In March 2015, Americans learned from the U.S. Department of Justice (DOJ) that the city of Ferguson, Missouri had been operating a “predatory system of government.”¹ Police officers were acting as street-level enforcers for a program in which fines and fees were used to extract resources from poor communities of color and deliver them to municipal coffers.

Three features of this extractive regime stood out in the excellent journalism that followed.

1. **The targeting and scale of the operation**: Black residents were clearly the primary targets of predation, making up 90 percent of those ticketed for public safety violations. With the city averaging three warrants *per household*, fines and fees became ubiquitous experiences among its poor, black residents. Payments were pursued so aggressively that they made up one fifth of the city’s entire revenue base in 2013 – an 80 percent increase over just two years prior.²

2. **The intentional, top-down nature of the operation**: Under sharp fiscal pressures, city leaders had *consciously chosen* to offset revenue losses on the backs of poor and working-class black residents. The DOJ Report concludes: “Ferguson’s law enforcement practices are shaped by the City’s focus on revenue rather than by public safety needs…. The City budgets for sizeable increases in municipal fines and fees each year, exhorts police and court staff to deliver those revenue increases, and closely monitors whether those increases are achieved.”³

3. **The city’s construction and exploitation of debt**: Even when subjected to minor fines and fees, Ferguson residents often became ensnared in a perpetual debt trap – making endless payments on interest, with devastating consequences for their own lives. The DOJ Report concludes: “Minor offenses can generate crippling debts, result in jail time because of an inability to pay, and result in the loss of a driver’s license, employment, or housing.”⁴

The revelations were shocking to many Americans. “How could this be?” many journalists asked. The entire story struck many people as deeply un-American, and sharply at odds with how governance normally works in 21st century American life.

Against this view, we argue that the extractive regime in Ferguson was no anomaly. To the contrary, it points us toward governmental practices that are widespread, longstanding, and worthy of far more critical analysis than they have received. In this regard, we advance three main arguments.
1. What the DOJ discovered in Ferguson is not exceptional, either in relation to U.S. history or in relation to contemporary American governance. Race- and class-targeted predation has been a central and enduring thread in American state and nation building, in the structure of our political economy, and in the varied forms of social domination that define American life, today as in the past.

2. Predatory state practices shift over time, generally reflecting the broader political rationalities of their time. Today, they function as an essential but poorly understood element of neoliberal governance in America. They are driven by neoliberal pressures; they operate according to neoliberal logics that blur the boundaries between state and market; and they supply key “conditions of possibility” for the contractual political economy of neoliberalism.

3. State predation is not just repressive; it is also a productive force. In the neoliberal era, it has fabricated a distinctive political figure that we conceptualize as the “indentured citizen.” Wendy Brown and others have argued that neoliberalism rewrites the political citizen as a marketized subject. Various accounts discuss the dutiful worker as idealized citizen, the citizen as consumer, the managed citizenry, and so on. Alongside these forms, we argue that state predation produces the indentured citizen as a key political figure of the neoliberal era. The civic position of the indentured citizen is structured by terms of debt and discourses of indebtedness. Through predation, the indentured citizen is brought into being as a different kind of governable subject; the state-citizen relation is rewritten around a market model of creditor-debtor relations.

To develop these arguments, we begin from a distinction elaborated in the works of Douglass North and Charles Tilly, between contract and predatory conceptions of the state.

Contract conceptions of the state can be traced back to the European social contract theorists of the early modern period. They supply the liberal-democratic image of the state that frames most mainstream analyses of American government today.

- The contract state is rooted in and legitimated through the consent of the governed. Its officials claim to be representative of and responsive to the public, and they are subject to legitimate criticism for failures in these regards.
- The contract state fosters economic development in classic liberal fashion – through establishment of property rights, enforcement of contracts, investments in collective infrastructure, and so on.
• It relates to the people in a manner that is supportive of the liberal equalities of
democratic citizenship, on one side, and the liberal inequalities of market economies, on
the other.
• It funds its own operations through systems of taxation that are accepted as legitimate
preconditions for these desired arrangements – “the price of civilization.”

We see the broad contours of this model, for example, in T.H. Marshall’s conception of how
liberal state institutions and forms of citizenship evolve together; in Robert Dahl’s polyarchy
amid social inequalities; and in John Rawls image of state and society as a flawed but more or
less “cooperative venture for mutual advantage.”

Inequalities abound under this liberal model, of course. But social domination and exploitation
are not, in themselves, projects of the contract state.

In fact, beyond a certain point, durable forms of domination would suggest a breakdown of the
“social compact,” distorting the contract state beyond recognition. We can see shades of such
arguments in both scholarly and popular critiques of economic inequality and plutocracy in the
United States today.

In contrast to this focus on consensus agreements and their violation, predatory conceptions of
the state begin from a conflict perspective on social and political relations. In this view, the state
is, first, a revenue-consuming ruler that extracts resources from populations and, second, an
instrument that dominant social groups use to prey upon subordinate groups.

• The predator state enriches the “real citizens” of the dominant strata, and enables their
quality of life, through expropriation and exploitation of subordinate groups.
• It advances modes of economic development and state-building – to the advantage of
some far more than others – through extractions of land, labor, and other resources from
subordinated groups.

As a concept, the predator state has been most explicitly applied to early periods of European
state formation and contemporary (often authoritarian) states in the Global South. The concept of
state predation has received far less attention in scholarship on governance in the United States.

In an important exception, Richard Young and Jeffrey Meiser have offered an incisive account of
American political development prior to the Civil War.7 Young and Meiser (p.33) argue
convincingly that:

“The early Anglo-American state can be best described as a dual state: a ‘predatory state’ in its
dealings with non-white Americans, but a ‘contract state’ in respect to the internal governance of
the dominant group, Anglo-American males. In practice, this duality meant that a prosperous,
expanding, liberal democratic, Anglo-American society was made possible by the dispossession of Native Americans from their traditional lands and the enslavement of African Americans.”

