

# Introduction

Over the last couple of decades the theme of law and order has penetrated deeply into popular discourse and come to shape state policy in very important ways. Its influence is profound. So too are the consequences for the targets of state policy and practices inspired by it. Law and order has become a popular mantra of politicians and media, especially those on the political right, but it is by no means exclusive to them. Repeated mention of this phrase can score popularity points for the politician or win a bigger audience for the media outlet. In so doing, it deflects attention away from other social issues. We are constantly reminded, on the one hand, that crime is everywhere. We are told that police and politicians, on the other, are waging the good fight against crime — never defeating it once and for all, perhaps, but with recourse to a tough law-and-order strategy, keeping on top of it. It is as if a thin line runs straight through Canadian society, precariously separating a civilized order from criminal chaos ready to overtake it if left unchecked for but a moment.

Law and order is certainly a central leitmotif of popular culture in North America, as witnessed by the proliferation of law-and-order themed movies and television shows since the 1970s. They have ranged from the uncompromising, no-holds-barred cop Dirty Harry (sometimes you just gotta break the rules to get the bad guys — a point we will discuss throughout the book), to Charles Bronson's stark mad vigilante anti-hero of the *Death Wish* series. Then there is the cold objectivity of the science displayed on the CSI series, as well as the hundreds of other law-and-order-inspired movies and TV shows. Since the 1970s, audiences have been presented with simple black-and-white moralistic narratives depicting the fight for justice and safety against the violent criminals lurking in the shadows of our society.<sup>1</sup>

But the real dynamics of the law-and-order agenda, following actual state policy and the related patterns of contemporary policing, are more complex than what is typically reflected in popular culture and politics. As law-and-order policies have been adopted by the state and police in Canada, what has increased is not a war waged on crime, which in fact has been decreasing for the past decade. Instead, what has increased is a less publicized war against displays of public disorder, such as begging, squeegeeing and hanging out in public spaces. This campaign is quite different than images of law-and-order policing we have become so used to. The campaign seems

much more mundane; it is in fact no less serious for the state than a war on violent crime. What is at stake may not be our protection from dangerous criminals run amok. It remains the case that a more serious agenda is at work: the consolidation of capitalist social relations in the era of neoliberalism.

To understand the law-and-order agenda, we must place it within the broader context of the political and economic changes associated with neoliberalism. Law-and-order policing is not an isolated policy endeavour or policing practice. It is, indeed, a central feature of a state power that, far from retreating with the demise of the Keynesian welfare state, is actively facilitating the establishment of a new capitalist order based on restructuring social relations. This new neoliberal order is very much about the role of an aggressive state and its relationship to the class struggle lying at the heart of contemporary Canadian society. Only by focusing on the issues of state power and social class will we be able to properly understand what is really driving the law-and-order agenda. Given the pervasive view of law-and-order policing espoused by its advocates, and current trends in social theory, it clearly warrants a fresh look.

A contemporary critical literature on policing does exist. The little attention, however, it gives to the role of the state and social class creates a significant blind spot, limiting its ability to see the full complexities of policing in capitalist society. Marxist theorists situated such complexities more prominently in the critical literature on policing in the 1970s. However, they tended to rely on a “crude functionalism,” treating the police merely as a repressive agency whose principal role is to crush outbreaks of working-class struggle (Neocleous, 2000: xii; Young, 1979). The exhaustion of the theoretical limits of Marxist-oriented functionalism was expressed in the ascendancy of panoptic theories of policing. Influenced by post-structuralism and developed primarily in the disciplines of criminology and sociology, these theories represent a theoretical shift that specifically de-emphasizes the roles of the state and social class in shaping policing practices.

This book will show that the state and social class are in fact crucial to our understanding of policing in capitalist society. It situates policing historically as part of a state-centred strategy whose goal is to produce a social order based on the subordination of wage labour to the imperatives of capital accumulation. The panoptic break from the one-sided emphasis on repression contributes positively to our understanding of policing. Its theoretical refusal to meaningfully question the role of the state or class relations, however, means it misses much of what policing is actually about and its impact on working peoples' lives. In contrast, a non-functionalist Marxist approach refuses an overly simplistic emphasis on repression, but remains attentive to the role of the state and class relations. Such an approach shows the central dynamics of policing much more effectively. It draws our attention to the particular way in which policing, as a central and productive feature of state power, is an expression of a response to the

day-to-day struggles of a working class as it responds to the vagaries of a new social order.

