

**Land of Broken Promises:  
Classification Struggles and the Reorganization of Municipal Pensions in Detroit's Bankruptcy**

by

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## **DEDICATION**

To Casey and to my folks, from Brooklyn to Detroit

## ACKNOWLEDGMENTS

It seems fitting that a dissertation about bankruptcy should begin with an accounting of the debts incurred in the process of its creation. This accounting necessarily begins with my family and especially my parents. I have asked myself many times why I chose to write about Detroit, its bankruptcy, and its municipal retirees. Why did this moment of rupture and redefinition of people and place resonate? A first order answer is that my own sense of identity was indelibly shaped by my family's economic status and the rapidly transforming city in which I was raised. Through many transitions my parents never stopped modelling curiosity, empathy, and adaptability. I am always impressed by my father's boundless intellectual curiosity, decency, and irreverent sense of humor. I have tried to emulate my mother's determination, creativity, and insightfulness. The gifts they have given me are immeasurable. For now, I thank them for providing unconditional love and support throughout the duration of this protracted process.

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## LIST OF ABBREVIATIONS

AFSCME	American Federation of State, County and Municipal Employees, the largest public employee union in the United States
ASF	Annuity Savings Fund, a voluntary individualized savings account managed by the municipal retirement system
CFSEM	Community Foundation for Southeast Michigan, a nonprofit organization that helped to organize the DIA settlement
COLA	Cost of Living Adjustment, wage increases to match the rate of inflation
COP	Certificates of Participation, bonds created to fund the city's retirement system in 2005 that enabled the city to elide borrowing limits
DAREA	Detroit Active and Retired Employees Association, a group created by retired Detroit employees to oppose the Plan of Adjustment
DFFA	Detroit Fire Fighters Association, largest labor union for fire fighters
DPOA	Detroit Police Officers Association, largest labor union for police officers
DIA	Detroit Institute of Arts, an art museum founded as a nonprofit organization but owned by the city government at the time of the bankruptcy
DRCEA	Detroit Retired City Employees Association, Detroit's oldest retired employees' Association, representing retired civilian employees
DROP	Deferred Enrollment Option Plan
FDF	Foundation for Detroit's Future, CFSEM's subsidiary, collects funds from foundations and other contributors to the DIA settlement and makes annual payments to the city
FGIC	Financial Guaranty Insurance Company, a monoline bond insurer

GRS	General Retirement System, pension fund for civilian city employees
GO	General Obligation bond, a municipal bond backed by the credit and taxing power of the issuing jurisdiction rather than the revenue from a given project
EM	Emergency Manager, Kevyn Orr was appointed by the state governor to review city finances, and initiated Detroit's bankruptcy
FGIC	Financial Guarantee Insurance Corporation, a financial firm that insured bonds
LTGO	Limited Tax General Obligation, a municipal bond that asks the issuing local government to raise property taxes if necessary to meet existing debt obligations
OPEB	Other Post-Employment Benefits, primarily medical insurance, and death benefits
OCR	Official Committee of Retirees, a nine-person committee appointed by the Department of Justice, to represent retirees in bankruptcy court
PFRS	Police and Fire Retirement System, pension fund for uniformed city employees
RDPFFA	Retired Detroit Police and Fire Fighters Association, an organization for retired Detroit police and firefighters and their surviving spouses
RDPMA	Retired Detroit Police Members Association, an organization created during the bankruptcy to represent the interests of police employees
RSCD	Retirement System of the City of Detroit, a retirement system for municipal employees, which is divided into two funds: General Retirement System and Police and Firefighter Retirement System
SWAP	A derivatives contract through which the city exchanged a fixed interest rate for a floating interest rate on underlying COP bonds
UAAL	Unfunded Accrued Actuarial Liability
UAW	United Auto Workers

UTGO	Unlimited Tax General Obligation bond, like the Limited Tax General Obligation Bond, except that the government can raise taxes to cover as much as 100 percent of the debt obligation.
VEBA	Voluntary Employees' Beneficiary Association, a trust fund created during the bankruptcy to provide medical benefits to Detroit retirees

## ABSTRACT

How were Detroit's municipal pensions converted from a contractual right to a charitable gift? The erosion of economic benefits is by now a familiar trope. Yet Detroit's 2013 bankruptcy was exploited not just to shift risk onto active workers, but also to revoke promises made to people who had already *earned* their benefits, including over twenty thousand individuals who had already retired. The profound rigidity of the welfare state's ideological foundation is part of what makes this particular shift so puzzling.

Cultural categories of worth run like fault lines through the entire history of American social provision. Since the colonial era the same set of categories has been used to sort between those more and less deserving of state protection against key economic risks. Americans who contribute to society through formal labor force participation *earn* access to social insurance programs. Others may receive more limited forms of public assistance, decried as *charity*, i.e. as "something for nothing." Thus, what is at stake in the definition of the pension promise is the status and rights of recipients.

Prior research finds this framework to be so inflexible that it has stymied efforts to expand social provision that would erase the symbolic and programmatic boundaries between these categories. The key contribution of this dissertation is to show that the ostensibly inflexible categories of contract and charity are more malleable and fluid than previously thought. Drawing on an "eventful analysis" of Detroit's municipal bankruptcy, I find that in crisis moments, classification struggles may reconfigure categories of worth in significant and durable ways.

The empirical chapters of the dissertation use archival, observational, and interview data to trace three classification struggles in which the meaning of the pension promise and the deservingness of active and retired workers with accrued pension benefits was reevaluated in relation to other subsets of city stakeholders. In the first episode, pensions were redefined as undeserving contracts and deprioritized in relation to a majority of bondholders. Influential legal actors reinterpreted pensions from compensation to credit, causing pensions to fall through the conceptual cracks of the bankruptcy code. In the second episode, the introduction of a charitable gift led pensions to be prioritized over a subset of bonds, repositioning pensioners as deserving dependents. Here, influential legal actors publicly framed the intervention in an ambiguous fashion, making it possible for foundations to privately attach different meanings and cooperate despite diverging goals. In the third episode, the pension system was stabilized in its new form. The city used the charitable gift to draw finer grained distinctions between subsets of pension beneficiaries. Trusted retiree representatives reworked the self-concept of beneficiaries in order to secure their public acceptance.

Cumulatively, these episodic reevaluations culminated in a durable shift in the pension financing mechanism that blurred the programmatic and symbolic boundaries between contract and charity. I argue that the underlying conceptual and institutional heterogeneity of key categories are what make social policies the site of definitional disputes, and also what structure the limits of their reinterpretation. Social reproduction results from the ongoing interaction between how people think about, talk about, and organize social provision. Influential actors who seize on the latent conceptual and institutional affordances of these categories in ways that resonate with the broader social and historical climate may be able reconfigure prevailing categories of worth in durable ways.

## **CHAPTER I**

### **Introduction: Between Contract and Charity**

What is at stake in the struggles about the meaning of the social world is power over the classificatory schemes and systems which are the basis of the representations of the groups and therefore of their mobilization and demobilization.

— Pierre Bourdieu (1984:484)

### **Introduction**

On June 10, 2013 Kevyn Orr, Detroit's state-appointed emergency manager, held a town hall meeting in a packed auditorium. Orr, a seasoned bankruptcy lawyer employed by the white shoe law firm Jones Day, had reluctantly accepted the governor's call to service (Bomey 2016). At the town hall meeting an audience member asked Orr about the fate of municipal pensions. Orr said that under existing state and case law, "vested pension rights are sacrosanct, they can't be touched" (MacSpeaking 2013). This statement would come back to haunt Orr several months later after bringing the city to bankruptcy court. In court, questions about the status of city pensioners would take center stage, revealing the underlying instability of the conceptual foundations of the American welfare state.

A few days after the town hall meeting Orr assembled 150 city stakeholders in a conference room near the Detroit Metropolitan Airport to explain that the city would not be able to honor many of its financial commitments. Contrary to his comments from a few days earlier,

Orr said that pensions, along with other retirement benefits constituted a large portion of Detroit's unsustainable debt and would have to be modified, even for workers who had already retired. The reversal surprised and confused many of the city's active and retired employees. In their minds they were workers, not lenders. Their pensions were compensation, not debt. "Roger," a retired construction inspector explained:

Well, with a municipal bankruptcy, I did not see myself as being a creditor to the city. I was a city employee. If there were debts outstanding to the creditors, I saw them sharing the debt, but I didn't feel that I was one of those creditors (Interview, April 24, 2017).

Active and retired employees believed that a provision in Michigan's Constitution made pensions untouchable. Even if pensions were a form of credit they believed that their benefits would take priority over risky loans underwritten by financial institutions. Despite finding that Orr had acted in poor faith, the federal bankruptcy judge charged with overseeing Detroit's case concluded that pensions were in fact a form of ordinary, *undeserving* debt. From a legal standpoint their claims were equivalent to those of "unsecured" financial lenders.

Under current bankruptcy laws, lenders who had "secured" their loans with collateral could receive full repayment. Although the judge expressed sympathy for retirees, he concluded that the state constitution, which declared pensions to be contracts immune from revision, afforded pensions no special protections. After the judge's ruling, one of the lead attorneys representing retirees told members of the Retired Detroit Police and Fire Fighters Association:

He said your pensions are like ordinary contracts, they can be modified, rejected in bankruptcy. He said it's just like an airplane lease. It's just like a vendor contract. Now it does have a human element, he said. Yet, it is still a contract (Carole Neville, RDPFFA Meeting, December 2013).

Having stripped pensions of their contractual protections, labor lawyers prepared to litigate

anticipated cuts all the way to the United States Supreme Court. Beyond Detroit, the vote carried high stakes for government workers across the United States. Bruce Babiarz, a spokesman for the city's pension funds, remarked, "This is one of the strongest protected pension obligations in the country here in Michigan. If this ruling is upheld, this is the canary in a coal mine for protected pension benefits across the country. They're gone" (as quoted by Davey et al. 2013).

The pension question never reached the Supreme Court, because the case was resolved through a settlement. In a strange twist of fate, a group of local and national foundations intervened, pledging funds to minimize pension cuts, and in doing so permanently foreclose the sale of the municipally-owned Detroit Institute of Arts. This arrangement led to the prioritization of pensions over other forms of "unsecured debt," driving a wedge between retiree representatives and financial firms who had previously contemplated a joint campaign to pressure the city to monetize its art collection. In court, the deprioritized financial firms argued that the pension-art deal "discriminated unfairly" against them because they had the same legal standing as pensioners. In yet another twist, however, the city induced the financial firms to settle with downtown development opportunities.

This proposed public-private financing arrangement promised to mitigate pension cuts, but it also drew finer grained distinctions between subsets of beneficiaries. Medical benefits were being slashed across the board, but public safety retirees were to receive better recoveries than civilian retirees. And some civilian retirees were to receive better recoveries than others, because of a "clawback" on interest accrued through a city-managed investment fund. In order to access the new funds, pensioners had to formally accept this new arrangement through a vote. In accepting this offer, pensioners had to waive their constitutional protections and publicly consent to trimmed pensions, slashed medical benefits, and the charitable substitution of city

contributions. The vote passed. A large majority (77 percent) of those who voted endorsed the deal. Yet, only 48 percent of beneficiaries voted; 11 percent of beneficiaries voted against the deal, and 52 percent did not vote at all (see Table 1). “Roger” was among those who voted against what had colloquially become known as the “grand bargain.” When asked why, he replied:

Charity is voluntary, and charity can be taken away. There’s no legal precedent requiring them to give us this money, and I don’t think that I worked 32 years to have part of my pension dependent on charity. I didn’t earn that. I earned my pension (Interview, April 24, 17).

Roger saw the settlement as a form of charity because charitable organizations would be helping to pay the pension he had earned. He then equated this “charity” with welfare, elaborating:

I didn’t work for charity. I’ve never accepted welfare, food stamps, charity of any type....I think that’s it’s being perceived as I need charity, and it’s kind of a sticking point for me because I’ve prided myself on working for what I earn and earning what I work for (Interview, April 24, 17).

Roger rejected the settlement, because he felt that accepting the foundation money would undermine his status as a hard-working, independent citizen. Nevertheless, the deal passed. This settlement made it possible for the city to exit bankruptcy in an expedient fashion, and avoid knockdown protracted legal battles about the vulnerability of pension benefits guaranteed by state constitutions, and the salability of publicly-owned art. For the next twenty years, Detroit’s municipal pensions, which had for a half century been understood as an inviolable, contractual promise, would be partially funded by charitable foundations. Thus, the bankruptcy was resolved in large part through the conversion of vested pension benefits from a contractual right to something more closely resembling a charitable gift.

## **Detroit's Bankruptcy: A Challenge to Theory**

Roger's words reflect a key sociological insight about the American welfare state: Since the colonial era, social provision has been organized according to deep-seated cultural distinctions between notions of "contract" and "charity" (Fraser and Gordon 1992; Katz 2010; Skocpol 1992; Steensland 2006). As policy paradigms, these categories are used to sort between those more or less deserving of protection against key economic risks. These cultural categories of worth run like fault lines through the entire welfare state literature, suggesting that this enduring cultural opposition has hardened into a rigid policy paradigm. Roger's comments illustrate this point. Roger rejected the bankruptcy settlement, because he could not accept the identity that accompanied this particular gift. It did not matter that the foundations would only be paying part of the pension, or that the money would flow through the city, in his mind the foundation money polluted his status as someone who earned his benefits (Steensland 2006). The money was earned or it was a gift, but it could not be both. In other words, once policies become framed in terms of contract *or* charity, their meanings do not seem to change. Even when presented with more generous policy innovations, Americans have resisted reforms that blur programmatic and symbolic boundaries between the categories of contract and charity (Steensland 2011, 2011).

The primary contribution of this dissertation is to argue that the ostensibly durable and mutually exclusive paradigms of contract and charity are more malleable and overlapping than previously understood. In the context of political claims making, contracts are always considered to be a source of strength, and charity is considered a position of weakness. Drawing on an "eventful analysis" of Detroit's 2013 bankruptcy, this dissertation finds that the poles do not always align as expected. The reorganization of Detroit's municipal retirement system unfolded through the episodic reinterpretation of pensions and pensioners in relation to other city

stakeholders during the city's 2013 bankruptcy. These findings suggest that in moments of crisis, real or constructed, the meanings of contract and charity can be reconfigured in significant and durable ways (Roitman 2013; Sewell 1996; Swidler 1986). I draw on Bourdieu's (1984) notion of classification struggles to argue that influential actors who can recognize and seize on the latent conceptual and institutional affordances of these categories in ways that resonate with the broader social and historical climate may be able to reconfigure prevailing categories of worth in durable ways. Classification struggles involve efforts at redefinition that in turn alter calculations of worth and change relationships between social groups (Fourcade and Healey 2013; Lamont 2009; Zelizer 1997). When a claimant's original expectations are retrospectively declared unreasonable, contracts may lose their valorized social status. But this alone is not enough to strip contracts of their political power. Unpacking the underlying conceptual and institutional heterogeneity of these categories is necessary to explain how they become susceptible to battles over meaning, and the ways in which their boundaries durably shift. The sections that follow first outline key contributions of the dissertation and introduce the case. After discussing methods and data I outline the chapters to follow.

### **Contract Versus Charity: The Categorical Logic of U.S. Social Provision**

Previous scholarship on policy making in advanced capitalist societies has emphasized how the pursuit of self-interest shapes political outcomes (Campbell 2002). In recent years, however, sociologists and political scientists—building on the work of Max Weber (2012 [1905])—have argued that ideas shape political outcomes in important ways (Béland 2005; Blyth 2002, 2013; Campbell 2002; Somers and Block 2005; Swedberg 2003b). Classification is considered one particularly important means by which ideas influence policy (Bowker and Star 2000; DiMaggio

1997; Goldberg 2007; Mohr 1994; Star 1992; Steensland 2010, 2006). Classification—the act of grouping people or things into categories on the basis of shared characteristics—is an integral part of valuation, symbolic or monetary (Bourdieu 1984; Lamont 2009). In the context of policy making, then, classification shapes decisions about “who gets what, when, and how,” to borrow Harold Lasswell’s (1936) oft-repeated dictum.

This dissertation focuses on one set of oppositional categories that has played a vital role in deciding who is worthy or “deserving” of economic assistance: contract versus charity (Esping-Andersen 1990; Fraser and Gordon 1992; Simon 1986; Skocpol 2009; Steensland 2006; White 1933). Whereas contracts denote “equal exchange, mutual benefit, self-interest, rationality, and masculinity,” charity has assumed contrasting connotations of “inequality, unilateral gift-giving, altruism, [and] sentiment” (Fraser and Gordon 1992:59). Contract and charity form the conceptual foundations of government programs designed to mitigate prevalent economic risks, such as disability, old age, poverty, and unemployment.

These cultural categories of worth have been shown to influence social policy development by shaping how people think about, talk about, and organize social provision (Steensland 2011). At the conceptual level, the origins of these policy paradigms have been traced to the emergence of modern industrial capitalism. In the pre-capitalist era, people did not depend solely on wage labor to survive (Esping-Andersen 1990; Fraser and Gordon 1992). Social aid was relatively generous, and there was no shame in accepting assistance (Esping-Andersen 1990). Many households were largely self-sufficient. Feudal lords furnished some paternalistic forms of aid. Communal organizations such as the church and guilds (the forerunner of mutual aid societies, and eventually modern trade unions) provided other modes of support (Esping-Andersen 1990).

The spread of capitalism produced new conceptions about individual rights. In eighteenth century England, property rights became synonymous with personhood and freedom (Fraser and Gordon 1992; Marshall 1950). If you could own property, you could sell your labor, and if you could sell your labor you could in theory survive on your own terms, as an autonomous individual (Fraser and Gordon 1992). This new English citizenry consisted of mostly white men, who understood their freedom and personhood in relation to other groups—women, children, slaves, the poor—who lacked property and depended on the good will and sympathy of others (Fraser and Gordon 1992; Marshall 1950).

As employment became the primary means of survival, other communal forms of resource distribution disappeared. When working people could no longer find employment, it became increasingly difficult to survive (Esping-Andersen 1990). Although dependence was considered appropriate within the intimate, affective confines of the household, in the public sphere, it became associated with femininity, feelings, and irrational gift-giving (Fraser and Gordon 1992; Sennett 2011). The Elizabethan Poor Law established taxes to fund assistance on a selective basis to those deemed “deserving” of relief (Katz 1990). Those that were deserving were seen as sympathetic dependents. The “undeserving,” able-bodied poor were considered deviants and were not granted relief (Goldberg 2007; Katz 1990; Marshall 1950). The poor house, as well as the social policies later formed in its image, aimed to reform and rehabilitate the character of recipients (Goldberg 2007).

The modern welfare state formed in the image of these two models of exchange (Esping-Andersen 1990; Fraser and Gordon 1992; Simon 1986). One model of provision, social insurance, extended the principle of mutual aid from the friendly society to the modern workplace and yoked social provision to “the free and equal contractual exchange of labor power

for wages” (Fraser and Gordon 1992:59). The other model transferred eligibility principles used in the Elizabethan Poor Laws to create a centralized system of public assistance. During the seventeenth century, English colonists adopted similar practices when they arrived in the New World. But, whereas England developed a language to more fully legitimize government assistance, American political culture has yet to do so (Fraser and Gordon 1992). Commitments to individualism and autonomy run so deeply in American political culture, that, outside of the family, it is virtually impossible to justify social provision on any basis other than that of free and equal exchange (Fraser and Gordon 1992). Those who are unable to justify social provision in contractual terms, must resort to declarations of need. These individuals are relegated to the moral purgatory of dependence (Graeber 2012).

Thus, cultural and institutional oppositions between notions of contract and charity have “run like fault lines through the entire history of American social provision” (Skocpol 1992:149). Skocpol’s foundational study about the nineteenth century origins of American social policy nicely illustrates this point. Skocpol (1992) observed that pre-New Deal pension programs for civil war veterans were justified using conceptual distinctions between contract and charity.

Politicians constantly spoke of a ‘contract’ between the national government and the Union’s defenders in the Civil War, arguing that in return for their valiant service the former soldiers and those tied to them deserved all the public provision necessary to live honorable and decent lives free from want (Skocpol 1992:149).

Policy advocates invoked the need to protect honorable veterans against the possibility of becoming “dependent upon private charity” (Skocpol 1992:150). Thus, although Civil War pensions differed from future social insurance policies in important ways, they were still “defined in opposition to charity or public programs for paupers at state and local levels” (Skocpol 1992:149). This is consistent with Goldberg’s (2007) finding that, at the moment of

inception, policy innovations “that expanded state involvement in social provision often generated intense struggles over whether to model the new policy on or sharply distinguish it from traditional poor relief” (Goldberg 2007:3). Yet once a policy innovation was framed as one or the other and the dust settled, these framings proved remarkably durable.

The preceding paragraphs make it clear that these cultural distinctions predated the New Deal. However, they subsequently found expression in its bifurcated bureaucracy. The New Deal system was premised on the idea that “good jobs were available to anyone who wanted to work” (Steensland 2011:1). People who were not expected to participate in the formal workforce due to youth, old age, illness, or involuntary unemployment became eligible for benefits. Public assistance (means-tested) programs, such as SNAP (Supplemental Nutrition Assistance Program or “food stamps”) and TANF (Temporary Assistance for Needy Families) provide selective assistance to low-income Americans based on need. Yet, the most generous benefits, administered through social insurance programs, were reserved for those who had worked in the formal labor force.

Old Age Insurance was modeled after private sector social insurance benefits, and as Jill Quadagno explained, “represented the acceptance of approaches to social welfare created by private businessmen” (Quadagno 1984:641). Eligibility for social insurance programs, e.g. Social Security, is established by participating in the formal workforce, making financial contributions, and then meeting certain fixed criteria, such as turning 65 years-old (Soss 1999). The legitimacy of social insurance programs stem from their apparent “conformity to the market ideal of personal responsibility and its semblance of quid pro quo market contractualism” (Somers 2017:77). The resemblance to contracts, and more specifically labor contracts, insulated social insurance programs from political critique. However, as this dissertation will show, likening

social rights to contracts suffers “from the disadvantage that it succeeds only by virtue of the homage it pays to the order it seeks to change” (Simon 1986:1431).

Thus, these two levels of American social policy—social insurance and public assistance—emulate distinct models of private economic exchange: labor contracts and charitable gifts. Federal social insurance programs resemble valorized contractual principles—namely that of equal exchange. In contrast, public assistance is unilateral in nature and positions participants as dependent recipients of charity (Fraser and Gordon 1992; Mauss 2002). In that way American anti-poverty policies were “designed to stigmatize the poor who are deemed ‘undeserving’ and mark them as morally different from the rest of society” (Steensland 2011:x). People who receive public assistance “experience shame, embarrassment, and humiliation” (Fothergill 2003:659). The stigma of welfare punishes poor people for being poor and prevents those who most require assistance from receiving it (Fothergill 2003; Katz 1990).

As the preceding paragraph suggests, the dual structure of the federal welfare state has always functioned as a system of social stratification (Esping-Andersen 1990; Quadagno 1996). The most generous benefits were administered through social insurance programs framed in contractual terms; these benefits were accessible to long-term, fulltime wage earners—most of whom were white men (Mettler 1998). As Mettler (1998:23) argued, “To New Dealers, these persons qualified as ‘independent’ citizens, and thus as free and equal bearers of rights, strictly because they were long-term fulltime wage earners.” Women and men of color, by contrast, appealed to protective labor laws and state-administered public assistance programs, which treated recipients as “dependent persons who required supervision and protection rather than as bearers of rights” (Mettler 1998:24). Work has always been the primary criteria of worth in evaluating Americans’ deservingness of federal economic protection. As Steensland (2006:13)

argued, “Based on perceived adherence to the work ethic and bolstered by Anglo-American individualism, the distinctions between ‘deserving’ and ‘undeserving’ constitute the cultural foundation of American social provision dating back to the colonial era.” Today, normative ideals of wage labor, and the belief that resources must be earned, continue to define the boundary between contractual and charitable social relations (Fraser and Gordon 1992).

Part of the durability of this framework stems from what political scientists have termed “feedback effects” (Pierson 1993; Thurson 2015). Because they provide different levels of symbolic and material resources, social policies reinforce the status and power of recipients (Campbell 2005; Soss 1999). Social Security, for instance, created a whole new class of “senior citizens,” who obtained new resources with which to defend their status and benefits (Campbell 2005). By comparison, public assistance policies confer shame and stigmatize recipients in ways that diminish their political participation. This helps to explain why public assistance policies have been more susceptible to regressive reform, while social insurance policies have been relatively resilient to regressive reform efforts (Pierson 2001; Soss 2000).

Social reproduction results from the ongoing interaction between how people think about, talk about, and organize social provision (Steensland 2011). Sociologists have argued that the ongoing alignment between these mechanisms has made the contract-versus-charity conceptual framework is so rigid that it has stymied progressive policy development (Levitsky 2014; Steensland 2011). In his study of the failure to enact a guaranteed income policy, Brian Steensland (2006) found, for instance, that policy innovations that tried to erase programmatic distinctions between public assistance and social insurance failed, because they blurred the conceptual distinctions between deserving and undeserving Americans. Policy makers and publics worried that if the boundaries between social security recipients and welfare recipients

were erased, that the stigma of welfare would rub off on Americans who had *earned* their benefits (Steensland 2006, 2011).

In summary, a rich body of welfare state scholarship suggests that the oppositional categories of contract and charity are highly inflexible. As policy paradigms, the idea of the contract has served as a source of political strength, while the resemblance to charity has been a source of weakness. These cultural categories of worth are thought to be highly durable and mutually exclusive: Policy designs assume one meaning or the other, but not both. And once a policy program becomes stably framed in contractual or charitable terms, its meaning does not change. It is difficult to even imagine policy innovations that exist outside of this conceptual framework (Levitsky 2014). Progressive efforts to erase programmatic and symbolic boundaries between these categories to expand social provision have failed (Steensland 2011). In the next sections I will argue that these categories may not operate in the same way when it comes to regressive policy reform, especially when limited to stigmatized subsets of an otherwise privileged population. In order to understand how cultural categories of worth can be reconfigured, however, it is necessary to first unpack their underlying heterogeneity,

### **The Heterogeneity of Contract and Charity**

The preceding section described the origins of key categories of worth that have shaped the development of the American welfare state, and how sociologists came to see this framework as a rigid policy paradigm. This section argues that the underlying complexity of these categories is what makes them vulnerable to definitional disputes. Understanding how these categories can be reconfigured necessitates a more nuanced accounting of their conceptual and institutional

heterogeneity. Just as contract and charity are varieties of exchange relations, they are also ideas that can be institutionalized in different ways in different contexts that exist in complex relationship to one another (Campbell 2002; Fraser and Gordon 1992; Somers and Block 2005; Suchman 2003; Swedberg 2003a). This section unpacks the underlying complexity of these categories in order to suggest that this heterogeneity is both what establishes the interpretive flexibility of these categories, and what structures the limits of reinterpretation (Bowker and Star 2000; Leigh Star 2010).

### *Contracts*

The contract is not a popular object of sociological analysis, but it is a legal institution that “is of particular importance to economic life” (Swedberg 2003:6). Its importance stems from its role in ensuring the reliable transfer of property (Swedberg 2003). For the most part, sociologists have invoked contracts as an abstract proxy for economic exchange. Sociological discussions of contracts often lack conceptual specificity and get swept up in broader critiques of liberal and neoclassical treatments of economic behavior as rational, atomistic, and egalitarian (Swedberg 2003a). In his critique of Herbert Spencer’s atomistic vision of society, for example, Durkheim (2014) argued that “Everything in the contract is not contractual....Wherever a contract exists it is submitted to regulation which is the work of society and not that of individuals” (Durkheim 2014:365). And while economic sociologists have in recent years examined many contexts in which culture shapes the economic valuation of human lives (see for examples Fourcade and Healey 2013; Zelizer 2010), they have largely avoided discussing labor markets (but see Zelizer 1985 for an important exception). As I hope to show, these approaches are compatible with welfare state scholarship that seeks to understand shifting notions of the responsibility of the state and employers’ to insulate citizens from the vagaries of the market. With that in mind, I

borrow Suchman's (2003:94) definition of the contract as "a formally documented arrangement for governing a voluntary exchange relationship in the shadow of the law." This duality of contracts – as both practicable agreements and legal doctrines – creates spaces where definitional misalignments can form.

Where political sociologists have dealt with contracts explicitly they have focused on labor contracts. The stylized invocation of contracts in welfare state scholarship refers to notions of labor contracts originating in liberal theory (Simon 1986). In these accounts, contracts function as a powerful metaphor (Campbell 2002; Simon 1986; Somers and Block 2005). Only recently have economic sociologists started to take up contracts as an object of analysis (Krippner 2017; Suchman 2003; Swedberg 2003a). Two key types of contracts are those that govern compensation and credit. Sociologists understand labor and lending to be fundamentally different types of relationships (Krippner 2017). Labor transactions involve reciprocal exchange between formal equals. The credit transaction, by contrast, is hierarchical: The lender holds power over the borrower until the debt is repaid (Krippner 2017; Graeber 2011). And whereas formal wage work has been understood at the ticket to becoming a first-class citizen, lenders, on the other hand, stir deep fears (Graeber 2011; Katz 2010; Schneider and Ingram 1993). In *Debt*, David Graeber writes, "It is almost impossible to find a single sympathetic representation of a moneylender – or anyway, a professional moneylender, which means by definition one who charges interest" (Graeber 2011:10).

Despite the perception that labor and lending are fundamentally different kinds of transactions, these relationships share important temporal properties. The delayed temporality of retirement benefits – promises for the future – resembles the lending relationship. The delayed temporality of credit is also a defining feature of gift-exchange, which creates a strong sense of

obligation or indebtedness on the part of the recipient (Graeber 2012; Mauss 2002). “To give a gift is both an honor and a provocation,” Graeber posits, “To respond to one requires infinite artistry. Timing is all-important. So is making the counter-gift just different enough, but also just slightly grander. Above all is the tacit moral principle that one must always pick on someone one’s own size” (Graeber 2011:106). As in the case of creditors, this temporal delay has created difficulties for workers seeking to ensure that their promises are upheld (Krippner 2017). But whereas creditors have developed both prospective (information gathering) and retrospective (collateral) strategies of mitigating the risks and uncertainty of lending, the primary recourse available to workers to reinforce such promises is to find new ways of institutionalizing the idea that benefits constitute a contractual right.

### *Gifts*

The above section argued that there are different kinds of contracts, some of which overlap with forms of gift-giving. Durkheim argued quite explicitly that gifts constitute “a variation of contracts,” asking, “What is a gift if not an exchange without reciprocal obligations?” (Durkheim 2014:97). Although Durkheim believed that gifts constituted a “benevolent” variety of the contract, because it bound at least one party, this statement reflects the prevailing perception of gifts as altruistic, unreciprocated transfers of resources. Yet, as Marcel Mauss (2002[1925]) argued in his classic treatise on gift-exchange, there is no such thing as a “pure” gift, because the logic of reciprocity is universal. The imperative to reciprocate is what forms the associational foundation of any economic system. A gift-exchange might not involve money, it might not involve a written agreement, and it might not be consummated immediately, but everywhere

there is a gift there is also a moral obligation to give back (Graeber 2012; Mauss 2002). Thus, just as gifts display social solidarity, they also display power dynamics (Healy 2006).

To the extent that a gift reflects the giver's perception of the recipient, it constitutes "an imposition of identity" (Schwartz 1967:2). Consequently, "to accept a gift is to accept...an identity and, to reject a gift is to reject a definition of oneself" (Schwartz 1967:3). This helps to explain why charity "wounds" (Mauss 2002). Charity, according to Mary Douglas, "is meant to be a free gift, a voluntary, unrequired surrender of resources" (Mauss 2002:viii). And although Americans often valorize charitable giving, they often also hold the recipients of charity in contempt (Fraser and Gordon 1992; Graeber 2012; Zelizer 1997). As Richard Sennet (2011:20) has noted, "Charity itself has the power to wound; pity can beget contempt; compassion can be intimately linked to inequality." With that said, it is also important to acknowledge that charity does not universally dishonor its recipient. Under disastrous circumstances, policymakers and publics are sometimes but not always less inclined to see victims as responsible for their misfortune, eligibility criteria may be relaxed, and repayment requirements less punitive (Gotham and Greenberg 2014). Even under these circumstances, however, the recipients of relief may still experience charitable assistance as humiliating and in conflict with their desire to see themselves as independent, self-sufficient individuals (Fothergill 2003).

More broadly, there are other kinds of gifts that do not dishonor the recipient. Unlike charity, which is viewed as a gift given voluntarily without expectation of return, "gratuities are voluntary payments for services received, made after the fact" (Bodvarsson and Gibson 1997:187). Whereas charity is an expression of sympathy, gratuities are an expression of gratitude (Sterett 2003). And whereas charity confers stigma on the recipient, gratuities confer honor. This constitutes an important distinction. However, the important similarity is that with

gratuities as with charity “no beneficiary...has a moral, economic or legal right to the benefits which he receives” (White 1933:420). Irrespective of the recipient’s moral standing, a gift is always a privilege, never a right. Thus, one of the theoretical contributions of this dissertation is to demonstrate the way in which charity is a variation of the broader category of gifts. This insight can add nuance to existing welfare state accounts, which often regard economic assistance styled after gifts as the province of the “undeserving.”

So far, I have argued that contracts and gifts take many forms, and sometimes these forms share important characteristics. As the dissertation will show, these shared properties made it possible to reinterpret the meaning of pensions and change the social status of pensioners. In the paragraphs that follow, I argue that a more expansive definition of the welfare state allows us to see the way in which American social provision actually consists of varieties of differently institutionalized contractual and charitable social relations.

Adopting newer conceptualizations of the American welfare state as a patchwork of public and private programs renders the institutional heterogeneity of contract and charity more apparent. America’s relatively anemic system of federal social policy is supplemented by private forms of social provision, namely employment benefits in both public and private sectors. Jacob Hacker (2002) has pointed out that “many social welfare duties are handled not by the state, but by the private sector with government support.” When private sector employee benefit programs are taken into account, American social spending is as extensive as other Western Democracies (Hacker 2002). Yet others, such as Salamon (1993) and colleagues have argued that private, non-profit spending must also be taken account into considerations of American social provision. Yet, more recently, Monica Prasad has argued that credit has become a substitution for government social spending (Prasad 2012). This way of thinking about the welfare state reveals

different forms of contractual and charitable social provision and reveals the way in which contract-charity oppositions can be complicated by the complex relationships between different social settings in which these ideas become institutionalized. In complicating these categories I have attempted to show that America's unique public-private system of social provision institutionalizes contract and charity in many different forms. This suggests that the categories are more overlapping than previously thought, and their meanings less stable and more open to reinterpretation. Questions remain, however, regarding when and how policy meanings can be redefined.

### **Beyond Contract Versus Charity**

The preceding sections argued, first, that welfare state scholars largely view contract and charity as the durable, mutually exclusive conceptual poles underpinning social provision in the United States. In order to demonstrate the porousness of these concepts, the previous sections unpacked the conceptual and institutional heterogeneity of these paradigms. I argue that this heterogeneity creates latent opportunities to disrupt the alignment between the conceptual, institutional, and discursive dimensions of social provision. The next sections will argue that Bourdieu's (1984) notions of "classification struggles" (battles over meaning) can help to illuminate how these latent opportunities can be exploited to reconfigure categories of worth in durable ways.

But first a brief detour is in order to consider alternative explanations. The question that animates this dissertation – How were pensions reorganized from a contractual right to something more closely resembling a charitable gift? – is fundamentally a question about distributional politics. This might lead one to wonder, then, what analytical purchase cultural

theories can offer that prevailing theories of labor power, elites, and political economy cannot. This is certainly a valid question, and my intent is not to suggest that these alternative explanations do not illuminate important aspects of Detroit's bankruptcy and its distributional consequences. Yet, the resolution of a distributional conflict through a novel reorganization of Detroit's municipal retirement system would defy the expectations of these theoretical perspectives. Ultimately, after briefly reviewing these alternative perspectives, I conclude that cultural theories are well-suited for unpacking processes of novelty and change.

Elite power perspectives would have expected the bankruptcy to benefit the interests of a coherent economic elite (Domhoff 1967; Mills and Wolfe 2000; Mintz and Schwartz 1987; Useem 1986). Although influential economic and political actors certainly saw Detroit's bankruptcy as an opportunity to reinvigorate local development, the bankruptcy's distributional politics were complicated by the incoherence and competing interests of fragmented elites (Chu and Davis 2013; Mizruchi 2013). The priorities of local business leaders were at odds with those of Wall Street lenders. Auto industry leaders – just regaining their footing, after Chrysler and General Motors (GM) had emerged from their own bankruptcies – were conspicuously absent from discussions surrounding Detroit's bankruptcy (Rattner 2010).<sup>1</sup> The city's anemic growth machine seemed to be constituted of a few highly visible billionaires, namely mortgage magnate Dan Gilbert and pizza tycoon Mike Illitch (Molotch 1976). Even if empowered legal and political actors had wanted to support these economic actors, which they certainly did, they would still have had to choose between the competing interests of local business leaders and non-local lenders.

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<sup>1</sup> In the summer of 2013, the city's reported unemployment rate hovering around 20 percent, roughly double the state-wide rate (Bureau of Labor Statistics 2018). Chrysler and GM were the city's eighth and tenth largest employers (*Crains* 2018), but cumulatively, they only employed about one percent of the city population.

These complex dynamics suggest that pluralist perspectives are more fitting (Dahl 1991; Harvey 1989; Peterson 1981). According to this perspective, the bankruptcy's distributional outcomes reflected the balance of power in the inter-organizational network. The difficulty in this instance is that the foundations that intervened were not part of the inter-organizational network. The bankruptcy did not affect them in a material way. Moreover, pluralist perspectives suggest that even as governments compete for development opportunities, that competition between elites ensures a measure of accountability to voters. However, the politics of emergency management completely upended any sort of democratic equilibrium. Elite theories have yet to fully contend with the heightened role of civic organizations in contemporary, postindustrial urban governance (but see Safford 2009 for an exception). This makes it difficult to understand how or why pensions were prioritized above a subset of financial institutions.

Labor power perspectives would also expect business and commercial interests to have been protected at the unmitigated expense of Detroit's workers. This had occurred in Central Falls, Rhode Island, where retirees lost up to 55 percent of their pensions after state lawmakers adopted legal protections for financial lenders right before the city entered bankruptcy (Bidgood 2012). Labor power perspectives posit that the political influence of workers depends on the strength of unions (Korpi 1983). In the mid-twentieth century, Michigan was the bastion of the American labor movement. Yet, by the early 2000s, union influence in Michigan and nationally had dwindled significantly (Mizruchi 2013). Michigan's 2012 passage of "right-to-work" laws further curtailed union power, and Detroit's municipal workers were at a disadvantage due to the dependence of public sector unions on private sector unions for political support (Ahlquist 2012). Although pensioners bore significant costs, they emerged with better-than-expected recoveries. The prioritization of pensions over certain kinds of financial debt astonished municipal bond

buyers and led some observers to proclaim that financial lenders had been grossly mistreated. University of Pennsylvania law professor David Skeel published his opinion in the *Wall Street Journal*: “the rule of law took a beating in the Detroit bankruptcy. Holders of the city’s general-obligation bonds, which had the same priority as pensions, got stiffed” (Skeel 2016). From the labor power perspective, it is difficult to understand how pensions were even partially prioritized.

Perspectives on the ascendance of market fundamentalism in the post-war period offer important additional insights into bankruptcy politics (Block 1977;1981; Davis 2011; Hacker 2008; Harvey 1989; Hinkley 2015; Krippner 2012; Marcuse 1981; Peck and Whiteside 2016; Phillips-Fein 2017; Somers and Block 2005). These perspectives illuminate how, in an era of state-led financialization, government organizations have themselves grown increasingly dependent on financial markets. These perspectives can further shed light on efforts of state governments to offload risk onto local government organizations, and the perception among policy makers that market-oriented strategies are best suited to address complex social, political, and economic problems (Krippner 2011). Peck and Whiteside (2016) argue that today’s version of business-friendly urban governance is increasingly accomplished “through financially mediated means and in conjunction with credit market actors” (Peck and Whiteside 2016:239). Broadly speaking, these perspectives would have predicted that political and legal actors would defer to market logics. And they certainly did in some crucial ways. The use of a state-led bankruptcy to address Detroit’s financial, social, and political problems is a prime example of that. But these perspectives would have a more difficult time explaining how Detroit’s art museum, survived the bankruptcy, and why this valuable asset was not liquidated and used to satisfy creditors, in accordance with the logic of bankruptcy.

In conclusion, prevailing perspectives illuminate a lot about the conditions that created the bankruptcy, yet they cannot adequately account for its distributional consequences, and particularly the peculiar reorganization of the municipal retirement system, which was the lynchpin to the bankruptcy's resolution. Cultural perspectives are well-suited to the task because they emphasize how actors construct strategies of action (Swidler 1986). The role of culture in action is particularly evident during moments of transformation and change (Swidler 1986). Cultural perspectives are important to this case because, as I will show, discursive strategies constitute a key mechanism by which influential actors create and exploit mismatches between conceptual and institutional dimensions of social policy.

### **It's "Classification struggles all the way down"<sup>2</sup>**

Drawing on the cultural sociology of Pierre Bourdieu (1977; 1984; 1999) and the more recent work of Chad Alan Goldberg (2007), I argue that Detroit's bankruptcy is usefully understood as a sequence of "classification struggles." The broader reconfiguration of the municipal retirement system unfolded through a sequence of classification struggles over the meaning of pensions and the deservingness of pensioners in relation to other groups of stakeholders. At each moment in this sequence, the reinterpretation of pensions led to the reevaluation of the worth of pensioners and changed their relationship to other sets of stakeholders: the city, the banks, one another.

Classification struggles are disputes about meaning. Bourdieu (1984) argued that definitional disputes play an important but oft-overlooked role in distributional conflicts, because mismatches between categories and perceived reality create opportunities to reshape the social order (Bourdieu 1984:481). The significance of classification struggles partly stems from their

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<sup>2</sup> Goldberg (2007:20).

role in group formation. Political explanations often examine how pre-established groups pursue pre-defined interests (Espeland 1998). Yet such explanations overlook “the cultural work involved in constructing the collective subject that is capable of having interests and the processes by which interests become attached or attributed to that subject” (Espeland 1998:32). Thus, at stake in struggles about meaning “is power over the classificatory schemes and systems which are the basis of the groups and therefore of their mobilization and demobilization” (Bourdieu 1984:481). Categories that are embedded in legal institutions and policy programs are important socio-political accomplishments (Espeland 1998). Battles over meaning take place in social arenas (“fields”) where people try to accumulate different kinds of symbolic and material resources (“capital”) (Bourdieu 1977). Different groups try to turn the resources they already have into the resources they want (Goldberg 2007; Peillon 2001). In the context of social provision, then, classification struggles refer to conflicting interpretations of a policy program, and the worth of its beneficiaries (Goldberg 2007; Zelizer 1997).

Through a comparison of six social policies introduced before, during, and after the New Deal, Chad Alan Goldberg (2007) finds that classification struggles emerge “soon after the introduction of new policies, suggesting that policy innovations provide a window of opportunity” to define recipients in relation to other groups in the same social arena (Goldberg 2007:15). Goldberg’s analysis extends the argument of this dissertation by showing that the organization of social provision at times blends properties of contract and charity, and positions clients in contradictory ways. Yet Goldberg’s (2007) findings also reinforce the idea that once a policy becomes framed as contract or charity and the dust settles, its meaning becomes entrenched. Goldberg’s account reinforces the idea that policy meanings, once formed, are highly durable.

As discussed in previous sections, scholarship on “feedback effects” helps to explain the durability of cultural categories of worth by emphasizing the self-reinforcing properties of social policies (Pierson 1993; Thurston 2015). Privileged populations have been able to reinforce their advantaged positions with the money and status conferred by social insurance policies (Pierson 2001, 1994; Soss 1999). Building on this insight, Schneider and Ingram (1993) outlined four ideal-type target populations based on two key dimensions: The first dimension refers to a population’s social status in terms of their perceived deservingness; The second dimension refers to the group’s political power. Thus, “advantaged” populations, such as “senior citizens,” are both powerful and deserving. “Contender” populations, such as banks, are powerful but negatively perceived. “Dependents” include recipients of public assistance, are deserving but relatively powerless. And “deviant” populations lack both power and social status. The concept of classification struggles highlights the latent discursive opportunities in categories of worth, and in doing so helps to explain how the reinterpretation of the promise can lead to a redefinition of the target population.

