"WHOSE LAW AND WHAT ORDER?"

Elizabeth Comack

What follows is the text of a keynote address delivered at the Joseph Zuken Memorial Association Award Evening *hosted by the CCPA-MB on May 21, 2008.*

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The title for my talk tonight actually comes from a book called *Whose Law? What Order?* Published in 1976, the book was authored by a noted American criminologist, Bill Chambliss, and was one of the key works in an area known as radical criminology. Radical criminology drew its inspiration from Marxism. It came to prominence in the 1970s as part of the rise of the New Left in academia. At that time I was a young university student and my work — including my honours thesis, Master's thesis, and PhD dissertation — was very much influenced by this approach.

Borrowing that title for my talk tonight is appropriate for a number of reasons. One reason relates to the fact that one of the sponsors of this event is the Joseph Zuken Memorial Association. As most of us are aware, Joe Zuken was the longest serving elected Communist Party politician in North America. Raised in Winnipeg's North End, he went on to obtain a law degree and was active, among other things, in establishing a legal clinic to give people without means access to legal representation. So speaking to issues relating to law seems very appropriate in this context. More specifically, though, in following on the Zuken tradition I want to use tonight as an opportunity to get back to my own "Marxist roots" — especially in terms of exploring how a Marxist or class analysis can inform our understanding of some of the issues that seem to be so prominent in the media these days.

Another reason why borrowing Chambliss' title seemed to make sense is that even though his book was published more than three decades ago, raising questions about 'whose law' and 'what order' are just as relevant today as they were back then — particularly in relation to what appears to be the increasing call for more 'law and order.' I think we need to seriously question why this call for more 'law and order' is happening. What kind of 'law and order' are we talking about? And will more 'law and order' actually resolve the pressing social issues that confront us?

I believe that a Marxist analysis can assist us in getting a handle on these kinds of questions. Adopting a Marxist approach means that we put the issue of the class inequality under

capitalism front and centre. In making this point, I'm very mindful of the fact that inequality takes many forms — racial oppression (based on colonialism and imperialism) and gender oppression (based on patriarchy) are two other significant forms. But we can't lose sight of how these forms of inequality connect to the class inequalities inherent in a capitalist society such as ours, especially since, by all accounts, this class inequality has been deepening in recent years.

In a recent public opinion poll conducted by the CCPA's national office, 65 percent of those surveyed believed that most of the benefit from Canada's recent economic growth has gone to the richest Canadians. Tellingly, almost half of those polled also said that they are only one or two missed paycheques away from economic disaster (CCPA 2006). Data released by Statistics Canada confirm this perception that the "the rich are getting richer": "After two decades of overall economic expansion, the top 5 percent of earners saw their average incomes leap from $133,000 to $178,000. During the same period, earners in the middle of the pack saw their average incomes frozen at $25,000, with family incomes nudging up slightly from $42,000 to $43,000" (Peritz 2007: A1). Much of this disparity is due to the advent of globalization, downsizing, and economic restructuring that has accompanied the expansion of capitalism. These economic developments have necessitated a lot of ideological work to justify and rationalize the ever-present and increasing class divisions.

In speaking about the American context, criminologists Don Sabo, Terry Kupers, and Willie London suggest that this deepening class inequality has prompted the need to revise the "anyone-can-do-it," "rags-to-riches" promise of the American Dream. As they note:

> As the gap widens between rich and poor, the rich and powerful are offering the middle class a different deal: Join us, at least in terms of identifying with our needs, and you will not fall beneath the level of creature comforts to which you have grown accustomed. But you must distance yourself from the poor — as we do — ignore their needs, refuse to pay higher taxes for social services, embrace unbridled competition and give up the idea of a social safety net, and demand that the bad apples among them be locked up for long stretches and treated harshly. (Sabo, Kupers, and London 2001: 14–15)

What Sabo and his colleagues are pointing to is the way in which the fallout of this deepening class inequality — including the heightened anxieties and insecurities that those in the middle class are experiencing — are being used to legitimate the imposition of more 'law and order.'

This recourse to 'law and order' is most starkly reflected in rising rates of incarceration. In the United States, the population of state and federal prisons increased about six and one-half times from 1972 to 2000, from less than 200,000 to over 1.3 million prisoners (Wood 2003: 17). In 1995 alone some $55 billion was spent on new prison construction in the U.S. (Taylor 1999: 189). While Canadians might believe that we imprison fewer people than other countries do, internationally Canada has one of the highest incarceration rates after the United States and Russia. In 2000, Canada imprisoned its population at a rate of 118 per 100,000 people, compared to a European average of 84. The rate of incarceration in provincial prisons has risen 102 percent since the 1980s. In 2004/05, adult correctional service expenditures in Canada totalled $2.8 billion. The largest proportion (71 percent) of those monies was spent on prisons (CAEFS 2007; Beattie 2006). And just so we're clear on this: imprisonment is an expensive strategy. According

to the Correctional Service of Canada (2005), it costs $110,223 per year to incarcerate a man in a maximum security prison, and $150,867 per year to incarcerate a woman in a federal prison.