The contract state that “promoted the growth of a prosperous, liberal democratic society of Anglo-Americans,” they conclude, was made possible by “a predatory state that financed white liberal society through its ruthless exploitation of Indian lands and African American labor.”

Noting our debt to this work, we want to distinguish our own project in two important ways.

First and most obviously, we contest the idea that state predation faded away after the Civil War. In fact, we argue that it plays a critical role in American governance today.

Second and perhaps more subtly, we set aside debates over whether the “true nature” of the American state is contractual, predatory, or some blend of the two. Instead, we focus at a lower level of operations, on governing practices. Drawing on the predatory state as a sensitizing concept, we aim to illuminate a specific regime of governing practices, clarify their sources and logics, and specify their social, economic, and political consequences.

Several features define the practices we deem “predatory” for purposes of this project.

1. All are targeted practices of resource extraction pursued or facilitated by state actors and institutions – though often in concert with market actors.

2. All are organized by race, class, and gender and guided by their social and spatial coordinates.

3. All advance projects of state building and maintenance and, at the same time, support dominant-group accumulation and citizenship.

For present purposes, we won’t dwell for long on our historical analysis, focusing instead on predation in the neoliberal era. But a few key historical points are worth a bit of our time.

Extending Young and Meiser’s analysis, we argue that predatory state practices prior to the Civil War should be understood as doubly productive. The extraction of labor through practices of chattel slavery and lands through practices of settler colonialism were not simply based on race.

- On one side, they functioned as race-making institutions whose practices produced racial subjects and constructed the terms of racial subordination.
- On the other side, they provided the conditions of possibility – both materially and ideologically – for the construction of an expanding system of liberal democracy, citizenship, and wage labor centered on white men.

In addition, our analysis focuses on the ongoing challenge, visible from the outset, of how to reconcile predatory practices with ideological commitments to the contract state of liberal democracy as the essential nature of the American polity.
For example, by drawing on Carole Pateman, Patrick Wolfe, Michael Rogin, Kevin Bruyneel, and others, we explore how the doctrine of *terra nullius* was deployed to deem Native lands “uninhabited and ungoverned” and, thus, existing in a quasi-state of nature legitimately available for the taking – and how racial constructions were developed to advance and justify the construction of a *herrenvolk democracy* underwritten by settler colonialism.

Along with chattel slavery, which followed its own distinctive logics and justifications, these practices played a central role in building the American state and nation. And importantly, even in these earliest periods, they operated as an integrated political economy, drawing state and market practices together in ways that often worked in concert.

Moving forward to the post-Reconstruction era, we explore the emergence of predatory practices such as debt peonage, prison industries, and convict leasing. State-led predation evolved in this period, in varied forms, in every region of the nation.

In the wake of the 13th and 14th Amendments, crime and punishment became *organizing and legitimating rationalities* for predatory practices. The anchor point for this system was coercive labor extraction orchestrated by state authority.

In the North, “prison industries” turned carceral facilities into factories, and inmates into captive labor pools generating private profits. In the South, chain gangs and convict-leasing contracts were used to reconstruct key elements of the old slavery and plantation arrangements.

Altogether, historian Rebecca McLennan reports that “by the mid-1880s, approximately 45,000 prisoners—or almost four in every five—labored away on a daily basis for… a mix of public and private interests.”

Penal servitude produced “tens of millions of dollars’ worth of goods on an annual basis.” “Almost everywhere,” she concludes, “the penal arm of government had been reduced to a mere instrument of private, commercial interests whose primary commitment was to the pursuit of profit.”

The severe practices that emerged in the South are especially hard to square with Young and Meiser’s claim that the predatory state faded away after the Civil War.

We can begin outside the prison, with the sharecropping system, where state laws and powers were used to facilitate racially targeted forms of predation by white landowners.
Debt – which had earlier served as the underpinning for labor coercion under indentured servitude contracts – emerged in this period as the foundation for a system of perpetual peonage in which Black sharecroppers worked endlessly to generate revenues for White southerners yet always ended the year unable to pay off all they owed to their White creditors.

State laws defended this system against disruptive market forces by forbidding wage competition among white landowners. State police powers were used to enforce exploitative lending contracts and “scrip” arrangements that included extortionary interest rates.

Police secured labor compliance by using vagrancy laws to arrest Blacks deemed to be “in idleness.” Those deemed to be in violation frequently joined the considerable numbers of Black southerners ensnared in the deeply predatory labor arrangements of the penal system.

Indeed, if one asks how the South was rebuilt and developed in the century after Reconstruction – and how this feat was accomplished without imposing significant taxes on the wealthy White elites who controlled the vast majority of southern capital – it is impossible to answer without recourse to the predatory racialized practices of prison labor and convict leasing.

Although the 13th amendment had abolished slavery, it carved out an exemption for involuntary servitude by convicted criminals. Southern states responded by passing laws that allowed public officials to lease out their prisoners, essentially making convicts the property of private actors.

Historian Edward Ayers describes the resulting penal form as “a sort of mutual aid society for the new breed of capitalists and politics of the white Democratic regimes of the New South.”

Tracing the history of convicts put to work mining coal in Alabama, David Oshinsky reports: “[The miners’] numbers ebbed and flowed according to the labor needs of the coal companies and the revenue needs of the coal companies and the state. When times were tight, local police would sweep the streets for vagrants, drunks, and thieves. Hundreds of blacks would be arrested, put on trial, found guilty, sentenced to sixty or ninety days plus court costs, and then delivered to a ‘hard labor agent,’ who leased them to the mines.”