The approach employed here is informed by Open Marxism, which views the state as the political form, or mode of existence, of the class antagonism between labour and capital. From this perspective, the state is shaped by, and in turn shapes, this class antagonism. Mark Neocleous makes an important contribution to this theory. He defines state power as a form of political administration of the working class. As he develops his theory of political administration, he analyzes the historical role of policing in the creation of a class of wage labourers. This analysis significantly advances our understanding of policing in capitalist society. It also frames our interrogation of policing practices in Canada today.

The contemporary law-and-order agenda in Canada is in real need of a new critical study. The agenda, it will be argued, is part of the state's response to the problems posed to neoliberal restructuring caused by the unwillingness of working people to simply conform to the reordering of their lives. Its goal is to create a cheap, flexible pool of wage labour, something that has grown steadily with neoliberalism. Law-and-order policing, therefore, is best understood as part of a continuum of neoliberal strategies, including other things like cuts to social programs, which facilitates the generalization of a poorly paid and insecure work experience by diminishing any possible alternatives people may seek to it. In this respect, as with policing historically, fighting crime is not the principal aim of contemporary law-and-order policing. Instead, the aim is to produce a new social order based on the severely diminished expectations of working people. Fighting crime matters only insofar as it helps in this process.

The examination of the law-and-order agenda offered here will also be useful in another important way. It further develops our understanding of policing in capitalist society and, by extension, Marxist theories of state power. The analysis highlights the way in which these things are racialized and gendered. This aspect of policing is absent in both the panoptic literature on policing and Marxist writings on the state. This is a glaring omission, given the growing wealth of evidence showing the racist and gendered character of police work and the day-to-day encounters of people of colour and women, especially immigrants, with public police officers. The work of writers like Kelley (1997), Bannerji (2000) and McNally (2002), among others, who are attentive to the ways in which the capitalist mode of production and its classes are historically materialized through racist and gendered social relations, will be incorporated into the analysis to help understand the disproportionate focus on communities of colour and certain women in the law-and-order agenda.

Furthermore, this book will also make an important contribution to the critical literature on neoliberalism. By focusing on policing, and its relation to the overall agenda of neoliberal restructuring, it advances further Sears'

assertion that the retrenchment of the “broad” welfare state does not mean there is now less state — as is the popular perception — but simply a different role for the state (2003: 1999). Often this role is more coercive.

Policing, of course, is not the only avenue by which classes are constituted or class experience is shaped in capitalist society. Other institutions, some of which are part of the state, can also perform this role in their own ways. Certainly religious institutions, educational systems, the family and even organized sport, have been important in forming social classes. Far be it for me to suggest that only the police or the state fulfill this role. But policing, as will be shown, is a strategically important and forceful part of this process. Given how misunderstood it is by advocates of law-and-order policies as well as by critics, it deserves our attention. The aim here is to cut through all the misconceptions surrounding the role of policing and to show that our understanding of it as an integral feature of state power is vital to understanding the development of neoliberalism.

The point here is to examine an important aspect of state power, which has been misunderstood and which has escaped serious examination in the studies of neoliberalism, particularly in Canada. Without developing our understanding of state power in general, and of policing in particular, as a constitutive force in capitalist society, our understanding of neoliberalism is incomplete. To put this point slightly differently, and perhaps a little more sharply: even though the operation of state power may not be, on its own, sufficient to the formation of classes and the persistence of capitalist social relations, it is nevertheless necessary. This is what in part makes our state capitalist: without a class of wage labourers to be exploited, capitalism cannot function. The aggressive intervention of the state in people’s daily lives has persisted throughout the period of neoliberalism. The study of this aspect of the state, in turn, also forces us to pay more attention to the equally persistent struggles at the heart of capitalist society — the day-to-day expressions of aspirations for a life outside of dehumanizing exploitative relations. The desire for something more humane persists, and policing is an expression of this.

As we proceed, it will become clear that the state actively pursues a neoliberal order, and that the police are on the frontlines of this struggle. The book will begin, however, by first looking at the panoptic writing, which is the main framework from which a critical perspective of contemporary policing is advanced. Following the work of Foucault, this writing is marked by three problematic assumptions about policing: it is done primarily at a distance, rather than directly; it is done from multiple sites of power, not the state; and it targets everyone equally regardless of class, race or gender. This “electronic panopticon” form of policing, further, is said to produce self-regulating docile bodies. Using government and police statistics, together with studies of zero-tolerance and community policing, we will show that this body of literature actually misses on all three counts much of the reality

that makes up contemporary policing. The panoptic theory is fundamentally inadequate despite its popularity to our task of explaining the law-and-order agenda.

