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**CRIMINAL JUSTICE AND UNDERDEVELOPMENT: A CASE STUDY OF THE
JAMAICAN GUN COURT ACT**

City University of New York

Ph.D. 1987

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**CRIMINAL JUSTICE AND UNDERDEVELOPMENT
A CASE STUDY OF THE JAMAICAN GUN COURT ACT**

by

WILLIAM CALATHES

**A dissertation submitted to the Graduate
Faculty in Criminal Justice in partial fulfillment
of the requirements for the degree of Doctor of
Philosophy, City University of New York.**

1987

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This manuscript has been read and accepted by the Graduate Faculty in Criminal Justice in satisfaction of the dissertation requirement of the Degree of Doctor of Philosophy.

February 1, 1987
date

John M. Corbett
Chair of Examining Committee

February 5, 1987
date

Carl F. Weidemann
Executive Officer

Dr. Ned Benton
Supervisory Committee

Dr. Sidney Haring
Supervisory Committee

Dr. Charles Winick
Supervisory Committee

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CHAPTER I: INTRODUCTION

The purpose of this study is to analyze the legal and social implications of the Jamaican Gun Court Act. It is appropriate at this time for a study to focus on the Act because firearm crimes in Jamaica rose dramatically throughout the 1970's and early 1980's. Criminal justice literature has specific opportunities to develop its analysis of legislation, crime and underdevelopment through its study.

Jamaican Gun Court Act

The Jamaican Gun Court Act was an attempt by the government to greatly reduce illegally held guns, including both hand guns and long guns (see Appendix A). In conjunction with the passage of the Act in 1974, a new prison was constructed on a military base in Kingston. The "Rehabilitation Center" was painted red, looked like a concentration camp, and was meant to be a highly visible reminder of the fate of gun offenders. Behavioral scientists who helped design the law, the prison and the court procedures were attempting to eliminate the "hero worship" and excitement associated with firearm violence.

The Gun Court Act provided that a person apprehended on a charge of illegal possession of a firearm was to be placed on trial within 7 days. There were no preliminary inquiries; cases were heard by a single magistrate appointed for this purpose. If an accused was guilty of other offenses, the person was to first answer the charges of illegal possession of a firearm.

Conviction carried a mandatory sentence of indefinite detention. One appeal by a convicted person was permitted to the Court of Appeals of Jamaica and no bail was available at any stage. The public was not allowed to enter Gun Court, but accounts of what took place were made available to the media. A Review Board alone was empowered to advise whether a detainee was to be released.

For the trial and punishment of offenses involving firearms, the Gun Court Act established three divisions which had island-wide criminal

jurisdiction. The Resident Magistrate's Division had jurisdiction to try summary conviction of offenses. The Full Court divisions had three Resident Magistrates for the trying of any indictable firearm offense (without preliminary inquiry) unless punishable by death. And the Circuit Court divisions had jurisdiction to try, after preliminary inquiry, all firearm offenses punishable by death. The three divisions of the Gun Court Act dealt with any offense under the Firearm Act of 1967.

The central Gun Court was located in Kingston, but the division was permitted to sit elsewhere at the order of the Chief Justice. Accused persons and detainees under the Gun Court Act were kept in a prison in the same locale as the Gun Court.

Juveniles were dealt with by the Gun Court regardless of the provisions of the Juveniles Law, but under the age of 14 their sentence was to be served in an approved reformatory, industrial school, or other incarceration center as defined by the Juveniles Law.

The duration of indefinite detention sentences was decided by the Governor-General on the advice of a Review Board (see Appendix B), consisting of a judge, the Director of Prisons, and the Chief Medical Officer or their nominees, a representative of the Jamaican Council of Churches, and a psychiatrist appointed on a recommendation of the Prime Minister after consultation with the Leader of the Opposition.

There was no appeal from the sentence of indefinite detention. Appeals from conviction in any of the Courts, except a Circuit Court division, was to be to the Court of Appeals whose decision was final. Appeal from conviction or sentence in a Circuit Court division of the Gun Court was to the Court of Appeals, with leave thereof, to the Judicial Committee of the Privy Council of Great Britain.

Juries served in the Circuit Court divisions of the Gun Court, and a Supreme Court was assigned to each division. There were no juries in other divisions of the Gun Court.

Sittings of all divisions of the Gun Court were closed to all except

members and officers of the Court, any security personnel required, parties to the case, their attorneys and witnesses or others directly concerned with the case, and such parties as the Court especially authorized to be present. The Court also directed that names and addresses or any particulars concerning witnesses be kept confidential and not be published; and that no particulars of the trial other than the name of the accused, the offense charged and the verdict and sentence be published without prior approval of the Court. Any individual who published any information in contravention of this was liable on conviction to a fine of \$2,000 or 12 months imprisonment.

Any person who, bribed or attempted to bribe, injured or threatened to injure another or damaged or threatened to damage the property of anyone connected with a Gun Court trial to prevent the course of justice or punish him for or to prevent or dissuade him from doing his duty was to be sentenced to indefinite detention on conviction.

The Gun Court redefined the offense of illegal possession of a firearm as follows: the possession of any firearm in circumstances which raised a reasonable presumption that such firearm was intended or about to be used in a manner prejudicial to public order or public safety; any person found in the company of anyone in those circumstances was, in the absence of a reasonable excuse (the burden was upon the suspect), treated as being in possession of such firearm; any person who was proved to have in his possession or under his control any vehicle or other things in or which was found any firearm was, unless he offered a reasonable explanation to the contrary, deemed to have such firearm in his possession; any person proved to have used or attempted to use or have been in possession of a firearm or an imitation firearm was deemed to be in possession of a firearm.

Time characterized the provisions of the Gun Court as follows; "under the terms of this draconian legislation, trials of gunmen are held in a special court, proceedings are closed to public and press, and there is no bail while the accused awaits trial. If convicted, prisoners are sentenced to indefinite detention at a specially designed rehabilitation prison" (*Time*, 1974, p. 13).

These basic delineations of the Gun Court Act remained virtually unchanged for a nine-year period, 1974-1983, despite the passage of two amendments (see Appendixes C and D). During its legislative life approximately 1,200 individuals were convicted. The history of the Act is discussed in detail later in this study.

Law Enforcement Policy Option

This study of the Jamaican Gun Court examines the legal strategy selected and implemented by the Jamaican government to reduce firearm violence during the 1970's and the early 1980's. The Act was an attempt to deter firearm violence. Deterrence refers to the prevention of criminal acts by incapacitating individual offenders and making examples of them. The offender is deterred from committing crimes against society as a result of the incapacitation (specific deterrence). General deterrence of potential criminals is assumed to result from punishment. The deterrence value of a law directly relates to the probability of an offender being detected, apprehended, tried, convicted, and sentenced.

In this regard, the present study analyzes the Gun Court Act's attempt to deal more harshly than earlier laws with those arrested, processed, and convicted of gun crimes in terms of whether it reduced firearm crimes. The first major research question of this study, therefore, is:

- (1) Did the Jamaican Gun Court Act reduce the incidence of firearm crime?

One of the major distinctions between the current concerns of criminal justice scholars and standard criminological research has been a focus on concrete policy options. Among these policy options, none have had a higher priority than that of reducing violent crime. Within this broad range, different crime-control policy options from gun control and mandatory sentences, to considering weapons possession as a factor in harsher sentences, have

been studied. The Jamaican Gun Court Act is unique in that it combined procedure with more severe sentences, addressing both the severity and swiftness, as well as the likelihood of punishment. These three distinct factors are not easily connected in America. Findings relating to the effectiveness of the Jamaican model have great potential value for American policy-makers.

Crime and Underdevelopment

An additional intent of this study is to investigate the origin, operations, legal and socio-political implications of the Gun Court Act from its inception in 1974 through passage of its second amendment in 1982. In doing so, the Act is analyzed in terms of its social and political genesis. The Act is examined in terms of a Jamaican social and political society which is shown to still be rooted in a dependent economic system. This study, therefore, investigates whether, economic dependency, even after 20 years of political independence, persisted in defining much of the identity and management of a major piece of criminal legislation.

The objective of both an empirical and societal approach to this case analysis is to locate the implications of the Gun Court Act within the broader patterns of Third World social development. An effort to link crime and justice in the Third World to the processes and effects of underdevelopment is made.

The study of crime and justice in the Third World is not new. Criminologists such as William Clifford, Marshall B. Clinard and Daniel J. Abbott, and Louise Shelley, have studied Third World crime (see e.g., Biles, 1976; Bohannon, 1967; Clifford, 1974; Clinard & Abbott, 1973; Lopez-Rey, 1970; Shelley, 1981). However, as is illustrated in the next chapter, much of their reason for studying Third World crime rate has been to test the applicability of theories in different social contexts. These comparative criminologists use economic history as a framework and apply "modernization theory" in their analyses. Modernization does not permit the necessary analysis of the political and social context of crime in Third World societies. Crime in these societies is not solely attributable to the rapid pace

of industrialization. Modernization criminologists have not subscribed to a sociology of law perspective. The lack (until quite recently) of such Third World criminological studies, is unfortunate in that such studies are desirable to the essential development of a mature sociology of law and have potential to make a major contribution to our understanding of crime and criminal law.

A growing number of scholars, however, have begun to write on this topic (see e.g., Birbeck, 1982; Dodd, 1979; Mahabir, 1980; Shiviji, 1982). This emerging body of criminal justice literature addresses the connection between the processes of imperialism and underdevelopment and the whole range of law violations and legal institutions current in post-colonial societies. This study of the Jamaican Gun Court Act is intended as a contribution to our knowledge of the role of crime and justice in social development, to the emergence of a crime and development perspective.

One of the premises of the present study, therefore, is that economic systems do not work automatically; they need to be created, protected and legitimated. Certain criminal laws and the violation of these laws, can be seen as important elements in economic development. Criminal law and criminal action are the expressions of social conflicts and contradictions, and are two of the key forces for stabilizing conflictual social relations. "They are often very much a part of the political economy; speaking its language, satisfying its needs and questioning its legitimacy" (Sumner, 1982, p. 4).

This study, through an historical analysis, examines how the dependence of one Third World nation, Jamaica, affected the scale of its crime problem, specifically, its gun control problem, as well as its official reaction to it, during the 1970's and early 1980's. An historical approach bears the rewards of gaining different techniques and insights into the problem of crime, thereby facilitating fundamentally, a more comprehensive explanation of criminal justice and the function of law within a society (see e.g., Duster, 1970; Jeffrey, 1957; Radzinowicz, 1948; Samatha, 1974; Swendinger & Swendinger, 1982; Thompson, 1975).

The very underpinnings of this study are rooted in the principle that the

understanding of the present can only be accomplished by an understanding of a line of movement begun in the past. Here, the line of movement of analysis is the growth of imperialism and international social relations. Such processes are historically viewed and related to the discovery of an explanation as to the power and class differences which came to bear on the legislative outcome which resulted in the Gun Court Act.

The Gun Court Act reflected a legislative policy decision designed to curb increases in firearm-crimes in Jamaican society during the 1970's. In order to understand the policy decision, an understanding of the politics of the Third World is necessary. In a significant sense, much of the history of crime and legislation in Third World societies is a history of political conflict precipitated by colonial law. (For purposes of this study "crime," therefore, is defined as "an act that has been shown to be actually harmful to society, or . . . is believed to be socially harmful by a group that has the power to enforce beliefs and that places such an act under positive penalties." see Gillin, 1943).

This study of the Gun Court Act, therefore, considers the relevance of the concept of "nation-building." The concept of crime in nation-building is still relatively unexplored by criminal justice scholars. Reasons for this include the narrow disciplinary limits of some criminologists who, on the whole, do not seem to be influenced by the sociology of law, a necessary framework for the study of this concept. In part, also, since contemporary nation-building is a phenomenon characteristic of developing countries, its theoretical connection with crime requires a comprehensive study of crime in developing countries that goes beyond comparisons of official crime statistics to the laws themselves, and to the forces that have shaped and continue to shape the law, legal systems, and the definitions of crime on these societies.

Nation-building as a social process has direct implications in the study of legislation in Jamaica. Nation-building, for the purposes of this study, is defined as a social process which encompasses the following goals: 1) the establishment of a political institutional framework; 2) the promotion of

socioeconomic development; and, 3) the search for national identity. In his analysis of decolonization and violence in the Third World, Frantz Fanon describes as nation-building any act of retaliation against a colonial or neocolonial order, which means that acts committed by a colonized people to create changes in an oppressive social order are nation-building (Fanon, 1963).

Social Policy Choices

The study examines the social forces that led to the creation of the Act and affected its form and application during a ten year period. The study's intent is to investigate the origin, operations, legal and sociopolitical implications of the Gun Court Act from its inception through 1983. The legislation is analyzed in terms of its social and political context, with an emphasis on the role of interest groups.

In the study of criminal legislation, an analysis of political interest groups is essential. Political interest groups operated in the context of underdevelopment in reference to the Jamaican Gun Court. Those who favored the Jamaican Gun Court Act claimed that the measure would falter because the criminals, in witnessing the debate over its constitutionality, felt it would soon be repealed and that society was not serious in its resolve to sternly punish them. Those who opposed the measure believed it to be ineffective because they were of the opinion that, following perhaps an initial lowering of the crime rate, the reduction over the long-run would not take place, due to the complex societal problems which they believed to be the cause of violent gun-related crime.

The following research questions are addressed in the study:

- (1) What were the origins of the Gun Court Act?
- (2) Was the Jamaican Gun Court Act structured by competing interest groups or was it a passed by Government fiat?

- (3) What interest groups supported/opposed the law?**
- (4) How did interest groups affect the content and structure of the law from 1974 to 1982?**
- (5) How was the role interest groups played in structuring this change governed by the political system?**

Criminologists have always been aware of the fact that criminal law reflects specific social policy choices that are the product of interest group activities. We have only a few studies that focus in detail on this process. One of the major problems with this research is that often criminal legislation is so broad and complex that interest group debate and motivation is difficult to document. The Jamaican Gun Court Act provides an excellent opportunity for this kind of research because it was highly visible and a highly structured response to a major crime problem in a small island nation.

To the researcher's knowledge no other Western society has attempted such a large scale social experiment to curb gun crimes. The New York mandatory gun law and other similar state legislative measures, for example, are small by comparison. These laws contained neither the wide range of provisions, nor carried with them the severity of punishment. Nevertheless, the results of the Jamaican legislation bear serious import for other Western societies afflicted by similar problems. The Act was also the sternest mandatory gun law ever passed in the western hemisphere and it therefore should be of critical concern for scholarly criminal justice study.

This study contributes to comparative criminology and to crime and underdevelopment. Because of the differences between developed and underdeveloped societies, and the complexity of forces structuring these latter nations, there is a need to contribute to this new literature. By focusing on one piece of legislation and one society, this study represents a modest attempt to meet this challenge.

Following a survey of the relevant literature, and a review of historical

antecedents, an investigation of the deterrent effect of the Act, and an analysis of the passage, implementation and legislative duration of the Gun Court Act is presented.

CHAPTER II. PREVIOUS WORKS

Introduction

This chapter presents a review of relevant literature. The first part of the chapter deals with mandatory gun laws, with the goal of presenting a sampling of the research which has been done to assess the impact of gun control legislation on crime. Studies concerning American mandatory gun laws are discussed, followed by a review of two studies of the Jamaican Gun Court Act. The second part of the chapter deals with a review of the literature on the sociology of law, with the goal of presenting criminal justice research which has recognized the value of studying criminal legislation in an historical context. The next part of the chapter includes an examination of Third World modernization literature and the literature on crime and underdevelopment. The theories which provide the basis for each are identified and pertinent studies in each are reviewed. Following this, an examination of class conflict and law literature is undertaken. Finally, a survey of relevant literature concerning itself specifically with the Gun Court Act is surveyed.

Firearm Legislation

Over the last couple of decades violent crime rose dramatically in several Western societies. As a result of this dramatic increase, we witnessed one of the most sweeping efforts to reform criminal sentencing in our history. The demise of the rehabilitative idea led a number of jurisdictions in the United States, and Congress, to seek ways to decrease and structure discretion and increase the severity and likelihood of punishment. Another cycle of criminal justice change occurred and deterrence and retribution became its benchmarks. Jamaica was no exception to this rising trend.

The social response to crime occurs through the criminal justice system - police, courts, correctional institutions, probation and parole. One of these responses to crime, mandatory gun laws, is simply based on the theoretical concepts of general deterrence, incapacitation and retribution. Those who

adopt a strong reliance on deterrence, in particular, believe that mandatory gun laws, will decrease the level of gun-related crime in a society.

Proponents of mandatory gun laws maintain that stricter and more certain prison sentences will have a significant impact on violent crime by deterring gun offenders. Introducing mandatory minimum prison sentences for those convicted of using or carrying a gun during the commission of a crime is frequently proposed as a way to curb weapon misuse. Such provisions have already been incorporated into the criminal laws of many states, and current opinion among public officials at all levels of government favors increased reliance on this concept.

The literature dealing with firearm legislation reflects the growing concern about the use of firearms in violent crimes. This growing concern has resulted in considerable interest in firearm regulation, particularly handgun regulation.

Franklin E. Zimring (1968) in, "Is Gun Control Likely to Reduce Violent Killings," examines the use of guns and knives as attack weapons in order to evaluate whether gun control would reduce the homicide rate. The debate over whether gun control laws will keep a person from killing or whether a person motivated to kill will find a weapon is addressed.

This report analyzes data received from the Chicago, Illinois, police department for the year 1967. Zimring finds that gun control laws would have no effect if the only intent of killers was to kill. Statistics from Chicago provide information on the degree to which homicides result from an ambiguous, rather than a single-minded attack. More than two-thirds of all killings involved spouses, lovers, friends, or tavern guests as victim and attacker. The nature of the attack is similarly related - over 80 percent of the homicides were a result of domestic, liquor, or money altercations. In over 50 percent of the homicides, the victim, the offender, or both had been drinking prior to the attack. These data suggest that often the motive in an attack is not to kill at any cost.

Zimring also assesses the relative potential lethality of various weapons

to determine how the weapon used affects the homicide rate. The acquaintance of the victim and the offender and the location of the act show that the weapon range is not necessarily a critical factor in attacks. Many attack instruments are used, but the most common, next to firearms, are knives.

A case can be made that the absence of guns would produce a great many more knife attacks and a substantially greater number of attacks using hands or feet as potential homicide weapons. Knives are the most dangerous weapons after firearms. The number of serious knife attacks in 1967 was over 200 percent times that of gun attacks. However, the death rate per 100 reported knife attacks was one-fifth the rate of gun deaths. Zimring suggests that this might have something to do with the seriousness of the intent to kill, which was assessed by the location of the wounds (i.e., serious wounds are on head, neck, back, chest, or abdomen). Problems with this measure are noted - minor knife wounds may be due to the victim's effective self-defense. Multiple wounds can also indicate the seriousness of the attacker's intent to kill. Data show that proportions of reported gun and knife attacks which may be considered serious are approximately equal. By taking the most negative interpretations of attack statistics - that is, assuming only serious puncture knife wounds reflected intent to kill while all gunshot attacks were earnest - the death rate per 100 attacks by guns is still 250 percent that of knife attacks. Finally, in suggesting further research concentrated on the deadly attack, it is noted that victims and attackers are disproportionately black and disproportionately male.

In "Firearms and Federal Law - The Gun Control Act of 1968," Zimring (1975) examines the impact of the Gun Control Act of 1968 on the efforts of law enforcement officials to fight crime and violence and concludes that the Act was ill-conceived and inadequate. This paper presents an outline of the antecedents of the Gun Control Act, prior Federal laws regulating firearm traffic and some of the legislative proposals that affected the shape of the 1968 law. A brief analysis of the Act itself shows how prior Federal law was

altered and how the alterations were thought to serve regulatory ends. Data are presented on the impact of the law, focusing on the so-called "Saturday night special" ban and the effort to aid state and local gun control efforts by reducing the flow of firearms from loose-control to tight-control states.

Martin S. Geisel, Richard Roll and R. Stanton Wettick, Jr. (1969) correlate gun control with various death and crime rates for states and cities, while simultaneously accounting for the influence of other factors such as per capita income, education, and population density in, "The Effectiveness of State and Local Regulation of Handguns." Differences in death and crime rates among the states and cities studied were obtained by collecting data on the rates of homicide by firearm, total homicide, suicide by firearm, total suicide, aggravated assault by firearm, total aggravated assault, and accidental death by firearm and robbery. Data were obtained from the 50 states, the District of Columbia, and the 129 United States cities whose population exceeded 100,000 in 1960.

Differences in the other factors which may account for variations in the death and crime rates were obtained by collecting data relating to income, education, sex, police, race, and licensed hunters. The various gun control regulations of the states and cities considered were classified into eight major categories. This permitted quantification of the gun control provisions of the state statutes and city ordinances by assigning numerical weights to each of the eight categories. Data analysis was employed to obtain estimates of the extent to which differences in the death and crime rate are related to the differences in gun control, while simultaneously accounting for other factors. Findings indicate that gun control legislation is most effective in reducing the number of suicides and accidents by firearms, less effective in reducing the number of homicides, and generally ineffective in reducing the number of other crimes.

D. R. Murray (1975) in "Handguns, Gun Control Laws and Firearm Violence," examines the relationship between the social factors related to the possession of handguns, the restrictiveness of gun control legislation, and the

acts of violence involving handguns. This study utilizes Federal Bureau of Investigation Data, census material, vital statistics, and Harris and Gallup surveys in a multiple regression statistical framework. Three sets of hypotheses are examined. In the first set, the author suggests that the various types and severity of gun control laws should have a significant effect on lowering rates of violence associated with firearms. This relationship was not found. The second set of hypotheses concerns the relationship between gun laws and differential rates of possession of handguns throughout the country. Once again, controlling for basic social factors, the data show that gun laws have no significant effect on access to firearms. In the third set of hypotheses, the purpose was to determine whether the basic proposition on which gun laws are based is valid, that is, whether differing rates of access to handguns have any significant effect on violent acts. These hypotheses are not supported by the data, and no relationship between access to handguns and acts of violence is found.

Under the Gun: Weapons, Crimes and Violence in America by James D. Wright, Peter H. Rossi, Kathleen Daly and Eleanor Weber-Burdin (1981) is one of the most comprehensive reviews of gun control research ever to be published. Among the authors' conclusions are that: 1) the existing literature provides only very weak evidence for the effectiveness of gun control legislation that has been enacted in the United States; 2) contrary to the belief that guns are completely unregulated in this country, the ownership and use of firearms are being regulated in the United States and have been under more or less strict statutory control for decades; 3) private ownership of firearms is a deterrent to nontrivial crime; and, 4) violent acts would continue even if a complete ban on possession of firearms were put into place and were effective.

Glenn L. Pierce and William J. Bower (1981) in "The Bartley-Fox Gun Law's Short-Term Impact on Crime in Boston" examine the one-year "mandatory" Massachusetts gun law. Drawing on FBI crime data, the authors employ interrupted time-series techniques and multiple control group

comparisons to examine the impact of the law on gun and nongun assault, robbery, and homicide. First, the authors find that the law substantially reduced the incidence of gun assaults, but produced a more than offsetting increase in nongun armed assaults. Evidently, the law prevented some individuals from carrying and using their firearm, but it did not prevent them from becoming involved in assaultive situations and resorting to other weapons. Second, the authors find that the law resulted in a reduction of gun robberies, accompanied by a less than corresponding increase in nongun armed robberies. In effect, the substitution of weapons for armed robbery was relatively less than for armed assault. Third, the authors find that the law reduced gun homicides with no increase in nongun homicides. Thus the gun law produced a net decline in the incidence of criminal homicide. Finally, the authors hold that the timing of the law's impact suggests that it was the publicity of the law's intent rather than the severity or the certainty of the punishments actually imposed under the law that was responsible for the observed reductions in gun-related crimes.

Mandatory sentences for crimes committed with a gun have become a popular policy because they promise a reduction in gun violence at a relatively low cost. In "One With a Gun Gets You Two": Mandatory Sentencing and Firearms Violence in Detroit," Colin Loftin and David McDowall (1981) present results of a study of the implementation of such a law in Detroit, Michigan. Two major questions are discussed: 1) what effect did the Michigan gun law have on the certainty and severity of sentences; and 2) did the gun law reduce the number of serious violent crimes in Detroit? The authors find that, although the law required a two-year mandatory sentence for felonies committed with a gun and the prosecutor followed a strict policy of not reducing the gun law charge, there was little change in the certainty or severity of sentences that could be attributed to the effects of the gun law. Only in the case of assault was there a significant change in the expected sentence. Also serious violent crimes - murder, robbery, and assault - follow patterns over time that lead the authors to conclude that the

gun law did not significantly alter the number or type of serious crimes in Detroit.

Marvin Wolfgang (1967) in *Studies in Criminal Homicide* concludes that the homicide rate would not be affected if guns were not immediately available. The prospective killer would most likely find another weapon with which to murder the victim. Additionally, Wolfgang finds that aggression is associated with age and sex. The majority of assaultive crimes are committed by young males (late teens to early thirties): "In general, a review of the statistical and clinical literature from many societies indicates that the age-sex category of youthful males contains the highest association with violent crime and that physically aggressive behavior for this group converges with notions about the masculine ideal" (Wolfgang, 1967, p. 4).

Wolfgang concludes that there is a cultural preference in the manner in which one kills and the weapon chosen. He finds that the method used to murder is merely due to its availability; the motivation or provocation is what really causes the homicide. "Although there are many factors which must converge before the homicide occurs, there can be little doubt that accessibility of a weapon, cultural traditions of carrying and employing certain types of weapons, and individual perspectives associated with various means of inflicting death are important factors" (Wolfgang, 1966, p. 268).

Paul Gendreau and C. Thomas Surrige (1978) examine the Jamaican Gun Court Act, pointing out that the increase of possession and use of firearms in Jamaica gradually occurred during the 1960's and exploded in the early 1970's. The authors evaluate the need for such a court, and its effect during its first year of operation. The authors describe the way in which the law was prepared and introduced. They explain that its introduction was initially welcomed, but that politicians, lawyers, psychiatrists and journalists voiced criticisms of the law shortly thereafter.

This study culminates in the empirical conclusion that the Gun Court Act, following its first year of operation, effected a fifty percent reduction in violent offenses with firearms, in the urban areas in particular. This conclusion is

tempered by their findings that crime in general had not diminished. The authors believe that crime control is impossible in Jamaica without overall reform of the Penal Code, with special emphasis on social problems.

A second study presents the results of a quasi-experiment based on a time-series analysis of the crime rate in Jamaica, before and after the Gun Court Act (Diener & Crandell, 1979). Edward Diener and Rick Crandell conclude in, "An Evaluation of the Jamaican Anticrime Program" that the Act reduced crime, but question whether or not the Act alone should be credited with the success. They hold that the Act was only a part of a series of anticrime measures which represented a comprehensive social experiment in combatting crime, and as such, the impact of any of the individual components of the program cannot be pinpointed. A major limitation of this study is that the authors' conclusions are based solely upon crime statistics from one year following the Act's implementation. The study of Gendreau and Surrige, suffers from this same limitation.

Building upon the work of Gendreau and Surrige and Diener and Crandell, this current study of the Jamaican Gun Court takes advantage of available gun-related crime statistics from prior to passage of the Act to its 1982 amending. These earlier authors' works represent the initial analysis of a major piece of criminal legislation. This study adds to these two previous studies by examining the Gun Court Act over the full duration of its implementation.

Empirical studies of mandatory gun legislation are sadly lacking, and therefore the Jamaican attempt to control gun crimes through the Gun Court Act is worthy of close attention. At the time of its enactment, Jamaica appeared to have enacted the sternest of penalties. The immediacy of the punishment is also noteworthy. The smallness of the society and its major impact on the criminal justice system and the entire nation permit the practicality, as well as the significance of its study.

Sociology of Law Literature

This study also analyzes the role of organized interest groups in the legislative and implementation processes of the Jamaican Gun Court Act. As such, it has two primary objectives: first, to test what the importance of such groups are by suggesting, quite simply, that their importance varied over time under different sociopolitical circumstances; second, and perhaps more important, to specify those sociopolitical circumstances, explaining when interest groups are important in the criminal legislative process of an underdeveloped nation and why.

The following review of literature helps to demonstrate that criminal justice has inherited power elite theory from sociology in relationship to the analysis of the making of criminal law (Domhoff, 1967; Hamilton, 1972; Mills, 1956). Power elite theory is directly translated into criminal justice analysis through such scholars as William Chambliss, Troy Duster, and Jerome Hall (see e.g., Chambliss, 1976; Duster, 1970; Hall, 1947). According to power elite theory, different interest groups use differentiated allotted power to their own end. This means that criminal law does not reflect value-neutral concerns, but rather reflects political power in society. In other words, criminal law should not be accepted as a given, but must be seen as a product of interest group power dynamics within a society. In particular, this is especially visible in a society where political power has apparently been used more by some interest groups than others (e.g., Jamaica).

The normative implications of power elite theory must be assessed by criminal justice scholars. Such scholars should bring to the discipline the understanding of the operation of criminal law as partly a product of legislatures functioning within political markets influenced by societal interest groups. The purpose of this study is ultimately to improve the knowledge base of criminal legislation decisions in the reality of a sociopolitical context. Improved criminal justice policy analysis has a real contribution to make, in particular insofar as participants in the legislative process often find it rational to obscure outcomes and employ symbolic reassurances in order to keep the

losers unaware of the real stakes (Lowi, 1969). In providing this analysis, however, criminal justice scholars must recognize that information constitutes a potentially powerful force for the "socialization of conflict" (Shattschneider, 1960) and that, as a consequence, their conclusions may not always be welcomed by policymakers.

This study of the Jamaican Gun Court Act, therefore adopts a sociology of law perspective. The importance of studying the social basis of criminal laws has been acknowledged by many authorities. Edwin Sutherland (1960), for example, viewed the sociology of laws' attempt at scientific analysis of the conditions under which criminal laws develop, as one of criminology's three principal divisions. Jerome Hall (1947) also regarded the sociology of criminal law and the concomitant investigation of legislative origins as synonymous with criminology. Also, scholars such as C. Ray Jeffrey (1957) and Edwin Schur (1969) have pointed out the high value of criminological theories which do not focus exclusively upon offenders. They have stated that the study of criminal law, including its social basis as well as its enforcement, is neglected. This is a major reason for the study of crime and development.

Although the lack of case studies of legislation has been an almost traditional complaint in the sociology of law, (see e.g., Rose, 1962; Hartjen, 1978) the need for such work received renewed urgency with the development of new directions in criminological theory in the mid-sixties (Carson, 1974, pp. 107, 110). The early questioning of official definitions of deviance should have seemed to demand investigation of the origins of these designations, but for familiar reasons, it was the criminal, along with low-level enforcers, who continued to hold center stage (Cohen, 1966).

In their statement of "the formal requirements of a fully social theory of deviance," Taylor, Walton and Young (1973) presented the study of legislation as a significant feature in any account of the "wider origins of societal reaction" (p. 273). Despite their indication of the serious consequences of "the omission of any consistent analysis of the cultural and

structural basis of law, legitimacy and morality," (Taylor et al., p. 32) the accumulation of case studies on the origins and the life of legislation which might have been expected have not materialized; indeed a reviewer recently claimed that "emergence studies have gone out of fashion" (Cain & Hunt, 1978, p. 93). As such, this study attempts to focus on a structure somewhat wider than that on which modernization theorists have concentrated their attention - the wider perspective of the structure of Jamaican society and considerations of the value such a case study has in the development of the sociology of criminal law.

One of the earliest attempts to systematically study the creation of criminal laws is Jerome Hall's investigation of the law of theft in England. In "Theft, Law and Society: The Carrier's Case," Hall (1947) raises a central question for the sociology of criminal law: What happens when social conditions (especially economic and political conditions) change such that the established laws do not adequately protect the interests of the more powerful classes.

Hall shows that at the time of the Carrier's Case there was no legal prohibition against taking the goods of another person if he or she had entrusted those goods to another's care. But commerce, trade, and the transportation of goods were becoming increasingly important parts of England's economy during that historical period. The judges deciding the Carrier's Case had to choose between creating a new law to protect merchants who entrusted their goods to a carrier or permitting the lack of such legal protection to undermine trade and the merchants' economic interests. The court decided to act in the interests of the merchants despite the lack of such law.

Troy Duster's (1970) major theme in *The Legislation of Morality: Law, Drugs and Moral Judgment* is that law itself can contribute to the emergence of meaningful moral categorizations. Nonetheless, he reiterates the view that certain classes of persons are more susceptible to having the immorality of their behavior underlined than others. It was when, for example, the addict

population of America came to be perceived as young, male, working class and Negro that "the bridge between law and morality was drawn" (Duster, 1970, p. 9). Duster concedes that even where moral connotations are more central to the issue, proponents of law are not always just campaigning for some form of moral autocracy.

W.G. Carson (1974) in "The Sociology of Crime and the Emergence of Criminal Laws" discusses the fact that the sociology of law has developed slowly despite its immense potential. The author both describes and defends the emergence of criminal law from a perspective focusing on power and conflict. Subscribing to this perspective with some reservation, he discusses some of its limitations. He holds that in complex societies, such as the United States, the commonest form of legitimacy derives from the belief in legality itself. "Thus, while the contents and perceptible movements of criminal law are not unaffected by conflict and power, neither do they mirror them exactly" (Carson, 1974, p. 84).

William Chambliss (1984) in the "Law of Vagrancy" points to the shortage of "sociologically relevant analyses of the relationship between particular laws and the social settings in which they emerge" (pp. 33-41). Chambliss' study of vagrancy statutes in England attempts to analyze particular legal categories, to observe changes which take place in the categories, and explain how these changes are themselves related to and stimulate change in the society.

Chambliss identifies the Black death in mid-fourteenth century England, which decimated the cheap labor force, as the societal event which initially produced the vagrancy statute. Cheap labor became a problem for the landowners. The vagrancy laws were formulated to end the mobility of laborers in order to lessen competition among landowners for labor. The author then traces the vagrancy laws historically, concluding that they underwent focal concern shifts as the social setting changed. Chambliss' study of vagrancy laws (and Hall's analysis of theft, 1952) demonstrate the importance of vested interest groups in the emergence and/or alteration of

laws.

William Chambliss and Robert Seidman (1971) in their textbook, *Law, Order and Power*, offer a systematic study of legal order. The work studies law in action as well as law in the books, thus developing a trend begun by American legal realists. The work seeks explanations for the shape and character of law in action in contemporary social theory. The authors state that the central myth about the legal order in the United States is that the normative structure of written law represents the actual operation of the legal order. The authors state that this is a fallacy, holding that the state is a self-serving system which maintains power and privilege. "The way in which rules actually operate to influence behavior can be understood only by considering the total social milieu of the persons whose behavior is supposed to conform to the rules and thus achieve the higher goals implicit in the rules" (Chambliss & Seidman, 1971, p. 4).

The authors hold that law does not represent "value consensus" in a pluralistic and stratified society. Law can never represent everyone's views. In reality, unequal power inevitably leads the legal system not to operate as a value-neutral arena. Even offenses for which there is a superficial consensus (e.g., gun crimes) are not so unanimously viewed as wrong-doing. Law comes to represent entrenched power. The authors conclude by offering a conflict theory of law: society is composed of groups which are in conflict with each other.

David Dixon (1980) in "Class Law: The Street Betting Act of 1906," investigates the origins of the Act by analyzing the National Anti-Gambling League. However, the history of the League's involvement in the emergence of this legislation leads the author beyond a pressure group study to wider perspectives of the structure of British society in this period and to consideration of the value of such case studies in the development of the sociology of law. The author calls for further exploration in both theoretical discussion and empirical investigation of the relativity of superstructural autonomy.

Modernization

The examination of underdevelopment and crime has been very limited in criminal justice literature. In particular, there was a dearth of case studies of Third World legislation. By the mid-1970's, however, a number of criminal justice scholars began to examine crime in developing countries in great detail (see e.g., Biles, 1976; Clifford, 1974; Clinard & Abbott, 1974; Lopez-Rey, 1970; Shelley, 1981). Underdevelopment and crime literature can be divided into two main bodies: modernization works and dependency works.

Many of the modernization studies, contain a theoretical misconception about the overall development of these societies, as well as the phenomena of crime. They ascribe the apparent growth of crime to industrialization and urbanization, a conclusion drawn from the assumption that the current status of economic development in Third World countries is a reflection of nineteenth century economic status of industrialized countries and the growth of crime. Marshall B. Clinard and Daniel J. Abbott (1973), for example, state that "in many ways crime in less developed countries is currently at a stage that provides a reflection of England, the United States, and other developed societies as they were at the time of rapid industrialization, and development in the early nineteenth century" (p. 4).

The conceptual framework provided by modernization theorists generally involves the belief that all major continents are undergoing transition from rural, agricultural to industrialized, urbanized societies, and irrespective of their social and economic characteristics, they are experiencing the growth of criminality which parallels the nineteenth century experience of western developed nations. Modernization works posit that Third World development is evolutionary. The assumption is that all societies have the potential to develop to a "higher" stage of development but for a variety of reasons Third World nations have been "retarded." (For a thorough discussion of modernization, see, e.g., Rostow, 1962; Black, 1966).

According to William Clifford (1973), for example, crime is a function of

the development of modern society and the concomitant moral development that is frequently associated with such development. Durkheim's theory of anomie provides the explicit theoretical foundation of Clifford's assertion that much crime in developing countries results because industrialization and urbanization release people from their traditional restraints while no other controls emerge to prevent criminality.

Marshall B. Clinard and Daniel J. Abbott (1973) in *Crime in Developing Countries* contribute to the literature in comparative sociology and comparative criminology. The authors view development in poor countries as a replay of Western development, as a delayed natural evolution. Modernization is seen as the growth of industrialization and urbanization. These changes, argue the authors, refer to economic dualism: modern industrial cities standing in sharp contrast to backward peasant societies in rural areas; population growth and increased unemployment; the availability of skilled jobs but not enough skilled manpower; reduction of the socialization role of the family and community in urban areas without adequate replacement by other agencies of social control; and finally a decline in the old values. These asymmetries mean that development produces a sharp growth to the crime rate, especially in property offenses.

Louise I. Shelley (1981) in, *Crime and Modernization: The Impact of Industrialization and Urbanization on Crime*, states her aim as the documentation of "the historical transition in international crime patterns" in order to demonstrate that "development rather than the unique cultural and social characteristics is responsible for observed changes in criminality" (p. xiii). At a theoretical level, she calls attention to several American criminological theories, each of which she says, addresses different consequences of the phenomenon of modernization. At the empirical level, she claims that modernization theory is a comprehensive explanation of crime on a global scale. She attributes the high crime rate of Caribbean nations to the fact that "domestic poverty is confronted by the affluence of tourists who provide ready targets for offenders" (Shelley, 1981, p. xiii).

Dudley Allen (1980b) in "Urban Crime and Violence in Jamaica" holds that crime can no longer be thought of as a simple problem for developing nations. Jamaica, for example, in the wake of mounting crime and violence declared it a national problem. Briefly mentioning the Gun Court Act, Allen calls it a courageous and bold step on the part of the Jamaican government. The author holds that rapid social change leading to a breakdown of traditional social roles and institutional controls over behavior and the rapid increase in expectations followed by the failure to meet those expectations were the main factors in the increasing level of violent crime in Jamaica.