This dissertation draws on a number of concepts drawn from institutional theory and social movement scholarship to further specify the nature of classification struggles. In particular the dissertation’s chapters emphasize the role of framing strategies in doing institutional and identity work. How did the traditional association between contracts and deservingness get broken? What led foundations to intervene? How did this new arrangement become institutionalized?

### *Institutional Entrepreneurship*

Within the highly constrained context of bankruptcy, a handful of actors were elevated to positions of unusual influence. An explanation of the reorganization of the retirement system necessarily takes these circumstances into account. Some of these actors are appropriately understood as “institutional entrepreneurs,” actors who leveraged old relationships and mobilizing frames in ways that culminated in the reorganization of the pension system (DiMaggio 1988; Maguire, Hardy and Lawrence, 2004). Organizational novelty results from interactions between social networks that traverse organizational fields and institutional domains (Padgett and Powell 2012). Scholars of institutional entrepreneurship find that skilled individuals who bridge organizational fields are particularly well-positioned to realize opportunities for innovation (Johnson 2007; Johnson and Powell 2017; Padgett and Ansell 1993). Being situated in multiple social contexts expands the range of conceptual and organizational templates which one is familiar (Clemens 1993; Johnson 2007). Spanning different contexts also makes it possible to connect previously disconnected actors, and to control the flow of information between them (Padgett and Ansell 1993; Safford 2009).

The concept of institutional entrepreneurship has helped institutional theory, which underscores the role of the environment in rewarding organizational continuity and conformity, to overcome its difficulties in accounting for novelty. Yet organizational scholars continue to debate the relative roles of structure and agency in manifesting new institutional forms (Johnson and Powell 2017). There is a tendency in organizational theory to treat institutional entrepreneurs as if they are unconstrained by social structure. Many accounts have focused on the technological resources available to influential actors or their individual characteristics (Low and MacMillan 1988). Yet, in doing so, these accounts decontextualize the process of innovation

(Johnson and Powell 2017). Because many attempts at innovation fail, it is important to consider the cultural and historical contexts in which novelty emerges and takes hold (see for examples Johnson 2008; Johnson and Powell 2017; Padgett and Ansell 1993). Some environments are simply more hospitable to the particularities of a new arrangement than others (Johnson 2007; Johnson and Powell 2017).

### *Framing Processes*

In order for new organizational forms to take hold, influential actors must actively work to persuade key audiences of their legitimacy (DiMaggio 1998). This element of persuasion suggests that attempts at organizational innovation often resemble social movements (Fligstein 1996; Rao 1998). Thus, in this context frames are usefully understood as interpretations of reality that get invoked to justify certain actions (Boltanski and Thévenot 1991; Goffman 1974; Snow and Benford 1992). As the dissertation will show, framing processes played a key role in the conversion of pensions from a contractual right to something more closely resembling a charitable gift. Classification struggles largely consist of the competing efforts of different parties to impose a particular definition of the situation in order to attain a favorable outcome (Bourdieu 1984; Goldberg 2007). I seek to extend the concept of classification struggles by arguing that policy meanings can be destabilized by exploiting the discursive affordances of prevailing categories of worth. Second, in accordance with prevailing perspectives in institutional theory I find that definitional disputes are won by those who can persuade other influential actors to tip the scales in their favor. In turn, these mobilization attempts appear more likely to succeed if they draw on specific features of the environment that resonate with those being lobbied to intervene. Finally, new arrangements are more likely to take hold if influential

actors can successfully reframe the situation in the eyes of other social actors who would otherwise see the new arrangement as contrary to their interests (Goffman 1952).

### **Introduction to the Case**

Few modern cities have experienced a fall from grace as profound as that of the City of Detroit. Detroit was once a thriving city, but it became a place “of notoriety,” associated with danger, disorder, and criminality (Wacquant 2007). The city’s pre-bankruptcy decline is often characterized by a litany of numbers: 40 percent of lights out; 70,500 abandoned properties; 37.5 percent of residents living in poverty; 300-plus murders; 30 minutes for the police to show up (Bomey 2016:3). In the years preceding the bankruptcy, the geographical isolation of Detroit’s under-employed, majority Black residents was matched only by the political isolation of its elected leaders at the metropolitan level and in the halls of the capitol (Kornberg 2016).<sup>3</sup> The deterioration of the built environment became so severe that it provoked comparisons to Dresden after WWII, and spawned an entire industry dedicated to the voyeuristic documentation of crumbling buildings dotting the urban prairie. This sort of decline does not happen overnight (Tabb 1982). Detroit’s fiscal crisis was decades in the making, but the state-led bankruptcy, which sought to insulate the state’s balance sheet from the city’s fiscal problems and rehabilitate the city’s public image, was carried out with remarkable speed (Frug 1980; Hinkley 2015).

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<sup>3</sup> I use the term Black instead of African American based on the self-identification of many Detroiters. I capitalize Black but not white in accordance with Touré (2012) and Tharps (2014).

## *Causes*

Detroit filed for bankruptcy on July 18, 2013, initiating the largest city bankruptcy in American history (see Table 2 for a timeline). The causes of the city's bankruptcy are manifold and complex. The primary cause of the bankruptcy was the hollowing of the tax base (Farley 2015; Sugrue 2014). As a one-industry town, Detroit's relative lack of economic diversity exacerbated the difficulties of adapting to deindustrialization (Glaeser 2011; Mills et al. 1946). Federal policies contributed to the depopulation of the urban core through the creation of an expanded transportation infrastructure, as well as the underwriting of suburban mortgages.

Throughout the early part of the twentieth century, Detroit's emergence as an industrial center attracted many people in search of jobs. Because the automotive industry offered some of the highest paying blue-collar jobs, Detroit became the home of one of the nation's most prosperous Black communities by the early post-WWII period (Farley 2015; Sugrue 2014). Yet, persistent racial conflicts arose around issues of both employment and housing. Although the auto industry hired Black workers in large numbers, employers limited the kinds of jobs they could fill. Racist residential practices, including restrictive covenants and redlining, further constrained the mobility of Black Detroiters both within the city – confining them to several overcrowded neighborhoods – and later, outside of the city, as jobs began to dry up (Farley 2015; Sugrue 2014).

Thus, racial conflict was an enduring feature of life in Detroit, but post-war depopulation was accelerated by a violent conflict in 1967. During the summer of 1967 upheavals erupted across the United States, but by far the deadliest such uprising took place in Detroit. In 1939, two-thirds of Detroit's metropolitan residents lived in the city. In 1955 the suburban population equaled the city population. By 2012, the proportion of metropolitan residents living in Detroit

had plummeted to 18 percent (Farley 2015).

Meanwhile, at the state level, home rule laws encouraged a proliferation of small townships, and prevented Detroit from annexing suburbs to adapt to depopulation (Farley 2015). Presently, 83 percent of Detroit's roughly 700,000 residents are Black. By contrast, 115 of the 185 cities and townships that make up suburban Detroit are over 95 percent white. In turn, the decline in the City's population diminished revenue sharing by the state government (Farley 2015). By some accounts, the state government had unconstitutionally diverted billions of dollars from local governments, causing undue belt tightening around the State of Michigan (Hall 2016).

Although Detroit remains one of the nation's most populous cities, over time, shrinking tax revenues, declining income from state and federal governments, and a high degree of unemployment and concentrated poverty made it increasingly difficult for the city government to maintain its sprawling infrastructure and provide adequate services to the population. These factors caused the city to continue cutting costs and raising taxes, while also relying increasingly on investments and borrowing, which grew more expensive as the city's credit rating sank. The 2008 Wall Street meltdown hit Detroit from multiple sides (Farley 2015; Hinkley 2015). Investment revenues that the pension funds relied on declined. Lowered interest rates caused a risky loan taken out to fund the pension systems to sour. Meanwhile, the foreclosure crisis, which disproportionately affected Black communities (Rugh and Massey 2010), further depressed property values, causing Detroit's tax revenues to sink to new lows.

In contrast with these structural factors, some observers emphasize internal problems, namely corruption and mismanagement among city officials, as main causes of the city's dysfunction and financial woes (Hinkley 2015). Certainly, there were problems: The police department was under the supervision of the Department of Justice since 2003 for civil rights

infractions (Farley 2015). Except for a three-year pause between 2005-2008, the State of Michigan had maintained control over the city's schools since 1999 (Farley 2015). The water department, struggled to comply with environmental regulations, and was superintended by federal judges from 1977 to 2013 (Farley 2015). The Department of Housing and Urban Development (HUD) took control over the city's housing commission in 2005, citing financial mismanagement (Farley 2015). In the 2000s, a handful of elected and appointed officials were convicted of embezzlement, "pay-to-play" schemes, and steering municipal contracts, among other crimes (Farley 2015).

First passed in 1998, Michigan's Emergency Manager Law required the state treasurer to monitor the financial health of cities and school districts (Farley 2015). An expanded version of the law was adopted in 2011. In November 2012, 53 percent of Michigan voters sought to overturn the emergency manager law, but the state government passed another similar, but harder to repeal version of the law. Under this new version of the law, if the treasurer anticipates insolvency, he or she must alert the governor. If the governor agrees that that a problem exists, the treasurer will negotiate a consent agreement with local officials designed to balance the budget with austerity measures. If officials comply with the consent agreement, the state withdraws its oversight. If, after six months, the city or district has made insufficient progress in the eyes of the treasurer, he or she will alert the governor once again. At this point, the governor can appoint an emergency manager to assume control over the operation of the municipality to cut more aggressively costs (they are not empowered to raise taxes) and balance the budget.

In 2012, State Treasurer Andy Dillon told Governor Rick Snyder that Detroit was running out of cash, because of a sharp decline in tax receipts. The treasurer worked out a consent agreement with Detroit's officials. In early 2013, Dillon alerted the governor that Detroit

was not making adequate progress towards the consent agreement, and the governor appointed bankruptcy lawyer, Kevyn Orr, as Detroit's emergency financial manager. In the spring months of 2013, Orr's team surveyed the city's assets and obligations. During this period Orr initiated an appraisal of the Detroit Institute of Arts and stopped servicing certain of the city's debts, triggering legal action by city creditors. Orr concluded that the city was insolvent.

### *Bankruptcy*

Orr's decision to file for bankruptcy in July 2013 angered city officials and residents. For many, bankruptcy represented an illegitimate seizure of control by a white, Republican governor after decades of neglect and abandonment of a predominantly Black, Democratic city. Labor groups sought unsuccessfully to prevent the emergency manager from filing bankruptcy on the basis that it violated the state constitution, which affords special protections to public employee pensions. In December 2013, Judge Rhodes ruled that the city was eligible for Chapter 9 bankruptcy. He further ruled that the purpose of bankruptcy was to impair contracts, and that public pensions—though afforded certain protections—are still contracts, which make them eligible for cuts under bankruptcy, though officials should only impair them as a last resort.

Once the city had formally entered into bankruptcy, Orr's job was to develop a "plan of adjustment," a set of suggestions about how the city government should restructure its operations and prioritize among its many promises to chart a path back to fiscal stability. Officials would negotiate the plan in closed-door mediation sessions, while the federal bankruptcy judge would preside over bankruptcy proceedings in court. Orr's original plan proposed to overhaul and privatize certain city services and modify all "unsecured" commitments (primarily including certain bondholders, vendors, and pensioners) by similar proportions.

The stated goal of a municipal bankruptcy is to give the organization some time to negotiate with lenders and devise a plan to renegotiate insurmountable debts. Part of this process involved creating a master list of every city creditor, and then grouping these parties into “classes,” based on the kinds of promises the city made to them. The debtor organization then floats a proposal for how the city will treat each group of promises going forward. This proposal is subject to ongoing negotiation and revision until creditors and the debtor reach an agreement, or alternatively, the court delivers a ruling. In this way, classifications create a hierarchy of contractual obligations.

The Bankruptcy Code makes first order distinctions between “secured” and “unsecured” debts. Secured debts are those backed by underlying property rights. This usually implies that the lender and the borrower agreed in advance that if the borrower defaulted, the lender could seize certain assets. This could also mean that the lender pre-defined the income stream from which they would be repaid, such as utility fees. It could also mean that the state government passed a law, promising to back certain city debts with state tax revenues. Secured debts are guaranteed to the extent that that they are secured. A relatable if imperfect analogy would be going to the post office to mail something important and choosing the value at which to insure the delivery. If the post office loses the package, then you recover the insured amount, even if your package was worth more than the insured amount.

### *The Classification of Pensions in Bankruptcy*

As of June 30, 2013, approximately 32,427 individuals were entitled to pension benefits, of which approximately 21,450 (65 percent) had already retired (Docket 4391:10). Another twenty-

eight percent of beneficiaries were still working but had started to accrue benefits.<sup>4</sup> At the time of the bankruptcy, 49 percent of civilian retirees were women, 67 percent were over the age of 65, and 52 percent lived in the City of Detroit (See Table 1). Public safety retirees were more likely than their civilian counterparts to be male living outside of city limits. More detailed demographic data on beneficiaries' race and ethnicity proved elusive, but anecdotal estimates by multiple parties suggest that public safety beneficiaries were majority white, and civilian beneficiaries were majority black.

Retirement benefits were sorted into two categories: pension benefits and “other post-employment benefits” (OPEB), which included medical, dental, and optical insurance and death benefits. Pension claims were then split into two classes, reflecting the bifurcated structure of the municipal retirement system (see Table 3). “Class 10” included pension benefits promised to uniformed public safety workers, administered by the Police and Fire Retirement System (PFRS). “Class 11” included pensions promised to civilian workers, administered by the General Retirement System (GRS). The two pension funds were governed by different groups of trustees but shared administrative staff and advisors. PFRS members represented 38 percent of the total active and retired membership. The average annual pension for retired GRS beneficiaries was \$19,213; the average for PFRS beneficiaries was \$30,607.

At issue in the bankruptcy was not the aggregated cost of *all* promised benefits, but that portion of the total future obligation (extending roughly thirty years into the future) that could not be covered by the system's existing assets. This deficit was known as the unfunded actuarial accrued liability (UAAL) (see Figure 1). The retirement system was funded through a combination of employee contributions, city contributions, and investments (see Figure 2). The

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<sup>4</sup> Eight percent were not working, but also weren't receiving benefits. This often resulted from terminations that occurred before the member reached the age of eligibility.

city government had had ongoing difficulties meeting its required contributions. In 2005, Mayor Kwame Kilpatrick borrowed approximately \$1.5 billion to fully fund the retirement system. Because the city had already hit its borrowing limit, the city created separate entities to borrow the money and transfer it to the retirement system. At the time, Wall Street celebrated the mayor for undertaking an innovative deal.<sup>5</sup> Later, however, after the complex loans were refinanced, collateralized, and layered with interest rate derivatives, they severely exacerbated the city's financial problems. At a university event, Kevyn Orr noted, "Most cities are not sophisticated enough to engage in complex derivative deals with Wall Street. Because they will take your money. If you're Detroit, you shouldn't be in that product line".<sup>6</sup> A week after Orr filed the bankruptcy papers, several executives from UBS – one of the companies involved in Detroit's soured bond deal – were sentenced with prison time for rigging municipal bond markets.<sup>7</sup> Compared to other cities, the retirement system was not in bad financial shape. But both before and after the Great Recession, the cash-strapped city government struggled to make its contributions.

The financial status of the retirement system was controversial. Few state and local retirement systems maintain a 100 percent funded status, but subtle adjustments in the assumptions used to calculate the UAAL can make a system appear well-funded or acutely under-funded.<sup>8</sup> The UAAL is calculated by subtracting the actuarial value of the fund's total assets from its total liabilities. This calculation sounds simple, but it is complicated by virtue of time. The actuary's task is to calculate the deficit in a way that accounts for future investment

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<sup>5</sup> *The Bond Buyer* named the deal the "2005 Midwest Regional Deal of the Year" (Honigman [Press Release](#), January 6, 2006).

<sup>6</sup> Ford School of Public Policy, November 14, 2016.

<sup>7</sup> U.S. Department of Justice [Press Release](#), July 24, 2013.

<sup>8</sup> According to data obtained from the [Center for Retirement Research](#) (CRR) at Boston College, in 2013, 10 out of the country's 179 largest state and local pension systems were funded at or above 100 percent.

returns, employee and employer contributions, and changing expenses. Before the bankruptcy, the retirement system reported a joint UAAL of \$1.5 billion (Docket 4391, 2014:12). The GRS reported that it was 70 percent funded, and the PFRS reported that it was 89 percent funded. These numbers placed the GRS in keeping with the average reported funded status of state and local plans; they placed the PFRS well above the national average.<sup>9</sup> Orr’s team hired an outside consultant, which recalculated the UAAL using uncharacteristically conservative assumptions, and concluded that the Retirement System had “substantially understated” the UAAL. Their revised estimate, which the consultant described as a “very rough preliminary guesstimate” pegged the combined deficit at \$3.5 billion.<sup>10</sup>

In addition to pension benefits, the city had also promised to cover “other post-employment benefits” or OPEB, consisting primarily of medical benefits. OPEB claims did not enjoy the same level of legal protection as pension benefits and were grouped into a separate class (Class 12) that combined beneficiaries across occupational groups. The estimated value of all current and future OPEB benefits was between four and five billion dollars (Docket 4391). In summary then, pension claims were split into two classes on the basis of occupational categories, and medical claims were grouped into a separate class. All three classes included retired workers, as well as active workers who had started to accrue benefits.

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<sup>9</sup> In 2013 the average funding status reported by the 179 largest state and local plans was 72 percent (CRR 2018).

<sup>10</sup> [Letter](#) from Glenn Bowen and Suzanne Taranto of Milliman to Chris Brown, City of Detroit Chief Operating Officer, July 6, 2012. Although the setting of assumptions used to value pension liabilities sounds trivial and technical, valuing the UAAL played an important role in the politics of the bankruptcy. Pension recoveries depended on the value of the UAAL. The setting of the discount rate used to value pension liabilities was an important component of the negotiated settlement. Using a higher discount rate created a rosier picture of the funding status. In turn, this suggested that retirees could obtain better recoveries. Using a lower discount rate created a more worrying picture of the funding status and translated into lower recoveries. Ironically, the issue was that the city government did not have the money to pay the pension funds. But using a lower, more conservative discount rate meant that the city would need to set aside more money to meet its obligations.

### *The DIA Settlement*

Head mediator Judge Rosen, leading the closed-door negotiations between the city and its creditors, leveraged the potential sale of the city's art collection to raise money from foundations that would simultaneously foreclose the sale of the art collection while raising money to offset pension cuts. In what became known as the "Grand Bargain," regional foundations raised \$366 million earmarked for pensions. The State of Michigan agreed to contribute \$350 million—a far smaller sum than it might otherwise have had to provide. The art museum committed to raise \$100 million over 20 years. In exchange, the city would have to relinquish ownership over the museum, which would be placed into a private trust.

Although the Bankruptcy Code stipulates that each class must consist of "substantially similar" claims or interests, it does not explain what "substantially similar" means, and it does not require debtors to group all interests fitting the description together. In Detroit's case, the media often talked about retirees as a homogeneous group. The bankruptcy court created an "Official Committee of Retirees" to represent retiree interests in court, but the "plan of adjustment," which endured many revisions, created different classes for pensions and other retirement benefits (medical and death benefits). It further distinguished between public safety pension claims and civilian pension claims. However, it neither distinguished between active workers with vested (earned) pension benefits and retired workers drawing down their pensions, nor did it distinguish between retirees that were subject to clawbacks on interest and those that were not.

Another important aspect of bankruptcy is that stakeholders have a right to vote on the proposed "plan of adjustment," which lays out how to treat and prioritize each group relative to other kinds of promises. For a judge to confirm the plan, a voting majority of at least one

impacted group had to support the proposal. If that happens, then the judge can “cramdown” the proposal over the objections of other creditor groups. Orr warned creditors that there was no better deal. The creditors settled when a majority of voters approved of Orr’s plan of adjustment, and the city exited bankruptcy in less than 16 months.

### **Methods and Data**

In order to examine the underlying processes by which pensions and pensioners were redefined, this dissertation undertakes an “eventful analysis” of Detroit’s 2013 bankruptcy. William H. Sewell outlined this approach in his essay on “Historical Events as Transformations of Structures” (Sewell 1996). Using the fall of the Bastille as a historical case, Sewell drew on a combination of historical narrative and theoretical analysis to develop a theory of the “event.” Sewell (1991:841) defines events as “sequences of occurrences that result in transformations of structures.” Such transformations occur when a disruption in one social context spills over into another social context, drawing in actors that would not normally intervene (Sewell 1999).

“The concept of crisis,” Roitman (2013:9) asserts, “is crucial to the ‘how’ of thinking otherwise.” Whether by chance or by design, crises upend the status quo and create opportunities for powerful people and groups to reconfigure things according to their preferences. In that sense, Detroit’s bankruptcy is better understood as a case of “ordinary crisis” (Peck and Whiteside 2016). Crises, real or constructed, create opportunities for redefinition (Roitman 2013; Sewell 1999). Part of what makes “unsettled moments” (Swidler 1986) analytically useful is that they reveal latent social structures and evoke explicit articulations of ideology and belief (Swidler 1986; Zubrzycki 2009). Such events often present a rare opportunity to see those at the

top of local power structures publicly negotiate the distribution of resources. But whereas most accounts of top down policy change emphasize the actions of calculating elites, the eventful analysis helps to foreground the often unspoken ways that emotion and identity may shape influential actors' interpretations' of social problems and viable solutions. A single case study cannot produce empirically generalizable results, but it is my hope that this study can offer some insights into the role of symbolic action in policy change, particularly in hard economic times.

Defining the boundaries of an historical event necessitates an act of judgment (Sewell 1991). As the introduction to the case suggests, the story of Detroit's bankruptcy began a very long time ago. The starting point of this account was chosen for analytical purposes. In order to examine the processes by which dominant cultural categories of worth were reconfigured, I set the boundaries of the event around the first public reinterpretation of Detroit's municipal pensions and the moment when the redefined pension gained authoritative sanction.

I collected the data for this study through a combination of archival research, in-depth interviews, and observations of public meetings and events. A detailed discussion of the data that I used and its methods of collection can be found in Appendix A. I will briefly summarize these sources here. The primary source of data for this study consisted of court documents filed in conjunction with the city's bankruptcy between July 2013 and December 2014. Well over 8,000 documents were filed during this period, most of which are available for free in an online database. I used a subset of these documents to anchor the analysis around proposals for how to restructure the city's debt. This subset of documents was essential to understanding which definitions of pensions gained authoritative sanction and the justifications for why. These documents were also particularly important in reconstructing the first of three moments in the

broader reorganization of the pension system (Chapter 3). They also helped me to catalogue the different kinds of worth claims that retirees made about themselves.

A second key source of data consisted of 43 in-depth interviews conducted over the course of 2016 – 2017. These data were particularly important for reconstructing the process by which foundations were mobilized to intervene (Chapter 4). I interviewed a wide range of individuals including lawyers, judicial actors, foundation leaders, and retirees. Certain interview subjects were selected on the basis of the particular roles that they played during the bankruptcy. This was especially true of judicial actors and foundation leaders, as well as certain lawyers and retiree representatives.

I endeavored to recruit retiree interview subjects by attending public meetings and events, and to a lesser extent by calling individuals who included their contact information on court documents. The presidents of the two largest retiree associations did not invite me to attend their associations' meetings, and this made it difficult to access the majority of beneficiaries who lived in the area. Many beneficiaries (approximately 50 percent) live in more distant parts of Michigan or out-of-state, rendering these segments of the population even less accessible. Due to these circumstances, people who voted against the plan of adjustment – or at least who reported voting against it – are over-represented in my retiree interview data. I lucked into an additional data source that helped me to supplement my understanding of retirees' experience of the bankruptcy. The primary public safety retiree association tapes its monthly meetings and posts the videos online for members who live far away to watch. These data in conjunction with the interview data form the basis for the content in Chapter 5.

A variety of miscellaneous archival and media sources were also used to trace the legal history of public employee pensions, the creation of Detroit's municipal retirement system, and

the enactment of Michigan's constitutional pension protection (Chapter 2). I drew heavily on secondary sources, primarily law review articles, in Chapter 2 to argue that cultural categories of worth shaped the historical trajectory of public employee pensions in important ways. Mayoral papers helped me to reconstruct the origins of the pension system. The Official Record of the 1961-1962 Michigan Constitutional Convention was an important data source with respect to the enactment of Michigan's constitutional pension protection.

### **Plan of the Dissertation**

The empirical body of the dissertation consists of four chapters. Chapter 2, sets up the dissertation's empirical puzzle by charting the historical development of public employee pensions, focusing on their legal history. When state and local employee pension programs were first established in the late 19<sup>th</sup> and early 20<sup>th</sup> centuries, lawmakers did not clearly define the status and rights of recipients. Consequently, these questions were often adjudicated by the courts, where rulings hinged on judicial interpretations of the pension as a contractual right or a gratuitous allowance. This chapter advances the overall argument of the dissertation, first, by establishing the phenomenon: The American judiciary regarded contracts and gifts as mutually exclusive categories used to define the status and rights of program participants. This chapter sets up the dissertation's empirical puzzle by showing how the widespread redefinition of public employee pensions as contracts made them seem like ironclad, unbreakable promises. This chapter also contributes to the dissertation's broader theoretical argument by revealing the institutional heterogeneity of contract and charity, and by showing how the same policy can occupy opposing categories across time and space.

The next three chapters delve into Detroit's bankruptcy to unpack a sequence of classification struggles that culminated in the broader reorganization of Detroit's pension program from a contractual right to something more closely resembling a charitable gift. Each chapter describes a step in the broader process of reorganization, and each chapter roughly corresponds to a stage of the bankruptcy (entry, middle, exit). For analytical purposes I treat these moments as temporally distinct though in reality they overlapped. However, these moments were also path dependent in the sense that decisions made at one time shaped the opportunity structure of subsequent moments. In each episode the meaning of the pension promise was reinterpreted, and pensioners' deservingness was reevaluated in relation to other sets of stakeholders. In each moment, group boundaries were redrawn and pensioners' interests were reconstructed in different ways.

Chapter 3 describes the first step in the reorganization of Detroit's municipal retirement system. Whereas welfare state scholarship views contracts as a source of political strength, this chapter describes how bankruptcy opened a space of *undeserving contracts*. This chapter examines the process by which Detroit entered into bankruptcy, and the attendant struggle over the status and rights of pensioners in relation to 100,000 other parties to whom the city was indebted. By reinterpreting pensions from labor contracts to lending contracts, influential legal actors shifted the criteria of worth according to which pensioners' deservingness would be evaluated. Consequently, pensions were redefined as "unsecured credit," and deprioritized in relation to other kinds of loans that were protected by collateral. Thus, the first chapter advances the dissertation's broader theoretical argument by showing how in a moment of crisis contracts became a source of weakness.

Chapter 4 charts a second step in the reorganization of the municipal retirement system, which involved the introduction of a charitable gift. Stripping pensions of their contractual protections repositioned pensioners as less powerful, but more sympathetic and potentially dangerous in the eyes of the judicial actors overseeing stakeholder negotiations. This chapter examines the surprising intervention of a group of foundations who raised funds to privatize the city's prestigious art collection. The proceeds were earmarked for pensions, prioritizing pensions above other kinds of unsecured debt. I draw from scholarship on institutional entrepreneurship to argue that judicial actors mobilized social networks to bring foundations to the table and invoked the capacious goal of civic preservation and the threat of civil unrest to secure foundation cooperation in the absence of shared missions. Whereas welfare state scholars typically treat charity as a source of weakness, this chapter advances the dissertation's broader theoretical argument by demonstrating how a charitable gift offered pensioners a measure of protection in relation to other unsecured creditors.

Chapter 5 recounts a final step in the reorganization of the retirement system by describing how the new public-private pension financing arrangement became institutionalized. The reorganization of the retirement system required retirees to waive legal protections and formally consent to slashed medical benefits and trimmed pensions. The chapter begins by describing how the introduction of a charitable gift enabled the city to draw finer-grained distinctions between *more and less deserving retirees*. I draw on theories of identity work, specifically, Erving Goffman's theory of cooling the mark to describe how retiree representatives worked to adjust the expectations and self-concept of impacted parties. I argue that this revision of the pension promise reflects retirees' newfound status as dependents, since charity grants the giver discretion over the use of funds. As a result, programmatic distinctions between social

insurance and charitable assistance became blurred, and municipal retirees were repositioned as recipients of charity. In accepting this new arrangement, however, they were framed as public spirited, arguably changing the meaning of charity itself. Ultimately, Detroit's case suggests that policy meanings can be changed quickly, but not all at once. Resolutions of conflict do not happen in one fell swoop. They proceed iteratively, and resolution in one moment structures politics in the next round.

## CHAPTER II

### **Contract Versus Gifts: Public Employee Pensions on the Books**

This issue is a vital one. If a pension is a mere gift dispensed by the employer as a charity, then the latter may be considered free to do as he pleases, just as in the case of any award. If, however, a pension is essentially a part of, or inevitably involved in, the wage payment, and merely deferred until a distant date, the situation obviously is quite different and the worker as obviously has rights which cannot justly be ignored.

—Luther Conant, Jr. (1922:52)

### **Introduction**

A pension is among the oldest rewards for public service (Cohn 1968; Merlau 2012). In the pre-modern era, monarchs bestowed pensions “on court favorites, artists and military heroes with a flourish which proclaimed that the royal treasury was as inexhaustible as the crown’s power was unlimited” (*Hickey v. Pitts, Pension Board*, 378 Pa. 300 [1954]). Employment pensions started to spread across the United States in the late 19<sup>th</sup> Century. However, the very first municipal pension plan was created for New York City police officers in 1857. The circumstances of its creation suggest that pensions have, since their creation, been wrapped up in intergovernmental conflicts over autonomy and control (Clark, Craig, and Wilson 2003; Frug 1980). In the early months of 1857, Republican lawmakers in Albany decided that something had to be done about

Fernando Wood, then-mayor of New York City. Wood, a charismatic if corrupt businessman,<sup>11</sup> had ascended the ranks of the Tammany Hall political machine and served as a member of Congress, before being elected mayor of New York in 1854 (Caliendo 2010; Trager 2010). The mayor enacted a number of popular policies, but under his watch corruption in City Hall reportedly grew unwieldy (Caliendo 2010).

Republican lawmakers tried to bring the mayor to heel by abolishing the city's "Municipal" police force, and replacing it with a new, state-controlled "Metropolitan" organization (Caliendo 2010). But the recalcitrant mayor refused to cede control, certain that the new law was unconstitutional (Merlau 2012). A violent stand-off ensued between members of the old Municipal police force, consisting primarily of Irish immigrants, and the newly formed Metropolitan squad, mostly of Dutch-Anglo descent. Several months went by before a state militia was dispatched to break through the crowds and arrest the mayor. Perhaps because so much turmoil resulted from the bill's passage, no one seemed to take much notice of a provision that established the nation's first municipal pension fund (Merlau 2012). The new social insurance program initially provided disability and death benefits by pooling proceeds from the sale of unclaimed property, rewards, penalty fees, and voluntary contributions (NYC Police Pension Fund Website 2018).

This chapter recounts the legal history of public employee pensions in order to accomplish two objectives. The first objective is to "establish the phenomenon" by showing that the rights and status of retired public sector workers have depended heavily on the classification of pensions as contracts or gifts (Merton 1987). This chapter supports previous studies that find that the conceptual and discursive opposition between contract and charity played a significant

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<sup>11</sup>He was a shipping merchant and real estate speculator who, prior to his first successful bid for NYC mayor, was convicted of defrauding investors during the Gold Rush (Caliendo 2010).

role in the historical development of social policy, even at local levels of government where social policy remains less studied. The second objective is to motivate this study's empirical puzzle by describing how municipal pensions came to be seen as "sacrosanct," ironclad promises, particularly in states like Michigan where pensions attained a protected status in the state constitution. This history is important in situating the subsequent chapters, which describe in detail how municipal pensions were retrospectively modified in a highly protected legal context.

In the next sections, I discuss how this chapter extends the dissertation's theoretical argument. Then, after introducing the origins of municipal employee pensions, I turn to a discussion of their legal history. Because the architects of these new programs did not clearly define the rights afforded by promised retirement benefits, pension disputes were often adjudicated in court. Early on, the predominate view held by American courts was that pensions were a "gratuity," which meant that the employer could modify the promise at will. Later on, however, the gratuity frame lost favor, and the courts largely reinterpreted pensions as contracts, strengthening the promise. The chapter concludes by situating the State of Michigan within this legal context, and briefly describing the origins of Detroit's municipal retirement system.

### **From Gratuity to Contract: The Heterogeneity of Pensions**

In recounting the legal history, this chapter extends the dissertation's theoretical argument by unpacking the institutional heterogeneity and interpretive flexibility of pensions. Existing scholarship on classification and welfare state development treats contract and charity as ideas that influence policy development at conceptual, discursive, and programmatic levels (Campbell

1998; Somers and Block 2005; Steensland 2006). The alignment of these three kinds of mechanisms is what makes this classification system durable (Steensland 2006). Yet, existing accounts have yet to account for the institutional heterogeneity of these ideas. In the context of federal policy programs, contract and charity have served as templates for the organization of economic assistance (Fraser and Gordon 1992). Social insurance programs have typically been understood in contractual terms (Somers 2017). It seems obvious then that social insurance-style public employee pensions would be considered part of the employment contract. Public sector employment benefits are negotiated through collective bargaining, and quite literally included in labor contracts. But, as Mark Suchman (2003) has discussed and as this chapter will show, the idea of the contract can take multiple bureaucratic and legal forms.

Second, this chapter reveals the interpretive flexibility of pensions by describing how they were judicially redefined over the course of the late nineteenth and twentieth centuries. Policy innovations tend to generate conflict over their meaning (Goldberg 2007; Skocpol 1992). The case of public employee pensions was no exception. At the time of their inception, proponents sought to frame employment pensions as an honorable alternative to pauperism. Detractors argued that they would undermine people's thrift and independence. But previous accounts also suggest that once policies become framed as contract or charity, the categories tend to stick (Goldberg 2007). This chapter shows that debates over the meaning of policy programs, and the rights and status of their recipients, may persist long after their introduction.

This chapter also illuminates the interpretive flexibility of pensions in a second way. Existing accounts describe an oppositional logic between the categories of contract and charity. In this case, however, the court debate was whether to classify pensions as a contractual obligation or a gratuitous allowance. The concepts of charity and gratuity are related because

both constitute “gifts.” Irrespective of the recipient’s moral standing, a gift is always a privilege, never a right. Both gratuities and charity are given voluntarily. Neither affords the recipient “a moral, economic or legal right to the benefits which he receives” (White 1933:420). But unlike charity, which is viewed as “a free gift” given without expectation of return, “gratuities are voluntary payments for services received, made after the fact” (Bodvarsson and Gibson 1997:187; Mauss 2002:viii). Thus, whereas charity is an expression of sympathy, gratuities are an expression of gratitude (Sterett 2003). Whereas charity confers stigma on the recipient, gratuities confer honor.

Together, these insights help to clarify some of the conditions in which the symbolic and programmatic boundaries between contract and charity might become blurred. It is precisely the heterogeneity of these categories that make them the site of classification struggles. As this chapter will show, even as the contract versus gift opposition shaped the conceptual possibilities available to judicial actors, the interpretive flexibility of pensions loosened the alignment between the organization of pensions (institutional) and how they were classified (discursive). This in turn contributed to the institutional heterogeneity of pensions, as states took different legal approaches (judicial, statutory, constitutional) in trying to clarify the rights and status of retirees. To summarize, in describing how pensions came to occupy the categories of contract and charity in different times and places, this chapter suggests that these categories are less durable than previously thought.

### **The Origins of Public Employee Pensions**

The first American pensions were granted to military veterans even before the Revolutionary War (Merlau 2012). But American cities were first movers when it came to creating pension

plans for workers (Clark et al. 2003). The first municipal pensions predated employment pensions in the private sector, as well as programs at state and federal levels (Clark et al. 2003). States began to offer pensions to teachers in 1908, and in 1911 Massachusetts established the first statewide system for civilian workers (Clark, Craig, and Ahmed 2009; Sterett 2003).

By 1917, 85 percent of cities with 100,000 or more residents had started to introduce pensions (Clark et al. 2003). Initially, these plans were limited to police officers, fire fighters and teachers (Clark et al. 2003). Like soldiers, public safety personnel were seen as “particularly deserving” because they risked their lives for others (Sterett 2003:78). The earliest of these plans provided disability benefits before adding a retirement feature. Many of the earliest pension plans were funded primarily by workers’ contributions (ranging from 3.5 to 5 percent of the worker’s salary), though in the case of public safety workers, certain kinds of departmental revenues (including unclaimed rewards, penalties, and licensing fees) were added to the pension pot (Clark et al. 2003). The federal government instituted the first civil service pensions in 1920 (Sterett 2003). In the 1930s, state and local retirement plans proliferated partly because the New Deal’s Social Security Act (SSA) excluded local government workers (Clark et al. 2009).<sup>12</sup>

The architects of the early pension plans hoped to attract and retain quality workers (Cohn 1968; Conant 1922). Retirement plans were particularly important for government employers who could not compete with private sector wages (Cohn 1968). From the employee’s standpoint, the pension could ensure a measure of economic security in advanced age (Cohn 1968; Conant 1922; Madiar 2014). By rewarding periods of continuous service, pensions reduced employee turnover, and also heightened employer control (Conant 1922). The pension

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<sup>12</sup>The exclusion stemmed from concerns that the federal government’s collection of contributions from local government employers would constitute a tax, rendering the law unconstitutional. Yet, in 1951, social security was extended to local government workers, and local employees could opt into Social Security (Clark et al. 2009). Approximately 28 percent of government workers (police, fire, and teachers) are still not covered by Social Security.

also created an institutional mechanism for phasing out older, less efficient workers, given that “summarily dismissing” workers after long years of service could have “an unfavorable reaction” among the wider workforce (Conant 1922).

In keeping with other kinds of social policy innovations, advocates sought to define benefits in opposition to poor relief (Goldberg 2007). Proponents often justified the pension as a way of improving “the character of the service” rather than “on the grounds of benevolence or philanthropy” (Conant 1922:18). The key moral argument of employers was often not one of humanitarian concern, but a desire to help dutiful workers avoid the indignity of depending on private charity for survival in advanced age (Conant 1922). Lee Welling Squier, an early proponent of federal Social Security, wrote:

No employer has a right to engage men in an occupation that exhausts the individuals’ industrial life in ten, twenty, or forty years; and then leave the remnant floating on society at large as a derelict at sea...it is as equally unjust and improvident for an industry to turn adrift its worn out and aged employees, to be taken up and housed at public expense in almshouses, as it is for the employee himself to stop work and become a tramp or vagrant (as quoted by Conant 1922:7).

Those who rejected this moral argument feared that the pension would damage the character of the recipient, “diminishing the qualities of self-reliance, thrift, and even self-respect” (Conant 1922:7). At first, labor groups did not support pensions because they thought that they were paternalistic (Conant 1922). If the employer paid workers adequately then they could support themselves “without charity either from employers or anyone else” (as quoted by Conant 1922:22). A 1928 *Detroit News* article echoed this sentiment in observing the changes taking place in pension programs:

The old theory [of pensions] was that the person who drew a salary would have sense enough to make provision for his old age by saving part of his pay and investing it. This American idea was against any form of paternalism, or forced participation in insurance or pensions. The employe’s [sic] pay was his own, to be

done with as he thought best. Now the swing is in the other direction, toward compulsory participation in the building of a pension. The employe is entitled to enough money to live on—to pay for shelter, heat light, food, clothing; and he ought to receive more than that, to allow him an opportunity to save a part of his income.

This commentary reflected the compulsory nature of pension plans at that time. But some of the earliest pension programs were non-contributory and this contributed to the perception that they constituted a gift.

In the modernizing employment context, the perception of pensions as a gratuity was the conceptual remnant of the pensions bestowed as a reward for distinguished military service. The gratuity concept extended medieval notions of monarchical beneficence to decisions about modern state government (Cohn 1968). In its first instantiations, the pension was a gift given by a magnanimous monarch or government to an individual. In keeping with this legacy, early social insurance programs were not contributory, meaning that they did not systematically withhold wages to help pay for future benefits. The lack of employee contributions reinforced the perception that pensions were gratuities, and consequently, that workers had no right to pension benefits (Conant 1922).

Yet, the prevailing view of pensions as a gratuity was complicated in the later nineteenth century, as public employee pension systems became formalized. By the early twentieth century, the vast majority of public pension plans were contributory (Conant 1922). But even those that were not contributory came to be seen as a form of deferred compensation (Conant 1922). The reason for this perceptual shift was that employees still “paid for” non-contributory pensions. The employer passed the costs of the pension system on to employees by reducing wages. The Illinois Pension Laws Commission (1916:282) wrote, “whether the contribution to a pension fund be taken wholly from the employees’ wages, or be paid wholly by the employer, or be

derived in part from each, these contributions are in all three cases to be regarded as in reality a deduction from wages or salary.” The worker helped to pay for the pension through salary reductions whether they knew it or not.

Public sector workers have often been subject to “pension envy” (Mitchell and Anderson 2009). In the early twentieth century, the spread of contributory programs in the public sector helped to address taxpayer concerns that public service employees constituted “an especially privileged class” (Conant 1922:104). With the spread of contributory pensions, the perception that pensions constituted a form of deferred compensation became even more entrenched. In turn, this shifted prevailing perceptions of the employers’ obligation to its workers. Thus, the definition of the pension as a gift or a form of compensation was enormously consequential in determining the employers’ obligation to its workers. A gift or gratuity implies a freedom to modify the promise on the part of the employer. However, if the pension is a deferred wage, the worker “has rights which cannot justly be ignored” (Conant 1922: 53). Yet, even as contributory pension schemes spread across the public sector, the legal system did not uniformly view contributory pensions as contractual claims.

The diffusion of state and local retirement plans continued into the early 1970s, but their legal status remained “contradictory and confusing” (Cohn 1968:32). The two federal laws that regulate pensions do not apply to public employee pensions, so rules vary by state (Munnell 2012). In 1976, a congressional task force described “the unclear legal status of the participants’ rights as the distinguishing characteristic of governmental pension plans” (Harvard Law Review 1977:992).<sup>13</sup>

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<sup>13</sup>This ambiguity made it easy for local governments confronting budgetary pressures in the early 1970s to seek financial relief from their retirement systems (Harvard Law Review 1977). In some instances, governments tried to change benefits and eligibility. In other cases, financially troubled governments prodded pensions funds to lend

## From Gratuity to Contract: Judicial Interpretations

### *Pensions as Gratuities*

Judicial actors, like policy elites and everyday Americans, grasped at familiar categories to clarify the status and rights of pension beneficiaries. In keeping with previous accounts of social policy development, the conceptual alternatives appeared limited to contracts and gifts. Rubin Cohn, an University of Illinois law professor and active member of the Illinois Public Employee Pension Commission, expressed exasperation over the tendency of the courts to “exalt labels over substance...routinely and uncritically apply[ing] labels as a substitute for logic and policy” (Cohn 1968:46,32). The labels were the ostensibly “contradictory” principles of “contract” and “gratuity” (Cohn 1968). “[T]he ‘rights’ are ‘contractual’ or ‘vested’ or ‘noncontractual’ and ‘nonvested’; they are ‘gratuities’ or ‘earned but deferred compensation’; and depending on the label which is conveniently appended, these ‘rights’ may or may not be subject to legislative modification” (Cohn 1968:32).<sup>14</sup> Despite this incoherence, the courts seemed to coalesce, first, around the idea that pensions were a gratuity, and later around the idea that pensions should be regarded as a contractual obligation (Cohn 1968; Harvard Law Review 1977; Merlau 2012; Monahan 2010).

During the late nineteenth and early twentieth centuries, most state and federal courts defined public sector pensions as gratuities, gifts dispensed in appreciation of services rendered. One Minneapolis court stated this perspective in particularly clear terms:

The unquestioned rule is that a pension granted by the public authorities is not a contractual obligation but a gratuitous allowance, in the continuance of which the pensioner has no vested right: and that a pension is accordingly terminable at the

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them money. New York City exemplified the latter approach when, in 1975, the teachers’ pension system made a loan that enabled the city to narrowly avert default (Phillips-Fein 2017).

<sup>14</sup> Being vested means that the recipient has fulfilled all the requirements to become entitled to the benefit.

will of the grantor (*Gibbs v Minneapolis Fire Department Relief Association* [1914]).

