THE DEVELOPMENT OF CRIMINAL LAW IN JAMAICA UP TO 1900

Thesis presented by

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for the Degree of Doctor of Philosophy in
the Faculty of Laws of the University of London

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June 1968

ABSTRACT

This work attempts to trace the development of criminal law in Jamaica from 1655 when the English captured the Island, up to 1900. In tracing this development emphasis is placed more on legislative enactments and their policies than on judical decisions, for it was in the field of penal legislation that Jamaican law tended to differ from English law.

In Chapter 1, the introduction of English law into the Island is outlined, and a theory as to Jamaica's status is proposed.

In Chapters 2 and 3 the background in which the penal legislation was enacted and administered in the 18th and 19th centuries is related. This necessitates an examination of the inhabitants, the legislators, the judiciary and the legal institutions.

In Chapters 4 and 5 the penal legislation relating to slaves is discussed. The various legislative devices aimed at preventing rebellions and at protecting the slave owners' property are related.

In Chapters 6, 7 and 8 the laws to protect the State, Persons and Property respectively are outlined.

In Chapter 9, four problems of particular importance to Jamaica are examined. These problems are Piracy, Obeah, Praedial Larceny and Vagrancy.

In Chapter 10 the attempt to codify the criminal law is related. Reasons for the failure at codification are suggested.

In Chapter 11 a brief look is taken at certain trends in penal legislation in the 20th century.

In Chapter 12, conclusions are drawn on the data provided in the preceding Chapters and certain proposals relative to the criminal law of Jamaica are put forward.

ABBREVIATIONS

A.A.L.S.	American Association of Law Schools
A.E.R.	All England Reports
A.P.C.	Acts of the Privy Council (Colonial Series)
CO	Colonial Office
C.S.P.	Calendar of State Papers (Colonial Series)
CTP	Council for Trade and Plantations
Eliz.	Elizabeth
Edw.	Edward
Geo.	George
Hen.	Henry
JAJ	Journal of the Assembly of Jamaica
Jas.	James
O.A.G.	Officer Administering the Government
P.P.	Parliamentary Papers
Phil. and Mary	Philip and Mary
Q.B.	Queen's Bench
Rev. Ed.	Revised Edition
T.S.P.	Thurloe State Papers
W.L.R.	Weekly Law Reports
Wm.	William
VAJ	Votes of the Assembly of Jamaica
Vic.	Victoria

TABLE OF CONTENTS

CHAPTER 1

The Introduction of English Laws

The origin of Jamaica's criminal law can only be understood against the background of the political and constitutional struggles of the Island from the earliest period of its recorded history. These struggles are important not only because they supply the keys to the Jamaican legal system but also because they reveal the profound influence which the constitutional and political disputes had on the immediate content and subsequent development of the criminal law. In this Chapter we intend to trace the protracted fight by the Jamaicans to acquire English laws and outline the factors which were the determinants in the agreement ultimately arrived at. The Chapter will be divided into two sections: (A) The Struggle For English Laws (B) Theories As To Jamaica's Status.

(A) The Struggle For English Laws.

Documentation of Jamaica's history begins with the arrival of Christopher Columbus on the north-side of the Island on the 5th of May 1494. The Island was then inhabited by the Arawak Indians, whom Black tells us had no form of writing and so left no written record.[1] The Spaniards established a government, and although attempts were made in 1596 and 1643 by English forces to wrest the Island from the Spanish, Jamaica remained a Spanish possession for over one hundred and sixty years. Within this period the Spaniards succeeded in exterminating completely the

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1. Clinton V. Black, History of Jamaica p.11

indigenous people. In May 1655, English forces under Admiral Penn and General Venables, having being battered and repulsed at Santo Domingo, found Jamaica " a place more suitable to their courage"[2] and captured the Island. The Spaniards, and the Africans whom they had brought to the Island as slaves, preferred not to engage the English in armed combat and fled to the safety of the woods.[3] The Spaniards capitulated and eventually found their way to neighbouring Cuba, but some of the ex-slaves ensconced themselves in the woods from which they sallied forth to harass the new inhabitants of the Island.[4] Finding no machinery of government in existence, indeed finding no conquered people to govern, the English were left with the job of settling the Island and establishing an administration.[5]

Both Penn who headed the navy, and Venables who commanded the army, returned to England shortly after, having handed over their military commissions to Admiral Goodson and Major-General Fortescue. In October 1655 Major Robert Sedgwicke arrived in Jamaica as commander-in-chief of the Island. From

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2. Thurloe State Papers, Vol. 3, p.565.
3. For this early history of Jamaica see Bryan Edwards, The History, Civil and Commercial, of the British Colonies in the West Indies (5th ed.); F.R. Augier, S.C. Gordon, D.G. Hall, M. Reckord, The Making of the West Indies. J.H. Parry and P.M. Sherlock, A Short History of the West Indies.
4. These ex-slaves were later known as the Maroons. See Chapter 4, infra.
5. This accounts for the absence of Spanish Laws under the English administration, although Spanish Laws were in force and administered during the Spanish regime. See F. Cundall and J. Pietersz, Jamaica Under the Spaniards.

his despatches to Cromwell, we glean that the scope of his commission was at first a matter of dispute among the local commanders:[6]

> "In agitating what was now best to be done, though my commission as commissioner was owned, yet it was apprehended, there could be no acting as a commissioner, I being but one, seeing the constitution of the commissioner's power alloweth not of any act, but what was acted by three or in some cases by two ..... Yet after some days of debate, and sometimes some hot discourse, we at last agreed to act together jointly to be serviceable to the good of the whole".

In the meantime, fifteen officers in the army had made representations to Cromwell regarding a constitution for the Island:[7]

> "That for the better regulatinge and ordering this little commonwealth, and encouragement of such as desire to live under a civill and settled government, his highnesse will please to make such constitutions and lawes, as his highnesse shall think meete for the government of this place, or impower such in the place, as his highnesse shall approve of, to make and constitute from time to time, such wholesome and necessary lawes, as shal bee most fitt for the better ordering and government of thinges here; and to erect court and courts of justice and equity for decideing of controversies betweene party and party."

No constitution for a civil government was made and the Island continued to be governed under military jurisdiction. The rules appear to have been made by a Council of War.[8]

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6. Thurloe State Papers, Vol. 4, p.152.
7. Thurloe State Papers, Vol. 3, p.661.
8. See Original Journal of Colonel Edward D'Oyley. B.M. Add MSS. 12423.

Five years later, the Privy Council ordered the Committee for the American plantations to acquire information about Jamaica from persons who were acquainted with the Island. Shortly after,[9] a Committee was appointed to consider Jamaican affairs and a Commission was prepared for Colonel Edward D'Oyley, who had been one of the military rulers, to be Governor of the Island.[10] D'Oyley, a man with firm views as to his own qualifications and ability,[11] was commissioned to elect a Council of twelve to help him govern.[12] With them he was to make laws and "Settle such Judicatories for civill affaires and for the Admiralties as may be proper to keepe the peace of the Island and may determine all matters of right and Controversy according to Justice and Equity."[13]

Within months of capturing Jamaica, Cromwell had published a proclamation[14] offering generous terms to those who would settle in Jamaica. It also stated that all persons born within the Island

> "shalbe and shalbe deemed and accounted to be free denizens of England and shall have and enjoy all and every such benefitte and priviledges advantages and imunities whatsoever as any the natives or people of England borne in England now have and enjoy in England."[15]

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9. A.P.C. Vol. 1, No. 489.
10. D'Oyley 's Commission, CO 138/1/3.
11. D'Oyley pleaded with Cromwell to be made commander-in-chief of the Island. "..... my education at the inns of courte, together with my continuall imployments, not mean ones in civill and martiall affairs these fowerteene yeares past, may give me experimentall abilities enough to performe the charge heere, as commander in chief of the forces, or governour, if I am allowed to be indued with common parts." Thurloe State Papers, Vol. 5, p. 138.
12. D'Oyley's Commission, CO 138/1/3.
13. D'Oyley's Instructions. CO 138/1/6.
14. Printed in Vol. 1 of the Statutes and Laws of the Island of Jamaica - Revised Edition by C. Ribton Curran, 1889.
15. Ibid.

After the Restoration, another proclamation was proposed and the Council for Foreign Plantations[16] ordered "that it be declared in the King's Proclamation for the encouragement of planters upon Jamaica, that they shall be governed by the laws of England."[17] The proclamation was published in December 1661 but this provision was not included. Instead it stated that

> "all children of any of our naturall borne subjects of England to bee born in Jamaica, shall, from their respective births, bee reputed to bee and shall bee free denizens of England, and shall have the same priviledges, to all intents and purposes, as our free borne subjects of England."[18]

The absence in the proclamation of a specific reference to the laws of England is remarkable, especially coming so soon after the Council's order.[19] However, on one interpretation the laws of England could be included in the term "the same priviledges... as our free borne subjects of England" and probably the laws of England were not specifically referred to, as Whitson states, "merely because it was thought unnecessary."[20]

In July 1661, a Committee of the Privy Council was appointed "to consider and frame a Modell for the Government of his Magisties Island of Jamaica"[21] and to prepare the necessary Instructions. Lord Windsor was then appointed Governor and

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16. For this institution see generally Lillian Penson, Colonial Agents in the West Indies. See also Chapter 2, infra.
17. C.S.P. 1661-68, No. 122.
18. See Laws of Jamaica (2nd ed. 1802) p.ii
19. Supra, note 17.
20. A. Whitson, The Constitutional Development of Jamaica, p.18
21. A.P.C. Vol. 1, No. 522. 3 July 1661.

he was instructed with the advice of the Jamaica Council[22] to establish Courts "to determine all matters of Right and Controversy and all Causes civill and criminall".[23] Furthermore, no man's "freehold, life or member"[24], was to be taken away or harmed except "by established Lawes (not repugnant to but as much as may be) agreeable to the Knowne Lawes of England"[25]. These Instructions also contained a very significant provision. Windsor was, with the advice of the Council to "call Assemblies, together, according to the customs of our Plantations, to make Lawes and upon eminent necessities to leavy Moneyes....Provided they (the laws) be not repugnant to any of our Lawes of England"[26]. These laws were to be "in force for two yeares and no longer unless they shall be approved and confirmed by us"[27]. Windsor's Commission and Instructions were equally important for what they omitted as for what they contained: nothing was said about the inhabitants of Jamaica being governed by or entitled to the laws of England.

Windsor's stay in Jamaica was not very long. On his return home, he was succeeded by the Deputy Governor, Sir Charles Lyttelton. In October 1663, Lyttelton and the Council seriously debated the "great good and content it will be to this Island....to have an Assembly chosen and elected by the votes of the Inhabitants of the Island"[28], and ordered the Provost Marshal to make arrangements for an election. An Assembly was elected and, meeting early in 1664,

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22. This Council was to be elected. See Windsor's Commission: CO 138/1/13 It appears however that Windsor's Council was appointed.
23. Windsor's Instructions. CO 138/1/13.
24. Ibid.
25. Ibid.
26. CO 138/1/18.
27. Ibid.
28. CO 140/1/11. Minutes of the Council, 23 October 1663.

it immediately displayed its legislative independence.

Among the first Acts it passed was one confirming several Acts of the Governor and Council of the Island and repealing all other ordinances.[29] Certain enumerated Acts were declared to be in force as if each Act or ordinance had been executed by the Governor and Council with the consent of the Assembly.[30] All other Acts not re-enacted were declared to be "void and for ever cease".[31]

A new Assembly was elected in October which was "much inferior to the other in parts and estates, [and] who had imposed upon them for Speaker, a malicious, beggarly, debauched fellow".[32] This did not dampen their legislative ardour. They forthwith passed an Act declaring the proceedings of the previous Assembly null and void.[33] The reasons for this action seem to have been that the writs by which that Assembly were summoned were illegal and that the laws had not been signed by the Lt. Governor.[34] Several Acts passed by the previous Assembly were re-enacted but some were omitted from the statute books. By now doubts seem to have arisen as to whether the settlers were entitled to English laws and the Assembly attempted to dispel any doubts that may have arisen on the matter: they passed an Act declaring the laws of England in force in Jamaica.[35] The Governor's reason for this Act was however not one of doubt but of convenience. On

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29. CO 139/1/41.
30. Ibid.
31. CO 139/1/41.
32. C.S.P. 1661-68, No.934.
33. CO 139/1/60.
34. See Whitson op.cit. p.32.
35. CO 139/1/65.

his arrival in Jamaica, he called the Assembly together and they passed several laws but finding their weakness in that work, passed the law like Sir Edward Poynings made in Ireland,[36] "thereby making us partakers of the most perfectly incomparable laws of our own country"[37] The Act stated that:[38]

> "all the Laws and Statutes heretofore made in our Native Country, the Kindgom of England, for the Publick Weal of the same and all the Liberties, Priviledges, Immunities and Freedoms Contained therein have always been of force and belonging to His Majesty's liege People within this Island as their Birthright and that the same ever were now and ever shall be Deemed good and effectual in the Law and that the same shall be Accepted, Used and Executed within this His Majesty's Island of Jamaica....Provided nevertheless and it is thereby further Declared and Enacted by the Authority aforesaid that the said Laws and Statutes may at any time hereafter by the Governor, Councill and Assembly be Mitigated, Altered, Lessened or Enlarged according as the Constitution of this place shall require...."

From the very beginning these two Assemblies gave notice that in Carlisle's words some years later "popular discourses prevail here as in England".[39]

Following his Instructions, Governor Modyford despatched these laws to England for confirmation. But in 1668 when writing to the Lord Keeper, the Governor told him that the laws had been remitted three years ago but "have been neglected to this day".[40]

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36. 10 Henry 7 c.22, Ireland.
37. C.S.P. 1661-68, No.1702.
38. CO 139/1/65.
39. C.S.P. 1687-80, No.794.
40. C.S.P. 1661-68, No.1702.