In "Crime and Treatment in Jamaica" Allen (1980a) points out that since the criminal and criminal behavior have been romanticized in Jamaica, the real issues have been ignored. The author states that the drastic shift in criminality in Jamaica called for strong legislative sanctions which defused public outrage only for awhile. Simultaneous with the passage of these new statutes, "a new awareness swept through the entire society, and certain groups became more militant" (Allen, 1980a, p. 54). Allen concludes that any legislative measure must consider the interests of the entire society and then delineates briefly the role of the police in Jamaica in enforcing criminal legislation.

Marvin Wolfgang and Franco Ferracuti (1967) argue that violence in developing countries is a viable way of life for many people for whom "physical aggression is a virtue" (p. 273). They see violent behavior in underdeveloped societies as, at times, and in specific contexts, as a cultural expression which is accepted within society.

Modernization theorists make several unjustified assumptions. First, to substitute capitalist development with the innocent label of modernization masks the profound effects such development has had on the political, economic and social infrastructure in Third World nations. This masking makes it impossible to see that capitalist development in the First World differs from its stunted version in the Third World. Modernization theory ignores the extent of capitalist penetration and its articulation, and the partial

conservation of the varying resident social formations in the Third World which produces consequences that subsidize capitalist production and reproduction. In other words, modernization theorists do not inquire into the effects of the establishment of a particular economic order in a society from an historical perspective.

Modernization theorists want to use their data in part to test the applicability in developing nations of theories such as those connected to the concept of differential association or the concept of urbanization with crime; ideas which have been formulated not merely in the West, but overwhelmingly for the United States. For example, Shelley examines the role of "anomie" as a result of urbanization in generating uneven distribution of institutional means to success goals; "culture conflict" as being more plausible if situated in the urban context; "differential association," "social disorganization," and "opportunity theory," as consequences of the urban community (Shelley, 1981). These theories are therefore said to be subsumed under the theory of modernization.

The analysis of traditional Western criminological theories in the context of non-Western societies is, of course, a legitimate aim of comparative research, but it has its dangers. It may impose a kind of tunnel-vision on thinking about crime in developing countries, distracting attention from formulations which arise directly out of the data from those countries. As is delineated in a subsequent chapter, causal factors which operated in Jamaica were different from causal factors which operated in developing countries for reasons of Jamaica's economic dependency.

Yet the case for studying the crime and the law of developing countries from a comparative perspective is a strong one, and could equally well justify the main emphasis being placed on that method in studying crime in the modern world. The work of Clinard and Abbott, although not dealing with the dependency issue, provides its readers considerable insight. Comparative criminologists have attempted to fill the need for cross-national comparisons since differences on crime and violence across societies are of remarkable

magnitude and in need of analysis and explanation.

Crime and Dependency

Contrary to modernization literature, dependency literature holds that the underdevelopment of the Third World began with European colonization. Underdevelopment resulted because colonists exploited the natural resources and slave labor of the Third World for their economic benefit. Crime is then explained with reference to dependency and political economy.

The theoretical foundation of this perspective is stated concisely by Colin Sumner:

Economic systems do not work automatically. They need to be created, protected and legitimated. Certain political and ideological forms are so necessary to an economic system that they can be considered organic to it. These forms interpenetrate with the purely economic. In this sense, certain criminal (as well as civil) laws, and the violation of these laws, can be seen as components of the motor-force of economic development: the relations and struggles between classes is constituted by the mode of production. Crime, whether as law or law violation, has historically been integral to the establishment of new economic formations. Criminal law and criminal action are very much expressions of social conflicts and contradictions, and are two of the key forces stabilizing social relations. They are often very much a part of political economy speaking its language, satisfying its needs questioning its legitimacy. (Sumner, 1982, p. 4).

Rosemary Brana-Shute and Gary Brana-Shute (1980) in *Crime and Punishment in the Carribean* present an anthology of papers on criminal justice problems in the Carribean. The collection of papers represent both modernization and dependency perspectives on crime. The central theme of their volume is that there is a need to identify the shortcomings of the criminal justice systems of Carribean nations in order to remedy them. Each paper points out that even basic data are lacking on existing situations. The authors call for research based on basic information collection, analysis, and

dissemination of results and recommendations.

Acknowledging the overwhelming nature of the issues, the Brana-Shutes also call for a careful rethinking of Caribbean institutions and aspirations. They state that criminological models and interpretations developed principally in North Atlantic industrialized countries are inappropriate in varying degrees to the conditions of rapidly urbanizing, developing countries dealing with industrial or plantation dislocations. Local situations are seen as further complicated in many developing countries by inherited systems of criminal laws and procedures, courts, police and correctional systems that fail to answer current, post-colonial needs.

Cynthia Mahabir (1980) explores the concept of nation-building as a phenomenon of developing countries in "Crime and Nation-Building: The Emergency Powers Act of 1970 of Trinidad and Tobago." The author brilliantly traces how a major social conflict (i.e., Trinidad and Tobago's Black Power revolt in 1970) brings to the fore contradictions of activities defined as crimes, while the law-breakers define themselves as nation-builders. The author calls for a re-examination of the concepts of crime and nation-building in the study of crime in the developing nations of the world.

Howard Jones (1981) reports on the crime situation in Guyana by emphasizing the criminological significance of pluralism. A pluralist society is defined as one in which there are a number of groups which are disparate both culturally and institutionally, but are united into a common social system by state coercion. The author points out that Third World nations have their own ethnic divisions but is surprised that studies like Clinard and Abbott's *Crime in Developing Societies* do not devote any attention to the significance of ethnic divisions in the crime picture.

In this work Jones also elaborates on the concept of the importance of studying underdevelopment in the understanding of the crime picture of Third World nations. He points to the effect that a degree of development is achieved in underdeveloped nations but that it is so limited and concentrated that it occurs at the expense of restricting development elsewhere in the

country. The economic consequences of this are serious enough and nation-building is seriously hampered; the lack of a basis for the social and cultural unification that all new nations have to find becomes apparent. In particular, inequalities of income and opportunity widen between those who are, and those who are not associated with the developing sectors.

David Dodd (1979) also provides a comprehensive analysis of law in his study of underdevelopment and law in Guyana. Guyana is shown to be an example of a legacy of colonial power. Its legal culture is investigated, the result of which leads the author to conclude that the legal and judicial systems were contrived and persist specifically to control and direct the lives of the laboring population. The systems are seen as playing a substantive role in producing, legitimating and reinforcing a social structure founded upon stratified inequality and persistent poverty. Since independence, the ideology of status ascription by color and ethnicity, although politically challenged, has not resulted in the law itself being removed as an instrument of state power.

In *Law and State in Papua New Guinea*, Peter Fitzpatrick (1980) draws on theories of underdevelopment and Marxist theories of law. He presents a theoretical framework which views law in the Third World as critical to the development and maintenance of social formations. The dominant mode of capitalist social formation is integrated with the traditional mode in ways which preserve key aspects of the traditional. However, combining these different modes is characterized by contradictions and difficulties.

In "The Papua New Guinea Minimum Penalties Legislation," David Weisbrot (1984) documents the attempt to combat a perceived crisis in law and order in Papua New Guinea. The Papua New Guinea Parliament enacted a new scheme of mandatory minimum penalties of imprisonment applicable to a wide range of offenses. Weisbrot discusses the strong criticism of the judiciary and attempts to circumvent the legislation which only resulted in further amendments by Parliament to increase the scope of the legislation. He submits that the legislation is ill-conceived, and will not have

desired effect of deterring criminal activity; rather, the scheme creates a harsh and arbitrary system of justice in which judicial discretion, and courts, gaols, and counsel are over-burdened.

This study is a direct parallel to the study of the Jamaican Gun Court. For example, Weisbrot states that the perceived lawlessness (reliable statistics do not exist) produce a climate where drastic solutions are regularly proffered and sometimes attempted (p. 164). The Papua New Guinea legislation was seen by judges and magistrates as an attack on their discretion in sentencing after politicians and others complained that sentences were too light and provided insufficient deterrence. "What eventuated is a tug-of-war between the different branches of government, played out in Parliament, the courts, and in the press, and culminating in a Constitutional challenge to the ability of the Parliament to fetter the discretion of the judiciary to the detriment of the accused" (p. 165).

In *Violence and Politics in Jamaica 1960-70: Internal Security in a Developing Country*, Terry Lacey (1977) examines the relationship between violence and politics in Jamaica from its transition from colony to nationhood. This work views violence as a social occurrence, and particularly political violence as a combination of economic, social and political factors. Lacey bases his study on some 2,000 incidents in Jamaica between 1960 and 1970. These incidents include, confrontations between revolutionary and political groups and police and the security forces, gang warfare, riots, arson, sabotage, shootings and shoot-outs.

Lacey posits that violence, whether politically motivated or otherwise, is not an autonomous phenomenon to be explained in terms of conspiracy theories about minority groups or as some kind of social aberration. Its causes are to be found in the social and economic system, where frustrations erupt in a certain style of politics or in a rejection of politics altogether. He demonstrates that most violence in Jamaica during the 1960's was neither outside nor against the the established political order but sprang directly from

it. The only solution, he concludes, is not "more efficient repression" but radical change in the economic and political structure to eliminate its causes.

An unpublished dissertation by Arthur Lewin (1978) of the City University of New York, "Social Control in Jamaica: Causes, Methods and Consequences," presents a detailed discussion as to the changing nature of crime in Jamaica. Following a survey of predominant types of crimes and weapons used in their implementation, Lewin demonstrates that despite the popular perception of crime as a political problem, the underlying cause of crime is social in nature. The increasing urban poverty and the "ghettoizing" of Jamaica are identified as the real problems. Lewin also notes that the inability of Jamaica to develop a sound economy and erase poverty has had severe political implications. He observes that both political parties, the People's National Party (P. N. P.) and the Jamaican Labour Party, (J. L. P.), have made crime an issue, accusing each other of being responsible for violence and denigrating each other's theories of development.

Frantz Fanon (1963), disagrees with Wolfgang and Ferracuti's opinion that violence in developing countries is a way of life for many people. Fanon views violence in the Third World as inseparable from the process of decolonization:

The violence which has ruled over the colonial world has ceaselessly drummed the rhythm for the destruction of native social forms and broken up without reserve the systems of reference of the economy, the customs of dress and external life, that same violence will be claimed and taken over by the native at the moment when deciding to embody history in his own person, he surges into forbidden quarters . . . The native's violence unifies the people. Violence is an action all-inclusive and national. (p. 40).

Fanon adds that violence for the people of the Third World is a "cleansing force" that "frees the native from his inferiority complex and from his despair and inaction; to make him fearless and restore his self-respect" (p. 94).

Colin Sumner's (1982) "Crime, Justice and Underdevelopment: Beyond

Modernisation Theory," sets the framework for the later essays of his anthology. In particular, he attacks the conventional modernization theory and he argues for a radical criminology rooted in an understanding of imperialism. He concentrates his attention on Clinard and Abbott in order to highlight the deficiencies of orthodox criminology. Essentially, Sumner dismisses the perspectives of Clinard and Abbott as naive and irrelevant to the real crime problems which are causally linked to the impact of imperialism upon social formations in colonial and neo-colonial territories.

Crime and dependency scholars such as the Brana-Shutes, Mahabir, Jones, Dodd, Fitzpatrick, Weisbrot, Lacey, Lewin, Fanon and Sumner do not view Third World development as a replay of western development and are therefore not interested in it as a comparative area study. The theoretical underpinnings of their approach involve the major criticism of the comparative approach; that is, there are some views which oversimplify the nature of the relationship between developed and developing societies. The study of the Jamaican Gun Court Act sheds light upon this relationship. Simply stated, its conclusions are set against the tension existing between "modernization" theory and the conflict theory of legal change. It presents the study of legislation as a significant feature in the account of the "wider origins of social reaction" (see e.g., Dixon, 1980; Mahabir, 1980; Sumner, 1982).

Dixon (1980), for example, in analyzing the Street Betting Act of 1906 sets his conclusions of the emergence of the Act against the conflict theory of criminal law. He criticizes Chambliss' conclusion of a "conflict theory of legal change" (Chambliss, 1976, pp. 100-102) because it equates structural forces with class conflict and classes with groups of people, thus making theoretical treatment of specific factions and interests within a class impossible. The result, according to Dixon, is a mechanistic model in which bureaucracies, moral entrepreneurs and interest groups are able to operate in the way earlier pluralistic theory suggested, in periods when class conflict is latent (p. 101). Structural forces swing into action "when class conflict breaks into open rebellion," then the state must enact legislation and the courts interpret laws

in ways that are perceived as solutions to conflict" (p. 101). The mechanism of the theory is a consequence of the limitations of a conception of social structure which fails to go beyond class conflict. The references to determination imply "an allegiance to Marxism which camouflages a dubious and unconvincing radical pluralism" (p. 67).

Dixon accounts for a variety of class interests in the attack on gambling, by a theory based on class conflict only by a relapse into pluralism. He states that the campaign against gambling, and the statute it produced, "were products of economic crisis and political and social dislocation" (p. 122). Similarly, the obvious fear of gun violence in Jamaica and the Gun Court Act were products of the same. Applying Dixon's conclusion to the theoretical base of conflict theory, leads one to the conclusion that, "analyses which restrict themselves to the concepts of class conflict and pressure group activity are incapable of appreciating the complexity of such phenomena" (p. 122).

What is needed, then, is an investigation into the nature and relativity of base and superstructure. This is a very complicated problem. Gramsci views the distinction between hegemony and domination as critical in understanding superstructure. Gramsci states that the supremacy of a social group or class manifests itself in two different ways: "domination, or coercion," and "intellectual and moral leadership." Hegemony is the latter type of supremacy. It is superiority obtained by consent rather than force of one class or group over other classes (Femia, 1981, p. 24). It is found within "civil society", not the "political society." Whereas, domination is realized through the coercive machinery of the state. Hence, criminal legislation can be passed and implemented by either consent, domination or a combination of both.

The character of the relationship between base and superstructure is extremely complex and, as of yet, remains, under-developed. As Rock (1974) has noted, "between social structure and legislation there are many mediating activities which cannot simply be dismissed or guessed at" (p. 8).

Moreover, Gray (1976) notes that, "the failure to 'find out what goes on in between' the economic and political levels has made the discussion of too many historical problems seem circular, inconclusive and unsatisfying" (p. 3).

The study of criminal legislation, therefore, by concentrating upon the development of an understanding of the effect of base and superstructure upon that which "goes on in between," will make a significant contribution. This study of the Gun Court complements the existing theoretical and empirical work of the sociology of law.

Class Conflict and Law

It is inaccurate to state that dependency of crime and underdevelopment theorists draw upon "Marxist" concepts in order to develop and support their views on crime in the Third World. An example of such an inaccuracy is to state that one Marxist concept which is abundantly drawn upon, is that of class conflict. Marx himself noted that, he did not invent the idea of class conflict. Hence, a study employing this idea is not necessarily Marxist. The following review highlights some critical works which discuss class conflict in detail.

William J. Roy's (1984) "Class Conflict and Social Change in Historical Perspective" reviews sociological and historical change and collective action. Roy mentions that this type of work has enjoyed a renaissance within sociology since the publication of E. P. Thompson's (1963) *The Making of the English Working Class*, Barrington Moore's (1966) *The Social Origins of Dictatorship and Democracy*, and Charles Tilly's (1964) *The Vendee*, which are summarized here. The epistemological roots of these and related works are treated in discussions of "history from the bottom up," the nature of historical contingency (vs. determinacy), and the role of evidence and empirical verification. Several substantive issues are reviewed: (a) the rise of capitalism in the West, including proletarianization, the formation of classes and class segments; (b) the social roots of collective action; and, (c) recent historical treatments of ideology, especially the relationship between popular

and dominant ideologies.

Thompson's (1963) *The Making of the English Working Class* concerns how the English working class organized itself from 1790 to 1832. Before the late eighteenth century, there was no such thing as an English working class. By the 1830's, through struggles against employers and the authorities, organizational mobilization, and ideological activity, an English working class did exist as a self-conscious, coherent entity capable of mobilized political action. Thompson departed from earlier accounts in his emphasis not only on an organized class but also on the degree of the autonomous leadership exercised by the emergent working class itself. His message had great appeal for American sociologists. They were seeking to transcend both the stale pluralist-elitist debate and mass society theory, in which the commoner was always depicted as impotent and passive. The book's rich cultural texture also appealed to neo-Marxists attempting to transcend economic determinism. Thompson presents the creation of the world's proletariat not as a vanguard-led transformation from a class-in-itself to a class-for-itself, but as a process in which real artisans, workers, and sympathizers reacted to industrialization while their very actions shaped its course.

Moore's (1966) *Social Origins of Dictatorship and Democracy* affected political sociology in two ways. First, it conceptually separates historical explanations of democracy from modernization theory. In contrast to prevailing notions of "political modernization," Moore explains the presence or absence of democratic regimes in terms of concrete coalitions and conflicts among class-based groupings. Second, he offers comparative, historical documentation to "prove" his argument, reviving a Weberian mode of analysis that had largely been abandoned during the era when structural functionalism dominated American sociology. Moore describes how a coalition between the manufacturing and commercial gentry in England, France and the United States prevailed over aristocratic, authoritarian, agrarian classes and insured popular sovereignty and democratic rights. In contrast, in Japan and Germany the landed aristocracy joined with traditional

royalty to sponsor authoritarian rule and economic development from above. He draws heavily upon historians' work to document his arguments in considerably more historical detail than sociologists were accustomed to doing.

Charles Tilly's (1964) *The Vendee* combines Moore's explicit sociological history with Thompson's rich use of primary historical sources. The book was his first attempt to develop the historically sensitive sociological theory of collective action now known as resource mobilization. He addresses the issue of the relationship between long-term political transformation and collective action by examining a well-known French counterrevolution. In contrast to the prevailing mass theory (see e.g., Kornhauser, 1959) whose proponents viewed social change as the result of social disorganization, anomie, frustration, and irrational beliefs, Tilly argues that modernization has an impact upon collective action by redistributing the resources necessary to mobilize it. Collective political action differs from institutionalized political action more because of people involved and the level of support from the authorities than because of its relative rationality and irrationality. Like institutionalized political action, collective action requires material resources and organization.

Tilly's examination of the Vendee begins with the events of 1793 when a counterrevolution erupted in several sections of western France almost simultaneously. Why, Tilly asks, was the counterrevolution stronger there than in other parts of the nation? Conventional historical accounts had emphasized the predominance in this area of the attitudes of conservatism and royalism - explanations Tilly found wanting. By comparing western France and other sections free from the counterrevolution, the richly textured analysis demonstrates how social change like urbanization and industrialization, along with political centralization, differentially affect various classes and religious and regional groupings and thus shape the tendency toward revolutionary support or resistance.

The key to the analysis is the assumption that impersonal structural forces impinge differently upon different segments of the population, thereby structuring interests, organizations, and the capacity for mobilization. Early industrialization in handicraft industries affected rural dwellers more than urbanites; urbanization created incentives for landlords to commercialize and require cash rent from tenants; commercialization both united wine-producing peasants to confront urban markets collectively and eroded the local monopolies held by craft guilds while lowering the costs of consumer items to factory workers.

As this study proceeds to review the theoretical underpinnings of its history of the Jamaican Gun Court Act, the influence of these works will become apparent. At this point, however, it is clear that in analyzing the rise of gun crime rate in Jamaica during the 1970's, a modernization approach would fail to take into account the complex inter-relationship between poverty and crime.

Gosta Esping-Andersen, Roger Friedland and Erik Olin Wright (1976) in "Modes of Class Struggle and the Capitalist State" explore the interconnections between class struggle, state structures and state policies. Rather than view the state either as merely an instrument manipulated by the capitalist class, or as an apparatus determined by the structures of capitalist society, the authors argue that the capitalist state must be analyzed as an object, a product and a determinant of class struggle. Two aspects of this interconnection between the capitalist state and class struggle are examined: 1) the ways in which class struggle shapes, in contradictory ways, the structure of the state, and reciprocally, the ways in which the structure of the state shapes class struggle; 2) the ways in which the content of state policies shape and is shaped by the content of the demands raised in class struggle. The paper develops a conceptual framework within which such issues can be analyzed, specifically focusing on the distinction between production and circulation politics, commodity and noncommodity politics, and reproductive and unproductive politics. A series of brief case studies are provided to

illustrate this conceptual schema.

James O'Connor (1973) analyzes both the relationship of internal structures of the state to contradictions in the accumulation process and the relationship of class struggle to those class structures. The author reviews the corporate profitability process and how it is transformed into crises of state bankruptcy given the constraints of a state which is tax-dependent. The methods in which class struggle limits the state's ability to rationalize capitalism and the ways in which state structures have been reorganized to make them more impermeable to lower class challenge is also analyzed.

Class analysis of law is found in Richard Quinney's (1973) *Critique of the Legal Order*. Quinney states that social legality is created to secure the interests of the dominant class. Quinney defines that benefit as accruing to the ruling class in the course of dominating the subordinate classes (p. 57). Thus criminal law establishes domestic order for the ruling class, in Quinney's view. Consequently, the "crime control program" of the U.S. government in the late 1960's and the early 1970's is viewed by Quinney as the construction of a "new reality of crime." This reality is an obvious attempt to perpetuate the existing social and economic order, in further oppression of those who suffer from a class-dominated society. Quinney concludes by stating that with socialism, classes, bureaucracy and centralized authority disappear and so does state law.

Antonio Gramsci (1971) in *Prison Notebooks* discusses the role played by law in winning consent. It has been noted that Gramsci distinguishes between two major superstructural "levels": "civil society" which was an ensemble of private organisms and "political society" or the state (p. 17). Civil society performed the function of maintaining the hegemony of the ruling class (domination by consent), while the state exercised coercive power. The law figures in both of these levels according to Gramsci. Firstly, "juridical government" as state coercion: . . . "legally" enforces discipline on those groups who do not "consent either actively or passively. This apparatus is, however, constituted for the whole society in anticipation of moments of crisis

of command and direction when spontaneous consent has failed (Gramsci, 1971, p. 11). The legal apparatus thus operates coercively to maintain hegemony, and directly in periods of ideological and political crisis. Secondly, legal enactments educate and adapt masses to the goals of society.

The dynamic of a legal system was termed by Gramsci, "the juridical problem." This problem is that of assimilating the entire grouping to its most advanced fraction (Gramsci, 1971, p. 195). In modern capitalism, this means the problem of assimilating the intermediate classes, the proletariat, the industrial reserve army and even fractious sectors of the bourgeoisie to the hegemonic domination of the multinational bourgeoisie and their national political and cultural representatives. In short, Gramsci argues that the general function of law, whether it relates to crime or custom, is to render the ruling class homogenous and to create "a social conformism which is useful to the ruling group's line of development" (Gramsci, 1971, p. 195).

Otto Kirchheimer (1961) in *Political Justice* emphasizes the political nature of law. Kirchheimer argues that political and ideological tensions between fascism and bourgeois democracy and between regimes of all kinds and communist/progressive opposition, have become internationally intense in the twentieth century. This increased intensity, has "caused all regimes to reinforce police and informal institutional controls over subjects' associations and political activities" (Kirchheimer, 1961, p. 16). This has meant an increased significance for law and legal procedure as a political force.

The functions of law are not only instrumental, but are ideological. E. P. Thompson (1975) demonstrates how the evolution of the Black Act was an expression of the rise of the Whig oligarchy, which created new laws and twisted old ones in order to legitimize its own property and status. This oligarchy used the law both instrumentally and ideologically to accomplish its goal by formulating a new definition of property rights. At issue in the Black Act was hunting grounds for deer. The forest officialdom redefined the forest

as "preserved grounds," while to the ordinary hunters the forests were turfs. Deer poaching and other violations of the Black Act of 1723 were punishable by death.

Class conflict and law developed so astutely by the preceding works was brought directly into criminal justice literature in *Albion's Fatal Tree* (Hay, Linebaugh, Rule, Thompson, & Winslow, 1975). In this anthology, eighteenth century English society is examined by several social historians, through its laws and their applications. Throughout the volume, the contributing authors emphasize the customs and attitudes of ordinary people. The essays raise questions about property and the differences and relationships between those who created it and those who consumed it, about the diversity of regional and local attitudes towards new law, about class backgrounds of those who enforced it and those against whom it was enforced. Many of these questions were raised but complete answers were not offered because the authors were limited to what was shown in the essays.

One of the essays in *Albion's Fatal Tree* is, "Property, Authority and Criminal Law," by Douglas Hay (1977). In it, Hay argues that the eighteenth century English ruling class was able to maintain order without a massive police-military machine and without any great increase in the use of judicial terror. This was accomplished through an astute manipulation of the ideology of law. Popular belief in the divine and magical power of the law was sustained by ceremonial public hangings and the careful use of the pardon. Hay argues that in the eighteenth century the law replaced religion as the dominant form of ruling class ideological hegemony:

An ideology endures not by being wholly enforced and rigidly defined. Its effectiveness lies first in its elasticity, the fact that men are not required to make it a credo, that it seems to them the product of their own minds and their own experience. And the law did not enforce uniform obedience, did not seek total control; indeed it sacrificed punishment when necessary to preserve the belief in justice. The courts dealt in terror, pain and death, but

also in moral ideals, control of arbitrary power, mercy for the weak. In doing so they made it possible to disguise much of the class interest of the law. (p. 55).

Capital statutes were abundant in eighteenth century England. Hay writes that rulers "cherished" the death sentence. Hay describes the function of law in eighteenth century England as: (1) maintaining the bonds of obedience and deference in society; 2) legitimizing the status quo; and, (3) recreating the structure of society which arose from property. He also notes that despite the growth in the number of capital statutes in the eighteenth century as compared with other periods, there were relatively few executions. Criminal law was thus a combination of terror and discretion.

Hay's essay is an important contribution in that it suggests the emergence of an ideology of law outside the economy and documents the various devices used by the ruling classes to cultivate and sustain this ideology. Mystification is rarely a pure effect of the economic structure. What is needed now is to attempt to investigate whether this theoretical framework can be applied to the Gun Court Act in demonstrating the origins of legal ideologies in the Jamaican political and cultural conditions of the day, as well as their economic contexts and class functions.

Gun Court Act Literature

There have been very few works which have had the Gun Court Act as their subject of inquiry. The following survey represents the major works and is related directly to the present study.

Pearnel Charles (1977), who was jailed in the Gun Court detention camp during 1976-77 characterizes the Gun Court Act as a threat to human rights in *Detained*. He calls the act a "draconian measure" and a forerunner of an authoritarian attitude of the government which under the guise of attempting to deal with crime, ostensibly is the use of legitimate authority in an illegitimate way to arbitrarily suppress human rights, disregard civil liberties and silence and trample the Opposition. He points out how easily human

rights can be denied and abused by those in power.

Prepared at the request of and presented to Prime Minister Michael Manley, "Crime and Justice in Jamaica," is an unpublished report of a visiting United Nations team of the Crime Prevention and Criminal Justice Branch/Centre for Social Development and Humanitarian Affairs (United Nations, 1977). The Prime Minister requested the assistance of the United Nations with the Jamaican crime situation which, by 1977, had reached proportions that were viewed with grave concern. The report is the result of a five day visit by a United Nations team in which interviews with numerous private citizens, businessmen, political leaders of both parties, laborers, unemployed, prisoners were conducted.

The report recommends a national collaborative effort to unite the citizenry with a view toward the solution of social problems by reasoned approaches rather than violence and brute force (United Nations, 1977, p. 5). The report points to the disjointed state of affairs of criminal justice in Jamaica. For example, when the number of convicts as well as detainees increased, the correctional system had no capacity to deal with the growth of inmates, particularly the "gun-court convicts" who receive life sentences without parole (p. 7). A preliminary review of the Gun Court leads the report to conclude that a close examination of the system would confirm its total failure in dealing with crime and violence in Jamaica and that *per contra*, it has contributed to the increase in the insecurity of the citizenry and the escalation of violence (p. 26).

Six years later in 1983, the Seaga Government of Jamaica requested the services of the Interregional Advisor in Crime Prevention and Criminal Justice of the United Nations to provide guidance on the establishment of a crime research unit at the Ministry of National Security and Justice (David, 1983). The main task of the report was to discuss the need for Jamaica to have a crime research unit to collect data and information on potential interrelations between crime prevention and criminal justice and various socioeconomic issues such as urbanization, employment, subemployment,

unemployment, population growth, and structure, etc. The author points out that upon his arrival on December 15, the Parliament had just approved a much needed modification of the Gun Court Act. He goes on to delineate those modifications in detail (David, 1983, p. 11).

Further work was conducted when, in February of 1979, the Jamaican Ministry of Justice directed that a detailed study of the operations of the Gun Court should be undertaken with a view to determining whether it was serving the purpose for which it was established, and to arrive at conclusions and recommendations as to its affect on Jamaican jurisprudence. *The Report of the Advisory Committee to the Ministry of Justice in Relation to Gun Court Legislation* resulted (Advisory Committee, 1983). The report presents the results of questionnaires which measured the attitudes of attorneys, judges, the public and inmate views on the Gun Court.

Twenty attorneys responded to the questionnaire; their attitudes tended to be more negative than positive. Emerging from responses was the general opinion that the Gun Court, to some extent, had outlived its usefulness and that gun offenders are best dealt with by existing but improved traditional measures of the ordinary courts of law. The findings were based on the analysis of a small and unrepresentative sample of attorneys; thus one cannot assure their reliability.

The twin themes of expedition and lack of judicial discretion recur in the comments of the three of eighteen judges of the Supreme Court who responded to an invitation to all the judges by the Committee for judicial comments on the Gun Court. All three judges responded positively, however, to the question of whether the Gun Court was serving a useful function by "acting as a deterrent to the commission of crimes of that nature" and by avoiding the problems of trial by jury. All agreed that the objective of speedy trial was not being met due to administrative difficulties, the way in which defenses are conducted and the faulty presentation of cases.

Of the three judicial respondents, only one specifically referred to the absence of discretion in sentencing, pointing out that such discretion would,

in appropriate cases, result in pleas of guilty thus lessening trials and appeals. Two of the three thought that the continued existence of the Gun Court was necessary and desirable largely, it seems, because the mainstream of the court system was already overburdened, particularly with respect to the availability of jurors. In addition to the point on judicial discretion, tighter administrative controls and better, more careful, preparation and presentation of cases emerged as factors which would improve the functioning of the Court.

Because there are eighteen judges of the Supreme Court, it is not possible to draw conclusions from these findings. The lack of expedition and absence of judicial discretion were criticisms often made of the Gun Court, but beyond this, it is difficult to draw more detailed conclusions on the basis of this sampling of judicial attitudes.

An unrepresentative sample of 498 attitudes about the Gun Court taken from a cross-section of the public found: 1) there was a high reluctance to volunteer personal opinions about the Gun Court, but generally, favorable attitudes were expressed; 2) although support for the Gun Court may be regarded as substantial, approximately forty-four percent of all respondents expressed varying degrees of negative feelings (the urban sample was more negative in their attitudes than the rural sample); 3) the effectiveness in "keeping down" gun crimes and the legitimacy of the Gun Court or its appropriateness to deal with gun criminals were stressed as positive features; 4) indefinite detention or life imprisonment were not regarded as appropriate punishment for persons who commit murder with the use of a gun (most respondents favored capital punishment); 5) negative responses to questions about the Gun Court cited the physical and psychological hardships endured by offenders at the Gun Court detention center; and, 6) relatively few statements referred to the administrative procedure or constitutional aspects of the Gun Court Act (Advisory Committee, 1983).

Summary

Mandatory gun laws are a response to crime based on the theoretical concepts of deterrence and retribution. Those who adopt a strong reliance on the former, in particular, believe that mandatory gun laws will decrease the level of gun-related crime in a society. Proponents of mandatory gun laws maintain that stricter and more certain prison sentences will have a significant impact on violent crime by deterring gun offenders. Introducing mandatory minimum prison sentences for those convicted of using or carrying a gun during the commission of a crime is frequently proposed as a way of curbing gun misuse. Such provisions have already been incorporated into the criminal laws of many American states, and current public opinion among public officials at all levels of American government favors increased reliance on this concept.

The basic assumption of proponents of mandatory sentencing is the following: violent offenders who are convicted by the legal system are responsible for the bulk of violent crime; since most of these offenders are recidivists, imprisoning them will significantly reduce the quantity of criminal violence in society.

Empirical studies of mandatory gun legislation are few in number. The Jamaican attempt to control gun crimes provides a rare research opportunity. At the time of its enactment, Jamaica appeared to have enacted the sternest penalties anywhere in the Western Hemisphere. Many will want to make comparisons that relate to other societal settings. However, Jamaica has a distinct history and culture, and these differences make the validity of generalizations regarding gun control risky.

This review of previous works also demonstrates that criminal justice scholars have brought to the discipline the understanding that the operation of criminal law is partly a product of legislatures functioning within political markets influenced by societal interest groups. The purpose of this study of the Jamaican Gun Court Act is ultimately to improve the knowledge base of criminal legislation decisions which occur in the reality of a sociopolitical

context. Improved criminal justice policy analysis has a real contribution to make.

A review of the sociology of law literature also demonstrates that criminal justice policy prescriptions must be based on a thorough understanding of the policy process. Criminal legislation outcomes cannot be understood in isolation. Criminal justice policy evaluations cannot ignore the political realities of the legislative process. The real challenge is to explain the flow of policy from the process of agenda formation through policy formulation to implementation followed by an examination of how the process varies across criminal justice issues and societal settings.

This theoretical dialogue is essential if we are to put into perspective current controversies over interest groups, power elite theory, class conflict, and the making of criminal law. We should not forget that the debate is not academic especially when considering important and controversial criminal justice issues. In the Jamaican context under study, for example, corrections, the defense bar, the prosecution, the Jamaican Bar Association, police, the Jamaican Branch of the American Association of Jurists, the upper class, the middle class, the lower class, the Press Association, academics, and the gun lobby, all represented vested interests during the legislative duration of the Gun Court Act. Each profoundly influenced the course of the Act in a number of practical and significant ways, and hence, justify a comprehensive examination.

It is erroneous to assume that while all countries were initially undeveloped, some "took off" and developed while others did not (Mahabir, 1980). This misconception permeates modernization theorists. These scholars apply the theories and definitions of crime in the developed world to the Third World. One modernization theorist has more recently recognized the fallacy of this argument: "Only by ignoring what has happened in Moslem societies and Japan can we maintain that every society is condemned to follow the paths of development cut by the the West" (Clifford, 1974, p. 65).

Additionally, class conflict literature helps in understanding class

dynamics within a society which may led to crime. Theoretically, the fact or condition of poverty may not induce violent crimes against people, but the coexistence of differing socioeconomic groups within the same society may play a role. In Jamaica, during the period under study, the social climate which bred resentment for the affluent and the middle class in the midst of increasing poverty, was an ideal one for the socially alienated to engage in primitive redistribution through violent crime.

Although Jamaica has not become industrialized over the last 20 years, the country has become more urbanized, more literate, and more modernized. Over the same period, crime has grown exponentially. Violent criminality became the major means of expressing social alienation. The climate of social opinion increasingly justified crime as a response to social deprivation, thereby providing the criminal with a legitimating ideology. In this particular subculture of violence, governmental actions prior to the passage of the Gun Court Act helped to create and perpetuate that ideology. These actions are discussed in a later chapter.

Prior to focusing on the full social policy analysis of the Gun Court Act, it is important, however, to analyze the value of the Gun Court Act as a law enforcement policy option and to discuss the political and social background of Jamaica. The next two chapters provide these discussions.

CHAPTER III. THE SYSTEMIC EFFECT

Introduction

The purpose of this chapter is to analyze the effectiveness of the Gun Court Act on the use of firearms by Jamaican citizens. Mandatory sentences attached to gun control legislation is a means of social control. Social control is the process whereby a society attempts to maintain normative behavior. Norms are the standards which define what people should or should not do. When norms appear to be violated society makes efforts to reform or restructure them. The manifestation of gun violence in Jamaica beginning in the late 1960's and reaching severe proportions by the early 1970's was a violation of societal norms resulting in the legislative gun restriction of the Gun Court Act.

Gun restriction stems back to at least the Middle Ages. The Statute of Northampton which is the law today in England was enacted in 1328. It required any man to "go nor ride armed by day or night in fairs, markets nor in no part elsewhere . . ." (Bakal, 1966, p. 148). This statute served as the foundation for American colonial gun laws. In 1692 the Province of Massachusetts enacted one of the earliest American versions of gun control legislation when it passed legislation which prohibited any man from carrying an offensive weapon in public (Bakal, p. 149).

In the United States, much of the past research on suppression of crime has focused on the impact of gun control measures. In the majority of these studies, the strictness of gun control laws in many areas (e.g., states) has been correlated with crime rates in those areas. The results of these studies have been mixed, with a tendency to find that gun control reduces crime (e.g., Bakal, 1966; Geisel, Roll & Wettick, 1969; Hofstadter, 1970; Krug, 1968; Murray, 1975; Zimring, 1968, 1975). In the previous chapter, a brief survey of many of these studies was presented. This study of the Jamaican Gun Court Act adds to this literature, thus contributing to the beginning of serious scholarly evaluation of a major public policy for reducing crime.

The Criminal Justice System

Prior to a discussion regarding the crime situation, crime trends, and the systemic effect of the Gun Court, it might prove useful to present a brief overview of the Jamaican criminal justice system: (i.e, the police, the courts, and corrections).

The major provisions for the establishment of the Police Service Commission and the Police are contained in the Jamaica (Constitution) Order in Council, 159 Sections 83-88. No person is eligible for membership in the Police Force unless he can prove a Certificate of Character from a Magistrate or any other gentleman of position and can pass a satisfactory medical examination. Every constable is enrolled for five years (the first six months on probation) and is bound to serve and reside in any place to which he is appointed.

In Jamaica, the following courts possessed some form of criminal jurisdiction during the study period: Court of Appeal, Supreme Court of the Judicature, Resident Magistrate's Court, Coroner's Court, Traffic Court, Petty Sessions Courts, Juvenile Courts, Revenue Court, Family Court and the Gun Court.

The Court of Appeal is staffed by the following judges; a) a President, b) the Chief Justice by virtue of his office as head of the Judiciary, but who, however, does not sit in the Court unless there are at least four other Judges sitting and unless he has been invited so to sit by the President of the Court, and c) six other judges.

This court sits in two divisions in Kingston throughout the year. A person dissatisfied with a decision of one of the other courts except Petty Sessions can appeal to this court. Petty Sessions appeals are heard by a judge in chambers.

The Supreme Court of Judicature is staffed by: a) the Chief Justice, b) a Senior Puisne Judge, c) ten other judges, and d) a master. The Supreme Court sits in Kingston for the trial of civil cases, and as a Circuit Court in the capital town of each parish. Criminal cases come to the Circuit Court through

commitals by the Resident Magistrate.

The Resident Magistrate's Court is a lower court of record and deals mainly with offenses of a less serious nature. The Resident Magistrate's Court is intermediate between the Supreme Court and the Petty Sessions Court. There is a Resident Magistrate's Court for each parish of the island, with as many stations as may be from time to time fixed by the Governor-General.

Each Resident Magistrate is assigned to a particular parish though certain parishes have more than one Magistrate. Every Resident Magistrate is Coroner for the parish or parishes to which he is assigned. He exercises both criminal and civil jurisdiction.

It is the duty of every Resident Magistrate to fix on or before the 31st of October in each year, the times and places for the holding of Courts of Petty Sessions and Resident Magistrate's Courts throughout the year.

The Resident Magistrate for a parish is usually the Coroner and may sit with a jury to hold inquest into any sudden and suspicious death in his parish.