The court's ruling that pensions conferred no rights, and that employers could modify pensions at will hung on the interpretation of the pension as a gratuity. The gratuity doctrine was largely underpinned by the U.S. Supreme Court's decision on *Pennie v. Reis*, 132 U.S. 464 (1889) (Cohn 1968; Harvard Law Review 1977). In turn, this decision hinged on the idea expected pensions could not be considered the recipient's property, because the recipient never taken possession of the funds.

The original dispute arose when the State of California declined to provide a \$1,000 death benefit to the estate of a deceased San Francisco police officer. The officer died on the job ten days after the state government repealed the benefit. The estate argued that the policeman's monthly contributions (\$2/month), which were taken out of his salary, created a property interest that could not be retrospectively denied. Yet, the California Supreme Court rejected the argument: "Though called part of the officer's compensation," the court reasoned, "he had no such power of disposition over it as *always* accompanies ownership of property" (*Pennie v. Reis*, 132 U.S. 464 [1889]). Thus, because the police officer never actually had possession of the funds in question, the money was not legally his property (Cohn 1968).

In its affirming decision, the U.S. Supreme Court concluded that the officer's interest was a "mere expectancy created by the law and liable to be revoked or destroyed by the same authority" (*Pennie v. Reis*, 132 U.S. 464 [1889]). Moreover, because the plan was revised before the officer died, his "expectancy became impossible of realization," because the money had already been "mingled with another fund." Thus, the court acknowledged that the pension was part of the officer's compensation but ruled that it could not be considered his property because the officer had never actually held the disputed funds. It further concluded that because the

pension was created legislatively it should not be considered part of the labor contract.<sup>15</sup>

A related justification supporting the gratuity doctrine stemmed from the notion that that government organizations administered retirement benefits on a *voluntarily* basis. According to Merlau (2012:1233), “the gratuity theory was premised on an understanding that pensions in those days did not arise from any agreement between the state and the employee. Rather, legislatures simply granted pensions at will, and therefore, in the eyes of the courts, pensions were little more than gifts.” As voluntary gifts, the employer retained full discretion over the pension and the circumstances of its fulfillment. This principle was on display in *Frisbie v. United States*, 157 U.S. 160 (1895). In this instance, the court concluded that the government could “prescribe who shall receive, and determine all the circumstances and conditions under which any application therefor shall be prosecuted. No man has a legal right to a pension” (*Frisbie v. United States* 157 U.S. 160 [1895]).

It would be natural to conclude that the gratuity doctrine was limited to disputes that arose under non-contributory plans, but this was not in fact the case. Cases in which employee contributions were mandatory actually bolstered the gratuity doctrine. What mattered here were the circumstances of the employee’s contributions, and in particular whether they were a compulsory part of employment. Under this logic, choosing to enroll in a plan conferred contractual status, while automatic enrollment created an unreliable expectancy (Cohn 1968). This principle was on display in *Pecoy v City of Chicago* (1914). Chicago police officer Arthur Pecoy was fired after ten years on the job. He argued that that because he had worked continuously for ten years and contributed to the pension system, he should be eligible to receive a city pension. He also argued that the accrued benefits should be considered vested property

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<sup>15</sup> Why physical control was considered so important was unclear. As a Harvard Law Review article noted, “a seizure of a policeman’s salary would presumably be no less a due process violation if it were accomplished before – rather than after – the check was mailed” (Harvard Law Review 1977:994).

rights (Merlau 2012). The court flatly rejected the argument, however, claiming the officer's contributions were an involuntary condition of employment. To summarize, during the late nineteenth and early twentieth centuries, most state courts viewed public employee pensions as gratuities that could be retrospectively modified (Harvard Law Review 1977; Monahan 2010).

### *Pensions as Contracts*

As the gratuity idea lost favor, state courts increasingly coalesced around the idea that employment pensions in both public and private sectors were more appropriately understood as a contractual obligation (Monahan 2010; Somers and Schwartz 1950). The reasons for this shift are not well documented, but contributing factors likely included the rising tide of labor power in both private and public sectors, the Great Depression – which highlighted Americans' economic vulnerability – and the subsequent passage of Social Security, which initially excluded public sector workers (Ahlquist 2012; Clark et al. 2003).<sup>16</sup> Another important reason was that when first formed, public sector pensions primarily funded disability and death benefits. Consequently, they did not constitute a primary source of income (Harvard Law Review 1977). However, as more traditional sources of retirement security, such as familial support and mutual aid societies, dwindled workers grew increasingly reliant on pensions. By the 1970s, most government workers entered into public service expecting a pension that would constitute their primary source of income in retirement (Harvard Law Review 1977). Finally, another reason that courts rejected the definition of pensions as gifts or gratuities was because some states forbade “gifts of public money to an individual” (California Constitution, Article 4, Section 31). More often than not, however, the courts simply concluded that the gratuity concept was outdated.

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<sup>16</sup> Public sector workers did not win the right to strike until 1965, but the disposition towards public sector workers also depends on the relative power and legitimacy of private sector unions (Ahlquist 2012).

This shift of attitude was on colorful display in a Pennsylvania Supreme Court case decided in 1954. The case revolved around a man named Thomas Hickey, who worked for the City of Pittsburgh from 1910 to 1947 and had fulfilled the requirements for a city pension “contractually, financially, and morally” (*Hickey v. Pitts, Pension Board*, 378 Pa. 300 [1954]). The conflict arose because of a rule change that took effect before Hickey retired but after his benefits vested. In 1933, the state changed the rules to suspend pension benefits if and when pensioners accepted employment with other government units. When Hickey started working for Allegheny County at nearly 70 years of age Pittsburgh suspended his pension. Hickey filed a complaint, which the local court dismissed, but Hickey appealed. The dispute eventually reached the state supreme court, which ruled in Hickey’s favor. In authoring the majority opinion, Justice Musmanno dismissed the definition of pensions as gratuities as ridiculous and intellectually lazy, writing,

Much of the misapprehension which apparently still exists in the minds of conscientious administrators of pension funds is possibly due to the fact that there still lingers a remnant of the ancient idea that a pension is a manifestation of sovereign generosity. The concept of pensions has come down through the centuries wearing a cloak of monarchical dispensation.... However, despite ceremony and pronunciamiento, the pensioner obtained no vested right to the proclaimed pension. In fact, he could not be any more assured of a continuation of the pension than he could be assured that his head would remain on his shoulders if he should displease his absolutist benefactor. Yet, the pension of today is not a grant of the Republic nor in this case is it a gift of the City Fathers. It is the product of mutual promises between the pensioning authority and the pensioner; it is the result of contributions into a fund which exists for the single purpose of pensions (*Hickey v. Pitts, Pension Board*, 378 Pa. 300 [1954]).

Musmanno suggested that in the feudal era, pensions were gifts that magnanimous kings gave to favored subjects to reward them for their service and display their power and beneficence. At that time the relationship between the state and its workers was hierarchical, not contractual (Sterett 2003). However, pensions were no longer gifts, in part because the relationship between

the government and its employees was no longer one of master and servant, but one of independent equals (Sterett 2003). Pensions had become a mutually agreed upon part of the labor relationship. Workers made contributions to the retirement system, for the sole purpose of administering pensions.

The court further remarked that the gratuity concept was inappropriate because it reinforced the “fallacious idea” held by the Pension Board and many others “that there is something almost philanthropic about the government paying salaries to employees” (*Hickey v. Pitts, Pension Board*, 378 Pa. 300 [1954]). Here, Musmanno suggested that the problem with interpreting pensions as gratuities was that the label smacked of charity, which dishonored the worker. In rejecting the gift theory of pensions, the court embraced its conceptual alternative, the contract. In doing so, the court offered little further analysis, but anchored its decision in earlier cases that the Pennsylvania Supreme Court had considered.

One of the earlier cases that the Supreme Court decided in 1934 was *Retirement Board v. McGovern*, 316 Pa. 161 (1934). In this case, the court presented a deeper, arguing that employee contributions were what distinguished gifts from contracts in this context. In the past, the court reasoned, pensions constituted gifts, “an allowance...made out of hand, gratuitously, and purely for past services, by the government.” However, the court continued, “where the employee contributes a part of his salary or wages with a sum from the state or county under a quasi-contractual relationship” there was a different result. Under these circumstances, the pension was a right. The court made a further distinction, arguing that until the worker satisfied the conditions of eligibility, the retirement pay was “an inchoate right.” Once the worker met those requirements, the pension became “a vested right” that had “ripened into a full contractual obligation.” In other words, a worker’s monetary contribution to the pension fund in the form of

withheld wages was what converted it from a gift to a contract.

In the early twentieth century, the contractual concept was often, but not always limited to *opt-in* contributory plans, which constituted a minority of retirement plans. The architects of those plans did not make participation voluntary with the intent of creating a contractual expectation between the employer and participants (Cohn 1968). Nevertheless, the formality surrounding enrollment better matched the courts' idealized notion of a contractual relationship. During the mid-twentieth century, however, the courts increasingly extended this contractual understanding to mandatory plans (Cohn 1968). The courts started to more closely examine the intent of lawmakers, searching for words in the creation of the pension system that signaled intent to create a contractual right, such as "eligible" "complies" "requirements," and "agree" (Merlau 2012). The contract framing was anchored in the interpretation of pensions as "earned but deferred compensation" (Cohn 1968:51).

Increasingly, the courts concluded that accepting employment was itself a voluntary act that signaled the creation of a contractual expectation, not one's enrollment in the actual pension plan. In *Betts v. Board of Administration*, 21 P.3d 859 (Cal. 1978), for example, the California court ruled:

A public employee's pension constitutes an element of compensation, and a vested contractual right to pension benefits accrues upon acceptance of employment. Such a pension right may not be destroyed, once vested, without impairing a contractual obligation of the employing public entity.

In cases where the rules surrounding the retirement system were not well defined, the courts still disagreed on when those rights became vested. In limited instances, the courts concluded that the contractual right vested when the employee accepted the job. In *Yeazell v. Capins*, 402 P.2d 541 (Ariz.1965), an Arizona policeman applied for his pension based on an expired formula for calculating the pension annuity. The formula he requested was in effect when he started working,

but legislation passed ten years before he retired had adopted a less generous formula. The court ruled that the police officer had a contractual right to the older formula, because he never explicitly agreed to the modification. The court ruled that his right to the pension became vested when he started working. This meant that legislators could not retroactively reduce the pension promise. In a dissenting opinion, Justice Udall complained about the logical inconsistency of the ruling, which seemed to suggest that desirable changes could take effect without explicit consent, but undesirable changes could not.

California was an example of a state that rejected the gratuity definition because the state constitution forbade government organizations from giving gifts to individuals. Edward O’Dea was a San Francisco policeman who died from injuries sustained on the job. At the time of O’Dea’s injury (two years before his death), the municipal code said that the widow of a deceased police officer should receive a monthly pension equal to half of the officer’s salary until she remarried. But O’Dea’s widow was denied the death benefit, because in the intervening period between the officer’s injury and death, the code had been amended in such a way that excluded her eligibility (*O’Dea v. Cook*, 169 P. 366 [Cal. 1917]).

A pension such as this law contemplates is not a gratuity or a gift. If it were, all of the provisions pertaining to it would be void under the constitution of the state. (Art. IV, sec. 31) A pension is a gratuity only where it is granted for services previously rendered which at the time they were rendered gave rise to no legal obligation. Yet, where, as here, services are rendered under such a pension statute, the pension provisions become a part of the contemplated compensation for those services and so in a sense a part of the contract of employment itself (*O’Dea v. Cook*, 169 P. 366 [Cal. 1917]).

Again, the court saw gifts and contracts as the only conceptual alternatives. The court first referenced the state constitution to suggest that pensions were not gifts, because that would make them illegal. The court argued that a pension only constituted a gratuity if the employer gave it spontaneously after the rendering of services. Whenever an individual performs services under

the expectation of a pension, it becomes part of the employment contract. Relying on the oppositional logic of gifts versus contract, the court concluded that if pensions were not gratuities, then they must be contractual.

By the late 1960s, state courts had largely accepted the idea that pensions conferred contractual rights. However, the courts still varied in terms of the degree of protection accorded to pensions. In most instances, the courts concluded that the benefits vested upon retirement. But in some states, pensions became rights after members had worked a certain number of years. Yet other state courts concluded that benefits vested as soon as the employee accepted the terms of employment. Other states, including California and Washington, took a more restrictive approach to vesting. These states reserved the power for lawmakers to make “reasonable” changes to pension benefits to maintain the financial viability of the pension system (Madiar 2014).

At the time of Detroit’s bankruptcy, 33 states regulated public employee pensions through a combination of case law and codified law. This meant that codified state laws did not explicitly define pensions, but the state Supreme Court had offered an interpretation of public employee pensions, which alluded to codified state laws. For example, in twenty-eight states, the Supreme Court ruling interpreted pensions as contracts, which in conjunction with the “Contract Clause” enshrined in federal and state constitutions offered public employee pensions a considerable degree of legal protection. The Contracts Clause prohibits state governments from passing new laws “impairing the obligations of contracts” (U.S. Constitution, Article 1, Section 10, Clause 1).

### *Alternative Framings*

Among the 33 states where public employee pensions are regulated by case law, five have rejected the contract theory of pensions. Indiana is the only state where the courts continue to uphold the gratuity doctrine (*Haverstock v. State Public Employees Retirement Fund*, 490 N.E.2d 357 [Ind. Ct. App. 1986]). In New Jersey the Supreme Court concluded that pensions were *neither contracts nor gratuities* (*Spina v. Consolidated Police & Firemen's Pension Fund Comm'n*, 197 A.2d 169 [N.J. 1968]). Public safety workers, who objected to the modification of their pensions under new eligibility rules, filed the case. The new rules changed the required service from 20 to 25 years. The court examined the intent underlying the existing statutory law, enacted in 1920, and concluded, “Not a word smacks of an intent to require or to permit one [a contract]. Indeed, efforts to introduce a contractual gloss in this area have failed.” However, the court also rejected the idea that pensions constituted “a mere ‘gratuity,’” because the pension was plainly a form of compensation. If the court agreed that the benefits were a form of compensation, the plaintiffs argued, then “it should follow that there is an immutable right to them.” But the court rejected this argument, as well, concluding that pensions possessed properties of contracts *and* gratuities. The court refused to “idly” sum up the pension in “one crisp word,” asserting, “there is no profit in dealing in labels such as ‘gratuity,’ ‘compensation,’ ‘contract,’ and ‘vested rights.’ None fits precisely, and it would be a mistake to choose one and be driven by that choice to some inevitable consequence” (*Spina v. Consolidated Police & Firemen's Pension Fund Comm'n*, 197 A.2d 169 [N.J. 1968]). Ultimately, the court ruled that pensions were a form of compensation, but without protection exceeding that of a gratuity (Madiar 2014).

If public employee pensions are neither contracts nor gifts, then what are they? The State of Minnesota offered an alternative interpretation. In 1983, the Minnesota Supreme Court reinterpreted public employee pensions and other kinds of retirement benefits as “promissory estoppel.” Promissory estoppel is a legal principle used to help injured parties enforce promises that fall short of formal contracts. In 1983, a man named Larry Jens Christensen sued the Minneapolis Municipal Retirement System. Christensen had worked for the city for a total of 23 years, first as an election helper and later as a city councilman. He stopped working for the city at the age of 38, and subsequently worked as a groundskeeper and part-time janitor. A decade later, Christensen’s benefits ceased when lawmakers revised the eligibility requirements. Under the new rules, he had to wait another 12 years until he became eligible to start receiving benefits again. Christensen sued the retirement system, arguing that the new rule was unconstitutional. The court ruled in Christiansen’s favor, but stopped short of applying the contract label, because it wanted to preserve the state’s ability to modify such promises under circumstances of fiscal constraint.

A few other states, namely Iowa, Maine, and Wyoming, have declined to classify public employee pensions at all. In 1993, for example, Maine’s Supreme Court rejected the conclusion that “the retirement statute creates immutable contractual rights on acceptance of employment that cannot be impaired,” but held that “retirement benefits are more than a gratuity to be granted or withheld arbitrarily at the whim of the sovereign state” (*Spiller, et al. v. State of Maine, et al.*, 627 A.2d 513 [Me. 1993]). The Wyoming Supreme Court has interpreted public employee pensions as property (Munnell 2012). Defining pensions as property subjects them to the Fifth and Fourteenth Amendments to the U.S. Constitution. Yet, in states that adopt this approach, courts have tended to find that changing pension benefits does not amount to the appropriation of

private property without just compensation. Consequently, states that define pensions as property rights have been less constrained in adjusting pensions than states that define pensions as contracts (Munnell 2012).

In summary, pension protections grew stronger during the twentieth century as courts coalesced around the definition of pensions as contracts. This history echoes previous scholarship on social policy development which has found that oppositional notions of contracts and gifts shape how Americans think and talk about social provision. The courts relied on the classification of pensions as contracts or gratuities to adjudicate the rights and status of pension beneficiaries. With some exceptions, these categories seemed to exhaust the conceptual possibilities. But even as program features remained relatively consistent (contributory, social insurance), the prevailing interpretation of pensions shifted from one category to another.

### **From Case Law to Codified Law**

The preceding sections examined the interpretation of pensions in court. The courts drove the contractual redefinition of public employee pensions,<sup>17</sup> but throughout the twentieth century some states reinforced this doctrine by modifying state law (Monahan 2010). As of 2018, thirteen U.S. states had passed laws that clearly define public employee pensions. The scope of these protections varies considerably. Some laws protect “accrued” benefits, those linked to work completed in the past. Other states offer more expansive protection, preventing the modification of benefits promised under old rules, but that have yet to be accrued (Merlau 2012).

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<sup>17</sup> What this usually meant is that the courts interpreted pensions as contracts and referenced the contract clause in either state or federal constitutions.

Whereas some states enshrined these principles in statutory laws, seven states have adopted constitutional amendments with explicit language banning pension cuts (Table 2). These constitutional provisions made retirement benefits even more secure by placing them beyond the ebb and flow of legislative politics, as state constitutions can only be revised once every decade. State constitutions have been an important site of “positive rights,” those that mandate certain kinds of government action to protect citizens (Zackin 2013). Political commentators have often suggested that the United States is exceptional in its preference for negative constitutional rights, those that constrain government action to protect individuals (Zackin 2013). While true of the federal constitution, these observations overlook the prevalence of positive rights in state constitutions (Zackin 2013). During the Gilded Age and Progressive Era, labor advocates turned to state constitutions as a strategy for insulating protective legislation from unsympathetic courts (Zackin 2013). Between 1864 and 1940, at least thirty U.S. states adopted positive constitutional provisions addressing a range of topics, ranging from working conditions to wages to physical protection (Zackin 2013). Apart from New York State, public employee pension protections were not a salient topic during these first bouts of amendments, but they appeared in constitutional conventions in the mid-twentieth century.

In 1938, New York was the first state to adopt a constitutional amendment for the expressed purpose of insulating pensions from legislative revision (New York Constitution Article 5, Section 7). The language adopted both stipulated that the public employee pension was a “contractual relationship” and that the benefits in a retirement plan could not be “diminished or impaired.” In 1970, Illinois adopted a similar constitutional amendment that placed no constraints on when benefits became contractual (Madiar 2014). Alaska (1956), Hawaii (1978), and Michigan (1963) adopted similar language, but limited these protections to accrued benefits.

In Michigan and Hawaii, the courts concluded that “accrued” distinguished between past and future service. The legislature could not adjust benefits linked to completed services but could modify pension benefits linked to services not yet performed. The Alaska Supreme Court took a different approach. It interpreted the constitutional provision to mean that benefits “vest” on employment and enrollment in the system, not when an employee becomes eligible to receive benefits. Yet, the court also concluded that the legislature could make “reasonable” changes if resulting disadvantages were balanced by new advantages (Madiar 2014). To the extent that constitutional provisions protect benefits, there are no disclaimers specifying the conditions in which the provisions do not hold. These circumstances led many to believe that unilateral reductions of pension benefits due to exigencies, such as a fiscal emergency, would not be possible (Madiar 2014).

### **The Legal Status of Public Employee Pensions in the State of Michigan**

Michigan’s public employee pension protections are among the strongest in the United States because of amendments to the state constitution passed in 1963. The pension amendment was introduced during the 1961-1962 Constitutional Convention (Con-Con), a gathering to revise the state constitution. Among the many issues on the table, Michigan teachers lobbied for an amendment that would give retirement benefits the status of contractual rights (*Kosa v. Treasurer of State of Michigan*, 408 Mich. 356 [1980]). In the 1940s and 1950s teachers’ pensions were small because they were based on “unconscionably low salaries and employee contributions premised thereon” (*Kosa v. Treasurer 1980*). Inflation further eroded retirement security because of a rising cost of living. The state government took on the responsibility of maintaining adequate funding for the teacher’s pension system, but the legislature often made

inadequate appropriations (*Kosa v. Treasurer* 1980). The amendment sought to encourage better funding of state and local retirement systems (Official Record of the Con-Con 1961; Robinson 1962).

There were two parts to the pension amendment. One part defined pensions as contracts and said they could not be modified: “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” (Michigan Constitution Article 9, Section 24). The other clause required retirement systems to set aside funds every year to cover future obligations: “All such benefits arising on account of service rendered in each fiscal year shall not be funded during that year and such funding shall not be usable for financing unfunded accrued liabilities” (Michigan Constitution Article 9, Section 24).

The primary justifications the committee made in favor of the amendment mirrored those that had been made by courts sympathetic to pension protections. One of the members of the Committee on Finance and Taxation, Richard Van Dusen, a Republican politician and advisor to then-Governor George Romney, told delegates that the proposal had two objectives. The first was to “give to the employees participating in these plans a security which they do not now enjoy,” by making accrued pension benefits “contractual rights.”

This you might think, would go without saying, but several judicial determinations have been made to the effect that participants in pension plans for public employees have no vested interest in the benefits which they believe they have earned: that the municipalities and the state authorities which provide these plans provide them as a gratuity, and therefore it is within the province of the municipality or other public employer to terminate the plan at will without regard to the benefits which have been, in the judgment of the employees, earned....Now, it is the belief of the committee that the benefits of pension plans are in a sense deferred compensation for work performed. And with respect to work performed, it is the opinion of the committee that the public employee should have a contractual right to benefits of the pension plan (Official Record of the Con-Con 1961:770–71).

Van Dusen argued that the gratuity model was inadequate, because pensions constitute a form of deferred compensation. On these grounds, he suggested, pension benefits were better understood as a contractual right. After fleshing out this argument, Van Dusen went on to explain the second objective of the proposal, which had previously been discussed by committee chairman, D. Hale Brake. Brake, a Republican senator and former state treasurer, expressed alarm about the funding status of the state's retirement systems, and argued that the new amendment would push the retirement systems to improve their fiscal integrity. Committee members were concerned about shortfalls in state and local plans, noting that the retirement fund for outstate teachers was short \$424 million dollars and the Detroit system was short \$151 million dollars. The discussion that followed these opening statements mostly sought clarification. Committee members raised few objections, none of which pertained to the contractual redefinition of pensions. Reflecting on the Con-Con, the legislator who had drafted the proposal noted, "We argued over a lot of issues, but that wasn't controversial at all" (Jack Faxon as quoted by Lessenberry 2014). The pension amendment passed without much fanfare or public debate with 117 votes for and 41 against.<sup>18</sup>

Despite these new protections, the Democratic Party and key labor groups mounted vigorous opposition to the state-wide adoption of the revised constitution. Apportionment, the basis of legislative representation, emerged as the most controversial issue.<sup>19</sup> In a brochure, the American Federation of Labor and Congress of Industrial Organizations (AFL-CIO) stated that "the proposed Constitution marks a definite step backward and in vital areas is characterized by substantial erosion of long established rights."<sup>20</sup> In March 1963 the Michigan State Employees Association (composed of 13,000 state employees) took an official stand against the proposed constitution. The organization charged that "the new document will weaken the Civil Service

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<sup>18</sup> Committee Proposal for Art. 9 Sec. 24. "Pensions, state and local obligations," George Romney Papers, Box 30.

<sup>19</sup> Letter to Governor Romney from John Hannan, President, MSU, Feb. 2, 1963, George Romney Papers, Box 30.

<sup>20</sup> "Facts about the Proposed Michigan Constitution." AFL-CIO, George Romney Papers, Box 30.

Commission so greatly that it will be stripped of almost all of its ability to protect the state's 30,000 employees."<sup>21</sup> The new constitution stirred acrimony along partisan lines, and just narrowly passed the public referendum after a recount.<sup>22</sup>

### **Detroit's Retirement System: A Brief Introduction**

Detroit's municipal retirement system (The Retirement System of the City of Detroit or RSCD) emerged from a decentralized system of departmental pension funds. The first city employees to receive pensions were teachers in 1895.<sup>23</sup> The police department established its own pension fund in 1923 with \$100 seed money confiscated from a drunkard who tried to bribe a patrolman.<sup>24</sup> The fire department later created a fund of its own. Another fund covered the pensions of some other city employees, such as librarians and water department employees. There was no coherent policy governing these systems: some required employees to make contributions while others did not.

By the late 1920s, Detroiters took the legitimacy of municipal pensions for granted, but worried about their financing. A 1928 article in the *Detroit News* depicted how the public viewed municipal pensions at that time:

Nobody quarrels with the right of public employes [sic.] to pensions. From every point of view it is a good thing, from that of the city, from that of the employe. The city gains because, assured of work and a competence in old age, the employe not only works with a free mind but at a lower salary than in more hazardous private employ... In still another way, the city gains. It is never possible or politic to put out on the streets employes who in years of faithful service have aged to a point where they can no longer perform their duties. Where there is no pension or

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<sup>21</sup> Open letter by John Doyle, Executive Secretary, Michigan State Employees Association, March 14, 1963. George Romney Papers, Box 30.

<sup>22</sup> Con-Con Election Statement by Coordinating Committee for the New Constitution, by Dr. Dewey F. Barich, Chairman, April 2, 1963, George Romney Papers, Box 30. News clippings, George Romney Papers, Box 30.

<sup>23</sup> Annual Report of the Board of Education Retirement System, Albert Cobo Papers, 1950, Box 1.

<sup>24</sup> "Rum Prisoner Unintentionally Finds Pension Nucleus," *Detroit Free Press*, March 23, 1923.

no adequate pension, these people are kept on the payrolls, virtually pensioned at full pay while others are employed to do their work. They dodder about, a liability in all ways, hurting the morale, clogging the channels of promotion.

While describing municipal pensions as morally legitimate in principle, this and other articles lamented the inefficiency of the city's fragmented pension system and endorsed the creation of a unified fund to cover all employees. The matter was put to a successful vote in 1933, but squabbles about which employees would be included and under what rules delayed the creation of the new agency until 1938. Policemen and firefighters resisted inclusion in the same fund as civilian workers. At first, the reason was that their current arrangements were more favorable than the new system, which would require a five percent annual contribution. Many saw public safety work as a dangerous occupation and felt that the risks taken by public safety workers made them special. Public safety workers also opted out of Social Security, preventing the automatic deduction of income tax from their salaries. Due to these circumstances, police and firefighters' pensions merged into a parallel fund. The RSCD oversaw both funds, but each had its own board of trustees, consisting of a combination of mayoral appointments and active employees. This governance structure persists today.

### **Conclusion**

This chapter demonstrated the applicability of the contract versus charity framework to local policy debates by tracing how this oppositional logic shaped the historical development of public employee pensions in the United States. In keeping with previous studies, this accounting of the legal trajectory of public employee pensions finds that their creation spurred debates about the meaning of the pension, on which hinged the rights and status of pensioners. In keeping with

previous accounts, this history also finds that whereas contracts conferred strength, gifts constituted a position of relative weakness.

Contra the existing scholarship, however, this chapter found that these social insurance programs were for many years thought of as a gratuity, a gift, albeit one that honors the recipient as opposed to charity, a gift that shames. In defining pensions as “gratuities,” the courts held that employers could withhold or modify benefits at will (Bodvarsson and Gibson 1997). In the early/mid-20<sup>th</sup> Century, however, the courts discarded this theory in favor of the view that, as a form of deferred compensation, (vested) pension benefits were more appropriately understood as contractual rights. This redefinition imposed constraints on the employer’s ability to retroactively modify pension promises.

Thus, in keeping with previous studies, this chapter found that the oppositional logic between contracts and gifts limited the conceptual options available to judicial actors evaluating the sanctity of the pension promise. And where existing welfare state accounts have described the contract versus charity opposition in the context of public policy debates, they have yet to consider how policy programs exist in complex relationship to other institutions. Some states adopted statutes or constitutional provisions that clearly defined pensions as a contract between the government employer and the employee. These legal protections contributed to public perceptions that public employee pensions were sacred, immutable promises, particularly in states like Michigan where constitutional amendments explicitly banned pension cuts. The contractual conception of pensions became so taken for granted that, as the next chapter will show, Detroit’s municipal workers were confounded by the state’s reinterpretation of pensions from a form of compensation to a form of credit.

## CHAPTER III

### The Undeserving Contract

The threat of bankruptcy elided policy choices, making it appear as though there were simply no alternatives—as though the transformations were brought about not by anyone’s decisions, but by the abstractions of fiscal rectitude and financial necessity.

—Kimberly Phillips-Fein (2017:8)

If all you have is a hammer, everything looks like a nail, so the minute they brought in ... a bankruptcy attorney to be the emergency manager, the writing was on the wall.

—“Jim,” Retired Detroit Policeman

### Introduction

The previous chapter examined how public employee pensions, once characterized by American courts as “gratuities,” came to be seen as “contracts” and institutionalized as such in state law. Several states, including the State of Michigan, took additional steps towards insulating pensions from modification by guaranteeing pension benefits accrued through past service in the state constitution in 1963. In this highly protected legal context, government workers had come to see pension benefits as inviolable promises. This chapter describes how these legal protections were circumvented, and preliminary steps were taken in the redefinition of Detroit’s public employee pensions from a contractual right back towards the status of a gift. Together, Chapters 3, 4, and 5

argue that this broader process unfolded through a sequence of classification struggles. Each episode in this sequence involved a reinterpretation of the deservingness of some subset of parties to whom Detroit's municipal government was indebted.

This chapter examines how the deservingness of pension beneficiaries was evaluated in relation to approximately one hundred thousand other city stakeholders. In order to help struggling organizations address an insurmountable debt in an orderly fashion, bankruptcy classifies and ranks the organization's financial commitments in order of repayment. This represents an ordering of lenders according to their deservingness of economic protection. Thus, although welfare state scholars have always understood contracts as a source of political strength, this case reveals that in moments of crisis, real or constructed, contracts can become a source of weakness. This chapter describes how pensions came to be regarded as *undeserving contracts*.

This step in the redefinition of pensions corresponds to the first stage of the city's bankruptcy: entry. The story begins with Kevyn Orr's arrival in Detroit.<sup>25</sup> Orr, Detroit's emergency manager (EM), was first to publicly characterize pensions as "unsecured" (i.e. unprotected) debt when he argued that vested pension benefits should be cut.<sup>26</sup> Yet, Orr's pronouncement did not unilaterally make it so. The first stage of a bankruptcy culminates in a trial and judicial evaluation of whether the struggling organization is in fact eligible for bankruptcy. Thus, it took legal and political work to persuade the court to sanction the bankruptcy and the classification of pensions as ordinary, unsecured contracts. The next sections of this chapter first discuss how the chapter advances the dissertation's theoretical argument. The

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<sup>25</sup> This is not to suggest that Orr's arrival constituted the starting point of Detroit's fiscal crisis or descent into bankruptcy. For more information about events that led up to this moment, see Chapter 1.

<sup>26</sup> In bankruptcy, the "debtor" is the term used to describe the borrower unable to fulfil its obligations. The parties to whom the city is indebted are called "creditors." The obligations themselves are referred to interchangeably as "credit" and "debt."

section that follows introduces some bankruptcy background, context, and terminology to contextualize and clarify the ensuing account, before turning to the case.

### **From Compensation to Unsecured Credit; From Workers to Lenders**

This chapter advances the dissertation's theoretical argument by examining how pensions became *undeserving contracts*. The idea of the undeserving contract is puzzling from the standpoint of sociological theory, which generally views contracts as a valorized kind of relationship in capitalist society. In the context of social policy, the labor contract – and its attendant principles of instrumentality and reciprocity – usually confers political strength. People who have *earned* benefits through participation in the formal labor force are considered deserving of economic protection (Steensland 2006; 2010). And claims made on the basis of self-interest tend to gain greater political traction than claims made on the basis of altruism (Eliasoph 1998). In this case, however, contracts became a source of weakness. Understanding how pensions were reframed as undeserving contracts requires a deeper consideration of the multiple meaning of contracts.

Orr was able to reframe pensions from compensation to credit because of their interpretive flexibility (Pinch and Bijker 1984). Public employee pensions have traditionally been understood as part of the employment contract. Pensions have also been excluded from states' constitutional definitions of debt, reinforcing the conceptual distinctions between them (Monahan 2017).<sup>27</sup> But pensions possess properties of both labor and lending transactions, and

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<sup>27</sup> Consequently, state borrowing limits have excluded pension obligations (Monahan 2017). Some worry that this has made it possible for pension obligations to quietly grow out of control. It should also be noted, that on many occasions, city governments have borrowed from pension funds. In 1975, for example, the NYC teachers' pension fund bailed out the city (Phillips-Fein 2017). And part of the motivation for Michigan's constitutional pension protection was to get city governments to stop dipping into their pensions funds.

these shared characteristics make pensions open to interpretation. Sociologists usually view labor and lending as fundamentally different types of economic relationships (Krippner 2017). Labor transactions involve reciprocal exchange between formal equals. The credit relationship, by contrast, is hierarchical in that the lender holds power over the borrower until the debt is repaid (Graeber 2011; Krippner 2017). The delayed temporality of pension benefits – promises for the future – is the characteristic that they share with the credit relationship. This delayed temporality is also what has led social theorists to construe credit as a variety of the gift relationship (Graeber 2011; Mauss 2000).

Pension beneficiaries occupy the unique position of being worker-lenders, because deferred compensation is, in a sense, a loan to the employer. Just as lenders must contend with the uncertainty of repayment, workers promised retirement benefits must contend with the possibility that when the time comes, their employer will not or will not be able to fulfill their obligations. In the context of credit markets, lenders have developed a variety of strategies to mitigate this uncertainty (Krippner 2017). In the context of social policy, however, the only conceivable strategy for strengthening claims is to analogize the claim to a contract. As Chapter 2 argued, this is precisely how pension claims were strengthened during the 20<sup>th</sup> century.

Chapter 2 described how government pensions were gradually redefined from gratuities to contracts in the judicial context. When the pension was framed as a gratuity, the worker occupied the subordinate position of the recipient of a gift and had no enforceable rights to the benefits that had been promised. The reframing of the pension as credit flipped this relationship. Workers had enforceable rights to their pensions, and if the city could not pay, then the state was on the hook. Reframing workers as lenders implied that they had some power over the city, and by extension the state.

In redefining pensions as credit, Orr made these commitments legible in the context of bankruptcy, a legal process designed to help an insolvent person or organization reorganize a set of insurmountable debts (Carruthers and Halliday 1998).<sup>28</sup> In credit markets lenders have developed two key strategies to mitigate the risk of default: connections and collateral (Krippner 2017). Connections refers to the information gathering carried out before making a loan to determine whether the recipient is trustworthy. Collateral involves pledging some sort of property as a back-up, in case of default. In bankruptcy, where a default has likely already occurred, collateral is the key strategy by which lenders seek to enforce their claims. Collateral has been institutionalized in the bankruptcy code as the primary criteria according to which lenders' deservingness of repayment is evaluated. But because workers do not generally collateralize or insure employment benefits, Detroit's municipal pensions fell through the conceptual cracks of the bankruptcy code.

To this point the discussion has focused on the pension as a particular kind of economic relationship. This discussion raises questions about what the definition and redefinition of the pension means for the status of the worker and the retiree. Since the passage of Social Security, "senior citizens" have maintained considerable political power as well as a positive image in the minds of Americans (Campbell 2005). Lenders, on the other hand, stir deep fears, and are often seen as powerful but unsympathetic (Graeber 2011; Schneider and Ingram 1993). Orr's reinterpretation of pensioners as creditors symbolically realigned them from a powerful group with a positive image (the elderly) to a powerful group with a negative image (lenders) (Schneider and Ingram 1993). Doing so bolstered the city's efforts to declare retirees' expectations as illegitimate. However, in affirming Orr's classification of pensions as unsecured,

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<sup>28</sup> In the corporate context, there also exists the possibility that bankruptcy will result in a firm's liquidation, but because cities are creatures of the state they cannot be dissolved through the federal bankruptcy process.

i.e. undeserving credit, the bankruptcy judge stripped pensioners of a key source of power, while also provoking new expressions of sympathy.

### **Property Rights as the Privileged Criteria of Worth in Bankruptcy**

The U.S. bankruptcy code elevates property rights as the privileged criteria of worth for evaluating a creditor's deservingness of economic protection. "Secured" claims are those that are backed by underlying collateral. Thus, secured creditors usually include banks, savings and loans, and financial firms that lend on a collateralized basis. Collateral refers to assets—money streams or concrete objects—that have been pledged as a back-up (Spiotto et al. 2016).<sup>29</sup> Another type of property that is used to secure loans is "special revenue." In this instance, when the loan is made, the lender specifies the specific revenue stream from which the loan will be repaid (Spiotto et al. 2016).

Today, "it is taken as gospel truth that secured creditors have a constitutional right to receive the full value of their collateral" in bankruptcy (Tabb 2014:766). However, this was not always the case. Before the passage of federal bankruptcy legislation in the late nineteenth century, bankruptcy was regulated on a state-by-state basis. Borrowers could pick and choose who to pay first when they experienced financial problems (Skeel 2014). Inter-state businesses "complained bitterly and repeatedly that debtors played favorites when they ran into financial trouble," prioritizing family members and local creditors for repayment over non-local lenders (Skeel 2014:47). Some southern lawmakers openly defended the preferential treatment of family members and other favored parties. "According to one senator, these were 'debts of honor,' and debtors had every right to pay them first" (Skeel 2014:47).

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<sup>29</sup> Note, if the value of the collateral is less than that of the claim, than the residual value of the claim is unsecured (11 U.S.C. § 506).

Federal bankruptcy laws did not become permanent until creditor organizations and business associations flourished at the end of the nineteenth century (Skeel 2014). In the 1880s, several creditor groups coalesced to form the National Organization of Members of Commercial Bodies, which lobbied the federal government to adopt bankruptcy legislation. This resulted in a dramatic expansion in the power of secured creditors, which Charles Tabb has argued constituted one of the key developments in bankruptcy practice (Tabb 2014). The idea that secured creditors “have a constitutional right to receive the full value of their collateral” in bankruptcy is largely underpinned by a 1935 Supreme Court decision (Tabb 2014:766). In *Wright v. Union Central Life Insurance Co.* (311 U.S. 273 [1940]) the court ruled that the secured creditors could “hardly complain” because they had been paid “the value of the property” and had “no constitutional claim...to more than that.” The ruling sought to constrain the rights of secured creditors, but they reclaimed it as a constitutional justification for their prioritization in bankruptcy (Tabb 2014).

Given the city’s economic decline, these circumstances raise the question: Could it have been any other way? Certainly, other outcomes were possible. State governments have historically gone to considerable lengths to avert municipal bankruptcy (Baldassare 1998). Michigan’s governor could have authorized a bankruptcy that shielded accrued pension benefits. Labor lawyers might have won the race to the circuit court and obtained an injunction against a bankruptcy filing (Bomey 2016). The legislature could have secured pensions by granting them “statutory liens” before the bankruptcy filing.<sup>30</sup> The presiding bankruptcy judge could have deferred judgement on the city’s eligibility until after legal challenges regarding the constitutionality of the emergency management law had been resolved. And labor lawyers could

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<sup>30</sup> Before Central Falls, RI, filed for Chapter 9 bankruptcy, Rhode Island’s legislature granted all bondholders statutory liens, effectively ensuring the prioritization of all financial debt above obligations to pay retirement benefits.

have asked the court for permission to sue the state to act as the guarantor of pensions (Judge Steven Rhodes, Interview, May 19, 2017).

### **From Compensation to Credit**

#### *Orr to Retirees: "Pensions are Unsecured Debt"*

March 25, 2013 was Kevyn Orr's first official day on the job as Detroit's emergency manager (Vlasic 2013). He arrived at City Hall early in the morning and spent most of the day meeting with elected officials (Banovic 2013). His arrival was met with bitterness among community leaders, incensed by the loss of local democratic autonomy. That afternoon, a crowd of 150 protesters gathered in front of the Spirit of Detroit statue by the entrance of City Hall (Vlasic 2013). A bald, spectacled man spoke into a loud speaker:

We are here today because Governor Snyder has enacted and supported legislation that has disenfranchised the voting rights of over 50 percent of the African Americans in the State of Michigan...[I]n the name of urban policy, Governor Snyder's administration has destroyed democracy. Today is not about Kevyn Orr. It's about Rick Snyder. Because Kevyn Orr is Governor Snyder's representative. And while we are not happy about the emergency manager Mr. Orr being in the City of Detroit, this is not just about the City of Detroit (Lauren T. 2013).

In 2012, Michigan voters overturned an expanded version of Michigan's emergency management law in a referendum (53 percent to 47 percent) (Yaccino 2012). In response, state lawmakers had passed a similar version of the law with revisions that immunized it from repeal. Orr, seemingly unphased by the ongoing protests, spent the ensuing weeks meeting with consultants and stakeholders as he developed a restructuring proposal for the City of Detroit.

On June 14, 2013, Orr shared his proposal with a 150-person audience in a hotel by the Detroit Metropolitan Airport (Docket 1945, 2013). The document painted a bleak picture of

Detroit's finances, translating decades of decline into 134 pages of bullet points, charts, and numbers.<sup>31</sup> The city was facing an economic crisis of staggering proportions. Orr argued that the city was struggling to pay debts as they came due, and further, that the city was diverting resources needed to deliver basic public services to pay interest on its debts. Because the city had lost so much of its population—62 percent of its 1.8 million-person peak—revenue collections could not cover the costs of services across the city's 143 square-mile sprawl. Orr said that all “unsecured creditors” would experience significant losses, but the scope of proposed cuts was unclear (Orr 2013).

Orr estimated that the city's outstanding debt totaled \$18 billion, of which he found \$11.4 billion was owed to “unsecured creditors” and \$6.3 billion was committed to “secured creditors” (Orr 2013). Orr concluded that the majority of unsecured claims were tied to retirement benefits: \$5.7 billion in unfunded retiree medical benefits, as well as life insurance and supplemental death benefits; An additional \$3.5 billion in unfunded pension obligations, and \$1.4 billion in principal for a soured loan taken out in 2005 that was supposed to help fund the pension system. The primary sources of secured debt included bonds that were supported by liens on state taxes, and “special revenue obligations,” mostly tied to the water department. The secured water department bonds constituted approximately 30 percent of the estimated \$18 billion debt and were to be repaid with revenues generated by the utility. On top of the \$6.3 billion owed to secured bond holders, the city owed a comparatively small amount, \$650 million, to unsecured bond holders, whose loans were insured by a set of large financial firms. The numbers supported the view advanced by Orr and his team that bankruptcy was a fiscal inevitability, and that unfunded retirement benefits were the primary reason why.

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<sup>31</sup>The proposal can be viewed here: [http://www.detroitmi.gov/Portals/0/docs/EM/Reports/City percent20of percent20Detroit percent20Proposal percent20for percent20Creditors1.pdf](http://www.detroitmi.gov/Portals/0/docs/EM/Reports/City%20of%20Detroit%20Proposal%20for%20Creditors1.pdf)

Orr’s plan to treat pension and medical benefits as “unsecured debt” was a disturbing revelation to many retirees. Four days before introducing the proposal, on June 10<sup>th</sup>, Orr told an audience at a town hall meeting that “[t]he state constitution and state case law says that vested pension rights are sacrosanct, they can’t be touched” (MacSpeaking 2013). Privately, he had also told Don Taylor, the president of the city’s largest public safety retiree association, that he had no intention of going after pensions or medical benefits.<sup>32</sup>

Orr’s characterization of pensions as unsecured debt contradicted his earlier statement that pension rights were sacrosanct (Docket 1945, 2013). The “unsecured” label lumped pensions into the same category as other kinds of ordinary contracts subject to adjustment. Characterizing pensions as “unsecured” suggested that their repayment should be treated as secondary to “secured” obligations. At the June 14<sup>th</sup> meeting, Orr noted unequivocally that “there must be significant cuts in accrued, vested pension amounts for both active and currently retired persons” (Orr 2013). Kenneth Buckfire, a New York investment banker with Michigan roots who served as an advisor to the governor and to Orr, later explained, “[w]e felt it important to start out by delineating our creditors into whether they were secured or unsecured. And we proposed that our secured creditors would receive 100 percent recoveries, our unsecured creditors would share pro rata in what we believed was the value available to them” (Docket 1490, 2013:197).