He further requested that the King's assent be obtained and that the laws be returned at the first opportunity. Again in 1670, Modyford wrote asking that the laws made by the Assembly "long since sent home for the Royal Assent be returned confirmed.... or so many of them as His Majesty shall approve".[41] As these Acts only had a legal life of two years, when they were not confirmed within that time, Modyford and the Jamaica Council kept them in force by Proclamation.[42] In 1671, Modyford said that the King had approved the Jamaican Acts[43] but there is no evidence to substantiate this.

Up to 1672 therefore, the Acts sent to England were not confirmed. In that year the Assembly having amended some, re-enacted them, and together with additional ones transmitted them for confirmation. The Governor, Sir Thomas Lynch, wrote the Council for Trade informing them that the sooner the laws were returned the better, not so much for governing the present inhabitants "who are very respective to authority", but for encouraging others to come.[44] But when the two-year period of limitation for the laws was about to expire and the laws had not been confirmed, the Assembly again amended and re-enacted the laws which had been previously sent up for confirmation. The same device was adopted when the next two-year period was about to expire in 1676 and the laws had not been confirmed.[45] After

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41. C.S.P. 1669-74, No.264.
42. C.S.P. 1677-80, No.1234.
43. C.S.P. 1669-1674, No. 704.
44. C.S.P. 1669-1674, No. 885. Writing to the Secretary of State at the same time, Lynch commented on the fact that though the Council for Trade had at least 100 sheets of paper of his before them, he had not even had a syllable from the meanest of their clerks: C.S.P. 1669-1674, No. 886.
45. C.S.P. 1677-80, No. 1234.

these were despatched, Lord Vaughan,[46] wrote to the Council for Trade expressing the hope that the laws would be approved by His Majesty. Like Sir Thomas Lynch before him, he told them that the sooner the laws were returned the better as people were encouraged to come when they knew by what laws they were to be governed. He also reminded them that his Instructions prohibited him from re-enacting any.[47] Eventually between May and June 1676 the Council for Trade examined the set of Jamaican laws sent up for confirmation and by the end of July the Secretary informed Lord Vaughan that having finished the examination of the laws, their Lordships proposed a short review of their observations on them, and would then decide what report they would make to the King in this "great affair".[48] For his "private satisfaction"[49] the Secretary gave Vaughan an idea of some of the comments which had been made on the laws. These do not all seem to have been favourable because in his reply, Vaughan remarked that from the objections made to the laws they were not likely to be returned confirmed.[50]

It was almost a further year before the Council for Trade referred the complete set of laws to the Attorney General who was "particularly desired"[51] to consider how far "necessary and useful to the Island and consistent with His Majesty's interest"[52] was the Act declaring the laws of England to be in force in Jamaica.[53]

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46. Appointed Governor in 1674.
47. C.S.P. 1675-76, No. 799.
48. C.S.P. 1675-76, No. 1002.
49. Ibid.
50. C.S.P. 1675-76, No. 1094. He also related that with the exception of one Act he had not assented to any Act which was not already in force and which had not been twice re-enacted by Sir Thomas Lynch.
51. C.S.P. 1677-80, No. 226.
52. Ibid.
53. Re-enactments of the 1664 Act were passed in 1672 and 1674.

He was also directed to prepare a Bill like Poyning's Law in Ireland,[54] regulating the mode of enacting laws in Jamaica. Finally in November, a Committee of the Privy Council made several far-reaching recommendations in a report on the present state of Jamaica.[55] Their first observation was that from the resolutions wider authority had been assumed by the freeholders and planters. The laws transmitted by Lord Vaughan were therefore to be given to Lord Carlisle[56] who on his arrival in Jamaica, should offer them to the Assembly. The Assembly should then consent to the laws, as laws originally coming from the King. In the future no legislative assembly was to be called without the King's direction and in emergencies the Governor should acquaint the King of the necessity of calling such an Assembly; the Governor was to send to the King a scheme of the Acts he thought necessary so that the King could consider them, and return them in the form he thought them fit to be enacted; when the laws were returned the Governor should summon an Assembly and propose the laws for their consent "so that the same Method in Legislative Matters be made use of in Jamaica as in Ireland according to the form prescribed by Poyning's Law".[57] The style of enacting laws was to be altered from "By the Governor, Councill and Representatives of the Commons Assembled" to "Be it enacted by the King's most excellent Majesty and with the consent of the General Assembly".[58]

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54. C.S.P. 1677-80, No. 226.
55. See Whitson, op.cit., pp. 65-69, 74-75.
56. Appointed Governor to succeed Lord Vaughan.
57. A.P.C. Vol. 1, No. 1177
58. Ibid.

Carlisle's instructions were accordingly drafted on the basis of this report and armed with the body of forty laws which had been approved,[59] he set sail for Jamaica. Arriving in July, he reported to Secretary Coventry in August that some of the Council were much dissatisfied at the alterations in the laws and in the manner of passing them.[60] He feared that the Revenue Act would not pass without difficulty. His fears were to be fully justified.[61] The Assembly of this His Majesty's "darling plantation", met on September 2, 1678, but affectionate terms were of little avail to an angry legislature. Being dissatisfied at the new form of government and losing their power of altering and amending laws, the Assembly refused to pass any of the laws and "threw them all out".[62]

Some of the objections formulated by the Assembly were that the laws contained several fundamental errors; that the distance of Jamaica made the proposed method impracticable; that the nature of the colonies being changeable their laws should be adaptable to those changes; that the Assembly lost a deliberative power in making laws; that the proposed form of government rendered the Governor absolute.[63] On hearing of these objections, the Council for Trade retorted that the people of Jamaica could not claim greater privileges than those granted them by Charter or Act under the Great Seal and that from the first they were governed pursuant to the King's Instructions. They recommended that if the Assembly rejected

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59. The Act declaring the laws of England to be in force was not included.
60. C.S.P. 1677-1680, No. 779.
61. Carlisle's Speech to the Jamaica Assembly, See JAJ Vol.1, p.23.
62. C.S.P. 1677-80, No. 814.
63. Ibid., No. 1009.

the laws again, the Governor was to be furnished with the powers given to Colonel D'Oyley to enable him as far as possible to govern according to the laws of England, and in other cases to act by the advice of the Council until further orders.[64]

These recommendations were embodied in instructions to Carlisle but the Assembly again refused to enact the laws. By January 1680, the Council for Trade informed the King that letters received from Carlisle showed the Island to be in a very "unsettled condition".[65] In the meantime the Council for Trade consulted two former Governors of Jamaica - Lynch and Vaughan[66] and turned also to the Law Officers for advice. In March 1680 the Law Officers were asked four questions of which only two are of interest to us here: (1) Have the King's subjects in Jamaica a right to the laws of England as Englishmen or in virtue of the King's proclamation or otherwise? (2) Are not those subjects of Jamaica who claim to be governed by the laws of England bound as well by such laws as are beneficial to the King as by such as tend only to the benefit of the subject[67]? These two questions were also referred to the Judges for their opinion.[68] In June, an Order of the King in Council directed the Attorney General, Solicitor General and the Judges to answer one question instead of the two previously submitted to them:[69] whether by his letter, proclamation or commissions annexed, His Majesty hath excluded himself from the power of establishing laws in Jamaica, it being a conquered country and all laws settled by authority there being now expired.[70] Their answer to this question has not been found.

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64. Ibid., No. 1009.
65. Ibid., No. 1260.
66. Ibid., No. 1234, 1239.
67. Ibid., No. 1323.
68. Ibid., No. 1346.
69. Ibid., No. 1405.
70. Ibid.

While all this was taking place in England, Carlisle in Jamaica dismissed the Chief Justice, Samuel Long, from his post, expelled him from the Council, and brought him and "some of the stubbornest of the General Assembly"[71] to appear before the Council for Trade. After Long expounded the views of the Jamaicans, the Council for Trade referred two questions to Chief Justice North: (1) whether the King by proclamation published during Lord Windsor's government, his letter of 15 January 1672-3, or any other Act appearing by the laws of England or Jamaica or by any commission or instructions to the Governor has divested himself of the power he formerly had to alter the forms of government in Jamaica; (2) whether the Acts of the Assembly of Jamaica or any Act of the King have totally repealed Acts made by D'Oyley and Governor Lyttelton for raising public revenue or whether these Acts were still in force.[72]

Days later the Chief Justice informed the Council for Trade that the gentlemen of Jamaica were prepared to grant the King a perpetual revenue for the payment of the Governor and revenue for the payment of contingencies for seven years provided they be restored "to their ancient form of passing laws" and be assured of the laws of England as concern their liberty and property.[73] The following day the Council for Trade announced a face-saving formula[74] and to all intents and purposes the Jamaican Assembly regained their original power of making laws.[75] The Council for Trade subsequently inquired from Long whether the Assembly would

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71. C.S.P. 1677-80, No. 1302.
72. C.S.P. 1677-80, No. 1540. The Chief Justice was of the opinion that Lyttelton's Revenue Act in 1663 was still in force.
73. Ibid., No. 1559.
74. Ibid., No. 1561. The Council for Trade agreed that Jamaica should have the same powers of enacting laws as laid down in Sir R. Dutton's Commission for Barbados. This was similar to the original Jamaica method.
75. When Long and his colleagues heard, they were "well satisfied": C.S.P. 1677-80, No. 1562.

be willing to grant a perpetual revenue for the government. He replied negatively.[76] One formal set of instructions was then prepared for the Governor directing him to have a perpetual revenue bill passed and a private set instructing him that if he could not obtain the bill for perpetuity he was to obtain it for as long as he could, in any case not less than seven years.[77] Writing of the Jamaicans in this episode, a Jamaican historian has ecstatically declared that "no threats could frighten, no bribes could corrupt, no act or arguments could persuade them to consent to laws that would enslave their posterity".[78] Round one - the regaining of their "deliberative voice" - had been clearly won by Jamaicans. Round two - getting their laws confirmed and permanently settled - had still to be fought. At this point it should be noted that this discussion involving Jamaica was mainly concerned with the legislative process in the Island. Little was said concerning Jamaica's status - whether it was a settled or conquered colony.

In May 1681, Sir Henry Morgan,[80] communicated to the Council for Trade the "great satisfaction" in the Assembly at the restoration of their former privileges. Euphemistically he added that when he "insinuated among the leading men the strictness of my instructions to press for a perpetual revenue they inclined to some heat".[81] The Assembly argued that since Jamaica was a

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76. C.S.P. 1677-80, No. 1566.
77. Ibid., No. 1570, 1572.
78. Edward Long, The History of Jamaica. Vol. 1, p.11. Another historian wrote in the same strain: "The barons of Runnymede, the warriors of Marston Moor, had their true descendants in the Jamaica Legislature of that day". W. Gardner, A History of Jamaica p.66.
79. Appointed Lt. Governor to succeed Lord Carlisle.
80. C.S.P. 1681-85, No. 115.
81. Ibid.

young colony they would always have to be amending their laws and they feared that once a perpetual revenue was granted there would be no need for the Governors to call Assemblies to enact laws. Not only would they not pass a perpetual revenue bill, but they refused to pass one even for seven years. Morgan unenthusiastically wrote: "their fears, jealousies and suspicions are such that notwithstanding all my persuasions, all the friends I could make in the House, they drew up and passed a Bill limiting the revenue to two years"[82]. In November the Assembly changed their minds and passed a Revenue Bill for seven years. At the same time they repeated their ingenious device of tacking, that is they annexed to the Revenue Bill all the other Acts passed during the session and enacted that they were to be of equal duration with the Revenue Act. The Jamaica Council found it necessary to explain to the Council for Trade their reasons for agreeing to this extraordinary procedure.[83]

Contrary to Morgan's hopes the new laws passed with this procedure did not please the King. The newly appointed Governor, Sir Thomas Lynch,[84] was therefore directed to acquaint the Assembly that the King would not allow any laws to be tacked to the Revenue Bill and that if they refused to pass a Revenue

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82. Ibid., No. 246.
83. "Considering the impossibility of obtaining the Bill and other laws that depended on it on any other terms, the ruinous state of the forts and the difficulties of the Government for want of revenue and laws we thought best to accept the Bill on these terms rather than lose it". C.S.P. 1681-85, No. 367.
84. He was a former Governor of the Island.

Bill, the laws of England empower the King to levy tonnage and poundage.[85] If the Assembly passed the Revenue Act the King would then confirm their other laws for the same period as the Revenue Act.[86] In 1682 the Assembly passed another Revenue Act, providing revenue for seven years and in February 1683, the King reciprocated by confirming for seven years some of the laws that had been passed in the Jamaica Assembly in 1681.[87] Objections were raised at others which the King promised to confirm as soon as they were amended. But again the Act declaring the laws of England to be in force, after being referred to the Chief Justice,[88] was disallowed.

In 1683 the Assembly passed a new Revenue Act for twenty-one years, after the Governor had promised that the King would confirm their laws for a similar period.[89] By Order in Council of April 17, 1684, the King confirmed the Jamaica Acts for twenty-one years and on this essentially mercenary bargain, perched the duration of the Jamaican Acts.

