

The Detroit bankruptcy ruling: Suspending democracy to impose the dictates of Wall Street

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On November 7, Judge Steven Rhodes issued an oral opinion in the Detroit bankruptcy case upholding the city's proposed "plan of adjustment." The opinion--the culmination of a conspiracy to loot the municipality under cover of bankruptcy law--gives judicial sanction to the robbery of the constitutionally protected retirement savings of tens of thousands of workers, the extortion of \$100 million from the Detroit Institute of Arts (DIA), and the trampling of basic democratic rights.

The opinion represents a total victory for Wall Street finance capital--the primary force behind the bankruptcy--together with its allies among the real estate speculators, big law firms, consulting companies, labor unions, politicians, and other parasites who lined up to profit from the general pillage of the city.

The decision is a landmark ruling in American jurisprudence, establishing a pseudo-legal framework for suspending democracy and the rule of law to facilitate the plundering of public assets, the shredding of contracts, and the theft of workers' life earnings.

The central conceit of Judge Rhodes' opinion is the so-called "grand bargain," which involves a collection of settlement agreements among the various conspirators involved in the bankruptcy. Rhodes praised the agreements as models of compromise, good faith and collaboration. "Each settlement was at arms' length, hard-fought," he said. "Each required perseverance, creativity and compromise by all involved."

By implication, the grand bargain represents an exemplar of democracy and "our constitutional structure" in action.

Detroit's grand bargain is nothing more than a grand conspiracy against the working class. There is something in the grand bargain for everyone--that is, everyone except the men and women who built the city and whose daily labor sustains it.

The working class is completely unrepresented in the grand bargain. Its rights are being trampled and its property plundered. The grand bargain is a model not of democracy but of plutocracy.

In his opinion, Judge Rhodes cited a number of "votes" by groups of affected retirees in favor of the plan. Under the auspices of the bankruptcy process, workers were required to cast these votes--closer to votes of shares in a corporation than votes of citizens in a democracy--at gunpoint. The retirees were threatened by emergency manager Kevyn Orr, the high-priced Wall Street lawyer who was installed to serve as the de facto bankers' dictator and take the city into bankruptcy, with even deeper cuts if they voted against the plan. In any event, the "votes" of the retirees were non-binding. Judge Rhodes retained the power under bankruptcy law to override any votes and impose any adjustments he saw fit. One of the most provocative and punitive provisions of the grand bargain is the "recoupment," or "clawback," of workers' retirement savings. City employees will be forced to give hundreds of millions of dollars of their retirement earnings back to the city. Under the bankruptcy settlement,

retirees "will have the option to pay" the recoupment "in a single lump sum cash payment." Otherwise, they will be forced to pay it over time with interest.

While Judge Rhodes' oral opinion is virtually devoid of legal content--he scarcely refers to any law or precedent--it is full of bluster and hot air, according to which the grand bargain is something to celebrate. "It is a vast understatement to say that the pension settlement is reasonable," Judge Rhodes declared. "It borders on the miraculous."

For the profiteers, lawyers, consultants and politicians involved in the feeding frenzy, it is indeed a day to celebrate. For the affected workers, who are being plunged into poverty by the ruling, Judge Rhodes has nothing to offer except the fraud of "shared sacrifice."

"This bankruptcy," he said, "is all about the shared sacrifice that is necessary because the City is insolvent and desperately needs to fix its future. All of the City's unsecured creditors are making sacrifices. Others sacrifice too, including the City's residents and visitors, and even the State of Michigan and its residents."

Among the many corporate vultures that swooped in to profit from the Detroit bankruptcy is loan shark and casino magnate Dan Gilbert. His personal wealth amounts to an estimated \$4.3 billion. A small "sacrifice" from Gilbert, for example, could completely cover the \$100 million being extorted from the DIA. But no such thing is contemplated in Judge Rhodes' doctrine of "shared sacrifice."

The Workers' Inquiry Into the Bankruptcy of Detroit held by the Socialist Equality Party earlier this year exposed the entire operation as a criminal conspiracy. From a legal standpoint, among the essential vehicles for the bankruptcy is Michigan's unconstitutional emergency manager law, which Judge Rhodes did not address in his oral opinion.