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<sup>32</sup> Pension and medical benefits had different levels of legal protection. Pensions enjoyed a special status, because the state constitution specifically prohibited their impairment. Medical benefits were not mentioned in this constitutional provision, likely because medical benefits were quite small at the time of its enactment. This also meant, however, that they did not have to be funded on an annual basis. Because medical benefits were funded on a “pay-as-you-go” basis, they were not as well-funded as the pensions. A series of court cases in the 1990s went back and forth on the question of whether the provision should be interpreted as including medical benefits. Of course, any increased medical costs that the retiree had to pay out of pocket would cut into the pension. In addition, in 2012 the city settled a class action lawsuit filed by Alan Weiler, a retired Detroit police officer, on behalf of 7,000 police and firefighter retirees, arguing that the city had violated collective bargaining agreements. In 2006, the city made unilateral changes to healthcare benefits promised to public safety retirees. The settlement required the city to give public safety retirees medical benefits for life. In March 2013, Michigan’s treasurer told Don Taylor that the state would not try to change vested pension benefits, but that it would probably try to challenge the Weiler settlement (Donald Taylor, Interview, October 21, 2016).

Later in the day on June 14<sup>th</sup>, during an interview with the *Detroit Free Press* editorial board, Orr told reporters that he was willing to use Chapter 9 bankruptcy to circumvent the constitutional pension protection. Referencing his earlier statement that pensions would have to be cut, Orr explained,

[W]e said that in a soft way of saying, ‘Don’t make us go into bankruptcy.’ If you think your state-vested pension rights, either as an employee or a retiree—that’s not going to protect you. If we don’t reach an agreement one way or the other, we feel fairly confident that the state federal law, federalism, will trump state law (Orr 2013).

The June 14<sup>th</sup> presentation was an important moment, because it clarified Orr’s intent to treat pensions as ordinary rather than special, “sacrosanct” promises. He justified this treatment by invoking the distinction between “secured” and “unsecured” debt, and characterizing pensions as unsecured debt.

Orr’s proposal was supposed to be a starting point for negotiations, but labor groups saw it as a take-it-or-leave-it proposition—a ceremonial performance of good faith negotiations, pushing terms Orr knew would be unacceptable (Docket 1490, 2013:196). In the weeks that followed, three lawsuits were filed by labor groups and the city’s pension system seeking to prevent a bankruptcy filing (Docket 1945, 2013). On July 3, two lawsuits were filed against the governor. The lawsuits tried to invalidate Orr’s declaration by questioning the legal basis of his authority. They sought a judgment that the revised emergency manager law was unconstitutional, precisely because it permitted pension cuts.

On July 16, Orr sought the governor’s authorization to file for bankruptcy. The governor granted the permission on July 18<sup>th</sup> without any contingencies, and Orr’s team hastened to submit the bankruptcy paperwork. The next day, the state judge presiding over the previously filed lawsuits ruled in favor of the retiree representatives, forbidding the governor from

authorizing a bankruptcy filing. Having already granted the authorization and submitted the paperwork, however, the state judge's ruling failed to halt bankruptcy proceedings as labor groups had hoped. The question of the bankruptcy's constitutionality was placed in the jurisdiction of the federal court.

### *Eligibility Requirements*

The first stage of a bankruptcy culminates in a trial and a judicial evaluation of the organization's eligibility for bankruptcy. While in bankruptcy, all pending lawsuits were paused, and the city did not have to service its debts. Much like a Chapter 11 corporate "restructuring" bankruptcy, the goal was to restructure debts to give the city a fresh start. To be deemed eligible for bankruptcy, Detroit had to meet several requirements spelled out in the U. S. Bankruptcy Code. First, it had to qualify as a municipality, "a political subdivision or public municipality or instrumentality of a state" (Constitution Article 11, Section 109(c)). Second and more controversially, the city had to be specifically allowed to file for bankruptcy by state law or an authorized government official.

A third, key condition was insolvency. Historically, this meant that a municipality had to show that it was unable to pay its debts as they came due. More recently, however, bankruptcy courts had expanded their interpretation of municipal insolvency to include "service-delivery insolvency," which refers to the inability to provide basic services (Spiotto 2016). Fourth, the city had to "desire to effect a plan to adjust its debts." In other words, there had to be evidence that the city wanted to enter bankruptcy. This requirement was also controversial because the filing was initiated by the state, not elected city leaders. Lastly, the city's lawyers had to show that city leaders made an earnest effort to avert bankruptcy. They had to show that they had

negotiated with creditors in good faith and tried to reach a resolution outside of court. Alternatively, they had to demonstrate that such negotiations were infeasible.

*Explicit Objections to the Framing of Pensions as Debt*

Organized groups that hired attorneys translated their objections into arguments that fit the legal framework of bankruptcy. Yet, objections filed by individuals without lawyers were not so constrained, and consequently invoked a wider range of justifications. Individual retirees who filed objections identified themselves in different ways. Some framed themselves as “secured” creditors, using the language of bankruptcy to position themselves as deserving of protection. Karl Shaw, for example, described his pension as “secured debt backed by investments of the Detroit General Employees Pension Board” (Docket 0398, 2013).

Several retirees rejected their framing as creditors altogether. While addressing the court, for example, Paulette Brown, a former water department employee, said, “I object to being referred to as a creditor. What I am is a dedicated public servant.” A retired stenographer named Olivia Gillon asserted in her written objection,

Orr, is treating me as a private creditor of the City of Detroit as opposed to a member of a group of municipal employees protected by the Constitutional laws of the State of Michigan which prohibit this municipality from filing bankruptcy. Since Mr. Orr wants to treat me as an entity of private industry, then I should be protected by the laws governing retirement in private industry. Mr. Orr should not be allowed to have it both ways (Docket 0974, 2013).

Gillon rejects Orr’s classification of retirees as creditors and suggests that creditors and workers are mutually exclusive categories that are subject to different kinds of legal protection. Whereas the Pension Benefit Guarantee Corporation guarantees private sector workers’ pensions, it does not cover municipal employee benefits. She alludes to this difference in arguing that if Orr wants

to treat her like a private sector creditor, then she should have access to the protections of private sector workers.

In court, these kinds of arguments were limited to individuals submitting objections without legal representation. In court, organized groups with legal representation did not make this argument. But outside of court, some did. One association that formed during the bankruptcy to advocate for retired police officers rejected the creditor label in strong terms, writing on their website:

Unfunded liabilities are not debts owed by the city: The so-called unfunded liabilities are not a debt but a projection based on assumptions. The unfunded liability figure is not the same as a conventional debt that must be paid off to be eliminated. It is an abstract accounting number that can go up or down significantly over a relatively short period of time depending on the state of the overall economy and the health of financial markets (RDPMA 2013).<sup>33</sup>

The city's employees had never thought of themselves as lenders making calculated risks. Being defined as a creditor seemed to erase the important distinctions in the nature of the city's commitments to workers versus financial lenders. These parties took measures to maintain boundaries between themselves and the category of creditors.

### *Asserting Deservingness on Familiar Contractual Grounds*

Many retirees who filed individual objection letters drew on familiar contractual framings to justify their deservingness. This is unsurprising, because the contractual principles of reciprocal exchange serve as the primary conceptual framework that underpins American social insurance programs, such as Detroit's public pension system. Oftentimes, objectors argued that they had fulfilled their contractual obligations to the city by completing their 30 years of service and "working hard." For example, in a hand-written letter Charles Chatman, a retired water

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<sup>33</sup> <http://rdpma.net/the-facts/>

department employee wrote, “I was promised a full retirement package for my loyalty and my hard-working services. Each and every day on my job, my efforts was 110 percent. I put my whole heart in my job” (Docket 0539, 2013).

Some retirees argued they had exceeded their contractual obligations by declining other employment opportunities, sacrificing wages, and—for those who worked in dangerous jobs—their health and safety. Donald Richardson, who had worked for the city for thirty years first as a bus driver and later for the water department, presented these sacrifices in stark terms. In his letter, Richardson wrote “At D.D.O.T., I got attacked, and beaten by 3 youths. While meter reading, I was bitten by dogs on seven different occasions...I got injured lifting a suburban water meter pit (well) cover....In June 2003 I again reinjured my back lifting a pit cover, with no hole in it.” Richardson vividly points out that he went beyond the basic call of duty, sacrificing his physical well-being for the city (Docket 1048, 2013). In response to the city’s contention that retirees’ original expectations were in fact illegitimate, these arguments suggest that the retirees’ original expectations undervalue their contributions, so at the very least the city should fulfil its basic obligations. What these individuals did not fully understand was that bankruptcy shifted the terrain on which their deservingness would be evaluated. Because bankruptcy is a legal process designed to void contracts, the invocation of contractual framings was not in and of itself an effective justification.

The previous sections described how Detroit’s emergency manager classified retirees as unsecured creditors to justify cutting pensions. It then described how labor groups tried to block Orr from filing bankruptcy, fearing retirement benefits to be at risk. It further discussed how some retirees and labor groups recognized that the very act of characterizing employment benefits as debt changed the meaning of those promises in such a way that undermined their

legitimacy. The next section turns to the eligibility trial to describe the designation of pensions as *unsecured* debt.

## **From Credit to Unsecured Credit**

### *The Eligibility Trial*

The eligibility trial started on October 23, 2013 and concluded on November 8, 2013 (see Table 4 for a timeline). Attorneys representing the city and state first called several financial advisors whose analyses Orr had relied on in formulating his proposal to creditors. On October 25<sup>th</sup>, Detroit's police chief James Craig testified about the state of city services. Detroit's emergency manager, Kevyn Orr, spent four days on the stand. Michigan's Governor, Rick Snyder, took the stand on Monday October 28<sup>th</sup>. Retiree representatives Don Taylor and Shirley Lightsey testified on November 4, and state representatives including the treasurer and an advisor to the governor testified during the trial's concluding days. Overall, city and state lawyers endeavored to show that the city was insolvent. In addition they sought to demonstrate that Orr made good faith efforts to negotiate with city stakeholders, but that negotiations were infeasible.

Labor lawyers argued that Orr failed to negotiate in good faith. They contended that negotiations with the city's many stakeholders were feasible, but that Orr chose not to make an earnest effort. They also posited that Orr's team had significantly overstated the size of the unfunded pension liability, that they did not actually know how big Detroit's liabilities were and had strategically avoided monetizing city assets before the bankruptcy filing to exacerbate the appearance of a cash shortage. In addition, they argued that a bankruptcy should not proceed until the state courts resolved the constitutionality of the emergency manager law. They also

argued that cutting pensions would further damage employee morale, reducing the city's ability to attract a stable workforce, necessary to the city's revitalization (Docket 1501, 2013).

Labor lawyers also tried to show that Governor Snyder had overstepped his authority in permitting the bankruptcy, and that Orr did not have the authority to file for bankruptcy. They argued that Orr, Orr's law firm Jones Day – which represented the city, and the governor had worked “hand in glove” to strategically circumvent the state constitutional pension protection (Docket 1503, 2013:77). When asked, for example, if Orr had considered treating the state government as the guarantor of unfunded pension costs, he said no. When asked if he had asked the governor whether the state government would assume any of the pension cost, Orr said he did not remember, but that “it was made clear that the city is obligated to resolve its own problems” (Docket 1503, 2013:103-104).

Orr's cross examination suggested that Orr and the labor lawyers were working under different conceptual paradigms. Orr had adopted the conceptual paradigm of bankruptcy in formulating his original proposal to Detroit's stakeholders. The labor lawyers were operating under the belief that the pensions were sacred contracts, guaranteed by the state constitution. Orr, himself a seasoned bankruptcy lawyer, often frustrated the court by giving verbose answers to “yes-or-no” questions. At one point, during Orr's cross-examination, Anthony Ullman, a New York lawyer representing the Official Committee of Retirees (OCR) questioned Orr about the city's assets. He was trying to make the point that Orr could have done more to fulfil pension promises and avoid bankruptcy. During this line of questioning, Ullman asked Orr whether his June 14<sup>th</sup> proposal introduced the idea of using water department revenues to pay pensions. Orr capped off his response by saying, “[T]o the extent pensions are unsecured, they would receive a benefit from that process” (Docket 1503, 2013:63). In other words, Orr explained, that if the

water department was somehow monetized (through privatization, for example), some of the proceeds would go into a \$2 billion pot, and pensioners would get a pro rata percentage of that.

Ullman likely expected Orr to affirm his statement, showing that nothing in Orr's proposal specifically described efforts to protect pensions (Docket 1503, 2013). Seeking clarification, Ullman said, "Okay. So the answer to my question, I was correct, wasn't I, that nothing in the June 14 proposal shows any funds that might be received through DWSD is going to pay vested pension benefits?" Orr did not cede the point. He said, "No, I don't think that's correct. I think the June 14<sup>th</sup> proposal speaks about a—a process by which we would provide benefits through the monetization of certain city assets to the unsecured creditor class, so consequently they would benefit" (Docket 1503, 2013:63). After a bit more back and forth, Ullman reached the heart of the issue, saying, "But there's nothing in the June 14<sup>th</sup> proposal that says if we're able to get cash out DWSD, we'll use that cash to preserve pension benefits and not have to cut them or not have to cut them so significantly, is there?" To which Orr replied, "There is nothing that treats pension benefits differently than any other unsecured creditor" (Docket 1503, 2013:63). Ullman then changed the subject. He did not ask Orr why he understood pension benefits to be like "any other unsecured creditor."

One of the arguments advanced by labor layers was that the constitutional pension protection invalidated a municipal bankruptcy filing that did not shield pensions from modification. In the context of bankruptcy, the designation of pensions as debt was so taken for granted as to go uncontested. But the designation of pensions as *unsecured* debt was one of the key stakes of the eligibility trial. The bankruptcy's legal framework required people trying to protect benefits to translate these objectives into legal arguments against the city's eligibility. However, the questions surrounding the constitutionality of the bankruptcy occasionally surfaced

overt discussions about the definition of pensions. The core issue was how to interpret the constitutional protection in the context of bankruptcy, which elevates property rights as the privileged criteria of worth. The legal status of constitutionally protected pensions remained an open legal question, elevating the stakes of the bankruptcy on the national stage. The constitutional language explicitly prohibits the adjustment of pensions, but it does not explicitly secure pension benefits, which is unsurprising considering that the amendment passed at a time when municipal bankruptcy was not at the forefront of lawmakers' minds and was not thought of in conjunction with large cities (Bond 1976). Consequently, pensions fell through the conceptual cracks of the bankruptcy code's primary distinction between secured and unsecured obligations.

### *The Value of a Constitutional Protection*

The core question was whether the constitutional language afforded pensions any special protections that distinguished them from other kinds of ordinary, unsecured contracts. Before Orr took the stand, a more pointed discussion about the meaning of pensions arose during the testimony of Kenneth Buckfire, a successful investment banker with Michigan roots who served as an advisor to Orr. He first took the stand on October 24<sup>th</sup>, and was cross-examined the next day. During his cross examination, Claude Montgomery, an attorney from Dentons, a large international law firm, representing the OCR, questioned Buckfire about Orr's proposed treatment of retirement benefits. Montgomery first asked Buckfire whether he agreed with Orr's recommendation to reduce retirement benefits significantly. Buckfire said yes. Then Montgomery asked if Buckfire had personally made such a recommendation to the emergency manager. Buckfire said no. When asked who had made the recommendation, Buckfire declined to give a name:

Well, it was a function of the city's insolvency and lack of cash. There was no way for the city to satisfy its unsecured creditors to the extent that their claims indicated because the claims of the pension fund and healthcare retirees are unsecured claims, therefore, *pari passu* with those of the general obligation and COP bondholders, clearly there wasn't enough value to satisfy them all, and they would have to be reduced (Docket 1503, 2013:58).

Buckfire takes the distinction between secured and unsecured debt for granted. He does not bother justifying the protection of secured creditors, suggesting that their status is so taken for granted as to be obvious. He then describes the fiscal impossibility of satisfying the city's unsecured commitments. He draws an equivalence between retirement benefits and unsecured bonds. And then, in a circular way, he argues that the city's finances were so bad that, as a form of unsecured debt, retirement benefits would quite obviously have to be cut. By placing retirement benefits in the same category as unsecured bonds, Buckfire naturalizes their subordination to other, secured claims.

When Montgomery pressed Buckfire for a name, Buckfire again demurred:

Well, it was a function of the mathematics. I'm not sure that there was any particular recommendation was made. The math and the financial condition of the city simply didn't support the continued satisfaction of all of its unsecured obligations as previously promised (Docket 1501, 2013:58).

Seeking clarification, Montgomery asked, "Are you suggesting it was so self-evident no one had to say it?" Buckfire affirmed (Docket 1501, 2013:59). Montgomery continued to probe the witness, asking if representatives of the financial and restructuring firms advising Orr had made the recommendation. Yet Buckfire did not give any ground, and Montgomery eventually changed the subject. This line of questioning would have uncovered the origins of the idea that pensions could be considered a form of unsecured debt. In deferring to "the mathematics," Buckfire naturalized the idea that someone would have to accept cuts and sidestepped questions about distributional politics. Implicit in Buckfire's statements, however, was the idea that the

constitutional pension protection would not immunize pensions from cuts.

Later, John Sherwood, a New Jersey lawyer for AFSCME picked up this thread. Sherwood asked Buckfire whether Orr's team had considered the argument that vested pension claims were protected by Michigan's constitution. In his response, Buckfire said, "We didn't give any weight to the obligation—the statement of the general obligation bondholders that their tax pledge was important either. We regarded them both as covenants that the city could not honor" (Docket 1501, 2013:110). Here, again, Buckfire likened vested pension benefits to unsecured bonds to justify pension cuts.

Dissatisfied with the answer, Sherwood emphasized, "I asked you whether you gave the constitutional protection any value in either the proposal...or your statement that the proposal was even-handed and fair." Buckfire clarified, "They don't have a security interest, and therefore, we did give it weight, but we did not regard it as relevant to our claims classification" (Docket 1501, 2013:111). In other words, Buckfire explained, Orr's team was aware of the constitutional protection, but did not think it distinguished pensions from other ordinary, contractual promises.

Sherwood followed up by asking, "So, in your view, a security interest is more valuable than constitutional protection?" To which Buckfire answered, "If a creditor has a security interest in an asset or revenue stream, that gives them a claim on that revenue stream or asset." At this point, Sherwood switched subjects. Sherwood's topical shift here suggests that he hit a wall in this line of questioning and did not seem to elicit the desired answers. This exchange reflects the way in which prevailing justifications of economic deservingness lost traction on the legal terrain of bankruptcy, which institutionalizes property rights as the privileged criteria of worth. In this

exchange, the labor lawyers wanted to elicit testimony that would support the idea that pensions should be protected but struggled to do so in terms legible by the bankruptcy code.

### *Excluding Alternative Criteria of Worth*

Prior sections described how the bankruptcy code institutionalizes a criterion of worth that privileges property rights. This section describes how other kinds of arguments or criteria of worth were constrained or discarded in court. When, for example, Peter Dechiara, a UAW lawyer, cross-examined Governor Snyder, he asked about the economic impacts that would result from reduced benefits, asking, “Did you do any investigation ... if significant amounts of that income was cut, whether the retirees would be able to pay their mortgages or pay their rent necessary to stay in their homes?” (Docket 1502, 2013:177). One of the state’s lawyers, Matthew Schneider interjected, “Objection. Relevance.” Dechiara and Schneider spoke over each other for a few minutes, before the judge interrupted, asking Dechiara: “Well, but your objection to eligibility is that this bankruptcy will impair the pensions regardless of their impact, right?”

Dechiara clarified, “We object to any impairment of accrued pension liabilities. That’s correct.”

Judge Rhodes responded, “All right. So it’s not on the grounds of impact. It’s on the grounds of the Constitution. Yes?”

Dechiara: “Correct, but that’s not our only—.”

Judge Rhodes: “All right. So, the objection is sustained” (Docket 1502, 2013:179).

The state attorney objected to a question about whether the governor had considered the economic impacts of modifying retirement benefits. Judge Rhodes sustained the objection, because – in seeking to show that the city was ineligible for bankruptcy – the labor group had

objected to pension cuts on legal constitutional grounds, not grounds of economic need. This exchange illustrates the constraints on arguments that could be made in court. Objections to eligibility had to address eligibility requirements. And court arguments had to address uncertainties arising from previously filed objections. This led attempts to anchor claims about deservingness in other kinds of criteria of worth to be discarded by the court.

Judge Rhodes ruled that the city was eligible for bankruptcy. He concluded that the city was “service delivery insolvent,” meaning that it struggled to provide basic city services. He further ruled that, “The state constitutional provisions prohibiting the impairment of contracts and pensions impose no constraint on the bankruptcy process” (Docket 1945, 2013:81). The court found that Orr had not acted in good faith, but that that to do so would have been infeasible.

In delivering this ruling, Judge Rhodes affirmed Orr’s classification of pensions as unsecured debt, noting, “nothing distinguishes pension debt in a municipal bankruptcy case from any other debt” (Docket 1945, 2013:81). He reasoned that had the authors of the 1963 constitutional amendment wished to give pensions special protections they could have done so in one of several ways. They could have prohibited Michigan cities from filing bankruptcy. Alternatively, the judge reasoned, they could have created a property interest, or explicitly required the state to guaranty pension benefits (Docket 1945, 2013). But because the Michigan Constitution merely defined pension rights as contractual rights, they were vulnerable to adjustment in a federal bankruptcy proceeding (Docket 1945, 2013).

Judge Rhodes concluded that pension cuts were permissible from a legal standpoint. This act validated Orr’s redefinition of pensions as “unsecured,” undeserving contracts. In doing so, the judge divorced pensions from their legal protections. However, the judge complicated his

message by noting in both his oral and written opinion, “No one should interpret this holding...to mean that this Court necessarily will confirm any plan of adjustment than impairs pensions. The Court emphasizes that it will not lightly or casually exercise the power under federal bankruptcy law to impair pensions” (Docket 1945, 2013:29). This cryptic message suggested that pensioners had no rights to their pensions, but that they retained a positive moral status.

### **The Unsettled Status of Pensioners**

Judge Rhodes’s eligibility ruling unsettled the status of retirees and framed them in contradictory ways. On the one hand, the ruling stripped workers and retirees of their contractual and state constitutional rights, heightening the threat of pension cuts. In addition, the ruling added insult to injury, because it validated portrayals of pensioners as undeserving of the benefits that had been promised to them. Before the ruling, the city argued that unfunded retirement benefits were so big as to be unaffordable. These arguments were often linked to arguments about the moral status of the city government and/or its current and former employees. In arguing, for example, that retirement benefits deprived the city of essential resources required for basic functioning, the city’s lawyers indirectly framed pensioners as a threat to the city’s survival.

Statements that Orr made in an interview contributed to negative images of pensioners. Not long after the city filed for bankruptcy, in early August, a *Wall Street Journal* profile quoted Orr saying,

For a long time the city was dumb, lazy, happy and rich. Detroit has been the center of more change in the twentieth century than I dare say virtually any other city, but that wealth allowed us to have a covenant [that held] if you had an eighth grade education, you’ll get 30 years of a good job and a pension and great

healthcare, but you don't have to worry about what's going to come (as quoted by Finley 2013).

Orr's remarks erupted across the city, provoking ire from city leaders, residents, and retirees. Irrespective of his intentions, Orr's comments evoked older, pejorative notions of welfare dependency, commonly directed at women of color in the 1980s and 1990s (Katz 1990). That helps to explain why some retirees, especially women of color, found the comments particularly insulting. This sentiment was on clear display in an interview with a retired stenographer, "Grace," a seventy-one-year-old Black woman who had worked for the City of Detroit for thirty-three years and nine months. Grace took offense to Orr's remarks so much that they moved her to file an objection and personally address the court.<sup>34</sup> When asked about her experience working for the city in the early 1970s, Grace quickly turned the conversation to Orr's remarks, saying, it had upset her when Orr, "Made some statement about uneducated city employees who think they just get a job, and make good money, because I did go to college. I'm proud of that fact that I'm a graduate of Wayne State University (Interview, March 12, 2017). After discussing her educational background for a few minutes, Grace returned to her point:

I always worked hard. I worked hard when I was in the Labor Relations division because we had to go into labor negotiations, take notes, come out and type up the notes. We had to do boilerplate labor contracts. I mean I don't ever remember my job with the city where I sat around and didn't have anything to do, and didn't work hard (Interview March 12, 2017).

Throughout the interview, Grace kept returning to the idea that she had worked hard, asserting her worth in contractual terms. At times she simply asserted it, and at other times she described her experiences working in ways that reinforced the point: She never took vacation unless her children were sick; She never paid attention to workplace politics because she was busy working; She developed knee and back problems from working through hours-long city council meetings,

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<sup>34</sup>On several occasions Judge Rhodes invited residents and retirees who had filed timely objections to directly address the court.

but never wanted to take a break: She enjoyed the work, and she took pride in it. And throughout the interview, Grace repeatedly invoked Orr’s statement to register her offense, noting, “I just felt how dare you say we’re uneducated and lazy” (Interview, March 12, 2017). Orr later publicly apologized, and said he was referring to Detroit’s “steamship era” when the city was flush with cash (Thompson 2013), but those words lingered, and were difficult to separate from other claims Orr made around the imperative of reducing retirement benefits.

The social status of pensioners was also tarnished through their association with the municipal pension bureau, the Retirement System of the City of Detroit (“RSCD”). Technically, the city’s commitments were to the retirement system, which collected contributions from various city departments and from city employees, oversaw two trust funds (one for public safety retirees and one for civilian retirees), devised investment strategies, and distributed benefits.<sup>35</sup> In recent years, the pension system had been beset by scandal, the most sensational of which involved former Mayor Kwame Kilpatrick, who was convicted on 24 counts of racketeering and extortion (Memcott 2013). A subset of the charges pertained to a bribery scheme that funneled pension money to certain investments. In addition, in 2005, the former mayor had undertaken a complex \$1.4 billion bond deal, state-approved despite being designed to circumvent state borrowing limits, to fully fund the pension system. The city then made another deal, betting that interest rates would continue to rise, helping to defray the cost of servicing the original debt (Guyette 2014). The 2008 financial crisis caused interest rates to plummet, dramatically amplifying the costs to the city.

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<sup>35</sup> In addition to a centralized set of directors and administrative staff, each fund was managed by a set of ten trustees. The trustees of the civilian fund included five employee-elected members, three ex-officio members, a retiree-elected member, and a “citizen” member appointed by the mayor (GRS Annual Report 2011). The public safety fund’s trustees included five employee-elected members, and five ex-officio members (PFRS Annual Report 2011). Each fund had its own lawyer, but both had relied on the actuarial services of Gabriel Roeder Smith & Co. since its inception.

In 2008, the American banking industry collapsed, the American auto industry collapsed, laying off 25,000 UAW workers, and Detroit Mayor Kwame Kilpatrick was indicted on criminal charges. The Great Recession drove American's trust in public and private institutions to new lows (Stevenson and Wolfers 2011). Yet, amid America's reckoning with poor leadership (mortgage executives who produced toxic financial products, bank executives who marketed them, and auto executives who flew on private jets to request federal aid) Mayor Kilpatrick's corruption scandal reinforced old racist tropes mobilized by suburban leaders to delegitimize Black leaders of Detroit (Kornberg 2016). The pension system had been reformed since the scandal broke, but a CNN Money article described the pension system as "haunted by bad investments and City Hall corruption in the past" (Hicken 2013). Kilpatrick's conviction coincided with Orr's appointment, further linking the two events in the public's eye. City residents had chosen bad leaders; unionized city workers had demanded too much, and so, the logic went, now they would have to suffer the consequences.

An additional criticism stemmed from a practice maintained by the civilian pension fund of administering a bonus check if the fund exceeded investment goals. The city's lawyers portrayed these benefits as windfall profits that had to be recovered. Thus, assessments of the affordability of retirement benefits were colored by the perception that the retirement system had caused its own problems, and that workers and retirees, who controlled the city's governance through the democratic process, were complicit in the mismanagement of the city and the retirement system, which in 2013 controlled \$6 billion in assets (GRS Annual Report 2013; PFRS Annual Report 2013).

The eligibility ruling supported Orr's original assertions that retirement benefits had become unaffordable. It also lent credence to negative images of pensioners circulating through

the media. Yet, even as the eligibility ruling broke the association between contracts and deservingness, the moral standing of retirees could not be altogether denied. In recognition of this status, Judge Rhodes sent a mixed message in his eligibility ruling. Judge Rhodes's ruling drew a distinction, however ambiguous, between pensions and other forms of unsecured debt, suggesting that pensioners warranted special consideration.<sup>36</sup>

### **Conclusion**

This chapter argued that the redefinition of pensions as undeserving contracts constituted a first step in the broader reorganization of the city's pension program. This redefinition was facilitated by the interpretive flexibility of pensions, which include properties of both compensation and credit. For most of their history, pensions have been understood as a form of deferred compensation. The employment relationship differs from the lending relationship in fundamental ways. Workers who accept employment with the expectation of retirement benefits are not making a speculative decision, but retirement benefits do share certain characteristics in common with lending relationships, specifically their delayed temporality.

The time lag built into both pensions and loans creates similar sorts of problems for workers and lenders who cannot know for sure if they will actually be repaid. Yet, whereas lenders have historically protected their loans with collateral, this strategy exists outside of the conceptual alternatives available in the social policy context. In shifting the legal context to one

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<sup>36</sup> The judge's statement could be interpreted as an acknowledgment that his ruling did not definitively resolve questions about the legal status of pensions. If labor groups tried to assert their rights by appealing to a higher judicial authority, then questions about the legality of constitutionally protected pension cuts could become subject to protracted litigation. It was possible that a higher court could overturn Judge Rhodes' ruling, although Judge Rhodes did not believe this to be a likely outcome.

where the deservingness of pensions would be evaluated according to the logic of the credit market, pensions fell through the conceptual cracks of the bankruptcy code, and consequently were grouped with other kinds of undeserving contracts into a newly formed class of “unsecured credit.”

The notion of the undeserving contract is puzzling from the standpoint of sociological theory. In the context of political claims making, sociologists find that Americans experience greater success when they justify their claims in contractual terms, highlighting rationality, instrumentality, and reciprocity. The invocation of work confers strength and bolsters the moral status of claimants. In other words, contracts have always been associated with deservingness. As this chapter suggests, however, in moments of crisis, real or constructed, contracts may lose their protective power. Understanding more specifically when and how certain contracts become undeserving requires further consideration of how economic relationships may change before the loop of reciprocity has been closed. And how receptive the environment is to arguments that the giver’s original expectations were illegitimate.

As the next chapter will show, in stripping pensions of their contractual protections, the eligibility ruling also elicited new expressions of sympathy for pension beneficiaries. Chapter 4 turns to the fallout of the eligibility ruling and examines a second step in the broader redefinition of Detroit’s municipal pension system from a contractual right to something more closely resembling a charitable gift.

## **CHAPTER IV**

### **Introducing a Charitable Gift**

#### **Introduction**

The previous chapter described a preliminary step in the reorganization of Detroit's municipal pension system. I argued that influential actors reinterpreted pensions from employment contracts to credit contracts based on their shared temporal characteristics. Because of this reinterpretation, pensions fell through the conceptual cracks of the bankruptcy code and were deemed undeserving contracts. In diminishing the power of retirees, Judge Rhodes's ruling also complicated their social status, simultaneously validating negative portrayals while also provoking new expressions of sympathy. In sum, Chapter 3, advanced the dissertation's argument by showing how, contra the expectations of welfare state scholarship, the contractual status of pensions failed to insulate them from revision.

This chapter describes a second step in the reorganization of Detroit's pension system. The withdrawal of legal protections opened the retirement system to new arrangements, but this alone does not explain how the programmatic boundaries between contract and charity became blurred. The next step in this process unfolded through the surprising intervention of a group of charitable organizations.

This chapter examines how a judicial actor persuaded a set of local and national foundations to substitute part of the city's monetary contributions to the municipal retirement system. This intervention led to the prioritization of pensions, and by extension pensioners, over a subset of financial creditors, repositioning pensioners again, this time as powerless but sympathetic deserving "dependents" (Goldberg 2007; Schneider and Ingram 1993). This charitable gift offered pension beneficiaries a measure of economic protection. By the same token, however, the substitution of a set of legal entitlements with a philanthropic pledge further signified a loss of rights and status.

The foundations' intervention became known colloquially as "the grand bargain," however in the remainder of the dissertation I refer to it as "the gift" or "the settlement," in accordance with its formal designation. The use of the term "gift" here underscores the voluntary nature of the foundations' intervention, and the absence of a direct pecuniary interest. In short, the question this chapter seeks to address is: How and why would a group of foundations with no clear obligations to the city government volunteer to help pay municipal pensions? After laying out the argument of the chapter and situating it within the broader argument of the dissertation, I return to the case.

### **The Emergence of a Situated Institutional Entrepreneur**

This chapter advances the dissertation's theoretical argument by describing how the intervention of foundations continued to rework the meanings of contract and charity. The foundations tipped the scales of the bankruptcy's distributional politics in a way that prioritized pensioners over certain financial firms, but ultimately also solidified significant cuts in retirement benefits and

the loss of legal protections. This new charitable financing mechanism blurred the symbolic boundaries between social insurance and charitable assistance. This is not to suggest that the foundation leaders or the judicial actors who worked with them endeavored to blur the boundaries between contract and charity, but that it was an unintended consequence of their collective efforts to resolve a difficult problem.

This chapter furthers the argument that the heterogeneity of contract and charity are what make social policies vulnerable to classification struggles. Charity, premised on the principles of altruism and need, usually constitutes a position of weakness when it comes to political claims making. In this context, however, a charitable gift offered pensioners a measure of economic protection in relation to other unsecured creditors. In other words, the poles of contract and charity do not always align as expected. Furthermore, scholars have long observed that the institutional heterogeneity of the American welfare regime and its affinity for private forms of social provision is part of what makes it unique (Esping-Andersen 1990; Hacker 2002; Tocqueville 1839). Charity is quite obviously not just a policy paradigm but, as voluminous literatures have discussed, a key component of the American system of social provision that exists in complex relationship to government organizations (see Smith 2012 for a review). Yet existing discussions of the dichotomous logic of American social policy have yet to fully integrate this heterogeneity into their analysis.

This chapter unpacks a next step in how the reorganization of the retirement system occurred. There is nothing extraordinary about private individuals or organizations pledging gifts to government organizations. Benjamin Franklin famously helped create the first public library by donating a collection of books to a town in Massachusetts. Yet, the bankruptcy probably

constituted the first recorded instance of foundations agreeing to help pay for governmental retirement benefits.

Organizational novelty is, as Stinchcombe (1968:194) notes, “preeminently a political phenomenon,” because support must be actively mobilized for new organizational arrangements to take hold. Organizational scholars have argued that this mobilization often requires drawing on preexisting relationships and framing the new arrangement in a way that will resonate with key audiences (DiMaggio 1988; Rao 1998). In accordance with this perspective, this chapter argues that a key judicial actor drew on personal and professional relationships to bring foundations to the table. Along with several influential foundation leaders, he skillfully framed the intervention in such a way that allowed foundations with different missions to participate. The pledge was framed as a means of “saving the city,” on the one hand from languishing in bankruptcy and on the other from overt racial conflict.

In that sense, the judge acted as an “institutional entrepreneur,” playing a key role in the transformation of the retirement system (DiMaggio 1988; Maguire et al. 2004). The foundation pledge constituted a “boundary object,” an artifact that facilitated the cooperation of actors with disparate interests (Star and Griesemer 1989; Star 2010). And the civic preservation framing created a “zone of indeterminacy,” a discursive context that made it possible for foundations to attach different meanings to their participation (Lainer-Vos 2013).

The concept of institutional entrepreneurship has helped institutional theory, which underscores the role of the environment in rewarding organizational continuity and conformity, to overcome its difficulties in accounting for organizational novelty. Yet organizational scholars continue to debate the relative roles of structure and agency in manifesting new organizational forms. Many accounts have focused on the individual characteristics of influential actors. Yet, in

doing so, these accounts decontextualize the process of innovation (Johnson and Powell 2017). Because many attempts at innovation fail, it is important to consider the cultural and historical context in which novelty emerges. Some environments are more hospitable to particular arrangements than others.

This chapter supports the latter perspective, finding that certain features of the regional environment – particularly legacies of social conflict – contributed to the viability of this new arrangement. Racism helped to create the conditions of the bankruptcy by contributing to the de facto segregation of Southeast Michigan along race and class lines, and to the resentment towards the city harbored by lawmakers from different parts of the state. The fear of latent social conflict becoming overt and violent also contributed to the resolution of the bankruptcy by being mobilized by influential actors as a key frame to move parties towards an agreement.

### **The Realignment of Interests**

As discussed in Chapter 3, Judge Rhodes' ruling dramatically altered pensioners' legal and social status. An important outcome of this ruling was the creation of a new group of “unsecured creditors” with a shared interest in having the city sell assets to honor its commitments. Well over 100,000 parties had a financial stake in Detroit's bankruptcy. Pensioners and active workers with vested benefits were joined by financial institutions, small businesses, and individuals that had provided services to the city, residents anticipating property tax refunds, among others in the ranks of “unsecured creditors.” This chapter focuses on several financial firms who, following the beneficiaries of the retirement system, had the largest unsecured claims against the city and played a particularly prominent role in the bankruptcy's politics.

City lawyers further divided unsecured creditors into smaller “classes” based on the types of commitments the city had made to them (see Table 3). Pension claims, for example, were divided into two classes, one for civilian pensions and one for public safety pensions, reflecting the bifurcated organization of the city’s retirement system. Retirement benefits, including both pensions and OPEBs constituted the vast majority of “unsecured claims,” representing 80-90 percent of their total estimated value.<sup>37</sup>

Another set of classes represented different types of unsecured bonds that had been issued for a variety of purposes, such as building a radio tower, facilities improvements for the Detroit Institute of Arts and the Detroit Zoo, and eliminating the pension deficit.<sup>38</sup> For example, in 2004, the city issued LTGO (limited tax general obligation) bonds to help pay for public safety projects to be carried out by the police department (Docket 0003, 2014). A city tax, which city voters approved, would pay for the bonds (Docket 0003, 2014). The bonds were “limited,” because the tax levied could not exceed a certain value, and they were insured by a firm called Ambac. When Orr instructed the city to stop servicing certain debts, the bond insurers (which also included Assured Guaranty, MBIA, and Syncora) were required to make up the shortfall.

When Orr instructed the city to stop making interest payments the insurers emerged from the woodwork. The law firm representing Syncora quickly dispatched Stephen Hackney, a Michigan native who lived in Chicago (Bomey 2016). Syncora had insured a complex set of loans (certificates of participation or “COPs”) that that the city government issued in 2005 to fully fund the retirement system. Because the city had already reached its debt limit, it created separate legal entities to issue the new bonds. Then the city purchased a set of derivatives from

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<sup>37</sup> The numbers were disputed, but even if the estimates had been revised downwards, retirement benefits would still have dramatically outweighed other “unsecured” claims.

<sup>38</sup> Information about municipal securities was accessed on the Electronic Municipal Market Access Website via [emma.msrb.org](http://emma.msrb.org).

UBS and Merrill Lynch, hoping they would stabilize the interest rates on the first set of bonds (Bomey and Gallagher 2013). In 2009, Standard & Poor's downgraded the city's credit rating to BBB-minus, triggering a huge penalty payment to UBS and Merrill Lynch. To avoid making the payment, the city pledged casino tax revenue as collateral (Bomey and Gallagher 2013). Then in June 2013, Orr instructed the city to withhold its interest payment. Hackney acted swiftly, instructing U.S. Bank, the city's financial custodian, to withhold the casino taxes that had been pledged as collateral (Bomey 2016). Not to be outdone, Orr persuaded a state court to grant a temporary restraining order, blocking Hackney from pursuing further legal action (Bomey 2016).

The bond insurers did not believe that the city's sinking credit rating could translate into an elevated risk for them. They warned Orr that his actions could raise borrowing costs across the state of Michigan (Finley 2013). Orr laughed off the threats, telling a *Wall Street Journal* reporter,

I've read all the articles about how this is a breach of the GO bond market covenant, and this is going to shift the earth, turning on its axis, and cats and dogs will start holding hands and start walking down the street together if I do this (as quoted by Finley 2013).

The bond insurers evoked little sympathy from legal and judicial professionals working on the case. Yet, another one of the bond insurers' lawyers, Stephen Spencer who represented FGIC, devised a strategy (Bomey 2016). He assumed that if the city's unsecured creditors were unified in opposition to Orr's plan, they could jointly pressure the city to sell certain assets, including valuable works of art housed at the DIA (Bomey 2016). Estimates of the collection's value ranged wildly, but by all accounts the 63,000-piece collection was extremely valuable, not to mention highly portable (Davey and Yaccino 2014). Throughout the fall, Spencer courted the OCR on behalf of the bond insurers, hoping to strike a deal. The prospect of an alliance between the city's biggest unsecured creditors posed a threat to the city's prestigious art museum, the

Detroit Institute of Arts (DIA). Understanding why civic actors intervened, and how pensions were prioritized over other forms of unsecured credit requires an understanding of how the bankruptcy's politics became focused on this cultural institution.

### **The DIA: Municipal Asset or Public Trust?**

The controversy over the museum first erupted in the spring of 2013. Not long after Orr's appointment, his team discovered that the museum was technically owned by the city, though its non-profit affiliate, the Founder's Society, ran day-to-day operations (Bomey 2016). Since the museum's 1885 inception, its ownership status had been in flux (Abt 2017). The museum's early benefactors and trustees included members of Detroit's wealthiest families. Edsel and Eleanor Ford famously underwrote Diego Rivera's Detroit Industry Murals in the early 1930s, and paid museum employees' salaries during the Great Depression (Hodges 2014). Yet the museum was no stranger to financial problems of its own (Abt 2017). In the late 1890s, the museum started to receive operating funds from the city government. Its reliance on municipal support grew steadily from there on. In 1919, the museum transferred ownership of its buildings and art to the city government, making it legally possible for the city to fully fund its operations. At the same time, the Founder's Society continued to raise money and acquire gifts for the museum.

In early 2013, as Orr's team hurriedly surveyed the city's assets, it started to explore the possibility of monetizing the museum's collections. Orr's team focused on the 2,800 or so pieces that had been purchased with city funds (Abt 2017). The salability of municipally owned art raised thorny legal questions. In the private sector, creditors are often able to seize the property of a struggling debtor (McConnell and Picker 1993). A private corporation will try to adjust its debts. If it cannot reach agreements with its creditors, however, the firm may "dissolve." A state

government has the power to disincorporate a city, but the federal government does not.<sup>39</sup> To avoid infringing on states' rights, the U.S. Bankruptcy Code assumes that cities exist in perpetuity. A city cannot function without fire trucks, lights, and buses. For that reason, no federal agency can force a city to sell its assets in bankruptcy. This does not mean, however, that the municipality is barred from doing so. Under state law, Orr had the power to fire museum leaders, and initiate a sale himself (Abt 2017). Orr explained:

Philosophically, my view was I have a fiduciary duty, and I have pledged to the governor and everyone else I'm going to do my job. I'm atoning for the sins of others. If that means having to inventory the art, look. We have seven Renoirs. Do we need seven? Ok? Can we sell a couple and get some coin? Let's just figure out what they're worth and have a discussion (as quoted by Bomey 2016:118).

Museum leaders were recalcitrant, if unsurprised (Abt 2017). This was not the first time the idea had come up. In 2007, for example, when the DIA was reevaluating its own financial practices, outside consultants suggested selling works of art in addition to other belt-tightening measures (Abt 2017). Some of the trustees thought it was a good idea, but DIA director Graham Beal vigorously opposed the suggestion (Abt 2017). Selling art for any purpose other than acquiring new art, a practice called deaccessioning, is prohibited in the museum community.

In the years leading up to the bankruptcy, museum leaders grew concerned about the city's financial status and its implications for the museum. In 2011, as Detroit's financial circumstances deteriorated, a city council aide warned the museum that its collection could be at risk if an emergency manager was appointed (Abt 2017). The aide drafted a proposal with strategies to protect the museum in the event of a fiscal crisis. The proposal suggested that the city undertake a 25-year grant seeking campaign that would privatize the DIA in exchange for its preservation in the City of Detroit (Abt 2017). Overshadowed by the city's growing inability to

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<sup>39</sup>By some estimates, over 370 cities have been dissolved since 1995 (Anderson 2012).

pay vendors and comply with state reporting requirements, the proposal was sidelined (Abt 2017).