The Traffic Court, for the Corporate Area (the parishes of Kingston and St. Andrew is presided over by the Judge of the Traffic Court, who is a Resident Magistrate assigned to the Court by the Chief Justice.

The Petty Sessions Courts, are presided over by Justices of the Peace. These courts sit regularly in all principal towns of each parish throughout the island, and deal with minor offenses.

The Juvenile Courts consist of a Resident Magistrate as Chairman and two Justices, one of whom must be a woman. There are three Resident Magistrates specially designated for the Juvenile Courts by the Chief Justice and the Justices are selected from a special panel of Justices appointed by the Minister. These courts sit in every parish.

There is a Revenue Court and there are Family Courts (Juveniles Law was amended in 1975 to increase the age of criminal responsibility from 8 to 12), and special courts for a variety of special purposes, such as the Courts martial for the trial of members of the Defense Force and the Water Courts.

Over and above all these courts there is the Judicial Committee of Her Majesty's Privy Council which sits in London and hears appeals from the decisions of the Court of Appeal for Jamaica. No Jamaican sits on this Court, which is composed of high Judicial officers from other countries of the Commonwealth.

There are eight prisons in Jamaica: 1) The General Penitentiary for male and female prisoners and long-term offenders; 2) The St. Catherine District Prison for short-term habitual offenders and persons condemned to death; 3) Tamarind Farm prison for selected recidivists suitable for open conditions; 4) Fort Augusta - a partly open prison for specially selected prisoners; 5) Richmond Farm - an open prison for first offenders; 6) St. Jago Correctional Centre for women - opened in November 1975, this institution is for women who are either awaiting trial and/or have been convicted (When the Centre began operating all women from the General Penitentiary were transferred there); 7) New Boughton for elderly males opened in 1977; and 8) Gun Court.

Hill-Top, formerly a semi-security prison for first offenders under 21 years of age was converted into an Approved School in November 1973. Each prison is provided with a staff of wardens and other officials headed by a Superintendent.

The Prison Act and Prison Rules governs prison conditions. E. George Green, Jamaica's Parliamentary Ombudsmen, in his special report on prisons to Parliament presented in 1984 reported that prison conditions were routinely violated. He stated that it was "virtually impossible for any inmate of any adult penal institution . . . to avoid being subjected, as a general rule, to cruel and inhuman treatment" (proscribed by the Jamaican Constitution). He also stated that, "not only do prisoners suffer merciless and unjustifiable beatings from callous prison staffers, but they are routinely subjected to prison conditions which evoke memories of the slave ships of the Middle Passage" (Americas Watch, 1986, p. 46).

As in many, if not most, American criminal justice systems, one of the

most serious shortcomings of crime prevention and control in Jamaica is the lack of a criminal justice "system." There is a total lack of integration between the police, courts, and corrections. The judiciary, for example, has no training in crime prevention policies. It simply adjudicates cases and has no control over the adjacent work of the law enforcement agencies. Similarly, the correctional system is the recipient of the products of the judiciary, or in the case of detainees, of the police. When police effectiveness increased and the number of arrestees multiplied, the judiciary found itself incapable of processing these criminal cases in the accustomed manner of due process with appropriate procedural guarantees. When the number of convicts and detainees increased, the correctional system had no capacity to deal with the vast influx of human beings, particularly the gun-court convicts.

The Crime Situation

Jamaican statistics indicate that by 1974 the crime rate had reached proportions which were indeed unprecedented since statistics had become available. The total number of offenders for Jamaica (figures per 100,000 of the population), adult and juvenile, male and female, was approximately twelve times as high as that for Jamaica's Latin American neighbors per capita (United Nations, 1977). The assault rate was more than twenty times as high per capita as that for Latin American countries. The theft rate was twelve times as high per capita (Data on file with the United Nations Crime Prevention and Criminal Justice Branch). Statistics made available by Jamaican authorities indicate that Jamaica had a crime rate normal for its size in 1960 and that the situation deteriorated thereafter, with heavy increases starting during the early 1970's.

Statistical comparisons are oftent difficult to make and the "dark figure" of unreported crime may distort the true rates considerably. For example, victimization surveys have never been conducted in Jamaica. Moreover, a study of the incident map of Kingston during the study period indicates virtually no reported property crimes for areas of lower social economic strata,

and a higher incidence of crime reporting for business areas and middle class residential areas. These facts notwithstanding, it is the view of this study that unreported crime and the lack of reports in lower socioeconomic areas did not demonstrate a lack of crime. Even if the Jamaican crime report figures are to be regarded as incomplete and inaccurate, the crime rate was far higher than the country could afford.

The year prior to Gun Court's enactment, an increasing number of citizens were being adversely affected by the increase in violent crimes. In the words of one individual, Jamaica had become "a small Vietnam" (I. Motta, personal communication, August 22, 1984). Citizens not only feared going out in the evenings, they feared staying in as well. There were accounts of family members keeping watch in their homes in rotating schedules at night in many sections in Kingston for fear that sleep would mean immediate death.

Murders occurred at an increasing frequency and were reported by the media. But it was not until the media horrified the nation with reports of the occurrence of three murders in particular that tremendous pressure was felt by the government to take immediate action. The first of these was the shooting in March of 1974 of Leo Henry, a prominent and well-liked businessman, who was involved in voluntary organizations and sports organizations. The business sector in Jamaica, in particular, was outraged. One newspaper headline simply read, "Get the Guns" (1974). Then on March 16, 1974, Robert Stennet, a Montego Bay attorney was shot in his home. Another attorney, Paul Ritz-Ritson, who was the Chairman of National Sports, was also murdered in Montego Bay.

Firearm Statistics

To appreciate the problems and difficulties of the crime situation in Jamaica, it is useful to offer an overall picture of the trends of firearm crimes during the study period. The sources of the data used are the officially recorded statistical data and publications of the Jamaican government, and a detailed analysis of newspaper reports. Crime rates are calculated from

official reports of crime known to the police and national census reports and the annual abstracts of statistics.

National crime statistics are collected and recorded by the national police agency - the Criminal Investigations Department (C. I. D.) and published in the *Economic and Social Survey* by the National Planning Institute. Statistics are collected from the 169 police stations around the country and are recorded in the agency's Criminal Statistics Register.

During many years and over many of the crime categories under study, there appears to be a conflict between the number of firearm-crimes reported by the *Gleaner*, the Department of Correctional Services, and those reported eventually by the police in the *Economic and Social Survey*, with the figures in the two former sources generally being lower than those in the Survey. For example in 1977, the *Gleaner* reported 214 murders, but the Survey reported 367; in 1978, the *Gleaner* reported 198 murders; but the Survey reported 409. Since 1976, the press has depended for its reporting of violence on information from the Police information Centre. Generally, when a conflict existed, data for the present study was taken from the *Economic and Social Survey* since it is the official government statistical journal.

Along with these kinds of inconsistencies concerning firearm-homicide data, a number of additional problems were encountered during data compilation and analysis. Simply stated, there were a number of years in the study period in which firearm data was either not officially compiled, or was not publically available. Although this forecloses a detailed quantitative analysis, it does not prevent the identification of general trends. It must also be noted, that along with the number of social and economic variables which cannot be accounted for in this study, a number of other criminal laws were passed along with, or shortly following the passage of the Gun Court Act (A short list of these statutes is as follows: Dangerous Drugs (Amendment) Act, 1974 (increased the penalties in respect to persons involved in cultivation, trafficking and possession of drugs); The Firearms (Amendment) Act, 1974 (sought to tighten conditions relating to the issuing of licenses to citizens);

The Juveniles (Amendment) Act, 1974 (authorized the introduction of firearms into the Approved Schools for their use by Correctional Officers. Juveniles over 14 years old charged with gun offenses were made subject to the same justice processes as adults similarly charged); The Suppression of Crime (Special Provisions) Act of 1974 (increased the powers of the police with regard to the prevention and detection control of crimes in specially designated areas); The Exchange Control Act of 1977 (significantly increased penalties for illicit outflow of currency as well as authorizing the confiscation of sums of money involved); The Criminal Justice (Reform) Act of 1978 increased the number of sentencing options available to the Courts); and, The Parole Act of 1978 (provided for the introduction of a system of parole as an aid to the drive towards rehabilitation of offenders). It cannot be stated, however, that any of these acts had the direct purpose of attempting to decrease the level of firearm violence that the Gun Court was designed to address).

All available firearm statistics appear in Appendix E. During 1973-1982, the total number of firearm crimes known to the Jamaican police was over 25,808 (see Appendix E, Table 2.1. Note the absence of data from four of the study years). Generally, over this period, the total number of firearm-crimes known to the police increased dramatically from year to year. An exception is found in 1978 to 1979. During that interval the total number of firearm-crimes decreased 34.3 percent. One might speculate that, since crime statistics are compiled under the supervision of civil servants appointed by the party in political power, in the year preceeding a national election of great importance, crime reporting was suppressed. Regardless of this point, perhaps the most interesting fact which can be gleaned from the total number of firearm crimes is the 73.9 percent total increase from 1979 to 1980.

There were over 2,162 firearm homicides from 1973-84 (see Appendix E, Table 2.2). The total number of homicides during this same period was over 3,064 (see Appendix E, Table 2.3). In 1973, the year before Gun Court, there were 124 firearm-homicides. There were 55 murders in the year

following Gun Court; with an overall decline of 56 percent. The decline was 78 percent over the first six months and 22 percent over the last six months (see Gendreau & Surridge, 1978). Since some Jamaican social commentators argued that the Gun Court was made more ineffective by the constant criticism of it during the later part of 1974, a comparison for the last six months is useful. A comparison based on firearm homicides over the last six months of 1973-74 indicate only a 22 percent decline (see Gendreau & Surridge, 1978).

The number of firearm-robberies in 1973-74 was 1,893 and in 1974-75 the figure fell to 1,369. This was a 28 percent decline and, interestingly enough, the decline increased over the year. In the first six months the decrease was 18 percent, for the last six months it was 35 percent (see Gendreau & Surridge, 1978).

It is important to note that the number of robberies without the use of a firearm behaved erratically throughout 1974-75. For the first six months they declined by 58 percent; but over the last six months robberies increased by 30 percent. Overall there was a decline of 28 percent (1,334 to 967) for 1974-75 compared to 1973-74 (see Gendreau & Surridge, 1978). It is also clear that from 1973 to 1982 there was generally a significant increase in robberies committed with the use of a firearm.

During the study period there were 11,419 intentional nonfatal shootings (see Appendix E, Table 2.6). The year following the implementation of the Gun Court, there was a 36.7 percent decline in such offenses. In 1974-75 compared to 1973-74 there was a 37 percent decline in shootings; from 879 to 556. The drop was greater over the first six months (52 percent) than the last six months (20 percent). However, following that initial decline, shootings steadily rose, peaking with tremendous increases during the 1976 and 1980 election years. It also appears that the total number of shootings greatly decreased during 1981 and 1982.

There were 7,862 breaches of the firearms law from 1973 to 1982 (see Appendix E, Table 2.7). The 5.6 percent increase in 1974 may represent

increased police enforcement against the illegal possession of firearms. However, following a slight decrease in 1975, the number of cases in which persons charged with a breach of the firearms law increased 160.2 percent in the 1976 election year. This was also following the first amendment of the Gun Court Act which gave judges increased discretionary powers. There was also a 78.9 increase in 1980 election year, over the 1979 figure. However, in 1981 and 1982, the total number decreased over 20 percent in each year respectively over the preceding year.

The mean percent change of firearm crimes over each study year is not readily calculable. However, close scrutiny of the available figures (see Appendix E, Tables 2.2, 2.3, 2.4, 2.5, and 2.6) clearly shows that the total number of firearm offenses was greater at the end of the study period than at the beginning of the study period. Moreover, it is also clear that each crime category experienced increases from 1975 to 1976, and tremendous increases from 1979 to 1980. For example, the percent change in the number of firearm-homicides rose over 287 percent from 1979 to 1980. During that General Election year a record 643 were murdered by the gun. In 1981 firearm-homicides declined over 58.2 percent, but the 303 figure still represents the second highest number of homicides during the study period.

Firearm-crime rates are the number of known firearm offenses per 100,000 population. Table 2.9 in Appendix E presents the Jamaican population over 1973-1982 and its annual percent change over that period (see Table 2.9, Appendix E). Table 2.10 gives the annual total firearm-crime rates between the same period. Rates are given for: (1) total reported firearm-crimes; (2) total amount of firearm-homicides; (3) total amount of firearm-robberies; (4) total amount of intentional shootings; (5) total amount of breaches of the firearms law; and, (6) total amount of firearm-rapes. Each table shows the annual percent changes in each of these firearm-crime rate categories. As the tables indicate, there was an increasing trend in each of the five major firearm-crime categories. This trend has occurred simultaneously with the increase in the size of the population.

Despite the limitations of the data, the results clearly offer a realistic assessment of the Gun Court Act. The data show that following an initial decline, there were overall increases for all categories of firearm-related crimes. Although it is beyond the scope of this study to analyze possible intervening variables, it is readily apparent that the Gun Court Act did not succeed in lowering the rate of firearm-related crime. Initially, as was illustrated by the two earlier studies of the Gun Court Act, (see Table 2.10, Appendix E) there were overall declines in the firearm crime rates following the first year of implementation. This present study, however, demonstrates that these results were short-lived. The fear generated by severe punishments for gun crimes and its concomitant increase in police efforts to apprehend gun criminals did not succeed.

Given the large increase in crime, the next question must be why the failure. In the Jamaican experience, many of those interviewed stated that the gun offender perpetuated the theft or rape, then shot the victim (see e.g., Allen, 1980b, p. 32). This was an element in the type of violence which characterized Jamaican society during this time period. If this was indeed the case, the firearm violence, complex in its own right, becomes even more difficult to comprehend.

In analyzing the rise of firearm-crimes during this period it must be understood that, statistically, living conditions within the urban areas of Jamaica generally improved. There was a reduction in unemployment rates; shanty towns were severely reduced; and education programs improved. Why then did firearm-related crimes increase so dramatically? Some have suggested that the numbers indicating this dramatic increase are not entirely accurate for comparative purposes due to the recent improvements in the crime reporting system. "There has been an increase in the numerical strength of the police and, perhaps, greater interest and vigilance" (Allen, 1980b, p. 32). Moreover, increases are often explained as being attributable to the demographic increase in the youthfulness of the population, as well as the increasing urbanization of the population.

Typical modernization analysis points to the fact that rapid social and technological change broke down traditional social roles and institutional controls. Such a modernization approach was taken by the then Commissioner of Corrections in Jamaica: "With our current Government (the P. N. P. administration of Michael Manley) which promised power to the people, we have had a revolution of rising expectations born in the wake of prosperity, changes in laws, war on poverty and a host of other features in contemporary life" (Allen, 1980b, p. 33).

It is difficult to determine how much of the increase in crime, and particularly crimes of violence was attributable to:

1. the use of strong-arm men, gunmen and gangsters in the political arena;
2. the loss of respect for human life and the resulting acceptance of criminality as a necessary evil of the day;
3. widespread victimization in the allocation of jobs and contracts by successive governments and by local authorities;
4. interference by politicians with the police in the execution of their duties;
5. the failure of successive governments to strengthen the efficiency and morale of police and improve their relationship with the public;

6. the failure of successive governments to take necessary steps to ensure accomodation and an enlarged judiciary and to provide suitable essential conditions for the efficient discharge of their functions;
7. the social and economic conditions which exist and the failure to focus attention on finding meaningful solutions to these conditions:

Legislators developed the Gun Court Act to help curb gun crimes. Statistics indicate that illegal weapons were still in the hands of many criminals in Jamaica eight years following implementation. Jamaican society continued to attempt to control firearm criminals by laws but it seems clear that crime continued to rise despite the law.

In summary, the Gun Court Act certainly did not reduce either the incidence or the rate of firearm crime but reasons for the increase cannot be determined through an analysis of empirical data.

Punishment and Corrections

It has been seen that at a given point in the deterioration of social life, the Jamaican Parliament passed legislation providing for mandatory life sentences for any citizen found in the possession of a firearm whether that citizen used the weapon for criminal purposes or not. The legislation was passed with a national fervor and in the strong belief that only a drastic measure could stem the tide of rising violence.

The number of cases which were held in Gun Court during the study period was 6,770; 12,247 convictions were handed down (see Appendix E, Table 2.16 for a record of the disposal of cases at Gun Court). In the Gun Court, weekly sessions with inmates and defense attorneys revealed that many of the former were innocent. Even district attorneys, admitted (off the record) that Gun Court procedures made it easier for them to obtain false

convictions. Also, it was estimated that the per-capita cost to imprison one inmate at Gun Court was \$3,500 (Jamaican) annually.

Procedural delay was also identified as one of the serious problems of the Gun Court. At the moment of the visit of the United Nations team in 1977 to Jamaica, for example, "the courts were seven months in arrears, and at the present rate, in a few years, the courts will be three to four years in trying Gun Court cases" (United Nations, 1977, p. 1).

Unfortunately, not only did the legislation fail in reducing crime rates, it led to a number of serious structural problems for the criminal justice system:

- (a) The number of arrests for possession of firearms increased so rapidly that the Government found itself incapable of humanely detaining those arrested, before and after trial;
- (b) As is the case with all pragmatic interventions by law enforcement, (e.g., the deployment of the military patrol) the immediate effect was the decrease of crime, but the long-range effect was that of fostering the attitude that it was hopeless to continue living in a world of ever-escalating violence and counter-violence, so that for the individual who had nothing to lose violence was deemed necessary in order to survive in this violent world;
- (c) The Commissioner of Corrections and his staff were unable to deal with the influx of new "gun-criminals." The small staff of professionals had barely been capable of providing humane confinement for the offenders who had come into the establishment and after-care services prior to the institution of Gun

Court. The new Gun Court offenders could no longer be placed in single cells. Instead they were kept in overcrowded cells which did not meet the requirements of the United Nations Standard Minimum Rules or the Treatment of prisoners. The enormously overcrowded Gun Court camp did not have the capacity to provide food services. Meals, such as they were, had to be prepared in the other prisons and then trucked to the Gun Court camp where they were served cold. The meals were inspected and were found to be of little nutritional value;

- (d) While even in the Gun Court prison, the concept of rehabilitation was paid lip service (the sign on the barracks reads "Rehabilitation Ward"), no rehabilitation effort was made, nor would it have been rational to rehabilitate anyone who had no prospect of ever returning to liberty. The Gun Court was a prison with entrances, but no exits, so during its existence the rate of increase of its prison population multiplied to such an extent that no existing Government agency could provide the security services for the containment of the vast number of inmates, who averaged 14-21 years of age. The inmates constituted a human keg of dynamite. In their confidential conversations, and through the display of slogans and pictures on the raw walls of their cells the prisoners gave every impression of being a completely explosive force which could have erupted at any time;

(e) The judiciary which operated the Gun Court was not able to keep up with the pressure of new entrants into the system. In the belief that justice had to be harsh as well as speedy, (it was originally contemplated that trial and conviction should occur within a matter of a few days) the court fell quickly behind. Nor does the accuracy of dealing with cases before the court seem to have been guaranteed. The safe-guarding of the process and the careful evaluation of the evidence, for which the Jamaican courts had been justly praised before the establishment of Gun Court could not be maintained. There were frequent and vigorous recounts of miscarriages of justice in the Gun Court. Nor can the judiciary be blamed for this deterioration of the criminal process. The judiciary found itself confronted with a task for which qualitatively and quantitatively it was not designed to cope. The appellate process, in particular, was incapable of providing adequate review of Gun Court convictions.

Summary

It is clear that Jamaica found that the problem of gun violence cannot be solved with the simple solution of mandatory gun control legislation. The simple solution may have seemed theoretically sound, but it did not work well in practice. In fact, it may have aggravated the very problems it intended to eliminate. In Jamaica, during the study period, impatient power brokers looked for a quick and easy solution to an extremely complicated and new societal problem. Perhaps it is human nature to be conditioned to look for, and expect, simple answers to complex problems. The problem of violent

crime cannot be solved, however, by simple legislation.

Today many people think that the simple solution to violent crime is to increase the severity of the penalties for the use and possession of weapons. Despite the claims of advocates of this position, this study shows that this method did not work as a solution in Jamaica; such a measure did not reduce gun crimes. In order to understand crime, simple empirical calculations can indicate much valuable information. However, in order to really comprehend the true meaning of criminal activity in a Third World society, a theoretical framework must be constructed. The following chapter begins to attempt to construct such a framework.

Chapter IV: Social, Political and Legislative Background

Introduction

This chapter offers an overview of underdevelopment, Jamaican historical and political antecedents, race, culture and status, and class polarization, as background to the passage of the Gun Court Act. This overview will provide context which will prove useful in the full understanding of the Act. Additionally, the events in Jamaican society that preceded passage will be discussed.

Underdevelopment

In order to ultimately reach an understanding of the Gun Court Act from a non-modernization perspective, a discussion of underdevelopment is necessary. However, since the processes and the results of underdevelopment are discussed in detail elsewhere (see e.g., Beckford, 1972; Emmanuel, 1972) the discussion here will be limited.

Most developing countries were formerly colonies of great European powers. Western capital, seeking outlets, was attracted by the fertility and rich mineral resources of these lands. Where there was a local reservoir of cheap labor, it was exploited and where it did not exist, the slave trade, and later, indentured labor were created. The economy of the colony soon became an ancillary to that of the colonial power, supplying raw materials, cheap labor, opportunities for investment, and also a market for cheaper industrial goods of the mother country.

Development in a colony was thus directed not from within by people interested in its general economic health, but by capitalists from outside, whose self-interest confined their interests to narrow limits. Capitalist penetration created and shaped Third World societies. The concept of the plantation economy developed by such West Indian economists as Lloyd Best and George Beckford (1972) describes how this process led to "distortion constriction," and impoverishment of what developed as totally dependent colonial societies.

The passing of colonialism to politically independent governments did not terminate economic dependency. "The thesis of neo-colonialism and many theories of underdevelopment consider that Third World nations are now typically independent in political form only and that effective structures of economic dependency, and external domination persist . . ." (Fitzpatrick, 1980, pp. 12-13).

Accelerated development has been sought by means either of foreign aid or investment, both of which have tended to perpetuate the dependency with the West. The marshalling of international venture capital brings with it even more of the disadvantages of old style colonial dependency than does foreign aid. It is not easy for the government of a developing country to gain control of its own affairs against the distortion introduced by overseas investment, usually, by multi-national corporations.

Jamaica, for example, continues since independence, to rely upon natural resource extraction, export agriculture, and tourism as the dominant modes of economic existence. The economy remains controlled by a class of business entrepreneurs who comprise a very small proportion of the population. The government in post-colonial Jamaica plays a facilitative and subordinate role, incapable and unwilling to change the exploitative structure on which it relies.

Historical and Political Antecedents

Jamaica, occupied by the British since 1655, was the first British West Indian territory to gain independence (1962). For the sake of this study a discussion of Jamaican social and political background will be brief.

Jamaica was a colonized territory characterized by the British plantation system. Because of the overwhelming importance of sugar to Great Britain and the fertility of Jamaican lands for sugar production, the sugar plantation became the dominant institution on the island in the seventeenth century, and continued to carry economic importance through the twentieth century. It was the economic relations of production that developed on and around the

plantation which shaped social institutions. The British colonial law and legal system in Jamaica were developed in this context. However, the law and legal system of Jamaica did not emulate that of Great Britain, but rather proceeded along its own line of development.

For example, the need for a large but manageable labor force resulted in the legal definition of slaves as property (Comitas, 1960, p. 810). Dominance, a prerequisite in any system of slavery, generated privileges among the planter class that resulted in certain socio-cultural patterns. These patterns were especially apparent in the legal system.

The Europeans who migrated to Jamaica differed from those who settled in mainland America. Mainland settlers envisioned American migration as a means of religious and economic emancipation. In Jamaica, Europeans saw migration as temporary, and plantation involvement as a means of quickly becoming wealthy. "It is astonishing the wealth that can be extracted from territories of the poor, during the phase of capital accumulation, provided that the predatory elite are limited in number, and provided that the state and the law smooth the way of exploitation" (Thompson, 1975, p. 245). This predatory elite was not simply searching for a means of a better livelihood and escaping oppression (Beckford, 1972, pp. 35-38). What resulted in Jamaica was a dependent economy based almost exclusively on export for the overall system of political and economic dependence. The plantation economy produced social institutions that differed radically from self-sufficient farm colonies. "The old colonial system in the West Indies was not a democratic system, nor was born as such. It cannot live with democracy" (James, 1933, p. 406).

From its colonial beginnings, the Jamaican lower class, as a slave class was an assertive independent force. Moreover, an early example of the struggle of the lower class following emancipation, can be found in Bedwardism and Garveyism (Lewis, 1968, p. 175). Bedwardism was essentially lower class in character, but did not have much of an impact. The impact of Garveyism was much more profound. For although it can be said

that the movement failed, Garveyism in Jamaica did have success in that it deployed massive psychological warfare which began to wipe out the inherited inferiority complex (*The Daily Gleaner*, September 10, 12, 18 and 20, 1964, cited in Lewis, 1968). It had a lasting hidden effect on the national spirit. Marcus Garvey was the pioneer of Jamaican organized political struggle and the quest for racial self-respect.

Modern Jamaica working class consciousness and nationalism also marked pre-independence twentieth century Jamaica. The former had its economic base in the alliance of workers and peasants during the period between the two world wars as an increasing proportion of the working class became unemployed and became concentrated in the Kingston slums (Lewis, 1968, p. 178). Out of this beginning of political unionism emerged two figures of national prominence: Alexander Bustamante and Norman Manley.

Jamaican unions have come to be run by political parties and are vote-catching mechanisms rather than worker-controlled. The two national parties through their unions led the worker's struggle, however, to some major gains from 1938-1961. Some of these gains can be traceable to the "Busta" personality (Lewis, 1968, p. 180) which can be characterized as raucous and bogus radicalism. Although Bustamante is regarded as one of the modern founders of Jamaica, he espoused many policies which were anything but nationalistic in spirit. For example, he was against the idea of shared party leadership and for all his terrorizing of colonial Governors, he had his full share of the colonial mentality. The other modern founder of Jamaica was Norman Manley, who as the political arch-rival of Bustamante, advocated "Jamaicanizing" Jamaicans. Manley's position was that all Jamaicans should struggle against the reactionary plantocracy. Manley stated that there was no real upper class in Jamaica, only an alien group of colonial Jamaican elements in parasitic relationship to the British colonial officialism (P. N. P., 1941, p. 5). Manley did help to slowly foster Jamaican nationalism. "For it is idle to say, as some of the younger present day radicals charge that there has never been a real Jamaican nationalist movement, only

an imperial transfer of power" (Patterson, 1965, p. 31).

The two-party system developed quickly. After 1949 there was a basic P. N. P. (People's National Party) - J. L. P. (Jamaica Labour Party) agreement on what form developing self-government should take. Although the P. N. P. styled itself socialist and the J. L. P., defender of capitalism, both adopted similar methods to attain roughly similar aims (Lewis, 1968, p. 184). As a result of this partnership, over the post World War II period, both the destruction of the unity of the working class and the destruction of ideological elements of nationalism occurred.

Bustamante ridiculed socialism and nationalism even to the point of suggesting that the Jamaican national police be replaced with English police (Lewis, 1968, pp. 184-185). The P. N. P., originally in favor of collaboratism with the British ruling class, accepted whatever pace was set by London. Concessions were looked upon as generous gestures, not victories. The march towards self-government was slow. During the decades before independence, the two political parties did not foster an atmosphere of vibrant nationalism.

It is accurate to describe Jamaican politics as comprised of a two-party system that was fundamentally directed by foreign-educated middle class leadership. As Jamaica approached independence, distinctions of policy were of degree, not kind. There remained personal rivalry between the two leaders, but it was an elegant facade, governed by the great cousinhood of Manley and Bustamante (see Ayearst, 1954; Bradley, 1960).

Out of this background, Jamaica engaged in an intense struggle between the classes. The characteristics of violence and criminality appear to be a direct result of this class struggle. Jamaica has depended upon competitive forms of social and economic interaction and upon substantial inequalities in the distribution of the scarce national resources. The two major political parties, the P. N. P., and the J. L. P., gave the illusion that they represented the two respective opposing classes.

During the 1960's discontent among the lower class in Kingston was

controlled and manipulated by the two political parties. The provision of homes and jobs, was a major political exercise carried out for the supporters of the victorious party. The struggle was not one for structural change, but to secure power for the winning political party and access to resources that were chronically in short supply.

Upon electoral victory in 1962, the J. L. P. did not disrupt the alliance between the upper and middle class. The party established itself as the party of independence and led the nation throughout the sixties. Initially, there was mild optimism among the lower class for the future. However, the J. L. P. quickly acted to consolidate its control. Pressure was placed upon the Jamaica Teachers' Association, the Jamaica Broadcasting Association, the Police Federation, and as a result, mass layoffs of public construction works occurred. The J. L. P. also passed electoral reforms which decreased the chances of the P. N. P. to win at the next election.

The battle for jobs, though, intensified. As the decade progressed, the poor became increasingly disillusioned. An example of this disillusionment came in August and September of 1965 when there were street riots aimed at the Chinese and other business groups. As a result of these riots and the rising level of unemployment, the P. N. P. that year proposed a socialist program - a radical land program designed to smash the plantation system.

Political demonstrations continued however. In May 1966 armed gangs of unemployed youths raided opposing political strongholds in West Kingston. The violence was endemic only to those areas in struggle and between those who choose that method of battle: the "top-rankings" and their supporters. "Top-rankings," the most notable and feared gangsters, were recruited by both political parties. Earlier, in the late fifties and the early sixties, a violent subculture had developed in the poverty areas of Kingston and the leading "rude boys" had assumed positions of power. By the mid-sixties, close links with politicians afforded the "top-ranking" government contracts. Close links with the "top-ranking" afforded politicians to foment an ever-more ferocious intra-class struggle.

Lower class disillusionment was channelled into intra-class struggle by the two political parties. An important political advantage was won by political parties when they controlled the streets. Campaign activity by the rival party was virtually impossible; voter registration was hampered; and bogus voting was rampant since intimidated polling scrutineers failed to show up on election day.

From December of 1965, electoral violence manifested itself in Molotov cocktails and revolvers. Prior to the 1967 general election, mobs representing both political parties took to the streets of Kingston contesting the nature and location of an urban housing renewal project. The June 1966 bulldozing of the Foreshore Road shanties increased the anti-J. L. P. feelings among the poor. Dudley Thompson, the P. N. P. candidate for Western Kingston, exploited this situation by intervening on behalf of the squatters. But the police were called in, and the J. L. P. won Western Kingston in the election.

As Western Kingston became a battleground, the public demanded an end to the political violence. The media helped bring together "peace talks" between the two parties in August of 1966, but the talks broke down. At this point, the upper class was becoming particularly concerned since it was widely believed that the Director of Public Prosecutions had instructed the police to avoid "interference" in any political violence.

The level of political violence continued to increase and the government passed a state of emergency in Western Kingston in October 1966. The police raided the political headquarters of both parties and the army was mobilized. When the state of emergency was called off in November, the level of violence once again started to rise. Prior to the election, the Farquharson Institute issued the following statement: "This is your country. Jamaica doesn't belong to a couple of hundred half-wits with revolvers" (Farquharson, 1967).

Following the J. L. P. victory in the 1967 General Election, the level of violence emerged as the main national issue. Prime Minister Donald

Sangster died in April of 1967 and Hugh Shearer, his successor, remained in office until the end of 1967. He responded to the problem by stating: "I am a no-nonsense Prime Minister . . . (He had given orders to the police) . . . to proceed without reservation and without restriction to tackle the problem, of violence and to bring the wrongdoers to justice in whatever way it can be done" ("No nonsense," 1967).

In 1968 a new protest movement emerged. It was sparked by the Walter Rodney incident. Walter Rodney, a Guyenese lecturer of African history, attended an academic conference in Canada and upon attempting to return to his teaching position at the University of the West Indies, Mona Campus, in Kingston, he was barred from re-entering the country. The P. N. P. walked out of the House of Representatives on October 18 as a protest and riots organized by the poor occurred.

As a result of the official government action, the social protest movement gained a type of momentum and direction. Proponents of the movement contended that political power was invested in "a white, brown and black petty-bourgeoisie who are culturally the creations of white capitalist society and who therefore support the white imperialist system because they gain personally and they have been brainwashed into aiding the oppression of black people" (Rodney, 1969, p. 28). Black power in Jamaica did not exclude non-black supporters. Black power represented a need to cultivate a strong sense of black identity to replace British cultural and social values.

The political parties responded to this social unrest in manners designed to contain and undermine the movement. Since the leadership of the J. L. P. and P. N. P. was predominantly black, both parties argued that black power was already a reality. The J. L. P. government named Marcus Garvey a national hero, invited Haile Salassie to Jamaica and erected statues to heroes in an attempt to express solidarity with the lower class. But the government also banned from the libraries the published works of Malcolm X, Elijah Muhammed, and Stokely Carmichael in an effort to suppress free intellectual exploration of black power precepts.

Irrespective of the moves by the political parties, the Rodney riots had the effect of demonstrating to a large segment of the lower class that a radical black power movement might benefit those who had not reaped anything from the political squirmishes to date. "The violence of October 1968 was mostly against property rather than persons but was distinguished from earlier political violence in that its origins were both 'anti-system' and potentially revolutionary" (Lacey, 1977, p. 52).

Norman Manley embraced this notion of black power (right at the end of his political career) and passed it on to his son, Michael. "African" organizations, which had become increasingly influential throughout the sixties, became more influential following 1968. Three main "African" organizations can be identified: 1) the Rastafarian movement, a diverse movement encompassing religious and sociopolitical elements; 2) the political-cultural movements such as the Afro-West Indian Society of Millard Johnson; and, 3) the political black power movement.

The latter movement helped to support *Abeng*, a weekly black power newspaper. *Abeng*, however, represented the Rastafarians, liberal intellectuals and Marxists and provided the vehicle which greatly assisted the P. N. P. to its 1972 General Election victory. *Abeng* agitated against the themes of rising discontent over unemployment; bitter industrial disputes characterized by inter-union rivalries; public service breakdowns; and the continued increase in violence which had begun to dominate Jamaican society. As a result of this kind of agitation, public opinion gradually became more critical of foreign capital and the J. L. P. government eventually announced plans for local participation in foreign-owned banks in Kingston. The election of the P. N. P. to office early in 1972 apparently provided the country with more radical leadership (Clarke, 1975, p. 131; see Lewis, 1968, p. 190, who states, "All of this left the Jamaican masses as nothing more than "the darkened theatre audience that alternatively applauds and hisses the actors on the national stage").

Race, Culture and Status

Jamaica, a one-island state of 4,244 square miles is located in the southwest Carribean. Totalling about 2.2 million people, its population is ethnically and racially heterogeneous.

The social structure of Jamaica is made up of three hierarchal organized classes which can essentially be described as upper, middle and lower class. The upper class is comprised of junior partners of finance, exhibits a colonial mentality and is socially and politically reactionary. In the mind of the upper class, poverty and lack of culture have the same connotations of disgrace and shame as Negro blood in southern United States (Norris, 1962, p. 61).

The middle class deals with the pressures of daily life, but avoids ideological identification with the lower class. From the birth of modern Jamaican politics, usually dated from the labor movement of 1938, the middle class supported the J. L. P., and was fearful of the P. N. P. because of its socialist orientation. However, once the P. N. P. purged the left wing element of its party in 1952, the middle class began to turn to it. After 1948, the middle class was joined by university educated professionals in this support.

The upper and middle classes are separated from the lower class by sharp breaks on the socioeconomic scale. The cultural difference between the upper and middle class is relatively slight however. "Materialism provides the formative principle or reference point in the value system of the upper section, while social status dominates the value system of the intermediate section, and values of immediate physical gratification are central among the third section, spiritual as well as secular values reflecting these principles" (Smith, 1965, p. 174).

This plural model has historical relevance. It may be argued that much of the behavior of the lower class in Kingston was consistent with "the culture of poverty." Much of the neocolonial behavior of the Jamaican lower class can be explained in terms of socioeconomic problems and needs. Social mobility was difficult. Race and color carried important implications, but they

were less critical than economic stratification.

Following the end of the second world war, political power became associated with the middle class. During the P. N. P. administration lasting from 1956 to the eve of independence, the link between the upper and middle classes was forged. This link persisted through the first decade of independence.

Of great significance in any discussion of class, politics and Jamaican criminality is the lumpenproletariat. During the late 1960's these were the many people who were armed by the political parties in the battle between the P. N. P. and J. L. P. for Western Kingston. "After this short introduction to politics within the system, some of these gangs reverted to ordinary criminal activities, others turned to more revolutionary politics and some used their newly-acquired guns to terrorize the rest of society, particularly, the national bourgeoisie" (Lacey, 1977, pp. 32-33).

The volatility of the lumpenproletariat utilized by both P. N. P. and J. L. P. politicians to fight their political battles, became so out of hand by the early 1970's that it in itself can be cited as the strongest non-deterrence theory behind the Gun Court Act's passage. By the early 1970's these energies, once controlled by the politicians, were increasingly directed against the entire economic, social, and political system. Although active usage of the political gunman by both political parties continued throughout the history of the Gun Court Act, it was underdevelopment and the failure of the newly independent Jamaican government to remedy tremendous economic, social, and political problems brought on by underdevelopment which fueled the despair of the lumpenproletariat which, in turn increased the level of violence within the society.

Since independence through the early 1980's, only those changes which were crucial to the social order were implemented. It is significant that no major national leader has ever emerged from the lower class. Of even greater importance was the failure of the P. N. P. to maintain and win support for the socialist policies it professed in the early 1940's. This policy was the

closest either party got to altering the hierarchical structure of the social system prior to 1972 (Clarke, 1975, p. 138); a system which fostered a large, uneducated lower class.

The social system has depended for its maintenance on the superior cohesion and power of the small superordinate group and its ability to secure assistance from the middle class. This superordinate group has historically comprised those who have controlled the dependent Jamaican economy for personal economic gain. In periods of crises, force has always been used against the lower class. Since independence, Kingston's hierarchical social structure became even more clearly expressed as the upper and middle class moved northwards into the foothills or to suburbs of Kingston, thus increasing their distance from the growing slums.

The coalition between the upper and middle classes was firmly established by 1972; the middle class filled the principal political and bureaucratic roles, while the upper class operated behind the scenes and controlled the economy. These classes remained in control, running the two-party system and the trade unions, manipulating the land, labor and housing markets, and controlling the regulatory arms of government - the police and defense forces. Jamaica's motto for independence, "Out of Many One People" was scarcely closer to realization by 1974 than it was at independence and Kingston was still beset by the unresolved problems of the colonial period. In summary, independent Jamaica, despite the formal transfer of sovereignty, remained a society shaped by its colonial heritage. Jamaicanization was the exercise of new state power for the socially comfortable groups.

Thus, the entire infrastructure of the Jamaican legal and social institutions was historically fashioned by the British legal institutions of the colonial period. This fact, by the 1960's, gave rise to certain feelings on the one hand that these institutions were alien to the culture of most of the people. This view suggested that law, lawyers and the legal system, represented instruments of class oppression and were dominated by the

privileged and the middle class and worked against the interests of the poor. On the other hand, the view, proliferated and supported by those in power, was that the day-to-day usage of these institutions by the majority of the population without questioning or challenging either their role or the quality of justice they provided, indicated that the former position may not be widely shared by the majority of the public.