As they generated private profits, convict-leasing arrangements worked alongside prison chain gangs to rebuild much of the region’s shattered infrastructure. At the same time, the local tax revenues they generated (through businesses) allowed state officials to provide services to White citizens without ever having to raise taxes on White voters.

American history is filled with varied forms of state predation worthy of our attention. In our book, we hope to assemble and theorize some of the different regimes in a way that’s generative for scholarship on American political development. For now, however, we will skip ahead to the
present era, returning us to practices like the ones uncovered in Ferguson and protested throughout the nation by the Black Lives Matter movement.

Now as in the past, state predation operates as an element of – and thus, adapts to and reflects – the prevailing political rationality of its particular era. In America today, we believe this logic is best thought of as “neoliberal” in character.

The logics and goals of neoliberal rule have evolved over time; they shift across spatial locales and domains of governance. But these variations cohere in ways that make it possible to draw them into a common frame of analysis and use the concept of neoliberalism to clarify and explain their operations.

Broadly speaking, neoliberalism refers to the extension of market rationalities across an expanding range of social, economic, and political relations. In one field of endeavor after another, actors are refigured as \textit{homo oeconomicus} and positioned in relations of exchange and competition.

In the neoliberal era, individuals, governments, nonprofits, and a host of other actors are all expected to make prudent choices that enhance their own capacities and lead to a desirable “return on investment.” Success and failure, deservingness and moral worth, civic standing and institutional performance… All these and more become evaluated in ways that turn market criteria into normative ideals or, conversely, legitimate grounds for condemnation.

If we look to state practices of governance, we find that operations in one arena after another have been redesigned to reflect market principles and make officials more dependent on market actors to achieve their goals. Policies are reformed to promote capital accumulation by market actors, service corporate interests, and generate new fields of profitable market relations.

Thus, neoliberal reforms work to roll back the market-constraining effects of state regulations and the welfare state. They work to expand the state’s role in creating market opportunities, absorbing market costs, and imposing market discipline.

Core state functions, from war to welfare, environmental management to incarceration, are contracted out to corporate providers. Policy authority is devolved to lower levels of governance, and made subject to various “public private partnerships” and “cross-sector collaborations.”

Today, there is a vast literature on neoliberalism, exploring and debating its operations in detail. Our aim is to connect this work to contemporary practices of the predatory state.

The neoliberal era of governance has been marked by a \textit{resurgence and transformation} of state
predation on poor communities of color.

- On one side, we argue that state predation in America today will be misunderstood if we fail to theorize its neoliberal character and locate it within a broader political rationality.
- On the other side, we argue that neoliberalism in the U.S. will be misunderstood if we fail to analyze its distinctive predatory forms.

To suggest the broad outlines of our argument, it is helpful to describe the neoliberal character of contemporary predation along a number of specific dimensions.

**First, we can begin with the neoliberal character of the forces that have driven municipalities to develop and escalate their predatory tactics.**

Neoliberal schemes have emerged at times through efforts to enact agendas worked out in advance in some ideological form. But as Jamie Peck rightly argues, we have for some time now lived in a condition of “zombie neoliberalism” in which new developments are driven less by the dreams of a Hayek or Friedman than by the ongoing need to cope with the disruptions generated by neoliberalism itself. ¹¹

Marketizing reforms repeatedly generate crises, Peck argues – which, in turn, create pressures and opportunities for new rounds of neoliberal innovation.¹² In this sense, governance advances and shifts through *coping tactics* designed to deal with what Fred Block and Margaret Somers (drawing on Karl Polanyi) describe as the instability and unsustainability of utopian, market-fundamentalist schemes.¹³ Such coping tactics reconfigure neoliberal governance, but generally in ways that lead to new tensions, problems, and modes of resistance.

These dynamics, we argue, have been driving forces behind the rise of predatory practices of extraction in local governance.

Across the United States, neoliberal policies have concentrated wealth and income at the top of the social order and undercut taxes on corporations and the affluent. The resulting public revenue losses have been greatly compounded by the growing “wealth defense industry” devoted to shielding riches from discovery and/or taxation. Yet at the same time, neoliberal reforms have devolved a wide range of government functions and responsibilities to lower levels of government.

For municipal governments, these developments converged to deepen preexisting structural tendencies toward conditions of chronic fiscal crisis. With powerful political and ideological forces arrayed against raising taxes or federalizing responsibilities, municipalities found themselves in an unsustainable structural position rooted in policies they had little ability to change.¹⁴
This was the precisely the situation that Ferguson officials found themselves in, and it provides the crucial backdrop for understanding the infamous predatory practices that emerged.

To cope with mounting fiscal pressures and pursue commercial development in the 1990s, as Walter Johnson has noted, Ferguson officials issued tax incremental financing (TIF) bonds. Essentially, they bundled future tax revenues and sold them on the securities market, obtaining revenue in the present by obligating themselves to pay principal and interest to Wall Street investors in the future. After that point, as Devin Fergus explains in a recent account, several key developments unfolded.

- The bond funds failed to cover development costs, leaving Ferguson officials and residents on the hook to pay the obligations to Wall Street.
- Interest mounted and the municipal debts to “big finance” became unwieldy.
- And then, the bottom fell out: When deregulation of the financial sector led to the implosion of housing finance and then a broad crisis of the finance industry, the Great Recession brought local economies to their knees.
- In Ferguson, as in other municipalities, revenues from sales taxes plummeted and the gap between spending obligations and resources on hand grew to crisis proportions.

From 2009 to 2014, Ferguson’s public debt rose from $14.2 million to $25.9 million, mostly due to increases in the city’s liability to private financial firms. And all the while, the Ferguson economy remained mired in high levels of unemployment and low levels of taxable sales.

City officials had few tools at their disposal to deploy as coping tactics. New taxes on the powerful local actors who held the real money were a political non-starter. But opportunity presented itself at the intersection of two other powerful policy developments. First, as Colin Gordon explains, decades of policy actions in the 20th century had constructed a highly segregated, spatially concentrated community of Ferguson residents subjugated by race and class. In a recent report, Richard Rothstein provides a staggering review of the government policies that assembled Ferguson as a socially stigmatized, politically isolated, and economically vulnerable community ripe for resource extraction:

In St. Louis these governmental policies included zoning rules that classified white neighborhoods as residential and black neighborhoods as commercial or industrial; segregated public housing projects that replaced integrated low-income areas; federal subsidies for suburban development conditioned on African American exclusion; federal and local requirements for, and enforcement of, property deeds and neighborhood agreements that prohibited resale of white-owned property to, or occupancy by, African Americans; tax favoritism for private institutions that practiced segregation; municipal boundary lines designed to separate black neighborhoods from white ones and to deny necessary services...
to the former; real estate, insurance, and banking regulators who tolerated and sometimes required racial segregation; and urban renewal plans whose purpose was to shift black populations from central cities like St. Louis to inner-ring suburbs like Ferguson.20

Second, the late 20th century was also marked by increasingly muscular efforts to deploy criminal justice policies, police powers, and carceral institutions as tools for regulating poor minority communities. The dramatic social and civic effects of this “carceral turn” are increasingly well documented and understood.21 Less often discussed is how such shifts in policy alter state administrative capacities and, thus, possibilities for governmental action.22

As criminal justice apparatuses became more central to municipal projects of “poverty governance” in recent decades, municipal authorities built up some capabilities for action over others. And as historical institutionalists such as Theda Skocpol and Kathleen Thelen have long argued, state capacities built for one purpose can be “converted” to meet a variety of other political and policy purposes.23

Thus, as public debt spiraled in Ferguson against the backdrop of the Great Recession, and traditional tax mechanisms offered few feasible options to local officials, more predatory strategies emerged in the form of a politically vulnerable, spatially segregated community already governed through an expansive apparatus of police, courts, and prisons.

In the areas of public safety and criminal justice, city officials controlled the pricing of fines and fees and the frequency of their application. In short order, they began to pressure the police department to work aggressively to extract revenues from the city’s poor black communities.24 Within a few years, public safety fines alone accounted for one fifth of Ferguson’s revenue base, with Black resident accounting for as much as 90 percent of those ticketed.25

Although we’re in the early stages of our study, our research so far suggests that similar storylines – sharp fiscal pressures driving searches for coping tactics – have driven the rise of predatory extraction in many municipalities around the nation.

The directly financial form of this extraction is especially worth noting, as it differs in important ways from the earlier period of predation based on state-controlled involuntary labor under prison industries and the convict-leasing system. In this regard, contemporary shifts in predation reflect what Greta Krippner describes as the paradigmatic coping mechanism of neoliberalism: the dissipation of state crisis through the financialization of state functions and practices.26

**Second, the rising predatory practices in municipalities reflect the convergence of two hallmarks of neoliberalism.**

- On one side, neoliberalism is marked by a migration of various governmental functions into policing and penal systems.
On the other side, neoliberalism is characterized by new modes of primitive accumulation that David Harvey refers to as “accumulation by dispossession.”

On the first dynamic, Loïc Wacquant, Bernard Harcourt, and others have written about how police, courts, and prisons have taken on new governmental functions in recent decades and are now central to the governance of an expanding range of social problems.

With prisons now the largest public mental health facilities and police serving as the frontlines for numerous social interventions, perhaps the most widely discussed example concerns the traditional functions of the welfare state. In Ferguson and municipalities across America, we see a parallel dynamic, with the revenue extraction functions of tax systems migrating to varying degrees and becoming embedded in policing, judicial, and carceral systems.

On the second dynamic, David Harvey argues that the “neoliberal state” not only services capitalist relations of production and exploitation; it also pursues aggressive agendas of “accumulation by dispossession” – Harvey’s reworking of Marx’s concept of “primitive accumulation” – marked by (a) privatization of common or public goods and (b) forcible takings from subordinated populations that are poorly positioned to resist.

It is through these dynamics of neoliberalism, we argue, that one should understand the vast scale and range of extractive practices now associated with law enforcement, policing, and carceral systems.

Drawing on Suzanne Mettler’s concept of the “submerged state,” Mary Katzenstein and Maureen Waller describe the result as a sprawling hidden system for “taxing the poor,” through “government seizures.” The point can be made with even a brief examination of how private profitability and public revenue generation have migrated into the carceral state.

Privatization of some form or another has burrowed into nearly every aspect of our criminal justice systems.

- Today, corporate prison contracts alone represent a $5 billion industry. And within prisons, there has been tremendous growth of practices that forcibly extract revenues from captive populations and convert them into corporate revenues.
- Consider prison phone calls. Capitalizing on inmates’ efforts to stay connected to their families and communities, companies such as Securus Technologies, Telmate, and Global Tel Link charge exorbitant per-minute rates for prison phone calls – according to federal authorities, sometimes as high as $14 a minute. The annual value of this industry is estimated at $1.2 billion, generating more than $460 million for public and private carceral institutions per year.
Policing and Courts: Fines and Fees

- Estimates suggest that about 10 million Americans, disproportionately poor people of color, owe about $50 billion in debt traceable to criminal justice fines and fees – and make nearly $40 billion in payments on this debt each year.
- Nationally, reports suggest that fines and fees make up as much as 40% of annual revenues for some municipalities. In fact, detailed studies of Missouri reveal that Ferguson is not even among the municipalities most dependent on this source of revenue: Down the road, Pine Lawn brings in more than 62% of its revenue from this mode of extraction.

Civil Asset Forfeiture

- Civil asset forfeiture provides another lucrative revenue stream. Available studies suggest the real value of seized assets increased sharply in the mid-2000s and doubled between 2008 and 2013. Between 2001 and 2014, the Washington Post estimates that $2.5 billion in assets were seized from people who were not charged with a crime. In 2013 alone, they estimate police seized as much as $1.1 billion.
- At the local level, the Institute for Justice (2014), reports that Philadelphia averages $6 million in forfeiture funds per year, overwhelmingly through “nickel and dime” seizures that are less than $190.

Third, Wendy Brown and others have argued that a key feature of neoliberalism is the importation of market rationalities, strategies, and practices into state institutions.

Given their penal logic and deployment through legal mechanisms, it is tempting to see the practices we’re describing as innovations originating in the state. But as Devin Fergus shows in his project, Land of the Fee, sophisticated strategies of what he calls “financial fracking” in poor communities of color emerged first as market innovations.

The key mechanisms of contemporary state predation were developed first by predatory businesses that targeted the vulnerabilities of poor communities of color as profitable opportunities. Profiting from these communities only seemed like trying to get blood from a stone. In reality, the limited financial resources in these communities could be leveraged to construct profitable new markets.

Payday lenders charging extortionary fees and interest rates sprang up around the nation. Bank and finance companies offered credit cards that allowed the poor to meet immediate needs but left them with debts they could not pay off. Subprime mortgages offered the dream of housing, on terms that proved eventually to be a financial nightmare.

In an almost endless variety of ways, market firms worked out the basic mechanisms of extraction that would eventually get imported and adapted as neoliberal tools of state predation:
1. They pioneered the transition from charging small fees to cover operating costs to aggressively exploiting fees as profit streams in their own right.

2. They showed how political and economic vulnerabilities could be leveraged to move poor people of color into potentially lucrative contractual arrangements.

3. They demonstrated how debt-and-interest schemes could be structured to produce perpetual-payment traps – where poor people make endless payments but, without the resources needed to erase the principal, always need to pay more.

It is from these market innovations that states derived their “coping tactics” for responding to growing fiscal pressures. We hear their echoes in the DOJ’s Ferguson report, which discusses as a representative example the case of an African-American woman who, on a single occasion, parked her car illegally. She received two citations and a $151 fine, plus fees.40

When the woman subsequently missed court dates and fine payments, the court issued arrest warrants and imposed new fines and fees. From 2007 to 2014, the woman was arrested twice, spent six days in jail, and made several payments to the court. But seven years later, in December 2014 – despite initially owing just a $151 fine and despite having already paid $550 – she still owed the court $541.41 42

Fourth, as Sandy Schram and others emphasize, neoliberalism is marked, perhaps first and foremost, by the blurring of boundaries between state and market, as actors participate in shared projects of governance. 43

Much of what we have already discussed testifies to this “state and market” character of contemporary predation. What needs far greater attention is the question of how state and market operations relate to one another in this arena.

To pursue this question, we argue that a coherent “field of extraction” has emerged in municipalities across the United States, spatially and socially anchored in neighborhoods where poor racial minorities are most concentrated. Within this field, predatory state and market actors (a) sometimes generate revenues independently on parallel tracks; (b) sometimes collaborate to produce revenues for both; and (c) sometimes compete over existing or potential predatory opportunities.

In all these activities, however, predatory actors remain participants in a common field of extraction, oriented by certain shared forms of common sense and beliefs that their actions are legitimate, reasonable, and right.
We’ll say a little about joint participation, and then a little about legitimation. To illustrate the first, we’ll focus on the institution of bail, where one of us (Josh Page) has been conducting ethnography as a bail bondsman for over a year.

As a public institution and private industry, bail provides a window into the inner workings of the field of extraction. The United States is one of only two countries that permit private, for-profit bail bonds. (The other is the Philippines.) When a person is arrested, the court either releases them on their own recognizance or requires them to post monetary bail. The official purposes of bail are to secure appearance at court and protect public safety.

When the courts set a monetary bail amount, defendants unknowingly enter into a field of extraction, in which actors compete and cooperate to profit off their situation. Because most defendants cannot afford to pay the full amount of their bail, the public imposition of bail constructs an urgent, non-negotiable need that renders defendants ripe for private predation.

To make bail, they turn to bail companies, which assume responsibility for insuring that they show up for court. For this service, defendants pay the private bail company a non-refundable premium—generally 10% of the bail (so $1,000 for a $10,000 bail). If a defendant fails to appear, the court begins a process to collect the full amount of the bail plus fees from the company. If the bail company is unable to return the defendant to custody, it is supposed to pay the bail and try to recoup the money from the people who co-signed for the bond. (The companies typically require one or more co-signers for every bail).

Bail agents compete with each other to land the bail for their companies, using a variety of overt and covert strategies. In his ethnographic research, for example, Josh finds that bail agents cold-call defendants’ friends and family to offer their services, solicit business at arraignment court (where judges set bail amounts), develop relationships with jail inmates who refer business to particular agents or companies, and aggressively advertise on the internet, radio, and television.

As bail agents compete with each other, their profit-making efforts intersect with those of private defense attorneys who seek to extract resources from defendants who are not so indigent that they qualify for public defense. Actors on each side cultivate cooperative relationships with actors on the other in an effort to tap into the expenditures of defendants under duress. In this profitable collaboration, lawyers refer clients to “their” bail agents with the expectation that agents will refer potential clients to them in return. Thus, competition among lawyers and competition among bail companies work to facilitate mutually beneficial relationships of cooperation across the two sectors.

A host of other businesses also compete to get a piece of the bail pie. Electronic monitoring businesses sell their products to bail companies, for example, which use the devices to keep track
of defendants and, thus, secure their investments. The costs for these services are typically passed on to the defendants, adding to their debts while preserving the bail company’s profit margin. In Josh’s study, bail clients are forced to pay $160 per month to wear a new electronic monitoring device called the HABIT: Defendants wear it on their wrists (like a “Fitbit”), allowing bail agents to monitor there whereabouts with a cell phone app.

Defendants who are released from jail “on conditions” often prove to be profitable for an even wider range of private and public actors. The vast majority of felony defendants must adhere to a list of conditions while going through the court process – including but not limited to drug and alcohol testing, electronic monitoring, checking in with probation officers, stay away orders, and curfews. Defendants have to pay money for many of these services, sometimes bringing revenue directly to the county and often delivering profits to contracted providers.

Public institutions have, in fact, been quite active in trying to parlay the vulnerabilities of the defendant into revenue streams. Through commercial bail, governments save money by outsourcing responsibility for making sure defendants show up for court. In addition, courts charge bail companies fees when their clients miss court, and sometimes charge an initial “filing fee” for every bond that agents post. Alabama, for example, charges $35 per bond – a fee that bail companies, then, pass along their clients. As a result, the typical defendant must pay the premium on the bond (roughly 10%) to the private company plus $35 to local government.

Municipalities also profit by contracting with another private player in this field of extraction: companies such as The Jail Advertising Network, which brokers deals to advertise in county jails in California. On its website, the company touts its “proven track record of success in providing fair, affordable, and equal opportunity advertising to qualified bail bond agencies and criminal defense attorneys in the form of signboards that can be installed in local and county jails.”

The Jail Advertising Network allows local governments to turn the bare walls of their jails into sources of revenue by tapping into the competitive predatory field of bail agents and lawyers. It explains on its website: “Since our inception [in 1999], we have seen downturns in the economy lead to more severe financial issues for jails than ever before. Jails are being asked to do so much more with so much less. Our purpose is to provide jail administrators with a solution to help meet their ever-increasing financial needs and overcome shortfalls from lack of government funding or changes in legislation that limit means of revenue.”

I could spend the rest of the talk discussing additional examples of predation from the bail arena, including a large line of profitable computer-based programs that specialize in. The take-away point, though, is that a wide range of public and private actors compete and collaborate to “get in on the action,” often looking for creative ways to “piggyback” on the revenue strategies initiated by others.
There is nothing unique to bail about such “piggybacking” practices. For example, as Civil Asset Forfeiture grew as a source of state and local revenue, interdiction training for this practice emerged as a profitable opening for private industry.\textsuperscript{49}

Since 1989, a company called Desert Snow has contracted with governments to teach aggressive policing tactics for the War on Drugs. In 2004, a corporate spin-off, Black Asphalt, was created as a for-profit intelligence network for police. Today, their joint website hosts an annual competition to honor the police officers who seize the most contraband and cash on the highways. As part of the contest, Desert Snow encourages state and local patrol officers to post seizure data along with photos of themselves posing with stacks of forfeited currency, consumer goods, and drugs.\textsuperscript{50}

Although far from exhaustive, this abbreviated survey of predation should suffice to demonstrate that the extractive processes uncovered in Ferguson were anything but an anomaly. They were just one instance of a massive field of practice in which public and private actors generate revenues by capitalizing on the vulnerabilities of marginalized communities.

These examples underscore how blurry the boundary between state and market has become, as well as the complex dynamics of cooperation and competition that guide their interplay.

\textbf{Neoliberal Modes of Legitimation:}

Just as the liberal doctrine of \textit{terra nullius} was used to legitimate the expropriation of Native lands in early America, predation today is legitimated through prevailing neoliberal discourses. For the present discussion, we’ll simply highlight two.

\textbf{First, in her powerful analysis of neoliberalism as a de-democratizing force, Wendy Brown highlights how this political rationality erodes the public nature of state institutions and any ethos in which public things are seen as held in common and valued for their commonality.} \textsuperscript{51}

Neoliberalism rewrites public institutions, she argues, in a manner that substitutes market transactions – purchasing, consuming, exchanging, competing – for shared participation in common institutions and shared valuation of collective public goods. Return on investment becomes a critical benchmark for success in all state and public endeavors. Public institutions strive to cover their own costs in a “self-sufficient” manner and orient themselves toward publics, increasingly, as producers exchanging goods with consumers.
Living under this logic, we have all learned to expect and accept the “user fee” as a basis for funding public institutions, and to take a skeptical view of arrangements that enlist us all – even non-users – in underwriting them through taxes. The shift from broad tax-based funding schemes to greater reliance on user fees has transformed our public parks, our public health programs, our public universities, and has reached deep into the corners of almost all our public institutions.

State predation in the legal arena operates – and is often legitimated – on precisely these neoliberal grounds. The targets of predation, in this rationality, are just the paying consumers of government services.52 To cite just a few illustrative examples:

- Today, all 50 states defray prison costs by charging prisoners some form of pay-to-stay fees.53 Generally these “user fees” focus on room and board, but in some states they extend to medical care and clothing.54
- In numerous states, most infamously Alabama and Florida, deep cuts to public funding for courts have been followed by sharp increases in fees for defendants, who are deemed to be receiving the services of the court, the “privilege” of being allowed to post bail, or dozens of other “consumer goods” large and small.
- In all 50 states, child support enforcement are designed to make so-called “deadbeat dads” pay the “user costs” of children receiving public assistance.
- A 2015 Ella Baker Center report notes that some “states charge defendants extra fees for jury trials,” and “even public defenders are not always free. Most states permit courts to charge defendants who use public defenders.”55

As a legitimating device, the discourse of "users fees" works by assimilating predatory practices into normal state operations and equating predatory targets with the citizen-consumer role normalized by neoliberalism.

By contrast, a second legitimating discourse operates by constructing a contrast between citizens in full standing and the suitable targets of predation, and positioning them as symbolic opposites pitted against each other.

The real citizens in this rendering are "taxpayers" who lead "self-sufficient" lives -- those who have earned and deserve a legitimate place as recipients of the benefits and services associated with the contract state. They're the producers and the makers who -- and here comes the contrast -- have been repeatedly victimized by the takers (the street criminals, the welfare queens, and all the rest).

The people paying fines and fees, in this framing, are the civic failures of neoliberalism -- the ones who have refused to take personal responsibility, who mismanaged their own lives, who have lacked the self-discipline needed to meet the work requirement that is the foundational civic minimum of neoliberal citizenship.

These are the underclass “freeloaders,” it is argued, who disrespect authority and prey on those who “play by the rules.” And when the authorities finally force them to pay fines and fees and
prison costs and all the rest, these people are only getting what’s coming to them. They are paying back the civic debt they owe. They are finally paying their fair share.

Such figures of civic failure have a long history, of course, rooted in the entwined cultural discourses of race and criminality that scholars such as W.E.B. Du Bois and Khalil Muhammad remind us have been deeply lodged in our state institutions, policies, and practices throughout American history. Against this backdrop, lower-class black residents of American cities today are, in a sense, always-already positioned as suspect figures (likely criminals, or “takers” in some way) – civic failures who owe a civic debt that justifies making them pay up.

The Ferguson Report powerfully shows the interweaving of these discourses. “Of those actually arrested by FPD only because of an outstanding municipal warrant, 96% are African American… We have found substantial evidence of racial bias among police and court staff in Ferguson. For example, we discovered emails circulated by police supervisors and court staff that stereotype racial minorities as criminals, including one email that joked about an abortion by an African-American woman being a means of crime control.” (p. 5)

The report continues: “City officials have frequently asserted that the harsh and disparate results of Ferguson’s law enforcement system do not indicate problems with police or court practices, but instead reflect a pervasive lack of ‘personal responsibility’ among ‘certain segments’ of the community… But the City’s personal-responsibility refrain is telling: it reflects many of the same racial stereotypes found in the emails between police and court supervisors.”

Throughout America today, state actors draw on this contrast of real citizens and their stigmatized opposites to justify and celebrate state takings. Roughly 300 miles from Ferguson, the West Tennessee Violent Crime and Drug Task Force, is fully funded by civil asset forfeiture. “We exist,” its leadership proclaims, “because we are funded by the criminals, not the taxpayers.”

As this statement places “criminals” outside the political community (and erases their histories as taxpayers), it also does political work by lumping together people suspected of crimes and people convicted of crimes.

Many people subjected to civil asset forfeiture are never charged with any crime at all. Yet within this legitimating discourse, to be a suspect is to be a criminal – and to be a particular type of person in a particular place is, by assumption, to be both at once.

Finally, let us turn to the question of how predatory state practices are reconfiguring citizenship in the neoliberal era.

As we noted at the outset, state predation is not only repressive and extractive; it’s also productive. In the neoliberal era, it constructs a distinctive civic status that we call the “indentured citizen.”

In important recent work, Amy Lerman and Vesla Weaver argue that increasing reliance on policing and penal modes of governance has given rise to a new era of “custodial citizenship” in
America—indeed, one that encompasses far more of the citizenry than just those convicted of criminal activities. Building on these arguments, we suggest the need to investigate how the financial dimensions of policing and penal modes of governance intersect with the broader proliferation of civic and social positions being redefined by debt in the neoliberal era. Debts arising from student loans, mortgages, credit cards, and a host of other transactions—many of which have their own predatory dynamics—have become central to the daily lives of large numbers of Americans. Indeed, pressures to pay off debts have become powerful disciplinary forces in era of receding labor market prospects and public austerity. In this project, we are most interested in how such dynamics are generated by and operate through predatory state practices that target communities subjugated by race and class.

In its dictionary definition, “indentured” refers to “terms of debt” that tie debtors to bondholders. “Indentured citizenship,” then, refers to the restructuring of state-citizen relations around terms of debt constructed through state predation.

The predatory state today does not simply take through force or make coercive use of involuntary labor: It constructs legal and civic violations that it then leverages to move individuals into positions of financial obligation. Through this process, debt itself becomes the marker of a distinctive civic status rooted in violation of the social contract.

Thus, unlike some earlier targets of state predation, indentured citizens are not privately owned as chattel and may not experience unremunerated involuntary labor of any sort. They retain a variety of formal legal rights—even when a subset of these rights is stripped away through legal entanglement.

Yet now as in the past, state predation targets and constructs race- and class-coded individuals, serving and building solidarity among “citizens in full standing,” who are disproportionately White and outside the lower classes.

Through the performance of predatory practices, “indentured citizens” are constructed and repositioned as debt-holders. The terms of their citizenship are refracted through their lens of debt, rendering their citizenship morally, symbolically, and materially suspect.

The alleged civic debts of these racialized targets are made politically legible and governable through their conversion into quantified financial debts—which then become the basis for attenuating various rights of citizenship and making them conditional on the civic obligation to pay.