The second chapter will establish the theoretical framework for the rest of the book. The theory is based on the analysis of Open Marxism, supplemented by the anti-racist and feminist analysis. The theory of state power based on class struggle is the key to understanding how policing has developed in a capitalist society. Modern policing emerged with the rise of industrial capitalism in Britain in order to produce a working class. The state's fight for public order, involving the criminalization of a large segment of the working class, was in fact the fight to consolidate private property by establishing a market in wage labour. Such a perspective offers more valuable insights into the reality of law-and-order policing today than the panoptic writings.

The third chapter will begin by looking at the global economic downturn, beginning in the early 1970s, and its economic and political impact on Canada. Readers here will find the argument that neoliberal strategies pursued by the state in advanced capitalist countries are a response to the opposition of the working class to economic restructuring. Employers initiated the restructuring to restore profitability. The state has helped employers regain their profitability, driving down the cost of labour. In Canada in the late 1970s labour costs were higher than the Organization for Economic Cooperation and Development (OECD) average (Wolfe 1984). The result: the Canadian working class was recomposed by creating an increasingly cheap pool of labour. This process has been facilitated, in part, by diminishing any alternative to the wage for subsistence.

Diminishing alternatives to the wage is achieved in different ways. Cuts to social-assistance programs, for example, have been one prominent strategy. Law-and-order policing has been another. As Sears suggests, "State disciplinary activities reinforce market discipline by visibly suppressing forms of 'deviant' conduct which threaten the norms of commodity exchange" (1999: 105). Law-and-order policies in this respect complement government restructuring. They are crucial to the success of neoliberalism.

The fourth chapter will look more concretely at how the law-and-order agenda has developed in Canada since the 1990s. The chapter begins with an historical examination of the vagrancy law in Canada. The vagrancy law was historically a key feature of the state's strategy to form a class of wage labourers. It targeted activities that might provide an income outside of formal market relations, until the law was declared in the 1950s and again in 1972, in the context of the postwar boom and the higher employment rates, a significant increase in relatively well-paying wage work and a somewhat progressive shift in attitudes towards poverty and criminality. The focus will then shift to Ontario's Safe Streets Act and various municipal bylaws that target begging. Both the act and bylaws represent a *de facto* return of

the vagrancy law. We will look at the laws themselves, the discussion of government officials surrounding their implementation, and the police practices associated with them. Such an analysis is revealing. A central aim of these laws, like the former vagrancy statutes, has been to target behaviour that potentially undermines peoples' dependence on market relations to survive. These laws, and the related police practices, have been as integral to neoliberalism as state restructuring.

The final chapter will look specifically at the law-and-order agenda as it relates to immigrants. Most of the recent immigrants to Canada come from the Global South. They experience a disproportionate amount of attention under law-and-order policies, but the attention they receive is also unique to them in some important ways. The state's aggressive effort to turn them into an extremely vulnerable source of labour is also influenced by the historical view of them. They represent a dangerous Other that threatens to contaminate Canada's precarious white Anglo-Saxon order. Bringing with them customs, habits and languages foreign to most Canadians of British or Western European background, immigrants of colour are viewed by authorities as physical and moral pollutants to Canadian society. Thus their criminalization is profound: simply being an immigrant in Canada is to be potentially criminal. This further increases their vulnerability to the worst forms of wage labour Canada has to offer.

After explaining this theme in some detail, we will look at two very interesting examples showing how criminalization plays out for many immigrants of colour. The war on drugs is one example. It has been well studied in Canada but is still largely misunderstood. The war on drugs has developed historically as an aggressive tool to target immigrant communities and the signs of disorder they represent. It also criminalizes alternatives to working for an income. The other example is the increased use of detention against immigrants. It serves as a stark reminder to them of the lengths the state is willing to go to assert its control over such immigrants and to increase their vulnerability.

## Note

1. The proliferation of law-and-order themes in movies and television since the 1970s cannot receive the attention it deserves in this book; indeed, this is worthy of a study of its own. One show that perhaps can be described as part of a law-and-order genre, but which does not succumb to the simplistic and moralistic black-and-white narratives typical of so many shows, is *Da Vinci's Inquest*.