Class Polarization

From the era of colonialization through the early 1980's, there has always been a large polarization between the classes in Jamaica. However, it was not until the P. N. P. won control of the government in 1972 that the masses became aware of this fact. The P. N. P. attempted to politicize the masses. Political education, was encouraged by the Manley government in the form of sponsorship of political groups, discussions, and involvement of the people in the development of their nation. For the first time in their history, it *appeared* that the majority of Jamaicans were part of something of their own. The masses, although the majority were illiterate, became articulate about national problems. The P. N. P. felt that the masses were vital to the developmental process and to its political success.

There appears to have always been a break between the very rich and the very poor. The fact is that, before 1972, the very poor were more docile in the acceptance of their role in society. The P. N. P. attempted to close the gap in the development of the country. The farmers, for instance, benefitted tremendously under a program of ceasing the importation of all but necessary food items (ultimately, however, this program led to food shortages). As a result, the farmers of Jamaica were never as prosperous at any time in their history as they were between 1972 and 1980, the period of the Manley administration. But these were the same farmers who were to vote against the government in 1980.

The P. N. P., led by Michael Manley, controlled the Parliament from 1972 to 1980. The Gun Court Act was passed during his administration. The

years Manley served as Prime Minister were years characterized by attempted social and economic reforms, problems and inefficiencies of administration, much opposition from the business community and the J. L. P., and an increasing wave of violence and criminality.

The J. L. P. utilized massive propaganda programs which swayed the illiterate masses of the country together with tremendous overt and covert American support to recapture power in the election of 1980. The election of 1980 was characterized by a large scale social upheaval and much violence. The American support unfortunately is next to impossible to document with any accuracy. It is no secret, however, to note that the American government had been extremely concerned with the policies and ideology of the Manley government. There had been open threats of cutting back on American economic aid, and warnings against strengthening Jamaican ties with Cuba. On a more covert level, many Jamaicans theorized that the American government shipped firearms into lower-level politicians on both sides to open hostilities and increase the level of street violence, while it attempted to place blame upon the Manley government with that increase.

Once the poor had become middle class or had become indoctrinated as to what it was like to be middle class they became volatile. Once these farmers started to own something they became very prone, very susceptible to the campaign of anti-communism which the J. N. P. launched and utilized so effectively. Fears that the P. N. P. was going to confiscate lands worried farmers. Now these were people who never had lands until the P. N. P. secured it for them. Yet, having secured it, they became completely susceptible to a very rigorous and continuing campaign that the P. N. P. was controlled by international communists. The J. L. P. pointed to strong P. N. P. ties to Cuba and anti-American sentiments on the part of the P. N. P. and told the farmers that one day they would not be able to own anything. (C. Rattray, personal communication, December 15, 1982)

By 1982, many former J. L. P. politicians and supporters believed that the establishment of the Gun Court was a contradiction to their professed

principles. Many had strong views against the Gun Court all along. They accepted the notion that the problem of criminality and violence in Jamaica could not be solved by any legislation. This J. L. P. opposition is documented in more detail in the following chapter.

In order to understand the reasons for criminality and violence in Jamaica and the resulting Gun Court Act it is necessary to understand this history of underdevelopment, Jamaican political development, race, culture and status, and the political polarization. Simply stated, the history of Jamaican underdevelopment is a history of inequity in the distribution of the scarce resources in the country.

Whenever a government comes into power in Jamaica, it has enormous potential for distribution of housing and jobs. For many, their lives and conditions of living depend upon the government, whether they support the government or not. Because their party is in power they feel that they will get the housing, jobs, the contracts and whatever else there is to be distributed by government. The expectation of better living conditions and its relation to the political party's power is what causes the continuous tension within the society.

By 1972, the year of Gun Court passage, it appeared that the Manley government was going to respond to the urgent need to devise methods in the society for the fair distribution of what there was to be given by the government. If such a social program had been fully implemented, it may have gone far towards the elimination of the tension caused by the polarization that existed between the classes. This need was not fulfilled and in its place the legal system became an instrument of violence. The violence of oppression brought on by the Gun Court Act is analyzed further in the next chapter. If the legal system is violent, if the penalties are violent, there is a contribution to the existing violence within the society (e.g., gun criminals facing harsh mandatory sentences wanted no witnesses and therefore left none).

It is clear, therefore, that throughout almost five centuries of colonial rule

in Jamaica, and into the present, the institution of law and the legislative system, has been deeply intertwined with the economic mode of production. Economic functions would have been inoperable in the absence of colonial law and the political system of colonial government. Today, with Jamaica's continued dependence on foreign capital, the heavy influence of a foreign-local business elite upon the government remains unchanged.

Without suggesting that all laws created since independence have been created for the benefit of the elite, the passage of certain pieces of legislation, (i.e, the Gun Court Act) raises some fundamental questions about the current legislative system in the nation: "Every legal problem arises within the framework of a particular set of social institutions . . . The report of law is a human document" (Hall, 1935, p. 3).

Therefore in order to adequately understand the significance of the passage of the Gun Court Act in 1974, and prior to our investigation of the role of interests groups, two questions must be raised:

- 1) What events in society occasioned passage of the Gun Court Act, and,
- 2) Was the legislation spurred by an identifiable lobby of interests or was it simply a move by Government fiat?

Background to Passage

In response to the increased use of handguns and automatic rifles in violent street crimes, the Jamaican Parliament in April of 1974 passed the Gun Court Act which provided for a mandatory and indeterminate sentence for illegal possession and use of weapons, as defined in the Act. In order to fully understand the reasons behind the creation of the Gun Court Act, it is necessary to examine its functions. What was the purpose of the legislation passed in April 1974? The government's stated official purpose was to combat the rising level of gun crimes in Jamaica which had begun to increase

during the 1960's and had reached serious proportions by the spring of 1973. As an illustration of this increase in the gun crime rate, during the first quarter of 1973, there were 95 murders (47 by gun), 308 shootings, and 1,228 robberies reported. Of the robberies, 51 percent involved a gun (Jamaica Department of Correctional Service, 1974). These statistics represented a large increase from the preceeding year.

Jamaican citizens offered a variety of explanations as to the causes of increased gun-crime during this period. The following represent some of their views:

1. **Crime and Social, Economic and Cultural Change**
In the words of a well-known criminologist of Jamaica, the country "and in particular its urban areas, has been changing technologically, socially and politically with a bewildering rapidity. We are changing how we work, how we live, how we think, and how we manage various enterprises. This has led to a breakdown of traditional social roles and institutional controls over the behaviour of the young and old alike." (Allen, 1980, p. 33). The major impact is on the young who, because of the unlikelihood of their being socialized in the traditional ways of doing things, cannot be constrained by these traditions.
2. **Crime and Rising Expectations**
There is also a revolution of rising expectations born in the wake of prosperity, changes in laws, wars on poverty, followed by obvious limitations to meet these expectations in the context of an increased deterioration of the international economic situation and the current world recession.
3. **Crime and Unemployment**
The increased levels of violent crimes seems to be closely interrelated to the unemployment situation, especially among the young and the sudden and unplanned conditions of urbanization and industrialization.
4. **Crime and Unemployment and Population Growth**
Disparities between the level of employment opportunities available to the most vulnerable groups of the population have also increased social unrest.

It is remarkable the symmetrical pattern between the curve for young age groups, unemployment, and youth crime.

5. **Miscellaneous**

Other factors listed were the world oil crisis, capital flight in the wake of nationalization efforts, emigration of talented and skilled Jamaicans, and abuses and violence which party leaders were not always capable of preventing.

Interviews with a cross-section of the Jamaican population indicated that during the early 1970's interpretations from newspapers and political debate were advanced to explain the increase in violence. The most prominent of these theories were: 1) crimes were political in nature, and 2) the society's respect for prosperous citizens and societal institutions had deteriorated.

Furthermore, it was felt that the liberties of law-abiding citizens were being eroded and more concern should be directed at taking away the liberties of the hardened criminal. Bail should be withheld in certain cases and the death penalty extended to some crimes of violence. Many who advocated the latter felt that it should be extended not so much to deter crime but to rid society of these offenders. While these suggested remedies seem harsh, perusal of comments in the newspapers, (i.e., letters to the editor), were indicative of support for taking a forceful approach to the problem.

Prior to April 1974 when the Gun Court Act was passed, most cases of illegal possession of firearms were tried in the Resident Magistrate's Court. Prior to the enactment of the Act, the Minister of National Security, Eli Matalon, offered amnesty for all illegal possessors of firearms during a designated period. Making a statement in the House of Representatives as a prelude to moving for the adoption of the Gun Court Act, the Minister directed his appeal "to those young men who either by force of circumstance or by the present trends in our society have sought to arm themselves with illegal weapons" ("Let Gun Court," 1974, p. 1). Matalon continued, to the applause of the Government benches: "I implore them: Let the Gun Court remain empty;

turn in their guns to the ministers of religion, let us not have a single case tried in that court" ("Let Gun Court," 1974, p. 1).

Matalon also expressed complete confidence in the loyalty of the police and the Army. "I am confident from discussions and conferences that I have had with the High Command of these Forces, that the nation can expect from them the maximum effort in implementation and reinforcing the rule of law. In particular, they will ensure that this Act is effectively administered, justly and without fear or favour" ("Let Gun Court," 1974, p. 1). Matalon set out once more his disapproval of politicians taking the law into their own hands and interfering with the course of justice. Politicians, he emphasized, have no right to tamper with the work of the police and the courts.

It seems that crimes were continuing to escalate and the government choose to act. On March 19, 1974, the House of Representatives observed a moment of silence as a mark of sympathy and respect for the relatives of persons from several levels of the Jamaican community, who, in the months recently past, had died as victims of criminal activity. Reports showed that some 20 persons had been murdered by gunmen over the preceding 68 days ("Text of," 1974, p. 1). The Prime Minister, Michael Manley, spoke of a completely new type of crime developing in Jamaica - a development which had been occurring over the preceding five or six years. The speaker of the Opposition similarly spoke of gun crime in Jamaica having reached "crisis proportions" and of "a tragic situation of terrorism of the citizens and the brutal gunning down of innocent people in all walks of life" which was "repulsive to the Jamaican personality and the traditional way of life of our people" (Advisory Committee, 1983, p. 5). The Prime Minister pointed out that "cold blooded and evil men" who were perpetrating those crimes were not typical of the majority of their fellow Jamaicans; they represented but a very small percentage of the population (Advisory Committee, 1983, p. 5). The stand taken by the Government was expressed by the Prime Minister in these words: ". . . this small band of evil men have wrought a disproportionate amount of damage in our society, in terms of death, of injury, of fear, and . . .

the Government and the society at large must react swiftly, decisively and effectively to eradicate this evil in our midst" (Advisory Committee, 1983, pp. 1-2).

In his speech which introduced the legislation to Parliament, the Prime Minister stated:

My patience has come to an end now. We must do something and even if we have to change the laws, we cannot allow people to come out on bail and kill 4 or 5 people even before they face trial. This country has a group of armed men trying to destroy it . . . It is a war to the death, and whatever it costs, Jamaica is going into that war. The people with whom we are fighting are not sufferers. We are fighting a small, highly armed group of people who are not interested in anything except shooting and stealing. They are scavengers trying to prey on society. We have one determination (however long it takes, and it may take us a long time and it will call for a lot of cooperation from you, the public) and that determination is to break organized crime in Jamaica, and break the connection between the political gunman and crime. ("Text of," 1974).

The necessity then was to develop ways of intensifying the struggle against crime in general and, more specifically, against the threat of illegal gunmen. It was, of course, privately recognized by the Government that a predisposition to criminality could be created by certain conditions in society and that, therefore, as a long-term measure, Jamaica was faced with a challenge to create the type of society which breeds neither the gun criminal nor, indeed, any other kind of criminal. However, while committing the Government to meet that challenge over the years, the Prime Minister also announced the Government's immediate concern over the problem:

of devising policies and measures which would prove effective is our main objective at this time, which is to eradicate the menace of the gun from the society of Jamaica, but to do so in a manner which will not do violence to our Constitution, to our legal institutions, which together are the ultimate guarantees of a

democratic and civilised society. (Advisory Committee, 1983, p. 2).

The Opposition speaker, Hugh Lawson Shearer, in his turn, made it clear that the Opposition was in agreement with the Government in the determination to combat crimes involving the use of the gun:

We of the Jamaican Labour Party are convinced that the desperate problem of crime in Jamaica today requires the speedy introduction and implementation of effective measures which must be applied in every case of crime with the gun irrespective of who the person is, irrespective of his or her cultural background and particularly without regard to political affiliation. If, therefore, in discussion of the measure for combatting the evil of gun crime, if in those discussions we are critical of certain details in the legislative package, this action must not be taken or interpreted as diluting our full support of any measure which is constitutionally acceptable and effective per se, but rather as a discharge of our duties as Parliamentaries to ensure that the measures proposed are based on sound law and are conceived in democratic precepts. (Advisory Committee, 1983, p. 2).

It is interesting to note that these circumstances leading to the enactment of the Gun Court Act were later judicially noticed by two judges of the Court of Appeal in Jamaica in the case of *Regina v. Moses Hinds, et al.* To quote from the judgment of Sir Joseph Luckhoo, then President of the Court of Appeal:

As to the purpose of object of the legislation regard must be had to the state of affairs which called for its enactment. In appeals of the nature now before us the Court may only have regard to matters of which it could take judicial notice, that is, matters of general public knowledge. It is a matter of general public knowledge that in recent years crimes of violence in which firearms, unlicensed or illegally obtained were used, gave cause for grave public concern and indeed alarm. The several measures taken over the past six or seven years to control the rising incidence of crimes of this nature have proved unsuccessful. Persons were shot and killed by day and by night in the course of robbing, rape and other offenses or for no apparent reason. Witnesses for the Crown at trials of persons accused for such crimes were

often intimidated. Victims of the crimes themselves were not infrequently killed or shot at, most probably with a view to their elimination as eye witnesses who could testify against the perpetrators of these crimes. Even Counsel for the Crown in one case was not immune from the use of a firearm. Intimidation and attack did not come only from the offender. It came also from associates of the offender especially where the offender was a member of a gang. It was in such a situation that eventually the legislature enacted the Gun Court Act, 1974 (*Regina v. Moses Hind*, R.M.C.A. No. 41 of 1974, *Regina v. Elkanah Hutchinson*, R.M.C.A. No. 42 of 1974, *Regina Henry*, R.M.C.A. No. 43 of 1974, *Regina v. Samuel Thomas*, R.M.C.A. No. 44 of 1974, as cited in Advisory Committee, 1983, p. 3; These preceding cases composed the first set of appeals from the Gun Court. For the second set of appeals, see *Regina v. Trevor Jackson*, R.M.C.A. No 53 of 1874).

With the advent of the Gun Court also came a new Ministry and the first reorganization of Prime Minister Michael Manley's cabinet. Home Affairs and Justice Minister Noel Silvera was replaced by Eli Matalon who became Minister of National Security and Justice. Mr. Matalon, a key figure in establishing the Gun Court, was soon to be called "the Sheriff."

Support for the measure was by all means not unanimous. George Eaton, a highly respected Jamaican social scientist stated: "The anti-crime measures must be viewed, however, as a diversion from the main task of national reconstruction. The intensification of crime and violence is but a symptom and reflection of problems which are endemic to the structure of the Jamaican economy and society . . ." (Eaton, 1975, p. 257). A Kingston resident remembered her views in the following way: "Our constitution should not be suspended to combat crime as many are suggesting . . ." (C. Howard, personal communication, December 12, 1982). Finally, many people outside the government, at first led by defense attorneys, disputed the officially stated deterrence function of the Act and pointed directly to the constitutional questions raised by it.

Summary

This chapter described Jamaica as a product of the legacy of a colonial economy devoted almost exclusively for 300 years to the production of agricultural products for overseas markets. The socioeconomic structure of the country derives from the plantation system. The culture of the plantation system, even after 20 years of independence, continues to exert a profound influence on social, economic, and political relationships within Jamaica. And the cultural patterns which they represent had, as is shown by this study, a direct influence upon the Gun Court Act, its form and its operations over a ten-year period.

Jamaica, following independence in 1962, operated under the formal machinery of English common law. The nation, like other former colonies of European powers, inherited the legal system of its previous owners. The laws of a slave colony, like its other institutions, were always imposed from without, and represented the political and economic interests of the plantocracy.

Neo-colonial leaders often resort to coercive measures, and as a result, freedom and justice for the individual are not fully secured and guaranteed upon the attainment of independence. The situation facing developing countries today is different from that which western societies faced during phases of development. The present-day developing country has to contend with the earlier activities of the imperialistic nations, the present commercial activities of the western world, and the pattern of economic and cultural dependence which these have imposed upon them. It also must cultivate a strong sense of identity to replace the colonial cultural and social values.

When Michael Manley and the P. N. P. won the national election in 1972, a move toward progressive reforms was intended. However, the social instability resulting from centuries of economic dependency and resulting in gun violence prevented any significant social-democratic movement. Firearm crime intruded and in so doing became a political issue. By 1974, the J. L. P., the opposition party, clearly had the ability to gain politically if the P. N. P. did

not act in some manner to attempt to eradicate the crime problem. As is seen further in the following chapter, the Gun Court Act was a direct manifestation of this political reality. However, since the issue of firearm crime was formally entered into the political arena by the passage of Gun Court, another political reality - interest groups - was about to enter into the picture.

Chapter V: INTEREST GROUPS AND THE GUN COURT ACT

Introduction

This chapter discusses the Gun Court Act as a legislative device utilized by the Jamaican Government from 1974 to 1983. The passage of the Act and its two subsequent amendments is historically traced with particular attention paid to the role interest groups played in affecting the characteristics of the legislative life of the Act and the effect the Act had on these interest groups.

American social science has been dominated by the notion that legislation is the result of pluralistic input. Where the view has been that it is the conglomeration of competing economic interests which results in legislation, the relationship between class structure and the state has been viewed as crucial. Class conflict and party competition, assumes responses by neutral state mechanisms (Lipset, 1960; Lipset & Rokkan, 1967). Pluralism holds that state mechanisms are accessible to interest groups (McConnell, 1966) and these interest groups vie for governmental power. Pluralism presents the state as an impartial arbiter between competing forces.

Interest groups played an important role in the legislative and implementation process of the Jamaican Gun Court Act. As such this study has two primary objectives: first, to test what the importance of such groups were by suggesting, quite simply, that their importance varied over time under different sociopolitical circumstances; and second, and perhaps more important, to specify those sociopolitical circumstances, explaining when interest groups are important in the criminal legislative process and why.

The creation of law and the official definition of it is a function of the distribution of power in a society. In Jamaica, the Gun Court Act functioned to permit neocolonial elites to maintain their system of power and privilege. This study, therefore, is based on the premise that in order to understand the Gun Court Act of Jamaica, the Act must be seen not merely as a legal phenomenon but as a socioeconomic phenomenon as well. The problem to be undertaken is the unveiling of the larger context of social justice. The larger context of social justice seems far more heuristic since the definition of

crime, the creation of laws, and also people's responses to the political and economic order in which the laws are framed, are based on some conception of social justice. The identification of conceptions of social justice are also integral to the very process of development in Third World societies such as Jamaica.

Prior to discussing the effect the Gun Court Act had on, and the role played by, the public-at large, the lower class, the middle and upper classes, the press, the legal community, the judiciary, the People's National Party (P. N. P.), academics, the religious community and the Bi-Partisan government, a brief survey of class development and interest groups will be presented.

Jamaican Class Development and Interest Groups

Applying an interest group analysis to the Gun Court Act is not an impossible undertaking. A starting point might be found in an analysis of the political side of urban violence (Eaton, 1975; Stone, 1973). George Eaton, a Jamaican political scientist, outlines the nature of Jamaican political unionism. He states that each political party is identified with a national union. He describes the "Spoils System of Jobs" extending to the broadbase of the population. As a result, attention is not focused on national priorities, but on the rationing of limited employment opportunities and the dispensing of rewards (Eaton, 1975).

Carl Stone, also a Jamaican political scientist, suggests that in Jamaica, class struggle is muted by polarizing the poor classes into two political parties. The proletariat in Kingston, rather than fighting for class interests, is organized into warring factions by the two political parties, and is repaid with political patronage. In other words, despite the heavy price paid in urban violence, the parties have a vested interest in its continuation. If it were to stop, the class struggle would burst to the fore and revolution from below might occur (Stone, 1973).

There has always been party rivalry over the distribution of jobs, but with the worsening economic situation in Jamaica in the early 1970's, the conflict

became more serious as jobs decreased and population increased. In Jamaica, members of the cabinet, including the Prime Minister and leader of the Opposition, were required by law, to be members of Parliament with a constituency. These powerful figures invariably had Kingston constituencies and they appeared determined to hold on to power and hence win local elections - even if it meant employing violence (Stone, 1973).

The Gun Court Act maintained a function within this social, economic and political milieu. A firearm law may merely disrupt the lives of the apprehended criminals. However, the Jamaican firearm law dislocated an entire society for a period of time while enemies of the state were rooted out. Jamaican firearm crime must be therefore seen as a political assault on the government of a neocolonial nation. With different political interest groups vying for power, the understanding of firearm legislation must account for the specific nature of firearm violence, the response to firearm violence and their places in the methodology of Jamaican development.

Within an underdevelopment historical context, it is not difficult to see that criminal legislation, as a public policy decision, can be an area for contention and competition among various interests in Jamaica seeking to influence policy outcomes. Public policies in Jamaica are formulated by party leaders in government with the recommendations of civil service advisors and specially appointed party advisors and consultants. The latter assumed increasing importance in the 1970's, replacing civil service advisors in various sensitive policy areas.

Specially appointed party advisors were mainly from the capitalist class and the intelligentsia. Their influence over policy depended largely on their relationship to key ministers and the more important leaders within the governing party.

Jamaican Parliament functions mainly as a mechanism for the distribution of party patronage and vote mobilizers and only has a marginal influence over most government policies. The Parliament and governmental system is dominated by the executive arm of the party in government.

Organized interests have some influence over public policy decisions but with many clear limitations. First of all, policy directions and initiatives tend to be defined by key actors, leaders and advisors functioning within the apparatus of government. Organized interests, therefore, are usually in the position of having to react to such policy directions either in consultations held before public announcements or more often after such public announcements have been made.

In the preindependence period, local and foreign business interests enjoyed a virtual veto power over sensitive public policy areas affecting their interests. In the period since independence, and especially when the P. N. P. came into power in 1972, public policy making was not so highly influenced by this group, as more and more economic power was entrusted to the state and elected politicians.

Increased competitiveness over policy influence by various organized groups was inevitable as the government acquired more and more regulatory power over private interests. This process increased quickly during the 1970's. This policy competitiveness added to the agitational role of the opposition party and the sensitivity of party government to intra-elite opinions and made the mass media the central arena of public affairs and public policy influence. The media channels of communications were utilized by organized interests to challenge and lobby against policies unfavorable to their interests. The government invariably responded with policy statements and reactions, some of which made concessions to these lobbies. More often, however, the governing party used the mass media channels to legitimize its policy priorities.

The trade unions, while enjoying a large militant membership and broad public opinion support, were a relatively ineffective lobby on policy matters outside of areas directly affecting labor relations, and played no significant role in the Gun Court policy formulation. On special interest matters, however, they had considerable policy influence due to their affiliation with both political parties and overlap of trade union and party leadership.

The two major political parties constantly sought to redefine all policy issues into interparty contentions (Stone, 1973). The governing party did this to discredit non-party critics or policy opposition, while the opposition party did this to identify with and co-opt all challenges to government policy. As a consequence, many issue debates attracted intense partisan exchanges that often diverted interests away from central causes of the controversy.

As has been noted, there was such a polarization between the political parties that the parties began to place gunmen behind them. Therefore, once Gun Court legislation was introduced by one party, it had the potential to be used as a political weapon. Once the opposition party attained power in 1980, it also had the potential to take advantage of it as an oppressive political weapon.

Beyond the political parties, the mass media, trade unions and the business lobbies, there were a variety of minor factions and lobbies which used the media to challenge policy issues. As is later demonstrated, for example, the legal profession was the main such "minor" interest group which rose to challenge the Gun Court policy decision. However, immediately upon passage, the Gun Court Act produced profound effects upon a number of different factions within society. The following discussion will present what these effects were and what responses resulted from these effects.

The Public At-Large

At the time of its enactment, public comment largely favored the Gun Court Act, and while there were some reservations, these were mainly expressed by the legal profession. On the one hand, there was the Jamaica Manufacturer's Association avowing that "it was in the best interest of national security." On the other hand, attorney R. N. A. Henriques described it as "a new creature of dubious legislative paternity." And his colleague Richard Mahfood asserted that the mandatory sentence of detention at hard labour during the Governor-General's pleasure involves inhuman and degrading punishment contrary to provisions of the Jamaican Constitution" ("Praise

curse," 1974).

Complete approval of the Gun Court came from the National Consumer's League in an editorial appearing in its magazine, *Value*. Generally, the editorial praised the Gun Court Act and called for the recognition of strong family and home life as long-term solutions to the crime situation ("Praise, curse," 1974). *Catholic Opinion*, in its editorial in the May 17th issue, had some harsh things to say however:

The Gun Court is not an instrument of justice. When the idea was first broached, it was thought by most people that this would be just another court designed to take care of what was expected to be a heavy load of cases. In effect, there is a great deal of uneasiness, because of the intimations of mortality as seen in the resemblances of similarities to Communistic practices. Even the colour of the Court. ("Praise, curse," 1974).

The physical characteristics of the Gun Court were harsh (Based on a visit to the Gun Court facility, Kingston, Jamaica, December 15, 1982. For a more detailed description of the Gun Court, see *Time*, 1974). There were many facilities which were sorely lacking. For example, the one telephone on the grounds was generally out of service; there was hardly any water for general use and water for simple toilet facilities did not exist; toilet facilities had to be shared by male and female. "The grim looking stockade is the brainchild of a group of Jamaican psychologists and sociologists. It is supposed to convey the message that crime does not pay . . ." (*Time*, 1974, p. 13).

The targets of the Gun Court Act were those individuals who participated on the middle and lower echelons of the political game and common apolitical street criminals. Top-notch gunmen were not touched. Their connections with the politicians of both parties protected them. Gunmen worked for both the P. N. P. and the J. L. P. For all intents and purposes, therefore, the Act may have been aimed at the population which contributed the least to the high level of firearm violence.

The Gun Court Act was criminal legislation that must be characterized

as socially and politically oppressive. As an illustration, the guilty by association definition of the concept of possession was oppressive. How could it be expected of someone to tell if the individual next to him actually was in possession of a firearm, and why should he have been required to go to court to explain that he did not know the other individual possessed it?

Moreover, the Act led to much corruption. All that was required of an individual, A, if A disliked individual, B, was to go to the police and claim that he saw B in possession of a gun, that B pointed the gun at him, or B shot at him. This was the sole evidence A was required to give to the police. The police would then arrest B and if A was a good liar in court, A could tell the judge that there was an argument between himself and B, and B said he was going to get him, and B threatened him and that afterwards B came out with a gun. At this point a dialogue similar to the following would ensue between the judge and A:

Judge: "Do you know what a gun looks like?"

A: "Yes."

Judge: "What does a gun look like?" (Now everyone knows what a gun looks like because they have seen it in the movies. So a standard response would be asserted).

A: "Oh, I have seen a policeman with it. It has got a handle. It has got a long part here which is called a trigger. The open part is called a mouth."
(E. Stewart, personal communication, December 13, 1982).

Although an anecdote of a former inmate is alone not sufficient proof of actual procedures, similar types of stories told by other inmates, defense attorneys, and even prosecutors add more than sufficient collaboration to reach the conclusion that the rules of evidence ran heavily against the accused. The preceding description and testimony was more than sufficient for conviction in the Gun Court.

Another recurring story occurred as follows: A would tell the Court that B pointed the gun at him, but that A managed to allude the bullet somehow or another. The case would be stronger against B if A was able to secure a

witness to come to Court to support the story. Without any additional evidence, B would be sentenced to either indefinite detention (prior to the first amendment, see Appendix C) or life imprisonment (following the second amendment, see Appendix D). There was no need for a gun to be recovered.

Apart from the fact that accidental circumstances may have given rise to a Gun Court charge, it should also be pointed out that an allegation of illegal possession of firearms could easily be concocted and substantiated. A number of simple examples which actually occurred will illustrate this point:

a) Someone may have wilfully, maliciously or even accidentally, left a cartridge or a gun in some part of the car of an ordinary law-abiding citizen and, "without a reasonable explanation" for the presence of that cartridge or gun, that law-abiding citizen would have been deemed to have committed a gun crime and been liable to a sentence of indefinite detention in the Gun Court camp. What reasonable explanation could a person have given when he did not know that concealed in his car there was a firearm, or part of a firearm, or ammunition, if he knew nothing about its presence.

b) Someone with a grudge may have left, or procured some person to have left, a bullet in the room of a person against whom he bore a grudge and then informed the police. The police, doing their duty, would search and find the offending article, and thereafter that innocent citizen was headed straight for indefinite detention. The same tactics could have been used by politicians who wished to get rid of their opponents either before or at election time.

c) A law-abiding citizen who stood at a bus stop may have been engaged in conversation by a person carrying an illegal gun. A policeman approached and the person pulled his illegal gun on him. That law-abiding citizen at that point of time was, in the absence of "reasonable excuse" treated as being in possession of that illegal gun. The law-abiding citizen was expected to give an explanation satisfactory to the Resident Magistrate, and in the meanwhile was liable to arrest without bail pending his trial.

The effectiveness of the Gun Court was predicated mainly on the twin

supports of speedy trials and the severe sentence. While the concept of speedy trials was not questioned by the public, the sentence of indefinite detention was. The critics of the legislation also questioned the validity of the Full Court Division of the Gun Court. Other areas of criticism included the removal of the onus of proof from the accused; deletion of the extension of the concept of possession; the lack of judicial discretion; the *in camera* proceedings; the trying of the most serious cases first; and the name and the decor of the Gun Court. These areas of public concern also obviously made the law a major issue for the Jamaican legal community.

The Farquharson Institute of Public Affairs issued a public proclamation for the repeal of the Gun Court Act in August of 1974 because it felt that the effect of it on criminals was wearing off, and the continuance of the controversy could only weaken the prestige of the Government and the forces of law and order (Farquharson Institute, 1974). The statement was released as the result of meetings Institute members had with the Attorney General Leacroft Robinson and defense attorney Ian Ramsey. In the Institute's opinion, the Government was unwilling to call a State of Emergency, in lieu of passing the Act, because it might have resulted in bad publicity abroad (i.e., island on the brink of civil war). But that the distinction between what the Government had done and declaring a State of Emergency was small. "On balance the Institute feels that it would have been better to rely on familiar and traditional methods of dealing with crime" (Farquharson Institute, 1974).

As is discussed in greater detail below, there were a number of legal cases brought to challenge the constitutional validity of the Gun Court. In general, the public found these legal cases involving the Gun Court extremely confusing. Many felt that once they "got past the *Gleaner* headlines they were entangled in the thickets of Latin and legal terminology" (D. Collins, personal communication, August 18, 1982). Many became confused over the legal issues surrounding the court, and the overriding question of the effectiveness of the Court was also becoming an issue.

Moreover, throughout the legislative life of the Act, but most especially

during its first few years, governmental authorities were curiously reticent on the question of statistics and hard facts during the Act's first year. Therefore there was no accurate sense citizens could develop as to the effectiveness of the Act. Most people did not doubt that there was a dip in firearm-crimes immediately following the introduction of the new law, but they were also noting the increasing reappearance of horribly familiar crime stories in the newspapers by the late fall of 1974. Some began to feel that when the Act's constitutionality was attacked by the judgment on the second appeal, it seemed that it was no longer a force and therefore the gun crime rate jumped up again.

People soon began to feel that the Gun Court had been a mistake. Many in the lower classes especially did not trust a law which provided for indefinite incarceration, for keeping people in prison "at the pleasure of a politician." It was not difficult to see this a law as one that could easily be misused. Many began to feel that the only reason for the initial decrease in firearm crimes at all, was due to the increase in police activity, and that such activity brought with it a heavy price.

As the Act took effect and was implemented by the police, many tales of torture and brutality by the police were being told throughout the streets and alleys of Kingston. It is very difficult to obtain accurate information about these stories, however, suffice it to say that anything that increases the average person's distrust of the authorities was bound to damage the drive against crime.

By February of 1974, a protest movement against Gun Court had reached inside to the Gun Court inmates. Prisoners at the Gun Court camp began a hunger strike. They felt that the promises of rehabilitation had never been kept and that the Review Board was not meeting as often as it should. Prisoners were also not being tried within the mandated seven day time period.

Firearm crime began to escalate before the 1976 election. This time there were differences in the violence from earlier elections. Included as

targets for the violence were individuals outside the political gang structure. And soon after the election of the Jamaican Labour Party in 1980, many individuals in Jamaica began to perceive the failure of either government to remove, or at least fully amend the Gun Court Act, as a challenge against all class interests. A local small merchant stated, "When the previous government was in power, the legislation was necessary as an emergency measure. But the fact is that that was 1974. The Act has proved to be a mistake and yet the new government did nothing at all to change it" (N. Brown, personal communication, August 22, 1982). In chapter 3, it was shown that the Act did not effectively deter firearm-crimes. In fact, by 1980, the Gun Court was piling up more and more cases every day. The new government did nothing to reduce it either. So people, rich and poor, were wondering why the Act and the Gun Court remained in operation for such an extended period of time.

The Middle and Upper Classes

Prior to discussing specific class effect and reaction to the Gun Court Act, it might be useful to offer a general definition of the class structure in Jamaica offered by former Attorney General, Carl Rattray. Rattray stated that, "the lower class owns next to nothing. The middle class owns something. And the upper class owns something imported" (C. Rattray, personal communication, December 15, 1982).

With the election of Michael Manley and the P. N. P. in 1972 and the rising level of firearm-crimes in society, it was not surprising that the J. L. P. and its upper and middle class supporters were in a state of panic. According to one well-respected upper-class merchant, Kenneth Issacs, members of the upper class had to build additional walls around their homes, purchase additional guard dogs, and organize security groups and/or pay off the police to protect themselves (K. Issacs, personal communication, December 20, 1982).

During personal interviews, several upper class merchants and a few

government officials expressed concern that it was lower class disrespect for law that caused the Government to impose the Gun Court Act. One middle class restaurant owner even stated that the Gun Court's provision of excluding juries was due to the high illiteracy rate of the lower class. Moreover, some police officers corroborated Issac's observations by preferring information that the upper class secretly paid them, and paid them well, for private protection.

It must be emphasized that very few upper and middle class citizens, including the politicians, believed that there would be a complete change in the political and economic system of the country. All were aware of the fact that firearm violence had started prior to the 1972 election. However, it is clear that there was a major breakdown in Jamaica by 1970 and that it involved widespread political maneuvering and violence.

By 1974, the middle and upper class were becoming more and more fearful of firearm violence. One reason why this fear reached such high levels was because the attention the violence was receiving in the media was great. Press reports, which included multiple daily stories and bold headlines, indicated a high level of violence for March and April 1974. The detailed coverage of these activities suggests that the frequency of these incidents during this period was unusual. However, it is important to note that according to press accounts, law and order was breaking down. And these press accounts were beginning to adversely affect the feelings of well-being and security which the upper and middle classes had felt in Jamaica in previous years.

Although many middle and upper class citizens fled the country with the election of the P. N. P. in 1972 due to fears of nationalization, the nation and its political and economic system were never seriously in jeopardy. Prime Minister Michael Manley adopted a politically expedient program which fully rejected Cuban-type socialism (see Lewin, 1982). Nevertheless, there was such a large identifiable lobby of interests with a stake in the existing political and economic system, the Government felt it had no choice but to pass the

Gun Court Act. Moreover, the ideological force behind a cure-all crime deterrent piece of legislation could truly be utilized politically. The middle and upper class segments of society were wholeheartedly in support of its passage, although there is no evidence whatsoever to indicate that they played a direct role in its passage.

As noted earlier in this chapter, the pre-independence government in Jamaica had often relied upon key advisors and ministers in its policy decisions. In the development of the Gun Court Act, the government relied on social scientists; they most notably participated in the development of the deterrent and retributive characteristics of the Act. In August of 1974, in response to a letter published by *The Daily Gleaner* by Michael Beaubrun (1974), considered the leading social scientific designer of the Act, Noel Edwards, a middle-class citizen, wrote a letter to the editor and stated that there was absolutely no way the consequences of appearing before the Gun Court for sentence could be made to fit into the learning theory of delayed negative reinforcement. "Unless Professor Beaubrun is an unwitting supporter of retribution, I really fail to understand his purpose in writing in learning theory terms" (Edwards, 1974).

Edwards expressed his feelings that society "should concentrate on eliminating the conditions which produce frustration instead of building permanent monuments (Gun Court and the so-called Rehabilitation Centre) to frustration and failure robed in crimson" (Edwards, 1974). Many Jamaicans of the middle and upper class became highly influenced by this letter. Edwards was the first private citizen of a "higher" social rank to publically oppose the Gun Court. Of course, there was major concern about crime and the challenge it was presenting to their places in society, but the Edwards letter started citizens questioning the means selected by the government in combatting the crime problem.

It cannot be disputed that, especially directly following the Act's passage, that middle and upper class opinions concerning the Gun Court Act reflected the position in society which they held. However, following the

Edwards letter, dialogue developed concerning the alternative solutions to the crime problem. Many middle and upper class individuals began to honestly believe that the firearm problem in Jamaica could not be solved without a more humanistic social solution as part of societal response.

For example, one owner of a paint store stated, "there is no such thing as crime prevention in Jamaica. There has never been an official attempt to get at the root of crime. The Gun Court Act was used as a politically expedient device by the politicians in power" (merchant, personal communication, December 12, 1982).

Certainly by 1982, middle and upper class opinion perceived the Gun Court legislation as one of hardship and oppression. A middle-level government bureaucrat stated, "It must be appreciated that there were gun crimes in Jamaica and that there had to be laws to punish perpetrators of gun-related offenses, but at the same time a law must fit into society. A law cannot be implemented without a full understanding of the social and political nuances of a society" (government bureaucrat, personal communication, August 24, 1984). Moreover, Bunny McKenzie, an upper class businessman and the first man to appeal from a sentence of indefinite detention in the Gun Court, put it quite well:

I have lived with men who were found guilty of illegal possession of firearms, men who were fatherless from birth, with mothers who could not even support themselves. They have lived where hunger, nakedness and stealing has become apart of everyday survival. They are forced to deal with unwanted circumstances. In order to live they must prey upon society. (Fuller, 1974).

The McKenzie case even moved the press to *qualified* opposition to the Gun Court.

The direct effect the Act had on those citizens of the middle and upper classes must be noted. Although a sportsman breaking the terms of his license by having 501 rounds of shotgun ammunition was liable to receive the same sentence as someone found in possession of a prohibited weapon

that included artillery, there were only one or two other rich people who passed through the Gun Court from its inception through 1983. None of them remained there very long. Simply stated, it seems that a general comment about the Jamaican way of life made by one Kingston banker held true throughout the course of the Gun Court's legislative life in terms of its implementation against the middle and upper classes: "Connections are the way of life. Buttering up and using friends is the only effective way of getting things done and staying or getting out of trouble" (H. Adams, personal communication, August 22, 1984).

A case following the McKenzie case, which involved upper class defendants, moved the press more solidly against the Act. Arthur Ford and Anthony Lee (Tony) were brothers who were real estate developers and sportsmen of middle class origin and privileged education. They were arrested and charged with illegal possession of two .22 caliber rifles following police raids carried out at their homes and offices ("McKenzie brothers," 1974). The press became upset that all they were permitted to report was that they were charged with, and convicted for the illegal possession of firearms. One journalist stated that "their (the defendants) real crime might have been related to negligence rather than criminal intent" ("McKenzie brothers," 1974).