The resort to incarceration becomes even more troubling when you consider that — contrary to popular belief — crime rates have actually been declining in recent years. The national crime rate reached its lowest point in over 25 years in 2006, having decreased by about 30 percent since peaking in 1991. The vast majority of criminal offences (about 48%) involve crimes against property; only 13 percent involve violent crime (Silver 2007). While most of the decline in the crime rate has been due to non-violent offences, homicides also declined by 10 percent (from 663 in 2005 to 605 in 2006) (Li 2007).

Yet, despite the drop in the crime rate, calls to 'get tough on crime' have been growing louder these days. We can't seem to open a newspaper without reading of yet another story about the threat of crime and of the harsh measures that the capitalist state is taking to address this threat. Most recently, the Conservative government passed legislation designed to impose tougher mandatory prison terms for crimes involving guns, tougher bail laws, and tougher rules for repeat offenders — all of which will have the effect of exacerbating the already high rates of imprisonment in Canada.

However, as the radical criminologists were so quick to point out in the 1970s, this 'get tough on crime' talk is not directed at the corporate executives who swindle and defraud the public, pollute the environment, maintain unsafe work places, or manufacture faulty products. In this regard, the incarceration of the Conrad Blacks or Martha Stewarts of the corporate world garners media attention more because they are the exception rather than the rule. So we need to be clear: all of this talk of 'getting tough on crime' and calls for more 'law and order' are really being directed at the poor and the marginalized.

Statistics regularly tell us that the vast majority of people incarcerated in Canada's jails are economically marginalized. Almost half of all prisoners held in provincial custody were unemployed at the time of their arrest. Almost one-third of all prisoners have less than a grade 10 education (Statistics Canada 2001). And here we need to acknowledge that this resort to incarceration has not only a class, but also a racial character.

In the United States, prison has taken over the function of the Black ghettos as an instrument of control and containment. As Loïc Wacquant (2001: 404–05) notes "black men made up 6% of the national population but have accounted for over half of new admissions in state and federal prisons every year since 1989." Approximately one-third of all Black males in the U.S. will experience state prison in their lifetime. It is a telling commentary that a Black male in the United States has a greater likelihood of ending up in prison that he does of attending university (Snider 2004: 229).

In the Canadian context, the racial character is most starkly evident in the over-representation of Aboriginal peoples in Canadian prisons. Although Aboriginal peoples made up just 3 percent of the Canadian population in 2005, they accounted for 22 percent of admissions to provincial jails and 17 percent of admissions to federal prisons. Their overrepresentation is most acute in the Prairie Provinces. In Manitoba, Aboriginal peoples made up only 11 percent of the

population and a whopping 70 percent of sentenced custody admissions in 2005 (Beattie 2006). And Aboriginal women are even more over-represented in Canada's jails than their male counterparts (Finn et al. 1999). For instance, they consistently make up over 70 percent of the women prisoners held at the Portage jail. Similar to the way that the prison has taken over the function of the ghetto as an instrument of control and containment for Black people in the States, prisons in Canada have become for many young Aboriginal people the contemporary equivalent of what the Indian residential school represented for their parents (Jackson 1989:216).

But this recourse to more 'law and order' doesn't just relate to the increasing resort to incarceration. It also extends to policing strategies. In Winnipeg we've seen evidence of this in terms of the advent of a 'zero-tolerance' form of policing — which is a much more aggressive style of law enforcement (Hopkins-Burke 1998; Innes 1999). Our mayor seems to be especially enamoured with this 'get tough' approach to crime (see, for example, Katz 2007).

In November of 2005 the City of Winnipeg launched "Operation Clean Sweep," which involved the deployment of 45 police officers, mainly in the city's West End. Described as a "take back the streets" and an "in your face" form of policing (Owen 2005), the intent of "Clean Sweep" was to suppress street level violence and disorder, "including but not limited to, gang, drug and prostitution related offences" (Winnipeg Police Service 2006).

In May of 2006 the city sponsored a two-day, by-invitation-only summit comprised of business and community leaders. The keynote speaker for the event was former New York City Mayor Rudolph Giuliani. Giuliani received $100,000 for his services at this event and had been flown to Winnipeg in a private jet at an estimated cost of $25,000, paid for by Power Corporation (Lett 2006). Having won election on a "get tough on crime" ticket, Giuliani was reported to have told his audience that "Winnipeg can get rid of its image as a high-crime, rundown city by first cleansing the streets of aggressive panhandlers and squeegee kids" (Saunders, 2006). Mayor Katz was quick to act on Giuliani's advice. Initially designated as a pilot project, Operation Clean Sweep was subsequently made a more permanent feature of policing in the city and is now called the "Street Crime Unit," comprised of 47 officers who work on a citywide basis. Other 'get tough on crime' initiatives have also been proposed, including camera surveillance of downtown areas and — my personal favourite — a sensor that can detect when a gun has been fired in a neighbourhood (which would only cost several million dollars to implement!).