Between 1684 and 1703 several attempts were made to get a perpetual revenue Act passed. None was successful, although in 1688 the Assembly having overcome their earlier distrust of such an Act did pass one.[90] But as this Assembly was alleged to

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85. C.S.P. 1681-85, No. 771.
86. This Revenue Act had no laws tacked to it.
87. For this the people of Jamaica were "eternally grateful". C.S.P. 1681-85, No. 1065.
88. C.S.P. 1677-80, No. 1567.
89. C.S.P. 1681-85, No. 1348.
90. JAJ Vol. 1, p.130.

have been elected by "threats, imprisonments, and men in arms"[91], the Privy Council "out of great tenderness to our subjects there and for quieting animosities amongst them and putting an end to all disputes concerning the said Assembly"[92], postponed the confirmation of the Act passed by that Assembly. Subsequent Assemblies were nevertheless warned that unless they passed another perpetual revenue Act, the 1688 Act would be confirmed.[93] But another perpetual Act was not passed and when the 1683 Revenue Act was about to expire, the Jamaica Assembly merely enacted a similar Revenue Act for twenty-one years, inserting in it a clause to continue all the Acts confirmed with it for twenty-one years.[94]

The standing of English laws in the Island remained equally unresolved. In 1711, the Privy Council announced their decision in the Jamaican case of Orby v. Long[95], which once more emphasized the uncertainty. A Committee of the Assembly reported to the House that from private correspondence they understood that "the chief point insisted on"[96] at the hearing was that the "laws, as well statute, as common laws, late of England now of Great Britain were not in force in this Island"[97]; the law made in Sir Henry Morgan's time declaring the laws of England in force had been disallowed but as no regular notice was given to the Island, the judges have acted according

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91. JAJ Vol. 1, p.141.
92. JAJ Vol. 1, p.279.
93. Ibid.
94. JAJ Vol. 1, p.323.
95. See A.P.C. Vol. 2, No. 1067.
96. JAJ Vol. 2, p.30.
97. Ibid.

to the laws and statutes of England; "if the said laws and statutes should not be allowed to be in force here, the Island would be in a very ill condition"[98]; so an Address was to be sent to the Queen on this matter. An Address presented to the House on the following day for debate stated inter alia:

> "That by commissions and instructions to all judges and other ministerial officers appointed in the said Island, they have been sworn to act and determine and have acted and determined according to the known laws of England; and it has ever since been the constant practice of the said island, in all causes, civil, criminal and mixed, to observe the common law and all general statutes of England made pro bono publico, and not by express words restrained to the kingdom of England ..... and the same are in force and have been always received as laws in the said island".[99]

Four days later the Island's Attorney General having apparently done some research, informed the House that a Journal of the Assembly in Governor Morgan's time, contained an entry of the privy seal disallowing the 1681 Act declaring the laws of England in force.[100] The proposed Address does not appear to have been sent to the Queen - may be as a result of the Attorney General's information.

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98. Ibid.
99. Ibid., 19 May, 1711. The Address continued that they had "no other laws by which to govern themselves but those of England only; and multitudes of judgments have been given and grounded according to such laws of England and not otherwise; and shall not your petitioners be permitted to enjoy the same they have hitherto done, not only multitudes of law-suits and controversies, must of consequence arise, but great confusion may be introduced in the said island, even to the ruin and destruction thereof, in respect of the many judgments given and grounded there on the said laws and statutes of England.."
100. JAJ Vol. 2, p.31.

After Governor Lawes arrived in Jamaica[101] he kept suggesting to the Council for Trade that the Island's revenue should be settled by Act of Parliament.[102] Although he was "dayly more and more convinced that there is no bringing the people to a sense of their Duty but by settling the Revenue by Act of Parliament"[103], Parliament did not intervene. When the Duke of Portland arrived as Governor he divulged to the Assembly that the King was willing to make their laws perpetual if they should at the same time make "due provision for the expenses of the Government here..." This is all he expects in return for the"promise of so great a favour".[104] Later in 1723 the Assembly passed a perpetual revenue Act.

The Assembly seized this opportunity of re-affirming forcefully their rights and liberties, and this perpetual revenue Act had far more the appearance of "a declaration of rights than of a Revenue Act".[105] To be enacted as laws of Jamaica were all the general known laws, statutes, customs and usages of England concerning the life, liberty or property of the subject which were in force in December 1661 and all other statutes made in England since that day either declaratory of the same laws or for the better enforcing, regulating or explaining thereof, or for the amendment of the law or for the common advancement of justice or for securing the rights, liberties or properties of the subject.[106] The right to the Habeas Corpus Act and the Bill of Rights was specifically mentioned.

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101. Lawes was made Governor in 1717.
102. CO 137/13/281; CO 137/14/6.
103. CO 137/14/95.
104. CO 140/17: 23 January 1723.
105. Whitson, op. cit., p.145
106. An apprehensive Council in Jamaica first sought the opinion of the Island's Attorney General on the Act: CO 140/18/1.

The Attorney General of England was of the opinion[107] that this clause was of a very "extraordinary nature and may be attended with many Inconveniences"[108], both to the Government and people of Jamaica; the description of the English Acts which were to become laws of Jamaica was so general that possibly the whole body of English laws unless otherwise provided for in Jamaica, may be introduced with unforeseen consequences; if all the English laws became laws of Jamaica, cases may arise in Jamaica by which the English laws would not be competent[109]; but if all the English laws did not become laws of Jamaica, great variety of doubts and questions would arise and it would be impossible for the people to know by what laws they were to be governed. As for the specifically mentioned Habeas Corpus Act he wondered how far it was proper to enact it in Jamaica "a colony of so great a distance from England"[110]; a similar Habeas Corpus Act was attempted in Ireland and the Crown for "weighty reasons"[111] has never thought it fit to consent to it. The Attorney General, in recommending the amendment of the part of the Act referring to English laws, suggested that if there were any particular laws of England which the Assembly in Jamaica desired, such laws should be particularly specified and described in an Act of the Assembly to be passed for that purpose[112]. Those Acts could then receive a "distinct Consideration as to the fitness of them with regard to the condition and circumstances of the Island".[113] This Revenue Act was duly disallowed.[114]

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107. These were only the legal objections, there were financial objections to the Act as well.
108. CO 137/14/194.
109. Ibid.
110. Ibid., pp. 194-5.
111. Ibid., p. 195.
112. Ibid.
113. Ibid., p. 195.
114. The Council for Trade, in very strong language told Portland that he had not followed his Instructions. C.S.P. 1722-3, No.696.

When the reasons for the rejection of the Revenue Act reached Jamaica, the Assembly appointed a committee to reply to the Council for Trade's objections. The Committee reported: as Englishmen or descendants of Englishmen they were suited to English laws; English laws were what they were accustomed to; the method of separately enacting the laws of England which were necessary, would be an admission that they were not entitled to any of them; the draft of the Habeas Corpus Act, which had been sent by the Council for Trade, contained a major exemption dealing with commitments by the Governor, "so that a Governor is to be at Liberty to put any man in prison or in Chains or to send him off the Island wheresoever and whensoever he pleases without signifying any manner or Cause for so doing"[115]; if the Bill passed, there would be no benefit of Magna Carta and the Bill of Rights, "left to a Jamaica man"[116].

An amended Revenue Bill passed by the Assembly in 1724[117] again contained references to the right of the inhabitants of Jamaica to English laws. In reply to queries from the Governor, the Jamaica Council said that since the establishment of a civil Government in 1662, the laws of England had always been accepted and used in the Courts of Judicature in all cases where the particular laws of Jamaica did not make special provision. They added that it was true that recently some particular statutes - that of frauds[118] and perjury - were denied to be in force in Jamaica,[119] but the opinion of the most eminent lawyers in England

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115. CO 140/18: 23 October 1723.
116. Ibid.
117. See JAJ Vol. 2, p. 500-1.
118. 29 Charles 2, c.3
119. Presumably referring to Orby v. Long. See A.P.C. Vol. 2, No. 1067.

in cases sent from Jamaica were based on the supposition that the laws of England were accepted in the Island.[120] The Assembly told the Governor that if they were to give up English laws they would have no laws at all, since the municipal laws of the Island were hardly any laws at all.

By the terms of the 1724 Revenue Act, the English laws, about which there had been the controversy, were limited to those laws "as they stand accepted and used"[121] in the Island. As usual, the English Law Officers[122] were consulted and they prefaced their remarks by saying that the considerations on the Act appear "to be matters of Prudence and Policy than of Law".[123] As far as English law was concerned they had no objection to the terminology in the Act since no other part of the law of England would be thus established except those that by acceptance and usage in Jamaica "had already gained the force of law".[124] Their objection to the Act was that the temporary Acts of the Assembly then in force would be made perpetual, "and it can hardly happen but that some of their Temporary laws are not fit to be continued for ever".[125]

The Attorney General and Solicitor General were also asked their opinion on (a) what laws would expire with the

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120. CO 137/14/304.
121. CO 137/14/329.
122. The Attorney General and Solicitor General.
123. CO 137/14/328.
124. CO 137/14/329.
125. Ibid.

present Revenue Act, (b) what laws would continue, (c) upon what footing the Government of Jamaica would continue after that time (when the Revenue Act expired) particularly in relation to its dependence upon the authority of the Crown of Great Britain. They advised that as far as the municipal laws of Jamaica were concerned two types of Acts would remain in force after October 1, 1724: (a) those made perpetual since 1682;[126] (b) those not yet disapproved or disallowed; when they were disallowed they would cease.[127] But those confirmed in April 1684 and again in 1704 would expire on October 1, 1724. As far as the laws of England were concerned such Acts of Parliament as have been made in England to bind the plantations in general or Jamaica in particular and also such parts of the Common or Statute Law of England as have by long usage and general acquiescence been received and acted under there, although without any particular law of the country for that purpose[128], would continue to be effective after the 1703 Revenue Act expired. The chief difficulty arose over the power of making new Revenue laws. The power to do this would depend upon the question whether Jamaica was to be considered merely as a colony of English subjects or as a conquered colony: if the former, the Jamaicans would be taxed only by the British Parliament, or by and with the consent of the representative body of the people; if the latter, they could be taxed by the Authority of the Crown. However, on this question "which is of great weight and importance", they claimed they did not have sufficient material

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126. CO 137/14/339.
127. Unlike the Governors before him, Carlisle was not instructed to pass laws of a two-year duration only. The laws were to be in force until they were disapproved.
128. CO 137/14/340.

before them, so they gave their opinion "on the supposition that it might come out either way".[129]

When it became clear that the new Revenue Act would not be confirmed before the existing one expired, the Governor of Jamaica was instructed to have an Act passed continuing the existing Revenue Act and other laws for another year. The Council for Trade in the meantime took meticulous care over the new Revenue Act "considering that this may be the best opportunity His Majesty will have to engage the people of Jamaica to make such a firm and lasting provision as may be sufficient for His Majesty's Service".[130] It was of the utmost importance that the Act should be conceived in "proper and effectual terms"[131], so the Attorney General should be directed to draft a Bill "as near as the plan of that sent from Jamaica"[132], but freed from the several objections to which the present one was liable. This draft was then to be submitted to the Governor, with orders to recommend it to the Council and the Assembly of Jamaica as "the terms upon which His Majesty will be graciously pleased to renew their laws"[133].

But, in fact, almost a year passed during which the Revenue Act was not returned from England. The Jamaicans were growing restless and Portland remitted to the Council for Trade a report that the "temper of the people here, require all what the art of man can invent to keep them within the bounds of their duty to his Magestie"[134]. He awaited their letters with the "utmost impatience"[135]. Yet another year dragged on and still

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129. CO 137/14/341.
130. CO 138/16/499.
131. Ibid.
132. Ibid.
133. Ibid.
134. C.S.P. 1724-5, No. 497.
135. Ibid.

there was no word from England about the Revenue Act. As the Assembly grew more restless the rumblings grew louder. Portland told the Council for Trade that he had been trying "all possible means to moderate the furious rage"[136] in which the Assembly broke up. The Assembly were incensed at being "yearly tenants for their laws"[137] and if any member of the Assembly were to "comply with a yearly reviving Bill for their laws, he would not only immediately be expell'd their House, but otherwise be voted and declar'd an enemy to his Country."[138] In January 1726 the Assembly proceeded to pass another perpetual Revenue Act but the Governor refused to assent to it on the ground that it was directly opposed to the King's Instructions and "particularly at a time when his (the King's) sense concerning a bill of the same nature is daily expected."[139] The Assembly were not to be put off and in a fortnight they passed another Revenue Act.[140] The Assembly "conscious of their darling Rights and Priviledges"[141], seemed to have had some idea of what was happening to their Revenue Act in England and drafted an Address to the Governor, although some of its contents were clearly meant for consumption in Whitehall. They conceded the King's right to dissent from their Laws but the laws

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136. C.S.P. 1726-27, No. 16.
137. Ibid.
138. Ibid.
139. JAJ Vol. 2, p.565.
140. Ibid., p. 569.
141. CO 137/16/227.

> "ought yet as we humbly apprehend to take their rise from Ourselves, without our being obliged to digest what is dealt to us by other hands, strangers in a great measure to our defects and necessities..... we only speak the same language and imitate the Spirit with which our predecessors formerly asserted their right of framing their own Bills..... which maxim of Government they wisely drew from their Mother Country, who can endure no laws but those of her own choosing ..... and which the Assembly hope, they may now as well borrow, not only as they are the same English colony, but from the declarations, and Concessions of all Charters of Government".[142]

The Governor reluctantly assented to the Act and urgently wrote home for instructions. He had never undergone "more trouble and Anxietie of Mind, nor been so perplexed as in this juncture."[143] Having to deal with a "furious Assembly, a distracted people and an indolent, discontented and divided Councill"[144], Portland found the situation "too perplex'd too weighty and of too great Consequence"[145] to trust his own opinion and from his perplexity only "His Majesty's sentiments" could free him.[146]

By now the draft Revenue Bill was ready and the Duke of Newcastle sent it to Portland

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142. Ibid., pp. 571-1. It continued: "we would also inform our successors that our struggle on this most important subject, is with all possible submission and reverence to His Majesty, with the greatest duty to your grace and with that freedom too which ought to exert and maintain itself in the resolutions and petitions of an English assembly." p. 572.
143. CO 137/16/227.
144. Ibid., p. 228.
145. Ibid., p. 227.
146. Ibid. Soon after, whether as a result of these weighty affairs or not, Portland passed away. The President of the Council, Ayscough, succeeded him.