In analyzing the role and the perceptions of the middle and upper class, therefore, two unexpected observations are apparent. First, after initially fully supporting the Gun Court Act, support diminished. A wife of a Jamaican ambassador stated that the Gun Court was a "disguised remedy." She stated that the Act, "became a political tool to lock up opposition. The violence in Jamaica can be directly attributed to the playing out at election time. You will see that the statistics back me on this. I would call up the police and they would say, I don't have a car. So I knew I had to pay them" (S. Tossaint, personal communication, December 13, 1982). Second, the middle and upper class played no overt role in the passage of the Act (e.g., no lobbying, no indirect pressure, no campaigning) and their effect on the legislative character of the Act over the course of the study period was minimal.

The Press

Initially the press was fully supportive of the Gun Court Act. As we have seen two Gun Court cases altered this position. The Press initially supported the Act despite the fact that the Act adversely affected coverage of gunmen trials. Generally, as indicated earlier, the media was not permitted to be present at any sitting of the Court unless specifically authorized by the Court. In fact, three separate powers vested in the Gun Court directly impacted upon press coverage of proceedings. First, the Court could refuse to authorize representatives of the media to be present in Court during the trial. Second, the Court could direct that any fact leading to the identity of any witness was not to be published. Third, the Court could direct that no particulars of the trial, other than those set out in paragraph b of section 13(2), be published without the prior approval of the Court.

Despite these hostile provisions of the Gun Court Act, the press negatively viewed all those who opposed the Act, especially the attorneys. "We as practicing attorneys opposed it too and the press gave us hell - so to speak. We were condoning crime. We were encouraging the criminal" (legal aid attorney, personal communication, December 13, 1982).

Following the McKenzie case, however, the press called for distinctions about certain categories of offenses. The press claimed they understood the rationale for the ban on publishing but that, "there seems to be an urgent necessity to publish the details of the McKenzie case so that the public can know the nature of the evidence for which these men have been charged" ("McKenzie brothers," 1974). The McKenzie case moved the press to feel that the consequences of the Gun Court Act were unavoidable, that it was conceived in haste, and that "experience cautions that such rushed pieces of legislation find themselves inevitably doomed to failure" ("Press Association against," 1974).

Justice Green, who presided over the McKenzie case, stated that in an appropriate case the publication of details could and would be made. *The*

Daily News followed the Justice's statement by publishing an editorial which argued that the public trial should be cherished and for justice to be done; it must be *seen* to be done (emphasis in original) and that "darkness breeds ignorance and suspicion" ("Justice must," 1974).

For whatever reasons, on August 23, 1974, Arthur McKenzie was the first man to win bail and an appeal from a Gun Court conviction of indefinite detention. Later the same month his brother was released by the Review Board.

It most be pointed out that *The Daily Gleaner*, *The Daily News* and the Jamaican Broadcasting Company (the sole television network in the country) are perceived by all elements in society as being controlled by the Jamaican Labour Party. *The Gleaner*, in particular, wields considerable influence among the general populace. In fact, it has been said that it is the "formulator and articulator of the formidable middle class opinion" (J. Richards, personal communication, December 8, 1982). It is not surprising, then, that middle and upper class outrage against the Gun Court Act first developed as a result of the Act's implementation against a businessman.

Moreover, following Michael Beaubrun's letter to the editor shortly after the Act's passage, the Press Association reacted immediately by issuing a strong statement against those sections of the Act which prohibited the publication of trial details. In reaching back to Bentham and Hallam, the public statement was a scathing attack on the Act and an invitation to all to prevent the erosion of the nation's constitutional rights and to repudiate any interpretation of the statute which amounted to a usurpation of the rights of the citizens (Jamaican Press Association, 1974).

Two days following the publication of the Press Association's statement in *The Daily Gleaner*, Resident Magistrate Ian Forte of the Gun Court released details of the evidence in the trial of American pilot Karl Hawkins (Geddes, 1974). Reacting to the increasing pressure, especially in light of the Press Association's statement, this was the first release of any details of a Gun Court trial. It is also important to note that it pertained to a case involving

a foreigner, not a local citizen.

The victories won directly by the press against the Gun Court Act were non-existent following the Hawkins trial. The press, as a distinct interest group, simply did not wield sufficient power or possess sufficient interest of its own to alter the provisions of the Act. However, as will be seen by the events leading up to the second amendment of the Act in 1982, the press was used as a mechanism by different interest groups for the articulation of their respective positions concerning the Gun Court Act.

The Lower Class

Because of the lack of equal opportunity and scarce resources and a lingering of colonial dependency, Jamaican society continues to be an "us and them" society since its independence in 1962. The "haves" and the "have-nots" are clearly defined. We have seen that the conditions surrounding the plantation economy established the context in which the legal system in Jamaica historically developed. This was made clear by a review of the informal exercise of political and legal authority on the sugar plantation. From 1974 to 1983, the lower class, the great majority of the people, struggled to exist from day to day, unemployed or fortunate to be earning as much as the federal minimum wage of \$30 weekly as a gardener or a domestic (see Appendix F).

While the upper and middle class, initially extended full support to the Gun Court Act, the sentiments of the lower classes who occupied the squatters' shanties on tiny strips of land, became mixed immediately following the Gun Court Act's passage. This observation may be close to obvious, for following passage, the shootings and the increased police activity occurred in their neighborhoods. Under the Gun Court Act, members of the lower class could easily be accused and they knew of no one who could get them out of trouble. They also could not afford private defense counsel. The somewhat mixed initial lower class opinion of the Gun Court certainly changed to complete opposition by the end of 1974 because by the

end of 1974, the Gun Court prison started to become filled with their own.

It is significant to note that most lower class individuals interviewed squarely understood the problem of increased firearm usage within their society to be the result of the rivalry between the two political parties. There is much political sophistication among the lower class in Jamaica. One young factory worker stated, "Political parties would give guns to people in certain neighborhoods strongholds of the opposition party to stir trouble; in order to create unhappiness and perhaps gain a political foothold" (N. Williams, personal communication, December 14, 1982). Moreover, one woman stated: "During elections one side declares war on the other. If they thought that you were with the other side, they would kill you; not so much in the rich areas, but in the poor areas. You see we can't afford to pay off the police for protection" (J. Williams, personal communication, December 14, 1982).

However, many lower class individuals turned to political violence because they perceived no better way to survive in an economically disadvantaged country. They began to "live by the gun." One self-proclaimed political gunman interviewed stated that turning to the gun was one way to get "free money:"

Well, it was called free money because most of the time you would do nothing and you would still collect it. I used to work for one of the parties. Sure I knew that what I was doing was illegal and I knew that there was a chance that I would be caught and sent to Gun Court for the rest of my life. But I needed money and I was told that I needed to do what they were telling me to do so that the government would change and things would get better. (youth, personal communication, August 12, 1984).

In one reported case, a fairly well-known and respected individual from the community of Stewart Town was arrested under the Gun Court Act (G. Richards, personal communication, December 14, 1982). From the moment of summary arrest one morning, he felt like a criminal of unspeakable crimes. He was made to wait in a charge room for nine hours for the brief magisterial

formality which merely refers a detainee to Gun Court. He was not allowed to speak. He spent his first incarcerated night on a concrete floor with five other men. A restaurant waiter, he was a man of little wealth, and when he reached the Gun Court the following day, innocence could save him from "degradation and misery" which he experienced from standing eight hours on the square, exposed to passers-by, to aggressive and humiliating behavior of wardens (correction officers) nor to the respite of bail.

He was despatched to the General Penitentiary and locked in from evening until reveille in a cell with no light, no bedding and a slop pail. His first night there was one of a "swelling sense of bitterness and despair." He told himself that a society capable of inflicting such unmitigating injustice and misery without trial was "doomed to a future of anarchy and fear." He was determined to "run from this perplexed and beautiful island" at the first opportunity (G. Richards, personal communication, December 14, 1982).

Freed by a legal aid attorney, a rare event for most Gun Court detainees, he readily admitted that although he was no permissive liberal, he believed that in the search for an instant solution to a national crisis, the Gun Court assumed that extremes of harshness were the only answer to criminal proliferation. It seemed that the government was quite insensitive to discovering the root causes of crime, the environments of crime.

Charles Pearnel, an inmate at the Gun Court, stated that the Gun Court Act provided the forerunner of an authoritarian attitude of the government under the guise of attempting to deal with the real menace of crime. He stated that the Gun Court was a use of ostensible legitimate authority in an illegitimate way to arbitrarily suppress human rights, disregard civil liberties and silence and trample the Opposition (Pearnel, 1977).

During the 1970's firearm violence was confined mostly to those who actively participated in political violence. However, by the election of 1980, the violence was new. It was random terror. This terror disrupted the fabric of people's lives and the flow essential to commercial and social services. Many lower class individuals interviewed stated that the real cause behind

this unprecedented level of violence in 1980 was a J. L. P. - United States conspiracy to discredit the Manley government. Many believed that the money needed to purchase the arsenal of new automatic weapons had to come from abroad. All knew, however, that when it came to directly impacting upon policy formulation within Jamaica, they had fairly limited options. Since the J. L. P. had begun to publically oppose the Gun Court Act, in the months following its passage in Parliament in 1974, and since it was obvious that the high level of firearm violence had not been lowered, the lower class voted the Manley government out of government control in 1980.

Policing: The Jamaican Constabulary Force

The Jamaican Constabulary force (J. C. F.), an organization of some five thousand officers, was established along strict para-military lines with rather rigid levels of managerial authority. The principle difference between a constabulary force and a regular police force is that members of the latter are on duty around the clock and they reside in barracks in the area they work.

As is true with any country with a colonial past, the uniformed agents of Government still tended to be identified with what was once an alien and imposed Government. This arrangement did not readily lend itself to flexibility in areas of police responses to the needs of the public during the legislative life of the Gun Court Act. Moreover, there seemed to be a serious lack of communication between the police at all levels and the citizens at-large. In fact, a major problem existed in the urban, high-crime sectors of Kingston, where confidence in the police was lacking and where the efficiency and impartiality of the police was openly questioned by large numbers of the population.

Prior to, and following Gun Court passage, there is evidence to suggest that many street officers and line managers did not perform their duties in a completely impartial manner; this gave rise to public complaints and a diminishing level of public support and respect. Internal investigations by the police were rarely conducted and, with few exceptions, results were not

conveyed to the public. There was a failure to convince the public that its complaints were being thoroughly investigated and errant police officers punished.

Prior to, and following Gun Court passage, police-community programs were non-existent. There was no attempt made by the J. C. F. to involve its officers in community activities in order to learn more about the citizens they swore to protect and serve. Instead, following passage, the law enforcement community was pressured by high-level politicians to make full usage of the Gun Court Act by increasing its surveillance and arrest activities of lower-level political and street criminals.

At given points the Government also felt it necessary to involve the Armed Forces in the control of crime. The instances of Armed Forces intervention were marked by an increase in the number of law enforcement officers killed while on duty and by information leading to the belief that a rapidly increased number of armed perpetrators had formed themselves into organized groups. Moreover, there were even recorded instances of clashes between the Armed Forces and the police.

The passage of the Gun Court Act therefore led to more violent law enforcement-citizen encounters. Many citizens interviewed saw a historical reason for the existence of armed groups in the country. They were aware of the fact that the Jamaican bi-partisan system created fierce loyalties which at given times in history may have had zealous supporters in either party resorting to strong-arm methods. Many regarded the Armed Forces, not the Police as the only neutral agency capable of putting this to an end. All political leaders interviewed condemned the existence of even the remnants of groups using strong-armed methods, but acknowledged their continued existence by blaming the other political side. Nevertheless, among the population the belief in the continued existence of such groups continued to exist.

Members of the Armed Forces were trained as a military organization and had no special capacity to enforce the law. When first deployed, usually

in groups of three or four soldiers protecting one or two constabulary officers on duty, a part of the citizenry welcomed military participation in law enforcement, as did part of the constabulary. However, large parts of the citizenry resented the inconvenience of being stopped and searched on the street by the military. Additionally, the constabulary itself felt that their function as civilian law enforcement agents was curtailed by the use of the military because such use casted doubt on their capacity to deal with the situation.

The situation reached such crisis proportions that accounts of police brutality and false arrests were becoming quite commonplace almost immediately following the Act's implementation. In fact, Justice E. G. Green, the first Presiding Magistrate of the Gun Court, on the occasion of his first acquittal of a gun crime, said when dismissing Winston Fearon for the possession of one cartridge, that he would regret to see the day when policemen would plant a bullet on a person. These possibilities began to occur and people became frightened.

During the first year of the Gun Court Act's implementation, the Jamaican people seemed to accept street killings as a way of life. The election of 1972 and its resulting violence also created a by-product which is interesting to note once again. There were a number of individuals who were known to be associated with gunmen, or who were gunmen, and who were highly respected in certain communities. For example, in downtown Kingston one found individuals who were members of the community and were able to secure respect from the youth of the community, who, may not have been convicted of a crime for one reason or another, but were known supporters of gunmen or were gunmen themselves.

It appears that there were these "political criminals" walking around free. The public was aware that they were gun criminals, but political connections protected them. Most of the gun criminals of this sort had some political aspect of life associated with them. These people were handed guns and money by both political parties to fight for them. Whatever else they were involved with outside of politics, they were protected to some extent.

Therefore, it was not unlikely for a politician to go to a police station with sufficient frequency and successfully demand that certain people be released. The police officer might have feared the politician or the police officer himself might have been politicized.

A high-level gunman of this sort was called a "ranking" gunman. The most notable of the political gunmen tended to have very short life-spans and were often killed brutally. This kind of criminal was above the Gun Court. For some political reason he was never brought before the Gun Court and consequently was permitted to continually create violent activity within the society.

It appears that the police were in an unfortunate position as a result of the existence of "ranking" gunmen. They had to strike a balance between effectively providing law enforcement activities in the communities at the same time as having to insure that they were not oppressive to certain classes of people. Many members of the public, however, felt that the police were too aggressive. A young attorney provided an example of this sentiment by offering the following account of a personal experience.

It was 12 o'clock Tuesday night and I was on the road. I saw a roadblock coming up in front of me so I cut down from 75 mph to 55 mph. I stopped at the roadblock and a police officer with a M-16, a high-powered rifle comes to my side, points the rifle directly to my head and screams, 'What is your mission? Where are you coming from?' So I hastily, but cautiously replied, 'I am an attorney-at-law coming from Montego Bay' and my colleague who was shaking in fear next to me asks what the meaning of this operation was and the police officer responded, 'Well you know there have been frequent killings along the river road. People have been slain at this time of night. So we are stepping up our operation.' (C. Lawrence-Beswick, personal communication, December 14, 1982).

Following Gun Court passage, the standard police function seemed to be the pointing of a rifle in the face of people walking the streets. Many people stated, "I am a law-abiding citizen, yet I get a rifle pointed into my face" (C.

Frawley, personal communication, August 22, 1984). However, many people interviewed surprisingly stated that they could understand the aggressive behavior of police. One taxicab driver stated:

What has happened now is that we have a lot of criminals that are well-attired. Their appearance is like a wolf in sheep's clothes. You just don't know who to trust. Because the police will stop you and you will have a well-dressed suit on, and under the coat is a gun. You might be well-dressed with a beautiful tie, but you're still a criminal. The police don't care who you are. They stop you and scream, 'come out.' Things have gotten really bad. (F. Jacobs, personal communication, August 20, 1984).

One police officer stated, "even people well-dressed and appearing to be law-abiding citizens have a gun" (police officer, personal communication, August 22, 1984). Yet it cannot be disputed that rifle pointing is not a proper police function. "If you point a rifle at an individual, it is going to upset him and give him a concept of police which he should not have" (E. Simmons, personal communication, Jamaica, August 24, 1984).

Judges

One attorney characterized the role of Gun Court judges in the following manner, "When you come into the Gun Court as an accused man, the judge makes you know that you are the lowest form of human life in the whole world. I think them call you boy. They call you 'this and that,' and push you around the court. You are guilty in the minds of all the judges" (legal aid attorney, personal communication, December 15, 1982).

Because of the interpretation of the Gun Court Act, many judges at Gun Court displayed in their judgments the opinion that persons who were charged with robberies in which firearms were alleged to be used, and where there was no firearm recovered but there was evidence of an adequate description of the thing used that met the definition, then that person could have been deemed to be in illegal possession of a firearm. For those

reasons several persons who appeared before the Gun Court on charges of robbery and shooting were convicted and sentenced for illegal possession of a firearm although they had not yet been tried for those offenses.

Despite all of this, prior to the 1980 election, judges began to oppose the Gun Court. For example, Mr. Justice Martin Wright stated:

Attorneys who practice in the Gun Court have for some time been aware of a degree of dissatisfaction among presiding judges with the practice and procedure of the Court. Major areas of dissatisfaction have been the removal of judges' discretion in sentencing and the lack of expedition in the disposal of matters. (Advisory Committee, 1982, p. 15).

Mr. Justice Wright bemoaned the long time it took for matters to reach trial and the consequent injustice to citizens "who at the end of the day, after very months in custody turn out to have been detained on the flimsiest of evidence" (Advisory Committee, p. 15). He continued to state that "the removal of judges discretion is an iniquitous thing. A man has a bullet and a man has a whole bag of guns and both of them go to prison for life. That cannot be fair" (p. 15).

In an address to the North Saint Andrew Kiwanis Club, Mr. Justice Rowe echoed these sentiments referring to the large number of cases then pending in the Gun Court (462 cases involving 566 persons awaiting trial): "With two judges assigned for the Gun Court and each one trying one case each day, next year this time 150 men would still not have been tried . . . every single person charged in the Gun Court was entitled to legal aid and everyone was in fact defended by an attorney at law" ("Justice Rowe addresses," 1979).

The trial of some Gun Court cases continued several days and with frequent adjournments for one reason or another, a case might not reach the trial stage for a year. Also no one pled guilty in the Gun Court. Against this background, Justice Rowe called for the unfettered, tried and tested power to fix appropriate sentences to be restored to judges in respect to gun offenses. "If judges are permitted to perform their normal functions of determining the

appropriate sentence for crimes triable in the Gun Court, once the maximum penalty has been fixed by the Legislature, it is the considered opinion that society could be adequately protected from the ravages of the gunmen" ("Justice Rowe addresses," 1979).

The primary reason behind Gun Court judges publically opposing the Act by 1980 was that by that time, the Court had become severely hampered administratively. By January 1981 the court was overwhelmed to the point where at the end of December of 1980, 1,267 persons were awaiting trial in 1,001 cases pending ("Gun Court slows," 1981). In a press conference given in Gun Court in 1982, Senior Puisne Judge Mr. Justice Parnell suggested specific reforms and called for the appointment of a Gun Court Advisory Committee to examine the operations of the court and make recommendations. He also called for a liberalization of the *in camera* proceedings and the mandatory life imprisonment.

Legal Profession

The Gun Court located on Camp Road commenced its operation at 10:00 A.M., April 5, 1974. The Judges who presided on that first day were Resident Magistrates U. D. Gordon of Portland, E. G. Green of St. James, Ivan Farquharson of St. Ann and Ian Forte of St. Andrew. Those scheduled to appear before separate judges were Elkanah Hutchinson, 19, a casual worker, Moses Hinds, 31, a mason, and Trevor Jackson, 18, a casual worker. Hutchinson was charged with shooting with intent at the police, illegal possession of a home-made short muzzle shotgun and illegal possession of seven rounds of ammunition. Hinds was charged with illegal possession of an Omega revolver and one round of ammunition. Jackson's charges were not reported in the press ("First case," 1974).

It was Winston Fearon, however, a person transferred from another court, who became the first man to appear before Gun Court. He was on trial before Magistrate Green for illegal possession of a .38 cartridge. Members of the news media were permitted to sit inside the Court but in accordance with

the law were not allowed to publish any report concerning the evidence conducted at trial ("Man gets," 1974). By this time eight other men were already in Gun Court custody. Fearon was later to be the first man acquitted because of major inconsistencies in the police story. As we have seen, Magistrate Green, in acquitting the accused, inferred that the one round of ammunition had been planted by the police.

The completion of the first trial occurred when Leroy Sinclair was sentenced to three years imprisonment at hard labor for illegal possession of a firearm. Sinclair escaped indefinite detention because he was not subject to the penalties of the Act having been arrested on March 29, two days before the Act became effective. Moses Hinds was the first man to be sentenced to indefinite detention (April 16, 1974). On April 25 the first juvenile to be convicted and sentenced to an indefinite detention was a 15-year old apprentice mechanic ("Sinclair found," 1974).

Defense attorneys in Jamaica began to feel strong opposition to the Gun Court Act almost immediately after its passage. Many believed that too much power had been placed in the hands of a single judge to decide both questions of law and fact in the most serious criminal offenses and involving sentences of life imprisonment. The attorneys believed that the long established systems of separating the functions of the judge and the jury proved to be more reliable and just than the system employed in summary trials which governed the operation of the Gun Court.

They also began to believe that Gun Court judges tended to develop cynical attitudes toward defenses put forward which were similar to others which they had heard in other matters on previous occasions and were consequently unable to approach questions of fact with a balanced and objective mind. It was also pointed out that, in the case of Jamaica, where most judges are appointed from civil servants who have been prosecutors, that most judges tended to be biased in favor of police evidence and critical of evidence or submissions which casted doubt upon the credibility of police witnesses. "Many of our judges bend over backwards to avoid making

decisions which imply disbelief of police witnesses even where the witnesses are blatantly lying" (C. Lawrence-Beswick, personal communication, December 14, 1982).

The members of the legal community who were representing clients charged under the Gun Court Act were concerned with the constitutionality of it and its potential to circumscribe the freedom of the individual. For example, Section 22 of the Jamaican Constitution provides that all proceedings of every Court be held publically (The Jamaican Constitution Order in Council, Section 22, 1962). It does, however, recognize the right of a Court to exclude from the proceedings persons other than the parties and their legal representatives to such an extent where a Court may be empowered or required by law to do so in the interests of "defense, public safety, public order, public morality," and the welfare of persons under the age of twenty-one years or the protection of the private lives of persons concerned with the proceedings.

Similarly, Section 22 of the Constitution also gives citizens freedom of expression to impart ideas and information without interference. It is, however, recognized that it is permissible to enact a statute prohibiting one's freedom of expression to the extent that the law is one which is reasonably required in the interests of defense, public safety, public order, public morality, or public health. However, many people questioned whether the events preceding the Government's action amounted to these standards.

Many of the attorneys believed, therefore, that it seemed that prior to any order made under provision Section 13(2) of the Gun Court Act, the Court had to consider the evidence it had heard. Following that, the Court had to come to a decision whether any evidentiary fact might lead to the identity of a witness. If it held so, the court would then hold that the name should not be published. It might also hold that particulars of the trial, other than those specifically permitted under Section 13(2)(b) of the Act (as the case may be), should be published. But these facts could only be published if the court held that they were for one or more of the purposes set out in the law. Failure on

its part to do so was perceived as not only leading to an excess of its own powers as conferred by the Act, but also amounting to a breach of the Jamaican Constitution.

Another strong point of legal attack on the Gun Court was the fact that it operated without the benefit of jury (On his arraignment for high treason in 1649, Lt. Colonel John Lilbourne claimed the right to a public trial as the: first fundamental liberty of an Englishman in order to his trial (*Regina v. John Lilbourne*, 4 St. Tr. 1273, (1649)). He declared that he would have nothing to do with the trial if the Court had not conceded his right to a public trial. "But if I be denied this undoubted privilege," he said, "I shall rather die here then proceed further" (1649).

In Jamaica there is an expression of pride in its inheritance of the common law. Yet 300 years after Lilbourne so courageously stood up against the violation of his right, the Gun Court Act eroded the individual right to a public trial. This characteristic was a serious violation of the principle that all persons charged with serious crimes are entitled to be tried with juries. The attack on the jury system was greatly facilitated by the difficulties alleged to be experienced in obtaining the services of persons qualified as jurors. These difficulties, it seemed, were too conveniently self-serving and it was quite understandable that in the view of many attorneys who practiced in the criminal courts, that there had been a great negligence, and perhaps, reluctance on the part of the authorities in ensuring that sufficient persons representing a wide cross-section of the community were brought to jury panels (legal aid attorneys-at-law, personal communications, December 14, 1982).

It appears that the elimination of jury trials with the advent of the Gun Court was a measure diametrically opposed to the Manley government's declared policy of involving the ordinary man greater participation in the operations of the state. The jury system is one of the earliest attempts of people participation in communal administration and its removal on the ground that in times of stress this task cannot be entrusted to citizens was a

significant demonstration that Jamaica's lack of confidence in the foundations of democracy despite protestations to the contrary.

Finally, it also is apparent that the right of appeal against conviction in the Gun Court was largely illusory. The basis for appeal prior to Gun Court largely rested upon the directions given by the trial judge in the summing up. Thus, he may have misdirected the jury on the law in relation to the facts or on the law or a combination of both. Apart from its effect on the trial, such a system had two additional advantages. First, it enabled the public, and especially lawyers, to observe the record of persons who sit as judges both in relation to their grasp of fundamental principles of law and their objectivity and fairness in dealing with facts. Indeed, there were cases in which some judges fell far short of the principles of justice and were criticized in the judgment of the Appeal Court. Secondly, in a trial by a judge and jury, the judge had to explain the law so that it could be understood by ordinary persons. This assisted the lay public to understand and keep abreast of the law.

Under the Gun Court Act there was no summing up in a wider class of cases and consequently a less effective means of review of the basis of conviction in that Court existed. As a result, appeals would only succeed in limited situations where there was a breach of procedure, where the facts adduced did not constitute a criminal offense or where the decision was totally unsupported by the evidence. The virtual denial of the right of appeal by the omission of any requirement for the judge to state the principles of law applied by him and the findings of fact on which he relied, was another illustration of the disregard for the rights and safeguards of accused persons which characterized this legislation.

It is generally accepted that the law of a free nation attaches great importance to justice being administered in public, by a jury and with a right of appeal. Where the departure from such rights is allowed by a constitution, it is the duty of the courts to see to it that such a departure conforms strictly to the limits set by the constitution. In passing the Gun Court Act, the Jamaican

Parliament transgressed the bounds established by its Constitution. It attempted to replace judicial power with its own Parliamentary directive and succeeded in doing so. The legal community was fully aware of this and reacted accordingly.

From the Gun Court Act's enactment in 1974, the vast majority of the Jamaican legal community believed that the Gun Court Act completely ignored not only fundamental legal principles, but fundamental moral principles as well. Although it did not appear from a strict interpretative understanding of the Jamaican Constitution that new courts could be established by an Act of Parliament in the absence of Constitutional provisions for or against, most attorneys generally believed that the Gun Court should have been condemned because it was "an institution that has sinned against the essential dignity of the human person" (L. Barnett, personal communication, December 15, 1982).

Most Jamaican attorneys believed that the years of Gun Court demonstrated that the mandatory sentence for every conviction of illegal possession of a firearm notwithstanding the circumstances giving rise to the charge did not serve its purpose. They generally believed that what discredited the Gun Court was the indiscriminate means by which it was applied. "Inflexible enforcement of an imprecise law can produce precedents which seep like cancer in the fabric of society, rotting human and constitutional attitudes to a point where the Constitution itself becomes a meaningless symbol of human rights" (D. Daly, personal communication, December 15, 1982).

A prominent attorney, Ian Ransey, believed that the Gun Court Act "took away some of the fundamental rights of the Jamaican people" (I. Ransey, personal communication, December 16, 1982). Ransey believed that the firearm crime wave should have been handled under the emergency powers of the Constitution. These powers, were by their nature, temporary and would not have contributed to "a permanent impairment of the main-stream of Jamaican jurisprudence" (I. Ransey, personal communication, December 16,

1982). For example, the Gun Court Act reversed the burden of proof in a criminal case and made a person charged, guilty until proven otherwise.

The legal community, as was the case with the middle and upper class, responded to the Beaubrun letter to the editor (see above) immediately. A letter to the editor by prominent defense attorney, Denis Daly, pointed out the false ideological perspective of the Gun Court masquerading as a "scientifically designed approach to behavioral change" (Daly, 1974). Stripped of its jargon, Daly held that Professor Beaubrun's position was that the solution to crime lay in the swift and inexorable infliction of the most savage punishment for the simplest criminal act. Daly pointed to historical antecedents, and illustrated that similar measures were first used in Jamaica by slave owners to keep slaves subdued and that despite the withdrawal of colonial political control, the punishment nevertheless continued to dominate the penal policy of the Government and the ruling classes.

Daly believed that the real issue, the propensity of violence pervading the society which has its origins in the violence of slave-owners and the state itself against the people, was being evaded. The additional violence inflicted by the Gun Court upon its victims, many of whom were guilty of nothing more than indiscretion, if anything at all, could only increase this propensity as well as the normally violent methods employed by the law enforcement bodies.

In the opinion of Daly, it was naive to have believed that the Gun Court could have effectively reduced gun crimes, not to mention violent crimes with other weapons. After perhaps being initially deterred, (see Gendreau & Surridge, 1978; Diener & Crandell, 1979; and chapter 3) the firearm criminal was more deadly when he resumed. Daly believed that this was reflected by the history of repressive measures, and without proper research into, and the adoption of measures to remove the causes of crime in the society, Jamaica was embarking on an "upward spiral of violence that can only end in tragedy for all" (D. Daly, 1974).

As was noted earlier, at the time of its enactment, public comment was largely in favor of the Gun Court and while there were some reservations,

these were mainly expressed by the legal profession. As noted, the effectiveness of the Gun Court was predicated mainly upon the twin supports of speedy trials and the sentence of indefinite detention. While the concept of speedy trial was not questioned by most attorneys, the sentence of indefinite detention was. The critics of the legislation also questioned the validity of the Full Court Division of the Gun Court. As noted earlier, other areas of criticisms included the onus of proof from the accused; deletion of the extension of the concept of possession; giving the judge discretion; making trials public; trying the most serious cases first; and, changing the name and decor of the Court.

Daly also pointed out that fear of indefinite detention because of its novelty may cause a potential gunman to be even more violent than prior to passage of that provision. "It is regrettable that a government which had, on its election, professed concern for certain human methods and conditions of our penal system, should so readily, on so little pretext, respond to advice, which was in direct contradiction to its own professed beliefs" (D. Daly, personal communication, December 15, 1982).

The day following *The Daily Gleaner's* publication of the Beaubrun letter, over 100 members of the legal profession attending a Bar Association meeting publically demanded the repeal of the Act. The meeting was called to discuss what action the profession should take to facilitate the repeal of the Act. A resolution was passed which offered the services of the profession to speak at public functions on the dangers inherent in the legislation. Attorneys at the meeting also deplored the hasty passage of the legislation without public debate and warned against the disregard of constitutional propriety.

According to speakers at the meeting, the Government had other alternatives to the legislation. For example, it could have declared a State of Emergency. There was also a call for the establishment of a non-political independent Commission to advise the Government on the administration of criminal justice and prevention of crime. If the Gun Court Act was not repealed, the Association proposed six amendments: removal of the onus of

proof from the accused; deletion of the extension of the concept of possession; giving the judge discretion; making trials public; trying the more serious cases first; and changing the name and decor of the Gun Court ("Bar association," 1974).

Ian Ramsay stated shortly after the passage of the Act, that he would cease private practice as a protest against the Gun Court, which he considered "a violation of individual freedom." This was a vivid individual dramatization of what would soon become the legal community's outrage against the Act. Ramsay pointed out that the Gun Court Act reversed the burden of proof in a criminal case and made the person charged, guilty until he proved himself innocent and also made a person, under Section 19, guilty by proximity: "If you are in the company of someone with a gun you can be arrested and charged, and have to prove your innocence of complicity." He viewed the act as an invitation to "frame-ups," "since if a gun was found in a house or vehicle belonging to you, you were considered to be guilty of possession and could be arrested and charged." The law also "turned a joke into a reality" by making someone with an imitation firearm in his possession subject to the same penalties as one found with an actual firearm. Ramsay also objected to the fact that gun crimes were tried by Resident Magistrates who were "inferior judges with only five years experience and would usurp the functions of a jury in our jurisprudence" ("Attorney to give up," 1974).

In July of 1975, the first four appeals from the sentence of indefinite detention in the Gun Court came before the Court of Appeal. These cases were consolidated and involved basic questions of the Jamaican Constitution. The hearings lasted two weeks. The appellants were Samuel Thomas, Moses Hinds, Elkanah Hutchinson and Henry Martin. The conviction and sentence of each appellant were challenged on three main grounds: 1) the establishment of the Gun Court by the Gun Court Act was contrary to the Constitution; 2) the *in camera* trial of each appellant was unconstitutional; and, 3) the indefinite mandatory sentence was unconstitutional.

In opening argument to Joseph Luckhoo, Acting President of the Appeal Court, and Justices Swaby and Zacca, the other two members of the Panel, Richard Mahfood, one of the nine attorneys for the defense, emphasized that the Gun Court imposed the same sentence on a person of good character committing a technical breach of one of the terms of his firearms license as a hardened criminal who had acquired dangerous grenades and bombs while contemplating the desirability of blowing up Parliament.

The attorneys for the appellants were scheduled to argue different aspects of the appeal. Dr. Lloyd Barnett argued in relation to the need for public trials; Harvey DaCosta, the constitutionality of the legislative scheme; Richard Mahfood dealt with sentencing and the Review Board; R. N. A. Henriques, the jurisdiction of the Court and Magistrates; Chin See, the admission of evidence and Hugh Small the notice of nature of the case ("Rights of accused," 1974).

Mahfood argued that the scheme of punishment under the Gun Court Act differed from any other punishment which existed prior to independence because of the establishment of the Review Board "which has effectively given the power to determine the length of sentence of a convicted person" ("Gun Court challenged," 1974). Mahfood continued by stating that the Review Board conflicted with Section 90 of the Constitution which gave the Privy Council the right to recommend remission to the Governor-General. In effect this deprived convicted persons of establishing their constitutional right before that Court of Appeal and therefore, Mahfood suggested that the establishment of the Review Board was an attempt to circumvent the right of appeal.

Henriques presented his argument by stating that the Supreme Court had a rival on Camp Road ("Gun Court, Supreme Court," 1974). He called the Gun Court a "hybrid" comprising a Supreme Court and a Resident Magistrate's Court and stated the fact that Parliament can create offenses, but they must be tried in ordinary courts of the land. He cited Constitutional provisions which indicated that appointment of Gun Court officials appeared

to be unconstitutional because it amounted to interference with the Judiciary by the Executive. Constitutional provisions provided that the Judicial Service Commission appoint judges.

Harvey DeCosta likened the Gun Court to a "mongrel" and contended that the Act was a *prima facie* violation of fundamental human rights. He pointed to the fact that the Act raised the question of reconciliation of the needs of individual liberties with the needs of adequate governmental authority ("Gun Court a mongrel," 1974).

James Kerr, Director of Public Prosecutions, argued the majority of the Government's case, (Attorney General Leacroft Robinson and Assistant Attorney General Austin Davis appeared as *amici curiae* on behalf of the Government, also submitted rejoinders to defense arguments) which held that although Parliament does not have absolute sovereignty, the Constitution conferred wide powers to it to protect individual rights on the one hand and the welfare of the State on the other. Kerr conceded, however, that he was unwilling to defend Section 11 of the Gun Court Act which provided for the assignment of personnel to the Gun Court by the Minister of National Security and Justice ("DPP unwilling," 1974).

On July 29, in a statement made to his central Kingston constituency, Prime Minister Michael Manley appeared on page one of *The Daily Gleaner* ("PM's statement," 1974). Defense attorneys directly accused Manley of attempting to influence the Court of Appeals decision. In response, Manley stated that it was the Cabinet, and not the Courts, that decided areas of policy. Mahfood contended in court that the statement, as reported, appeared to be calculated to influence the atmosphere in which the particular matters were being considered by the court ("DPP unwilling," 1974). The court ruled that there was no improper attempt at influence.

The Court of Appeals handed down its 33-page judgment in October. It held that the appeals were dismissed and the convictions and sentences affirmed. Justice Swaby was the sole dissenting judge. Application on behalf of the four appellants for leave to appeal to the Privy Council in England was

immediately made.

A second Gun Court appeal involving constitutional points was handed down in December of 1974 in the appeal of Trevor Jackson. The sentence of indefinite detention was found unlawful by a different Court of Appeal panel ("Gun Court ruled," 1974). In this case there was one change in the panel of judges in that Justice Graham-Perkins presided instead of Justice Luckhoo. As it stood then, there were two conflicting decisions of the Court of Appeal as to the constitutionality of the Gun Court. Confusion reigned supreme following this second decision, which for the most part strung together legal authority in a manner almost entirely contrary to the first decision. The Privy Council battle in England would have to decide it; James Kerr immediately applied for leave for appeal.

Several difficulties presented themselves as a result of this second decision. If the court was correct that the Gun Court was *ultra vires* the Constitution, and that any trial which took place there was a nullity, then: 1) all the accused persons who already were tried at that court and acquitted could have been rounded up by the Police and retried in the Resident Magistrate's Court; 2) all accused persons who were convicted in Gun Court and were in custody awaiting appeals could not have been set free with the charges still hanging over their heads, to be retried in a competent Resident Magistrate's Court; and, 3) the Gun Court could have ceased to function and a new government policy to combat gun-crime would have had to been established.

A day after this second decision, Attorney General Robinson stated that "the Gun Court is still in business" ("Gun court still," 1974). Robinson stated that the Government would follow the earlier Court of Appeal decision which had ruled the Gun Court constitutional. His statement, whether intended or not, appeared to be in defiance of the second decision of the highest court of the land. The Jamaican Bar Association responded by issuing a statement attacking Robinson. Following this, a statement was also issued by the Jamaica Council for Human Rights (1974). This statement fully endorsed the statement released by the Bar Association, called for Robinson's resignation,

and offered a legal analysis which indicated how the two Court of Appeals decisions were not in conflict and their result read in conjunction with each other, led to the conclusion that the entire Gun Court was unconstitutional.

According to the laws of Jamaica, when there are two conflicting Court of Appeal decisions, it is within the prerogative of a presiding lower judge to decide which case he will follow. Resident Magistrates in the Gun Court choose to uphold the constitutionality of the Act by adopting the first decision. For example, Resident Magistrate Ian Forte's legal analysis indicated that the Court of Appeal in the second case applied the test for severance laid down in an Australian case instead of the principles laid down in a Privy Council case. He said he was following the Privy Council case because Jamaican courts must do so. By applying that decision he concluded that the unconstitutional part of the court could be severed from the constitutional part.

The lawyers continued to point out that Jamaica never needed the Gun Court. What Jamaica did need was a properly functioning legal system. The call was not for a crash program to produce an alternative form of justice, but for measures to implement the existing system, to ensure that cases were brought to law with minimum delay. The greatest error behind Gun Court was its effect of turning proper attention from the real issues and problems of underdevelopment and crime.

The validity of the Gun Court Act was challenged by some of Jamaica's leading legal minds in defense of their clients at the Privy Council in London (Jamaica is a member of the British Commonwealth of Nations, and as such, the Privy Council is the highest court of appeals in Jamaica). Hearings commenced in June of 1975. The two Court of Appeal cases were consolidated so defense counsel represented all five men (Appeal brought by Moses Hind, Elkanah Hutchinson, Henry Martin Samuel Thomas, Trevor Jackson). Individual appellant and appellee arguments were similar to those offered at the lower level.

Four substantive questions were decided by the Judicial Committee of the Privy Council: (1) that provisions of the Act providing for *in camera* trials

were constitutional, as the presumption of constitutionality had not been rebutted by proof that Parliament acted in bad faith or misinterpreted the provisions of the Constitution permitting *in camera* trials in the interest of public safety and public order; (2) that Circuit Court Division of the Gun Court presided over by a Supreme Court Judge in a court was constitutional, as it was merely an exercise of the criminal jurisdiction of a different name; (3) that the Full Court Division of the Gun Court, presided by three Resident Magistrates, was unconstitutional in that it empowered Magistrates to try grave criminal offenses and to impose severe penalties extending in some cases to imprisonment for life; and, (4) that the mandatory sentence of indefinite detention was unconstitutional ("Gun Court ruled," 1975).

Prior to the Privy Council's declaration that the sentence of indefinite detention was a breach of the Constitution, the situation just mentioned did not create any serious problems. If an accused was detained for an indefinite period, then any other conviction which might have resulted in life imprisonment necessarily became less important. However, the Privy Council decision altered this due to the fact that the conviction for an illegal possession of a firearm only had a three year maximum sentence. The effect was that all persons who since the establishment of the Court had been charged with a firearm offense (the Full Court Division having been declared unconstitutional) should have been placed before the proper Resident Magistrate's Court for preliminary examinations with a view to determining whether or not such persons should be committed to the Circuit Court to be charged on those charges. The success of this is not known. Witnesses would have had to recall testimony from as far back as 14 months.

Following the return of the defense lawyers in the Privy Council back to Jamaica, the matter of prisoners in Gun Court who failed to appeal within the statutory time was referred to the Court of Appeal for advice (appeal must be made within a 14-day period). This was the result of an application for a writ of *habeas corpus* by Hugh Small in the case of Paul Walker ("Gun Court," 1975). However, the P.N. P.'s response to the Privy Council decision, (see

Appendix C) led to continued outcry by the legal profession.

The Council of the Jamaican Bar Association, therefore, once again found itself opposed to the legislation passed by the Government to deal with the incidence of gun crimes. It felt that the Government's passage of the Gun Court Act's first amendment in 1976, was a reaction to the panic of the upsurge in gun violence without giving the public sufficient time to comment. The attorneys' estimated that the amendment would result in approximately 70 percent of Circuit Court trials being tried without a jury in Gun Court ("Bar Council again," 1976). Despite, only a partial victory at Privy Council, following the decision the legal community represented a strong, organized interest group squarely opposed to the Gun Court.

Academics

Although the University of the West Indies, Mona Campus in Kingston is a highly respected academic institution with a law school on campus, serious academic scholarship on general criminological issues and on the Gun Court Act, specifically, were not undertaken during its legislative life. In fact, the paucity of research and comments on the Act was somewhat surprising.

However, Michael Beaubrun, the psychologist relied upon by the government in its proposal and enactment of Gun Court legislation was the highly accepted social scientific architect behind the Act. As we have seen, directly following its passage, he attempted to convince the public that the Act was neither a panic measure nor a draconian punishment. In his letter to the editor of *The Daily Gleaner*, Beaubrun attempted to spell out his feelings that the court was a scientifically designed approach to behavioral change (Beaubrun, 1974). He stated that he did not want the lawyers to press for discretionary powers or for legal appeals against conviction for that would "effectively castrate the measure" (Beaubrun, 1974). He wrote that although he understood the press' position concerning the *in camera* provision that limited the press coverage of Gun Court trials, it was necessary to stop grandstanding and the playing out of the hero fantasy roles. His letter

received many responses, however, he played no significant role following this editorial publication.

Despite the lack of any research on the part of the Jamaican academic community, many within the profession held very firm views on the subject. For example, one member of the sociology department at the University stated, "There is not enough opportunity for young people in the schools. They have certainly not been able to find work upon graduation" (faculty member, Sociology Department, University of the West Indies, Mona Campus, personal communication, August 23, 1984). Moreover, a colleague of his was quick to point out that the situation is even worse for those without any formal education: "Out of despair they are willing to try almost anything. Someone approaches them and says, 'Here is a gun I need you to put a fright in some folks.' They know very well that it is illegal to possess a gun and they know very well that there is a Gun Court, but the alternative might be starving for a week" (faculty member, the Sociology Department, University of the West Indies, Mona Campus, personal communication, Jamaica August 23, 1984).

What seemed to be most puzzling to many of the university professors interviewed was the total lack of change in the Gun Court Act when the government changed in 1980. Following 1974, the Jamaican Labour Party had been issuing public comments against the Act. One political scientist offered the following comments:

The fact is that in 1980, the new National Security and Justice Minister, Winston Spaulding, when he was in opposition described the legislation as a total disgrace. He was very critical of it when he was in opposition. But since he has come to power, there has been no change. There has been no real change from the government as such although they are saying that they are making some comprehensive study of the Gun Court legislation. Lawyers took their time out to oppose the workings of the Gun Court legislation, but that hasn't seemed to have any effect either. (faculty member, Government Department, University of the West Indies, Mona Campus, personal communication, August 23, 1984).

Generally powerless throughout the course of the Gun Court Act, academicians on the University of West Indies campus, however, did not put much faith in the deterrent value of the Act. In fact, many university professors openly stated that the economic, social and political causes of crime had to be addressed in any piece of legislation. One instructor stated, "Although there was some initial hope that the law would bring down gun crimes, we all realized that it was hastily drafted and that it was a poor Act not only because it did not address the true causes of crime, but it was a poor Act because of how it was structured. The mandatory sentence for everything was kind of ridiculous. A man who has a M-16 rifle received the same kind of treatment as a man who has but one bullet" (faculty member, Philosophy Department, University of the West Indies, Mona Campus, personal communication, August 22, 1984).

Despite the fact the lack of participation of the Jamaican scholarly community in the evaluation of the Gun Court Act, some international academic research was undertaken. As was noted on the Previous Works chapter, a United Nations team led by Gerhard Mueller was requested to travel to Jamaica by Michael Manley in December of 1978 (see Previous Works, pp. 42-43). The United Nations team spent 10 days in Jamaica and found that the Gun Court Act was not working.

In an interview, Mueller stated that he believed that "there was no criminological base present at the university to conduct appropriate research" (G. Mueller, personal communication, November 11, 1984). He also stated that the law school was too practice-oriented for such a task. Moreover, in describing the team's visit to the Gun Court prison, Mueller stated, "We found people in cages. We also tasted the food there. It was not fit for human consumption. Additionally, the suggestion to paint it red was a horrendous idea. Moreover, the Gun Court placed tremendous pressures on other aspects of the Jamaican criminal justice system" (G. Mueller, personal communication, November 11, 1984).

The United Nations team's preliminary review of the gun-court system

led them to believe that a close examination of that system would confirm its total failure in dealing with crime and violence in Jamaica and that, *per contra*, it contributed to the increase in the insecurity of the citizens and the escalation of violence (United Nations Report, 1977).

Additionally, the 1977 United Nations study found that the most wasteful and self-defeating aspect of criminal justice in Jamaica was the system of Gun Court, "which through its punitiveness, contributed more than anything to the deterioration of the crime situation." The report characterized the severe sentences of the Jamaican criminal justice system - "especially mandatory life sentences for possession of firearms - factors which would increase, rather than decrease, crime. The sentencing structure requires change" (United Nations Report, 1977).

A second United Nations team visited Jamaica during the study period (David, 1983). In December of 1982 the Seaga government requested the Interregional Advisor of Crime Prevention and Criminal research to provide guidance on the establishment of a crime research unit at the Ministry of National Security and Justice. His arrival coincided with the second amendment of the Gun Court Act. He only made several cursory comments concerning the Gun Court (see Previous Works, pp. 43-44).

A much more meaningful academic study was the *Report of the Advisory Committee of the Ministry of Justice* (1982) (see Previous Works, pp. 44-45). This report primarily deals with public attitudes concerning on the Gun Court. It is disappointing to note that the report did not fully gather or analyze firearm offense statistics. The justification for concentrating only on public perceptions was put forth in the report: "The Justice System is a fairly general concept encompassing the relationships of individuals and groups with the institutions of society as a whole, its standards and values" (Advisory Committee, 1982, p. 3).

The Committee concluded that the system operated at the Gun Court was haphazard and unfair to the accused and the concept of a fair trial. The entire system needed to be revamped. The Committee specifically recommended:

1. That in order to ease some of the Administrative work and to deal with the cases that are pending before the Gun Court (particularly those from the rural parishes), these should be immediately returned to the main stream of the Administration of Justice in Jamaica by being listed before the relevant Circuit Courts. It is felt that in that way, the cost of operating the Gun Court would be reduced and the use of the Circuit Courts would be effective and the trial process accelerated.
2. That sentencing discretion be immediately returned to the Judiciary - whilst preserving the maximum of imprisonment for life in appropriate cases.
3. That there be a sentencing review by the Court of Appeal of all cases in which mandatory life sentences are being served to determine the just length of sentences, starting with the oldest cases.
4. That trial of approximately 600 persons now facing charges and appeals from conviction and for sentence be expedited. The return of Trial Cases to Circuit Courts, if accepted, should assist in this process and some appeals may be dealt with as appeals against sentences only if discretion in sentencing is restored. (Advisory Committee, p. 8).

The report was conducted in 1979 and the findings and recommendations were completed long before the passing of the second amendment in December of 1982. In the Committee's view, legislative changes necessary to effect the immediate recommendations should have been made as swiftly as those which were implemented to initiate the operation of the Court. Moreover, in the long term, the Committee advised the abolition of the Gun Court *per se*, on a phased out basis (i.e., all new cases would be dealt with in the parishes in which the offenses were alleged to have occurred and pending cases would be sent to Circuit Courts.

People's National Party (P. N. P.)

It may be quite difficult to understand how Michael Manley's People's National Party, a progressive, social-democratic party, could pass and maintain such a severe piece of criminal legislation as the Gun Court Act. In many respects, however, the answer lies in simple political analysis - survival.

A scholar in history and economics, Manley understood the people of Jamaica better than perhaps they understood themselves. He understood that guns were being shot at will and therefore his regime as well as the two-party system in Jamaica could be under attack. It was not a matter of system-wide survival, only political survival, and he used every means possible, including the stamp of Parliamentary legitimacy to stem the tide. With complete support of both parties, the upper and middle classes, and some of the lower class who had supported the deterrence argument, the Gun Court Act was passed.

Prior to the passage of the Act, Manley began to release tough statements on crime to the press. For example, in blaming the increase of firearm crimes on the ganja trade, he stated:

We intend to use resources to tackle the problem because this is one of the chief ways in which the gangs are getting hold of the guns with which they threaten our society. Jamaicans have got to realize at every level and in all walks of life that you cannot get it both ways. If ganja leads to guns both must be fought equally. We cannot beat crime if citizens do not have the courage to stand up against these forces. ("Tougher laws," 1973).

Manley's government was quick to react against the opposition which formed in the legal community and the press. It dispatched politicians to speak to local community groups to keep the fear of crime high among the populace and to defend the legality of the Act. Addressing a meeting of the South St. Andrew Kiwanis, for example, Attorney General, Leacroft Robinson maintained vehemently that the Gun Court Act had not committed a breach of the Constitution. He stated that "those people who are saying that the Gun

Court violates the Constitution should have their heads examined and be sentenced to an obligation to read the Constitution at least once" ("Attorney General explains," 1974). Robinson pointed to the Traffic Court and informed the group that traffic offenses were only tried there and likened that court to the Gun Court whose sole jurisdiction involved the trying of gun offenses.

In December of 1974, attorney Eric Frater, a special advisor in the Prime Minister's Office questioned whether the Constitution should have any bearing on the Gun Court legislation. Frater was delivering the key-note address at the annual prize-giving ceremony at the Ruceas High School in Lucea. Frater said:

Are we saying that a Government with as large a mandate as the present Government, faced with a crisis of gun crime, cannot pass legislation it has considered correct in the circumstances because of a document drawn up 12 years ago that did not envisage the type of problem we face today. ("Attorney General explains," 1974).

By early 1975 the incidence of gun crimes which were said to be politically motivated continued to occur and were most prevalent in Kingston. A funeral procession headed by Prime Minister Manley in early March was fired upon and observers stated that it was a gun salute to Winston Blake alias "Burry Boy" who was being given an official party funeral ("Guns bark," 1974). One week later Manley assumed the leadership of the Security forces as there were official reports of Eli Matalon's illness. The military and the police continued to patrol the streets of Kingston and police were continuing to receive reports of shootings daily.

It appears to be an extreme contradiction that a government controlled by the P. N. P., headed by Prime Minister Michael Manley, which had upon its election, professed concern for certain inhuman methods and conditions in the penal system, should have so readily responded to advice which was a direct opposition to its own publically professed beliefs.

Carl Rattray, who served as Attorney General under Michael Manley,

stated in an interview:

If your legal system is violent, it contributes to the violence within society. I think someone has to break the cycle of violence somewhere. I think the government has it in its power to break it in its own system. We haven't attempted to approach it at all. We are not doing enough studies to find out what part of crime is based economically. We have no sort of criminal justice research of any depth which could be fed into national planning to be able to cope with this sort of thing. (C. Rattray, personal communication, December 15, 1982).

The Gun Court Act was a repressive piece of criminal legislation which was passed by a self-proclaimed reform government. In reality, although the Manley government wanted to win control of both the economy and the crime situation, it only had the ability (or the desire) to attempt to control the latter. Economic control means the ability to control, or at least direct, private property. Social control means possessing a monopoly (or at least most) of power. George Eaton put it well when he stated, "The anti-crime measures must be viewed, however, as a diversion from the main task of national reconstruction. The intensification of crime and violence is but symptoms and a reflection of problems which are endemic to the structure of the Jamaican economy and society. . ." (Eaton, 1975, p. 257).

Underdevelopment created a multitude of social problems for Jamaica. Following his election victory in 1972, Michael Manley attempted to create a mixed economy for Jamaica. However, due to a number of reasons, (i.e., long history of underdevelopment, political opposition, inefficient administration, etc.) his plan for a new Jamaica failed. Unmet economic problems led to social unrest and Manley responded with social control.

Religion

Religious leaders also responded to the Beaubrun letter to the editor immediately. In May of 1974, *The Daily Gleaner* published a response letter by Charles Judah, of the Peter and Paul Rectory in Kingston. In that letter,

Judah condemned the creators and all defenders of the Gun Court. He characterized Gun Court as an institution which "sins against the essential dignity of the human person" (Judah, 1974). He characterized Beaubrun as a person who regarded man as a "mere Pavlovian dog." Judah went on to state that:

to deprive a young man of his basic rights as a human person for an indefinite period of time for the illegal possession of a single round of ammunition is an act of criminal injustice paralleled to those crimes against humanity for which so many judges, generals, doctors, and ministers of the State of the Nazi regime were charged in the World Court at Nuremburg. (Judah, 1974).

For the most part, following the Judah letter, the religious community in Jamaica did not have any real influence in directing opposition against the Gun Court Act until 1982. In the early summer of that year, Roman Catholic priest, Father Richard Ho Lung came out against the Gun Court Act which he said had condemned for life some 1,500 young men who were not all murderers. He described the Act as too harsh and violent. The government had stated that perhaps persons charged under the Gun Court Act would not necessarily face life imprisonment. The new amendment which was being proposed by the government at the time, would not be retroactive, however. It would not be applicable to the 1,500 already sentenced.

Ho Lung believed that the Act symbolized oppression and injustice. His new proposal called for three reforms: 1) those with no guns be punished first; 2) those who had guns, but not bullets, be processed second, 3) those who had guns, but did not use them would be processed next. "We must curtail freedom, not destroy it, punish, but not reduce to hopelessness. He said that he was not asking for sentimentality, as wrongdoers should be punished, but let us not be harsh and merciless" ("Gun Court is harsh," 1982).

The Bi-Partisan Government's Response

The Gun Court Act was passed quite spuriously in April of 1974. It went through Parliament in two days. In Jamaica, there is a tendency to react to situations and the P. N. P., at the time, did not believe that the legislation was a contradiction to their policies. They looked upon it as an emergency measure. However, the J. L. P., after the passage of the bill, but prior to its 1980 electoral victory, was squarely opposed to Gun Court for its own political purposes. The J. L. P. claimed that the law, after an initial novelty effect, would not deter firearm crimes. Immediately following passage, the P. N. P. began to accuse the legal profession and the J. L. P. of attempting to undermine the law. Publically, each political party had to maintain opposing postures.

In wake of the ruling by the Judicial Committee of the Privy Council, on July 29, 1975, Prime Minister Michael Manley stated in Parliament that anyone convicted in the Gun Court would face mandatory life imprisonment and that legal draftsmen would be directed to prepare for consideration of the House, amendments of penalties ("Life for gun convicts," 1975). The legal profession demonstrated its resolve to maintain vigilance over fundamental rights and freedoms.

In February of 1976, Keble Munn, the new Minister of National Security, moved for the Parliamentary discussions of the first amendment. Nine other speakers played active roles. In opening the debate, Munn referred to four police victims of a recent episode of political violence and suggested a minute of silence. Following that, he said, "there is political gunmanship on both J. L. P. and P. N. P. sides of the political fence" and that "we are going to smash it up" ("House passes," 1976).

Unlike the passage of the Act in 1974, this debate had some dissenting opinion. Dr. Adrian Bonner of the J. L. P. stated that harsh mandatory gun laws were not the answer. He felt that it behooved them at that time to sit down and pass laws that would not make a man lose his job because his party was not in office, or to get a house for the same reason. Marketing and

Commerce Minister Vivian Blake also called on people in both the P. N. P. and J. L. P. to assert their authority and rid society of the gunmen who had attached themselves to the parties. He emphasized that it was irrelevant for members to come to the House claiming they had clean hands, since once one was in the party, collective responsibility attaches. For most of the rest of the debate representatives simply took the Parliamentary floor to recount violence incidents in their districts and to call for a tough first amendment.

Many doubted that the Opposition would go along with the Government's decision to introduce mandatory life imprisonment for convictions in the Gun Court. However, at the time, Opposition Leader Edward Seaga warned that substitute legislation had to be harsh if it were to be effective legally and psychologically. Manley had invited the Opposition to discuss the matter fully before new legislation was passed but those meetings were delayed and never occurred. If those meetings had ever occurred, it was expected by many in the public that the legal profession would have been fully represented. The public believed that had such legal representation been provided for at previous meetings, the controversy which characterized the Gun Court the preceding year would not have been possible. However, no such preliminary meetings were ever held.

By the time both parties met in Parliament to discuss the development of the first amendment to the Gun Court Act in wake of the Privy Council decision, the democratic trump card played by the P. N. P. in 1972 to consolidate its public support before the looming economic decline had been challenged. The J. L. P. had renewed its traditional ideological thrust against the P. N. P. in the form of vulgar red-baiting. In the summer of 1975, for example, following Manley's visit to Cuba, he professed admiration for *some* of its social experimentation. As a result of this visit, in alliance with the private sector, the J. L. P. pressured the influential *Daily Gleaner* to begin a strong media campaign against Manley and his party.

Notwithstanding the crucial need to discuss and fully implement a unified and well-developed response to the firearm-problem, the Parliament

hastily approved the first amendment to the Gun Court Act in 1976 and then refused to meet again to discuss the issue again until 1980.

In fact, the Government continued to engage in a continued policy of civil liberties restriction. In October of 1976 the government ordered the Security Forces to put into motion certain "policy decisions" which allowed for detention orders to be issued against Gun Court detainees under the State of Emergency, even after such persons had been acquitted ("Nights of violence," 1976). Owen Philbert a laborer and former Chairman of the Brown's Town Socialist Youth Group was acquitted on an indictment charging him with illegal possession of a firearm and shooting with intent of a police officer. But after his acquittal he was taken into custody as a result of this new policy. Detention orders were granted after an investigation into his activities revealed that he was a "danger to the state."

By the 1980 election, urban warfare became a violent scramble for the control of individual communities on the one hand, and a campaign to create mass hysteria on the other. On July 13, political gunmen launched a pre-dawn attack on Greenwich Town in Southwest St. Andrew, a P. N. P. district. Five gunmen invaded a four-apartment tenement, killing four women and three men. The following morning in Jamestown, South St. Andrew, another P. N. P. constituency, political gunmen murdered three women, aged 55, 70, and 75 (Koslofsky & Wilson, 1980). And in Fletcher's Land in West Central Kingston, young children numbered among the dead. This was the first time that women, the elderly, and children were targetted as the political victims of gunmen.

Also, during the spring and summer of 1980, political gunmen often forced people to scatter in West Kingston's Coronation Market. Moreover, there were also attacks on country buses transporting produce to the urban centers and shootings in the market communities themselves. Kingston Hospital also became the scene of gun violence, as gunmen continually entered it to murder those political enemies which they had only wounded.

Within this context of widespread political terror, the Gun Court was not

a major concern of too many people. It continued to function, but interest group activity became minimized as higher stakes were being played out. It was not until the defeat of the Manley government in the election of 1980 and a relative return to normalcy two years later that the Gun Court Act once again became a national issue of priority.

A series of events occurred leading up to the Act's second amendment which strongly influenced new bi-partisan consideration. In September of 1981, attorneys who practiced in Gun Court met to discuss the issue and stated that it was urgent that there be a review of sentences for persons then serving mandatory life imprisonment. In December, over 400 inmates went on a hunger strike to support the call for a review of the Gun Court. In February 1982, the Bar Council expressed concern about the continuing delay of the Minister of Justice Spaulding in dealing with the Gun Court. In mid-February, the Minister issued a statement saying that review of the Gun Court was being pursued carefully. In March of 1982 over 150 attorneys, a majority of the 300 or so attorneys who practiced in Jamaica, petitioned Spaulding for a change of the Gun Court Act (N. Litton, personal communication, December 13, 1982).

Spaulding ignored the pleas for reform. And, in fact, only one week before the second amendment was passed, stated, "In view of the continuing gun crimes in society, it is not fit to amend the Act. The Gun Court is a necessary evil" (N. Litton, personal communication, December 13, 1982).

In November 1982, the Select Committee of the House of Representatives, which reviewed the Gun Court Act said it could not recommend that the Act be repealed at the time. Its members, however, felt confident that the reform of the law could be addressed further. At its first meeting, which occurred on November 29, 1982, the Committee stated that the cases of persons previously convicted should be reviewed by the Governor-General. A minority report was submitted by Opposition member of the Committee, Dudley Thompson on November 30. Thompson did not accept the majority report and his report stated that the Act was anachronistic

and should be repealed.

The Jamaican Bar Council expressed concern about the continuing delay of the Minister of Justice in dealing with the Gun Court during this period, particularly the return of discretion in sentences to the judiciary, and the review of sentences of persons convicted and currently serving terms ("Gun Court limited," 1982). The public statement issued by the Council stated:

There are a number of other aspects of the Gun Court which affect constitutional rights, and the operation of the court often amounts to a specific denial of justice to citizens accused of charges before it.

The council understands that having regard to the number of persons awaiting trial the great majority of them will not be tried for an inordinate length of time and, further, that when the matters do come to trial the acquittal rate is sometimes as high as fifty per cent. This means that citizens are, in effect, serving a sentence without a trial.

The waste of judicial, administrative, and police time which this represents, as well as the time of the legal profession to say nothing of the cost of keeping hundreds of persons in custody and the hardship imposed on the accused persons and their families - together, constitute an untenable and reprehensible situation - one which, we demand that IMMEDIATE steps be taken to ameliorate or rectify. We call upon the Minister of Justice to act accordingly as we feel that he has had more than ample time to start to deal with this matter. ("Gun Court limited," 1982).

The Jamaican Branch of the American Association of Jurists (A. A. J.) described the Bill to Amend the Gun Court Act tabled in the House of Representatives as "totally unsatisfactory" and called upon the Minister to repeal the Gun Court Act. A news release issued by president, Richard Small also asked that the Minister immediately publish the report of the Special Committee of experts which was appointed over two years before to examine the Act and the operations of the Court (American Association of Jurists, 1982).

The Association said the bill did not meet the pleas by practicing attorneys at the Gun Court. It also called for the abolishment of the Court itself and the removal of the provision whereby a person could be found guilty merely by association. It further said that the draft provision which made it possible for a person to be convicted of illegal possession of a firearm even though the firearm was never found in his/her possession or produced in evidence remained unamended by the bill and hence, was unacceptable.

The A. A. J. said the bill did not remove Section 13 which established secret trial and forbade the public to know the nature of the evidence led against persons who had been charged before the Court. "Perhaps most serious of all, the Draft Bill does not provide for the number of persons who are presently serving life sentences for a wide number of minor breaches of the Firearms Act," (American Association of Jurists, 1982) the release said.

The release quoted Spaulding, as having stated in 1974 that, Section 19 which makes a person guilty by association, was an "utter disgrace." At that time the Minister also stated that that section of the law was:

a discredit to any lawyer or lawyers who advise the government that it was necessary to use statutory provisions to erode time hallowed common law principles of possession in law . . . What is utterly contemptible is that lawyers and a government so filled with lawyers could by Section 13 of the law establish in camera proceedings to the extent that even attorneys-at-law representing parties to the case may be excluded . . . Please amend this Act now. (American Association of Jurists, 1982).

In the year the Gun Court Act was passed, Spaulding also said, "The many possibilities of the misuse of this Act in the political arena alone fills me with foreboding. In this respect the leadership of the Opposition has demonstrated a remarkable lack of responsibility and good sense. History will condemn them" (American Association of Jurists, 1982).

On a call-in radio show in late 1982, Spaulding assured the public that the reform bill would pass. In response to rumors of another hunger strike

being staged at the Gun Court in protest to how long legislative reform was taking, Spaulding stated that the anxiety concerning the bill was understandable. However, he could not understand any serious concerns because discussions were taking place: "if we had gone through this measure in a way which was inept; that did not have the input of various agencies and something comes out which did not represent a consensus, we would have been criticized for moving to quickly without getting inputs. Each interest group tended to see the particular bill it has an interest in as being the only one - the bill must go through stages" ("Gun Court amendment," 1982).

The Bill to amend the Gun Court Act (the second amendment) was brought by Spaulding to Parliament on September 22, 1982. The bill sought to introduce greater flexibility in two important aspects: 1) by the removal of mandatory sentence of life imprisonment and the introduction of discretion in the Court for sentencing up to a maximum of life imprisonment; and, 2) to relieve congestion of the Court by giving to the Resident Magistrates in the parishes other than Kingston, St. Andrew and St. Catherine discretion to determine whether or not any individual case should be referred to the Gun Court or kept for disposal in the Resident Magistrate's Court. In addition, it was proposed to amend the law to relieve the Court of responsibility for trying children under the age of fourteen who would in the future be dealt with in Juvenile Court.

The select committee was comprised of Mr. Spaulding, chairman, J. A. G. Smith, Minister of Labour and the Public Service and Leader of the House, Neville Lewis, Minister of Social Security, and Anthony Spaulding and Dudley Thompson of the Opposition. A second committee was later established to deal with other aspects of the Act ("More flexibility," 1982).

Spaulding said that the proposed reform would remove the "most obnoxious" features which deal with mandatory life sentence provision. He was disappointed at the statement the previous week which described the amendments as "totally unsatisfactory." As noted, the Jamaican Branch of the American Association of Jurists issued a statement the week before which

held that the proposals were "unsatisfactory." This statement also held that Sections 13 and 19 of the Act had not been addressed by the amendment.

The statement was signed by A. A. J. President Richard Small who was also a member of the Jamaican Bar Association. Spaulding said that members of the Association who wished to comment on matters on which the legal profession had an interest should consult with the Bar Association to discover the latest developments between those respective bodies and the Ministry on matters of policy regarding legislation.

Discussions the week before between Spaulding and members of the Association including K. C. Burke, attorneys Denis Daly, Sonia Jones, Howard Hamilton, Churchill Neita and representatives of the Attorney General's Department, the Ministry and the Chief Parliamentary Counsel. Among points raised by the Minister were that the draft Bill represented a consensus regarding the important aspects of the Gun Court legislation. He also said that the amendment should not be held up until a perfect solution was found to all aspects of the Act.

The interim amendment to the Gun Court Act which introduced a greater degree of flexibility in two areas, was approved in the House of Representatives. This approval was won although five members of the Opposition who were present staged a walk-out. Twenty government members who were presenting the chamber voted unanimously after Spaulding piloted the bill "An Act to Amend the Gun Court Act." Other Government members contributing to the debate were the Minister of Education, Dr. Mavis Gilmour; the Minister of Public Utilities and Transport, Pearnel Charles; and a back-bencher, Everard Washington.

The walk-out by the Opposition members concerned a ruling of the Speaker, Talbert Forrest. It arose when Spaulding, who was speaking at the time, sat down and asked the Speaker to see that he was not disturbed because he was dealing with a "serious and fundamental issue." Spaulding, at the beginning of the debate gave a historical view of Gun Court and was repeatedly asked by opposition member Terrence Gillette to deal with the

reforms before the House.

Making the request of the Speaker to allow him not to be disturbed, Spaulding sat down. Dudley Thompson, of the Opposition, then rose to make his contribution and was recognized by the Speaker. But Spaulding again rose on a point of order to say that he had not finished his contribution. This led to cross-talk from both sides of the House, with several points of order being raised; and the leader of the House, J. A. G. Smith called for a five-minute recess "to sort out any problems."

On the resumption, the Speaker ruled that the Minister could continue. He said that he was not erasing the ruling he made in the first place to permit Thompson to speak, but in this particular case the Minister had explained that he was seeking protection from the Chair when he took his seat. "I did not recognize him, but in order to allow the debate to proceed I will allow the Minister to speak," ("Gun Court amendments," 1982) the Speaker said.

Gillette accused the Speaker of ruling against the Standing Orders of the House. Thompson said that the ruling of the Speaker was not consistent with other rulings made against members of the opposition. The Leader of Opposition Business, Seymour Mullings asked for a clarification from the Speaker as to whether or not he would ask Thompson to yield to allow the Minister to proceed. The Speaker said that, in effect that was what he had done. Thompson rose again stating, "Are you asking me to yield? You have not yet so done. A ruling is not a request. I stand on my right. If I am not allowed to speak I will leave" ("Gun Court amendments," 1982).

After several attempts to restore order, Spaulding was asked to continue his contribution to the debate. The Opposition members then left the Chamber ("Gun Court amendments," 1982).

In his presentation of the amendment proposals to Parliament, Winston Spaulding stated that the Gun Court Act was wrong and disgraceful and a blot on the country's jurisprudence and judicial history. "If it can be made out for the ultimate repeal of the Act, we will be open-minded," the Minister said. He also added that, "This set of amendments which is the important

beginning of the process of review and reform of this much-debated Act is again the visible and tangible honoring of a pledge by this Government when in opposition, concerning an important area of human rights and justice" ("Gun Court amendments," 1982).

He recognized that there were those who called for a total repeal of the Act; however, this could not be done, he said, "as we needed to defend individual human rights and at the same time, defend the society against gunmen" ("Gun Court amendments," 1982).

Following passage of the bill, an appeal for urgent steps to be taken to remedy the situation whereby convicted persons from the Gun Court have to wait for long periods, sometimes years before their appeals can be heard was made on the 18th by President of the Jamaican Bar Association, K. C. Burke. Denis Daly added that these delays were a "disgraceful state of affairs and a shame to the criminal appellate system in Jamaica" ("Delay at Gun Court," 1983).

The Council of the Jamaican Bar Association, pleased with the restoration of the Judge's discretion in trying Gun Court cases, believed that the reform was only remedial and limited. Its view was that the Gun Court should have been abolished. "It is vital that further far-reaching legislation be introduced early to deal with and redress the serious legal problems which the law has created, in particular the question of guilt by association and the unfair burden of proof which is placed upon an accused by certain legal fictions embodied in the Act" (K. C. Burke, personal communication, December 15, 1982).

What all this means is quite clear. As Edwin Wint, an eight year member of the Police and Security Commission, stated, "in reference to the Gun Court Act, the political parties in Jamaica, played off the lower and upper classes for their own purpose and power. There were no real differences between the parties. No one was ready to tackle the real issue of 400 years of underdevelopment" (E. Wint, personal communication, December 21, 1982).

Apparently, the parties were not ready to set aside their perceived

ideological differences for the sake of the preservation of the country. There are two ways of evaluating the situation: 1) the political parties failed, over a ten year period, to make adequate adjustments in the Gun Court Act; or, 2) it took the political parties ten years to make any adjustments in the Gun Court Act. Either conclusion leads one to some very serious condemnations of the two-party system of democracy and the administration of justice within Jamaica. In summary, one indisputable conclusion can be reached: there was a failure to adopt a bi-partisan approach that may have led to a solution to the firearm crime problem. As in-house debate concerning the second amendment suggested, both political parties were more concerned with Parliamentary survival rather than the need to act in order to curb overzealous partisans in their own ranks who resorted to firearm violence.

Overall Reform of the Gun Court Act and Development Issues

The overall reform of the Gun Court Act, as reflected in its second amendment, initiated half-heartedly by the Minister of National Security and Justice, required the previous undertaking of comprehensive and interdisciplinary criminological research in relation to the needs of crime prevention and criminal justice in the context of various issues of development. Among them, the possible interrelations between age-groups, unemployment and crime, urbanization, rural-urban migration, marginality and the subculture of violence, the role of schools and the prevention of crime. Such a study did not occur. The study which was undertaken was the *Report of the Advisory* and we have seen the limitations of that study (Previous Works, pp. 44-45).

However, following the second Gun Court Amendment Act, there was a noticeable silence, as if the problems spoken and written about had been quickly solved. Unfortunately, this was not the case. Most criticisms leveled at the Gun Court, from the ease of securing conviction, to the difficulty in obtaining bail, to its usage as a political arena for personal and political revenge, remained intact. The only difference secured was that presiding

judges were given the power to impose sentences ranging from fines to life imprisonments upon those convicted.

What caused the second amendment's implementation was the clear injustice in sentencing a person to life imprisonment in the finding in his possession of one bullet; of sentencing a juvenile to spend the whole of his life in prison because someone said that he once had a gun, and no gun was recovered, no action requiring a gun occurred, and no other crime committed. Corroboration was never necessary, the unsupported word of another would be sufficient. A large number of convicted persons fell into that category, and the Gun Court prison had run out of spaces to incarcerate them by 1982.

A preliminary conclusion which can be drawn from all of this may be that underdevelopment breeds a compensatory overdevelopment of certain political functions. These functions maintain mass support for the system in spite of the limited capacity to satisfy material and social expectations and desires at the mass level. The contradictions between relatively developed political tendencies and relatively backwards economic forces were reconciled, in the short run, in Jamaica, by highly developed skills of political management in the areas of mass mobilization, the propagating of myths and ideological symbols, and partisan allegiance building.

As a consequence, the political system devoted disproportionate emphasis and attention to these essentially political and noneconomic functions. The result was a continuing tension between "mass politics" controlled by the manipulation of popular support by ideological pandering.

Central to the political function of Jamaica in relation to the Gun Court Act was the manipulation and management of it as a symbol. The Gun Court Act was used to strengthen support for the political and economic system within the mass public by calming fears and promising less firearm crime in society; a prescription for an easy formula to solve entrenched and complex problems. The Gun Court Act was a symbol manipulated to control power in Jamaica and legitimize the two dominant political parties by:

1. **maintaining and reinforcing a high level of partisan loyalty and two-party allegiance;**
2. **supporting the rules of the game of competitive parliamentary politics;**
3. **maintaining multiple class political alliances in a highly class-stratified society; and,**
4. **controlling potential radical and anti-system elements outside of the two-party framework.**

The J. L. P. Government in 1982 was facing a multiplicity of problems. For example, although Seaga was given international credit for reducing the inflation rate to three percent annually, there was no evidence of such a result. The reason why the Government was able to claim a low inflation rate was that it had a basket of goods which included only favorable items, items whose cost remained somewhat stable over a period of time. Other items which may not have been so favorable were not included or were given very little weight in the basket of goods. Housing, for example, was given a disproportionate value weight (C. Rattray, personal communication, December 15, 1982).

At this time, all Kingston mass media indicated that crime outranked all other news items in space, allocation and headlines. The tentative findings of those criminologists who have studied mass manipulation of information about force and violence indicate that the extent and intensity of emphasis on violence may have the effect of creating and supporting a view that the world is totally violent. "Such a world view tends to promote widespread toleration of violence, a feeling that it is hopeless to try to control violence, and the belief that individuals must be violent in order to survive in a violent world" (The

above findings are summarized from "Violence and the Media," a staff report of the Commission on the Causes and Prevention of Violence," Washington, D.C., United States Government Printing Office, 1969).

The oppressiveness of the Gun Court and the social and political conditions which spawned its creation was also manifested in the educational policies of Jamaica. Access to the public school system was quite limited and based entirely upon competitive examination. In 1982, over 40,000 children sat for the public entrance examination and only 5,000 were awarded passing grades which granted them the privilege of attendance (N. Litton, personal communication, December 13, 1982).

Unemployment, reported officially at 17 percent of the adult population in 1982, (Pocketbook of Statistics, Jamaica, 1981, p. 57) must be seen as a fundamental cause of crime. Unemployment was even more widespread in 1982 than it had ever been. Many Jamaicans believed that the P. N. P. Government was becoming communist, but were not concerned. Because it appears that when the P. N. P. controlled the Government, the poor were given greater attention. Perhaps the P. N. P. did not possess the level of administrative expertise required to effectively govern a nation, but it was sensitive to a poor child not being able to attend school and an individual not being able to obtain employment. An example of poor administrative expertise on the part of the P. N. P. was the printing of national currency to place into circulation, funds over and above what was necessary. This poor fiscal policy was an attempt to keep the economy sustained, but it was not based on sound judgment.

However, it was the Manley Government which passed the Gun Court Act and the Seaga Government, which as the Opposition had opposed the Gun Court at the time. This support and opposition naturally "flip-flopped" when the political control of the Government changed hands. Only the majority of the practicing attorneys opposed the Act from its inception, and the press brutalized them for condoning crime and the criminal. The legal profession, however, stood its ground and raised enough funds to send an

appeal to the Privy Council, and eventually won enough support by incrementally attacking the Act as often as it could to alter its scope and nature. Prior to the 1980 election, the P. N. P. had decided that no amendment was required, while the J. L. P. had been calling for one all along. When the Government changed in 1980 many people believed that immediate revisions or even repeal of the Act would occur. The Act was not repealed by the new Government; only amended.

Summary

Given the circumstances preceding the introduction of the Act and the official rationale for its passage, how did its function compare with the function of law in general? The Act was instrumental, detaining certain individuals and continuing the processes of government and the two-party struggle. More significant, its function was an ideological one: a harsh law would be a deterrence, firearm crimes would cease and the populace would be kept further from the truth as to the real causes of crime in their country.

As noted in the Previous Works chapter, Chambliss and Seidman suggest that the function of law is the inducement or coercion of certain behavior by some set of individuals in a society. The set of individuals identify the state as the creator of law representing the value-neutral framework within which conflict takes place and as an integral part of the constant social struggle between antagonistic interests and classes that comprise a society. In the former, it is presumed that there is an underlying, fundamental value-consensus in society which is reflected in the creation, enforcement, and adjudication of law, while in the latter, it is assumed that the control of the state and its law-making apparatus is hotly sought after by antagonistic interests in society. Chambliss and Seidman argue the latter.