During the spring months of 2013, city lawyers and restructuring professionals met with DIA leaders, pressing them to come up with ideas about how the museum could be leveraged to help pay city debts (Abt 2017; Bomey 2016). Museum leaders bristled at the suggestion. In a public

Interview Graham Beale said:

I felt that part of their campaign, part of their strategy, was to basically treat us as if we had no standing. Y'know, they represent of the city. They own the collection. We happen to be contractual guardians of it. Yet, in that sense, we were sort of treated as if what we thought or felt didn't really matter. Gene Gargaro, the chairman, had a meeting with the restructuring guy, Ken Buckfire...And he came away...puzzled. Because they asked him, 'What can the DIA do for the bankruptcy?' And even though we knew that the collection was in peril and represented this massive asset, we weren't thinking, 'Well we can help you by selling a lot of art and giving you the money' (Graham Beale, Conversation with Jeffrey Abt, May 2, 2015, 32:17).<sup>40</sup>

Museum leaders found Orr's team brusque and uncommunicative. Orr's team found museum leaders uncooperative, and both viewed the other as naïve. At another meeting, Beale said he had been told, "It's going to be the rich museum against the poor pensioners. And so, what are you going to do to help us?" Beale retorted, "has anybody told you that we just got a tax passed? We're not regarded completely as an elitist museum" (Beale 2015).

Separately, Orr's spokesman, Bill Knowling, told a journalist that they wanted to avoid selling art, because the museum was a public asset. "You don't sell your parks," Knowling said. "The dilemma we faced was if the pension funds are so poorly funded, a retiree might see his or her pension slashed from \$10,000 to \$20,000 per year if we couldn't find more funding for the pension plans. If we don't sell the art, we deserve to get hung" (as quoted by Bomey 2016:117).

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<sup>40</sup> Video accessed via <https://www.youtube.com/watch?v=7BQkw5D6wT4>, August 2, 2018.

Despite the protestation of museum leaders, Buckfire hired Christie's Auction House to carry out the first of several competing appraisals (Abt 2017). Irrespective of Orr's true intentions, the appraisal sent a strong message that he intended to treat a part of the collection as a "non-essential asset," one that could be dispensed with to satisfy creditors.

News about the appraisal whipped up national and international media interest. And as news leaked about the stand-off between Orr and museum leaders, officials from the adjacent suburbs started issuing threats. In 2012, Macomb, Wayne, and Oakland Counties, which constituted the metropolitan area, adopted a property tax to support the museum's operating expenses.<sup>41</sup> The millage was supposed to raise approximately \$23 million a year for ten years, and finance almost 75 percent of the museum's operating expenses (McVeigh 2013). The ballot initiative was strategically timed for the August primary, so low voter turnout was expected (Abt 2017). Fewer than twenty percent of the tri-county population turned out for the vote. Of those that did vote, 63 percent supported the bill (51 percent in Macomb County; 63 percent in Oakland County; and 68 percent in Wayne County) (see Table 5 and Figure 3). While the millage was in effect, admission was free for residents of the tri-county area.

If Orr pushed the sale of art, Oakland and Macomb County politicians threatened to cancel the millage (Cwiek 2013). L. Brooks Patterson, Oakland County's six-term county executive, was particularly outspoken, as he had always been on matters relating to the City of Detroit. As Oakland County prosecutor, Patterson sparred with Detroit's first Black mayor Coleman Young throughout the 1980s. In 1989, Patterson said of Detroit, "Is there hatred between us and them? Okay, I don't deny it" (as quoted by Chafets 1990:134). In September 2013, Patterson was interviewed with a journalist who published an inflammatory article in the

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<sup>41</sup> In 2010, the DIA budgeted \$2 million to launch a campaign in support of the millage, launching a marketing campaign two months before the August 2012 election (Abt 2017).

*New Yorker* the following January. The article's title, "Drop Dead, Detroit!" alluded to the legendary *Daily News* headline that distilled then-President Gerald Ford's attitude towards New York City when it teetered on the brink of insolvency in 1975. Among other offensive remarks, Patterson told the journalist that he would tell his children, "I can't imagine finding something in Detroit that we don't have in spades here. Except for live sports. We don't have baseball, football. For that, fine—get in and get out" (as quoted by Williams 2014). The bellicose reaction of a few suburban officials fueled the perception that the fate of the art museum could amplify tensions between city and suburb.

In Southeast Michigan, the established code for talking about race was the language of metropolitan geography, according to which "Detroitiers" were poor and Black and "suburbanites" were affluent and white (Chafets 1990). In this context, observers often conflated museum stakeholders with white suburbanites and pension stakeholders with Black Detroitiers. High art has always carried classed connotations, but in part because urban poverty is racialized in metropolitan Detroit, as it is across the United States, many onlookers – forgetting perhaps that under emergency management city residents had no power over the fate of the museum – concluded that city dwellers did not care about the museum. David Heiman one of the city's Jones Day attorneys expressed this belief during an interview, saying, "You know, do you really think that they [city residents] care about the museum when they're living in poverty? I don't know. I mean nobody ever asked them, but I would doubt it." (Interview, September 9, 2016) When asked if he thought the state government was most intent on protecting the museum he responded, "Certainly the state people who lived in the surrounding area, the people who like myself felt like it would be a beacon for the rehabilitation of the city, and therefore was an intangible necessity to demonstrate to the world that Detroit is a real place" (Interview,

September 9, 2016). These associations fueled the perception among some of the legal actors involved in the case that the controversy surrounding the museum could activate regional racial conflict.<sup>42</sup>

The inscription of race onto the conflict surrounding the museum was misleading, for those who did see things that way. If the city initiated a sale, it would be at the behest of Kevyn Orr, not city residents. The main source of pressure on Orr, in turn, would come from unsecured creditors, including bond insurers and retirees. The insurers and the banks that had underwritten the underlying bonds were national financial institutions. The pension population was racially diverse, and geographically dispersed (see Figures 4 and 5). Of the city's 21,385 retirees, a total of 85 percent lived in the State of Michigan. Of those individuals, 35 percent lived in the City of Detroit, and another 25 percent or so lived in the broader metropolitan area.<sup>43</sup> Systematic data on employee race and ethnicity demographics are not publicly available. Yet, while the city's active employees are predominantly Black, retirees represent a cross section of the city's historical population. Anecdotal estimates suggest that the civilian retiree population is less than 50 percent white, and the public safety population is more than 50 percent white.

Voting data from the 2012 millage suggests that the relationship between race, income, and support for the DIA is also more complex than imagined. Broadly speaking, across the tri-county area, cities at both the high and low ends of the income spectrum were particularly supportive of the millage, whereas middle-earning cities exhibited less support. In keeping with prevailing expectations, affluent cities, those with a median income at or above \$90,000, turned out more support for the millage. More surprising were the high levels of support among lower

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<sup>42</sup> Multiple interviews.

<sup>43</sup> These numbers are based on data provided by Bridge Magazine.

income cities (see Figure 3).<sup>44</sup> And, among lower income cities, those that were majority Black exhibited more consistent support for the millage. With that said, Detroiters were underrepresented among museum visitors, comprising only 9 percent of visitors in 2015. That year, 25 percent of visitors came from Wayne County, 20 percent from Oakland County and 12 percent from Macomb County.<sup>45</sup>

Retiree representatives and their lawyers were divided over the bond holders' proposition to press the city to sell works of art.<sup>46</sup> They agreed that the city should try to leverage the museum in some way to obtain new funds, but they disagreed about the best strategy. In addition to selling all or part of the collection, many other ideas were introduced, including leasing parts of the collection, using art as collateral for a loan, or using the possibility of a sale to extract funds from the state government. Among the proponents of a sale was Ron King, one of the lawyers representing police and fire retirees who said, "We couldn't care less about the art. Sell it off. There was a promise made to these retirees. If that's an asset of the city, so be it, sell the asset" (Interview, May 30, 2018). On the other side of the spectrum, Carole Neville a New York-based attorney who represented the Official Retiree Committee, said:

Our group never really focused on the sale of the art, because we felt like it would pit the retirees against the art, and that was like pitting the Black Detroit against the white suburban... Michigan...who we're gonna' either try to kill us in one way or another. So, I think we've pretty much stayed away from the art. Let the bondholders go into the art (Interview, January 18, 2017).

Carole serves as an example of an influential actor who expressed concern that pressuring the city to sell works of art could lead to a violent racial conflict. Another young local lawyer, Ryan

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<sup>44</sup> Demographic data was obtained from the U.S. Census. Voting data for the August 7, 2012 primary elections were obtained from County Clerk websites: <https://www.waynecounty.com/elected/clerk/august-7-2012-primary.aspx>, <http://results.enr.clarityelections.com/MI/Oakland/41155/98523/en/summary.html>, [http://clerk.macombgov.org/sites/default/files/content/government/clerk/pdfs/electionresults/macomb\\_county\\_election\\_results\\_august\\_7\\_2012.pdf](http://clerk.macombgov.org/sites/default/files/content/government/clerk/pdfs/electionresults/macomb_county_election_results_august_7_2012.pdf).

<sup>45</sup> Data provided by Kenneth Morris, DIA.

<sup>46</sup> Multiple interviews. See also Bomey (2016).

Plecha, who represented the presidents of the city's two largest retiree associations, had a more nuanced interpretation:

I don't know if I perceived the bankruptcy as being those two separate categories, specifically the art versus the retirees. Yet, there was definitely fear from the beginning that there would or could be civil unrest just based on the filing of the bankruptcy. And there was protest, there were people opposing the bankruptcy filing and protesting loudly against it, but it never became violent.... There was a fear that especially with everything else that was going on nationally with race relations at the time and Detroit's past, there was a fear that Detroit was a powder keg. And that's another reason why getting the city out of bankruptcy as soon as possible was a goal (Interview, October 6, 2016).<sup>47</sup>

Retirees were certainly among those protesting outside of city hall and the federal bankruptcy court. They along with others protested pension cuts, as well as the usurpation of democratic authority by an emergency manager, and the involuntary initiation of bankruptcy proceedings. As touched upon in Chapter 3, Detroit activists argued that the practice of emergency management in the State of Michigan was a form of institutional racism, because the law suspended the voting rights of a disproportionate number of Michigan's Black citizens. Months later, in the spring of 2014, new activist groups formed to protest Orr's decision to disconnect water service to thousands of households that were late on their payments. One visible group of activists that included city retirees called on the court to place a moratorium on city debts, and sue the banks for driving the mortgage crisis, which hit Detroit particularly hard and contributed to its financial crisis (Moratorium Now! Website 2013). Protestors did not call on the city to sell works of art, but "the establishment" in Ryan's words, worried that if the bankruptcy was

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<sup>47</sup> In a follow-up e-mail exchange, I asked Ryan *who* shared this concern. He replied: "Warning – lawyer answer to follow....I think it was a concern quietly held by many, but shared by few. I do not want to specifically call out or name any particular individuals, but it was something that was mentioned in various settings and by various people." I followed up by saying that I knew this concern was shared by various mediators and lawyers, but wondered if he ever got the impression that this concern was also shared by any foundation representatives or members of the retiree committee. To which he replied, "I would not say you were incorrect" (E-mail correspondence, August 23, 2018).

prolonged because of litigation surrounding the museum, that peaceful protests could turn violent.

Multiple outcomes were possible under this new set of circumstances. If retirees joined bond insurers to pursue a sale of municipal art, it was possible the emergency manager would initiate a sale. There was no telling whether the city would succeed in carrying out a sale, however, because the museum would litigate. Moreover, the taboo against “deaccessioning” in the museum community could suppress demand in the event of an auction. Several private bidders signaled that they would purchase large parts of the collection, but it was difficult to know if these were serious offers. If the city did sell works of art, there was no telling how much revenue a sale would generate, or how proceeds would be divided between city stakeholders. State lawmakers were highly resistant to a municipal bailout. Yet, if the art museum was at risk, it was possible the state would intervene to prevent a sale by providing the city with a cash infusion. Yet, *if* Orr declined to auction any part of the art collection, *and* the state declined to intervene, *and* Judge Rhodes confirmed a plan with pension cuts, then the retirees would have appealed the ruling, potentially all the way to the U.S. Supreme Court. Surprisingly, none of these scenarios came to fruition. Instead, a group of foundations intervened, raising new funds for the city that simultaneously took the art museum “off the table” and mitigated pension cuts.

So far, this chapter has described how Judge Rhodes’ eligibility ruling drew new kinds of boundaries around city stakeholders and led retirees and bond insurers to consider working together to advance their shared interests. As retiree representatives privately weighed their approach to the DIA, the museum became publicly politicized. The preceding sections argued that the DIA became a focal point of Detroit’s bankruptcy politics in a way that heightened the stakes for certain parties who did not live in the city or count themselves among the city’s

creditors. I further argued that, some onlookers worried that the controversy surrounding the museum could in one way or another elevate the risk of civil unrest. It was against this backdrop that empowered judicial actors started to search for outside funds to resolve the city's distributional dilemmas. Previous sections emphasized the important role played by Judge Rhodes. In this section, I turn to the role of a different judge, Judge Rosen, who oversaw backstage negotiations. To understand how the foundations became involved, it is necessary to first understand how Judge Rosen understood the bankruptcy's distributional politics, because he was the architect of the new arrangement.

### **Creating the Institutional Infrastructure for the Gift**

#### *Judge Rosen: A Situated Institutional Entrepreneur*

When the circuit court of appeals appointed Judge Rhodes to preside over Detroit's bankruptcy case,<sup>48</sup> he in turn asked Judge Gerald Rosen, then-Chief Judge of the U.S. District Court for the Eastern District of Michigan, to serve as a mediator. The purpose of mediations was to bring different stakeholders together with the city's lawyers and restructuring professionals, to see if they could reach agreements with creditors that could help to resolve the bankruptcy. Judge Rosen, an avid Churchill fan, asked five colleagues to help him carry out mediations, noting, "I was the only Republican on the team, actually" (Interview, August 3, 2016). Rosen's first call was to Eugene Driker, an old friend, lifelong Detroit, and esteemed local lawyer, who Rosen described as "like Yoda" (Interview, August 3, 2016). In addition, he invited a close colleague, Judge Victoria Roberts, a Detroit native who had worked extensively on labor issues; Colorado

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<sup>48</sup>Partly on Judge Rosen's recommendation (Jacoby 2016).

Judge Wiley Daniel who had impressed Rosen with his negotiating skills; and bankruptcy Judge Liz Perris, who Rosen did not know previously, but who had dealt with creditors in California's municipal bankruptcy cases. Based on their past experiences, Rosen asked Driker to focus on pension issues, Roberts to focus on issues affecting active employees, Perris to work with the creditors, and Daniel to focus on the healthcare issues. The meditations took place concurrently with court proceedings.

Judge Rosen and Eugene Driker were particularly concerned about the DIA.<sup>49</sup> Rosen was not in his words a "museum person," but he also found the prospect of selling the art "unfathomable." When asked why during an unrecorded interview he explained:

The museum is a world-renowned heritage. Are we going to cannibalize it and use it to mortgage our future? I was going to be one of the guys who would have presided over the cannibalization to oligarchs in Russia and sheiks in Dubai. I mean it was crazy. Here's a place of nascent growth. Honestly, there was a racial component too. The civil rights community saw the DIA as a hobby of the privileged, suburban elite. An indulgence of a white privileged elite. On the other side were Black pensioners, and I thought, this could be another civil war. And I thought, rather than be in conflict, maybe we could marry them together. Yet, the City itself was compelling as an iconic American city. I knew people would want to save the art. It would have broad appeal. And saving the pensioners was appealing (Interview, August 3, 2016).

Whereas retirement benefits constituted the city's biggest set of unsecured "liabilities," Rosen and other legal professionals working on the case saw the art museum as "the only asset" in an otherwise "assetless" bankruptcy. What this meant to legal professionals, was that from a logistical standpoint, the art work was not only valuable, but it was logistically easier to sell than utilities or parks or zoo animals. As Driker noted,

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<sup>49</sup>When asked what he thought about a sale of DIA art, Driker said, "I just felt that it would be the death knell of the city. I didn't think that the great families of the city or the great institutions would let that happen. I thought, politically, could you imagine what this would have looked like in the world press to see moving vans backing up to the front door of the DIA and lugging out a Breugel that's worth two-hundred million dollars?" (Interview, June 6, 2016).

The art—there's a market for it. It's tangible. I mean, it's a little hard to say, 'Well, let's sell Belle Isle.' You know, it's thousand-acre park...[Y]ou know, here you could back up a moving truck and haul away five-hundred million dollars' worth of art sold to some Saudi prince if it's right (Interview, June 6, 2016).

Symbolically, however, this framing suggested that pension and medical benefits owed to active and retired workers were putting the city's very survival at risk. And that the art collection was the only thing of value left in the majority-Black, predominantly poor city.

In the statement quoted above, Judge Rosen frames the DIA as a sacred cultural institution under siege by foreign powers, Black civil rights activists, and pensioners willing to "cannibalize" the city's European cultural heritage. This rather sensational interpretation merges a set of overlapping yet, distinct stakeholders, namely active workers (who were predominantly Black) with pensioners (a geographically dispersed and racially heterogeneous population), with local activists (who wanted to sue the banks rather than sell the DIA). Rosen's invocation of a "civil war" alludes to the racial upheaval that took place in Detroit in 1967, which Detroiters call a "rebellion" and non-Detroiters call a "riot," that badly scarred the city and accelerated the region's de facto racial segregation (Sugrue 2014). The use of the word cannibalization evokes anti-Black stereotypes that were staples of Blackface minstrelsy and have in recent years become common in contemporary media depictions of public sector workers and public-sector unions (HoSang and Lowndes 2016).

Rosen's depiction portrays retirees as threatening, but in other moments he also describes retirees in sympathetic terms. In doing so he positions retirees ambiguously, as if he is unsure whether to think of them as "dependents" (weak but deserving) or "deviants" (weak but undeserving) (Schneider and Ingram 1993). At a university event, Rosen told the audience:

You know people were desperate. The retirees were desperate. Kevyn Orr was talking about cutting their pensions by 50 percent. These were not lavish....To cut their pensions would have caused social unrest, and also social dislocation, maybe

even a riot, because there was this racial component to it (Ford School of Public Policy, December 5, 2016).

Here, the judge positions retirees between the categories of contract and charity. Contra media narratives describing Detroit as “Exhibit A” of overly-generous public pensions,<sup>50</sup> Rosen frequently issued public reminders that pensions “were not lavish.” By stating that pensions are not overly generous, Rosen draws on contractual framings to suggest that the pensions promised were appropriate compensation and that retirees deserved the benefits that had been promised to them. At another speaking event, during the bankruptcy, Rosen again drew on contractual framings emphasizing past service to the city as the justification for the deservingness, telling the audience, “It’s about Detroit’s retirees who have given decades and decades of their lives devoted to Detroit.” In doing so, Rosen shifts from work-based justifications characteristic of *contract-like* social insurance programs to needs-based justifications, characteristic of *charity-like* public or private assistance programs. Yet, in describing retirees as “desperate” at the prospect of losing half of their benefits, Rosen also depicts retirees as economically vulnerable, formally powerless, and potentially dangerous.

Since his appointment, Rosen viewed the bankruptcy’s primary distributional problem as a puzzle of how to balance pensioners’ economic needs with the museum’s preservation. The bond holders and the financial firms that insured them were usually not mentioned during interviews and public statements. In *not* talking about financial lenders, Rosen positioned retirees as more deserving than financial creditors. Their absence meant that his reasons for prioritizing pensions were often left implicit. At one university event, however, Rosen did mention financial creditors. “Everyone kept presenting this as a binary choice. Art versus retirees. Not too many

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<sup>50</sup> See for example USA Today Editorial Board (2013).

people cared about the financial creditors,” he said, “but they too wanted to liquidate [the DIA].”

He then went on to explain,

I’ve been accused of not caring about the financial debt. I did care about it. Yet, I felt that if we could get the retirees off the runway, because they were the biggest single creditor, and I felt that if we could get them off the runway then we could begin to address the other debt (Ford School of Public Policy, December 5, 2016).

This comment suggests that for Rosen, there was a strategic reason to prioritize pensions over unsecured financial creditors. The Bankruptcy Code requires at least one class of creditors to agree to the restructuring plan before the judge can confirm it. This means that once one creditor group consents, the judge can confirm a plan of adjustment over the objections of other creditor groups if it does not “discriminate unfairly” (11 U.S.C. 1129 [1978]). Rosen reasoned that if could get pensioners to reach a consensual resolution, he could more easily pressure other creditor groups to settle.

Judge Rosen asked Michigan’s governor for aid but was quickly notified that a state bailout would be impossible.<sup>51</sup> Many lawmakers viewed the city, its government, employees, and residents as undeserving of state assistance. One of the Democratic state lawmakers said that the stigma of Mayor Kwame Kilpatrick’s corruption scandal had damaged the reputation of the city. “We had legislators coming in from Northern Michigan who said, ‘I don’t want to send any more money to Detroit. They’re corrupt. They don’t know how to spend it. They’re crooks,’ Y’know, like, a blanket conversation about all the people of the city” (Interview, November 20, 2015). There was little support among lawmakers for a bankruptcy, let alone a state bailout. Yet, the governor also personally believed that Detroit needed to be held accountable for its own problems. At a university speaking event, the governor stressed the mismanagement of the pension system, noting, “They did some crazy things. What was bad on their part was the 13<sup>th</sup>

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<sup>51</sup>This proved to be one of few instances in which the judge’s personal connections did not prove helpful. The governor had worked for Judge Rosen as a data analyst in the early 1980s, when Rosen ran for congress.

month payments, and these annuity payments. They [pensioners] became millionaires off these programs that we could only adjust in bankruptcy” (Governor Rick Snyder, Ford School of Public Policy, November 26, 2016).<sup>52</sup>

Rebuffed, Judge Rosen turned to the philanthropic community. The eventual intervention of foundations was a key act in the reorganization of the pension system. Their intervention was voluntary, and without expectation of direct financial reciprocity from the recipients. This is what made their collective financial commitment “a gift,” which is what shifted the meaning of the pension promise. William Schambra (2014), a philanthropist and frequent contributor to *The Chronicle of Philanthropy*, wrote in a critical editorial, “Foundations have spent decades insisting that they must not be treated as merely passive, reactive pools of cash available to ‘shore up’ public institutions running short of funds or to meet other immediate social needs.” Yet, they voluntarily agreed to a twenty-year commitment under conditions of acute uncertainty. Their commitments were considerable, exceeding grant-making conventions in every single case. In the following sections, I argue that the foundations were first mobilized around the abstract goal of “saving the city.” This goal was sufficiently capacious to allow foundations to privately attach different meanings to the intervention.

### **Mobilizing Foundations to “Save the City”<sup>53</sup>**

After his request for state assistance was turned down, Rosen turned to the philanthropic community, where his personal and professional relationships proved helpful in mobilizing a set

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<sup>52</sup>An examination of retiree voting data suggests that one of 15,626 retirees who voted on the final plan of adjustment had a total claim valued at \$1.05 million. Two others had claims of \$0.95 million and \$0.97 million. It was not indicated whether these sums include the ASF balance. Likely they did not.

<sup>53</sup>Unless otherwise noted, the sources for this section include observations of speaking events; interviews with foundation representatives; and interviews with Judge Rosen and Eugene Driker.

of local and national foundation leaders. His first conversation was with Mariam Noland, the esteemed if reserved president of the local community foundation. She knew Rosen, because the community foundation managed a philanthropic fund on behalf of the local judiciary. After a chance encounter at a downtown Deli, Rosen asked Noland for a meeting. Rosen and Driker told Noland that they wanted to raise money from foundations to save the DIA (Bomey 2016). Noland thought the idea seemed far-fetched, but she agreed to try and help. She shared their concern for the museum, and believed that the politics playing out around the museum including Orr's efforts to appraise it grossly misrepresented its value:

The value in terms of the community is...countless. Because it's not about the dollar value, it's about the notion of a city having a great art museum as an asset, and the notion that if it were sold at fire sale, it would have taken Detroit's reputation...it...we never would have recovered. It would have been 'Detroit let its art be sold.' So, a community asset value is just, there's just no number to put on it (Mariam Noland, Interview, May 5, 2016).

Noland reached out to the presidents of about fifteen regional and national foundations that had connections to Detroit, inviting them to meet with Judge Rosen. In a testament to her influence, all of them accepted. The Community Foundation was well positioned to bring civic groups together, because it had facilitated previous collaborations. Noland was fond of saying that foundations do not work together, but five years earlier, the community foundation spearheaded a collaborative, \$100 million "New Economy Initiative," seeking to spur innovation and entrepreneurship in Southeast Michigan (NEI 2018). Most of the foundations that Noland invited to the November 5<sup>th</sup> meeting had been funders of the New Economy Initiative. Robin Ferriby, vice president and general counsel of the community foundation emphasized that the shared history of working together was important because "there was a level of trust" that helped civic leaders to get comfortable with the idea of getting involved in an unconventional initiative that would require unusually long-term commitments (Interview, June 13, 2017).

On November 5<sup>th</sup>, the foundation directors and the mediators convened in Judge Rosen’s impressive chambers, with little information about what the meeting would entail or who would attend. Rosen invited everyone to introduce themselves, and appealed to what he believed would be the primary concerns of those in attendance: cultural preservation (protecting the museum) and humanitarian need (protecting retirees) (Abt 2017). He said he would be asking the foundations to contribute to a trust that would help to address both issues. At first the proposal did not appear to gain much traction. Attendees recognized the difficult situation the city faced, but the numbers the judge cited about the city’s deficit and the pension deficit were “astronomical.” Alberto Ibarguen, the president of the Knight Foundation echoed this sentiment, noting, “It seemed like an enormous amount of money for an idea that nobody had thought through” (as quoted by Kennedy et al. 2014). Although philanthropic excursions into the public sector were common (see for examples Barman 2017; Jacoby and Powell 2016), there was no precedent for foundations funding municipal employee pensions. Some worried that intervening in municipal finance could jeopardize their tax-exempt legal status if the IRS thought it fell outside of appropriate charitable purpose.

Darren Walker, the recently appointed president of the Ford Foundation, salvaged the conversation, however, saying that the core issue was not about saving art or pensions per se, but about “saving the city” (Abt 2017; Interview with Eugene Driker 2016).<sup>54</sup> Rip Rapson, the head of the Kresge Foundation, explained the logic:

On the one side the art, and on the other side, if we reduced the pensions by a dime, it would have been litigated. I think your argument is that the city can’t afford a decade of litigation on both these fronts. What you’re really asking for is a fund to speed the resolution of the bankruptcy” (Conversation with Nolan Finley, Ford School of Public Policy, November 21, 2016).

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<sup>54</sup>Accounts of this meeting vary. Some suggest that as people were introducing themselves, Rosen realized he would need to reframe his proposal away from rescuing individual institutions. Other accounts suggest that the Ford Foundation president was the one to reframe an intervention around civic preservation.

The notion of civic preservation became the key justification for the DIA settlement. This justification was compelling, in part, because it would attach the foundation pledge to an abstract public purpose that was above reproach. Moreover, this framing fit better with the general desire of foundations to distinguish their gifts from charity by tackling social problems, rather than just mitigating symptoms (Barman 2017).

### **The Multiple Meanings of the Gift**

The abstract goal of civic preservation proved compelling, in part, because it allowed civic actors to attach different meanings to the proposed intervention (Lainer-Vos 2013). Framing the intervention around saving the city was successful, because it created a “zone of indeterminacy,” a discursive context that allowed foundations to avoid having to agree to a particular meaning (Lainer-Vos 2013). This was important because obtaining board approval was a matter of what Rip Rapson called “retail politics.” Everyone had to reframe the request in a way that made sense in the context of each organization’s unique circumstances and mission. Internally, foundation leaders could reinterpret the idea of civic preservation in a way that allowed the organization to overlook aspects of the arrangements that did not necessarily fit their programming priorities. The foundations attached a range of meanings to the gift that reflecting their interests in maintaining, repairing, or severing various kinds of relationships.

### *Relationship Repair*

One set of meanings attached to the intervention had to do with repairing relationships. In the case of the Ford Foundation, the intervention helped to repair the organization's relationship with its progenitor family, city, and state. For decades the Ford Foundation maintained a conspicuous distance from the Ford family and the City of Detroit. First established in 1936 by Edsel Ford, son of Henry Ford, the creator of the Ford Motor Company, the foundation relocated its headquarters to New York City in 1953 (Sutton 1987). Over the course of the next two decades, the foundation gradually divested itself of company stock. In 1976, Henry Ford II resigned from the board, frustrated by the organization's increasing focus on left-wing causes. In the years that followed, grants to Michigan recipients slowed considerably.<sup>55</sup> In 2005, Michigan's attorney general launched an investigation, accusing the foundation of abandoning its native city and state, "kidnapping" the legacy of its founders (as quoted by Miller 2006). The investigation was more of an intimidation tactic than a serious legal inquiry. Nevertheless, the ensuing years saw a notable uptick in the foundation's grant making in the State of Michigan. In 2013, when he was appointed CEO, Darren Walker resolved, in the words of his old friend and fellow foundation executive Alberto Ibargüen, "to end the alienation between Detroit and the Ford Foundation" (as quoted by Bomey 2016:145).

Rosen along with Ibargüen and Rapson impressed upon Walker that intervening in the bankruptcy would be a meaningful way to reconnect to the city (Bomey 2016). In the end, Walker persuaded his board to pledge \$125 million, representing a quarter of the foundation's entire giving for the year. The following June, members of the Ford family hosted members of

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<sup>55</sup> Between 1998 and 2005, the foundation gave less than \$1.5 million a year to programs in the State of Michigan. In 2001 Foundation grants reached \$593 million worldwide.

the foundation board in the City of Detroit (MacFarquhar 2015). In 2017, the foundation opened an office in the City of Detroit for the first time in 64 years.

The Kresge Foundation was also interested in relationship repair, but of a more generalized variety. For Rip Rapson, the intervention signified the détente between city and suburb, by making Detroit a desirable destination. At a university event, Rapson said:

[W]e acted as a seller. We became really aggressive in trying to convince other people that they should invest in Detroit. In 2008 Detroit had very little credibility. People thought it was dangerous, the neighborhoods were collapsing, the financial system was collapsing, the political system was corrupt. We needed a way to signal to people that the narrative was moving in the right direction (Ford School of Public Policy, November 21, 2016).

For Rapson and for many other state officials, civic, and legal actors, the art museum symbolized an opportunity to change the narrative about Detroit. Cultural institutions have long played an important role in perceptions of place. Yet, during the bankruptcy, the DIA's significance as a status symbol was considerably heightened, because it operated as what Erving Goffman termed a "disidentifier," a status symbol that contravenes an otherwise stigmatized reputation (Goffman 2009). Civic and judicial leaders viewed the DIA as an institution capable of transcending the city's bad reputation. One of the foundations leaders explained,

If Detroit were ever to truly rebound, and we're not just talking about exiting the bankruptcy, but rebound...an institution as large as the DIA needed to exist....The DIA said that if the bankruptcy ... weren't successful, the DIA would cut back on its hours of operation. It would absolutely, by my definition, be a part-time museum. I think that that taint almost or that stain on Detroit would have been worse than the bankruptcy (Jonathan Aaron, August 1, 2017).

The prospect of selling works of art or having to cut back the museum's hours in the event that the millage was withdrawn made some people shudder at the thought of what that would symbolize in the eyes of the world.

In recent years, Kresge had poured millions of dollars into various revitalization projects around the City of Detroit. “If in fact we could resolve the bankruptcy with our contribution we’ve safeguarded all these investments,” Rapson said at a speaking event, explaining that for him the intervention was an insurance policy of sorts. As Rip Rapson continued to describe the role of philanthropy in the city’s revitalization, he made it clear that the importance of the art museum also stemmed from its capacity to attract new investment:

You’ve got to steward the fragile ecologies of human services, arts and culture...Essentially is what each of those roles is, is creating places people want to move to. I claim that people are moving to places first, and figuring out jobs later. I think people in your generation are going to places where they want to live. So, creating this suite of amenities, riverfront scene, bar scene, art scene, I think the best way to create jobs is to create the quality of life (Ford School of Public Policy, November 21, 2016).

In summary, Rapson believed that the foundation’s role was to improve quality of life to attract new investment to the city. For Rapson, consecrating the museum served as a powerful reminder of Detroit’s past wealth and status, and a hopeful symbol of how the city could transcend its stigmatized reputation in the eyes of Michigan’s young professionals.

### *Social Closure*

While some foundations interpreted the intervention as a way to repair relationships, others viewed it as a way to protect the museum and its contents by removing it from city ownership. This orientation was exemplified by the Hudson Webber Foundation. Hudson Webber was not a family foundation, but several trustees were descendants of the downtown Detroit department store magnate, Joseph Hudson. For decades, the family had maintained a high degree of involvement in the museum’s affairs. In the 1950s and 1960s, Joseph Hudson’s nephew, art collector Robert Hudson Tannahill, donated over 1,000 works of art to the DIA, contributing a

significant portion of the museum's permanent collection.<sup>56</sup> Multiple family members had served on the Detroit Arts Commission, which oversaw museum operations on behalf of the city (Abt 2017). In 2013, two Hudson Webber trustees, including a Hudson family member, sat on the DIA board. Between 2006 and 2012, the foundation granted \$1.9 million to the DIA. The leadership of the Hudson Webber Foundation was deeply concerned about the fate of the museum. In an interview, a program officer explained,

Certainly, the DIA has been a big partner in our Arts and Culture portfolio for a long, long time. The strength of that institution has been really important to the foundation and to the trustees. I think both the practical loss of that asset to the community as well as the signal that that sends to the world was something that we were very concerned about (Interview, June 14, 2017).

Thus, some foundation leaders were personally invested in the museum's fate, because family members had made significant gifts and been involved in the museum's leadership.

### *Relationship Maintenance*

A few of the local foundations—primarily those focused on youth programming—did primarily justify their participation around the desire to mitigate the bankruptcy's economic impacts on retirees. In these cases, the meaning of the intervention was to protect and maintain the city's relationship with its current and former workers. Under this interpretation, violating the trust of city active and retired employees would hinder the city's revitalization because it would have difficulty maintaining a stable workforce. For example, La June Montgomery Tabron, president of the W.K. Kellogg Foundation, explained:

I looked at this as a recovery strategy, because what I said is if they can't deliver on the promise made to these people, no other person will ever have trust in this community or in this city, which meant they could never rebuild because they could never—I thought they could never earn enough credibility to build a new workforce (Interview, July 7, 2017).

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<sup>56</sup> 557 of those pieces were bequeathed with explicit instructions that those works not be sold (Welch 2013).

These foundations further reasoned that lost retirement benefits would have a destabilizing impact on families, and have negative downstream effects on children, the foundations' primary focus. Thus, their intervention would maintain the foundations' relationship to its primary beneficiaries, which were children. Tabron continued,

Conversations with my board was about the people—who do we see the people? These are families. These are families with children, and we care about the most vulnerable children, and we were making children more vulnerable if their families were left without this level of security (Interview, July 7, 2017).

For Tabron, as for other foundations, the goal of “saving the city” was an effective framing device. And for Tabron, as for other foundations, securing board approval meant privately interpreting “saving the city” in a way that fit with the organization's mission. Tabron explained her reaction to Judge Rosen's proposal in the following way:

When we first heard it and it was framed around the art, a very, very high-level conversation with the board even back in October is ‘We would never do that. They must be crazy.’ So take that from we would never do that; they must be crazy to get them to by February to understand what I understood, which was this was a much deeper issue, and it was about saving the city of Detroit, and allowing the pensioners to have some level of security after their life-long commitment to the city....It actually sounded somewhat crazy to us at first, but fundamentally it was aligned with our values, and it would impact the children of Detroit, who we care deeply about (Interview, July 7, 2017).

Here, Tabron reinterprets the abstract goal of civic preservation in a way that fit the organization's mission. She makes a point of distancing her foundation from the DIA, noting that rescuing the DIA “wouldn't be appealing for us at all.” She justifies participation in terms of protecting children, the foundation's primary beneficiary by promoting the economic security of families, and by creating the conditions for the city to retain a stable workforce moving forward.

### *Building New Relationships*

Several of the foundations were smaller and newer. For them, participating in an historic collaboration with well-established foundations such as the Ford and Kresge Foundations was a feather in their cap and an entrée into the philanthropic community. The William Davidson Institute exemplified this perspective. The William Davidson Institute was a family foundation that formed in 2005 but did not become operational until 2009 when Bill Davidson the multi-billionaire owner of Guardian Industries Corporation, one of the world's biggest glass suppliers, passed away. In 2013, the IRS alleged that the Davidson estate owed \$2.8 billion in unpaid taxes (Gallagher 2015). Around the same time, Jonathan Aaron, Davidson's son in law, took the family to probate court to try splitting the foundation's assets (Welch and Halcom 2013).

In October 2013, the foundation had no staff and the family was still tied up in legal disputes when Aaron, then president and chairman, received a cryptic call from Mariam Noland's office, inviting him to attend the meeting at the court house. Noland had a lot of clout, and the invitation was itself something of an honor. The opportunity to work with Noland was appealing. Aaron explained,

I had met her. I wouldn't say that we were close. I had met her and was certainly aware of her role in the community, and as a new foundation and somebody new to the professional side of the foundation, I was certainly an admirer. I wanted to get to know her (Interview, August 1, 2017).

Later on, after the fateful meeting in the judge's chambers, Eugene Driker, one of the bankruptcy mediators reached out to the board, reiterating many of the themes that had come up at the initial meeting. Driker was a partner at the law firm that represented Aaron's wife, Davidson's daughter, in probate court (Welch and Halcom 2013). According to Rapson, whose Kresge offices were situated in the same complex as those of the Davidson Foundation, the Davidson

family was partially persuaded by the idea that a large donation would help them to meet their IRS payout requirements (Ford School of Public Policy, November 21, 2016).

Yet the appeal of this particular donation was that it provided the young organization with an entrée to the philanthropic community. In response to a question about who Aaron knew at the November 5<sup>th</sup> meeting, he explained,

The philanthropic community in Southeast Michigan is very welcoming, very warm. I don't know if it was because of the bankruptcy, but certainly as a result of the bankruptcy, it's become very well-organized. We have now a quarterly meeting of the presidents of foundations that sit around the table to share our ideas. There were a number of other foundations that have come on board. The Fisher Foundation was new. The Erb Foundation was there. They were new. We were new...so there's a number of newer foundations, newer players that have been kind of embraced into the fold by those that have been here longer (Interview, August 1, 2017).

Here Aaron describes the strengthening of bonds between regional foundations, and his appreciation of the willingness of older foundations to bring young organizations into the fold.

By January 2014, the foundations' financial commitments were largely in place. Judge Rosen issued a press release, announcing that the foundations had raised \$365 million to be funded over a 20-year period (see Table 6). Yet, their contributions depended on a number of conditions, including matched funds by the State of Michigan, a supplemental contribution of \$100 million by the DIA, and a consensual resolution. In December 2013, as news emerged that an agreement was coalescing between foundations and the state government to offset pension cuts, the OCR rejected the bond insurers' invitation to strike a deal (Bomey 2016). On February 21, 2014 Orr released the first of nine versions of the city's Plan of Adjustment with the basic contours of the "DIA Settlement," colloquially known as "the grand bargain" (Docket 2708, 2014).

In summary, Judge Rosen opposed a sale of DIA art, but worried that drastic pension cuts could induce civil unrest, and that efforts to sell the art would cause the city to languish in bankruptcy. For their part, retiree representatives, particularly on the civilian side, worried that actively pursuing an art sale could activate a racial backlash. These threats to the city's survival helped the judge to galvanize the support of a group of local and national foundations. Framing the intervention around civic preservation was effective because it enabled civic groups to attach their own meanings to their pledge.

Judge Rosen believed, correctly at least in some cases, that the humanitarian purpose of helping pensioners would appeal to the foundation's leaders. Consequently, the intervention of charitable organizations led to the prioritization of the claims of pensioners over other those of other unsecured creditors. The foundations did not talk explicitly about why they were prioritizing pensions over unsecured financial debt. For them, it may have seemed so obvious as to need no justification. Whether they realized it or not, however, one consequence of the foundation intervention was to prevent retiree representatives from joining with bond insurers to pursue a DIA sale more aggressively.

### **The Struggle Over the Gift**

The bond insurers had attempted to persuade retiree representatives to jointly pursue a sale of the DIA's collection, but the foundations' intervention put an end to the proposed alliance and led the insurers to try derailing the settlement that was coalescing between the foundations, the state, the DIA, and the retirees (Bomey 2016). The insurers' efforts to derail the settlement forced the

city to defend its plan, provoking more explicit articulations on both sides about why pensions should or should not be prioritized over other kinds of unsecured debt.

These justifications reveal the degree to which conventional categories of worth—contract and charity—gained traction in court and were considered legitimate modes of justification in the context of bankruptcy. Chapter 3 described how Kevyn Orr and city lawyers highlighted similarities between labor and lending contracts in order to shift authority to the bankruptcy court and elevate a property-based criterion of worth. In this moment, Orr and the city lawyers now identified key *differences* between labor and lending contracts in order to justify the prioritization of pensions over bonds. They further argued that the charitable properties of the new funds were precisely what made it possible to prioritize pensions, arguing that foundations—“generous” independent actors who owed nothing to the city—had made the funds contingent on their use to pay pensions. They also drew on notions of charity to emphasize the material hardship that would result from significant cuts to retirement benefits. However, they also drew distinctions between private and public forms of charitable assistance, justifying the settlement on grounds that it would prevent pensioners from falling onto the state’s balance sheet via public assistance.

Of the bond insurers, Syncora and FGIC – those that had insured a set of soured 2005 pension bonds – were especially tenacious in their attempts to derail the settlement. They reminded the court that it had already deemed pensions to be *ordinary* contracts, lacking special protections in bankruptcy. They maintained that arguments grounded in principles of reciprocity (contract) and need (charity) were both invalid in the context of bankruptcy. While pensioners were “deserving of sympathy,” they asserted, there was no place for sympathy in bankruptcy court. Judge Rhodes agreed that sympathy was not a valid justification in the context of

bankruptcy, but appeared willing to approve the plan anyway, because he discerned a valid “business justification” for the prioritization of pensions. The judge never had to rule on this issue, because the bond insurers settled, removing a key obstacle to the city’s exit from bankruptcy.

### *Contesting the Gift*

In the early months of 2014, negotiations continued between the city and retiree representatives. The third version of Orr’s plan of reorganization was released on April 16, 2014, and included a new clause stating that, “The Foundations have required that their funds be applied to fund the City’s restructured legacy pension obligations” (Docket 4391, 2013:65). This statement was significant because it further clarified the city’s intention to use the funds exclusively for pensions. Importantly, it justified this use by appealing to the discretion of the foundations who—in conjunction with the state government—could withdraw their funds at any time. In a deposition, Orr’s financial advisor Kenneth Buckfire reinforced this point, arguing that it was “because those amounts can be regarded as gifts,” they could be used to prioritize pensions (Docket 7150, 2014:422). Syncora and FGIC quickly filed objections calling on Judge Rhodes to squash the deal. The pensioners, they argued, did not deserve any special treatment. And the new monies, they asserted, should not be considered a gift. In bankruptcy, they argued, gifts have a special meaning, which refers to some creditors allowing some of their recovery to be redirected to other creditors. Since the foundations were not creditors they argued, the funds could not be considered a gift.

Questions about the meanings that the foundations attached to the exchange cut to the heart of the controversy. Syncora’s counsel subpoenaed leaders of the foundations and the DIA,

and even the court-appointed bankruptcy mediators. They wanted to test their theory that the decision to earmark new funds for pensions originated with the foundations, noting, “You’ll remember in our pretrial conference...they were saying things like, ‘It is the foundations that were requiring us to do this. We are—you know, we’re limited here’” (Docket 5697, 2014:23). They argued that the court should be able to learn more about the intentions of the foundations and the origins of the idea to prioritize pensions.

The foundations’ lawyers argued that the subpoenas were designed to harass foundation leaders in hopes that they would abandon the deal. City lawyers framed the foundations in charitable terms emphasizing their generosity:

All of these charitable Foundations have stepped up to make generous donations at a time of great need for the City. Requiring them now to scour through decades’ worth of documents to meet the demands of an Objector of questionable motivation exceeds the reasonable demands of discovery” (Docket 5494, 2014:5).