> "not doubting but your Grace will recommend it in the strongest terms to the Council and Assembly and use your utmost endeavours that they may accept it in the manner it is now drawn, without making any the least addition or variation, otherwise than by filling up the blanks ....." 147

The incensed Assembly summarily rejected this draft. The President of the Council, Ayscough, called a new Assembly but with no better luck - they treated "the draught with disdain".[148] Ayscough found himself in as much of a dilemma as Portland and told the Council for Trade that it was "a common saying among some of the leading members that if a Governour don't yield to their desires", they would grant no supplies, "and that if a Government can subsist without money, they can do so without Laws. Such is the present Humour of the People".[149] The Council for Trade had noted the Assembly's objection and told the Privy Council that the sending of a draft Bill to the Island was not intended as a precedent, but "only as a Signification to the Assembly of Jamaica of those most reasonable Terms upon which His Majesty was pleased to Renew them (their laws) in Perpetuity".[150] Since there was no objection to the substance of the draft, Governor Hunter was therefore to be instructed "to pass any Act which shall be prepared by the Assembly, provided that the Substance thereof be strictly agreeable to the said Draught."[151] With the Island in a "deplorable condition"[152] and "not a farthing of money in the Treasury"[153], Hunter hurried to Jamaica.

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147. C.S.P. 1726-27, No. 204.
148. Ibid., No. 519.
149. CO 137/17/14.
150. CO 137/16/366.
151. Ibid.
152. CO 137/17/14.
153. C.S.P. 1726-27, No. 438.

Hunter, in a surprisingly short time, succeeded in getting the Assembly to pass a perpetual Revenue Act.[154] He assented to it, and on transmitting it to the Council for Trade told them that he had "carefully compared"[155] the Act with the draft and found that the words "which perpetuate the laws in this Act are synonymous to those used in the draught."[156] But the legally-trained minds of the Attorney General and the Solicitor General detected substantial differences between the terminology of the draft and that of the Act. That of the draft was "As by Usage and Practice have been accepted and received as Laws in Jamaica"[157], the Act was "As have been at any time, esteemed, introduced, used, accepted or received in the Island."[158] This latter phrase the Law Officers found "so loose and uncertain that it will be very difficult to know what laws of England are thereby

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154. 1 Geo. 2,c.1.
155. C.S.P. 1728-29 No. 196.
156. Ibid.
157. CO 137/17/265.
158. Ibid.

made laws of Jamaica and what are not[159]" and it seemed "liable to the same inconveniences as some former Clauses of the like nature which have been rejected[160]". The Council for Trade sent this Act to the King and repeated the Attorney General's remarks. However, they seem to have grown weary of the Jamaica affair and "upon the whole, considering that the people of Jamaica have already been for a considerable time in a State of Anarchy for want of laws[161]", and that the Governor was not strictly confined to the words of the draft, recommended the approval of the Act.[162] This the King did on May 22, 1729. On hearing the glad tidings the Jamaican Assembly penned an Address to the King about his "Paternal Goodness and Justice" to them[163]

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159. During this period there was also great disputes as to how far English law was in force in the other American and West Indian colonies. Larkin told the Council for Trade that the Bostonians abhorred the very thought of English laws "and Acts of Parliament they look upon to be only obligatory wherein the province is particularly named, though they will make [use] of either of them to serve a friend, so noone can tell what is Law and what is not ....." C.S.P. 1701, No. 945. From Antigua, Governor Codrington stated that the "fundemental difficulty" was "how far or whether or noe Acts of Parliament as such are obligatory here". C.S.P. 1701, No. 997. Regarding Bermuda, Larkin declared that the Attorney General "tells you in open Court, if you'll have English Laws, you must go to England for them; that no Act of Parliament is of any force here unless the same be enacted here by the Assembly". C.S.P. 1702, No. 1042. In Maryland,"the opinions of several of the Courts of Law here (and especially the Provinciall, where all criminal matters are handled) that the several Statutes of England, unless they expressly mention the Plantations, are not in force here; so that for want of a particular Act of Assembly, many criminalls should escape, as in conventicles, rapes, bigamy, Jesuites, and other ffelons". C.S.P. 1706-8, No. 160. See also C.S.P. 1710-11, No. 710.

160. CO 137/17/141.

161. CO 137/17/265.

162. CO 137/18/17.

163. CO 140/21: 28 March, 1730.

"by Establishing Our Constitution and perpetuating Our Laws which We and our latest posperity shall always most affectionately and Dutifully Commemorate."[164] On both sides there was cause for satisfaction at the outcome. The King was granted a perpetual revenue and so was no longer at the "mercy of the rabble"[165] to defray the expenses of the government. The Jamaican Assembly on the other hand, had at least three reasons to celebrate: most of the laws made by them were made perpetual, their right to enact their own laws was acknowledged and their claim to English laws was confirmed.

Fifteen years after 1 Geo 2, c.1 was enacted, Governor Trelawny suggested to the Assembly that they amend the clause of the 1728 Revenue Act which declared the laws of England in force in Jamaica. His criticism of the clause's terminology is not surprising: "Those terms are too general and uncertain, and leaves the court too much at liberty, at different times, to give different judgments on matters of a similar nature", when doubts arise as to what laws and statutes of England, have been esteemed, introduced, used or accepted in Jamaica. He suggested that the clause should be amended by enumerating the statutes which, on a "judicious examination", appear to be "consonant with the circumstances of the island." That would be a means of preventing "much contention", and a "frequency of appeals" and it would be a "great benefit to the subject, as it will render him more safe and secure in the enjoyment of his property".[166] The Assembly subsequently appointed a committee which included the Island's Chief Justice to determine which laws should be declared in force in the Island.[167] It does not appear

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164. Ibid.
165. Letter from a Mr. Nevil to the Earl of Carlisle about 1677 in Tracts Relating to Jamaica (1492-1703), p. 113.
166. JAJ Vol. 3, p. 615
167. Ibid., p. 616

that this committee reported.

A century later, the Act of 1728 was still casting shadows of uncertainty in legal circles. One of the questions submitted by the Legal Commissioners of 1827 to the public functionaries was:

> "What Code or System of Law prevails in this Colony; to what extent, and in what cases, are the Common Law and Statute Law of England in force therein; is there any, and what general principle by which Laws made in England, which have effect in this Island, can be distinguished from Laws made in England, which have not any effect in this Island?" [168]

Both the Chief Justice[169] and the Attorney General[170] gave written replies to this question. The Commissioners nevertheless stated:[171]

> "By the Colonial Act, the 1st of Geo 2, Cap. 1, all such laws and statutes of England as had theretofore been acted upon in Jamaica are made perpetual; and the Chief Justice says it may be stated generally, that the statute law of England (not being at variance with the Acts of the Colony) is acted upon in most cases of manifest convenience, but British Statutes passed since the 1st of Geo. 2, are not in force, unless extended by express terms to the Colony; or unless (added the Attorney General), they relate to trade and navigation, to the law merchant, or are in aid, or are amendments of the common law.
>
> Now it appears to us, that neither the statement of the Chief Justice nor that of the Attorney General, affords grounds sufficiently precise to prevent doubt and difference of opinion, as to what statute made in England is or is not in force in the Colony, and as

168. First Report of the Commissioners of Enquiry into the Administration on Criminal and Civil Justice in the West Indies (Jamaica): P.P. 1826-27 (559)XXIV.131. Hereafter in this work cited as the Legal Commissioners Report.
169. Ibid., p. 164.
170. Ibid., p. 182.
171. Ibid., p. 93

> might be expected, we found that different opinions were often entertained on this subject at the bar, and on the bench. Indeed, as we have shown in a previous part of this Report, when giving a sketch of the political constitution of Jamaica, doubts have been entertained on the subject from the first settlement of the Colony. We would, therefore, recommend the passing of an Act of the Colonial Legislature, that should enumerate by their precise titles such Acts and parts of Acts made in the mother country, as should thenceforth be deemed to have the force of law in the Colony. An Act to this effect was passed by the local Legislature in the Bahamas, and we were informed there it had proved very beneficial.
>
> With respect to the common law of England, it is stated that it prevails as far as local circumstances permit, and where it is not at variance with the Colonial Acts.
>
> We could wish also, that this notion of the prevalence of the common law of England in Jamaica, could be rendered more precise by some Colonial Declaratory Act."

Instead of these recommendations being accepted and acted on, the status quo was in fact reinforced by 8 Vic., c.16, passed seventeen years later.

After emancipation, commissioners were appointed to consolidate the laws of the Island. But the problem of the terminology of Section 22 of the 1728 Revenue Act arose once more. The Commissioners were eager to state all the laws in force but they felt "considerable difficulty" in deciding what English statutes prior to 1728 had been acted on, and in ascertaining the principle, they should be guided by in selecting those statutes. They continued:[172]

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172. VAJ 1846-47 p. 396.

> "To profess to extract all the statutes of England, which are considered to be in force here, would be to make ourselves judges of what are so, and responsible for the accuracy and completeness of our selection; an undertaking for which we do not consider ourselves competent. We have therefore proposed to introduce only such as are notoriously in force, of great importance, and in constant use ....."

This formula still did not solve the problem, and in 1872 the Statute Law Commissioners again skirted the problem.[173]

The terminology of section 22 of the 1728 Revenue Act has survived and by Section 41 of The Interpretation Act, 1968, remains in force in Jamaica today. When the Bill was being debated in the House of Representatives, several members criticised the re-enactment of the terminology of the 1728 Act.[174] One member, Mr. Vivian Blake, regretted that the terminology had been persisted in, instead of a list being made of the English statutes which, prior to 1728, had been "esteemed, introduced, used, accepted or received" in Jamaica. Often, he said, matters arise and have to be settled in relation to an obscure point and in many instances they are lost in a list of iniquities.[175] The Attorney General, the Hon. Victor Grant, who introduced the Bill, described section 41 as a "great pain in the belly" and declared that they were "sort of humiliated" to repeat the terminology. They would have liked to exclude the clause because "it still retains that sort of colonial concept", but they could not do so, as the laws covered by that section had not been enumerated.[176] He held out some hope however, that the clause would be excluded when the laws were revised.

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173. See Minutes of the Legislative Council 1871-72, p. 107.
174. Proceedings of the House of Representatives 1967-68, 30 January, 1968. See Speeches of Mr. Blake, Mr. Coore, Mr. Manley.
175. Ibid. Mr. Blake's Speech.
176. Ibid. Mr. Grant's Speech.

The struggle for English laws has had important consequences for the criminal law of Jamaica, and three aspects of the dispute should be noted. Firstly, throughout the entire period when the Jamaicans were demanding the use of English laws, their concern for the criminal law was merely secondary. In the pre-1680 period, constitutional rights were what primarily concerned the Jamaicans. Criminal law does not appear to have been thought of and it was included only as part of the constitutional struggles. In the post-1680 period, the Assembly were not primarily concerned with the criminal law. Criminal laws were only a section of the group of English laws for which they were contending. Secondly, the Assembly's actions in 1728 had consequences which might not have been intended at the time. On the one hand, the Jamaicans were demanding the right to use English laws; on the other, they were equally uncompromising in their claim to enact their own laws. In 1680, their legislative competence was fully recognised. But by exercising their legislative rights in 1728, they attempted to state the English laws to which they were entitled and, probably unwittingly, put an end to subsequent claims to English laws. It is not clear that the Jamaicans were, in 1728, aware that this was one of the consequences of their actions. Thirdly, the terminology agreed on in 1728 was not even at that time considered satisfactory. The English Law Officers declared that the phrase was "so loose and uncertain that it will be very difficult to know what laws of England are thereby made laws of Jamaica". So it has proved. It was for political - not legal - reasons that the Jamaica Assembly had refused to enumerate the English statutes which they wished to adopt.

It was also political and financial - not legal - considerations which led the Council for Trade to advise that the terminology be accepted. This essentially political compromise did not settle the legal problems and has been the cause of great uncertainty in the criminal law of Jamaica.

(B) Theories As To Jamaica's Status.

Jamaica's history has inevitably given rise to a question of "great weight and importance" to both students of constitutional and criminal law: what is Jamaica's status - is the Island to be regarded as a colony settled by English subjects or is it to be regarded as conquered territory? If Jamaica were a colony, the settlers would bring with them all the laws of England which they needed, but if it were a conquered colony, the laws of the Island would remain operative and the laws of England would not be in force there until declared so by the King. There has been no unanimity as to Jamaica's status.

In Blankard v. Galdy,[177] Holt C.J. declared without giving any reasons for his views, that "Jamaica being conquered .... the laws of England did not take place there until declared so by the conqueror or his successors".[178] Similar views were expressed by Baron Parke in Beaumont v. Barrett,[179] an appeal from the Court of Errors in Jamaica to the Privy Council:[180]

> "It is not necessary to enter at length into the history of the constitution of the island of Jamaica. It appears that it was a conquered island, and as in other territories obtained by conquest such laws are in force there as the King, by his supreme authority, may choose to direct".