Disputing the theory that criminal law is created in response to the views of the general public, Chambliss and Seidman conclude that: (1) criminal law is generated by social conflict; and, 2) in one way or another, laws that are enacted, implemented and incorporated into the system reflect the interests of

those groups capable of asserting their views as the official definitions within society. This, however, is not always consciously done. According to Chambliss and Seidman, there is a whole world of criminal law enacted which reflects the interests of economic elites "not consciously but effectively." They attribute this to "the mobilization of bias." They argue that those who are structurally involved in the process of law-making typically come from the upper classes. There is a bias that is favorable to the interest of economic elites, and it is easily mobilized by organized interest groups. Max Weber also acknowledges that laws are created for special economic interests in society, but adds that other special interests such as politics also influence the formation of law (Duke, 1976, pp. 58-59).

We have already seen that the laws and the legal procedures established by Great Britain in its colonies served the same functions. Colonial elites in Jamaica, for example, used law ideologically and instrumentally to protect their position and interests. When confronted with demands from the masses, the colonial elites responded with the full force of the law.

What, then were the true functions of the Gun Court Act? An upper class merchant stated that there was "fear in going to sleep at night" (K. Issacs, personal communication, December 20, 1984). Who or what was in danger? According to the Government, the public was in general danger from criminal elements. According to some in the lower class, it was the Government that was in danger of being toppled. So while the Government stated that the function of the Gun Court Act was to protect the public, gunmen continued to be employed by both parties, and crime continued to increase due to entrenched and unmet economic and social problems.

CHAPTER 6: CONCLUSIONS

One aspect of the prolonged controversy over firearm control, apart from the constitutional issues, is whether such legislation is inherently capable of reducing the number of firearm-related crimes (see e.g., Lofton, Heuman & McDowall, 1982; Geisel, Roll & Wettick, Jr., 1969; Heuman & Loftin, 1979; Lofton & McDowall, 1981; Zimring, 1968). The opponents of increased control, tacitly admitting that empirical evidence is one of the means of measuring the effects of gun regulation, contend that expert opinion and compelling evidence seem to indicate that the amount or kind of crime in a community is not substantially affected by the relative ease with which a person can obtain a gun or by the relative severity and mandatory nature of gun offense sentences. Marvin Wolfgang points out, for example, that: "Few homicides due to shootings could be avoided merely if a firearm were not immediately present . . . the offender would select some other weapon to achieve the same destructive goal" (Wolfgang, 1958, p. 83).

Criminals in Jamaica did not have to choose an alternative weapon to achieve their goals during the 1970's and the early 1980's. The gun was made readily available. The statistics show this. Since the J. L. P. victory over Michael Manley and the P. N. P. in 1980, the J. L. P. - controlled newspaper, (*The Gleaner*), and the J. L. P. - controlled national television network, the Jamaican Broadcasting Company (J. B. C.), did *not* fully report the continuing bloodshed which gripped the nation. The constitutionality of the Gun Court Act and the debate as to class struggle and the economic woes of Jamaica, are of course, vital matters. But no less vital is the most elementary question of all: namely, did the Gun Court Act fulfill its stated purpose of deterring firearm-related crimes?

The Jamaican authorities were curiously reticent on the question of statistics and hard facts. No one doubted the fact that there had been a drop in the incidence of firearm-related offenses immediately following the introduction of the law in 1974, but the re-emergence of violence, increasing significantly each succeeding year is made empirically evident by the present

study.

The massive escalation of firearm crimes overwhelmed the Gun Court to the point where, at the end of December, 1982, 1,782 persons were awaiting trial in over 1,500 cases pending and 460 persons were sentenced and were serving life sentences (Dodd, 1983). The factors which contributed to the backlog included lengthy trials, the pressure of work on the government ballistics expert, non-attendance of witnesses, non-attendance of police officers, frequent adjournments, lack of sufficient and reliable police vehicles to transport prisoners, inefficient process service for witnesses to attend court and absence of defense attorneys.

This administrative backlog was not the only negative effect of the Gun Court Act. The Jamaican people paid a high price for the Gun Court. They were forced to accept an adopted criminal justice ideology (i.e. retribution, and deterrence) and forced to develop patience for a law that first provided for indefinite detention, (keeping people in prison at the pleasure of politicians), and then for requiring life imprisonment for all firearm-related offenses. And since the Gun Court itself and the adjoining Gun Court Prison were nicely symbolized in a bright red color, with the absence of the barest living standards, the only possible reason for its prolonged existence was that there was an acceptance of the ideology that this stern measure was a real deterrent to gun crimes.

By the end of 1982 many Jamaicans interviewed pointed out that the Gun Court was never needed. The findings of this study agree with this. What Jamaica needed in 1974 is what Jamaica still needed by 1983 - a properly functioning legal system. This is where the efforts of the legislators should have been channeled. The call should not have been for a crash program to produce an alternative form of justice, but for measures that would have implemented the existing system to ensure that cases were brought to justice with the minimum of delay and the maximum of fairness. In a sense, the greatest miscalculation behind the Gun Court was, in effect, its turning the attention of the Jamaican people from their real social, economic and political

problems and issues.

Another practical problem which was ignored by the Gun Court was rehabilitation efforts. In spite of the huge sign beside the Gun Court proclaiming "Rehabilitation Centre," nothing of the sort took place within the walls of the detention camp. By the end of the study period there was a large incarcerated population presumed to be dangerous individuals, yet despite the presence of a token of social workers, there was no effort made to bring these men back into society. One former inmate of the prison remarked that many of the prisoners spent their time on two staple items of conversation: (1) a recounting of those people they shot in the past, and (2) a presentation of those they intend to shoot when they emerged (former Gun Court inmate, personal communication, December 12, 1982).

Supporters of the Gun Court stated that its implementation was the Government's response to the rising panic that attended the rising crime rate. This may have indeed be true, but the people of Jamaica deserved more than the inefficient and non-effective administration of criminal justice. It would have been quite a different matter had the rate of firearm crimes continued to fall unabated following 1975. If this had been the case, then the Gun Court would have earned much acclaim as a mechanism which helped to stem an increase in violence, even in the short run, while more long-term solutions in the form of better housing, education, jobs and social amenities could have been provided. Unfortunately, this was not the case.

The Gun Court legislation was passed without sufficient consideration and was allowed to remain the law of the land without sufficient sensitivity to the real issues. The legislation had all the appearance of being the product of panic and hysteria by the government to a grave situation which existed in Jamaica which it perceived as creating a serious danger to life and property in Jamaica.

There continues to be a grave situation in Jamaica. It is necessary for steps to be taken to remedy the situation to allow its citizens to live without the continual fear of being attacked or killed. Gun Court-type legislation is no

solution. A law enforcement option which speaks to the necessity of bringing those charged before the courts and to trial expediently proved not to be a real solution. Law enforcement policy options made, for whatever reasons (or as a result of certain causes) ring hollow if they are made in an ahistorical and asocial vacuum.

For example, the right to trial by jury of peers inherited many hundreds of years ago, was in Jamaica for the past 300 years. This right was abolished with passage of the Gun Court. The right of a convicted person to appeal his sentence to the Court of Appeal was taken away by Gun Court Act. Moreover, the principles in relation to the operation of procedures before the review board were vague and uncertain. The limitations of individual liberties often result from law enforcement solutions to the problem of increased criminal activity.

By the end of 1982, the law enforcement inadequacies of the Gun Court Act became the predicate for many in Jamaica to make recommendations which, if implemented would have gone a long way to improve and reform the criminal justice in Jamaica. A list of these recommendations included:

- 1. Repeal of the Gun Court Act;**
- 2. There should be an adequate number of judicial officers and court staff at all levels so that trials can be speedily dealt with as a general rule;**
- 3. Adequate facilities and modern equipment should be provided so that Courts may operate expeditiously;**
- 4. Steps should be taken to establish special staffs to deal with such matters as serving subpoenas to witnesses and warning jurors, and the police should be relieved of these functions;**
- 5. Police raids, roadblocks and other operations should be organized with an emphasis on efficiency and security, rather than massive displays of armor and arrogance. For example, roadblocks which indiscriminately stop vehicles and cause traffic congestion are unlikely to produce efficient results.**

Raids should be unannounced and directed to suspected criminals and their hiding places rather than blocks of houses or whole communal areas;

- 6. Crime detection should employ the most-up-to-date techniques and scientific methods instead of reliance on strong-arm methods;**
- 7. Police public relations should not be allowed to deteriorate by the absence of the requirement that the police themselves are subject to the law;**
- 8. Reform of the prison system should be undertaken as part of the strategy to control crime. The Probation Service, which has a good record of achievement, should no longer be neglected;**
- 9. Training and rehabilitation of offenders, particularly the young, should be undertaken as a priority;**
- 10. A Commission dealing with crime should be established to investigate, keep under review and make recommendations in respect of the administration of criminal justice, the cause and the prevention of crime. These matters cannot be adequately dealt with by a Parliamentary Committee or by ad hoc consultations in times of pressure; and,**
- 11. Comprehensive efforts should be made to eradicate unemployment and poverty, and to establish conditions in which human dignity is respected.**

The Jamaican Constitution was framed when the nation became independent and was written under the guidance of two national heroes, Norman Washington Manley and Alexander Bustamante; both renowned fighters for the freedoms and liberties of people. However, given the problems of underdevelopment and the escalating violence which accompanied them in Jamaica, a law was passed which limited some of the basic tenets which that Constitution presented.

The Gun Court Act represented a failure on the part of a Third World nation to control firearm-related crimes. The Government passed this harsh law to contain these offenses, but over a ten-year period we have seen that

opposition developed and interest group activity was organized to slowly bring about the amendment which reformed most of its oppressive features.

Theoretical Implications

Many recent studies which focus on the making of legislation focus on disputes about individual decision-making, legal pluralism and the role of power brokers in channeling the effects of law in society. Many employ a pluralistic conception of politics, and a dualistic notion of the economy. Frequently they are characterized by a relative ahistoricism, use of the case as the unit of analysis, and an emphasis on either the institutional or technical aspect of the law. In contrast both classical Marxism and theories of underdevelopment and dependency emphasize the importance of understanding social relations, including legislation, within a historical materialistic framework. They stress the creation of a lower class in the creation of underdevelopment, the place of agricultural commodity producers within the capitalist world economy; and the relationship of legal forms to the formation and reproduction of class relations. Despite their deficiencies, these theories identify the central questions concerning contemporary legal processes in underdeveloped nations. By requiring criminal justice scholars to place disputes and social transformation in relation to the historical development of capitalism, more adequate explanations of crime and underdevelopment and the societal reaction which it produces can be developed and presented.

This study, therefore, has examined the context which gave rise to the Gun Court Act; the conditions in Jamaican society that produced the Act and the offenses it was intended to curb, and has documented the support and criticism it received before and after the Act's passage.

The study also illustrated that the crime problem of Jamaica during the period under study was the result of the nation's economic dependency and neo-colonial ties; that the Gun Court Act was an indirect social control measure. It obviously was not designed to curtail a wide range of basic

freedoms, as say, the Emergency Powers Act in Trinidad and Tobago. However, it was an attempt to find a short-term solution to very complex causes of violence within Jamaican society. In this respect, the general population was sold the ideology of deterrence and for ten years were controlled by the two political parties which were attempting to maintain control of the island-nation.

In a sense, therefore, this study agrees theoretically with the position of Arthur Lewin who broadens his analysis of the Gun Court Act to examine the road from crime to revolution. Lewin states that the real threat of rising crime in Jamaica is that it presages a time when individual criminals may band together under the leadership of intellectual revolutionaries in social movements to challenge state power (Lewin, 1978).

The concluding overview of this study must take advantage of the application of theory to the specific case of the Jamaican Gun Court Act. Underdevelopment theory helps one to understand the internal development of Third World colonies. Under this rubric, legislation is seen as the creator and perpetuator of the capitalist mode of production. In colonial period, legislation sustained colonial social formation. Class development was controlled by an authoritarian system of legal control. Law forced the masses to provide labor and surplus to the capitalist mode. In the instant case, despite attempts at class containment in the neocolonial period, due to political exigencies (i.e., the perpetuation in Jamaica of the two-party system of the national bourgeoisie) some penetration of the capitalist society emerged during the decade prior to the Manley election, and began to explode directly after his election. In colonial times, poor economic conditions were excused by the promotion of compliant class element and the maintenance and containment of antagonistic class elements. Such steps are not so readily facilitated in neo-colonial societies where the masses now comprise a variety and complexity of positions; (i.e., the interest groups within Jamaican society).

It is this variety and complexity of positions in Jamaica which gave rise

to interest group opposition to the Gun Court Act. As a result of interest group activity, modifications of the Gun Court Act occurred. Modifications were a long time in coming because, in part, numerous officials opposed them on the grounds that they involved a weakening of power. In line with the analysis given in the previous chapter, the reform stalled because some elements of the bourgeoisie had interests placed in the maintenance of the restrictive law. Firearm violence, whether caused by political gunmen, or not, could be severely controlled by the Gun Court Act and hence positions and power held by officials could not be threatened.

Jamaica, with its social formations, consists of a society with a complexity of class positions and stratification. In the rural and urban areas, the bourgeoisie operates within a structure of patronage and corruption. It has a necessary place in the apparent control and finds some legitimacy. Within the Jamaican context, the bourgeoisie are those privileged minority of owners and their principal agents or management. They are also a class united by their tightly knit social networks. The bureaucratic bourgeoisie are those high-ranking members of both political parties who attempt to keep the weak class system together by forging inter-class coalitions. Pragmatic and instrumental, the bureaucratic bourgeoisie in Jamaica used the Gun Court Act for political mileage. The bureaucratic bourgeoisie used the Gun Court legislation to constrain the lower classes. It did this by "repackaging" the violence which was occurring in the streets. By blaming firearm violence on "common street criminals," the loss of respect by youth, etc., it covered up its own lack of desire (or inadequacies) to attempt to deal with the social and economic reasons behind this violence. Moreover, it covered up its lack of desire to deal with its own usage of gunmen to maintain political control. It must be understood that with the advent of political independence of underdeveloped nations, some laws purposely promote the bureaucratic bourgeoisie elements, as they are the ruling class. Yet, the bureaucratic bourgeoisie is also severely constrained.

The Gun Court Act is evidence of the persistence of colonial forms of

legislation. Such legislation takes broad discretionary form with its authoritative cast and continues in the service of conservation and class containment. Its effectiveness is inhibited, however, not only because some legislation requires authoritarian state action, but to the extent that people operate within the traditional mode of production, the legality of the bourgeoisie is for them an irrelevance. Generally, there is little basis for generating popular consensus and involvement of support of legislation. Hence legislation is hard put to hold down its territory. This, as well as the economic weakness of the bureaucratic bourgeoisie and its inability to rule, all make for great political instability and a persisting insecurity in Jamaica.

Legislation must also be examined in terms of the ideology it proposes. Moreover, the ideology which it proposes must be the result of a kind of pluralism. Powerful social pressures, aided by the forces of mass communication, the failure of unorthodox politics, and the bribes of an economic system forced modern Jamaica to become a society controlled by a dominant class ideology. This ideology was a direct result of underdevelopment.

In underdeveloped societies, periods of crises are experienced in which ideas and politics must change. The ruling class must change ideologies and political strategies or else capitalism may turn to fascism. The ruling class will attempt to change the ideas of the mass of people to keep control. However, the ideology of the elite is no longer the only ideology of importance. Social ideologies become relevant. As a potential crime-deterrent piece of legislation, the Gun Court Act attempted to unify the masses and did so for a time, until its oppressive nature forced numerous interest groups in Jamaica to unify against it.

In summary, one can speculate that the Gun Court Act exemplifies the importance of analyzing the state structure of underdeveloped nations because it was a mechanism used to mediate the relationship between classes (i.e., as a product and a determinate of class conflict). Although this is not proven by the present study, what the study does demonstrate is that, one

cannot study criminal legislation in isolation from societal interest group activity.

In summary, the following propositions are offered for further debate:

1. The Gun Court Act was the outcome of class struggle rather than an ahistorical act for repressing the lower classes.
2. The Gun Court Act legitimized state intervention and politically neutralized Jamaican lower classes.

Policies toward the humane containment of the dangerous, and the correction of those with a potential for being corrected, were not institutionalized within an overall program of de-escalating the total atmosphere of deterrence, violence and retribution which permeated the Jamaican situation. Above all, the dangerous assessment of potential human destructiveness inside the Gun Court was not turned into a positive force for the benefit of the country, through rehabilitation of offenders.

Public participation was not secured in all segments of criminal justice, including corrections and law enforcement. Responsible community organizations, churches, fraternal orders, and others were not given the opportunity of participating.

The P. N. P. and the J. L. P. did not place aside their self-perserving, concocted ideological differences for the sake of the preservation of the country. Neither party acted to curb over-zealous partisans in their own ranks who were prone to resort to force. The most wasteful and self-defeating aspect of criminal justice in Jamaica, the Gun Court's system of punishment and so-called corrections which, through its punitiveness, contributed more than anything to the deterioration of the societal situation.

The privileges enjoyed by colonial and neocolonial elites depend upon unequal distribution of rights and privileges. To elites, actions that preserve

their privileged status are just. Justice affirms the social and political system which depend on economic order. Colonial and neo-colonial elites, strongly oppose movements that work to change this system. They often use their power as law-makers to pass such laws as the Gun Court Act. They label as serious crime, social phenomena such a social unrest and political strong-arm tactics. To the upper class, "gunmen" were terrorists, as well as criminals, when they were charged with a violation of their laws. It is the contention of this study that many of these "terrorists" and "criminals" were not enemies of existing political institutions, but both the pawns and victims of it; and perhaps even nation-bulders.

In underdeveloped societies, the lower class' maintenance of a different relationship with the social order than the upper class is more pronounced than in developed societies. Fanon examined this by describing the movement of nations from false consciousness to revolutionary consciousness and confrontation with neo-colonial "masters" (Fanon,1963). In Jamaica, there is no new consciousness.

The process of decolonialization demands the transfer of colonial structure. Unfortunately, the unyielding two-party system in Jamaica and western influences leave Jamaica as a repressive democracy when confronted with popular opposition. The history of the Gun Court Act, however, shows that legitimate constitutionalism, first manipulated by the elites, succumbed to the attorney/intellectuals and other popular opposition when the Act no longer kept its political expediency and completely failed as a mechanism to correct the firearm crime problem.

The irreconcilable conflict between the interests of the elites and the majority of the population underlies a considerable amount of what is officially defined as crime in a developing society. The characteristic unwillingness of the two political parties in Jamaica to acknowledge social and economic problems was evident as they continued to struggle for domination of a lost paradise.

History can be seen as a series of phases of struggle between social

classes. Although the present phase of Jamaican struggle is not a long-term phase such as the phase from feudalism to capitalism, it is nevertheless, a material one. This phase is characterized by deteriorating economic and social conditions which have awakened the ignorance and apolitical subservience of the majority of Jamaica's working and lower classes to an awareness of, minimally, the possibilities of reform socialism. We see through this study that this phase of struggle created in Jamaica translated itself into a violent struggle between the two major Jamaican political parties and also defined the very nature and existence of the Gun Court Act.

This study also demonstrates that the Marxist conception of law as an instrument of class domination is too limited. It has valid insights and arguments but by no means do all laws function for the ruling class, nor do they all originate in the class struggle. That such a class struggle occurs is obvious, but studies recurrently focusing on the origins and functions of laws in terms of class relations often ignore other elements existing in society. Law only becomes an interest to Marxists when it interferes with classical economic dialectic of capital versus labor. This would explain why laws relating to industrial relations, economic crimes, housing, riot control and safety at work are most commonly selected for Marxist analysis.

These studies have value, but they present a theoretical problem. For example, although one can agree with Quinney's position that law is always under the control of the ruling class in a broad sense, "it does not *always* originate in economic class conflict, function well for the ruling class, reflect the full range of ruling class opinion, remain immune from the lawyers and bureaucrats who administer it" (Sumner, 1979, p. 255).

Marxist theory of law developed due to the political nature of much modern legislation all over the world. "Legal enactments must be seen as reflections of contemporary culture and as reflections of political maneuver, as well as reflections of economic structure. This will involve the recognition that the analyses of class relations and ideologies must be complemented by the study of class factions, political parties, political dialogue, bureaucratic

and cultural movements, cultural groups, and all their corresponding ideologies" (Sumner, 1979, p. 256).

Political Class Struggle

The present study demonstrates that a new theoretical perspective must be created in order to focus on the relationship between class structure and legislation. In a capitalist society, the state channels lower class political activity so as to prevent its impact on capitalist political domination. To analyze legislation within this kind of society, it becomes necessary to locate the government within the dialectic relationship between class dominance and systemic constraints by discussing the internal structure of the government and its relationship to constraints, and the class structure and how it shapes and is shaped by those structures.

As an underdeveloped society, Jamaica's internal structures of government always allowed it to be a nation used for the interests of capital. Political independence in 1962 did not alter this. Jamaica maintains a neo-colonial dependence stature. The nation is limited in its production and allocation processes. In the earlier discussion of underdevelopment, it was pointed out that production policies of an underdeveloped nation are defined externally and serve to primarily satisfy the allocation needs of developed nations; serving the underdeveloped nations allocation needs only secondarily.

But in underdeveloped societies, allocation policies are subject to political conflict. In Jamaica, the masses were "rudely awakened" in the 1960's. Their politicalization resulted in the election of Michael Manley and the P. N. P. to the leadership role in the country, a proletarianization of the issue of underdevelopment and its concomitant economic dependency. Economic woes ripened the political and social climate for an upheaval. An underdeveloped nation, as a capitalist nation, is forced to devise rules to maintain private capital accumulation. Unfortunately, underdeveloped countries simply have less to allocate.

In other words, the internal structures of Jamaica, created and perpetuated for capital accumulation of western nations, and limited in its own development, must be seen in the context of a class struggle to that societal structure.

It was seen through James O'Connor's work that the internal structure of a state relates to contradictions in the accumulation process. The relationship of class struggle to those state structures was also seen. In an underdeveloped nation, the contradictions of the accumulation process become more exaggerated. Implicit in the present study, therefore, is the recognition that the state structure of an underdeveloped nation is a source of power and the organization of political authority around it differentially affects the access, political consciousness, strategy, and cohesion of various interests and classes (Esping-Anderson, Friedland & Wright, 1976, p. 191). Criminal legislation as a mechanism of state structure intervenes between social needs and the way these needs are translated into political demands.

Class struggle has historically taken violence as its form. Although some have pointed to the sudden and total destruction of capitalism, (Lenin, 1917) others have shown that it occurs only through incremental structural change. What is critical, however, is that it is the political challenge of the lower class that shapes historical development of state structure. Criminal legislation, therefore, is not a simple reflection of capitalist interests, but a reflection of the class struggle between the lower classes and capitalists.

The problem which Jamaica and other underdeveloped nations faced and continue to face is how they continue to permit capitalist nations to exploit them following the political organization of the lower classes. In order to permit the maintenance of the capitalist relations of production the state must become more involved in the regulation of its underdeveloped economy, and it must seek avenues to neutralize its newly politicized lower classes. Thus, in Jamaica, the Gun Court Act was an example of this attempt at neutralization. Although the Act professed to limit firearm violence, it eliminated fundamental constitutional rights and sharply refocused the

attention of the people from the social and economic reasons of crime to a more limited hope in a deterrent solution to crime.

Societal Change

This study has shown seen that Jamaica was restructured by the events of the late 1960's and 1970's. The movement for the reform Government was controlled by socialist intellectuals operating through the P. N. P. The reform Government developed a package of structural reforms. Through these structural reforms, it increased political organization and participation of the lower classes, while simultaneously being unable to decrease the influence of First World needs over production and allocation.

Embattled elections, however, made it increasingly difficult to maintain the power of state structure. Thus, both political parties turned to violence to gain and maintain advantages.

It is important to locate a theoretical base to enable us to analyze how the form and direction of interest group conflict shaped the Act following its initial passage. The study, therefore focused on the structure of the Act and the nature of interest groups themselves. It raised the crucial questions about how the origins of law always relate to the power bloc behind the legislation, the nature of the problem this bloc wants to solve, the ideology in which the problem is perceived and understood, and the political opposition to the proposed legislation. "Law is a hybrid phenomenon of politics and ideology; a politico-ideological artefact" (Sumner, 1979, p. 67).

Legislation is a type of state action. Legislation generally serves both an economic and political function. Economically, legislation gives normative form and coercible content to relations of production. Legislation is "deeply imbricated within this very basis of productive relations" (Thompson, 1977, p. 261). Politically, legislation provides a constitutional function. It secures coherence of relations within the dominant classes and containment of lower classes. It accomplishes this by either directly coercing or by securing consensus through popular involvement in or identification with the

legislation.

Legislation which directly coerces has been characterized as follows: "Laws dealing with class regulation, especially with the containment of subordinate classes, often take the form of broad, discretionary powers giving officials power to define in particular ways what situations will be subject to legal coercion, such as laws dealing with public order and emergency powers" (see Hunt, 1976).

Consensus securing is often difficult, especially in maintaining the consensus of the lower classes. Tangible benefits assist in the generation of consensus. Legislation is a function of the ideology which it represents. Legislation must be stable, universally applicable and relate to pre-defined behavior. People must be free to orient their conduct around the legislation. The legislation must be upheld by an impartial official.

The legislation must reflect universalism in society; it must be representative of an expression of unity within the nation (Sumner, 1979, p. 273). Some universalism seems necessary to support an element of consensus. Hence, legislation must involve giving some investment to the lower classes (Sumner, 1979, p. 264).

Marx and Engels . . . explain the reasons why the bourgeoisie experience this difficulty in the realisation of its hegemony over the dominated classes. These are: the intense fractioning of the bourgeoisie class; the continued existence of classes of the small producers in capitalist formations and their complex reflection at the political level; the rise of the organized struggle of the working class; the institutions of the capitalist state (for example, universal suffrage), which hurl all the classes or fractions of society on to the political scene, etc. In short everything happens as if the specifics coordinates of the struggle of the dominant classes contribute to prevent their political organisation.

What then is the role of the capitalist state in this context? It can be stated as follows: it takes charge as it were, of the bourgeoisie's political interests and realises the function of political hegemony which the bourgeoisie is unable to achieve. In order to do this, the capitalist state assumes a relative autonomy with regard to the

bourgeoisie. (Poulantzas, 1973, pp. 284-285).

Legislation, then, is one normative support in which conflicts can be settled in a neutral and controlled way.

Third World Application

Legislation in Third World societies must control the societal forces introduced by capitalism. The main differences which must be accepted in analyzing legislation in Third World dependent societies, from that of capitalist societies, is that in the former, class forces are stunted. Legislation regulates the relations between the bourgeoisie and the proletariat.

In colonial societies, economic exploitation is based on the seizure of political power. In post-colonial societies, legislation resembles the legislation of capitalist societies. The visibility of some class formations indicate that economic constraints are more in effect and legal controls may be required to maintain the economy. Production modes are set; workers and their families are more reliant on wages; peasants more tied to production.

Legislation serves the emergence of the bureaucratic bourgeoisie. Most colonial legislation which was based on racially-ascribed status is repealed. A system of capitalistic legislation is now used to enforce capitalistic relations. Here political power is seen as leading to economic power. The state fosters the limited growth of upper class elements. The lower class is contained by a variety of measures which make for the continuation of colonial structures. The lower class is controlled by such things as vagrancy and public order laws.

Bourgeois societal controls play a more prominent role in neo-colonial societies and are reflections of the new bourgeoisie which is present. However, that new bourgeoisie, because it is so weakly based economically experiences difficulties in trying to rule. Considerable political instability results and often force and a military government tend to be considered as necessities. In writing of Africa, for example, Nwabueze concludes, that bourgeoisie legality, in its constitutional aspect, had failed (1973, pp.

300-301). Further dominant class elements are not secure enough to allow institutionally set and enduring limitations on their political power. However, Nwabueze qualifies this by exempting the independence of the judiciary (p. 359). However, the judiciary is conservative and serves the bureaucratic bourgeoisie. Its concerns do not center around the development and establishment of a struggling emergent class.

Colonial authoritarian rule continues to deal with political instability and with the presence of the urban unemployed (see Kay, 1975). The state assumes a wide-range of powers. The rule of the state must, however, be flexible and plural enough to allow involvement in the process of decision-making.

The fact is, however, that only a very limited number of people have a real stake in the maintenance of the capitalist mode of production in neo-colonial societies. In these societies, the ideology behind legislation plays a less paternalistic role, and it even celebrates freedoms and the virtues of a liberal democracy. Ultimately, however, it is saying the same things as colonial ideology, although in different and more elaborate manners.

We saw earlier that legislation often gives way in the force of political conflict within Third World social formations. In the present case under study, the Gun Court legislation was the result of internal political conflict. Also, once passed, the Act was able to engender active professional legal opinion in the country which considered the law excessive and draconic. On its face the law was extremely excessive and draconic. How then do we explain the wide public support it maintained over the study period?

The Ruling Class and Consent

Antonio Gramsci, an Italian Marxist, writing in the 1920's and 1930's, as all Marxists, believed that many laws reflect economic relations and that law itself is eternally and generally a weapon of class domination. But Gramsci believed that in order to understand law, it is necessary to understand how the ruling class manages to win consent of the subordinate classes (Fiori,

1970, p. 238).

To understand law in society it is necessary to understand the "ideological heterogeneity" of modern societies. Gramsci does not stress the economic structures themselves so much as the ideologies which they generate or which maintain them at the political and cultural level. Intervening conditions of ideology, state power, the intellectuals, hegemonic fractions and class conflict must all be understood within their own contexts and through their interrelationships with each other.

Gramsci points to the ideological function of law in unifying fractions of the ruling class in practice, as well as to the classic Marxist argument that law conceals the reality of the social structure for the masses - an ideological mystification. Legal mystification could be undermined, if the intellectuals of the lower class were active in defeating hegemonic propaganda and demonstrating the thoroughly social and oppressive nature of a law. Thus, it is the practice of the politicians and intellectuals which is crucial to the understanding of the legal form and key apparatuses in maintaining hegemony of the ruling class (1971; see also Cammett, 1967; Femia, 1981).

Otto Kirchheimer observes that "the ideological fight for domination over people's minds" entails the courts in important political activity (1961). There are biases of underlying assumptions and procedures and the indirect pressures of mass media influences. Thus, the political trial is an ideal way of eliminating political opposition since it carries legitimacy as an element of due process. Linking the courts with other agencies, such as military action, informal bribery, and church preachings and mass media influences, Kirchheimer views the political trial as a functional authentication of political repression. It is a new political weapon in the struggle for power, operating through its selection of criminalization.

In Hunt's work the extension of these remarks is taken one step further. Hunt states that the effectiveness of law as an ideological force, as a means towards ruling class hegemony, depends upon the ideological development of a manufactured consensus outside itself in other economic, political and

cultural practice (1976).

An ideological alliance is necessary between the ruling class and other classes and class factions. "Law without some hegemonic class bloc is merely naked power and thus no law at all" (Sumner, 1979, p. 265). Law is not only ideology backed by instituted social power, it is also instituted social power articulated and reinforced by ideology.

Therefore, Hunt states that legal rules have an ideological dimension. Sumner goes further when he states that, "not only does law embody the appearances of reality produced by social relations, but also it embodies those appearances as they have been seen and interpreted by the classes and groups who make the law (Sumner, 1979, p. 265).

Law depends upon some type of ideological consensus amongst a number of classes and class fractions. That consensus cannot always be produced on important issues or problems is accepted. However, politics is always controlling. Law is a function of political practice and is, therefore, subject to the pressures and demands of politics (Sumner, 1979, p. 265).

The political sources of law cannot be over-emphasized. Legislation is always political since its immediate causes are the legislators, agents of political practice, and their immediate purpose is the resolution of conflict but, less immediately the balance of class forces, economic necessity, ideological pressures and political pressure groups are always other important considerations.

Once a mode of production is established along with the corresponding modes of political relations, a society's legislation must develop in order to regulate that social formation. In other words, legal enactments respond to social problems and are not simply unilateral political declarations of ideology. To a certain extent, therefore, the social system dictates to judges and legislators. Only to an extent though; what is vital is the recognition that problems only appear in a certain manner depending on the social structural context in which they exist.

In summary, legislation is only an instrument of class rule through the

mediating arenas of politics and ideology and that, therefore, it is *not* just an instrument of class rule. It is also, at the very same time, an instrument of party politics, a protector of reserved ideas and an agency for the prevention of social chaos. Moreover, it can only successfully operate on the basis of a political ideological consensus (whether spontaneous or constructed).

Economic and political ideologies and cultural practice, thus, not only express class relations but also technical divisions formulated within class relations. Legislation does not therefore just contain bourgeoisie economic ideology. It also reflects ideologies of other classes, through the political activities of these classes and class fractions. Moreover, it reflects the ideologies of occupational groups and pressure groups (Sumner, 1979, p. 269).

Law does not reflect these ideologies equally. Some classes, some occupational groups, some pressure groups and some individuals have more power than others in the legislative process. It is not as pluralistic as other ideological forms (e.g., the novel, music) because it is the subject of the political process and, hence, the relative ability of different classes and groups to establish their ideas is low. Law is much closer to a reflection of class inequality than other forms. It tends to express the ideologies of the dominant class. Although law is complex, it is still a major weapon of class domination, for it is the reproduction of class power.

Legislation must demand some kind of consensus. It must thus express itself in a general manner. Legislation signifies ideology reflected by the dominant social relations not ideology held by the dominant class (Sumner, 1979, p. 272). Legislation is expressed in terms of individual freedom (freedom from gun crimes) rather than the freedom of the bourgeoisie to expand their capital at the expense of the lower class - the sanctity of personal property, not the sanctity of productive property of bourgeoisie. The generic social function of legislation is to express, regulate, and maintain the general nature of the dominant social relations of a social formation.

Legislation is a form of political control. The mystification of the nature

of law (as a form) is still necessary today and will be as long as there is class domination (Sumner, 1979, pp. 275-276). In short, the ideology of legislation is an ideology necessitated by political relations of domination: it enables them to continue on a regular basis.

In Jamaica we observed that over time, the legal profession began to insist that the Gun Court legislation was distinguishable due to its basic constitutional principles. It is clear, though, that what counted as proper was a political question. Neither legislation, nor interest group activity aimed at that legislation, can conceal politics.

The Gun Court Act enjoyed the favor of the public due to Michael Manley's patronage and charisma and the fact that it represented a "sellable" criminal control option - the ideology of deterrence. Thus, the Gun Court Act, in a sense, was a paradox since it avoided the dirty images of politics and shared in its good side. Its structural position enabled it to be presented as an expression of universal truth under the aegis of beneficent and meritorious authority.

Legislation holds out many false promises and more delusions. It denies political realities. Legislation promotes the notion of simple truths (e.g., what the world ought to be like). Legislation punishes and executes. It has an instrumental side. It has another side as well, an ideological side. However, beyond all else, legislation is a means of exercising political control by the dominant class. It is the mechanism of the hegemonic bloc of classes and class fractions whose rough consensus it sustains. It holds a central importance to social formation. Once its real purpose is exposed, the hegemonic bloc of classes and class fractions which it sustains and the rule of capital is in trouble. Inequality and domination can only be justified mystically and that is precisely the ideological function of the legislation (see also Sumner, 1982).

In summary, legislation is historically constituted and is comprised of a unity of politics and ideology. It represents social structure and perpetuates moral ideology through its executors who are representatives of the ruling

class. The Gun Court Act had more than a crime control meaning. It had a social meaning. It is an excellent example of the ideological nature of law. While it is important not to ignore the technical aspects of law, it is equally important to derive the social meaning which is embodied in its technical meaning. Inadequacies of present criminal justice approach must be remedied by taking into account social functions of legislation, political ideology, and the nature of current party politics.

Summary

In 1974 the Jamaican Parliament clearly was under intense pressure to act following widespread concern and insecurity over the escalation of firearm violence. Immune to the long history of underdevelopment and recent social and political history following independence, members of both political parties acted with a short-term legislative measure, using short-term legislative insight. Local newspapers had extensively covered, and often sensationalized the use of the gun in criminal activity. Perhaps the government was acting on an increasing concern about the the effect of unfavorable publicity to the important tourist industry. In reality, however, issues regarding class division, political rivalry, and social instability overwhelmed the artificial interest of deterrence. The study therefore represents an initial effort toward criminological research in an area where such social and political perspectives are crucial to an understanding, and appraisal of, the impact of crime and underdevelopment.

In a ferment of agitation for political and social change a number of crucial questions have been raised in Jamaica and other underdeveloped nations on the role of law in society. Among those questions is the issue of whether law in underdeveloped nations provides the means of protecting the rights of a select few, notwithstanding the efforts to train and equip a legal community. Secondly, a number of questions must be raised about the weaknesses in the functioning of a legal system and the need to reform that system as well as to change some of the laws which are seen as either unjust

or inadequate. Thirdly, important issues have been raised on the question whether a criminal justice system is biased against the poorer classes.

The literature on crime and developing nations suggests the following proposition: where mass social movements have emerged in post-colonial societies seeking fundamental societal change, governments backed by colonial and neocolonial elites frequently use the law and the legal system to control and outlaw activist energies. In Jamaica, as a result of this study, a corollary to that proposition is presented for further investigation: governments backed by colonial and neocolonial elites frequently use the law and the legal system to control and *direct* activist energies before they can become mass social movements seeking fundamental societal change.

This study has also examined different interest groups in Jamaica which had divergent and similar evaluations of the Gun Court Act over the study period. This survey of interest group action and reaction was carried out to establish a baseline of information on how interest groups viewed the Gun Court Act and precisely what was done and not done as a result.

The slow but overall reform of the Gun Court Act also requires further comprehensive and interdisciplinary criminological research in relation to the needs of crime prevention and criminal justice in the context of various issues of development (e.g., the possible interrelations between age-groups, unemployment and crime, urbanization, marginality and the subculture of violence, rural-urban migration, the role of schools and the prevention of crime, etc.

The adjustment between adopted legislation and the resulting changes which occur in society is another area for further study. The measures taken and not taken by the Jamaican government in relation to the Gun Court Act demonstrate that only through careful examination of legal instruments in relation to current social, economic and political conditions, can we maximize the possibilities of improving the criminal justice systems as instruments of ensuring domestic peace and social justice, in the context of development.

ADDENDUM

As a result of the abolition of the mandatory sentence of life imprisonment by the Gun Court Amendment Act (1983), action was taken to review the cases of approximately 800 inmates serving life sentences under the Gun Court Act. A Review Board comprised of jurists was established to assist the Privy Council in reviewing cases. A Secretariat with the Deputy Commissioner of Corrections as Executive Secretary was also established to facilitate processing of cases and ensure that review decisions were communicated to inmates.