Michigan's emergency manager law is thoroughly anti-democratic. It provides for the appointment of emergency managers with the power to override the entire system of elected officials in a municipality. As an unelected dictator who cannot be removed by the local population, the emergency manager is granted special powers to violate contracts, fire local employees, and take municipalities into bankruptcy.

After the emergency manager law was struck down by a popular referendum in 2012, the Michigan legislature passed it again. Then Detroit's new emergency financial manager, Kevyn Orr, rushed to take the city into bankruptcy before Michigan state judge Rosemarie E. Aquilina could issue her ruling that the re-enacted emergency manager law was illegitimate and in violation of the Michigan Constitution.

"The record demonstrates that the City has worked honestly, diligently, and tirelessly to accomplish precisely the remedy that the bankruptcy code establishes for municipalities--the necessary adjustment of the City's debt," Judge Rhodes said in his ruling.

The record, in fact, demonstrates precisely the opposite of honesty and

good faith. Emails that came to light in the course of the bankruptcy frankly discussed, for example, a covert plot to give “political cover” to Kevyn Orr and distribute patronage to the politicians involved, “whether cabinet, senate, or corporate.”

In January of this year, Judge Rhodes himself was compelled to acknowledge that a number of financial schemes between the city and Wall Street over the preceding decade were “probably illegal.”

The appropriation of workers’ pensions—one of the central measures implemented by Judge Rhodes’ ruling—is expressly prohibited by Article IX, Section 24 of the Michigan Constitution of 1963, which states: “The accrued financial benefits of each pension plan and retirement system of the state and its political subdivisions shall be a contractual obligation thereof which shall not be diminished or impaired thereby. Financial benefits arising on account of service rendered in each fiscal year shall be funded during that year and such funding shall not be used for financing unfunded accrued liabilities.”

In his oral opinion, Judge Rhodes gave short shrift to the Michigan Constitution. He noted that he had previously “held that the federal bankruptcy power could impair pension right in a municipal case, even if the state constitution protects (sic).” He added, “The Court stands by that decision.”

The grand bargain would not be possible without the treachery and perfidy of the trade unions, which worked hand-in-hand with Orr and company to sell out the city’s workers and waive their rights. Thanks to the unions, Judge Rhodes was able to couch his entire ruling as merely an “approval” of the grand bargain to which most of the parties had already agreed. Rhodes did not fail to cite the unions’ position that art at the DIA should be sold to pay for workers’ pensions.

As part of the grand bargain, the unions agreed to release, on behalf of workers, all of their rights to contest the constitutionality of the city’s plan of adjustment. If a worker in the future attempts to challenge the theft of his pension money in court, his case will be tossed out on the grounds that his union already bargained away his rights.

The unions’ participation in the grand bargain was purchased at the cost of the establishment of so-called “voluntary employees’ beneficiary associations” (VEBAs) to handle city workers’ health benefits. The VEBAs, modeled after similar arrangements that were made in the course of the 2009 restructuring of the auto industry, were nothing more than shameless bribes.

Judge Rhodes acknowledged in his oral opinion that the Detroit Institute of Arts was off-limits to the city’s creditors. “No provision of law allows the creditors to access the DIA art to satisfy their claims,” he said. Nevertheless, under the grand bargain, the DIA “will secure and guarantee commitments for contributions to the GRS [General Retirement System] and the PFS [Police and Fire Retirement System] of \$100 million over twenty years.” No matter how these contributions are itemized on the DIA’s balance sheet, the fact is that the grand bargain will significantly impact the access of the general public to the museum’s art collection.

Finally, while workers’ retirement savings are subject to “recoupment” and general unsecured creditors will receive approximately 10 cents on the dollar, some Wall Street bondholders are getting as high as 74 cents on the dollar. In his oral opinion, Judge Rhodes concluded that, “this discrimination is not unfair.” For financial speculators who purchased the privileged bonds at less than 74 cents on the dollar, the Detroit bankruptcy represents free money.