The city’s lawyers emphasized the more powerful position of the foundations and the voluntary nature of their involvement, suggesting that it would be inappropriate to inconvenience them in making such a gift. Judge Rhodes rejected the subpoenas, but the bond insurers continued to press their point.

Importantly, the bond insurers argued that earmarking new monies for pensions constituted “unfair discrimination.” Under the U.S. Bankruptcy Code, different kinds of unsecured claims usually receive similar levels of recovery. Sometimes the recoveries vary, but a plan cannot be confirmed if it “discriminates unfairly.” Although case law establishes some tests for unfair discrimination in the context of Chapter 11 corporate bankruptcies, there have been few municipal bankruptcies, and little precedent for adjudicating these distributional questions in the context of a Chapter 9 bankruptcy.

The bond insurers condemned the deal in strong, sensational terms.<sup>57</sup> They, first, argued that pensions were not afforded any special protection in bankruptcy. Earmarking foundation funds for pensions would be hypocritical, they asserted, given Kevyn Orr's earlier comments, that "pension obligations are an unsecured claim just like any other...and the pension obligations shouldn't get special consideration without other creditors agreeing to it" (Docket 4697, 2014:6). Syncora also invoked Judge Rhodes's eligibility ruling to argue, "the City cannot now attempt to justify the Plan's preferential treatment of Classes 10 and 11 [pensioners] by relying on a purported special protection for Pension Claims under Michigan law, which the City itself has denied exists" (Docket 4697, 2014:6). These arguments endeavored to undermine contractual justifications for the prioritization of pensions on grounds that the court had already concluded that pensions were *ordinary* "unsecured" contracts.

Second, the bond insurers argued that the scope of differential treatment was so great that the plan amounted to an illegitimate reclassification of claims. In its objection to the plan of adjustment, Ambac wrote, "A plan that takes a senior debt instrument and throws it to the very bottom of the barrel, while elevating other debt to recoveries some five or six times greater, cannot be confirmed" (Docket 4677, 2014:4). Syncora claimed that the preferential treatment accorded to pensioners was "So extreme that it amounts to a de facto reordering of the priorities of the Bankruptcy Code" (Docket 4697, 2014:2). What is more, Ambac argued that their debt instruments should have been prioritized *above* pensions. Under state law, Ambac argued, limited-tax general obligation (LTGO) bonds<sup>58</sup> enjoy "a special status...with significant protections and rights that are superior to all unsecured creditors" (Docket 4677, 2014:1). They

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<sup>57</sup> Bond insurer Ambac described the proposal as "offensive." Syncora went as far as to call it "separate and highly unequal," comparing itself to Reconstruction Era African Americans subject to state-sponsored racial segregation (Docket 4677, 2014:1; Docket 4697, 2014:2)

<sup>58</sup> Bonds that are backed by the taxing power of the issuer. Because they are limited to certain kinds of tax or certain maximum tax rates, they are considered riskier than "unlimited-tax general obligation" (UTGO) bonds.

argued that their statutory protections were more robust than state pension protections, because their loans were backed by property rights, a claim which the city denied.

In addition to arguments that pensions were ordinary contracts not deserving of special protection, the bond insurers also tried to undermine charitable justifications for pension protections. For example, in an objection to the Fourth Plan of Adjustment, Ambac's lawyers first validated the idea that pensioners deserved sympathy, but then argued that the Bankruptcy Code does not permit distributional decisions to be made on the basis of need or sympathy: "To be sure, the plight of the retirees is deserving of sympathy. Yet, sympathies for one creditor group cannot justify discrimination against another" (Docket 4677, 2014:48). Syncora made a similar argument, asserting that "there is no legal basis—whatever one's sympathies—to reward some creditors for past services by hugely discriminating against others." (Docket 4697, 2014:37). They also tried to delegitimize charitable justifications by arguing that the settlement would divert funds away from other worthy recipients:

What we want to explore is the effect of the grand bargain that it has taken hundreds of millions of dollars in charitable monies that were otherwise going to be devoted to the southeast Michigan region and/or Detroit in particular, redirected them away from things, for example, like blight remediation or other things that can help the city, redirected them to the grand bargain to the pensioners, who in my -- it is my understanding as many as 70 percent of the pensioners do not live in the City of Detroit (Docket 5697, 2014:27).

In summary, the bond insurers assumed an especially combative stance against the settlement that was coming together. Properties of gifts enabled the city in this context to justify prioritizing pensions over other kinds of unsecured obligations. The city was able to argue that a new outside source of funds was becoming available due to the largesse of independent foundations, and that, as is customary of charity, the givers would have to maintain discretion over the use of the funds. The bond insurers tried to undermine the settlement by arguing that foundation money was not

actually a gift, and by calling on the foundations to account for their interests in entering into such an agreement.

### *Defending the Gift*

The bond insurers' objections forced the city to explicitly justify its decision to earmark foundation monies to pensions instead of distributing them equally among unsecured creditors. As the bond insurers increased pressure on the court to reject Orr's proposal, the city introduced contractual and charitable justifications for the earmarking of new funds for pensions. One term that came up repeatedly was the notion of the "human dimension." When legal actors mentioned the human dimension, they were referring to the economic impacts of benefit cuts on pensioners. For example, during a deposition Orr told Syncora's lawyer, Steven Hackney:

Orr: I don't want to give the impression that we were merely looking at it from a technical perspective, there is a human dimension here that we were very concerned about, too...

Hackney: Why did you believe you couldn't cram them down<sup>59</sup> at the proposed plan levels in the first plan?

Orr: Well...again, wanted to be sure that addressed the human dimension.

Hackney: When you're talking about the human dimension what are you talking about?

Orr: Very simply...the pensioners are people many of whom are in their sixties, seventies, and eighties and don't have an option. They have worked for the City, most of them have done nothing wrong. They are -- the covenant that the City had with its employees and retirees was that if they perform work for the City that upon their retirement they'd be taken care of for the rest of their natural life, that some of this came as quite a shock to them because they had planned their affairs accordingly (Docket 7150, 2014: Exhibit 4).

Orr invokes both "contract" and "charity" frames to describe the deservingness of retirees. First,

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<sup>59</sup> A cram down is a term used to refer to the conditions under which a debtor can advance a plan of adjustment over the objections of creditors.

he draws on charity framings by invoking external constraints that prevent individuals from returning to the workforce, suggesting that they are deserving of assistance, because they not “able-bodied.” Then he invokes contractual framings to explain that the retirees fulfilled their side of the deal, “have done nothing wrong,” and therefore occupy a superior moral position.

The city repeatedly invokes notions of need in justifying the prioritization of pensions over other forms of unsecured debt. For example, in a response to objections, the city’s lawyers argue that the city’s “responsibility” for the social welfare of a large, implicitly poor population should be considered, that pensioners are more vulnerable than bond insurers, and that pensioners legal status is ambiguous:

The unique concerns of chapter 9 are especially pronounced here, where the City is not just any municipal debtor, but a major American city providing critical services for one of the largest urban populations in the country. No debtor seeking to confirm a plan has ever borne the same level of responsibility for the social welfare of so many individuals (including thousands of retirees and employees), the majority of whom have little capacity to absorb the financial hardships that are an unavoidable consequence of the City’s need to adjust billions of dollars of unsecured debt. The challenge presented by the City’s restructuring is literally unprecedented in American bankruptcy law, and the City’s (and its retirees’) circumstances do not fit neatly into prior case law (Docket 5034, 2014:27).

Here the city suggested that its obligation to its residents are akin to those of retirees, that the retirees cuts would adversely impact the retirees this argument is the claim lenders are better able to withstand economic losses than retirees. Further they note that the legal status of retirees was uncertain, implicitly because of the constitutional protection. Later, the city made another needs-based argument, positing that retirees depended on pension income, and lacked control over the governance of the pension programs:

The Plan’s treatment of Pension Claims is further reasonable based on the fact that individual holders of Pension Claims: (a) often depend on their pension income to provide basic living needs and expenses; (b) were not provided any choice with respect to whether and how much to invest in their pensions; and (c) had no control over how pension assets were invested and their pension programs

operated. Indeed, courts have permitted the favorable treatment of creditors whose claims against the debtor arose from circumstances where the creditors had no “real opportunity to protect themselves” (Docket 5034, 2014:43).

In this quote, the city goes on point out a key difference between compensation and credit in that workers are not making calculated risks when they enter into agreements with their employers, whereas lenders are. These arguments were supplemented by claims that material hardship would result from pension cuts would harm retirees to a greater degree than they would harm bondholders. These arguments were further bolstered by the idea that if pensioners fell below the poverty line, they could become welfare dependent:

Preferential treatment of Pension Claims also is in recognition of the personal hardship that will befall pensioners, many of whom are also residents of the City, if their Pension Claims are further impaired under the Plan. This hardship—if severe enough—can also strain City resources by causing City social service costs to rise (Docket 5034, 2014:45).

This statement drew a clear distinction between private and public charity, suggesting that it would be better for retirees to receive private charity than public assistance. The above statement suggests that forcing retirees to receive public assistance was an undesirable outcome because it would impose additional costs onto the city.

However, the city also advanced moral arguments about why it would be inappropriate for retirees to wind up on welfare. These moral arguments emphasized the contractual properties of the pension promise. In its reply to objections filed by the bond insurers, the city argues that active and retired city workers “chose to work as public servants based on the promise that they would sacrifice higher wages for receipt of guaranteed pensions upon retirement, as a form of deferred compensation.” They continued by arguing that:

The disadvantaged creditors are, for the most part, financial institutions with the sophistication and experience necessary to appreciate the risks they were taking when they invested in or loaned money to the City. The financial creditors had both the opportunity to conduct due diligence and a choice with respect to

whether and how much to invest in the City. Pensioners simply were not in the same ‘position to know of the debtor’s financial condition and the risks involved’ when they became creditors of the City, nor did they make knowing investment choices (Docket 5034, 2014:40).

Here the city argues that guaranteed pensions are a form of reciprocity, because public sector workers accept lower wages *in exchange* for guaranteed benefits. The city also argues that, unlike employees, lending organizations take calculated risks when they purchase municipal bonds, and are better able to absorb financial risks than individuals. In his deposition, Orr goes even further, arguing that the pension promise is not just a quid pro quo exchange, but a sacred covenant:

Hackney: One of the factors you identified...was the City’s covenant.

Orr: Yes.

Hackney: And I took that to mean the fact that the City had a contractual obligation to pay these people?

Orr: Right and what I’m trying to relay to you is it’s not just a fact that the City had a contractual obligation; it is the commitment and reliance on that commitment behind that contractual obligation that various City employees and retirees will come and express to me in very real terms what this means to them.

Hackney: I see...What you’re saying is you relied not only the existence of the legal obligation to pay but also testimonies you got from people that they had relied on that?

Orr: Yes (Docket 7150, 2014: Exhibit 4).

Two additional contractual arguments gained traction in court. One framed the settlement as a form of compensation for active employees who would receive less generous benefits in the future. The other argued that the settlement was an inducement being used to persuade retirees to waive their constitutional protection, and drop lawsuits seeking to restore pensions against the city and state.

The first of these arguments hinged on the distinction between past and future work. Past

work corresponded to “accrued” benefits, which were protected by the state constitution. Future work was not covered by the constitutional protection. Consequently, future benefits would accrue under a new, less generous plan. This meant that active workers would experience one set of adjustments to their accrued benefits and a different set of adjustments to their future, unaccrued benefits. The DIA Settlement only affected accrued benefits but agreeing to it would be interpreted as an implicit endorsement of the other changes that would take place.

Here, by providing a relatively enhanced recovery to holders of Pension Claims, the City is helping to ensure the success of some of its most vital relationships going forward. Active employees of the City also have claims for vested pension benefits that are classified in Classes 10 and 11 and treated under the Plan. Going forward, the pension benefits of active City employees will accrue under new, less generous hybrid pension plans, as set forth in the Plan. City employees are no doubt concerned about any further reduction of their benefits. Moreover, current employees are understandably concerned about the extent of impairment of benefits for retired City employees, as active employees will become retirees at some point. Impairment of Pension Claims beyond that which is proposed by the Plan would have a greater negative impact on the performance and morale of current City employees (Docket 5034, 2014:39).

This argument appeals to the higher order principle of civic preservation by arguing that betraying the trust of workers would make it harder to attract and retain a stable workforce in the future. A city cannot function without a fire department. The second argument was that the settlement constituted an inducement to waive legal rights. Specifically, the deal asked pension beneficiaries to drop existing lawsuits appealing pension cuts or seeking to hold the state accountable for making up pension shortfalls (Docket 5034, 2014:42).

### *Stabilizing the Gift*

The key legal issue was not whether the plan “discriminated,” but whether it did so “unfairly.” The bond insurers assumed an aggressive stance in arguing that the mediators’ role in organizing

the settlement was inappropriate and that the plan discriminated unfairly. The back and forth culminated in a pre-trial hearing, where Judge Rhodes heard oral arguments for and against the deal. During the hearing, Hackney persuaded Judge Rhodes that need was not a valid justification to favor pensions over bonds:

There is no support in the 254-page reply brief, not one case that I saw that says that Bankruptcy Courts and debtors can consider the personal hardship that will be suffered by various creditor classes in deciding to pay them differently for better or worse, your Honor (Docket 5697, 2014:101).

Rhodes, struck by Hackney's argument, turned to the city's attorney, and said, "I've never seen a case where in deciding whether to confirm the plan...the hardship or the neediness of creditors was considered. Have you?" Rhodes later concluded that Hackney was correct on that point, noting, "I'm going to say here as unequivocally as I can that as a matter of law, creditors' needs is not an issue when it comes to determining unfair discrimination" (Docket 5697, 2014:104). The judge explained that he would make such a determination based on "the business needs of the debtor, not the business or financial needs of the creditors" (Docket 5697, 2014:104). Thus, Judge Rhodes's comments suggest that his affirmation of the prioritization of pensions over bonds would have been made neither based on contract or charity, need or reciprocity, but rather based on the city's financial needs. The judge would still have to weigh the city's "business needs" in terms of employee retention versus access to capital markets. However, Judge Rhodes avoided having to rule on the issue. After pensioners agreed to settle, the bond insurers were induced to settle with downtown development opportunities, dropping their fight against the settlement.

## Conclusion

This chapter has advanced the dissertation's argument by describing how the intervention of foundations continued to rework the meanings of contract and charity. The foundations tipped the scales of the bankruptcy's distributional politics in a way that prioritized pensioners over certain financial firms. In that sense the new arrangement bolstered social provision. In another sense, however, the new arrangement constituted a regressive innovation, because it solidified significant cuts in retirement benefits and the loss of legal protections. This is not to suggest that the foundation leaders or the judicial actors who worked with them endeavored to blur the boundaries between contract and charity, but that this was an unintended consequence of their collective efforts to resolve a set of difficult problems.

The chapter began by describing the fallout of Judge Rhodes's eligibility ruling. The ruling reduced retirees' power but elicited new expressions of sympathy (Pierce et al. 2014; Schneider and Ingram 1993). The ruling also created a new group of adversarial stakeholders – “unsecured creditors” – that included both financial firms and active and retired workers who now shared an economic interest in having the city sell municipal assets, most controversially the Detroit Institute of Arts, to honor its commitments. The new alliance between the retirees and the bond insurers never came to fruition however, because retirees were induced to settle with favorable terms.

The prioritization of pensions over other kinds of unsecured financial creditors unfolded through the mobilization of a coalition of local and national foundations. Judge Rosen, with the help of colleagues, framed their intervention as a way of “saving the city” from languishing in bankruptcy, losing its cultural heritage, or descending into violent conflict. The civic preservation frame created a “zone of indeterminacy,” a context of discursive ambiguity that

helped Judge Rosen to secure foundation participation. Some foundations were primarily motivated to protect the DIA, while others were driven to mitigate economic adversity among retirees. All could rally behind the public justification of “saving the city.” The ambiguity of this framing made it possible for the foundations to privately reinterpret the gift in a way that was consonant with their organizational missions.

While it remains unclear whether Judge Rosen invoked racial conflict strategically or earnestly, this threat played an important and unexpected role. Ordinarily we expect racial conflict to prevent social alliances that would bolster social provision. Consistent with these expectations, a long history of violent and latent racial conflict led to the social and political isolation of Detroit’s elected leaders and city residents, which contributed to the conditions of bankruptcy. Contra these expectations, however, in bankruptcy the threat of racial conflict seemed to encourage social alliances that bolstered social provision in certain limited respects.

The city’s retirees were a racially diverse and geographically dispersed group. The judge worried, however, that protecting the museum’s 63,000 works of art, the majority of which were collecting dust in the basement, while slashing pensions and healthcare, and shutting water off to thousands of homes<sup>60</sup> across the city could trigger civil unrest. And, as several of the retirees’ lawyers suggested, the Official Committee of Retirees avoided an aggressive pursuit of the art collection in part because they did not want to activate an anti-Black backlash. Thus, a key finding of this chapter is that, contrary to expectations, a charitable gift—new resources voluntarily provided by actors with no prior commitments to Detroit’s retirees—offered pensioners a measure of protection. As the next chapter will argue, however, these recoveries

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<sup>60</sup> In 2013 the City Council approved a \$5.6 million contract to disconnect water to 70,000 homes late on their bills (Kurth 2016).

were stratified in a way that most benefited a subset of older, whiter retirees living in the Metropolitan suburbs.

This account furthers the idea that the symbolic and institutional heterogeneity of contracts and charity are what make social policies vulnerable to classification struggles. Charity, premised on the principles of altruism and need, usually constitutes a position of weakness when it comes to political claims making. In this context, however, charity offered a measure of strength. Furthermore, although welfare scholars have argued that the institutional heterogeneity of the American welfare state is part of what makes it unique, those that have studied the role of classification in social policy have yet to fully integrate this heterogeneity into their analysis. Charity is of course not just a policy paradigm but, as voluminous literatures have shown, a means of organizing social provision that exists in complex relationship to government organizations.

To the extent that the proposed public-private financing mechanism constituted a policy innovation and a novel organizational form, this chapter also offers some implications for research on institutional entrepreneurship. One of the key debates taking place among organizational scholars concerns the relative roles of structure and agency in the emergence of organizational novelty. The concept of entrepreneurship emphasizes the skilled manipulations of individual actors. Yet understanding why some innovations take hold while others do not requires a careful consideration of the historical and contextual features that make social environments receptive to entrepreneurial acts (Johnson and Powell 2017). This account supports this perspective, finding that prior shifts in the broader economic and political environment produced the new category of the undeserving pensioner. And further, that the collective memory of Detroit's upheaval in 1967 served as a key mobilizing frame. This is not to diminish

the creativity of Rosen's actions, but to suggest that his skill lay in understanding which environmental features to invoke to successfully mobilize key audiences. The next chapter presents a final step in the reorganization of the pension system, arguing that the settlement was institutionalized through retirees' formal acceptance.

## **CHAPTER V**

### **Institutionalizing the Gift**

If you give that money up, you will have no sympathy from anybody.

—Shirley Lightsey, DCREA President (2014)

#### **Introduction**

In the summer of 2014, Detroit’s active and retired city workers confronted a difficult choice. One year earlier the City of Detroit had filed for bankruptcy. Now, city stakeholders had to vote on whether to support the proposed “plan of adjustment.” Voting “Yes” meant accepting pension cuts ranging from approximately 0.5 percent to 20 percent, the near-eradication of medical benefits, and the abdication of key legal rights and protections. Voting “No” would mean greater uncertainty. Perhaps a better outcome was possible, but it would take time, money, and stamina. And as recent events had made abundantly clear, there were no guarantees. This chapter charts a final step in the reorganization of Detroit’s municipal retirement system, its solidification in a new form. This step hinged on beneficiaries’ formal acceptance of the charitable gift and the conditions attached to it. Ultimately 77 percent of those who voted (37 percent of all beneficiaries) endorsed the settlement; 11 percent of all beneficiaries voted against it; 52 percent of beneficiaries did not vote at all (see Table 1). This chapter investigates how a critical mass of retirees was persuaded to accept this new arrangement. Before previewing this chapter’s

argument, a recap is in order.

Chapter 3 examined how influential actors reworked the power and status of retirees, retrospectively delegitimizing their original expectations and breaking the association between labor contracts and deservingness. Here, the ideal-typical framework outlined by Schneider and Ingram (1993) regarding the “social construction of target populations” is instructive. Their framework includes four categories representing the intersection of power and social status: “Advantaged” groups are considered powerful and deserving; “Contender” groups are powerful but undeserving; “Dependent” groups are less powerful but deserving; and “Deviant” groups lack power and are also considered undeserving.

Chapter 3 argued that in the lead-up to Detroit’s bankruptcy, Detroit’s emergency manager initially framed municipal pensioners as “advantaged,” by describing pensions as “sacrosanct” promises that were immune to revision. Soon after, however, Orr reversed his position and argued that pensions were “unsecured” contracts that could be retrospectively modified in bankruptcy. Orr justified the modification of pension benefits on grounds that the deficit was insurmountable, and that pension trustees and pensioners themselves were partially responsible for the city’s financial duress. Through these arguments, Orr repositioned retirees as “contenders,” powerful but undeserving of the benefits that had been promised to them. The federal bankruptcy judge presiding over Detroit’s bankruptcy affirmed Orr’s argument that pensions were ordinary, unsecured obligations. Stripping retirees of key legal protections diminished their power but elicited new expressions of sympathy.

Chapter 4 argued that the intervention of charitable foundations again repositioned retirees this time as deserving “dependents” (Schneider and Ingram 1993). This chapter examined how a group of philanthropic organizations became involved in Detroit’s fiscal crisis,

seeking to expedite the city's exit from bankruptcy by resolving a perceived distributional conflict between the city's prestigious art museum and municipal pension beneficiaries. The foundations pooled funds to purchase and privatize the prestigious, city-owned Detroit Institute of Arts (DIA). In turn, the proceeds were pledged to help the city meet its required contributions to the municipal retirement system. In earmarking new funds for the exclusive use of pension payments, the intervention of foundations constituted a second key step in the redefinition of municipal pensions from a contractual right to something more closely resembling a charitable gift. Through this process, the deservingness of pensioners was again reevaluated, this time in relation to other unsecured city creditors. Thus, while secured creditors had their contracts upheld, charity offered a measure of economic protection to pensioners in relation to other unsecured contract holders. The injection of new funds sought to alleviate the bankruptcy's adverse economic impacts on municipal retirees. In doing so, this new financing arrangement blurred the boundaries between contract-like social insurance and charitable assistance.

This chapter argues that the institutionalization of this new arrangement constituted the third and final step in the redefinition of Detroit's municipal retirement system. Before the new arrangement took hold, however, a number of hurdles had to be cleared. One challenge which the previous chapter discussed was the vigorous resistance of a small group of financial firms who argued that earmarking new funds for pensions was "unfair" and "discriminatory." Eventually these firms were induced to settle with downtown development opportunities.

As this chapter will show, there were other hurdles that stemmed from conditions set forth by the foundations. First, the foundations made their contributions contingent on the matching of funds by the state government. They also required the DIA to pledge \$100 million towards the settlement. A third challenge that constitutes the focus of this chapter was the

foundations' requirement that the agreement be consensual, meaning that most pension beneficiaries formally consent to the settlement, waiving key legal protections and dropping related lawsuits against the city and state. This requirement dovetailed with the rules of bankruptcy, which require impacted parties to vote on the debtor's proposed "plan of adjustment." In order for the court to approve Orr's plan, a voting majority of at least one class of impacted stakeholders<sup>61</sup> had to vote in support of the plan. Technically, then, the court could have approved a plan over the objections of retirees. In this case, however, the DIA settlement, which constituted the lynchpin of the plan of adjustment, required the formal acceptance of a majority of voting retirees. Thus, in a highly constrained context where local democratic institutions had been supplanted by a state-appointed emergency manager, retirees experienced a rare moment of agency.

This chapter asks how a majority of beneficiaries came to accept the bankruptcy settlement. To some, the answer may seem obvious: It was the best deal possible. Retiree representatives believed that rejecting the plan was impractical, a sentiment enshrined on a pin that read, "You Can't Eat Principles, and Uncertainty Doesn't Pay the Bills." The alternative outcome, the city's emergency manager warned, would be worse. If the settlement was rejected and the foundations withdrew, the city would pursue more draconian cuts (see Table 7). But no one could be sure whether the court would approve severe cuts over the objections of retirees. Or if it did, whether the decision could be overturned on appeal, let alone how much time and money would be consumed in the process. This explanation has merit insofar as retirees found the economic threat to be credible, and many probably did. Yet, even credible threats do not always produce submission. At times, threats activate resistance and solidify oppositional groups

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<sup>61</sup>Alternatively, a plan can be confirmed if claimants representing two-thirds of the total value of unpaid obligations of one class of creditors approves the plan.

(Ermakoff 2008; Mizruchi 2013). In 2015, for example, Greek voters rejected the austere terms of a European bailout. In 2017, tens of thousands of Argentinians took to the streets to protest the tightening of pension and welfare benefits (Politi 2017). And, in American elections, fear of cultural displacement and the desire to preserve privileged social status have been shown to overpower economic interest (Cox and Jones 2017). While it is tempting to conclude that stakeholders voted according to their economic interests, this conclusion belies the complexity of the situation, the heterogeneity of retiree interests, and the important role played by trusted representatives in constructing these interests.

This chapter describes the efforts of retiree representatives to secure buy-in for the settlement by adjusting retirees' expectations and self-concept. The analysis presented in this chapter focuses on the RDPFFA, the city's largest police and fire retiree association. The RDPFFA was the first group to settle with the city. Of all pension claimants, its members received the best treatment under the proposed plan of adjustment. They also confronted the least amount of risk in rejecting the plan. This fact renders their support for the plan and its required abdication of legal rights all the more puzzling. The RDPFFA was initially chosen as the focus of this chapter because of the availability of high quality data. Yet this group is an apt site of analysis, precisely because interest-based explanations would predict greater opposition from a group weighing marginal economic losses with the abdication of rights and status.

### **Collective Cooling: Adjusting Retiree Self Concept**

Through his analysis of the failure to enact a guaranteed income policy in the United States, Brian Steensland (2006) argues that policy makers and publics resist policy innovations that blur

the boundaries between contract-like social insurance and charity-like public assistance. Progressive reform efforts that seek to erase programmatic boundaries between contract and charity provoke resistance, because they threaten to mar the social status of privileged populations (Steensland 2011). The findings of this dissertation so far suggest that these categories do not function in the same way when it comes to regressive reform efforts. Policy makers and publics appear more likely to accept regressive reforms that blur programmatic boundaries if they are limited to stigmatized subsets of an otherwise privileged population. This leaves open questions, however, of how and why impacted parties would formally consent to regressive reforms.

In agreeing to the settlement, pensioners symbolically accepted a charitable gift, accepting the redefinition of their status from independent rights bearing citizens to charitable dependents. To give a gift is to impose an identity (Schwartz 1967:1). “To accept a gift is to accept...an identity, and to reject a gift is to reject a definition of oneself” (Schwartz 1967:3). People may reject gifts if they threaten a valued role or identity (Schwartz 1967). On the one hand, the foundation money averted more draconian cuts and prioritized retirees over other unsecured lenders. But the foundation funds, along with additional public and private funds, would only cover part of the pension deficit. Retirees were still being asked to accept an economic loss as well as a loss of rights and status. Just as accepting an apology gift constitutes an act of forgiveness, accepting the settlement constituted an endorsement of Orr’s definition of the situation, which revolved around the idea that retirees did not deserve exactly what they had been promised.

This chapter argues that trusted retiree representatives secured buy-in for the settlement by actively adjusting retirees’ expectations and self-understandings. I draw on Erving Goffman’s

(1952) theory of “cooling the mark” to explain how retiree representatives adjusted the expectations of active and retired workers with vested pension benefits. This perspective helps to extend the idea of classification struggles by unpacking how different audiences’ perceptions of a social group’s status and rights are brought into alignment. I argue that retirees who saw themselves being framed as more deserving than other stakeholders were more amenable to the settlement. Retirees who experienced the deepest cuts were more likely to reject the plan, not because it was in their narrow economic interest to do so, but because they suffered the greatest insult.

Goffman’s (1952) theory of “cooling the mark” is useful for understanding how people come to accept an unexpected loss, especially when imposed by a trusted institution such as the state or an employer. The “cooling-out” concept, Goffman suggests, is broadly applicable to any situation where disappointed expectations provoke consolation. In describing this phenomenon Goffman focused on the victim of a crime or a con. The “mark” is the victim. Someone in on the crime “cools” the mark by persuading them to accept the loss. The goal is to prevent the victim from making a fuss, seeking retribution, or calling on higher authorities. In Goffman’s (1952:452) words, “the cooler has the job of handling persons who have been caught out on a limb – persons whose expectations and self-conceptions have been built up and then shattered.” This aptly describes the experience of Detroit’s retired city workers, who believed that – short of repealing state laws explicitly protecting their pensions – their retirement benefits were irrevocable promises. Goffman’s emphasis on “coolers” or “agents of consolation” is particularly useful. These individuals have been tasked with the unpleasant job of reworking the expectations of the impacted party (Clark 1960). These influential actors may deploy a number of strategies, including serving as the object of frustration, offering a substitute role or status, providing a

financial consolation, and delaying a decision to give the impacted party time to familiarize themselves with the new situation (Goffman 1952).

Cooling-out can be provoked by one of two kinds of “involuntary loss,” one which reflects badly on the impacted party, and one which does not (Goffman 1952). The second kind of loss still changes how individuals think of themselves and how they are seen by others but is not considered a reflection of a deserving fate (Goffman 1952). The other kind of loss reflects badly on the impacted party and involves humiliation or a loss of face. In this case, the loss is seen as a symbol of what the party deserves. Goffman (1952) argued that financial loss due to fraud produces shame that can be devastating. But in the United States, where making money reflects good character, any sort of financial loss can provoke embarrassment (Harrington 2012). Unexpected economic loss can have a devastating emotional impact (Goffman 1952; Harrington 2012). Accepting such a loss may involve efforts to reframe it from one that reflects badly to one that does not (Goffman 1952). In the sections that follow, I first discuss several of the key conditions of foundation participation and the organization of beneficiaries before returning to the case.

## **The Price of Charity**

### *Heightened Oversight and Control over the Pension Funds*

One distinguishing feature of charitable giving, especially when in large sums, is the propensity of donors to attach terms and conditions to their gifts (Barman 2007). When elites “give away their money,” Ostrander (1997:161) has noted, “they usually want to retain control over where it

goes.” Detroit’s case was no exception. During an interview, the president of the local community foundation who played a key role in mobilizing the foundations, explained,

We did this to save the city in a mediated process, where we knew there would, that certain things would happen including certain controls. It was important to have controls on the process and on the city coming out of this. We all cared a lot that there was gonna’ be an oversight. {pause} So that’s one thing. We were betting on, not a sure thing but a clear thing. If, if any public entity comes to us and said help us with our basic public services ‘cause we’ve screwed up, we would probably say no. Cause you’re just putting money into— it’s not gonna’ get better. Yeah, you may help somebody, it may make a pension payment today, but tomorrow they won’t. So, it was the total situation that you had some assurances around (Mariam Noland, Interview, May 12, 2016).

Noland speaks of “controls,” “oversight,” and “assurances,” gesturing to the desire to reform the retirement system in order to avoid throwing good money after bad. Noland’s view reflects the perception held by the governor and other state officials that the retirement system had squandered essential resources by making bad investments and overpaying beneficiaries. At a university event, Nolan Finley, a journalist who covered the bankruptcy for the *Detroit News* explained,

He [the governor] was convinced and the state was convinced that the pension funds were massively underfunded, and they were that way because of mismanagement and corruption, the annuity savings, the 13<sup>th</sup> check, the over estimates of returns. Now you talk to the pension funds they say, ‘No, by that time we were under control. We fired the crooks. We hired other managers.’ But the state believed the pension funds were the primary drain on the city’s financial stability. They were determined to get control of those funds and they did that through this financial advisory board. And to get back some of the benefits they thought were wrongly given (Nolan Finley, Ford School of Public Policy, November 28, 2016).

This sentiment echoes the rhetoric of public assistance dating as far back as the traditional poor laws, which “tended to conflate poverty with deviance” (Goldberg 2007:3). Just as the poorhouse provided assistance on the condition that recipients rehabilitate their behavior or dispositions, newer welfare policies have often assumed a similar approach (Goldberg 2007). In this case, the foundations attached a variety of conditions to their collective pledge. Key among them was: 1.

Matched contributions by the state government; 2. \$100 million contribution by the DIA; 3. Increased oversight and control over the pension funds; 4. The formal consent of retirees to varying levels of cuts; 5. A release from legal liability (Docket 8045, 2014).

As discussed in Chapter 4, requests for state aid initially fell on deaf ears. But the involvement of the foundations enabled the architects of the settlement to muster some political will. In early 2014, Judge Rosen circled back to the governor. He later recounted,

I said, ‘Rick you know you made a very courageous decision to put the city into bankruptcy. It was absolutely the right decision that all your predecessors avoided. But you can’t throw your hands up now. It’s conditional on the state’s participation.’...I said ‘Ford is in for \$125 Million.’ And he said in his high-pitched voice, ‘Really!’ I went through the numbers, and you know he is an accountant...I said, ‘This is an assetless bankruptcy, Rick. We can’t leave money on the sidelines. If we leave this money in the sidelines we will all be weighted in the balance of history and found wanting.’.... He said ‘This is going to be very difficult. But if I go to the legislature you can’t betray me.’ I said, ‘I understand that’....As I was walking out, Rick’s legislative liaison put his arm around me and he said ‘You don’t know how hard this is going to be’ (Ford School of Public Policy, December 5, 2016).

An aggressive lobbying campaign took place during the spring and early summer of 2014. Republican lawmakers were largely persuaded by economic arguments, and in particular the idea the costs to the state government could be much greater in the absence of a settlement.<sup>62</sup> Lawmakers whose constituents included Detroit residents and retirees (who lived all over the state) were also persuaded by their constituents’ support for the settlement

#### *Finer Grained Distinctions Between More and Less Deserving Beneficiaries*

The discretion that accompanied the injection of private, charitable funds made it possible for the city to prioritize pensions over other kinds of unsecured credit. It also enabled the city to draw

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<sup>62</sup> Sources include an interview with Dick Posthumus, the Governor’s legislative liaison (October 4, 2017), as well as comments made by Governor Snyder, Kevyn Orr, and journalist Nolan Finley at the Ford School of Public Policy (November 14, 2016; November 28, 2016).

finer grained distinctions between subsets of pension claimants. First order distinctions were drawn between public safety and civilian retirees. When the ballots went out, the city’s proposed treatment of pension claimants was as follows: PFRS beneficiaries would recover their full pension but would lose 55 percent of the annual inflation adjustment (“COLA”).<sup>63</sup> GRS pensions would lose 4.5 percent of their annual pension, and the COLA would be eliminated.<sup>64</sup> Both groups would lose approximately 90 percent of their OPEB benefits (Docket 4391, 2014). If retirees rejected the settlement and the foundations withdrew, then PFRS beneficiaries could lose the full COLA; GRS beneficiaries could lose 27 percent of the pension on top of the COLA elimination (Docket 4391, 2014). All claimants stood to lose the majority of their medical benefits, but civilian retiree pensions would be cut more than public safety pensions.

There were several justifications given for the different treatment of civilian and public safety retirees. One oft-cited justification was that Detroit’s public safety workers did not participate in Social Security, and for that reason depended more heavily on their pension income (Docket 4938, 2014).<sup>65</sup> A second justification was that the PFRS was better funded than the GRS at the outset of the bankruptcy, meaning that the deficit was smaller to begin with. This observation was often attached to the moral argument that the GRS was responsible for its deficit, because it had engaged in irresponsible financial practices. During a university speaking event, Michigan’s governor explained, for instance,

Some of the stuff was absolutely nuts... they came out with these deals where they’d make an extra payment – like a 13<sup>th</sup> month check just because they had a good year. So, should you give all your extra returns away in a good year? They did some crazy things....They became millionaires off these programs that we

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<sup>63</sup> This would translate into a loss of approximately 10 percent of the total estimated value of the pension, depending on retiree age and the size of the pension (Docket 4391, 2014).

<sup>64</sup> This would translate into an estimated 14.5 percent the total GRS liability (Docket 4391, 2014).

<sup>65</sup> Approximately one quarter of state and local government workers are not covered by Social Security (Gale, David, and Homes 2015).

could only adjust in bankruptcy (Governor Rick Snyder, Ford School of Public Policy, November 28, 2016).

The different treatment between public safety and civilian workers was also political. Ron King, a lawyer for the PFRS explained, “Part of it was a flat out political decision. You’ve got to have police and firemen in the city” (Interview, May 30, 2018). Although civilian workers incurred physical risks by, for example, lifting heavy sewer covers or driving buses on dangerous routes, public safety workers knowingly risk their lives, and this has long distinguished them in the eyes of officials. While union power had dwindled by 2013, public safety unions retained influence even with Republican lawmakers (see for examples Fisk and Richardson 2017; Page 2011).

To the extent that occupational differences covaried with demographic characteristics, retiree recoveries were also stratified by gender, race, age, and geography. Public safety retirees were more likely to be white men living in the suburbs; Civilian retirees were more likely to be Black women living in the City of Detroit. Impacts also differed between older and younger retirees. Younger retirees had more to lose from an economic standpoint,<sup>66</sup> but were also better positioned to secure alternative sources of income. An income stabilization fund was created for eligible pensioners and surviving spouses and minor dependents whose total household income was equal or less than 140 percent of the Federal Poverty Level in 2013 (Docket 4391, 2014). The goal of the fund was to prevent low income pensioners from falling into poverty, and it cut across pension classes (Docket 4391, 2014).

In addition to the distinctions drawn between classes 10 and 11, finer grained distinctions were made within these groups. Some civilian retirees received better recoveries than others, because of a “clawback” on interest accrued through the Annuity Savings Fund (ASF). The ASF

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<sup>66</sup> For example, the Fourth Amended Plan of Adjustment noted, “Over time, the loss of COLAs will affect younger retirees (or active employees with vested pension benefits) more than it will affect older retirees because younger people generally can expect to receive more years of annual COLAs” (Docket 4391, 2014:18).

was a voluntary, individual program operated by the GRS. Employees could opt to have a percentage of their wage put into the account and invested with other pension assets. Historically, the GRS Board credited members' accounts with the assumed rate of investment return regardless of the fund's performance.<sup>67</sup> After 25 years of service, active workers could draw down the account. Upon retiring, the worker could cash out or annuitize the balance. Retirees "had no say in the computations or the crediting of interest to their ASF accounts" (Docket 4391, 2014:24). Orr concluded however that between 2003 and 2013, the ASF was treated "as a guaranteed investment program," yielding windfall benefits to an estimated 11,200 members (Docket 4391, 2014:24; Docket 5206, 2014). Although the ASF practices did not appear to be illegal, the city's lawyers openly suggested the ASF plan was fraudulent, stating that "the excess ASF returns had more in common with a Ponzi scheme than a retirement plan" (Docket 5034, 2014:178).

Considering these practices, Orr endeavored to recoup "excess" interest credited to ASF accounts (Docket 4391, 2014). Retirees were asked to pay a lump sum up front. Those who declined the upfront payment would have a portion of their monthly pension check deducted and would be charged a 6.75 percent interest rate on the money over time. The ASF clawback was capped at 20 percent of the highest balance in the ASF account during the period in question (Docket 5206, 2014). Thus, civilian retirees would experience pension cuts ranging anywhere from 4.5 percent of the base pension to 4.5 percent of the base pension plus 20 percent of the ASF balance, not including the elimination of inflation adjustments. Some retirees paid between \$14,000 - \$300,000<sup>68</sup> up front (Tompore 2015). In meetings and court-filed objections, retirees

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<sup>67</sup> GRSD Website. <http://www.rscd.org/grsd/POA-Info/ASF-Recoupment>.

<sup>68</sup> The high-end payment came from a retiree who had accrued \$1.5 million in annuity savings (Tompore 2015).

asked how, if no breach of law had occurred, it was legal for the city to clawback interest that had already been accrued (see for example Docket 6389, 2014).

Treatment also differed among public safety beneficiaries (Dockets 4938, 2014; 5788, 2014). Retired public safety workers were to have their COLA cut by 55 percent. Since the inflation adjustment was pegged to wage hikes, until active public safety personnel received a wage increase, which had not happened since before 2008, the pensions of retired police and fire personnel would technically remain unimpaired. When it came to voting on the plan of adjustment, retired public safety workers were however grouped together with active personnel whose future benefits would accrue under new, less generous terms (Dockets 4938, 2014; 5788, 2014). Some parties objected to the different treatment of retired versus active personnel, arguing that the city was trying to dilute the votes of impaired public safety beneficiaries with those of unimpaired beneficiaries (Dockets 4938, 2014; 7143, 2014).

Other parties, including the city's two largest public safety unions, objected to the different treatment of subsets of active beneficiaries. As of May 2014 when the ballots went out, the city's largest public safety unions had not yet reached an agreement with the city. They accused the city of proposing less favorable terms on their members, calling the differential treatment "illegal and punitive" (Docket 4938, 2014:3). There were even some differences of interest between police and fire personnel. Before the bankruptcy there was "parity" between police and fire departments, meaning that pay was kept the same across rank. However, members of the police department believed that they should receive higher pay on the basis of physical risks incurred. One of the first things that the city government did when Orr was appointed was to break parity. This was a boon to the police officers, because the city could no longer use parity as a reason not to raise wages. However, this development disadvantaged fire fighters.

### *Abdicating Legal Rights*

Previous sections depicted how the foundation settlement embodied charitable relief by making new funds conditional on increased oversight over the pension system and finer grained distinctions between more and less deserving retirees. Another characteristic of charitable relief is the tendency to make economic assistance contingent on the forfeiture of other kinds of political rights or power. Traditional poor relief required recipients to sacrifice citizenship rights in exchange for economic assistance (Marshall 1950). T.H. Marshall believed that what distinguished the modern welfare state from traditional poor relief was that it made social rights part of citizenship. But Goldberg (2007) has argued more recently that modern forms of public assistance are more similar to traditional poor relief than Marshall realized.

As of May 2014, there were 18 ongoing lawsuits challenging different aspects of the bankruptcy (Cunningham-Cook 2014). The settlement required creditors to drop lawsuits against the city and the state. In accepting the settlement, pensioners would have to give up the right to sue the city and state governments to recoup benefits, and waive the constitutional pension protection (Yearout 2014). The Eighth Amended Plan of Adjustment stated that,

If the State Contribution Agreement is consummated, each holder of a Pension Claim will be deemed to forever release, waive and discharge all Liabilities arising from or related to the City, the Chapter 9 Case, including ... Article IX, Section 24 of the Michigan Constitution that such party has, had or may have against the State and any State Related Entities (Docket 8045, 2014:60).

This stipulation did not pass unnoticed. Many retirees filed objections asking, “How can our right to sue be threatened and or eliminated” (See for examples Dockets 5059, 2014; 6391, 2014).

## **The Organization of Retiree Representation**

The previous section described the splintered interests of the members of Detroit's municipal retirement system. The plan of adjustment grouped pension claims into two classes reflecting the bifurcated organization of the Retirement System of the City of Detroit (RSCD). Although bankruptcy laws call for similarly prioritized classes (i.e. secured versus unsecured) to be treated similarly, and parties in the same class to receive the same treatment, Orr's plan drew finer grained distinctions within and between retiree classes.

In order to understand how retirees came to accept the bankruptcy settlement it is important to understand the internal organization of this population. On paper, pension beneficiaries were organized into two groups: classes 10 (PFRS) and 11 (GRS). But the legal representation of the city's 32,000 active and retired vested pension beneficiaries was quite complicated in part because of the intermediary role played by the RSCD. The city was required to make regular contributions to the RSCD, which aggregated contributions from different sources, invested the funds, and administered benefits. In the early stages of the bankruptcy, the city tried to persuade the court to treat the pension bureau - not individual retirees - as the city's creditor. The court concluded, however that the beneficiaries were the true creditors.

