."⁴⁷

One might wonder why, if Veolia already was “the leading candidate to take over [DWSD] in a privatization”, they were hired to monitor water quality control in Flint. If they had an interest in purchasing DWSD, they also had an interest in keeping Flint from returning as a customer. And if Veolia can show as much callous disregard for its clients as the Michigan Civil suit alleges, one might wonder whether Veolia is quite the right giant multi-national corporation to hand over one critical access point to the world’s greatest source of fresh water.

Aftermath

This paper has been about the causes of the tragedy in Flint. But we cannot ignore the effects. Starting on April 25, 2014, the roughly 6000 children in Flint were drinking and bathing in hazardous waste.

⁴⁷ <http://www.npr.org/sections/thetwo-way/2016/06/22/483083095/they-made-it-worse-michigan-files-suit-against-2-companies-over-flint-crisis>

Their food was washed in hazardous waste. Dr. Marc Edwards of Virginia Tech said, “we had never seen such sustained high levels of lead in 25 years of work.”

The research on the dangers of lead is unequivocal. “Environmental lead exposure, measured in blood or dentin, has been associated with higher rates of inattention and impulsivity.”⁴⁸ Some researchers have argued that the large rise in violent crime starting in the early 1970s, and the subsequent steep decline in violent crime since 1991, is due at least in part to the focus on avoiding lead exposure.

It is standard to note that there is no such thing as a safe amount of lead in drinking water. According to the CDC, “[e]xperts now use a reference level of 5 micrograms per deciliter to identify children with blood lead levels that are much higher than most children’s levels.”⁴⁹ And the “US EPA action level for lead is 15 ppb and the World Health Organization (WHO) maximum lead level is 10 ppb.”⁵⁰ It has been found that even incremental decreases in lead exposure lead to substantial positive effects on reading proficiency.⁵¹ And what was found in the water in Flint?

Virginia Tech collaborated with Ms. Walters’ on a follow-up sampling event. In this case we used bottles that allowed consumers to use water at a normal flow rate. We also collected 30 bottles from her home at low, medium and high flow rates. The drinking water samples all had extremely high lead levels between 200 ppb to 13,200 ppb (Figure 2). Water containing more than 5,000 ppb of lead, exceeds criteria that classifies water as a hazardous waste.⁵²

On July 13, 2015, after persistent year long activism by Flint residents, the EPA alerted the Michigan Department of Environmental Quality about the lead worry, Brad Wurfel, spokesman for the Michigan Department of environmental quality, issued a statement. Wurfel said, “Let me start here – anyone who is concerned about lead in the drinking water in Flint can relax.”⁵³ On September 25, 2015, almost a year and a half later, Flint finally issued a lead advisory. Governor Snyder’s chief of staff, Dennis Murchmore, on that day wrote an email describing the controversy over lead as “a political football.”⁵⁴

On February 17, 2016 Rick Snyder testified in front of Congress, calling it a “failure of government on all levels.” He promised to take responsibility and ensure that a tragedy of this proportion would not happen again. Michigan DEQ director Dan Wyant resigned. In July, 2016, Rick Snyder selected his replacement. Snyder’s choice as the new director of Michigan’s Department of Environmental

⁴⁸ <http://www.ncbi.nlm.nih.gov/pmc/articles/PMC1764142/>

⁴⁹ https://www.cdc.gov/nceh/lead/acclpp/blood_lead_levels.htm

⁵⁰ <http://flintwaterstudy.org/2015/08/hazardous-waste-levels-of-lead-found-in-a-flint-households-water/>

⁵¹ <http://www.nber.org/papers/w22558>

⁵² <http://flintwaterstudy.org/2015/08/hazardous-waste-levels-of-lead-found-in-a-flint-households-water/>

⁵³ <http://michiganradio.org/post/leaked-internal-memo-shows-federal-regulator-s-concerns-about-lead-flint-s-water#stream/0>

⁵⁴ <https://www.documentcloud.org/documents/2696071-Snyder-Emails.html#document/p71/a5>

Quality? Former BP oil executive Heidi Grether. Her qualifications? She served as the spokesperson for British Petroleum during the Deepwater Horizon disaster.⁵⁵

Conclusion: On the Technocracy

I have argued that we see in the case of Flint, Michigan, and its surrounding context, an example of the strategic use of technocracy. But are there philosophical morals here? Or is this just a paper about a misuse of otherwise valuable democratic ideals? Should technocracy be used to guide policy in democracy? If so, then Michigan just is a case in which the ideals of technocracy happened to be misused. Or should we expect tragedies like Flint to be regular by-products of the use of technocratic ideals to shape policy in pluralistic democratic societies?