177. 2 Salkeld's Reports, 411.
178. Ibid., at p. 412.
179. 1 Moore P.C. 59
180. Ibid., p. 75

In Halsbury's Laws of England it is stated: "Jamaica seems to be a conquest from Spain in 1655 recognized by the Treaty of Madrid in 1670".[181] Recently, Sir Kenneth Roberts-Wray, formerly legal adviser to the Colonial Office has written: "Jamaica's title rested on conquest. The Colony was not acquired by settlement; settlers were acquired by the Colony."[182]

But there have also been contrary opinions. In R.v. Vaughan[183], Lord Mansfield expressed the opinion that Jamaica was to be regarded as a settled colony and in Campbell v. Hall[184], a few years later, he reiterated this view. In the latter case he said that he had traced the constitution of Jamaica, as far as he was able to, from the records, and he could not find that any Spaniard remained on the Island as late as the Restoration; all the Spaniards having left or were driven out. Jamaica "from the first settling was an English colony, who (sic) under the authority of the King planted a vacant island, belonging to him in right of his crown."[185] Lord Mansfield's views, though worthy of great respect, are however merely obiter, as Jamaica was not the Island involved in the case.[186] In Stultz v. Wallace, Jamaica's status was reviewed by the Island's Supreme Court, Chief Justice Rowe declaring that "it should be remembered that this island has been treated as a colony appended to the Crown of England and not as a conquered or ceded colony."[187] In Jacquet v. Edwards[188], Jamaica's status was again reviewed by the Supreme Court. One of the main points of dispute was how far the common law of England was in force in Jamaica. In delivering the judgment of the

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181. Halsbury's Laws of England (3rd ed.) Vol. 5, p. 544.
182. Kenneth Roberts-Wray, Commonwealth and Colonial Law pp. 853-4.
183. 4 Burrow Reports, 2499.
184. 1774 Cowper, 204.
185. Ibid., p. 212.
186. Macdougall's Jamaica Reports, 44.
187. Ibid., pp. 57-58.
188. J.E.R.Stephens, Supreme Court Decisions of Jamaica 1774-1923, Vol. 1, p. 414.

Court, Kemble J. declared that two questions had been raised (a) whether the Island was to be considered as a settled or a conquered colony and (b) what was the effect of section 22 of the 1728 Revenue Act, 1 Geo. 2, c.1. Having examined the Island's history and the relevant authorities, he declared in reference to the first question:[189]

> "Even assuming Jamaica must be considered a conquered and not a settled colony, there is sufficient in its early history to show that by the acts and conduct of the Crown the colonists became entitled to the same rights and privileges as they would have been entitled to had the Colony been a settled one.... It (Jamaica) should therefore, under any circumstances, be treated as a settled colony".

On the second point, as to the effect of section 22 of the 1728 Revenue Act, it had been argued that in the expression 'laws and statutes of England', 'laws' must be construed to mean the 'common law' as opposed to the statute law. Kemble J., however, felt that 'laws' and 'statutes' had been used synonymously; if that interpretation were correct, then the section applied only "to the statute laws of England previously used and accepted in the Island, and not to the common law" and this construction was consistent with the object of the draftsmen "who wished to preserve for the colonists the benefit of certain English statutes which they had, without legal authority, previously adopted as if laws of the colony".[190] The common law of England, therefore, "by whatever means introduced, and to whatever extent it may prevail" was in force in Jamaica irrespective of 1 Geo. 2, c.1.[191]

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189. Ibid., p. 416.
190. Ibid., p. 418.
191. Ibid., p. 419

Of these divergent views as to Jamaica's status, it seems that the opinion expressed in Jacquet v. Edwards is to be preferred. It is undoubtedly true that Jamaica was acquired from Spain by conquest. And in apparent reference to the absence of Spaniards after the English conquest, Roberts-Wray further states that if a "British possession was in fact acquired by conquest, circumstances such as those in Jamaica could not alter the fact."[192] But despite this, it is submitted that Jamaica should be regarded as a settled colony, although its original title was by conquest.

This submission is based on two grounds. In the first place, some of the basic elements in relation to conquered territories were absent in the Jamaican situation. A conquered territory presupposes a conquered people with a defined legal system, which would remain in existence for some time after the conquest. According to Blackstone, "in conquered or ceded countries, that have already laws of their own, the king may indeed alter and change those laws, but till he does actually change them, the antient laws of the country remain."[193] In Jamaica's case, the majority of the Spaniards fled to the woods and shortly after, departed from the Island altogether. There was thus no subject people to govern and no "antient laws" to administer. From the beginning, therefore, the English conquerors of the Island had to administer English laws.

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192. Roberts-Wray op.cit., p. 47
193. William Blackstone, Commentaries on the Laws of England (9th ed.) p. 108.

In the second place, Jamaica has in fact, at least since 1661, been treated as a settled colony. It should be noted that at the period when Jamaica's status was in question, the rules as to settled and conquered territories had not been fully worked out. The English authorities were still groping for a definite set of rules. Furthermore, the struggle of the colonists to have English laws is not inconsistent with Jamaica being treated as a settled colony. In the period up to 1728, it was never denied in England that the common law was in force in the Island. What was contested was the colonists' claim to be entitled to all the laws of England. When the Jamaicans receded from this claim, it was the terminology of their restricting legislation which was the subject of great debate. Even in a settled colony, the colonists are not entitled to all the laws of England. Blackstone states that in a territory settled by English subjects, "all the English laws then in being, which are the birthright of every subject, are immediately there in force." But the colonists carry with them from England, "only so much of the English law, as is applicable to their own situation, and the condition of an infant colony." He felt that they would probably carry with them the rules as to inheritance and to protection from personal injuries; but the "artificial refinements and distinctions incident to the property of a great and commercial people", the laws as to the police, revenue and clergy, were "neither necessary or convenient for them", and therefore were not in force.

> "What shall be admitted and what rejected, at what times and under what restrictions must in case of dispute, be decided in the first instance by their own provincial judicature, subject to the provision and control of the king in council." 194.

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194. Ibid.

In 1723, the English Law Officers recommended that Jamaica should specify the English acts they wished, so that "these acts may receive a distinct Consideration as to the fitness of them with regard to the condition and circumstances of the Island."[195] This recommendation does not seem inconsistent with Blackstone's views as to settled colonies.

In the light of the preceding discussion, a few remarks remain to be made as to the sources of Jamaica's criminal law and the treatment of it in this work. One source was laws made by the Jamaica legislature. After 1680, these laws remained in force until they were disallowed by the King. Another source was statutes made by Parliament which were specifically stated to be in force in the colonies or Jamaica. Most of these dealt with trade in general, but an important one related to piracy.[196] A third source is the common law of England and the statutes supplementing it or explanatory of it. The common law was accepted as being in force in Jamaica. From 1661, Jamaica was treated as a settled colony, and all the English statutes then in existence could prima facie be in force in Jamaica. But only what English statutes were necessary in Jamaica then were to be in force - and these were never outlined. Another complicating factor is the terminology of the 1728 Revenue Act, by which "all such laws and statutes of England as have been at any time esteemed, introduced, used, accepted or received, as laws in the Island" up to 1728 were to continue in force after that date. So various English statutes which had been enacted at any time before 1728, were also in force in Jamaica. But again, a comprehensive list of these statutes was never made. A few of the English statutes which were in force in Jamaica prior to 1728 are known; but beyond that, it

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195. See note 113, supra.
196. See Chapter 9, infra.

is mere conjecture as to what English statutes were in force in the Island in the period up to 1728. For that reason the early Jamaican laws concerning the State,[197] Persons,[198] and Property[199] are to a very large extent, matters of surmise. This is a highly unsatisfactory situation, but the circumstances do not admit a more concrete treatment.[200]

The sources of Jamaica's criminal law have also determined the treatment of the subject-matter of this work - the development of the criminal law in Jamaica. After 1728, Jamaica still continued to adopt the decisions of the English common law, and the development of the common law in Jamaica was identical with the development of the common law in England. But it was different with regard to legislation. If after 1728, Jamaica required any English statute, which did not expressly extend to the Island, specific legislation incorporating the statute had to be passed in Jamaica. In the 18th and early 19th centuries, Jamaica did not adopt most of the English penal statutes, and as a result the content of Jamaican criminal law tended to differ from English criminal law. It appears more useful and rewarding to concentrate on this variation, and this work will, therefore, be mainly concerned with the development in broad outline,[201] of penal legislation in Jamaica up to 1900.

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197. Chapter 6, infra.
198. Chapter 7, infra.
199. Chapter 8, infra.
200. It is most regrettable that the early legal records of Jamaica have had to be withdrawn from public use.
201. For this reason, it is not every single statute which provided a penalty that will be discussed.

CHAPTER 2

18th Century Background to Penal Legislation

In this Chapter we shall examine the framework in which the Jamaican laws were made and administered during the 17th and 18th centuries. This is a vital part of our work, if we are to acquire a proper understanding of the development or non-development of the criminal law. Laws exist for the use of the particular society for which they are made, and in doing so, reflect the values and attitudes of the society at that period. We therefore have to know among other things who the inhabitants were, what the legislative process was, and how justice was administered. It is for that reason necessary to set out considerably detailed information in certain sections of this Chapter relating for example to the judiciary, in showing the qualifications of the judges, and also and equally important, describing how the attempts for reform were thwarted by the vested interests of those with legislative power. This Chapter will be divided into six main sections: (A) The Ethnic Composition of the Island; (B) The Legislature; (C) The Judiciary; (D) The Legal System; (E) Functionaries Concerned with the Administration of Justice; (F) The Administration of Justice.

A. The Ethnic Composition of the Island

In 18th century Jamaica, there were three distinct groups within the population: the whites, the free coloureds, and the negro slaves -- the blacks. It is necessary for us to know who the 'Jamaicans' were, and these groups will be treated separately.

(i) The Whites

After Jamaica's conquest by the English in 1655, settlers were sought to develop the Island. Within months after the conquest, Cromwell issued a proclamation aimed at encouraging settlers to migrate there.[1] In 1661, King Charles issued another proclamation, with the same end in view.[2] At the same time the soldiers in the Island were encouraged to become planters. Some actually did and later executed important judicial and legislative functions.[3] But Jamaica was still desperately short of settlers. The proclamations with their generous offers, had not succeeded in attracting very many people to Jamaica.[4] Furthermore, the climate and alcohol proved fatal to many who ventured to the Island to seek their fortunes.[5] As a result, other methods of increasing the white population had to be found. One method was to encourage

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1. See Vol. 1 of the 1889 Edition of the Revised Laws of Jamaica.
2. C.S.P. 1661-68, No. 195.
3. In 1677, Governor Vaughan described the majority of Council members as "old standees and officers of Cromwell's army." C.S.P. 1677-80, No. 270.
4. See C.S.P. 1661-68, No. 566. Lyttelton to Bennett, 15 October 1663.
5. C.S.P. 1574-1660, No. 480. See also CO 138/8/8: Beeston to CTP, 18 November 1694; CO 138/10/335: Selwyn to CTP, 30 March 1702; C.S.P. 1703, No. 1326; T.S.P. Vol. 4, p. 153.

settlers from other British territories which had been settled previously to migrate to Jamaica. When in 1664 Modyford was travelling out ot Jamaica as Governor, he was given permission to call at Barbados and invite settlers to go to Jamaica.[6] This method was scarcely more successful and only a few settlers appear to have accppted his invitation. Some years later, the encouragement of settlers from other British colonies was discountenanced.

In addition to planters, two other categories of persons were brought to the Island in an effort to augment the white population. They were transported convicts, and indentured servants. In June 1661, we find a group of London merchants requesting permission to transport convicts to Jamaica,[7] and in April 1662, warrants are directed to the Sheriff of Middlesex to deliver fifteen prisoners from Newgate prison so that they may be transported to Jamaica.[8] One prisoner even petitioned to be transported to Jamaica rather than remain in England to serve his term of imprisonment.[9] Transportation to Jamaica was also the fate of some convicted for rebellion in England. In 1716, the Jamaican Council beseeched the Council for Trade to send to Jamaica the recently convicted rebels whom the King "in his princely clemency may be pleased to extend his mercy."[10]

Many white persons were also brought to the Island as indentured servants, to serve for a number of years. After their period of service expired, they became free subjects. In 1682 when very few servants were coming from England, the Governor of Jamaica told the Council for Trade, that he had heard that the

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6. See C.S.P. 1661-68, No. 632, 738.
7. A.P.C. Vol. 1, No. 517.
8. C.S.P. 1661-68, No. 292. See also A.P.C. Vol. 1, No. 527, 607, 638.
9. C.S.P. 1661-68, No. 551.
10. C.S.P. 1716-17, No. 203(i); See also CO 140/4/106-7.

Lord Chief Justice would permit none to come, although they were willing to do so. He requested them to "move him to be less severe to us, for these idle people do mischief in London and would do good here."[11] In 1699, it was proudly announced in the Assembly that a ship had arrived from Scotland with two hundred servants of that country.[12]

From the above sources many "vagabonds, idle or disorderly Persons" and "sturdy Rogues and Beggars" arrived in Jamaica.[13] These convicts and servants were not the most esteemed type of immigrant and there were strident protests against them. John Style denounced the sending to Jamaica of "convict gaol birds or riotous persons, rotten before they are sent forth and at best idle and only fit for the mines."[14] In one Governor's opinion, those immigrants were "worse than Negroes" and "a Nursery for pirates",[15] and the Island should not be settled by "Renegades and a base sort of People who are Sent over Servants for a Term of years."[16] The Jamaica Assembly at one stage imposed a £10 duty on every convict transported to Jamaica. In England, the statute was adversely reported on as being inconsistent with Acts of Parliament permitting convicted felons to be transported to the colonies. Some years later the Assembly made a second attempt and imposed a duty of £100 on each convict sent to Jamaica. This Act was not disallowed as it was only of a year's duration, but the Governor was specifically instructed to assent to no act which imposed duties

11. C.S.P. 1681-85, No, 668.
12. JAJ Vol. 1, p. 196.
13. See A.P.C. Vol. 1, No. 643.
14. C.S.P. 1661-68, No. 1023.
15. CO 137/13/245: Lawes to CTP, 31 March 1720.
16. CO 137/13/184: Lawes to CTP, 6 December 1719.

"on the Importation of any Felons from this Kingdom into Jamaica."[17] On being informed of this instruction the Jamaica Council scathingly commented that if "it be prudence in England to banish rogues; it must certainly be prudence here to endeavour to keep them out."[18]

Apart from the above sources, white people also came to Jamaica from Surinam.[19] Jamaica was also an indirect beneficiary of the French capture of Montserrat because over 600 of the inhabitants, "extremely plundered, even to their very shirts", came to settle in Jamaica.[20] Furthermore, the Assembly passed several laws encouraging white immigration,[21] and in some instances penalised landowners for not possessing a certain proportion of white servants to slaves.[22] During the latter part of the 18th century, additional efforts were made to attract white immigrants to the Island.[23] After the American War of Independence, some loyalists with their slaves also migrated to Jamaica.[24]

But despite all these efforts and dubious methods employed to increase the European population, the Island remained chronically short of white inhabitants. An already bad situation, was further exacerbated by the fact that the affluent planters returned 'home' to England, as soon as they amassed their wealth from their Jamaican estates.[25] And with monotonous regularity, despatch after despatch from Jamaica related the desperate need for white inhabitants. In 1669, there was a great need for "a speedy supply from England of Christian planters"[26] and fifty years later, there was complaint

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17. CO 138/17/352.
18. C.S.P. 1731, No. 550
19. See A.P.C. Vol. 1, No. 1061; C.S.P. 1669-74, No. 729.
20. C.S.P. 1661-68, No. 1456.
21. See 10 Geo. 1, c. 8.
22. See 33 Charles 2, c. 11.
23. See 22 Geo. 2, c. 3.
24. See CO 137/82/290: Campbell to Shelbourne, 20 September 1782.
25. See Eric Williams, Capitalism and Slavery (Chapel Hill ed.).
26. C.S.P. 1669-74, No. 7.

about the "weak and defenceless condition" of the Island, due to the small number of white inhabitants and unsound fortifications.[27] In 1658, the white population had been estimated at 4,000; in 1739 at 10,000; and in 1787 at 25,000.[28]

There is little reason to doubt some descriptions of Jamaica in the 17th and 18th centuries. One English visitor's description of the Island at the end of the 17th century is none too rosy:[29]

> "The Receptacle of Vagabonds, the Sanctuary of Bankrupts, and a Close-Stool for the Purges of our Prisons. As Sickly as an Hospital, as Dangerous as the Plague, as Hot as Hell, and as Wicked as the Devil....A broken Apothecary will make there a Topping Physician; a Barber's Prentice, a good Surgeon; a Bailiff's Follower, a passable Lawyer; and an English Knave, a very Honest Fellow."

And Beckford, a slave owner who had spent thirteen years in Jamaica, was unflattering in his description of some of the book-keepers: many of them "so far from being able to calculate accounts" could not even read; yet from this position, "they become overseers and have the conduct of a plantation."[30] Ragatz' view of Jamaica and the other British West Indian territories, is that no

> "considerable body of persons inspired by motives higher than the desire to extract the greatest possible amount of wealth from them in the shortest possible time ever reached the Caribbean colonies' smiling shores.... Few came to establish homes and to raise their station in a new world. Instead the islands became the goal of the spendthrift bankrupts eager to recoup their wasted fortunes, or penniless younger sons of the gentility amassing means sufficient to become landed proprietors in the homeland, and the dumping-ground for the riff-raff of the parent country."[31]

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27. CO 137/13/119: Lawes to CTP, 31 January 1719.
28. See G.W. Roberts, The Population of Jamaica, p. 33.
29. Edward Ward, A Trip to Jamaica, pp. 13-16.
30. W. Beckford, Remarks upon the Situation of Negroes in Jamaica, p. 89.
31. L. Joseph Ragatz, The Old Plantation System in the British Caribbean, p. 1.

This assorted collection of planters, servants, and convicts comprised the white population of Jamaica in the 17th and 18th centuries. All the civil and military offices were specifically and exclusively reserved for members of the white population, and these persons were the ones responsible for the administration of the Island. This must not be forgotten especially in reference to the legislators, the judiciary and the law enforcement officers.

Equally important as the calibre and intellect of the white administrators of Jamaica, was their attitude to, and opinions of, the overwhelming majority of the population — the slaves. These were important operative factors in both the formation and the administration of penal legislation.

Some of the earliest slave statutes passed in the Island, give us a clue to white opinion. The African slaves were a "heathenish Brutish...and dangerous Kinde of People" who were to be protected as we do other "men's goods and chattels".[32] And we also find the reasons why the slaves were not to be tried by a jury: "... and being Brutish Slaves deserve not for the baseness of their Conditions to be tryed by the Legall tryall of twelve of their peeres... as the freemen of England are."[33] Long's rationalisation of the severe slave legislation was that the first imported Africans were "wild and savage to an extreme", and their "intractable and ferocious tempers naturally provoked their masters to rule them with a rod of iron"; the earliest laws governing slaves were therefore "rigid and inclument, even to a degree of inhumanity."[34] And towards the end of the 18th century, the Jamaica Council declared that the slaves in the Island enjoyed

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32. CO 139/1/109.
33. CO 139/1/111.
34. Edward Long, The History of Jamaica, Vol. 2, p. 497.

"Comforts and Contentment beyond the same number of their Fellow Creatures in any part of the World, whose lot has been cast for Servitude and dependence." As a result, the "African-Black soon finds he has exchanged Barbarian Slavery, for a far less galling Yoke, under Civilized Christians."[35]

One aspect of the question of slavery was the issue of race and colour, and regrettably the effects of a policy deliberately formulated and rigidly executed by the white inhabitants in the 17th and 18th centuries still plague the Island today. This policy was excellently articulated by the Jamaican Agent in support of a 1761 Jamaican statute:[36]

> "A state of Slavery is unknown in the Mother Country, yet without that State Jamaica would soon be depopulated and deserted, and the keeping up that State depends upon keeping up a distinction of Colour, naturally introduced with it, and of consequence it is the Spirit of that Constitution to receive every Law, which is calculated for the maintaining that Barrier."

This 'barrier' was legally and socially maintained.[37] Thus when Lady Nugent, the wife of a Governor, danced with an old slave at a King's House servants' ball, some of the white ladies of Jamaica, were so shocked that they were on the verge of fainting, "and could hardly forbear shedding a flood of tears" at "such an unusual and extraordinary sight."[38] The ladies even claimed that Lady Nugent's action could result in a slave rebellion! So successful had been this policy that 'Monk' Lewis was able to observe on his visit to

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35. CO 137/90: Williamson to Dundas, 30 November 1791, Enclosed Address by the Council.
36. CO 137/33: Stanhope to CTP, 13 June 1763.
37. It broke down at one level where the white males cohabited with the black female slaves.
38. Lady Nugent's Journal (F. Cundall ed.), p. 204.

the Island in 1815, that "separation of castes in India" could not be more rigidly observed, than that "of complexional shades among the Creoles".[39] The result was that as Curtin has said of the 19th century, the "question of race was beneath the surface of every Jamaican problem intermingling with other issues and making all solutions more difficult".[40] So consistent had been the application of this imprudent and myopic policy of racial distinction by the white inhabitants, that by the end of the 19th century, it had become a combustible issue and one Governor was able to refer to this "dangerous Colour question".[41]

(ii) The Coloureds[42]

The free coloureds or mulattoes[43] were generally the result of the non-legal unions between the white males and the female slaves. Lady Nugent found that in Jamaica, the "white men of all descriptions, married or single, live in a state of licentiousness with their female slaves",[44] and according to Dallas, the white people on the estates had as many wives as they wished and changed them as often as they wished; and there were few properties "on which families of mulattoes have not been left by each succeeding overseer and book-keeper."[45] The children of these unions were regarded as slaves but usually their fathers manumitted them and made them free subjects. In many instances, these mulattoes were left considerable sums of money and property by their fathers. At one stage the Jamaican Assembly became

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39. Matthew G. Lewis, Journal of a West India Proprietor, p. 79.
40. Philip D. Curtin, Two Jamaicas, pp. 172-173.
42. In this section, the free blacks will also be discussed.
41. CO 137/565: Blake to Ripon (confidential), 29 April 1895.
43. In this work 'mulatto' is used to describe the coloured group as a whole. The coloured group was sub-divided as follows: black+white= mulatto; white+mulatto=quadroon; white+quadroon=mestee; white+mestee=perfect white. See Anon. An Account of the Island of Jamaica, p. 9.
44. Lady Nugent's Journal (F. Cundall ed.), p. 118.
45. R.C. Dallas, The History of the Maroons, Vol. 1, p. 127. (Polygamy was not legally permitted in Jamaica; 'wives' in this context apparently means concubines.)

so alarmed at this practice that they attempted to limit by legislation, the amount which a father could give to his illegitimate child.[46]

The mulattoes had no political rights and were like the slaves, debarred from holding any offices of state.[47] But like the whites, they despised the slaves, and erected a formidable social barrier between themselves and the slaves. In a society where the whites were at the apex, the mulattoes unwaveringly gravitated towards that position, even to the extent of rejecting their own group. In 1816, it was observed that the brown females "seldom marry men of their own colour, but lay themselves out to captivate some white person who takes them for mistresses, under the appellation of house-keepers."[48] As far as the mulattoes were concerned, the European customs and manners were to be followed, and this they did avidly.[49] And because of their attitude to the slaves, there was no doubt where their loyalties lay in times of slave rebellions or threats of rebellions. Many of the mulattoes also were said to have outdone their white counterparts in cruelty to their slaves.[50] As the mulattoes had no political power, their attitude to the black slaves in not important in relation to the criminal law of the 18th century. Their attitude, however, is of crucial importance in the 19th century, when they became sharers of political power with the whites.[51]

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46. 2 Geo. 3, c. 8.
47. See CO 137/33: Stanhope to CTP. 17 June 1763.
48. Lewis, op.cit., p. 165.
49. One observer lamented the pains the mulattoes took "to disfigure themselves with powder and with other unbecoming imitations of the European dress." W. Beckford, A Descriptive Account of the Island of Jamaica, Vol. 1, p. 389.
50. "Nothing can be uniformly more wretched, than the lives of the slaves of the free people of colour in Jamaica". Lewis, op.cit., p. 401. See also CO 137/112: Nugent to Cooke (private), 30 August 1804.
51. See Chapter 3, infra.

The free blacks were mainly those slaves who were manumitted by their masters or who were freed by the legislature as reward for rendering services to the public.[52] These 'services' usually consisted of disclosing details of proposed slave rebellions or of fighting with, and defending their masters' property in case of rebellion. Being devoid of political power, they played no part in the formulation or execution of the criminal law.

No records were kept of the free coloureds and free blacks during slavery and it is difficult to say what their numbers were in the 18th century. In 1788, the Assembly estimated that the number of free coloureds and free blacks in the Island was 10,000,[53] but it may have been anywhere between 4,000 and 37,000.[54]

(iii) The Blacks

Shortly after civil government was established in the Island in 1661 and a decision was made to develop the Colony, slaves began to be imported in large numbers to work on the plantations. Slaves were cheap labour and consequently they were much in demand. According to one Governor "planting is the mother of trade and negroes the support of planting."[55] At first, demand for slaves outstripped supply. In 1665 Lynch complained to Bennett that the "want of negroes" was "the grand obstruction" for "without them the Plantations will decline and people be discouraged."[56] In January 1672, 400 slaves were avidly purchased on landing, and the Governor thought four times that number could have been sold.[57] British traders particularly from

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52. See 1 Geo 3, c. 23; 35 Geo. 3, c. 50.
53. JAJ Vol. 8, p. 429.
54. See Roberts, op.cit., p. 38.
55. C.S.P. 1717-8, No. 196.
56. C.S.P. 1661-68, No. 934.
57. C.S.P. 1669-74, No. 729.

Bristol and Liverpool, were soon supplying the wants of the colonists and in a short while the slave population increased astronomically.[58] In 1658, the estimated number of slaves was 1,000, but by 1739 the number had risen to 99,000 and by 1787 it had soared to 210,000.[59]

The trade in slaves was actively supported and encouraged by the British Government and in their Instructions, Governors were directed to give "all due encouragement to the trade which the royal company trading into Africa shall set on foot in our small island."[60] When agitation concerning the abolition of the slave-trade started, the members of the Jamaican Council told the Governor that a "continuance of the Slave-Trade was the necessary and primary condition...of our Emigrating to these remote, and dangerous Climes." They added that Great Britain could "never flourish as a Commercial Nation without the Support of her West India Colonies," nor could "their Staple Manufacturers be upholden, but by a continual Importation of Laborers from Africa, whose Texture of Body Nature has adapted to a Tropical Climate."[61] Britain was in fact gaining wealth from the West Indian colonies and in these colonies, the wealth was being generated by slave labour.[62] This factor might help to explain the absence of objection by the British Government to many of the barbarous slave enactments of the 18th century.

These slaves whose "Texture of Body Nature has adapted to a Tropical Climate" came mainly if not entirely from the West Coast of Africa. They came from an area stretching from Senegal to Angola and included territories now known as Gambia, Ghana, Dahomey, Nigeria Guinea and the Congo.[63] It was generally claimed that in the 18th

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58. See generally Williams, op.cit.
59. Roberts, op.cit., p. 35.
60. Lynch's Instructions in JAJ Vol. 1, Appendix p. 14. See also D. Mannix and M. Cowley, Black Cargoes, Chap. 2.
61. CO 137/90: Williamson to Dundas, 30 November 1791.
62. See Williams, op.cit.
63. See O. Patterson, The Sociology of Slavery, Chap. 5; Mannix and Cowley, op.cit., B. Davidson, Black Mother.

century most of the slave rebellions were planned and executed by slaves from Ghana -- the Coromantees. This claim must be treated with caution for white Jamaica had a penchant for generalising without proper investigation. Furthermore, the conspiracy of 1776 showed that rebellion was far from being a monopoly of the Coromantees.[64]

B. The Legislature

Legislation in Jamaica had to undergo a three-stage process of approval before it could be sent to England for confirmation. Shortly after civil government was established in Jamaica, the legislative institutions were modelled on the English pattern:

> "The legislative power of making and repealing Laws is settled in the Governor as his majesty's commissioner, in his majesty's council as representing the lords' house, and in the assembly composed of the representatives of the freeholders, two persons elected out of every parish and these chosen as the commons in England, being an humble model of our high court of parliament, each of these prospective bodies enjoying a negative as well as an affirmative vote."[65]

We will outline the composition and powers of these bodies and examine what happened to legislation after it left Jamaica.

(a) The Governor

The Governor had the unenviable task of upholding the royal prerogative and carrying out the instructions which he was given. Governors have been described as the "center and mainstay of the

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64. See Chapter 5 infra.
65. Modyford's reply to the Commissioners, JAJ Vol. 1, Appendix p. 22.

whole colonial structure" [66] and "the vital linchpins of colonial administration."[67] The Governor had a plethora of tasks to perform requiring almost superhuman abilities:

> "He is a vice-roy; a legislator; a general; a judge in equity and law, in ecclesiastical and in maritime affairs; a combination of offices, which at first view, seem to require such a comprehensive power of genius, judgement, memory, and experience, as are almost inconsistent with the limited period of mortal existence, or with the common faculties of the human mind." [68]

In many instances a Governor's appointment hinged less on his ability to fill these various roles, and more on the patronage, bribery and dishonesty which was rampant in the spoils system. Pleading unsuccessfully for the governorship of Jamaica, Charles Fox wrote:[69]

> "If it be considered how well I have behaved during 20 years in Parliament, how I have injured my fortune by that service, and how I suffered by a calamitous fire, I humbly presume...to hope for compassion. Without this grant or something equivalent at home, I am not able to shew my hand, which I would sacrifice in your Lorshdip's quarrel."

As a result many of the Governors who arrived in Jamaica were thoroughly ill-equipped, temperamentally and intellectually, for the job. Long again tells us:

> "A faithful description of our Provincial governors and men in power, would be little better than a portrait of artifice, duplicity, haughtiness, violence, rapine, avarice, meanness, rancour and dishonesty, ranged in succession, with a very small portion of honour, justice and magnanimity here and there intermixed, to lessen the disgust, which otherwise, the eye must feel in the contemplation of so horrid a group." [70]

From the records, these are fair comments on some Jamaican Governors.[71]

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66. C.M. Andrews, The Colonial Period of American History, Vol. IV, p.179.
67. G. Metcalf, Royal Government and Political Conflict in Jamaica, 1729-1783, p. 1.
68. Long, op.cit., Vol. 1, pp. 26-27.
69. CO 137/51/215: Letter from Charles Fox, 2 March 1720.
70. Long, op.cit., Vol. 1, p. 4.
71. Modyford, Hamilton, Knowles, and Henry Lyttelton were among the worst.

The Governor was directed how to act by his Commission and Instructions, which were usually fairly detailed.[72] Here we will advert to the more important powers which affected the legislative process. These were the powers of calling, proroguing and dissolving the Assembly, and vetoing legislation. These were vital powers for, if no Assembly was called, no legislation could be passed, and if the Assembly was prorogued or dissolved before legislation had completed all its stages, that legislation was effectively terminated. The unwholesome effect of a premature prorogation or dissolution was vividly illustrated by Governor Knowles' inefficient administration. In October 1754 a bill for enlarging the jurisdiction of the inferior courts of common pleas was given a first reading in the Assembly. In November, Knowles clashed with the Assembly and dissolved them before the bill had completed its legislative journey. A similar bill was introduced in the new Assembly in January 1755. After another altercation with the Assembly in the same month, Knowles exercised his power of dissolution. In April 1755 a third attempt was made to get the bill through, and Knowles finally assented to it in May 1755.

The Assembly had to meet at least once every year to grant supplies for the administration of the government and if this had not to be done it is possible that very few Governors would have bothered to call Assemblies. The granting of supplies was the trump-card of the Assembly and on several occasions they used it as a bargaining point in order to coerce the Governor into assenting to their legislation.[73] A prudent Governor would hesitate long and hard before exercising his vetoing powers over legislation, if by doing so, he would find himself running the government without money.

A few Governors however, having both ability and perspicacity, had a positive effect on legislation. They took the initiative and

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72. See the Commissions and Instructions of some 17th century Governors in JAJ Vol. 1, Appendix.
73. See CO 138/19/108: CTP to the King, 31 July 1749.

recommended to the Assembly legislation which experience had proved necessary. Beeston encouraged the Assembly to pass an act governing their slaves, Lawes repeatedly reminded them to determine the qualification of jurors by legislation, and Trelawny recommended an act altering the trials of slaves. Trelawny also tried his hand in drafting. He drafted a militia bill and gave it to a friend in the Assembly but after it had gone through the legislative machinery "it was murder'd and so mangled that I did not know my own Child."[74]

(b) The Council

The legal authority for the establishment of a Council in Jamaica, was contained in D'Oyley's Instructions where he was instructed to elect a Council of twelve to help him govern. Starting with Modyford, the Governors were authorized to nominate the members of the Council and this was the pattern throughout the 18th century.

The Council performed a dual function. As a privy council, they advised the Governor in matters concerning the exercise of the royal prerogative or in affairs of state within the Governor's competence. As the second chamber in the bicameral legislature, they possessed the power of amending, and vetoing legislation. They saw themselves as the Jamaican House of Lords and claimed the same powers and privileges of the English House of Lords.[75]

They were very often engaged in battles with the Assembly which were only terminated by the latter's prorogation. When amendments proposed by the Council were not accepted by the Assembly, the Council either 'receded' from their amendments or the points at issue were resolved at a 'free conference' between members of the Council and the Assembly. Failing agreement on proposed amendments, the Council

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74. See CO 137/25/83: Trelawny to CTP, 8 June 1749.
75. See CO 137/32/213: Lyttelton to CTP, 24 October 1762.

exercised their veto powers. This of course depended on the importance of the bill, and on most occasions the Council preferred to compromise than lose the bill entirely.

The Jamaica Council of twelve, was nominated by the Governor and confirmed by the Privy Council in England. Councillors were usually appointed from among the richest, the most influential, and the most loyal in the Island. This, in Jamaica, often meant the landed proprietors with large properties. President Heywood referred to one nominee to the Council as having a "good sugar work,"[76] and Hunter described another who had a "plentiful estate" as "a man of good sense and interest in the country."[77] Of Bryan Edwards, the famous historian, it was said that his "Property, Integrity, and Abilities are unquestionable and his uniform Attachments to Government and Weight in this Country" would render his appointment "useful to the Crown and satisfactory to the Country."[78] However, the financial situation of some Council members fell far below the dignity of their office. Speaking of councillors in "embarrassed or insolvent circumstances", Trelawny stated that "the Council is not, nor I believe ever was without some in that situation."[79]

On further examination of the composition of the Council we find almost every 18th century governor complaining of the difficulty of getting a quorum of Councillors.[80] Handasyd was "hardest put to get a Council when there is a necessity for it,"[81] and Lawes found "great difficulty in getting (a) corum of Council."[82] This shortage of available Councillors was attributed to various factors. Handasyd fulminated that the Councillors were "no sooner put into the Council

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76. CO 138/15/194: Heywood to CTP, 14 November 1716.
77. C.S.P. 1732, No. 462.
78. CO 137/56/186: Trelawny to Hillsborough, 15 December 1771.
79. CO 137/55/99: Trelawny to Hillsborough, 9 June 1769.
80. The effective quorum was 5.
81. CO 138/13/161: Handasyd to CTP, 4 June 1710.
82. C.S.P. 1720-21, No. 459. Lawes to CTP, 20 April 1721.

but they are troubled with one distemper or other, which they pretend makes them uncapable of doing their duty."[83] John Gregory spoke of the oldest Councillor as being "so worn out with age and infirmity as to be uncapable of acting,"[84] and Trelawny told Hillsborough that the President of the Council, Dawes, was "worn out with age and infirmities" that he had not once attended the Council since he arrived in the Island.[85] Unwillingness to accept office and distance from the capital were also given as reasons for the shortage of councillors.[86]

But by far the most frequently stated reason for an insufficient number of Councillors was their absence from the Island. The Council generally consisted of the wealthiest planters and the wealthiest planters were only too glad to return 'home' to England after acquiring their wealth. In 1702, Vice-Admiral Benbow told Secretary Vernon that the Government of Jamaica "is entirely in the hands of Planters who mind nothing but getting estates and when so to go off, having no regard to the King's interests or subjects."[87] Lawes referred to some Councillors "being indulged to stay in England, while the King's service requires their attendance here."[88] The reports contain numerous letters to absent Councillors inquiring whether they intended to return to Jamaica. In extreme cases, the Board of Trade divested the absent Councillor of his seat, because he had failed to return to the Island.[89]

Another aspect of the Council which merits our attention for its effect on the administration of justice, was the Councillors' possession

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83. CO 138/13/161: Handasyd to CTP, 4 June 1710.
84. C.S.P. 1735-36, No. 125.
85. CO 137/35/105: Trelawny to Hillsborough, 14 April 1769.
86. See CO 137/23/64: C.S.P. 1720-21, No. 459.
87. C.S.P. 1702, No. 560.
88. C.S.P. 1720-21, No. 459.
89. See CO 138/23/381.

of important judicial powers. Five of the Councillors together with the Governor constituted the Court of Errors -- an appellate court in civil cases. Some Councillors were also judges of the Supreme Court, thereby exercising criminal jurisdiction. This unhealthy concentration of both judicial and legislative power in the hands of a small group was severely attacked by a committee of the Assembly when it examined the state of the courts of justice in 1740. The Committee found that the constitution of the supreme judicature was liable to "many and strong objections"; the authority of the court continued to be exercised by four gentlemen of the Council, who had been appointed judges for that court; there were four other judges, but one of them had been in Great Britain for some time, and another from an ill-state of health had not been able to give any or very little attendance for many years past, and there was little or no probability that the other two judges would act in that station; by a recent practice of forming the supreme court of judicature out of the Council, or by placing so many of the Councillors on the bench as to make a majority of the court, "such an extraordinary measure of power may fall into the hands of the council, as is not nor should not be trusted to any one body, in any government within his majesty's dominions"; the consequence may be, that besides the authority the Council have in the government and legislature, "one part of them will determine upon our properties in a court of errors" and the rest "will exercise original jurisdiction over the lives, liberties and properties of all his majesty's subjects on this Island"; so much power in any one part of our constitution, must weaken the whole, and cannot be consistent with the freedom of government promised and allowed by his majesty and his royal ancestors; if there should be a number of Councillors sufficient to constitute both the supreme court of judicature and the court of errors, "then the council board will be possessed of our whole judicature in law, which will be such an addition of power to that

body, as must be dangerous to our liberties."[90] The Governor remedied this state of affairs by suspending the Attorney General and another member from the Council.

Because of the difficulty of getting a quorum of Councillors, attempts were made to increase their number. These attempts were discouraged in Whitehall, Portland for example telling Balcarres that "unless the regular Administration of Justice is found absolutely to require it, I strongly incline to doubt the expediency of such a measure."[91]

In the 18th century therefore, the Council was not a body which contributed much to penal legislation. Many of the members did not even bother to attend the Council. Furthermore, the members of the Council had as much interest in repressing the slaves as the Assembly; and so found little cause to differ with them over slave legislation, which comprised the majority of penal enactments.

(c) The Assembly

We next turn to the most important partner of the legislature — the Assembly. In this work, however, the discussion of the Assembly will proceed on a general plane and for further references, the reader must consult the detailed works on constitutional law. Our object in this section is primarily to discover what was the composition of the Assembly and how comprehensive was the legislative power they purported to possess. This data will help in explaining not only the genus of the criminal law but also its qualitative and quantitative content in this period.

Composition

The first Assemblies which met in 1664 had about 20 members.[92] Representation increased as the population grew and during the 18th

90. JAJ Vol. 3, pp. 520-521.
91. CO 138/42: Portland to Balcarres, 11 July 1798.
92. See Modyford's Reply in JAJ Vol.1, Appendix, p. 22.

century the number of Assemblymen was 43.[93] The franchise for voting in elections for the Assembly was extremely limited. By a 1733 Act to secure the freedom of elections,[94] each voter had to be a freeholder of at least three months standing and had to swear that he possessed a freehold consisting of a tenement of real value of £10 per annum; or an estate with six heads of cattle of the like value; or that he had a plantation with at least five acres planted. An Act in 1756 amended the qualifications for voting, one of the main amendments being that the period of ownership for the freehold was increased to twelve months.[95] The franchise was slightly amended in 1780.[96]

From an already severely restricted franchise, other classes of inhabitants were totally excluded. The first obvious class was the slaves and no further mention need be made of them. Except those who had been given special privileges by law, the free coloureds were prohibited from voting and laws were made throughout the 18th century expressly defining "mulattoes." The Act of 1780[97] declared that "no Person who is not above Three Degrees removed in a lineal Descent from the Negro Ancestor exclusive", was to be allowed to vote in elections and

> "no one shall be deemed a Mulatto, after the Third Generation, as aforesaid, but that they shall have all the Privileges and Immunities of His Majesty's white Subjects of this Island: provided, they are brought up in the Christian Religion."