During 1984, (the first full calendar year of the review process) a total of 461 decisions were handed down by the Privy Council. Of these, 47 were granted immediate release while 414 had a less severe form of punishment imposed. Apart from 17 appellants whose cases could not be processed until their appeals were heard, all the remaining cases were in an advanced stage of processing, i.e., awaiting the decision of the Privy Council. The breakdown of review matters is set out below:

<u>Review Decision</u>	<u>Number of Cases</u>	
	<u>1983</u>	<u>1984</u>
<u>Immediate Release</u>	<u>11</u>	<u>47</u>
<u>Sentence Reduced</u>	<u>14</u>	<u>414</u>
<u>Remained Unchanged</u>	<u>4</u>	<u>0</u>
<u>Total</u>	<u>29</u>	<u>461</u>

Appendix A

THE GUN COURT ACT (1st April, 1974, as amended, 4th February, 1976)

1. This Act may be cited as the Gun Court Act.
2. In this Act -
 - "capital offence" means any offence which renders the offender liable to the penalty of death;
 - "Clerk", "Deputy Clerk" and "Assistant Clerk" means respectively a person appointed to be a Clerk of the Courts, a Deputy Clerk of the Courts, or an Assistant Clerk of the Courts or to act in any one of those capacities (as the case may be) under the Judicature (Resident Magistrate's Act);
 - "the Court" means the Gun Court established under this Act;
 - "firearm" shall have the meaning assigned thereto by subsection (1) of section 2 of the Firearms Act;
 - "Firearm offence" means -
 - (a) any offence contrary to section 20 of the Firearms Act;
 - (b) any other offence whatsoever involving a firearm and in which the offender's possession of the firearm is contrary to section 20 of Firearms Act;
 - "Resident Magistrate" means a person appointed to be a Resident Magistrate or to act as such under the Judicature (Resident Magistrate Act);
 - "Supreme Court Judge" means a Judge of the Supreme Court.
- 3.--(1) There is hereby established a court, to be called the Gun Court, which shall have the jurisdiction and powers conferred to it by this Act.
 - (2) The Court shall be a Court of Record and, in relation to any sitting of the Court in which a Supreme Court Judge presides, shall be a superior Court of Record.
 - (3) The Chief Justice shall cause the Court to be provided with a seal, which shall be judicially noticed, and all process issuing from the Court shall be sealed or stamped with such seal.
4. The Gun Court may sit in such number of Divisions as may be convenient and any such Division may comprise--
 - (a) one Resident Magistrate--hereinafter referred to as a Resident Magistrate Division;

- (b) a Supreme Court Judge sitting without a jury--hereinafter referred to as a High Court Division; or
- (c) a Supreme Court Judge exercising the jurisdiction of a Circuit Court--hereinafter referred to as a Circuit Court Division.

5.--(1) A Resident Magistrate's Division of the Court shall have jurisdiction--

(a) to conduct any preliminary examination relating to a firearm offence which is a capital offence, whether committed in Kingston or St. Andrew or any other parish, and to commit the accused to a Circuit Court Division of the Court;

(b) to hear and determine any offence under subsection (3) of section 13.

(2) A High Court Division of the Court shall have the jurisdiction to hear and determine--

(a) any firearm offence, other than a capital offence;

(b) any other offence in the Schedule, whether committed in Kingston or St. Andrew or any other parish.

(3) A Circuit Court Division of the Court shall have the like jurisdiction as a Circuit Court established under the Judicature (Supreme Court) Act, so, however, that the geographic extent of that jurisdiction shall be deemed to extend to all parishes of Jamaica and any jury required by the Court may be selected from the jury list in force for such parish or parishes as the Chief Justice may direct.

(4) The provisions of this section shall have the effect notwithstanding anything to the contrary contained in the Juveniles Act or any other enactment.

6.--(1) Any court before which any case involving a firearm offence is brought shall forthwith transfer such case for trial by the Court and the record shall be endorsed accordingly, but no objection to any proceedings shall be taken or allowed on the ground that any case has not been so transferred.

(2) Where any case within the jurisdiction of the Court is brought before the Court, the Court may, if it is satisfied that the requirements of justice render it expedient to do so, transfer the case to such other court having jurisdiction in the matter, as may be appropriate, and the record shall be endorsed accordingly.

- (3) A court on making an order under subsection (1) in respect to any person shall remand him in custody to appear before the Gun Court.
- 7.--(1) The Court may hold its sittings in Kingston, or St. Andrew, and at such other places (if any) as the Chief Justice may, by order, from time to time, appoint.
- (2) Any order under subsection (1) may contain such consequential, supplemental or ancillary provisions as appear to the Chief Justice to be necessary or expedient.
- (3) Subject to the provisions of this Act and rules of Court (if any), the Court and the Resident Magistrates and Supreme Court Judges assigned thereto may sit and act at any time for determining proceedings under this Act.
- (4) Divisions of the Court may, pursuant to the foregoing provisions of this section, sit at the same time, or at different times, or in different places.
- 8.--(1) Where any person charged with a firearm offence appears before the Court, the hearing before the Court of the offence contrary to section 20 of the Firearms Act, shall ordinarily be commenced within seven days of the date of his first appearance before the Court of such charge, but no objection to any proceedings shall be taken or allowed on the ground that any hearing was not so commenced.
- (2) Notwithstanding anything to the contrary in the Juveniles Act or any other enactment but subject to subsection (3), any person who is guilty of an offence under section 20 of the Firearms Act, or an offence specified in the Schedule shall, upon conviction thereof be sentenced, pursuant to this Act, to imprisonment to hard labour for life.
- (3) Where a person under the age of fourteen years is sentenced pursuant to subsection (2) nothing in this section shall be construed as requiring him, while under that age, to serve the sentence in any place other than an approved school or a place of safety as defined in the Juveniles Act.
- (4) The trial of any person, and its determination, in pursuance of the foregoing provisions of this section shall be without prejudice to his being charged, proceeded against, convicted or punished for any offence whatsoever for which he could not have been convicted on such trial.
- (5) The Minister, may, by order, amend the Schedule and any such order shall be subject to an affirmative resolution.

9. Without prejudice to the generality of section 5--
- (a) there shall be vested in a Resident Magistrate's Division of the Court all the like powers and authorities as are vested in a Resident Magistrate's Court and in a Resident Magistrate.
 - (b) there shall be vested in a High Court Division of the Court all the like powers and authorities as are vested in the Supreme Court and a Judge thereof and, for the purposes of this Act, a Supreme Court Judge exercising jurisdiction in that Division in relation to any offence shall have all the powers of a Judge and a jury in a Circuit Court.
 - (c) where any capital offence of which the Court has cognizance is a capital offence a Circuit Court Division of the Court shall have the like powers and authority for the purposes of dealing with that offence as are vested in a Circuit Court for the purposes of dealing with such an offence.
- 10.-- (1) there shall be assigned to the Court such Supreme Court Judges and Resident Magistrates and in such numbers as may be considered necessary for the exercise of the Court's jurisdiction under this Act, and any person so assigned shall be a Judge of the Court and shall, for the purposes of the execution of his functions under this Act, enjoy the like powers, privileges and immunities as appertain to the office of Supreme Court Judge or Resident Magistrate, as the case may be.
- (2) Without prejudice to the generality of subsection (1) but subject to subsection 12, any Resident Magistrate assigned to the Court may, in relation to any offence of which the Court has cognizance, exercise the like functions and authorities as may be exercised by a Resident Magistrate of any parish in relation to offences whereof the Resident Magistrate's Court of that parish has cognizance.
- 11.-- (1) There shall be assigned to the Court such number of Clerks and such number of Deputy Clerks and Assistant Clerks as may be considered necessary for the proper carrying out of the provisions of this Act.
- (2) Each Clerk, Deputy Clerk, and Assistant Clerk so assigned shall, for the purposes of discharging the functions of the Court within his purview, have for any and all parishes all the functions, duties, powers, immunities and privileges of any Clerk, Deputy Clerk or Assistant Clerk appointed under the Judicature (Resident Magistrates) Act for any parish and of the Registrar of the Supreme Court, as the case may require.

- 12.--(1) Save as may be otherwise prescribed by this Act or by any regulation hereunder, the practice and procedure in the Resident Magistrate's Court shall, *mutatis mutandis*, obtain in a Resident Magistrate's Division of the Court.
- (2) Notwithstanding anything to the contrary, the trial of any person before a High Court Division of the Court shall be commenced by the preferring of an indictment against such person--
- (a) by any officer performing the functions of the Clerk of that Division; or
- (b) by like direction, or with like consent, as authorized by virtue of subsection (2) of section 2 of the Criminal Justice (Administration) Act, and there shall be no preliminary examination.
- (3) For the purposes of a trial in a High Court Division of the Court steps shall be taken, in such manner and subject to such terms and conditions (if any) as may be prescribed, to make available to the accused or his attorney-at-law copies of statements of such witnesses as are intended to be called to give evidence for the prosecution.
- (3a) Save as otherwise provided by the rules of court or regulations under this Act, a High Court Division of the Court shall observe as nearly as may be the like process, practice and procedure as a Circuit Court, so, however, that unless otherwise provided as aforesaid--
- (a) the Judge shall take notes of the evidence and other proceedings taken before the Division;
- (b) such notes shall be sufficient record for all purposes of the proceedings taken before the Division;
- (c) such notes or a copy thereof certified by the Clerk of the Court as being a true copy, and the documents received in evidence before the Judge, or copies thereof certified by the Clerk of the Court as being true copies, shall be read and received as evidence in the case by the Court of Appeal, which may, nevertheless, if it thinks fit in any case, require the production of the original documents, or any of them, or of the original notes of evidence.
- (4) The trial of any capital offence in a Circuit Court Division of the Court shall, save as may otherwise prescribed by this Act or by any regulations hereunder, be held and determined before a Supreme Court Judge and a jury in like manner as in a Circuit Court.

- (5) Subject to subsection (2) of section 8, upon determining a case, the Court shall have all such power to convict and punish the offender as is provided by any law in relation to such case or any offender.
- 13.--(1) In the interest of public safety or public order, no person shall be present at any sitting of the Court except--
- (a) members and officers of the Court and any other security personnel required by the Court;
 - (b) parties to the case before the Court, their attorneys, witnesses giving or having given their evidence, and other persons directly concerned with the case;
 - (c) if the accused is a juvenile, his parents or guardians;
 - (d) such other persons as the Court may specifically authorize to be present.
- (2) In the interest of public safety, public order or public morality, the Court may direct that--
- (a) in relation to any witness called or appearing before the Court, his name, the address of the witness, or such other particulars concerning the witness as in the opinion of the Court should be kept confidential, shall not be published;
 - (b) no particulars of the trial other than the name of the accused, the offence charged and the verdict and the sentence shall be published without prior approval of the Court.
- (3) Any person who publishes any information in contravention of a direction under subsection (2) shall be guilty of an offence and liable on summary conviction thereof in the Court to a fine not exceeding two thousand dollars or to imprisonment for a term not exceeding twelve months.
- 14.--(1) A sentence pursuant to subsection (2) of section 8 shall not be subject to appeal.
- (2) Subject to subsection (1) a decision of the Court shall be subject to appeal in like manner and to like extent--
- (a) in a case of any decision of a High Court or a Circuit Court Division of the Court, as such a decision by a Circuit Court;
 - (b) in any other case, as such a decision by a Resident Magistrate's

Court.

- (3) Except from a decision given by a Circuit Court Division of the Court, the decision of the Court of Appeal on any appeal under subsection (2) shall be final and conclusive.
 - (4) Save with leave of the Court of Appeal, no appeal shall lie to Her Majesty in Council in the case of any decision given by a Circuit Court Division of the Court.
 - (5) In this section "decision" means--
 - (a) in respect of a decision of a Circuit Court Division of the Court, conviction and sentence;
 - (b) in any other respect, judgment.
- 15--(1) Subject to the provisions of subsection (2), (3) and (4), the Resident Magistrates named from time to time by the Minister for purposes of 135 of the Judicature (Resident Magistrates) Act, or a majority of them, revoke and alter rules for the Court--
- (a) for the effectual execution of this Act and of the objects thereof;
 - (b) for the regulation of the practice and proceedings of the Court;
 - (c) for the regulation of all orders and judgments and the keeping of books by the Clerk of the Court, recording or relating to the proceedings of the Court;
 - (d) for the setting of the duties of the officers of the Court.
- 16.--(1) the Minister may make regulations in relation to all or any of the following matters--
- (a) the detention of persons on conviction or otherwise in custody in pursuance or for the purposes of this Act;
 - (b) anything to be prescribed by this Act;
 - (c) making with effect from a prescribed date, not earlier than the 1st of April, 1974, such adaptations and modifications in any other law made or having effect prior to the 1st of April, 1974, aforesaid as appear to him necessary or expedient on account of anything provided by or under this Act;
 - (d) the recordings by shorthand writers or otherwise of proceedings in

any Division of the Court;

- (e) any other matters (whether similar to the foregoing or not) which appear to him necessary or expedient to give full effect of this Act.
 - (2) Any regulations adapted or modifying any Act or Law under paragraph (c) of subsection (1) shall be subject to affirmative resolution.
 - (3) In subsection (1), "law" includes any instrument having the force of law and unwritten rules of law.
- 17.--(1) The Chief Justice may, by order, designate any Circuit Court to be a Circuit Court Division of the Gun Court.
- (2) The Chief Justice may, by order, designate any Resident Magistrate's Court to be a Resident Magistrate's Division of the Gun Court.
 - (3) The officers of any court designated under this section shall be regarded and treated as having been assigned as such officers, respectively, to the Court pursuant to this Act.
 - (4) Any order under this section may contain such consequential, supplementary or ancillary provisions as appear to the Chief Justice to be necessary or expedient.
18. Every person who (whether in the Court or elsewhere) in relation to any offence--
- (a) injures or damages or threatens or attempts to injure or damage the person or property of another with either of the following two intents--
 - (i) to obstruct, defeat or pervert the course of justice in the Court; or
 - (ii) to punish any person for, or prevent or dissuade him from, doing his duty in the interests of justice in the Court; or
 - (b) bribes or attempts to bribe, or makes any promise to, any other person with either the following two intents--
 - (i) to obstruct, defeat or pervert the course of justice in the Court; or
 - (ii) to dissuade any person from doing his duty in connection with the course of justice in the Court, shall be guilty of an offence, which may be dealt with and punished in like manner as the

first-mentioned offence, and the person so offending may be proceeded against, tried and convicted accordingly, either together with the person accused of that offence or otherwise: Provided that where the first-mentioned offence is a capital offence, a person convicted under this section shall be sentenced to imprisonment at hard labour for life.

- 19.--(1) Save as respects a Juvenile Court, nothing in the foregoing provisions of this Act shall be construed to divest any court of any jurisdiction.
- (2) No person shall be liable to life imprisonment by virtue of only this Act for any offence committed prior to the 4th of February, 1976, but nothing herein shall preclude the trial of such an offence by the Court.
20. For the purposes of this Act, possession of a firearm or ammunition by any person shall be deemed not to be in contravention of section 20 of the Firearms Act if a license authorizing his possession of that firearm or ammunition was issued under that Act and the contravention of section 20 aforesaid resulted from--
- (a) failure to pay the appropriate duty in respect of the license; or
 - (b) expiry of the license by effluxion of time; or
 - (c) breach of any of the terms or conditions included in the license.

Appendix B

Gun Court Review Board Regulations

A brief examination of the Gun Court Review Board Regulations shows the following:

- (1) The case of any detainee may be considered by the Board at any time during his detention. (Presumably this meant that a detainee who appealed against his conviction could have his case considered while he remained an appellant).

- (2) The case of a detainee must be considered by the Board in the following circumstances:
 - (a) upon the expiration of two years from the commencement of his detention followed by subsequent intervals none of which shall exceed six months, or

 - (b) if the Minister so directs, or

 - (c) if the Gun Court in passing sentence makes any recommendation for the consideration of the Review Board. (In this connection it would appear that if the Gun Court should recommend that the case of a particular defendant be not reviewed until four years after his detention, this recommendation would clash with the regulation in 2 (a) above).

- (3) The Board must have access to any detainee as it thinks fit for the purpose of its functions.**
- (4) The Board may require any person to appear before it and such person may be examined on oath.**
- (5) Any person appearing before the Board shall have his expenses (including travelling) paid from public funds but the Board may disallow the whole or part of such expenses as it thinks fit.**
- (6) The Board may meet as often as may be necessary or expedient and at such time or place as it may determine.**
- (7) The chairman may call a special meeting of the Board or a special meeting may be convened at the request of any two members of the Board.**
- (8) At any meeting of the Board three members shall form a quorum and the decision of the Board shall be by the majority of the members present and voting with a casting vote reserved for the member presiding in case of a tie.**
- (9) Members of the Board are to be paid such salaries, fees or allowances as may be fixed by resolution of the House of Representatives.**
- (10) All documents, information or reports obtained or received by or for the Board are to remain secret and confidential.**

(11) A breach of certain specific regulations is punishable in a summary manner with a fine of \$100 or three months imprisonment at hard labor.

(It is not clear, however, whether this breach was punishable before any Resident Magistrate or before the Gun Court itself).

The first Gun Court Review Board consisted of Sir Herbert Duffus, retired Chief Justice; Rev. Webster Edwards, the nominee of the Jamaica Council of Churches; Dr. W. J. S. Wilson, Chief Medical Officer; Dr. Michael Beaubrun, the nominee of the Prime Minister after he had consulted with the Leader of the Opposition; and, Mr. C. M. Lipsett, the Director of Prisons.

Source: *Jamaica Gazette Supplement*, May 9, 1974.

Appendix C

Amendment to Gun Court Act, 1976

The Privy Council declared the Full Court Division of the Gun Court unconstitutional. Section 4 was amended in order to substitute for it a High Court Division constituted by a Supreme Court judge sitting without a jury. The amendment of Section 5 conferred on this new division, jurisdiction over any firearm offense which was not a capital offense. The effect of these reforms was to remove from the Resident Magistrate's jurisdiction any offenses which fell within the new definition of "firearm offense" and to render any such case triable only by a Supreme Court judge. The Resident Magistrate's Division also, in addition to exercising jurisdiction in preliminary examination relating to a capital firearm offense was empowered to hear cases under Section 3 of the Gun Court Act.

In holding that the Full Court Division of the Gun Court was unconstitutional, the majority decision of the Judicial Committee paid great regard to the provision of the Constitution dealing with the method of appointment and security of tenure of the members of the judiciary which were designed to assure to them a degree of independence from the executive and the legislature. The effect of these provisions was that Supreme Court judges were protected by entrenched provision of the Constitution against Parliament passing ordinary laws: (a) abolishing the office; (b) reducing their salary while in office; (c) providing that their tenure of office shall end before the age of 65.

The Privy Council held that the attempt of Parliament to confer jurisdiction on three Resident Magistrates to try grave criminal offenses and impose severe penalties would have deprived individual citizens of the safeguards which the makers of the Constitution regarded as necessary, of having important questions affecting his civil or criminal responsibilities determined by a court composed of judges whose independence from all local pressures of Parliament or the executive was guaranteed by a security

of tenure more absolute than that provided by the Constitution for judges of inferior courts.

The mandatory sentence of indefinite detention prescribed by Section 3(2) of the Gun Court Act for firearm offenses was also ruled unconstitutional by the Privy Council. The reasoning applied was that since the sentence was subject to review by the Review Board, which was in effect a non-judicial body that had been imposed by the executive and not the judiciary, this provision violated the separation of power of the legislative, judicial and executive, as it was envisaged by the Constitution.

In striking down the mandatory indefinite detention sentence the Judicial Committee of the Privy Council held that the role of the Review Board in its exercise of sentencing discretion took away from the courts the judicial power of determining length of sentence. In the words of Lord Diplock, who delivered the unanimous decision of the Judicial Committee:

If, consistently with the Constitution, it is permissible for the Parliament to confer the discretion to determine the length of custodial sentences for criminal offences upon a body composed as the Review Board is, it would be equally permissible to a less well-intentioned Parliament to confer the same discretion upon any other person or body of persons not qualified to exercise judicial powers, and in this way, without any amendment of the Constitution, to open the door to the exercise of arbitrary power by the Executive in the whole field of criminal law. ("PM's advisor," 1974).

In a sense the majority decision of the Privy Council was a triumph of British pragmatism. It affirmed the convictions of the appellants in the Resident Magistrate's Division of the Gun Court while striking down those provisions of the Act which most contravened the Constitution. This result was achieved by severing some provisions of the Act from others.

Consequently, in order to prescribe a punishment which reflected the gravity of the offense in question but at the same time held regard to constitutional restraint, Section 8 was amended so as to prescribe a

substantial penalty for certain offenses under that Section which carried a sentence of indefinite detention. Consequently, upon the Privy Council's ruling of the Review Board as unconstitutional, this Review Board was abolished. Thus, Section 8 was amended to remove the reference to the Board; Section 20, which provided for the establishment of this Board was repealed as was Section 16(1)(d) which gave the Minister power to make regulations in relation to the constitution of the Review Board. In addition, appropriate reforms were made to other sections of the Act, notably Sections 9, 12, 13 and 15.

The first amendment of the Gun Court Act had many effects. For instance, persons then being held by the Gun Court under a sentence of indefinite detention who did not appeal had no legal redress because the time in which they could have appealed expired although the sentence was declared unconstitutional. It may be recalled that the Act set up three divisions, i.e., Resident Magistrate Division, Full Court Division, and Circuit Court Division. In fact, because of the appeals that were pending, the division that sat from 1974-1976 was the Resident Magistrate Division, which had the jurisdiction for trying the offenses of illegal possession of a firearm. The effect of that was that no persons charged with a firearm offenses, such as robbery and shooting, were tried for those substantive offenses since the establishment of the Court. The uncertainty of the constitutionality of the Full Court Division made it wise not to commence the sitting of that division and that being the only court to have jurisdiction to try these offenses, no such cases were tried.

Appendix D

Amendment to Gun Court, 1982

Interim amendments to the Gun Court Act which introduced a greater degree of flexibility in two important areas were approved in the House of Representatives on December 14, 1982. Twenty government members who were present in the chamber voted unanimously in support of amendments after the Minister of National Security and Justice, Winston Spaulding, piloted the bill entitled, "An Act to Amend the Gun Court Act."

The Minister, faced by a walk-out by the five members of the Opposition over a procedural ruling by the Speaker, stated that it was a considered necessity at this time as a matter of urgency to implement certain measures. It was against this background that this second amendment to the Gun Court Act was proposed. The amendment was passed on December 15, 1982 and the principal alterations to the then existing Act was as follows:

1. Mandatory sentences were abolished. Gun Court judges were given full discretion to adjust the level of sentence to the circumstances of the offense and the record of the offender. The maximum penalty continued to be life imprisonment.
2. Subsection (5) of Section 20 of the Firearms Act contained a provision whereby a person would be in serious jeopardy of being found guilty of illegal possession of a firearm merely by being innocently associated with someone else who was in possession of that firearm. The amendment now introduced by this legislation provided that in those circumstances the person not in possession of the firearm would only be implicated if there was evidence that he was present, aiding and abetting the person who carried the firearm.
3. Children under 14 years of age were no longer to be tried in the Gun

Court unless they were involved with a joint trial with a person over 14. The Juveniles Court, which was the most suitable forum for dealing with cases affecting children, was restored to its proper position in firearm offenses.

- 4. Juveniles over 14 years and under 17 years of age, although tried in the Gun Court, were given the benefit of a recommendation from the Court that they be detained in some other place than a prison.**
- 5. Authority was given to the Resident Magistrate attached to the Gun Court to handle all ancillary matters that may rise before the actual day of the trial and thus reduce the time currently wasted in making applications on the day of the trial itself.**
- 6. The Resident Magistrate's Court in all parishes except Kingston, St. Andrew and St. Catherine, were given the power to decide whether a particular charge could well be dealt within the Resident Magistrate's Court itself, or needed to be referred to the Gun Court.**
- 7. Divisions of the Gun Court were permitted be constituted in the parishes themselves by a judge on Circuit. This enabled witnesses to be more conveniently accomodated in Gun Court trials in those parishes.**
- 8. A Resident Magistrate in any parish other than Kingston, St. Andrew or St. Catherine, was empowered to: (a) to commit without holding a preliminary examination, a person charged with a firearm offense which is not a capital offense, for trial during the next ensuing sitting of the Circuit Court for that parish before the Circuit Court Judge sitting as the High Court Division of the Gun Court; and, (b) to hold a preliminary examination where the person is charged with a capital**

- offense and to commit that person to the Circuit Court Division of the Gun Court constituted by a Judge of the next ensuing Circuit Court for the parish, sitting with a jury for that purpose.**
- 9. Provision is also made in the bill for a Resident Magistrate, after consultation with the Registrar of the Supreme Court, to assign cases referred to in paragraph 8 above for trial in another parish.**
 - 10. Mechanism under Section 90 of the Constitution of Jamaica was put into place to deal with the review of some 1,500 incarcerated individuals convicted under the Act without judicial discretion and serving life imprisonment (see Addendum).**
 - 11. A Committee was established to examine a further medium and further long-term proposals for on-going reform.**

Appendix EFIREARM STATISTICS

**Table 2.1 INCREASE IN NUMBER OF TOTAL FIREARM
CRIMES AND PERCENT CHANGE, 1973-1982.**

Year	Total Firearm Crimes	Percent Change
1973	N	N
1974	2,239	N
1975	N	N
1976	3,178	N
1977	3,829	20.5
1978	4,883	28.0
1979	3,210	-34.3
1980	5,550	73.9
1981	N	N
1982	N	-32.5*
Total:	N	Mean Change: N

Source: Economic and Social Survey: Jamaica National Planning Institute, 1973-1982; * The Daily News, January 26, 1983.
N - not determinable.

**Table 2.2 TOTAL NUMBER OF FIREARM-HOMICIDES
AND PERCENT CHANGE, 1973-1982.**

Year	Total Firearm-Homicides	Percent Change
(1973-74)	124	N
1974	62	-50.0
1975	N	N
1976	216	N
1977	242	12.0
1978	264	9.1
1979	166	-37.1
1980	643	287.3
1981	303*	-58.2
1982	142	-53.1
Total:	2,162#	Mean Change: N

Source: Economic and Social Survey: Jamaica National Planning Institute, 1973-1978 (Figures 1979-1982 were published in The Daily Gleaner, March 16, 1983): * The Daily Gleaner, February 15, 1982, from figures released by the Police Information Centre.

one study year missing

N - not determinable

**Table 2.3 TOTAL NUMBER OF HOMICIDES AND PERCENT
IN WHICH FIREARMS USED, 1973-1982.**

Year	Total Number of Homicides	Percent Firearms
1973	232	-53.4
1974	207	33.9
1975	289	N
1976	388	55.7
1977	389	62.2
1978	381	69.3
1979	351	47.3
1980	N	N
1981	303	61.8
1982	424	56.6
Total:	3,064#	Mean: N

Source: Economic and Social Survey: Jamaica National Planning Institute, 1973-1982.

one study year missing

N - not determinable

**Table 2.4 TOTAL NUMBER OF FIREARM-ROBBERIES
AND PERCENT CHANGE, 1973-1982.**

Year	Total Number of Firearm-Robberies	Percent Changes
1973	N	N
1974	1,502	N
1975	N	N
1976	1,831	N
1977	2,182	19.2
1978	2,622	0.2
1979	1,996	-23.8
1980	2,458	23.1
1981	2,598*	5.7
1982	N	N
Total:	N	Mean Change: N

Source: Economic and Social Survey: Jamaica National Planning Institute, 1973-1982; * The Daily Gleaner, February 2, 1982.
N - not determinable.

**Table 2.5 TOTAL NUMBER OF ROBBERIES AND PERCENT
IN WHICH FIREARMS USED, 1973-1982.**

Year	Total Number of Robberies	Percent Firearms
1973	3,225	N
1974	2,417	N
1975	3,209	N
1976	3,094	59.2
1977	3,492	62.5
1978	3,990	65.7
1979	3,650	54.7
1980	N	N
1981	4,617*	56.3
1982	N	N
Total:	N	Mean: N

Source: Economic and Social Survey: Jamaica National Planning Institute, 1973-1982; * The Daily Gleaner, February 15, 1982.
N - not determinable

Table 2.6 TOTAL NUMBER OF INTENTIONAL NONFATAL SHOOTINGS AND PERCENT CHANGE, 1973-1982.

Year	Total Shootings	Percent Change
1973	702*	N
1974	625	-36.7
1975	717	14.8
1976	979	36.5
1977	1,165	19.0
1978	1,730	48.5
1979	893	-48.4
1980	2,283	155.7
1981	1,387	-39.2
1982	938**	-32.4**
Total:	11,419	Mean Change: 16.0

Source: Economic and Social Survey: Jamaica National Planning Institute, 1973-1982; * The Daily Gleaner, February 15, 1982; ** The Daily News, January 26, 1983. "Breaches of Firearm Act" and "Intentional Shootings" formerly were merged. N - not determinable.

**Table 2.7 TOTAL NUMBER OF BREACHES OF FIREARMS
LAW AND PERCENT CHANGE, 1973-1982.**

Year	Number of Breaches	Percent Change
1973	305	N
1974	322	5.6
1975	304	5.6
1976	7,916	0.2
1977	795	0.1
1978	855	7.5
1979	856	0.1
1980	1,559	82.1
1981	1,170	-25.0
1982	905**	-22.0
Total:	7,862	Mean: 22.5

Source: Economic and Social Survey: Jamaica National Planning Institute, 1973-1982; * The Daily Gleaner, February 2, 1982; ** "Breaches of Firearm Act" and "Intentional Shootings" formerly were merged.
N - not determinable

**Table 2.8 TOTAL NUMBER OF FIREARM-RAPES
AND PERCENT CHANGE, 1973-1983.**

Year	Number of Firearm-Rapes	Percent Increase
1973	75	N
1974	67	-11.0
1975	N	N
1976	N	N
1977	N	N
1978	267	N
1979	155	-42.0
1980	166	7.1
1981	273	64.5
1982	350*	28.2
Total:	N	Mean: N

Source: Economic and Social Survey: Jamaica National Planning Institute, 1973-1982; * total sexual assaults, The Daily Gleaner, February 2, 1982.
N - not determinable.

Table 2.9 GROWTH IN THE SIZE OF THE JAMAICAN POPULATION, AND PERCENT CHANGE, 1973-1982.

Year	Population	Percent Change
1973	2,042,700	1.73
1974	2,047,800	0.25
1975	2,052,600	0.23
1976	2,085,500	1.60
1977	2,109,400	1.15
1978	2,164,500	2.61
1979	2,186,100	0.10
1980	2,225,200	1.79
1981	2,296,604	3.20
1982	2,218,450	-3.40
	Mean Change:	.93

Source: Census Reports (1970, 1980); Annual Abstracts of Statistics (1971-1982).

**Table 2.10 FIREARM CRIME RATES PER 100,000
POPULATION AND THEIR ANNUAL
PERCENT CHANGE, 1973-1982.**

Year	Total Firearm Crime Rate	Percent Change
1973	N	N
1974	109.3	N
1975	N	N
1976	152.4	N
1977	181.5	19.1
1978	225.6	24.3
1979	146.8	-34.9
1980	249.4	69.9
1981	N	N
1982	N	N
Mean Rate:	N	Mean Change: N

Source: Computed from Crime Statistics Register (1973-1982); Census Reports (1970, 1980); Annual Abstracts of Statistics.

**Table 2.11 FIREARM-HOMICIDE RATES PER 100,000
POPULATION AND THEIR ANNUAL PERCENT
CHANGE, 1973-1982.**

Year	Total Firearm-Homicide Rate	Percent Change
1973	6.07	N
1974	3.08	-49.3
1975	N	N
1976	10.36	N
1977	11.47	10.7
1978	12.20	6.4
1979	7.59	37.8
1980	28.90	280.8
1981	13.19	-54.4
1982	6.40	-51.5
Mean Rate:	N	Mean Change: N

Source: Computed from Economic and Social Survey:
Jamaica National Planning Institute, 1973-1982;
Census Reports (1970, 1980); Annual Abstracts of
Statistics (1973-1982).
N - not determinable

**Table 2.12 FIREARM-ROBBERY RATES PER 100,000
POPULATION AND THEIR ANNUAL PERCENT
CHANGE, 1973-1982.**

Year	Total Firearm-Robbery Rates	Percent Change
1973	N	N
1974	73.35	N
1975	N	N
1976	87.80	N
1977	103.44	17.8
1978	121.14	17.1
1979	89.93	-25.8
1980	110.46	22.8
1981	113.12	2.4
1982	N	N
Mean Rate:	N	Mean Change: N

Source: Computed from Economic and Social Survey:
Jamaica National Planning Institute, 1973-1982;
Census Reports (1970, 1980); Abstracts of
Statistics (1973-1982).
N - not determinable

**Table 2.13 INTENTIONAL SHOOTINGS PER 100,000 POPULATION
AND THEIR ANNUAL PERCENT CHANGE, 1973-1982.**

Year	Intentional Shootings Rate	Percent Change
1973	34.37	N
1974	30.52	-11.2
1975	34.93	14.4
1976	46.94	34.4
1977	55.29	17.8
1978	79.93	44.6
1979	40.85	-48.9
1980	102.60	151.2
1981	60.39	-41.1
1982	42.29	-30.0
Mean Rate:	52.80	Mean Change: 131.2

Source: Computed from Economic and Social Survey: Jamaica, National Planning Institute, 1973-1982; Census Reports (1970, 1980); Abstracts of Statistics (1973-1982).
N - not determinable

**Table 2.14 BREACH OF FIREARMS RATE PER 100,000
POPULATION THEIR ANNUAL PERCENT
CHANGE, 1973-1982.**

Year	Breach of Firearms Rate	Percent Change
1973	14.93	N
1974	5.72	-5.3
1975	14.81	-5.8
1976	38.12	157.4
1977	37.69	-1.1
1978	9.50	3.8
1979	39.10	60.0
1980	70.00	68.9
1981	50.94	-27.3
1982	40.97	-19.6
Mean Rate:	36.19	Mean Change: 21.2

Source: Computed from Economic and Social Survey; Jamaica National Planning Institute, 1973-1982; Census Reports (1970, 1980); Abstracts of Statistics (1973-1982).
N - not determinable

**Table 2.15 FIREARM-RAPE RATES PER 100,000
POPULATION AND THEIR PERCENT
CHANGE, 1978-1982.**

Year	Total Firearm-Rape Rates	Percent Change
1978	12.36	N
1979	7.09	-42.7
1980	7.46	5.2
1981	11.89	59.4
1982	15.78	32.7
Mean:	10.91	Mean Change: N

Source: Computed from Economic and Social Survey; Census Reports (1980); Abstracts of Statistics, (1978-1982).
N - not determinable

Table 2.16 DISPOSAL OF CASES AT GUN COURT.

Year	New Cases	Convicted	Dismissals	Pending
1974	403	102	226	75
1975	645	165	364	116
1976	899	155	493	251
1977	760	160	535	65
1978	794	148	421	225
1979	734	138	475	121
1980	923	148	149	626
1981	820	154	587	79
1982	792	77	491	224
Totals:	6,770	1,247	3,741	

Source: Gun Court Clerk Statistics

Appendix F**PERCENTAGE DISTRIBUTION OF THE EMPLOYED LABOR FORCE BY
INCOME GROUP - OCTOBER 1974, 1977 AND NOVEMBER 1980**

Income Group (Average per week)	1974 October	1977 October	1980 November
TOTAL	100.0	100.0	100.0
No income	6.2	7.7	7.6
Under \$10	24.8	14.8	5.0
\$10 to under \$20	24.4	19.5	9.0
\$20 to under \$30	17.1	19.6	12.9
\$30 to under \$40	9.3	10.3	14.4
\$40 to under \$50	5.8	7.0	10.8
\$50 to under \$100	9.4	14.6	24.7
\$100 and over	3.0	6.5	15.6

Source: Pocketbook of Statistics, Jamaica, 1981

Appendix G

Interviews and Newspaper Analysis

One of the most striking aspects of this study was the discovery that so little was written by the lawyers and scholars of Jamaica on the Gun Court Act. Partly, this is a function of all Third World research and partly a function of the political context of the passage of the Act.

However, due to the limited number of relative direct participants in the history of the Gun Court Act, interviewing was selected as a primary means of data gathering. Interviewing served several purposes: discovery of the firearm violence prior to, and following passage; the effect the Act had on component parts of the criminal justice system; and the discovery of the motivation for supporting or opposing the Act (the issue of political motivation behind crime legislation). All interviews were generally retrospective and were concerned specifically with the Act. No interview lasted less than 30 minutes, while a number of interviews lasted over three hours. Questions were framed with the particular potential knowledge of the respondent in mind.

The following list represents those individuals interviewed who have agreed to be identified:

<u>Individual</u>	<u>Position</u>	<u>Place</u>	<u>Date</u>
1. Hyacinthe Adams	upper class	Kingston	8/22/84
2. Dr. Lloyd Barnett	attorney	Kingston	12/15/82
3. Carol Lawrence-Beswick	prosecutor	Kingston	12/14/82
4. Norma Brown	lower class	Kingston	8/22/84
5. K.C. Burke	pres. Bar Asstn.	Kingston	12/15/82
6. Claudette Chung	middle class	Kingston	12/12/82
7. Michael Chung	middle class	Kingston	12/10/82
8. Dorothy Collins	lower class	Kingston	8/18/84

<u>Individual</u>	<u>Position</u>	<u>Place</u>	<u>D a t e</u>
9. Denis Daly	attorney	Kingston	12/15/82
10. Ian Farren	student	Kingston	12/18/82
11. Neville Farren	gvt. official	Kingston	12/18/82
12. Chris Frawley	middle class	Kingston	8/22/84
13. Maisey Frazier	librarian	Kingston	12/19/82
14. Freeman Jacobs	taxi driver	Mo. Bay	8/20/84
15. R. N. A. Henriques	attorney	Kingston	12/16/82
16. Connie Howard	lower clas	Kingston	12/12/82
17. Kenneth Issacs	upper class	Ocho Rios	12/20/82
18. Audrey Jarrett	middle class	Kingston	12/15/82
19. Norma Litton	attorney	Kingston	12/13/82
20. Michael Manley	P. M.	New York	3/22/84
21. Wilfred Motta	lower class	Kingston	8/22/84
22. Gerhard Mueller	U.N.	New York	11/11/84
23. Iris Motta	lower class	Kingston	8/22/84
24. Owen Palmer	upper class	Ocho Rios	12/20/82
25. Gail Richards	student	Kingston	12/14/82
26. Joyce Richards	middle class	Ocho Rios	12/8/82
27. Ian Ransey	Attorney	Kingston	12/16/82
28. Carl Rattray	Attny Gnrl.	Kingston	12/15/82
29. Elijah Simmons	lower class	Mo. Bay	8/24/84
30. Eric Stewart	Gun Ct. inmate	Kingston	12/13/82
31. Sybil Tossaint	upper class	Kingston	12/13/82
32. Jennifer Williams	lower class	Sp. Town	12/14/82
33. Neville Williams	lower class	Sp. Town	12/14/82
34. Edwin Wint	upper class	Kingston	8/21/84

This list represents only those individuals who identified themselves and gave permission for there identities to be disclosed. Among those interviewed individuals who did not want there identities disclosed included

the following types: a Gun Court judge, a restaurant owner, a paint store owner, police officers, government bureaucrats, legal aid attorneys, district attorneys, alleged gunmen, Gun Court inmates and members of all social classes.

There is also a literature on newspapers and crime in Jamaica and the issues ascertained from it were popular beliefs, power, and pluralistic sources of support and opposition to the Gun Court Act, and popular notions of the effect the act had on the criminal justice system. The analysis of this literature helped to provide the specific role Jamaican interest groups played in the development and the implementation of the act. The nature of the roles played by interest groups was also investigated (i.e., if their roles changed and if so, why).

Journalistic articles and editorials were treated as a special class of documents. Newspaper articles were looked to for the more or less straight reporting of speeches and legislation, and the rather full and objective accounts by reporters of events they witnessed or men talked to. Editorials were looked to for the derivation of public opinion. It was kept in mind, however, that editorials are columns by the ownership and editorship of the newspaper, and although there is an inference that they will not depart too widely from the views of the majority, less they lose their allegiance, any specific case may be one in which the editors have departed from the views of the large part of the public.

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