We know about Flint because of the heroic actions of its citizens. And we have seen that Flint is not an isolated case even in the state of Michigan. Is technocracy likely, by its structure, to be a flawed ideology, one that masks social reality in a way convenient to the interests of those in power? Or is Michigan just a place where one finds multiple examples of tragic misuse of otherwise positive ideals for policy making in a democracy?

The dialectic here is familiar from political philosophy. Are democratic ideals suspicious by their nature, because they tend to be systematically misused, as Carl Schmitt famously argued? After all, at least for most of its history, the United States was a democracy in name only, because so many citizens were disenfranchised. But many philosophers think this just shows that democratic ideals were not followed properly. Is the dialectic the same here? Are technocratic ideals otherwise valuable ideals in democratic policy formation, which have just been misused by politicians in Michigan? I will briefly make the case that the situation is quite different with technocratic ideals. Unlike in the case of democratic ideals such as the various interpretations of freedom and equality, there is a strong case for the *incoherence* of technocratic ideals as guiding ideals for the formation of democratic public policy.

Technocracy is policy formation guided by *financial efficiency*, or *financial responsibility*.⁵⁶ Technocracy is value-neutral, and “non-ideological”; recall Nathan Bomey's description of Rick Snyder as "a technocratic Republican", who is therefore "non-ideological". Technocracy disdains "politicians." Decisions should not be left in the hands of democratically accountable "politicians," who will only put off hard decisions and pander to their water-hogging constituents. When the people are in charge, they spend too much on themselves. The people make *financially irresponsible* decisions.

But the technocracy is simply incoherent. Its ideals, financial responsibility, efficiency, and value-neutrality, cannot be systematically combined. The notions of responsibility that these ideals invoke are deeply moralistic, and hence deeply value-laden. The people are financially irresponsible because they are spending too much money on themselves, money that is not theirs. Whose money are they

⁵⁵ <http://www.electablog.com/2016/07/what-snyders-choice-of-an-oil-executive-as-deq-director-says-to-michiganders.html>

⁵⁶ The notion of financial efficiency that is central to technocracy is not at all the economist's notion of *economic efficiency*.

spending? The money they are spending is the bondholders' money; they are spending capital they have borrowed from banks, and from other private, wealthy lenders. The paradigm of *financial irresponsibility* is to not pay back bondholders for their loans. The paradigm of *financial responsibility* is to refuse to honor pension promises, or contracts with labor.

The very *statements* of the Emergency Manager Acts initiated under Snyder make moral judgments, asymmetrical valuations of contractual relationships. Honoring pension obligations is not part of "financial responsibility". Indeed, quite the opposite, financial responsibility requires *not* honoring them. Not honoring debts to capital is, by contrast, the paradigm of financial *irresponsibility*. These are very strong value judgments, about whose worth matters. And this also answers an important question. The word "efficiency" is a relative word; we must always ask, "efficient to whom?" According to moral schema of the technocracy, "financial efficiency" is efficiency for those who according to the technocracy matter most, the bondholders. And every single one of these points, indeed the whole situation, was utterly clear to the local Flint activists. That is why I can end this paper with a straightforward summary of its main point, using the words of Claire McClinton of the Flint Democracy Defense League:

It's interesting to note, in Public Act 436, the Emergency Manager cannot void a contract with bond holders. That's off limits. Bond holders are sacred. They cannot be touched. People are not sacred.⁵⁷

⁵⁷ From the outset of Curt Guyette and Kate Levy's ACLU documentary, *Here's to Flint*: