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Ferguson and the Criminalization of American Life

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The Department of Justice's investigation of the Ferguson Police Department has scandalized the nation, and justly so. But the department's institutional racism, while shocking, isn't the report's most striking revelation.

More damning is this: in a major American city, the criminal justice system perceives a large part of that city's population not as citizens to be protected, but as potential targets for what can only be described as a shake-down operation designed to wring money out of the poorest and most vulnerable by any means they could, and that as a result, the overwhelming majority of Ferguson's citizens had outstanding warrants.

Many will try to write off this pattern of economic exploitation as some kind of strange anomaly. In fact, it's anything but. What the racism of Ferguson's criminal justice system produced is simply a nightmarish caricature of something that is beginning to happen on every level of American life; something which is beginning to

transform our most basic sense of who we are, and how we—or most of us, anyway—relate to the central institutions of our society, in ways that are genuinely disastrous.

The DOJ's report has made us all familiar with the details: the constant pressure on police to issue as many citations as possible for minor infractions (such as parking or seat-belt violations) and the equal pressure on the courts to make the fines as high as possible; the arcane court rules apparently designed to be almost impossible to follow (the court's own web page contained incorrect information); the way citizens who had never been found guilty—indeed, never even been accused—of an actual crime were rounded up, jailed, threatened with "indefinite" incarceration in fetid cells, risking disease and serious injury, until their destitute families could assemble hundreds if not thousands of dollars in fines, fees, and penalties to pay their jailers.

As a result of such practices, over three quarters of the population had warrants out for the arrest at any given time. The entire population was criminalized.

It's important to remember though that these were not criminal warrants. The inhabitants were not even being accused of actual crimes (that is, felonies or misdemeanors.) Parking tickets, or tickets for unmowed lawns or improperly placed trash receptacles, are not criminal matters, they are violations of administrative codes having the same legal standing as, say, a supermarket's failure to take a loaf of bread past the due date off their shelves. They were simply being treated as if they were criminals.

Obviously, this picture has almost nothing to do with anything we normally consider "justice." Still, if the image of police terrorizing and manhandling citizens over parking fines seems bizarre, it's partly because we tend to forget who and what the police actually are. The police spend very little of their time dealing with violent criminals—indeed, police sociologists report that only about 10% of the average police officer's time is devoted to criminal matters of any kind. Most of the remaining 90% is spent dealing with in-

fractions of various administrative codes and regulations: all those rules about how and where one can eat, drink, smoke, sell, sit, walk, and drive. If two people punch each other, or even draw a knife on each other, police are unlikely to get involved. Drive down the street in a car without license plates, on the other hand, and the authorities will show up instantly, threatening all sorts of dire consequences if you don't do exactly what they tell you.

The police, then, are essentially just bureaucrats with weapons. Their main role in society is to bring the threat of physical force—even, death—into situations where it would never have been otherwise invoked, such as the enforcement of civic ordinances about the sale of untaxed cigarettes.

For most of American history, police enforcement of such regulations was not considered a major source of funding for local government. But today, in many municipalities, as much as 40% of the money governments depend on comes from the kinds of predatory policing that has become a fact of life for the citizens of Ferguson. How did this happen? Some of it, of course, has to do with populist anti-tax movements, beginning with California's Proposition 13. But much of it has happened because in recent decades, local governments have become deeply indebted to large, private financial institutions—many of the same ones that brought us the crash of 2008. (In Ferguson, for instance, the amount of revenue collected in fines corresponds almost exactly to that shelled out to service municipal debt.) Increasingly, cities find themselves in the business of arresting citizens in order to pay creditors.

But the banks themselves are using very similar methods. Most financial institutions themselves now acquire the majority of their profits from penalizing members of the general public for rule-breaking. According to a 2012 report by the Consumer Financial Protection Bureau, overdraft and insufficient funds fees made up sixty-one percent of bank profits from consumer checking accounts; and in 2009, J. P. Morgan Chase, the biggest bank in America, reported 71% of its total profits derived from

fees and penalties. Put another way, this means that the profitability of America's banks is based on knowingly creating rules so complicated that they know a significant portion of their customers won't be able to follow them—and then punishing those customers for failing to do so.

And this pattern can be observed down the line. Even our higher education system now operates largely as an engine for trapping students in permanent debt, and much of the profits to be extracted from student debtors comes from penalizing them for missed payments, postponements and defaults.

Almost every institution in America—from our corporations to our schools, hospitals, and civic authorities—now seems to operate largely as an engine for extracting revenue, by imposing ever more complex sets of rules that are designed to be broken. And these rules are almost invariably enforced on a sliding scale: ever-so-gently on the rich and powerful (think of what happens to those banks when they themselves break the law), but with absolute Draconian harshness on the poorest and most vulnerable. As a result, the wealthiest Americans gain their wealth, increasingly, not from making or selling anything, but from coming up with ever-more creative ways to make us feel like criminals.

This is a profound transformation, and one we barely talk about. But it is rapidly altering people's most basic conceptions of their relations with society at large.

In a very real sense, the "middle class" is not an economic category, it's a social one. To be middle class is to feel that the fundamental institutional structures of society are, or should be, on your side. If you see a policeman and you feel more safe, rather than less, then you can be pretty sure you're middle class. Yet for the first time since polling began, most Americans in 2012 indicated they do not, in fact, consider themselves middle class.

The Department of Justice report on the Ferguson Police Department should give us the means to finally begin to understand why. Most Americans no longer feel that the institutions of gov-

ernment are, or even could be, on their side. Because increasingly, in a very basic sense, they're not.