Judge Rhodes concluded his opinion by showering praise on Kevyn Orr, revealing much about the fundamentally biased character of all the legal proceedings that have taken place in the bankruptcy.

“Here I want to single out Kevyn Orr for special recognition and appreciation,” Judge Rhodes said. “His task was perhaps the most challenging of all of us. Yet he met that challenge with skill, determination and commitment, and at great personal sacrifice. I hope that

someday soon, this City will recognize the singular contribution that he made to its fresh start and give him the credit that he truly deserves.”

Perhaps Judge Rhodes thinks the workers of Detroit should erect a monument to this unelected financial dictator, who misled and threatened them, cheated them out of their constitutional rights, and robbed them of their life earnings!

“Profound thanks to the attorneys and the other professionals in the case,” Judge Rhodes added. “Also, on a more personal level, you made my job manageable. Even fun sometimes[!]”

The most revealing sentence of all in Judge Rhodes’ oral opinion came at the very end, when he said, “It is now time to restore democracy to the people of the City of Detroit.” This sentence deserves careful scrutiny.

As a preliminary matter, one cannot “restore” something that was never taken away in the first place. Accordingly, Judge Rhodes’ opinion acknowledges that democracy was suspended in the course of the Detroit bankruptcy. But who gave Judge Rhodes the power to suspend democracy and then restore it? What happened to the concept of “inalienable rights?”

If Judge Rhodes admits that democracy was suspended in order to implement the Detroit bankruptcy, this is a concession that the whole process was illegitimate from the start, a sham proceeding and a conspiracy against the city’s population. In writing that he is “restoring” democracy to Detroit, Judge Rhodes exhibits a conception of democracy that is utterly alien to the country’s democratic traditions and the conceptions advanced in the American Revolution.

Instead of democracy as government by consent of the governed, Judge Rhodes conceives of democracy as dispensed from above—much as the American military supposedly brought democracy to Iraq, Afghanistan and other unfortunate places. Democracy, instead of a system of inalienable rights, is transformed into a privilege to be extended and withdrawn at the whim of the ruling class. The clear implication of Rhodes’ oral opinion is that if Detroit does not behave in the future according to the wishes of Wall Street, democracy might need to be suspended again.

It is not even true that democracy is in any sense being “restored” to Detroit. Instead, a Financial Review Commission will remain in place with “the authority to review and approve the City’s 4-year financial plans, contracts over \$750,000, and all collective bargaining agreements.”

With respect to the Financial Review Commission, Judge Rhodes complained that “two elected City of Detroit officeholders” will be included, which means that “only seven of its nine members are truly independent.” The word “independent” here means “unelected.”

He denounced the inclusion of any elected officials at all on the commission because their presence “skews the commission’s voting and risks undermining the commission’s effectiveness in ensuring the implementation of the plan and the City’s fiscal health and integrity.” In other words, Judge Rhodes’ “democracy” would be better, in his opinion, if it excluded any elected officials from the body that will hold real power for the foreseeable future.

In the corporate, military, intelligence and financial circles that rule America, there is virtually no understanding of or agreement with the historic Enlightenment and democratic conceptions associated with the country’s founding. With the rise of the financial aristocracy, which has piled up obscene levels of wealth through corruption, speculation and fraud, new conceptions have arisen to replace the old.

“Finance capital does not want liberty, it wants domination,” wrote the Austrian Marxist Rudolf Hilferding in a passage quoted by Lenin in *Imperialism: the Highest Stage of Capitalism*. “Imperialism is the epoch of finance capital and of monopolies, which introduce everywhere the striving for domination, not for freedom,” Lenin explained. “Whatever the political system, the result of these tendencies is everywhere reaction. . . .”

While an emergency manager with dictatorial powers is permitted to trample on basic democratic rights in Detroit, the American president

himself operates as a kind of national “emergency manager.” The Bush and Obama administrations have asserted the power to override the US constitution to carry out assassinations, domestic spying, torture, undeclared war and other brazenly illegal acts.

From start to finish, the Detroit bankruptcy is a striking example of the fact that basic democratic rights are incompatible with a social system based on the domination of a tiny sliver of financial parasites over every aspect of society.



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