In backstage mediations, retirees were represented by a nine-person Official Committee of Retirees (OCR), assembled by the Department of Justice in the early stages of the bankruptcy. The committee chose the international law firm Dentons to represent it in court. (The city government agreed to pay for the committee's legal fees.) Members of the OCR included two union representatives and the presidents of the city's two largest retiree associations, Don Taylor and Shirley Lightsey. Don and Shirley were jointly represented by a young attorney employed by Lippitt O'Keefe Gorbein, PLLC, a metropolitan area law firm that had a long history

representing the city's police officers but no bankruptcy experience.<sup>69</sup> Shirley Lightsey represented civilian retirees as the president of the Detroit Retired City Employees Association (DRCEA), the city's oldest retiree association. In 2013, the DRCEA had about 8,000 dues paying members. Shirley, an energetic 80-year-old Black woman who once ran the city's HR department had served as the association's elected president for 17 years with a break in the middle. The DRCEA's public safety counterpart was the Retired Detroit Police and Fire Fighters Association (RDPFFA). At the time of the bankruptcy the RDPFFA had about 7,000 dues-paying members, roughly 400 of which showed up to the association's monthly meetings (Taylor 2014). Its president, Don Taylor, was a barrel-chested white man and retired police officer, who spent his days lobbying in Lansing and working out of the RDPFFA headquarters in Sterling Heights, Michigan. Don was displeased by the composition of the OCR, and he succeeded in persuading the court to give him and Shirley extra seats at the negotiating table.

Active workers were represented by a handful of unions, the largest being AFSCME (the biggest American public-sector employee union), which represented about 70 percent of active civilian union-represented employees (2,523) and approximately 45 percent of Detroit's 11,943 retired civilian retirees. While collective bargaining includes employment benefits, unions do not bargain on behalf of retired workers. Consequently, their presence on the OCR was controversial. In addition, there were four public safety unions that represented active employees, including those with accrued benefits. And during the bankruptcy, a group of retired police officers formed the Retired Detroit Police Members' Association (RDPMA) to more specifically promote the interests of retired police officers in bankruptcy proceedings.

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<sup>69</sup> Trial attorney Norman Lippitt was lead counsel for the Detroit Police Officers Association from 1967-1984, where he defended many officers against accusations of anti-Black police brutality. In 1967, he succeeded in getting three white Detroit police officers acquitted in the murder of three young black men at the Algiers Motel, in the midst of the violent conflict that took place across the city during the summer of 1967 (Kurth 2017).

By the time the ballots went out in May 2014, the OCR, the retiree associations, the pension funds and most of the labor unions had reached settlement with the city. By July 2014, AFSCME, the DPOA, and the DFFA, the largest and most obstinate unions had struck deals with the city. For the new arrangement to take hold, however, a majority of impacted beneficiaries would have to approve the deal.

### **The Cooling Process**

The previous sections outlined what was at stake for retirees in accepting the settlement. The next sections describe the process by which retirees, and in particular retired public safety workers, came to accept the bankruptcy settlement. Don's group, the RDPFFA was the first to settle and received the best treatment under the plan relative to other subsets of beneficiaries. But Don's group also faced relatively little economic risk in the event that the settlement failed. Whereas civilian retirees would see pension cuts go up from 4.5 percent to 27 percent if the settlement fell through, public safety pensions would not be directly reduced. Instead of losing 45 percent of the inflation adjustment, public safety retirees would lose 100 percent of the inflation adjustment. The COLA was pegged to wage hikes, and there had not been a raise in five years. OPEBs would be cut by 90 percent no matter what. To be sure, protracted litigation could prove costly, but why sanction the near eradication of medical benefits, the erosion of rights and status, and the lack of democratic accountability inherent to charity? These circumstances render the acceptance of police and fire retirees all the more puzzling.

### *Divorcing Contracts from Deservingness*

The eligibility ruling marked a turning point in the outlook and approach of retiree representatives. Before the eligibility ruling (detailed in Chapter 3), retiree representatives expressed anger and frustration towards Orr, the city and state for painting retirees in a negative light. Claims about the affordability of retirement benefits seemed inextricable from claims that retirees were responsible for the city's financial problems, and complicit in past corruption and mismanagement. They regarded Orr's claims with suspicion, arguing that he was spinning the numbers in his favor. And they invoked these claims to mobilize retirees' opposition to the bankruptcy. Before the bankruptcy, municipal pensions were considered "sacrosanct" in the State of Michigan. The state constitutional protection offered municipal pensioners a special level of protection. Judge Rhodes's ruling challenged that assumption. Labor groups had appealed the decision to a higher court, arguing that the bankruptcy was illegitimate, and that the state was on the hook for any pension contributions the city could not meet. At the same time, however, the testimony delivered at the eligibility trial persuaded key retiree representatives that the city was in fact broke. In an interview, Ryan Plecha, the lawyer who represented Don and Shirley, explained, "You can't get blood from a rock. Um, and that's where the City was during the pendency of the bankruptcy" (Interview, October 6, 2016). Thus, in the wake of the eligibility hearing, the retiree representatives changed their tone and rhetoric, telling members that circumstances had changed.

In meetings that followed the eligibility ruling, retiree representatives began to redefine the pension promise and lower retirees' expectations. In doing so, they started to shift members' self-concept from that of contractual rights holders to dependents, substituting the language of rights with the language of sympathy. They informed retirees that the bankruptcy judge did not

recognize the state's constitutional protection as a valid source of legal protection. In addressing the members of the RDPFFA, Carole Neville, the lead attorney for the OCR, a petite New Yorker with a silver bob, interpreted the judge's ruling in the following way:

He said your pensions are like ordinary contracts – they can be modified, rejected in bankruptcy. He said it's just like an airplane lease. It's just like a vendor contract. Now it does have a human element, he said, but it is still a contract (RDPFFA Meeting, December 2013).

In explaining the judge's ruling, Carole tells members that the state constitution will not afford pensions any special protections. There is nothing *special* about the pensions, she says, they are *ordinary* contracts. As discussed in Chapter 3, redefining pensions as “ordinary” contracts created a legal equivalence between pensions and other kinds of contracts that could be impaired in bankruptcy.

Once the city had formally entered bankruptcy, and the judge had affirmed Orr's declaration that pensions constituted a form of unsecured debt, retiree representatives found it difficult to question the distributional logic of bankruptcy. When retirees questioned the prioritization of bondholders – who made calculated investment risks – over pensioners – who entered into employment agreements – Don and the lawyers deferred to the legal framework of bankruptcy. At one of the meetings, for example, a member questioned the modification of medical benefits, saying, “[W]hen we were hired on, we were promised healthcare when you retired.” The member emphasized that he had upheld his side of the agreement, so the city must now fulfill its side of the exchange. In response, Don said, “That's all been eliminated in bankruptcy court. The purpose of bankruptcy court is to eliminate contracts. That's what bankruptcy court does. It eliminates contracts. That was a contract. They're all eliminated in bankruptcy court” (RDPFFA Meeting, September 2014). Don drives home the point that in

bankruptcy, contracts lose their protective power. But he stops short of explaining why some contracts are vulnerable to revision while others are not.

When members specifically asked why their promises were being treated as equal to or less than those of bondholders, Don again defers to the rules of the game. When for example one frustrated member asked, “Is the judge aware that the bond companies realized they could lose their money? Otherwise they wouldn’t insure it. So why the hell are they paying them anything?”

Don responded by saying,

There are bankruptcy laws....There are secured creditors and unsecured creditors and secured creditors can get a larger chunk than unsecured creditors. Summa’ these bonds, everybody says, ‘Why should you worry about them they’re insured?’ We have found out that many of these insurance companies insuring the bonds are filing bankruptcy. So those that thought they were gonna’ get paid off, may not get paid off (RDPFFA Meeting, February 2014).

Here, Don tries to explain the logic of bankruptcy, telling members that as unsecured creditors, they are entitled to less than other creditors. As discussed in Chapter 3, in bankruptcy “secured” contracts, those deemed deserving of protection, are those that are insured or collateralized. Don then tells members that the insurance firms are losing out too, and some are even risking insolvency. The comparison seeks to ameliorate the sense of injustice expressed by the audience member by pointing out that the financial firms have not been immunized from harm. Don could have mentioned the ongoing appeals, seeking to negate Judge Rhodes’s ruling and affirm the deserving status of pensions but he did not do so.

### *Embracing Sympathy*

Having untethered the association between contracts and economic protection, Don and the lawyers started to adjust members' expectations. In February 2014, Don told members not to expect a full recovery:

This is a very difficult situation. Everybody has different individual problems. There is no way to win in bankruptcy. There is only one pot of money. 100,000 people are after it. And Judge Rhodes said we have to be treated the same. Our intention is that there are ways that they don't have to necessarily treat us the same. But there's no way we're going to go in there and say we need 100 percent of our claim and those other guys can take the cut (RDPFFA Meeting, February 2014).

Here Don tells members that they should not expect full protection. While it is possible retirees could get favorable treatment, he says he is not going to ask for full protection. Under these new circumstances, he suggests, that the best retirees can hope for is sympathy. Don opened the February meeting by discussing an effort to delay cuts to medical benefits, explaining:

Our healthcare is a contract. That can be — Basically if the city wants to eliminate it, they can eliminate it. But we took a long shot. Thought we could get a little bit of sympathy out of it. But we tried. We got a little, but and that's about all you can ask for (RDPFFA Meeting, February 2014).

In describing an appeal to the judge's sympathy Don adopts the language of charity. The invocation of sympathy in these exchanges reframes pensioners as charitable dependents. Implicitly he is telling retirees they should accept this new definition of the situation. Some members' comments reveal a receptiveness to this redefinition. At the March meeting, one member raises a question about the city's art museum: "I realize we can't force, and the judge won't force a liquidation in a Chapter 9, but I'm thinking that if there's a lot of money there [the art museum], at least there will be a lot more sympathy from the state." Here the member is saying that retirees deserve sympathy. The fight for what is "rightfully theirs" is giving way to a

fight for sympathy. This comment reflects a growing acceptance that the pension had been redefined.

### *Reframing the Hierarchy*

When an important role or status is revoked, impacted parties that are given a new way of seeing themselves are more likely to accept the change (Goffman 1952). Goffman (1952) argued that “cooling represents a process of adjustment to an impossible situation -- a situation arising from having defined himself in a way which the social facts come to contradict” (Goffman 1952:456). In this case, the new status offered to retirees was the privileged recipients of a gift. The gift positioned retirees as a privileged class, because it prioritized retirees over other “unsecured” (“undeserving”) creditors. In this sense, it served both as a financial and a symbolic inducement for retirees to reach a negotiated settlement.

A key justification for foundation intervention was that it provided the court with a legitimate way to prioritize retirees over other unsecured creditors. Had the new funds come from a public source, the judge reasoned, they would have to be distributed equally between pensioners and unsecured bondholders. Because the funds originated in private sources they could be used to prioritize pensioners above other unsecured creditors. In this way, the earmarking of foundation funds offers retirees an alternative status by reframing them as deserving in relation to other unsecured creditors. Don describes the foundation deal in positive terms, suggesting that retirees need to fight to protect the new pot of money:

What Judge Rosen has been able to do, and some people have even criticized him for doing it, he has gone out and he's got the foundations – a group of very wealthy foundations – to contribute \$350 million, and that amount is going higher. The DIA is gonna' contribute \$100 million. The State of Michigan is gonna' contribute \$350 million. And there are some other smaller groups that are

contributing. I think it's just below a billion dollars now. This billion dollars is earmarked in such a way that the attorneys believe that that doesn't have to go into the general pool to be available to all unsecured creditors. That could be used solely for the purpose of protecting pensions. And that's very important because if this goes into the pool, everybody's gonna' be after it (RDPFFA Meeting, February 2014).

Don's comments evoke an association between charity and deservingness by underscoring the idea that the foundations are offering retirees coveted resources and a privileged status. In April, Don asks members to call their congressional representatives to support the deal. The meeting is tense, because a new proposal has been released that stipulates deeper pension cuts.

Obviously, none of this is a good deal that we're working on, but we don't want to leave anything on the table until we know what's going on. We've made a – we've got to kind of request at this point that you start contacting your legislators, asking them to vote for that piece of legislation....so kind of the pitch we've been using: 'It doesn't solve our problems, but we're going to take whatever we can get if it's available to try to help minimize the damage' (RDPFFA Meeting, April 2014).

Here again, Don adopts a charity framing with the phrase "take whatever we can get." Don knows it's a vexing request. He is asking members to ask their legislators for help, creating a sense of dependence. Furthermore, he is asking them to support a deal that will cut their benefits significantly. After delivering a thirteen-minute update about the bankruptcy proceedings, Don cuts the tension with a sardonic joke: "So, before I bring the attorney up, does anybody want to ask me any questions? Hope none of you brought a gun with you." The members laugh.

In talking about legal attacks being made by other unsecured creditors, Don and the lawyers emphasize that retirees are being offered a privileged status that they should not take for granted. In the September meeting, after another tense exchange between Don and one of the members, Ryan – the association's primary lawyer – backs Don up, noting:

All the guns are pointed at the retirees, and that's not an exaggeration. That's very true. Almost every single objector that made opening statements was taking shots

at retirees saying that you got too much, it's not fair, and basically pouting that they're not getting as much as the retirees. I know a lot of people in this room probably think that's crazy, because people in this room are not thrilled about your position in this case, but there are people who would switch places with your recoveries in a second (RDPFFA Meeting, September 2014).

Don and Ryan's statements reframe pensioners as advantaged in comparison to other adversely impacted groups. Ryan and Don emphasize the prioritization of retirees over other creditors, and suggest that the retirees must now fight – not to recover their full benefits – but to protect the foundation funds.

The foundation money did not just distinguish retirees from other unsecured creditors. It also distinguished retirees from the city government, regarded by many as corrupt, dysfunctional, and responsible for the city's financial difficulties. At the March meeting, Don explained,

Another important part of this, if you've been listening to the media, almost a billion dollars have been donated or going to be donated to go to pensions. Some say it's not worth the trouble of going after the billion dollars. If they don't get it, it's going to come out of the claims. The State of Michigan is \$350 million. It's going to be very tough to get that through the legislators because there's a lot of out-of-city, out-of-state legislators that are upset with the state of Detroit. They say, 'Not another penny to the city.' So far, all of the ones we've been meeting with - the overwhelming majority - have agreed that they're going to vote for it. The main reason is that if it's going to the city, it would never pass. It's specified in there it has to be applied to pensions (RDPFFA Meeting, March 2014).

By underscoring lawmakers' distrust of the city government, Don reframes the loss as one that does not reflect poorly on retirees by distancing retirees from the territorial stigma of the City of Detroit (Kornberg 2016; Wacquant 2007). Don portrays retirees as dependents, but also enables them to save face by distinguishing them from the city government and talking about how lawmakers view them as deserving.

## *Resisting Charity*

While retiree representatives ultimately endorsed the settlement, it should be noted that the foundation intervention was not immediately or universally embraced. When first proposed, the idea provoked a mixed reaction, and even after the city exited bankruptcy some of the lawyers, to say nothing of the individuals affected, were emphatic that the deal had been inadequate and let the state government off the hook. Back in December 2013, Carole told the retirees that she did not think the art was worth pursuing at first, but that the collection was becoming “less sacred” in her eyes.

Y’know the state wants the art to stay in Detroit, let the state pay for the art {*affirming murmurs*}. And then we have Judge Rosen’s plan, which he modestly calls the “Rosen Plan” {*audience laughter*}, which is to get a bunch of private foundations to put up an insignificant amount of money to keep the art in a charitable trust for Detroit. And to give that money in part to the pension plans.... We told him \$500 million wasn’t enough....They’re undervaluing all the assets of the city to make it look like it’s impossible to pay the pensions. They’re undervaluing everything. So that should make you all pretty mad (RDPFFA Meeting, December 2013).

Carole discouraged the idea of retirees pursuing an outright sale of the art in part because she believed that it could cause a racial backlash against retirees who were presumed to be predominantly Black (Interview, January 18, 2017). She argued that there were ways for the city to pay pensions without selling the art collection. Nevertheless, she dismisses the foundation proposal as inadequate. Later, at the same meeting, the foundation proposal came up again. Again, Carole bristled at the idea.

You know the judge at one point in the hearing, and said this, and it made everybody cringe. He said the state and the charitable institutions better get their pockets ready to help the retirees. And all the people sitting around me said they don’t want help like that, they want their pensions (RDPFFA Meeting, December 2013).

These comments reflect Carole's resistance to the repositioning of retirees as dependents, suggesting that the foundation deal was demeaning and that retirees deserved more than charity. In these comments, Carole presents herself *not* as an agent of consolation. Here she encourages retirees to expect more. This is perhaps unsurprising since Carole thought that Detroit's bankruptcy would be a high-profile case that would eventually set a national precedent for the legal status of state and local employee pensions (RDPFFA Meeting, October 2013).

But Carole was not alone in thinking that the proposal was inadequate. In an interview after the bankruptcy, Ron King, a PFRS lawyer said, "We couldn't care less about the art. Sell it off. There was a promise made to these retirees. If that's an asset of the city, so be it, sell the asset" (Interview, July 6, 2018). Public safety retirees and representatives appeared more willing to call for an outright sale of the art, possibly because members were majority-white and unencumbered by concerns about a racial backlash. Despite these opinions, the pension funds, the OCR, the union leaders, and retiree association leaders eventually came to endorse the settlement, seeing it as the best outcome possible under the circumstances.

### *Bought like a Pig in a Poke Pit*

In May 2014 the city started to mail ballots to city creditors. The ballots arrived with a summary of the proposed Plan of Adjustment, a letter from Kevyn Orr encouraging a yes vote, and a CD-ROM with hundreds of pages of legal documents and accompanying explanation (Davey and Yaccino 2017; Yaccino 2014). Each beneficiary received a ballot for their pension claim and another for their medical claim. Each pension ballot identified the retiree's total claim and provided an estimate of anticipated cuts under two different scenarios: The first scenario reflected cuts with outside funding. The second scenario reflected larger estimated cuts in the

absence of outside funding. Thus, the most obvious reasons to vote yes was to minimize the risk of more draconian cuts. As discussed in previous sections, however, the additional losses for PFRS retirees were marginal compared to those that would be imposed on GRS retirees.

The OCR mailed out a letter printed on yellow paper. In bold letters it said, “the Retiree Committee strongly recommends a yes vote on the Plan simply because it is most likely to save you the much more serious harm than will come with a majority of no votes.” If retirees rejected the deal, the city warned, the foundations would withdraw their support. And if the money evaporated, things would get *much* worse. It was unclear whether the foundations would have followed-through on this threat. If they did, the judge could technically have approved draconian cuts over retiree’s objections.<sup>70</sup> If that happened, retirees would have appealed, but nobody could know what the outcome would be.

Judge Rosen and Eugene Driker, the bankruptcy mediators who orchestrated the settlement worried that the vote might not pass (Bomey 2016). Judge Rosen pressured Orr, Orr’s staff, the OCR, the pension funds, and the retiree associations to sell the plan, to treat it “like a political campaign” (Bomey 2016:200). In turn, city and state officials, retiree representatives, and some unions stepped up efforts to rally support for the settlement (Bomey 2016; Davey and Yaccino 2017). Ron King, the PFRS lawyer, explained,

Basically, we were required to publicly endorse the plan. In the absence of that endorsement, I don’t think they would have supported it. There was a lot of pressure to get the plan sold. They really stressed, ‘This is going to go badly if you don’t agree to this. You need to get this over the line.’ We weren’t convinced we could (Interview, July 6, 2018).

Jamie Fields, a retired police officer with a law degree also noted, “Part of the agreement was that...they sent a letter to your members saying, ‘Oh yeah, this is the greatest thing since sliced

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<sup>70</sup> In an in-person interview, Judge Rhodes suggested that he would not have done this, though it is impossible to know for sure.

bread” (Interview, March 23, 2018). Don and Shirley wrote statements of support that were posted online and mailed to the members of their respective associations. The city’s pension funds, retiree associations, and the Official Committee of Retirees organized meetings to answer questions and encourage members to support the settlement (Bomey 2016). Orr personally paid to have buttons pressed with the slogan, “You Can’t Eat Principles, and Uncertainty Doesn’t Pay the Bills” to be distributed at retiree meetings (Bomey 2016). In July 2014, the *New York Times* observed that Detroit had “taken on the feel of an all-out election campaign” (Davey and Yaccino 2017).

Another justification used to build support for the settlement was to maintain a positive status in the eyes of influential actors. In this sense, the vote constituted a choice between being seen by influential actors as “dependents” or “deviants,” to borrow from Schneider and Ingram’s (1993) ideal-type framework. As dependents, retirees’ status as “public spirited” individuals “deserving” of charitable assistance was contingent on their formal acceptance of this new status. If retirees rejected the deal and asked for more, they risked losing the sympathy of the foundations, the judges, and lawmakers. At a public event, Shirley Lightsey told retirees, “If you give that money up, you will have no sympathy from anybody” (as quoted by *MLive.com* 2014). Choosing the settlement and accepting concessions made the retirees look public-spirited, deserving of sympathy and good will. If they rejected the settlement, asked for more money, or pushed for the sale of the art, they would have been seen as selfish and greedy, indifferent to the city’s survival, and undeserving of sympathy. After decades of service to a city that could not match the pay of other city governments, let alone private sector organizations, sympathy in the eyes of decision makers had become the reward for making one more sacrifice.

As the vote drew closer, retirees raised questions and concerns about the settlement. At the RDPFFA meetings, Don and the lawyers responded in a few different ways. One response was to highlight the risks inherent in other strategies. In meetings and in an interview, Don emphasized the drawbacks of the appeal process, were members to reject the settlement. At the June RDPFFA meeting, Don acknowledged that some retirees would like to reject the settlement and have their day in court, remarking, “There’s different opinions out there. There’s those that want to see us fight this to the last bullet, drop of blood, and all of that. I don’t know who would pay for that fight, but it would take numerous years, millions of dollars, and at best, it’s uncertain how it would come up.” This comment exemplifies Don’s way of emphasizing the risks of rejecting the settlement. He often added that by the time the case would move through the court system, many of the city’s retirees might no longer be alive. Don and the lawyers also reassured members that they would not be giving up their rights. If the foundations and the state failed to deliver on their promises, they could still sue. But they still had to sanction pension cuts, however marginal, by waiving the constitutional protection. This also constituted an abdication of rights.

There’s is no longer that worry about voting and giving up your rights that you’re not getting your money because Judge Rhodes has corrected that. That’s going to be on the ballot. Like I said, if you vote to accept the plan, and something was to happen, your vote will be changed to a ‘no’ vote, and then we’ll spend the next 20 years suing everybody (RDPFFA Meeting, May 2014).

Brian O’Keefe, one of the lawyers later backed Don on that point, telling members “we have not given up any of our rights” (RDPFFA Meeting, May 2014).

A second strategy was to remind retirees that they had a choice about how to vote, elevating their sense of control over the situation (Goffman 1952). Such statements often went unchallenged. But, in one tense exchange in June, members pushed back. The exchange started

when one member suggested that accepting cuts would make retirees vulnerable to more cuts in the future:

I think we'd be remiss if we don't discuss the nuclear option because, number one, if you give in, you take any cuts, you know you're going to get another cut. It's coming. I mean one cut, next cut. Eventually, you're pushing everybody into a state of poverty. I'm sixty-one, so I'm paying my medical with my wife, so I take a cut, that cuts me back again. Then, we have another fallback from Mr. Orr for more money, that's another cut. So, where does it stop? If we don't say, we can never say it because once they implement their plan, there's going to be a new pension in place. All those trustees are fired, so then he's going to have to make new standards. I say give us an option to opt out. How come no one's talked about that (RDPFFA Meeting, June 2014).

Don tells the member that his idea has already been introduced and rejected. If the member does not approve of the plan, Don says he has a choice: he can vote against the settlement. Another member then murmurs, "How can you say they're not forced when you've got a gun to your head?" Don does not directly respond. Instead, he moves on, saying, "I'm going to repeat the phone -- anybody wanting a phone number for benefits, the phone number is 885-224-6200." Despite resisting Don's effort to heighten members' sense of control in this moment, the members ultimately let Don off the hook by letting him change the subject. Ultimately, 48 percent of beneficiaries voted on the plan of adjustment. Thirty-seven percent of beneficiaries voted for the plan of adjustment and 11 percent voted against; 52 percent did not vote at all.

## **Conclusion**

This chapter traced a final step in the reorganization of Detroit's municipal pensions from a contractual right to something more closely resembling a charitable gift: pension beneficiaries'

acceptance of the new arrangement. At first glance, supporting the settlement would seem to make economic sense, because it promised to lessen an anticipated economic loss. Unfortunately, the economic considerations were complicated by the stratification of proposed recoveries across retiree groups. If the settlement fell through, public safety retirees would still keep their base pensions but would lose the rest of their COLA. However, civilian pension cuts would jump from 4.5 percent to 27 percent, in some cases much more, suggesting that civilian pensioners confronted the highest economic risks in rejecting the settlement. Contrary to what one would expect, those who faced the smallest risks in rejecting the settlement were most likely to support it; Those who faced the biggest economic risks were more inclined to reject it.

I have argued that the “cooling out” process – an active reworking of expectations and self-concept – moved some retirees to accept an economic loss as well as a loss in status. Those that voted against the settlement could not be cooled, because the stratification of recoveries heightened their sense of inequity. In Goffman’s (1952) original theorization, the cooling out process involves different strategies: letting people vent, heightening their sense of control, providing a consolation, divorcing the economic loss from the loss of status. This chapter endeavored to show how these strategies were deployed retiree representatives, given the task of securing retiree support. Retiree representatives tried to rhetorically separate the city’s lack of resources from the politics of blame to suggest that the economic loss was not dishonorable. Yet, in evoking the depoliticized language of austerity, trusted representatives glossed over the underlying distributional decisions about who should pay for the city’s debt reduction (Blyth 2013).

It is important to note that the circumstances of Detroit’s bankruptcy differ from Goffman’s theory in important ways. Although he recognized that cooling out could apply to a

variety of situations in which someone loses a valued identity or status, Goffman (1952) had a sting in mind when he wrote his essay. In extending this metaphor to the context of Detroit's bankruptcy, I do not impute deceptive or sinister motives on the lawyers and association leaders discussed in this chapter. Second, Goffman described the cooling-out process at an individual level. However, what transpired in this case were efforts to simultaneously persuade groups of people largely in meetings and written communications. This suggests that Goffman's cooling-out framework can be usefully extended to collective situations. Doing so can help to clarify how micro-level interactions mediate macro structural changes.

Ultimately, this chapter illustrates how regressive policy reform may be facilitated by moving people from a valorized category to a de-valorized category, in this case from contractual rights holders to charitable dependents or in Schneider and Ingram's (1993) words, from the categories of "advantaged" to "dependent" (Fraser and Gordon 1992; Goldberg 2007). Sociologists have found that the durability of the contract-versus-charity opposition has stymied progressive efforts to expand social provision (Steensland 2006). This chapter suggests, however, that the durability of these categories does not hinder retrenchment in quite the same way. In this instance, charity seemed better than the uncertainty inherent in the unfamiliar terrain of the undeserving contractee. Ultimately, moving beneficiaries who had upheld their side of the bargain out of the valorized contract category and into the domain of charity elevated the category of charity in what is known as category creep. Thus, while welfare state scholars generally view these policy logics as fixed and mutually exclusive, the movement of beneficiaries between these categories changed the meaning of the categories themselves.

## CHAPTER VI

### Conclusion

How were city pensions converted from a contractual right to a charitable gift? Answering this question can help social scientists to understand how trusted institutions, such as the state and employers, unwind ostensibly ironclad promises of the past. The profound rigidity of the welfare state's ideological foundation is part of what makes this particular shift so puzzling. Notions of contracts and gifts run like fault lines through scholarship on America's federal welfare state. These policy paradigms originated at a time when working or begging were seen as the only ways of organizing economic relationships outside of the household (Fraser and Gordon 1992). These two models influenced policy development at the conceptual level – by defining the realm of possibility – at the discursive level – shaping how people talk about social provision – and at the institutional level – by serving as templates for policy design (Steensland 2011). As Michael Katz (2010:509) has noted, “first class citizens become party to the social contract by earning its benefits.” Others have had to depend on the charity of the state or on more punitive substitutions for welfare.

The affinity for contractual principles – voluntary, reciprocal exchange among independent equals – runs so deep in American political culture, that policy makers strive to define new programs and their beneficiaries in opposition to charitable relief (Fraser and Gordon

1992; Goldberg 2007). Thus, while public assistance programs have always been relatively anemic and susceptible to reform, social insurance programs have enjoyed widespread popularity and proven surprisingly resilient in the face revisionary efforts (Pierson 2001). Previous studies have found that the oppositional logic between notions of contract and charity is so strong that more generous reform efforts that erase boundaries between social insurance and public assistance provoke resistance because they threaten to mar the social status of privileged populations (Steensland 2011).

This dissertation argued that the entire sweep of the welfare state literature suggests that the oppositional categories of contract and charity are highly inflexible. The key contribution of this dissertation is to argue that these categories are more porous and malleable than previously thought. I have used Detroit's 2013 bankruptcy as a theory-building case to add nuance to theories of the role of classification in American social provision. Classification plays an important role in social provision, because categorization is a necessary precursor of valuation and evaluation, meaning that classification plays a key role in determining who is worthy of economic protection (Lamont 2009).

Drawing on an "eventful analysis" of Detroit's 2013 bankruptcy, I argued that in moments of crisis the symbolic and programmatic boundaries between contract and charity can be reconfigured in significant and durable ways. Understanding how the boundaries between contract and charity can shift requires a more careful accounting of the underlying complexity of these categories. There are multiple kinds of contracts (such as compensation and credit) and multiple kinds of gifts (charity, gratuity and credit) and sometimes they overlap. Furthermore, the same idea can be differently institutionalized across social contexts that exist in complex relation to one another. Mismatches can arise between the micro (e.g. the organization) and

macro (e.g. state laws) contexts in which such programs operate. The interpretive flexibility and institutional diversity of these concepts are what make social policies vulnerable to classification struggles, struggles over meaning, and also what establish the limits of their reinterpretation.

In Detroit's case, this reconfiguration was largely carried out by a handful of influential actors: judges, lawyers, foundation leaders, and trusted retiree representatives who found themselves in positions of unusual influence. Any transformation story necessarily underscores the role of agency. However, in tracing the unprecedented reorganization of Detroit's municipal retirement system, this account also affirms the importance of paying careful attention to the "nature of the social world" within which novel arrangements emerge (Johnson and Powell 2017; Sewell 2005:10). In Detroit's case, the violent events of 1967 catalyzed the city's social and political isolation, concentrating and exacerbating the adverse effects of deindustrialization. Racial conflict, latent and overt, played a complex and important role in creating the conditions of bankruptcy (Farley 2015). Part of what Detroit's case illustrates is the way that racialized antipathy towards welfare can be redirected towards government workers, regardless of, but especially if they are perceived as predominantly people of color (HoSang and Lowndes 2016; Somers 2017). Also true, however, was that in bankruptcy, the collective memory of historical racial conflict was resurrected to bolster social provision. The grand bargain created an expedient resolution to the bankruptcy, but in the judge's rendering it also constituted a means of racial reconciliation. In this instance, the individual skill was exercised in the act of retrospective framing: Selecting features of the environment from the past that would resonate with key audiences in the present. In the next section, I review the dissertation's chapter level arguments in greater detail.

### *Summary of Argument*

Chapter 2 motivated the empirical puzzle by demonstrating the applicability of the contract versus charity framework to the lesser studied local context of municipal pensions. In tracing the legal history of public employee pensions this chapter, first, demonstrated how government pensions came to be seen as inviolable contractual promises. Public employee pensions are quite literally part of the employment contract. But because employers did not clearly delineate the status and rights of beneficiaries, pension disputes often landed in court. In keeping with the existing literature on social provision, courts used the conceptual and discursive distinctions between gifts and contracts to adjudicate the rights and status of pensioners. Early on, the courts tended to define government pensions as a gratuity. By the mid-twentieth century, however, the courts had coalesced around the view that pensions were more appropriately understood as a form of compensation, implying certain contractual rights. This history reveals how the same policy program came to be defined in seemingly contradictory ways. It further demonstrated how notions of contract and gift become embedded in different institutional contexts that exist in complex relationship to one another. Programmatically, pensions conformed to contractual principles, but legally pensioners were initially defined as a kind of a gift. Thus, the relationship between the employment context and the legal context in which it is embedded carries implications for the kinds of claims that recipients can make. Ironically, this history suggests that the only way to strengthen a contractual obligation is to have legal institutions reiterate its contractual status.

Chapter 3 traced the first step in the subsequent redefinition of pensions by examining how obdurate classifications of deservingness were upset in the process of entering bankruptcy. I argued that Detroit's emergency manager exploited the interpretive flexibility of pensions to

break taken for granted associations between contracts and deservingness. Drawing on their shared temporal characteristics, Detroit's emergency manager reinterpreted pensions from compensation to credit in order to subject them to a different classification scheme, that of property rights. Whereas "secured creditors" – bondholders who had collateralized their loans – had their contracts upheld, retired workers and active workers with accrued pension benefits were grouped together with other groups of "unsecured" (i.e. undeserving) city creditors. Because gifts and contracts were the dominant conceptual models available for organizing social provision, collateralizing retirement benefits was never an option, and pensions fell through the conceptual cracks of the bankruptcy code. Thus, although sociologists have always understood contracts to be a valorized kind of relationship in American society, this chapter demonstrates that crisis conditions open up spaces of "undeserving contracts."

Chapter 4 examined a second key step in the broader redefinition of pensions. This chapter investigated the puzzling intervention of a group of foundations and argued that the introduction of a charitable gift led pensions to be prioritized over other forms of "unsecured" credit. This chapter traces the efforts of an influential political actor to mobilize foundations to intervene. In framing the intervention around the capacious idea of "saving the city" the judge made it possible for foundations to privately reinterpret the project in a way that accorded with divergent missions. By resurrecting the ghost of historical racial conflict, the judge drew on historical features of the regional environment to bolster support for his plan. Charity is usually considered a weak position from which to make political claims. This chapter furthers the argument that the poles of contract and charity do not always align as expected. Contrary to prevailing expectations, charity offered pensions a measure of economic protection in relation to other unsecured contracts.

Chapter 5 recounted a third and final step in the transformation of pensions from a contractual right to something more closely resembling a charitable gift. This chapter traced the process by which the municipal retirement system was solidified in its new public/private form. I argued that the institutionalization of the gift depended on retirees' public acceptance of reduced pensions and slashed medical benefits, of the substitution of employer contributions with private, charitable dollars, and the permanent privatization of the city's most valuable asset. In keeping with other forms of public and private charitable assistance, recipients had to abdicate other forms of citizenship – in this case key legal protections – in order to access the gift. I argue, contra economic explanations, that acceptance of the settlement depended on a cooling out process whereby trusted representatives adjusted the expectations and self-concept of retirees. These strategies proved most effective among retirees who could see themselves being prioritized over bondholders as well as other subsets of retirees. These strategies were least successful among retirees who saw themselves being blamed and punished for the city's financial distress.

#### *Is Detroit an Idiosyncratic Case?*

In the 1950s and 1960s, Detroit's experience seemed to parallel those of many cities around the United States, as urban growth and industrialization gave way to deindustrialization, suburbanization, urban depopulation, and racial tension (Dewar et al. 2015). Sugrue's classic text on *The Origins of Urban Crisis* told Detroit's story and in doing so shed light on what was happening elsewhere. In the years leading up to the bankruptcy, Detroit still exhibited the same dynamics of racial and economic inequality that exist across the United States, but it seemed unique in the scope of its distress (Dewar et al. 2015).

Historically, state governments went to lengths to avert municipal bankruptcy (Baldassare 1998). In the wake of the Great Recession, however, state governments have started to assert more power over cities in various ways (Hinkley 2015). Such interventions can make it easier for state governments, experiencing their own budget woes, to offload risk onto the balance sheets of local governments.

Although city bankruptcy remains a relatively rare phenomenon, the frequency and forms of urban crises seem to be proliferating (Gotham and Greenberg 2014). As Janet Roitman has noted, “Crisis is everywhere” (Roitman 2013). Crises are often deployed as a narrative device that signals temporal discontinuity and makes it possible to imagine how things could be otherwise (Roitman 2013). Foundations have never paid for government pensions before, and it is quite possible that they never will again. Nevertheless, it is my hope that some of the insights of this study could be cautiously applied to select other policy contexts. One context where it might be applicable is that of Social Security. Somers (2017) has recently argued that the racialized rhetoric of welfare has been redirected at Social Security recipients in an attempt to delegitimize their benefits. Another example of an ostensibly unbreakable lifelong promise that has recently confronted mounting critique is the institution of tenure. Under what conditions could American professors be stripped of tenure? Could “tenure envy” among the growing ranks of adjunct faculty reduce opposition to the withdrawal of this benefit?

Government pensions are themselves an important case of social policy in part because they are being used as a way to attack the state by decrying a fiscal emergency. Over the course of the twentieth century, public employee pensions came to exert “substantial influence on the economic, social, and political fabric of the United States” (Congressional Pension Task Force 1978:2). Today, state and local retirement systems continue to wield considerable influence over

the American economy, managing cumulative assets in excess of \$4 trillion (Federal Reserve 2018). In an era of heightened economic insecurity, public pensions remain an important component of American retirement security, covering approximately 25 million active and retired public servants working at state and local levels.<sup>71</sup> Retirement security – i.e. the capacity to limit economic risk and maintain an adequate standard of living in retirement – tops Americans’ financial concerns (Dugan 2014). And while social insurance, “defined benefit” pensions have been phased out of the private sector, they remain prevalent among state and city governments. In 2011, seventy-eight percent of state and local government employees were still covered by defined benefit pension plans, in comparison with just eighteen percent of private sector workers (Wiatrowski 2012). Workers covered by public pensions are often subject to “pension envy” among private sector workers (Mitchell and Anderson 2009). But many forms of public sector work – firefighters, bus drivers, police, judges, water treatment operators – have few counterparts in private industry. Public sector work often comes with greater personal risk and requires more loyalty and discretion than is required in private sector work (Mitchell and Anderson 2009). Social scientists have frequently suggested that Social Security will be the next frontier in the “Great Risk Shift” (Hacker 2006). It seems however that government retirement benefits may be the next frontier of regressive reform.

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<sup>71</sup> *Public Plans Data*. 2001-2016. Center for Retirement Research at Boston College, Center for State and Local Government Excellence, and National Association of State Retirement Administrators

Table 1. Votes on the Plan of Adjustment by Vested Pension Beneficiaries

	<b>GRS</b>	<b>PFRS</b>	<b>Total</b>
Total pension claim of voters	\$1,070,265,000	\$758,026,100	\$1,828,291,000
<i>As percent of total claim</i>	60%	46%	53%
Median	\$77,230	\$88,481	
Mean	\$125,309	\$106,990	
Standard deviation	115,085	69,662	
<b>Total beneficiaries</b>	<b>19,990</b>	<b>12,437</b>	<b>32,427</b>
Retirees	12,118	9,054	21,172
Actives	5,658	3,272	8,930
Not working; not yet receiving benefits	2,214	111	2,325
<b>Retired beneficiaries</b>	<b>12,118</b>	<b>9,054</b>	<b>21,172</b>
Women	49%	Unknown	Unknown
Over 65	67%	Unknown	Unknown
Living in Michigan	89%	80%	85%
Living in Detroit	52%	3%	35%
Average annual pension	\$19,000	\$32,000	\$24,761
<b>Total votes</b>	<b>8,541</b>	<b>7,085</b>	<b>15,626</b>
<i>As percent of beneficiaries</i>	43%	57%	48%
Accept	6,248	5,822	12,070
<i>As percent of voters</i>	73%	82%	77%
Reject	2,293	1,263	3,556
<i>As percent of voters</i>	27%	18%	23%
Did not vote	11,449	5,352	16,801
<i>As percent of beneficiaries</i>	57%	43%	52%

Sources: Voting data is from court documents; Geographical data was provided by Bridge Magazine; Demographics obtained from legislative packet provided by Ryan Plecha.

Table 2. Bankruptcy Timeline

<i>Before Bankruptcy</i>	
Tuesday, May 15, 1990	Michigan’s emergency management law takes effect
Wednesday, March 16, 2011	Public Act 4 expands emergency manager powers
Thursday, November 10, 2011	Governor appoints Detroit financial review commission
Wednesday, November 7, 2012	Voters repeal Public Act 4
Friday, December 28, 2012	Governor approves Public Act 436
<i>The Undeserving Contract</i>	
Thursday, March 14, 2013	Governor appoints Orr Detroit’s emergency manager
Monday, June 10, 2013	Orr publicly calls pensions "sacrosanct"
Friday, June 14, 2013	Orr announces proposed pension cuts
Thursday, July 18, 2013	Orr files for bankruptcy on behalf of Detroit
Wednesday, October 23, 2013	Eligibility trial begins
Tuesday, December 3, 2013	Judge Rhodes rules Detroit eligible for bankruptcy
<i>Introducing the Gift</i>	
Monday, January 13, 2014	Judge Rosen publicly introduces the foundation plan
Friday, February 21, 2014	City proposes a first version of the “Plan of Adjustment”
Tuesday, April 8, 2014	City settles with UTGO insurance companies
<i>Stabilizing the Gift</i>	
Tuesday, April 15, 2014	RDPFFA reaches settlement with city
Wednesday, April 16, 2014	GRS reaches settlement with city
Friday, April 25, 2014	Retiree committee endorses plan of adjustment
Tuesday, September 2, 2014	Confirmation trial begins
Monday, September 15, 2014	Syncora settles with the city
Thursday, October 16, 2014	FGIC settles with the city
Tuesday, November 4, 2014	DFFA drops objections
Friday, November 7, 2014	Rhodes approves the Eighth Amended Plan of Adjustment

Table 3. Classification of Claims

Class	Claim	Original Estimated Allowed Amount (\$ Mill)	Original Estimated Recovery	Final Estimated Allowed Amount (\$ Mill)	Final Estimated Recovery
Secured Claims					
1A-1F	DWSD Bonds	5,780	100%	5,780	100%
2A-2F	Secured GO Bonds	485	100%	485	100%
3	Other Secured Claims	9	100%	8,855	100%
4	HUD Installment Notes	90	100%	90	100%
5	COP Swaps	288	30%	85	30%
6	Parking Bonds	8	100%	8	100%
Total		6,660		6,457	
Unsecured Claims					
7	Limited Tax GO Bonds	164	15%	164	10-13%
8	Unlimited Tax GO Bonds	375	15%	388	74%
9	COPs	Unknown	TBD	1,473	0-10%
10	PFRS Pension	1,588	86% - 94% (0% COLA)	1,250	100% (0-45% COLA)
11	GRS Pension	2,299	66% - 74% (0% COLA)	1,879	73%-95.5% (0% COLA)
12	OPEB	3,185	15%	4,303	10-13%
13	Downtown Development Authority	34	15%	34	10-13%
14	Other Unsecured Claims	Unknown	15%	150	10-13%
15-16	Convenience Claims & Subordinated Claims	Unknown	25%	Unknown	25%
Total		7,644		9,640	

Sources: Original estimates are from the first amended plan of adjustment disclosure statement. Final estimates are from the fourth amended plan of adjustment disclosure statement (Dockets 3382; 4391).

Table 4. Eligibility Trial Timeline

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Wednesday, October 23, 2013

*Opening arguments*

Thursday, October 24, 2013

*Guarav Malhotra, Ernst & Young, Restructuring professional, Advisor to Orr\**

*Charles Moore, Conway Mackenzie Restructuring professional, Advisor to Orr\**

Friday, October 25, 2013

*Kenneth Buckfire, Miller Buckfire & Co., Investment banker, Advisor to Orr\**

*James Craig, Chief of Police\**

*Kevyn Orr*

Monday, October 28, 2013

*Governor Snyder*

*Kevyn Orr*

Tuesday, October 29, 2013

*Kevyn Orr*

Monday, November 4, 2013

*Kevyn Orr*

*Donald Taylor, Retired Detroit Police & Fire Fighters Association President^*

*Shirley Lightsey, Detroit Retired City Employees Association^*

Tuesday, November 5, 2013

*Andy Dillon, State treasurer*

Wednesday, November 6, 2013

*Andy Dillon, State treasurer*

*Richard Baird, Advisor to the governor*

Thursday, November 7, 2013

*Closing arguments*

*\*Called by counsel for the City of Detroit*

Table 5. Voting Returns from the 2012 DIA Millage

	Yes	No	Total Votes	Total Population*
Macomb	62,390	60,604	122,994	827,917
of total votes	51 percent	49 percent		
of total pop.	8 percent	7 percent	15 percent	
Oakland	139,678	80,571	220,249	1,173,489
of total votes	63 percent	37 percent		
of total pop.	12 percent	7 percent	18 percent	
Wayne	162,278	75,681	237,959	1,849,869
of total votes	68 percent	32 percent		
of total pop.	9 percent	4 percent	13 percent	
Grand Total	364,346	216,856	581,202	3,851,275

\*Totals calculated by adding city totals. The numbers are lower than those reported for the full county by the 2010 U.S. Census.