Once indebted status is established, new fees and expenses often mount quickly and move people into a cycle of perpetual debt. From this point onward, the foremost civic obligation (on which a great many other rights of citizenship depend) is the act of making reliable payments to public and private actors. When indentured citizens fail to meet this “civic minimum” of payment, they risk incarceration or other state actions that further erode their rights and standing.

Indeed, as we noted earlier, recent estimates suggest that a socially circumscribed subset of U.S. citizens owes more than $50 billion in criminal justice debt, and they are paying nearly $40
billion on this debt each year. Many people take out additional loans to cover these criminal justice costs, resulting interest payments that raise their debts further still.

The backstop in this process is a modern variant of the old debtors’ prison. Like many historical practices perceived as having been banished by “liberal progress” and the expansion of citizen rights, the debtors’ prison has returned in an updated, neoliberal form.\(^58\)

Debt bondage is a civil rights violation, of course, banned by federal law and unconstitutional under the 14th Amendment. However, jail time for debt is a reality in many states today.\(^59\)

When a person who owes a fine or fee misses court for some reason – they did not receive the summons, they skipped because they didn’t have the money, they couldn’t get off work, didn’t have childcare, or whatever – they then incur additional debt and a warrant for arrest.\(^60\)

They are not jailed for debt \textit{per se}, then, but debt becomes the entry point for a warrant that eventually lands them in prison. A similar process often unfolds when a creditor or debt collection company sues a debtor.\(^61\) And in additional cases, people on probation are deemed to have violated the terms of their release if they fail to pay fees.

The indentured citizenry should be recognized as far larger than the incarcerated or even convicted population for two reasons. First, even among those who are arrested or charged with crimes, many are never convicted of anything.

Second, in addition to the “primary targets” of predation – those who are assessed fines, fees, etc. – one must include a far larger group of “secondary targets” – that is, the people who eventually come to bear the financial burdens of this resource extraction and find themselves drawn into relations of perpetual debt and payment.\(^62\)

It is here that \textit{gender} becomes critical for understanding the neoliberal era of state predation and indentured citizenship. Women are, of course, direct targets of state predation along with men.

But as Mary Katzenstein and Maureen Waller stress, it is important to recognize both the greater prevalence of men among the incarcerated and the fact that it is disproportionately women who shoulder the burdens of “government seizure” from carceral populations.

Roughly 1 in 4 women in the US have a family member in prison – a number that rises to 44% among black women.

The recent Ella Baker Center study concludes that women — the mothers, grandmothers, aunts, wives, sisters, cousins, daughters and girlfriends of the incarcerated — nearly always become responsible for at least part of men’s legal and prison costs. In fact, the study found that women made up 83% of family members covering costs for incarcerated populations.

Indeed, Mary Katzenstein and Maureen Waller stress that, despite the greater prevalence of men among the incarcerated, it is disproportionately women who shoulder the burdens of “government seizure” from carceral populations.\(^63\)
It is typically women who co-sign the bail contracts and wind up on the hook – who cover the fines and fees and prison charges while men are imprisoned, and who take on additional debts when the men return to the community branded an “ex-felon” and find they are unable to secure work.

The Ella Baker Center reports that 1 in 3 families go into debt trying to maintain contact with prison inmates. And in states such as Florida and Wisconsin, even when an ex-prisoner dies, his or her estate remains liable for any unpaid debts.

Payments on these debts leave many women unable to keep up with living expenses – including food, utilities, and rent. This dynamic combines with others to push a significant number of women into the kinds of eviction processes analyzed in Matt Desmond’s recent, widely discussed book.

In Desmond’s study of Milwaukee, more than one in five black female renters reported being evicted as an adult, triple the rate for white women. Women living in predominantly black areas of the city were twice as likely to be evicted as their male neighbors.

Through this process of secondary stigmatization and extraction, women who have not themselves been targeted by state predation become indentured citizens in their own right.

As predatory state practices expand, they reconstruct both sides of the state-citizen relationship. Thus, on one side, the DOJ report concludes: Participation in predatory practices transformed the Ferguson municipal court so that it ceased to “act as a neutral arbiter of the law or a check on unlawful police conduct.”

On the other side, practices also transformed Ferguson citizens by “undermin[ing] community trust,” cultivating fear and avoidance of public authorities, and breeding a combustible mix of frustration, anger, and expectations of injustice.

Concluding Remarks

To say that state predation has been a persistent, recurrent feature of the American polity is not to say that, somehow, it has been a constant over time.

As Frances Fox Piven and Richard Cloward argued decades ago, institutions that exercise social control expand, contract, and get reconfigured through episodes of political mobilization and struggle.

What they showed for state practices of welfare provision is no less true for state practices of predation. Older practices of predation have been challenged and, in many cases, abolished.

As Onur Ulas Ince notes in a superb new essay, the history of primitive accumulation has also been a history of political resistance to predatory expropriation – from the anti-enclosure riots,
Diggers, and Levellers of 16th and 17th century England to slave revolts, mutinies on the sea, and colonial rebellions of various sorts up to the present day.69

This history, we believe, provides a critical backdrop for understanding the #BlackLivesMatter movement today. The predatory practices we’ve described have cultivated widespread alienation and outrage—along with social disruptions and burdens—in poor communities of color.

The uprisings that emerged and coalesced as a movement have focused most intensely on race-targeted police violence and killing. But this rebellion, we believe, should also be understood as a refusal to accept ongoing practices of dispossession and injustice at the hands of predatory state and market actors.

It is through this sort of disruptive mobilization that political communities from time to time are able to undermine prevailing regimes of predation, reorganize the capitalist state, and create, at least for a while, a more just and democratic system of societal institutions.

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2 Ibid.
3 Ibid.
4 Ibid
12 Ibid.
17 Ibid.


25 Ibid.


28 Ibid.


37 Ibid.


Ibid