So it seems that more 'law and order,' 'getting tough' on crime, 'zero tolerance,' 'cleaning and sweeping,' and increased surveillance are being touted as the solutions to the social problems of our times. In Marxist terms, these initiatives could be interpreted as an effort to use the strong arm of the state to bolster a capitalist social order. And it's pretty clear that such initiatives are being directed at those who are the most marginalized and oppressed within that social order. But we have to ask: What will these measures accomplish? Will they make us safer? Will they address the underlying issues that have prompted inner-city kids to turn to drugs or to join gangs? Will they put food on the table or create affordable housing and meaningful jobs?

Safety and security are pressing issues — especially in Winnipeg's inner-city communities where concerns about gangs, drugs, and violence are very real. But at the same time, so are issues of poverty and social exclusion. In 2000, the household poverty rate in the inner city was 44

percent, almost double the citywide rate, and the child poverty rate was over 50 percent (CCPA-MB 2005). Nineteen percent of the population of the inner city is comprised of Aboriginal peoples. Nationwide, 1 in 4 First Nations children live in poverty, compared to 1 in 6 Canadian children; more than half of First Nations people are not employed; and high school completion rates among First Nations youth are half the Canadian rate (Social Planning Council of Winnipeg 2007).

People who live in the inner city know what's going on. They have a very sophisticated understanding of safety and security issues — and of what is needed to address them. Jim Silver and I discovered this in a project we did in 2006 that involved interviewing residents in three inner-city communities (Comack and Silver 2006). For instance, one inner-city resident assessed the prevalence of gangs as follows: "I really think it's related to poverty. I think kids get recruited in it because they don't see any other options so it's a way of having money, a way of having some power." Another resident was of the view that the problems were not simply internal to the inner city, but connected to the actions of those outside the community: "A lot of people in the community have expressed that it's not so much just the gangs and prostitution that they're scared of, it's outsiders that come in for those services...johns coming around...the more upper class people are coming in, the ones with the money."

Inner-city residents also expressed concerns about the role of the police in their communities. One resident referred to what she called "spatial profiling" by the police, saying: "so just because you live in a certain neighbourhood then you're a criminal, you're a this or a that, all these negative stereotypes." This spatial profiling includes stereotyping young people in the neighbourhood. One resident told us: "I think the police profile any Native kid that's walking down the street." Another Aboriginal mother told us that her son, who likes to jog, "can't run down the street" because he is subject to being stopped by the police when he does.

Many residents of the inner city express fear and distrust of the police. But at the same time, they also want to see a greater police presence in their communities. In these terms, inner-city residents do want more 'law and order.' But the law and order they have in mind is of a particular kind. Rather than the police acting as an 'outside force' that comes into their neighbourhoods to 'bust heads,' they envision a role for police as working in partnership with their community, as being part of the community revitalization process that is underway.

To my mind, this suggests that if we really want to address the social issues that are confronting our communities, then we need to build on the strengths of those communities. And there is so much to build upon, especially in Winnipeg's inner city. Although my own involvement has been limited, I've been so impressed by the work that I see going on there. Since last fall, for instance, there has been a group of people working as a coalition to take action to provide supports for sexually exploited youth. Through working together, they're making progress, and change can happen.

Part of making that change will involve putting pressure on the state. We can't let the state off the hook. The state — at all levels — does have a role to play in the revitalization of the inner city and the alleviation of poverty. So government should be doing all it can to support the important work that is now underway in these communities.

But more 'law and order' is not the solution. The criminal justice system does not hold the key to resolving the social issues of the day. In this regard, I think we need a different vision and a different language to talk about these issues. We need a vision that is not premised on punishment, discipline, and control but one premised on wellness, healing, capacity building, and compassion. We need to resist and counter the discourse or language that the Right uses to give shape to these issues. For instance, we need to stop talking about 'getting tough' on crime. This notion of 'getting tough' is masculine language. More often than not it is counter-posed with the feminized alternative of being 'too soft' on crime. From interviews that I did with men at the Headingley jail for my book, *Out There/In Here* (Comack 2008), I've learned that one of the key reasons these men ended up in prison is because they're trying to live up to the masculine ideal of the 'tough guy.' So it makes no sense to keep talking about 'getting tough' as that kind of language is part of the problem, not a solution.

The same is true for 'zero-tolerance,' which is a term that has its roots in American politics of the 1980s and the Reagan Administration's zero tolerance approach to drug use — which really meant cracking down on Black people. 'Zero tolerance' implies 'no patience.' But the problems that inner-city communities are confronted with are complex, and they require our patience. There is no 'quick fix' solution that will resolve them.

Above all, we need to stop talking about criminal justice and instead focus on social justice. It is only through realizing social justice that meaningful change will occur. But we are fortunate. There are a host of activists and community people who do have a vision for how things could be. In this respect, they are continuing the legacy of Joe Zuken. Leslie Spillett, who we are honouring tonight for her work, is one of those many people.

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