Table 6. Foundations that Contributed Directly to the DIA Settlement

Foundation	Pledge (Mill USD)	Public / Private	HQ	Giving (2014) (Mill USD)	Assets (2014) (USD)
Ford Foundation	125	Private Foundation	NYC	518	12.4 Bill
Kresge Foundation	100	Private Foundation	Troy, MI	140	3.7 Bill
W.K. Kellogg Foundation	40	Private Foundation	Battle Creek, MI	295	8.6 Bill
Knight Foundation	30	Private Foundation	Miami, FL	116	2.3 Bill
William Davidson Foundation	25	Family Foundation	Southfield, MI	51	849 Mill
Community Foundation for Southeast MI	10	Public Charity	Detroit, MI	99	765 Mill
Mott Foundation	10	Private Foundation	Flint, MI	73	2.8 Bill
Erb Family Foundation	10	Family Foundation	Bloomfield Hills, MI	6	279.8 Mill
Hudson-Webber Foundation	10	Private Foundation	Detroit	8	174 Mill
McGregor Fund	6	Private Foundation	Detroit	7	182 Mill

Source: Welch 2014; 990 Forms.

Table 7. Comparison of Stipulated Reductions in Retirement Benefits, Based on the Outcome of the Vote

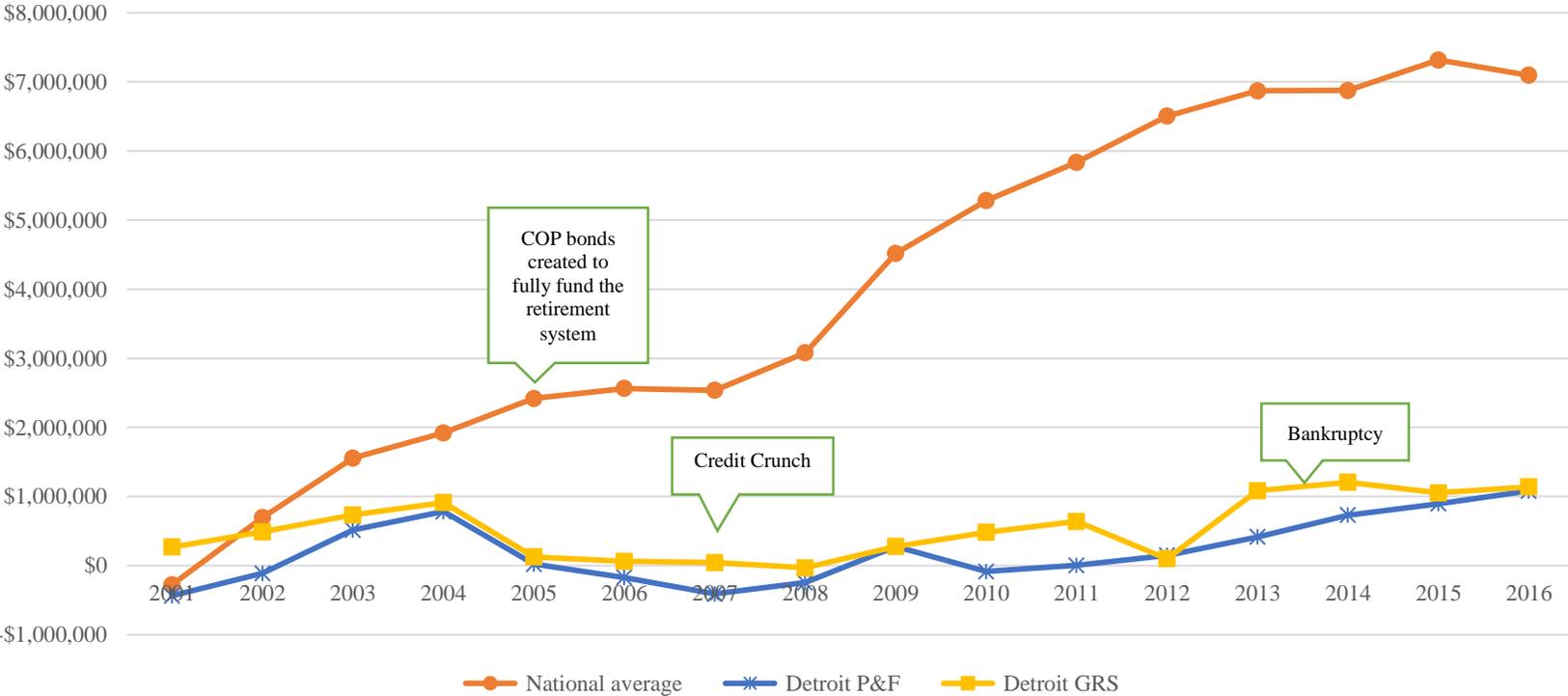
<b>Reduction</b>	<b>Pension</b>	<b>COLA*</b>	<b>Medical</b>	<b>ASF**</b>
GRS				
Accept	4.50 percent	100 percent	90 percent	Varied
Reject	27 percent	100 percent	90 percent	Varied
PFRS				
Accept	0 percent	45 percent	90 percent	NA
Reject	0 percent	100 percent	90 percent	NA

\*COLA refers to Cost of Living Adjustments, which are pegged to wage increases of active workers and are supposed to adjust for inflation.

\*\*ASF refers to the Annuity Savings Fund, a voluntary investment fund managed by the GRS, that was subject to an interest clawback under the Plan of Adjustment. The clawback was subject to a ceiling of 20 percent the total value of the pension.

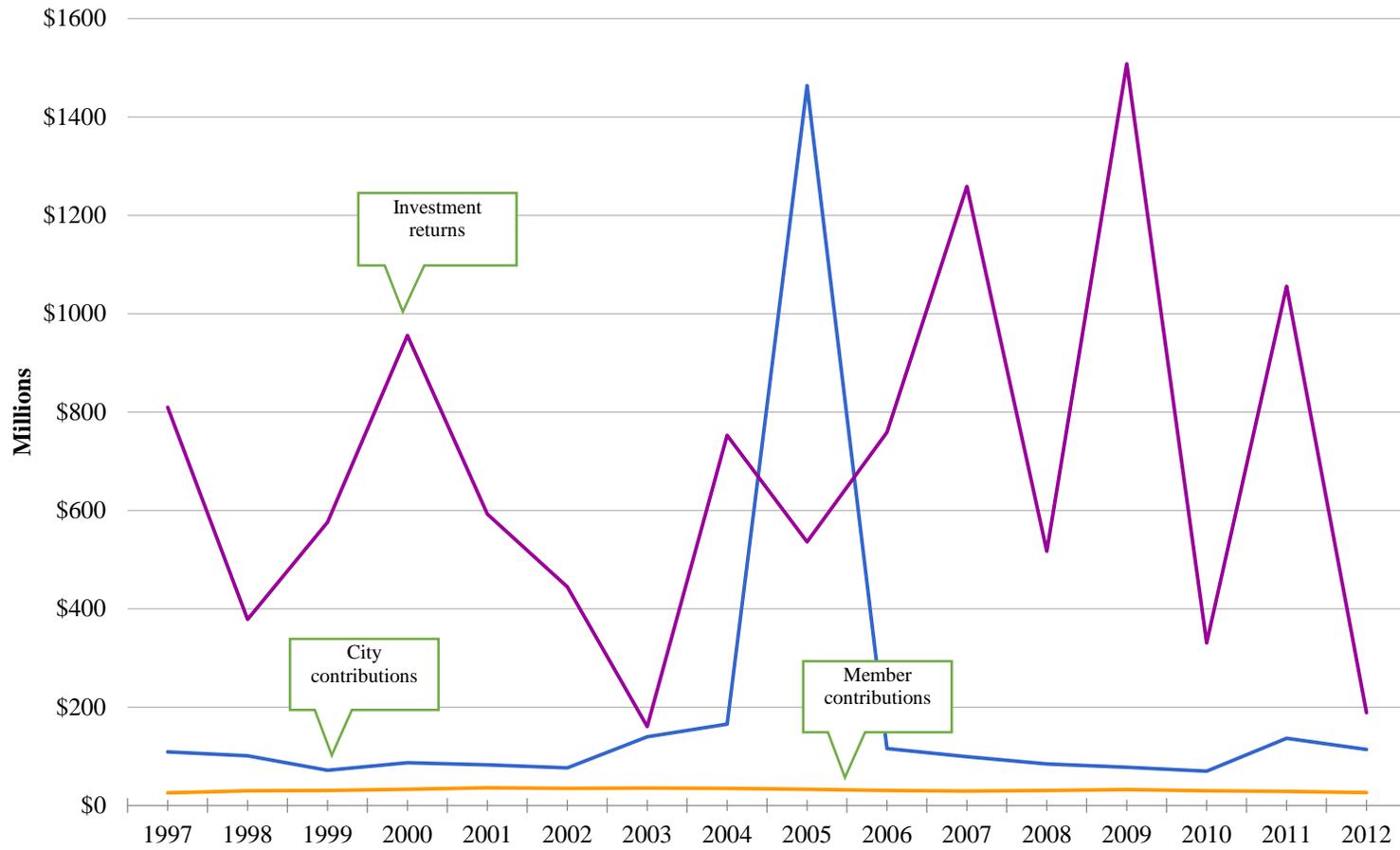
Source: Dockets 4392, 2014; 6379, 2014.

Figure 1. Reported Pension Deficit, National Average, Detroit GRS, Detroit PFRS, 2013



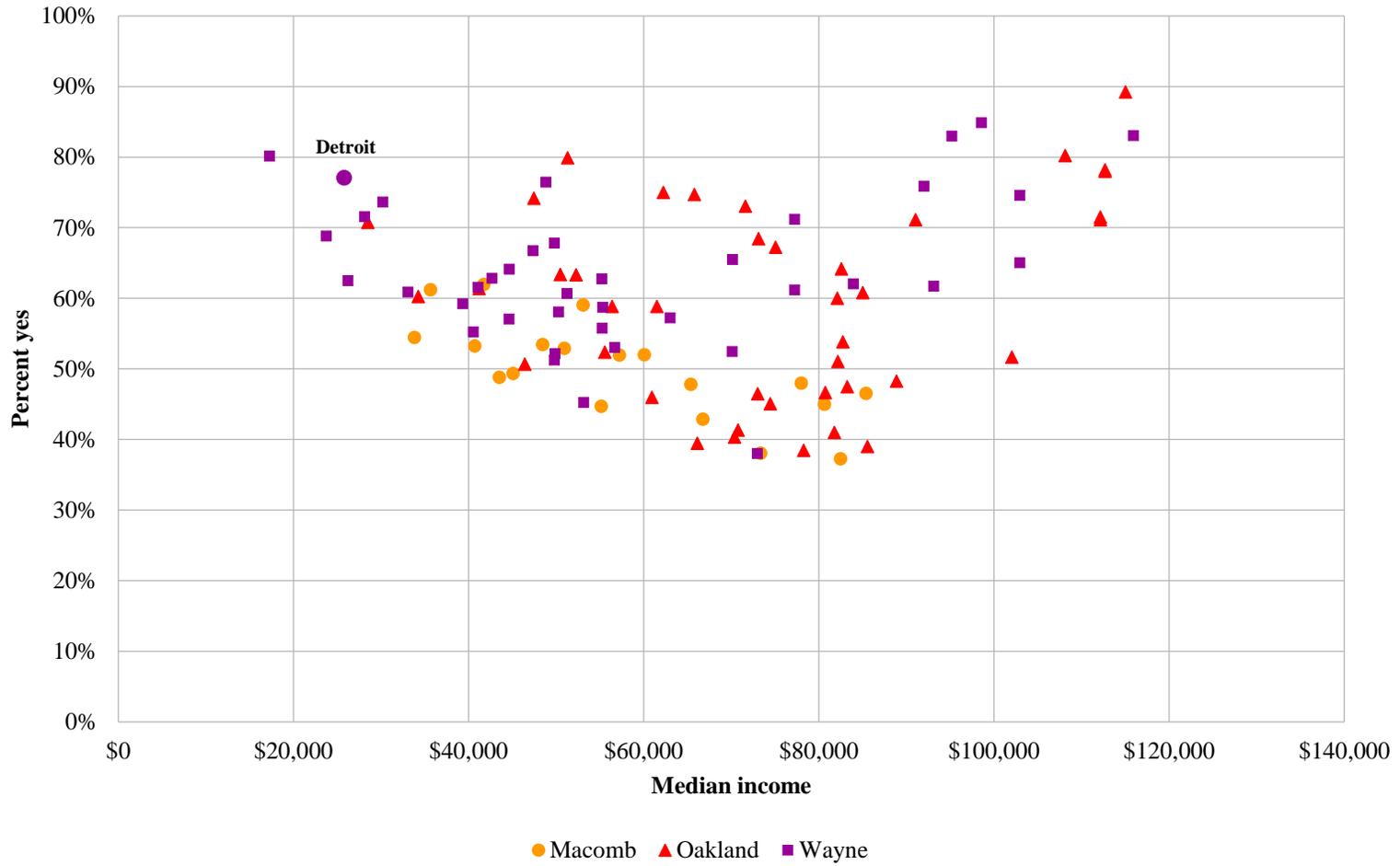
Source: Data from the Center for Retirement Research. Accessible via <http://crr.bc.edu/data/public-plans-database/>.

Figure 2. Detroit Combined GRS/PFRS Retirement System Revenues, 1997-2012



Source: Annual Reports

Figure 3. Percent of Each City's Voters that Supported the 2012 DIA Millage, by Median City Income, by County



Source: Voting returns; U.S. Census.

Figure 4. Geographical Dispersion “Heatmap” of Detroit’s Municipal Retirees Living in the United States

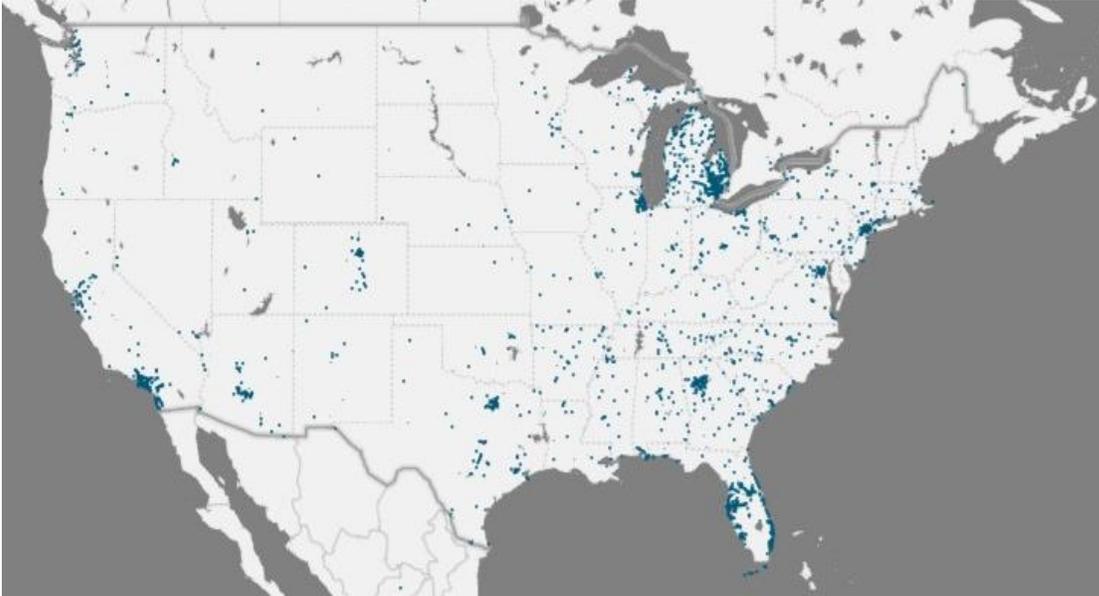
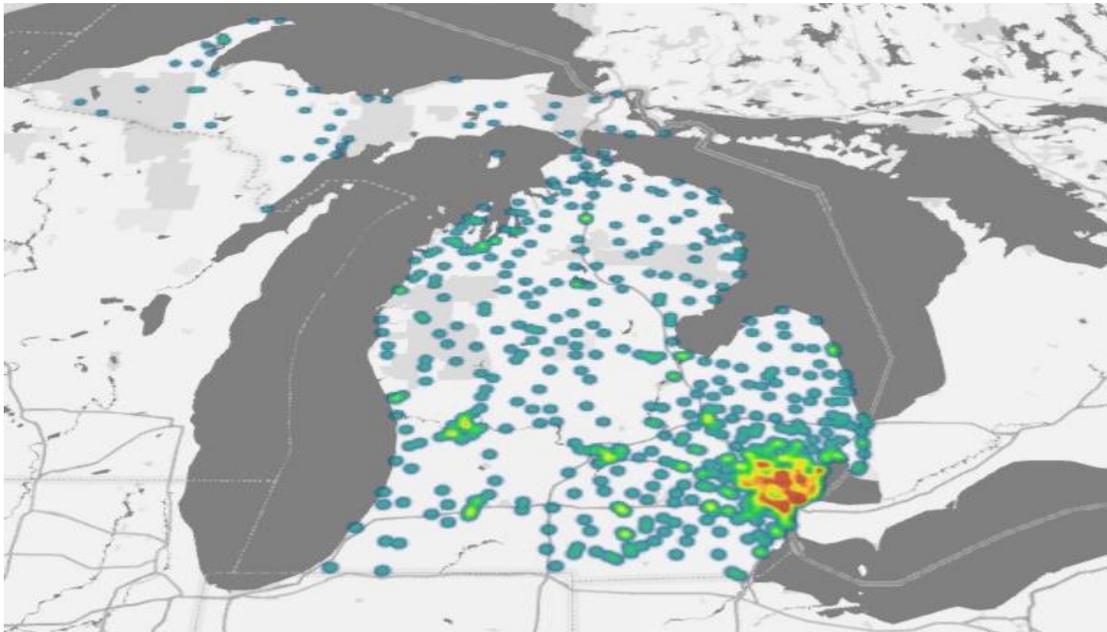


Figure 5. Geographical Dispersion of Detroit’s Municipal Retirees Living in Michigan



Source: Data provided by Bridge Magazine.

## **APPENDICES**

## APPENDIX A

### Notes on Sources

#### Court Documents

The primary source of data for this dissertation included court documents filed during Detroit's municipal bankruptcy. These documents were essential to understanding how competing interpretations of the deservingness of pensions and pensioners played out in court. Between July 18, 2013 (the date that Kevyn Orr requested federal bankruptcy protection for the city) and November 7, 2014 (the date that Judge Rhodes issued his confirmation ruling), 8,584 court documents were filed and made freely available through a searchable database hosted by the legal services firm, KCC LLC. This list excludes court documents filed in association with adversary proceedings, lawsuits filed separately but related to the bankruptcy case. It also excludes transcripts of court hearings, which were available for purchase on PACER (Public Access to Court Electronic Records). Conveniently, I was able to download a full list of the KCC LLC court documents in Excel. This file indicated the docket number, the date filed, the document name, and related documents. The document name included key words that helped me to identify the type of document enclosed and its author. Key document types included but were not limited to "objections," "briefs," and "plans of adjustment." This file made it easy to search and sort documents based on dates, parties, and keywords.

I used twelve key documents to anchor the analysis. Ten of these documents consisted of various versions of the debt restructuring proposals issued by Detroit's state-appointed emergency manager. The first proposal was introduced on June 14, 2013, predating the bankruptcy. In a way, this preliminary proposal constituted a first shot across the bow, because it

clarified the emergency manager's intentions to retrospectively modify pensions among other city obligations. The next nine versions of this proposal reflected subsequent iterations of this proposal. The final version of the "Plan of Adjustment" was filed on October 24, 2014 (Docket 8045). Each version of the proposal grouped and ranked creditors according to their priority for repayment and explained if and how Orr intended to modify the city's commitments to those parties. These key documents were supplemented by two additional documents that reflected key turning points in the bankruptcy. The first was the judge's ruling that the city was in fact eligible to enter bankruptcy on November 5, 2013. The second was the judge's confirmation of the city's restructuring plan, signaling the city's exit from bankruptcy on November 7, 2014.

These data were supplemented by "objections" that stakeholders filed individually and in groups in response to the city's request for bankruptcy filing and various restructuring proposals. During the entire period of the bankruptcy, over 2,000 objections were filed. I used dates and keywords to identify objections of interest. For example, to analyze objections to the city's attempt to enter into bankruptcy (Chapter 3), I searched for documents with the phrases "eligibility objection" and "objection to eligibility" in their titles, filed between July 18, 2013 and November 5, 2013, when the eligibility trial ended. This search returned a total of 91 objections filed by individuals and organizations. Objections filed by individuals were quite short, usually not exceeding two pages. Objections filed by organizations were often much longer. I coded objections filed by individuals by hand to get an overall sense of the arguments being made, and their relationship to the conceptual categories of contract and charity. Chapters 3 and 4 rely particularly heavily on court documents filed during the case.

## Interviews

Interviews were an important source of data when it came to what transpired outside of the court room. The collection of interview data was approved by the University of Michigan Institutional Review Board (HUM00104309). Interviews were particularly helpful in reconstructing the process by which foundations were mobilized to intervene in the city's bankruptcy (Chapter 4). They also helped to reconstruct how retirees and key retiree representatives understood and experienced the bankruptcy (Chapter 5). In total, I conducted formal semi-structured interviews with 43 individuals. Fifteen of these interviews were conducted over the phone. Interviews lasted between thirty minutes and three hours, depending on the subject's availability.

Certain individuals (judges, lawyers, foundation leaders, and retiree representatives) were selected for interviews because they occupied positions of influence during the bankruptcy. Detroit's bankruptcy proceedings were stewarded by a judge who was assisted in mediations by six other judges and lawyers. I interviewed five of these seven judicial actors. I was able to reach Judge Rhodes who presided over the case through a generous introduction by another lawyer who I interviewed. I reached another mediator through a friend who had clerked for that judge during the bankruptcy. Three mediators accepted interview requests sent by e-mail. Two other mediators did not respond to interview requests.

In addition, I interviewed ten lawyers representing different stakeholders to the bankruptcy. I attempted to distribute interviews with lawyers across stakeholder groups but did not succeed in recruiting lawyers working with the bond insurers. Because of the dissertation's focus on retirees, I did not try to interview union representatives. Active workers and retirees were largely seen as different groups with different interests. And unions cannot bargain on behalf of retired employees. In reality however these groups overlapped significantly, as

over 10,000 active workers had accrued pension benefits. The absence of union representatives as well as other members of the Official Committee of Retirees is a limitation of the study.

I conducted semi-structured interviews with six foundation presidents and one program officer. The first of these interviews was fittingly with Mariam Noland, the president of the local community foundation who played an instrumental role in bringing foundations to the table. In 2016, I attended an event where Mariam spoke about her experience of the bankruptcy, organized by the Ford School of Public Policy. I approached her at the end of the event and asked if she would be amenable to an interview. She agreed. I secured interviews with four other foundation leaders through a combination of introductory e-mails and calling their offices and asking administrative assistants how best to request an interview. I received the e-mail addresses of several foundation leaders from a lawyer. In those cases, I sent a formal letter of introduction with a description of the project and asked if they would be amenable to an interview.

In interviews with foundation representatives I asked interview subjects to describe how they became involved in the bankruptcy, their recollections about how bankruptcy mediators framed their request, how the initial request fit or did not fit with their organizational missions, what the risks of participation were, and how they approached their boards of directors about the intervention. I asked subjects to describe the nature of pre-existing personal relationships and organizational collaborations with other participating foundations. I also tried to solicit interpretations of other foundations, the city government, and pensioners. Unfortunately, I did not elicit data on how foundation leaders interpreted the deservingness of retirees in comparison with bondholders. At the time that I conducted these interviews, this aspect of the arrangement was so legitimized and taken for granted that it did not initially occur to me to ask about it.

I also conducted semi-structured interviews with sixteen pensioners. These interviews included conversations with Shirley Lightsey and Donald Taylor, who represented the city's largest retiree associations and had seats on the "Official Retiree Committee." They were particularly important in mobilizing retirees to support the proposed settlement. I reached Donald Taylor by calling and e-mailing the office of the association that he runs. I reached Shirley Lightsey through her attorney, Ryan Plecha. Ryan represented Don and Shirley together during the bankruptcy. I conducted separate face-to-face interviews with each of these three individuals. I got the impression that Ryan encouraged Don and Shirley to do interviews, that as leaders of their respective associations they had some obligation to accommodate such requests.

As presidents of the largest retiree associations Don and Shirley were gatekeepers to their respective communities. Neither Don or Shirley invited (or permitted) me to attend association meetings. I talked to Shirley about connecting me to other retirees, and I got the distinct impression that she would want to select these individuals carefully, and that most of the people she thought would be fitting had already done interviews with another researcher. She also suggested that I had acted too slowly and also that I would have better luck if I included a financial incentive. I intended to follow this strategy and start offering a financial incentive, but I worried that this would ruffle feathers or seem unfair to those I had interviewed in the past.

People who have endured an economic loss, especially when imposed by trusted institution, may experience feelings of shame or guilt (see Goffman 1952). They may be less inclined to trust outsiders. Accordingly, activists and retirees were at times reluctant to speak with me or guarded when they did. The wounds of the bankruptcy still fresh, it is unsurprising that people would regard curious strangers with skepticism. This came through in one of the first interviews that I did with a retired water chemist. More than anyone I interviewed we had an

instantaneous connection, and we became very friendly acquaintances. That is to say, I seemed to win him over more than anyone else from his organization. I was surprised then when during our interview he asked me how I would be sharing the money that I made off the project. I asked what he thought would be appropriate and he said that all the people that I interviewed should receive a cut based on the number of quotes they had featured in the final product. I said I wasn't sure if or when I would receive any money, but if and when I did I would call him to discuss. He seemed satisfied with that.

The first time I called Don's association, I asked if I could attend the monthly meeting to recruit interview subjects, and the person on the phone said that members don't really want to keep living the bankruptcy. They want to move on. I am grateful that during our interview Don mentioned that his association records meetings and posts the recordings online (more on this below). This proved to be a rich and un-intrusive data source. I should also say that despite the difficulties in securing interviews, the people who I sat down with were extremely candid and generous with their time. Quite a number invited me into their homes.

I attempted to distribute retiree interviews across key occupational and demographic groups, but because of the difficulty attending key meeting sites, this proved harder than expected. I relied on several strategies to recruit retiree interview subjects. First, I called individuals who had included contact information on publicly available court-filed objections. Second, I recruited subjects at public meetings. One interview subject then connected me to two additional pensioners. I recruited an additional subject through personal networks. I conducted a handful of other miscellaneous interviews. Four interviews were conducted with lawmakers and staff from the governor's office. Three interviews were conducted with financial and PR

professionals. I was helped also by informal conversations and correspondence with a number of journalists who covered the bankruptcy.

These interviews helped me to understand certain technical aspects of the bankruptcy process. They also helped me to understand how these various individuals understood their roles and the personal stakes of their involvement. During these interviews I tried to solicit information about subjects' interactions with and attitudes towards different other actors and groups involved in the bankruptcy. I used these interviews to elicit actors' interpretations of events and people, recognizing that in some cases interpretations are those that they think will resonate with key audiences. In accordance with the goals of this project, interview data is well-suited for mapping the way boundaries operate at conceptual and discursive levels (Lamont 2002).

Concealing the identities of certain of these individuals would prove difficult, because of the public nature of their roles. On the interview consent form, I asked subjects for three kinds of consent: to participate, be recorded, and use their real names. Most people agreed to all three, but others declined to be recorded, and some declined to have their names used. Some individuals asked that I request their consent before directly attributing individual quotes. Although many of the retirees interviewed agreed to have their names included, I decided to anonymize direct quotes drawn from retiree interviews. Where possible I rely on public data to make the chapter level arguments. That means that when quoting retiree statements made in court documents, I do not use a pseudonym, but when drawing directly on retiree interviews, I have used pseudonyms designated by scare quotes to protect these individuals' anonymity. Note that the roles and organizational affiliations listed below refer to those at the time of the bankruptcy. Many interview subjects have since switched roles or organizations.

## **Observations of Public Meetings and Events**

In seeking to understand Detroit's bankruptcy as an event, I attended a wide variety of meetings and public events, approximately thirty in total, between late 2015 – 2017 in the aftermath of the bankruptcy. I used these meetings and events to familiarize myself with the bankruptcy and its key players and to recruit interview subjects. In some instances, as I will explain, I also treated meetings and events as a source of observational data.

The first event that I attended was a protest of a post-bankruptcy celebration at the DIA on October 13, 2015. There I met members of Moratorium Now!, a coalition of activists, including some retired city workers. I started to attend their Monday night meetings where members discussed the bankruptcy and its impacts. I soon learned that several members of Moratorium Now! were among the leaders of DAREA (Detroit Active and Retired Employee Association), an association formed during the bankruptcy to represent municipal workers and retirees disaffected by the actions of their representatives. I started attending DAREA's bi-monthly meetings at two locations in Highland Park: Saint Matthew & Saint Joseph Episcopal Church and Nandi's Knowledge Café. Whenever I attended a DAREA meeting, I was asked to introduce myself and my project. Those who were interested in speaking with me would give me their contact information after the meeting. The DAREA meetings provided insight into the interpretations shared of a subset of city workers and retirees who shared a sense of acute injustice about the bankruptcy. DAREA's leaders staged and participated in many protests during the bankruptcy and organized an appeal after it had concluded.

In the earlier stages of this project, I also attended meetings of Detroit's Financial Review Commission and biannual meetings of the Detroit Revenue Estimating Conference. In the later stages of the project, I attended board meetings of the city's General Retirement System, which

are open to the public. In 2016, I enrolled in a mini-course about the bankruptcy organized by Nolan Finley, a *Detroit News* journalist, at the University of Michigan Ford School of Public Policy. Each week, Nolan invited a different key actor to visit the class to discuss their take on the bankruptcy. Each session started with the visitor delivering prepared or off-the-cuff comments about their experience of the bankruptcy. Then Nolan would conduct an informal interview with the visitor, and then the session would be opened up for student questions. Through these sessions, I was able to observe the governor, the emergency manager, and one of the foundation presidents who I was not able to interview speak quite candidly about their experiences. I took as close to verbatim notes as possible during these meetings. Sometimes I was able to observe individuals discuss the bankruptcy publicly who I had also spoken with privately, and at times this helped me to better understand where public and private interpretations diverged.

## Video Data

An important additional source of archival/observational data included video recordings of monthly meetings held by the RDPFFA (Retired Detroit Police and Fire Fighter Association), the city's largest public safety retiree association during the bankruptcy (between June 2013 and December 2014). Chapter 5 primarily uses this data source to examine how retirees were persuaded to accept the proposed agreement. The RDPFFA was the first group to reach an agreement with the city and publicly endorse the DIA settlement. Its members received the most favorable treatment under the plan of adjustment. The analysis focuses on portions of the annual meetings where retiree representatives update members about bankruptcy proceedings, and field questions about the bankruptcy. These recordings do not exactly replicate the experience of being present in the room: The video quality is bad; The camera never strays from the speaker; Pieces of the meeting are lost in the transition between recordings. Nevertheless, this archive provides a precise record of conversations unfolding in real time. Beyond the words spoken, the recordings also provide useful information about the tone and tenor of interactions between members, association leaders, lawyers, and pension trustees. Each meeting is archived in several video segments, the titles of which describe who was speaking during the recorded part of the meeting. The analysis focuses on reports delivered by Donald Taylor, and some of the key lawyers representing retired municipal workers in Detroit's bankruptcy proceedings. The analysis also includes video segments that feature elected pension board trustees. However, segments devoted to administrative matters have been excluded, as have announcements about deceased members. Three meetings were excluded based on their focus on an annual picnic (2) and presentations by insurance companies (1). In total, the analysis drew on fourteen meetings,

of which I transcribed five. A trained research assistant transcribed one, and a hired transcriptionist transcribed eight.

### **Miscellaneous Sources**

The dissertation also draws on a variety of other archival, regulatory, law review, and journalistic sources. Chapter 2 draws primarily on secondary sources, namely law review articles to retrace the legal history of public employee pensions. I also consulted three archives to glean information about the history of Detroit's municipal retirement system and Michigan's constitutional pension protection, which are both briefly discussed in Chapter 2: The University of Michigan Bentley Historical Library, the Burton Historical Collection at the Detroit Public Library, and the Eugene Wanger Collection at the Michigan Archives. Materials housed at the Burton Historical Collection at the Detroit Public Library were helpful in piecing together the early history of the municipal pension system, albeit in a preliminary way. I used the collection at the Bentley Historical Library to review the Official Record of the 1961-1962 Constitutional Convention, as well as the papers of key participants, and where I struggled to make sense of a dearth of discussion about the pension amendment. I also consulted the papers of Eugene Wanger, another delegate to the Con- Con.

I used a variety of journalistic and media sources including newspaper and magazine articles, Youtube videos of protests, meetings, and events as well as several books published by the mainstream press to assemble a more detailed timeline and narrative of the bankruptcy. Nathan Bomey was a *Detroit Free Press* journalist who covered the bankruptcy and published a first mainstream monograph. I drew on Bomey's book for information about the proposed alliance between the bond insurers and the retiree committee, as this was not something I was

able to glean details about elsewhere. There was a strict but selectively upheld gag order imposed on the backstage bankruptcy proceedings, which Bomey by virtue of charm or familiarity or his position in the media was better able to scale. Jeffrey Abt's two books were helpful sources of information about the DIA and its history, including the recent history of the 2012 millage.

## APPENDIX B

### Source Lists

#### Key Legal Documents and Court Materials

11 U.S.C. (1978)

U. S. Constitution, Article 1, Section 10, Clause 1

California Constitution, Article 4, Section 31

Michigan Constitution, Section 24 of Article 9

New Mexico Constitution, Article 20, Section 22

New York Constitution Article 5, Section 7

*Betts v. Board of Administration*, 21 P.3d 859 (Cal. 1978)

*Frisbie v. United States*, 157 U.S. 160 (1895)

*Haverstock v. State Public Employees Retirement Fund*, 490 N.E.2d 357 (Ind. Ct. App. 1986)

*Hickey v. Pitts, Pension Board*, 378 Pa. 300 (1954)

*Kosa*, 408 Mich. at 360, 292 N.W.2d at 455 (1980)

*Kosa v. Treasurer of State of Michigan*, 408 Mich. 356 (1980)

*O'Dea v. Cook*, 169 P. 366 (Cal. 1917)

*Pennie v. Reis*, 132 U.S. 464 (1889)

*Retirement Board v. McGovern*, 316 Pa. 161 (1934)

*Spiller, et al. v. State of Maine, et al.*, 627 A.2d 513 (Me. 1993)

*Spina v. Consolidated Police & Firemen's Pension Fund Comm'n*, 197 A.2d 169 (N.J. 1968)

*Wright v. Union Central Life Insurance Co.*, 311 U.S. 273 (1940)

*Yeazell v. Capins*, 402 P.2d 541 (Ariz.1965)

*In re: City of Detroit, Michigan. Debtor. Chapter 9. (Case No.:13-53846)*

- Kevyn Orr. “Proposal for Creditors.” June 14, 2013.  
[http://www.detroitmi.gov/Portals/0/docs/EM/Reports/City percent20of percent20Detroit percent20Proposal percent20for percent20Creditors1.pdf](http://www.detroitmi.gov/Portals/0/docs/EM/Reports/City%20of%20Detroit%20Proposal%20for%20Creditors1.pdf)
- Bankruptcy petition. Docket 001. July 18, 2013.  
<http://www.kccllc.net/detroit/document/1353846130718000000000001>
- All versions of the Plan of Adjustment and disclosure statements are available here:  
<http://www.kccllc.net/detroit/document/list/3668>
- Judge Steven Rhodes. “Opinion Regarding Eligibility.” Docket 1945. December 5, 2013.  
<http://www.kccllc.net/detroit/document/1353846130718000000000001>
- Judge Steven Rhodes. “Oral Opinion on the Record.” November 7, 2014.  
<https://www.mied.uscourts.gov/PDFFiles/DBOralOpinion.pdf>
- Donald Taylor. Comments to the Michigan Legislature. 5/14/2014.  
<https://tinyurl.com/yad4jt8o>
- Most court documents can be publicly viewed here:  
<http://www.kccllc.net/detroit/document/list/3666>
- Key documents: 001, 0003, 0398, 0539, 0566, 0821, 0974, 1048, 1490, 1501, 1502, 1503, 1945, 1946, 2708, 3142, 3382; 4391, 4392, 4398; 4660, 4677, 4697, 4901, 4938, 5034, 5054, 5059, 5206, 5300, 5427, 5494, 5697, 5788; 6379, 6389, 6391; 6651, 7129, 7143; 7150, 8045

## Interviews

Name	Affiliation & Role	Interview	Date
<b>Judge and Mediators</b>			
Hon. Wiley Daniel		Phone	9/14/2016
Eugene Driker		In-person	6/28/2016
Hon. Steven Rhodes		In-person	5/18/2017
Hon. Victoria Roberts		In-person	11/20/2015
Hon. Gerald Rosen		In-person (unrecorded)	8/3/2016
<b>State Government</b>			
John Mulcrone	Legal Counsel, State Capitol	Phone (unrecorded)	11/17/2015
Richard Posthumus	Senior Advisor & Legislative Lobbyist, Governor's Office	Phone	10/4/2017
John Walsh	Director of Strategy, Governor's Office	Phone	10/4/2017
Gretchen Whitmer	Minority Leader, Michigan Senate	In-person (unrecorded)	11/11/2015
<b>Misc. Lawyers, Experts</b>			
Tina Bassett	Public Relations, RSCD	Phone (unrecorded)	4/18/2018
Douglas Bernstein	Lawyer, Plunkett Cooney	In-person	6/29/2016
Ryan Bigelow	Chief Investment Officer, RSCD	In-person (unrecorded)	11/18/2016
Ronald Bloom	Financial Advisor, Lazard	Phone	3/6/2017
Jamie Fields	Lawyer	In-person	3/23/2018
David Heiman	Lawyer, Jones Day	Phone	9/7/2016; 9/12/2016
Carole Neville	Lawyer, Dentons	Phone	1/18/2017
Tony Paris	Layer, Sugar Hill Law	In-person	2/2/2016
Barbara Patek	Lawyer, Erman, Teicher, Zucker & Freedman	In-person	4/17/2017
Ryan Plecha	Lawyer, Lippitt O'Keefe Gornbein	In-person	10/5/2016
Ronald King	General Counsel, RSCD	Phone (unrecorded)	5/30/2018

Note. The positions listed represent those held at the time of the bankruptcy.

## Interviews Continued

Name	Affiliation & Role	Interview	Date
<b>Foundation Presidents &amp; Staff</b>			
Jonathan Aaron	William Davidson Foundation, President	Phone	8/1/2017
Ricardo Castro	Ford Foundation, General Counsel	In-person	3/3/2017
Robin Ferriby	CFSEMI, Vice President & General Counsel	In-person	6/19/2017
Keegan Mahoney	Hudson Webber, Program Officer	In-person	7/14/2017
Kate Markel	McGregor Fund, President	Phone	7/5/2017
Mariam Noland	CFSEMI, President	In-person	5/12/2016
Douglas Bitoni Stewart	M. & M Fisher Foundation, President	Phone	7/18/2017
La June Montgomery Tabron	W.K. Kellogg Foundation	Phone	7/7/2017
William White	Mott Foundation, President	Phone	8/10/2017
<b>Retiree Association Presidents</b>			
Bill Davis	DAREA	In-person	10/17/2016
Shirley Lightsey	DCREA	In-person	11/20/2016
Donald Taylor	RDPFFA	In-person	10/21/2016
<b>Law Professors and Journalists (off the record)</b>			
Michelle Wilde Anderson	Stanford Law School	Phone	
Nathan Bomey	Detroit Free Press	E-mail	
Peter Hammer	Wayne State Law School	In-person	
Joe Guillen	Detroit Free Press	In-person	
Nolan Finley	Detroit News	In-person	
Cate Long	Reuters	Phone	
John Pottow	University of Michigan	E-mail	
Susan Tompor	Detroit Free Press	Phone	
Mark Stryker	Detroit Free Press	Phone	

### Retiree Interviews

<b>Subject ID</b>	<b>Sex</b>	<b>Race</b>	<b>Final occupation</b>	<b>GRS/PFRS</b>	<b>Vote</b>	<b>Recruitment</b>
1	M	white	Investor relations	GRS	Yes	Meeting
2	M	Black	Sewage Plant Attendant	GRS	No	Objection
3*	M	Black	Sewage Plant Supervisor	GRS	No	Meeting
4	M	Black	Chemist	GRS	No	Meeting
5	M	Black	Bus driver	GRS	No	Meeting
6	M	Black	Accountant	GRS	No	Meeting
7	M	Black	Paymaster	GRS	No	Meeting
8*	M	white	Policeman	PFRS	Yes	E-mail
9	M	Black	Construction Inspector	GRS	No	Objection
10	W	Black	City council clerk	GRS	Yes	Objection
11	W	Black	Assistant to police inspector	GRS	No	Objection
12	W	Black	Project manager for IT	GRS	Yes	Snowball
13	W	Black	Principal accountant, wire transfer manager	GRS	No	Snowball
14	W	white	City planner	GRS	Yes	Personal
15*	W	white	Policeman	PFRS	No	Objection
16*	W	Black	HR Manager	GRS	Yes	Snowball

\*Note: These individuals are also listed in in the table on the previous page

## Archival Materials

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University of Michigan	Bentley Historical Library	Constitutional Convention 1961-1962: Papers of Governor Romney; Richard van Dusen; Publications of the convention
Detroit Public Library	Burton Historical Library	Paper of Mayor Cobo; Mayor Young; Mayor Reading; Excerpts & Miscellany on "Old age pensions" and "Municipal employee pensions"
Michigan History Center	Archives of Michigan	Eugene Wanger papers

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## Miscellaneous Materials

- Committee on Education and Labor. House of Representatives. Ninety-Fifth Congress. 1978. *Pension Task Force Report on Public Employee Retirement Systems*. Retrieved August 15, 2018 (<https://catalog.hathitrust.org/Record/002942840>).
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Appendix C. Legal Definitions of Government Pensions by State (2018)

<b>State</b>	<b>Definition</b>	<b>Legal Basis</b>	<b>Year</b>
Alabama	Contract	Supreme Court	1976
Alaska	Contract	State Constitution	1956
Arizona	Contract	State Constitution	1998
Arkansas	Contract	Supreme Court	1973
California	Contract	Supreme Court	1978
Colorado	Contract	Supreme Court	1961
Connecticut	Contract	State Constitution	1956
Delaware	Contract	Supreme Court	1976
Florida	Contract	Statute	1974
Georgia	Contract	Supreme Court	1987
Hawaii	Contract	State Constitution	1978
Idaho	Contract	Supreme Court	1968
Illinois	Contract	State Constitution	1970
Indiana	Gratuity	Supreme Court	1986
Iowa	Contract	Supreme Court	1931
Kansas	Contract	Supreme Court	1980
Kentucky	Contract	Statute	1995
Louisiana	Contract	State Constitution	1996
Maine	Undefined		
Maryland	Contract, subject to modification	Supreme Court	1994
Massachusetts	Contract	Supreme Court	1973
Michigan	Contract	State Constitution	1961
Minnesota	Promissory estoppel	Supreme Court	2005
Mississippi	Contract	Supreme Court	2000
Missouri	Contract	Supreme Court	2006
Montana	Contract	Supreme Court	2005
Nebraska	Contract	Supreme Court	1995
Nevada	Contract	Supreme Court	2000
New Hampshire	Contract	Supreme Court	1985
New Jersey	Neither contract nor gratuity	Supreme Court	1964
New Mexico	Property rights	State Constitution	1998
New York	Contract	State Constitution	1938
North Carolina	Contract	Supreme Court	2006
North Dakota	Contract	Supreme Court	1948
Ohio			
Oklahoma	Contract	Supreme Court	1995
Oregon	Contract	Supreme Court	1996
Pennsylvania	Contract	Supreme Court	2006
Rhode Island	Contract	Supreme Court	1999

South Carolina	Contract	Supreme Court	2006
South Dakota	Contract	Supreme Court	1953
Tennessee	Contract	Supreme Court	1981
Texas	Gratuity (state); Contract (local)	State Constitution	2003
Utah	Contract	Supreme Court	1988
Vermont	Contract	Supreme Court	1988
Virginia	Contract	Supreme Court	1988
Washington	Contract	Supreme Court	1956
West Virginia	Contract	Supreme Court	1988
Wisconsin	Contract	Statute	1981
Wyoming	Property rights	Supreme Court	1996

Sources: Monahan 2010; State regulatory materials.

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