Although the Jews formed a comparatively rich part of the community they were also disenfranchised. In 1750, freeholders from

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93. Long, op.cit., Vol. 1, p. 57.
94. 6 Geo. c. 2
95. 29.Geo. 2, c. 14. In August 1756 the Assembly voted that the following motion should become a rule of the House "That cattle put upon a piece of land, with an express and sole intention to qualify the owner of such land to vote giveth the owner no right to vote."
96. 21 Geo. 3, c. 15.
97. 21 Geo. 3, c. 15, Sec. 19.

three parishes sent petitions to the Assembly protesting against Jews voting or being elected to the legislature. A reply by the Jews followed, and after a debate the House proceeded to pass three resolutions concerning Jews:[98] (1) That the Jews "have no right by law to give their votes at election for choosing representatives to sit in the assembly," (2) That they have no right by law "to exercise any part of the legislative or judicial authority of this island, or to have any share in the administration of the government thereof," (3) That it would be a "most dangerous consequence to the religion and constitution of this island, to admit the people called Jews," to exercise any part of the "legislative or judicial authority of this island or to have any share in the administration of the government thereof."

The qualifications for a member of the Assembly were much higher than for an elector. Assemblymen had to be freeholders and had to possess property worth either £300 per annum in excess of their debts or £3,000 in excess of their debts.[99]

From the franchise described above, it can be seen that it was only a very small proportion of the total population which played any part in the electoral process. Moreover, from the restricted field from which the 43 members had to be selected, it was not the best available talent which reached the Assembly, as Hunter pointed out: "the men of the greatest substance and best education have made it their choice to lye by at ease", whilst those "of an opposite character are industrious in getting themselves elected", some for the protection of their persons, others with a design to "embroil matters and perplex the administration from private resentments or worse intentions."[100]

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98. See JAJ Vol. 4, pp. 246-247, 249-250.
99. 21 Geo. 3, c. 15, Sec. 18.
100. C.S.P. 1733, No. 331.

Whether they came under Hunter's description or not, there was one section of the population which was always well represented in the Assembly -- the judiciary and members of the legal profession. Whereas in New York at this time the "general cry of the people both in town and country was 'No lawyer in the Assembly,'" [101] whatever objections there were to lawyers' representation in Jamaica, remained muted. As we shall see however, it was the rule rather than the exception for the judiciary to be qualified. That members of the legal fraternity played an active part in Assembly proceedings, there is no doubt. In August 1718, Lawes was obliged to adjourn the Assembly for a month because, "by reason of the sitting of the Grand Court, the Speaker being Chief Justice and severall of the Judges and Lawyers Members of the House, it was judg'd impracticable for them both to Sit together." [102] The Speaker's chair was occupied by more than one Chief Justice and an Attorney General displayed his versatility in the same position.[103] The judges and the lawyers sat on committees, moved resolutions, and introduced bills. Many of the bills in the mid-18th century concerning slaves were introduced by the Chief Justice or another judge. This overlap of functions of legislator and judge was a matter of concern to more than one Governor. Thus after the then Chief Justice had supported resolutions which ran counter to his wishes, Governor Balcarres informed Portland that it was impossible for him to express his indignation on seeing the name of His Majesty's Chief Justice of Jamaica in the list of the "violent enragees" and "I should be glad to know from the Chief Justice in what manner he can reconcile his opinion as a Judge with his support of those Resolutions."[104]

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101. Colden to Hillsborough, quoted by Paul S. Reinsch in Select Essays in Anglo-American Legal History, Vol. 1, p. 394, (A.A.L.S. ed.).
102. CO 137/13/52: Lawes to CTP, 1 September 1718.
103. See JAJ Vol. 2, p. 42.
104. CO 137/101: Balcarres to Portland, 23 December 1798. When one of the assistant judges who was a member of the Council resigned in protest against the new Chief Justice, the Governor suspended him from the Council declaring: "Hee that Refuses to serve the King in One Capacity is not fitt to serve him in any other."
CO 140/4/205: Albemarle to CTP, 5 March 1787.

Towards the end of the century attempts were made to dispossess the judges of their legislative power. In their petition to the Assembly in 1786, the inhabitants of Portland said that "it is an indispensable maxim in the law that 'parties ought not to be judges'; and therefore the offices of legislator and judge ought not to be vested in the same person."[105] In November 1787, two resolutions were introduced in the Assembly:[106] (a) That the exercise of legislative power by persons vested with judicial authority was unconstitutional; (b) That it may be proper to restrain all the Judges of the Supreme Court and Assize Courts from sitting and voting in the House. Both resolutions were defeated -- the Chief Justice and his judicial colleagues predictably voting against them. The following year a bill, on the lines of the second resolution was introduced in the House. Again the judicial representatives in the House rose to the defence of their interests and killed it.[107]

The atmosphere in which the House conducted its proceedings were sometimes hardly conducive to reasonable debating of important legislative proposals. On many occasions the debates were vigorous, vociferous and violent. Molesworth, on dissolving the Assembly told them that all "things have been carried not by strength of argument or reason but by noise and number of voices led by malice and followed by ignorance."[108] On one occasion Hamilton stated that "as the partys present in the House", were equal, several questions were only "Carried by the Speaker's vote". Some members then withdrew from the chamber leaving the House without a quorum. As it was represented to him by the "Speaker and Several Members, That they apprehended violence and the greatest disorders should the absent members again return to the House," he dissolved dissolved the House immediately.[109] Handasyd's report of another Assembly was even more revealing:[110]

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105. JAJ Vol. 8, p. 206.
106. Ibid., pp. 292-293.
107. Ibid., p. 477.
108. C.S.P. 1685-88, No. 886.
109. CO 137/10: Hamilton to CTP, 27 October 1713.
110. CO 137/9: Handasyd to CTP, 9 April 1710.

> "On Monday night last being the 3rd instant, the Assembly at an unusuall hour betwixt 9 and 10 o'clock at night meet at the Assembly House, and their (sic) fell into Such warm Debates about Turning out their Speaker that they put the whole Town in an uproar and murder was cryd out in severall places.... Upon which alarm I Run with all Speed towards the Assembly House."

Bacchus may have played his part in the Assembly's affairs because Inchiquin felt that "at least two-thirds of them sit up drinking all night and before they are cool next morning vote whatever is put into their heads." [111]

Powers

From the beginning, the Assembly because of their elected status never lost an opportunity of proclaiming that they were the 'representatives of the people', and entitled to certain rights. Their law-making power was hailed as their Magna Carta and it will be recalled from Chapter I what extremes the Assembly were prepared to go to preserve this cherished right. Having passed their laws, they advised the British Government to be cautious in disallowing them, as the laws were enacted to suit local needs. Lynch wrote that the Jamaican Acts were "formed to the particular usage of these parts, than assimilated to the laws of England," and they could never have laws "if some deference be not made to the judgment and reason" of the Jamaican legislature; few in England could give "reasons for divers of those laws" and "many things that may seem unreasonable there are absolutely necessary here." [212] Beeston said the Jamaicans thought it hard that after all the trouble and expense of calling an Assembly, a law should be rejected "on the bare opinion of one or two in England

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111. C.S.P. 1689-92, No. 1698.
112. C.S.P. 1669-74, No. 1130.

who have nothing to do with it and say that people in England cannot so well know the reason for making a law as those who make it."[113] One set of laws which was persistently justified by local circumstances was the brutal enactments concerning slavery and this may have been one of the factors which accounted for the absence of criticism by the British Government to those laws during the 18th century.

The Assembly's attitude to other persons or bodies which could have affected their legislation, may also help to explain why much of their legislation was not objected to. The Assembly had always considered themselves as Englishmen and as Portland said were "fond of the notion to be as near as can be, upon the foott of His Majesty's English subjects."[114] They adopted the powers of the House of Commons and modelled themselves on its procedure.[115] To keep them informed of current events in the English Parliament they sent for the English statutes and the House of Commons Journals. In all, they believed that "what a House of Commons could do in England, they could do here."[116] The net result was that they never seemed to have feared, King, Parliament or Governor.

In the turbulent 1679-80 period when a new constitution was proposed for Jamaica the Assembly subtly declared that the King would never have acted as he did, if he had beeh properly advised.[117] By 1766, the Assembly had consolidated its position and all sublety was thrown to the winds when they unanimously resolved: That this house, hath, as the representative of the people of this island, all the privileges that the house of Commons hath as the representative of the people of Great Britain; and that any instruction from the King and his ministry, can neither abridge or annihilate the privileges

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113. C.S.P. 1696-97, No. 130.
114. C.S.P. 1722-23, No. 779.
115. They even seem to have been in advance of the House of Commons in claiming certain powers over the control of their finances. See Whitson, op.cit., Chapters 3, 4.
116. C.S.P. 1701, No. 749.
117. See JAJ Vol. 1, p. 36.

of the representative body of this island.[118] Sometimes the King's orders were deliberately misconstrued to accord with the Assembly's wishes. When an Order in Council was sent down stating clearly that if all the Assembly's Acts had not received the royal assent within three years they were to be void, the Assembly informed the Governor that from the strong conviction with which they were "impressed of his majesty's sacred regard for the rights of all his subjects," the Order in Council should not be construed to mean "any other acts of the legislature of this island, than such as are of a private nature, or have a clause inserted in them," declaring that they should not be in force until they had received the royal approbation.[119] Nevertheless, in times of crises the Assembly knew to whom they should turn for help: "We fly to your Majesty as the father of our Country for succour in our distress."[120]

The Council for Trade, or Board of Trade as it was subsequently known, reviewed Jamaican legislation before sending it to the King, and it came in for its share of criticism. After the Board of Trade had reported adversely against three Jamaican Acts, the Assembly sent a message to the Governor that as they did not believe the Board's objections carried any weight they were by no means "disposed to submit their sentiments to the determination" of their Lordships, "nor ever will at any time suffer them in any respect to direct or influence their proceedings, by any proposition or decision whatever."[121] The Assembly had previously passed a resolution designed to show negligence on the part of the Board of Trade.

It was the Governors who were the main targets of the Assembly's invective. A Governor had the unenviable task of preserving the royal prerogative against the corrosive claims of the Assembly to which rightly or wrongly, they believed they were entitled. Almost

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118. JAJ Vol. 6, p. 4.
119. JAJ Vol. 10, p. 536.
120. C.S.P. 1722-23, No. 295 (i).
121. JAJ Vol. 5, p. 353.

everyGovernor in the 17th and 18th centuries, complained bitterly pf the uncompromising behaviour of the Assembly. To be fair to the Assembly, many of the Governors were high-handed and incompetent, and would have done well to have heeded Lyttelton's advice that the people of Jamaica "are generally easy to be governed, yet rather by persuasion than severity."[122] Albemarle found "malcontents" in the Assembly, Inchiquin referred to the "unquenchable flame" and Handasyd felt they would teach him to be either a "Conjurer or a Philosopher."[123] Beeston's cry of despair was "Were I an angel, I am sure that I could not please everyone."[124] These were all Governors during the fiercely agitated pre-1728 period. But the trend continued: Lyttelton called the Board of Trade's attention to the "lawless spirit";[125] Balcarres' difficulties were vastly increased by the "red-hot Patriots";[126] and Dalling's famous description of the Assembly was that they were "a crooked set of people" who "love without affection and hate without cause."[127]

The Assembly's sentiments were often reciprocal. The Assembly expressed their gratitude to the King for removing Lord Hamilton[128] and they acknowledged the King's goodness "in permitting your majesty's late Governor, Charles Knowles, to resign."[129] Lyttelton's earned epithet was "scourge"[130] and the Assembly resolved that he "ought to be forever held, deemed and reputed, a disturber of the public peace, and an enemy of the commerce, welfare and prosperity of this island."[131]

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122. C.S.P. 1661-68, No. 812.
123. See CO 138/6/113; C.S.P. 1689-92, No. 980; CO 138/11/52.
124. C.S.P. 1693-96, No. 345.
125. CO 137/33/214: Lyttelton to BOT, 24 March 1765.
126. CO 137/102: Balcarres to Portland, 19 May 1799.
127. CO 137/76/167: Dalling to Germaine, 14 September 1779.
128. CO 140/13/915.
129. JAJ Vol. 4, p. 587.
130. JAJ Vol. 5, p. 616.
131. Ibid., pp. 642-643.

Such was the attitude of the Assembly to those who had the power to veto or disallow their legislation.

The Assembly and the Administration of Justice

Following the House of Commons, the Assembly let it be known on appropriate occasions that they had "a natural inherent and indisputable right over our own members."[132] The Assembly extended their power of committal to persons interfering with the privileges of the House. At one period Governor Hamilton complained to the Council for Trade that the Assembly not only caused several persons to be inprisoned "upon the frivolous pretendes and words said to be spoken at or before the Elections, but imposed on them the payment of Exorbitant Sumes of Money, Varnished over by the name of Fees."[133]

The Assembly also concerned themselves with the wider aspects of the administration of criminal justice. After resolving that a "violent insult was offered to the public justice of this country... by sundry evil disposed and riotous persons, in violently rescuing and pulling out of pillory", Benjamin Gwyer, who had been sentenced to stand there, the House agreed to request the Governor to issue a proclamation for the discovery of the miscreants and if they were discovered to order the Attorney General to prosecute them.[134] On another occasion, following a report of a committee of the House inquiring into the courts of justice, the House informed the Governor that having considered "the many barbarous and bloody murders" lately committed in the Island, particularly "a most inhuman and wicked murder", they were requesting him to take such steps to effectively secure the peace, and quiet the fears and apprehensions of

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132. JAJ Vol. 1, p. 424.
133. CO 137/10: Hamilton to CTP, 22 March 1714.
134. JAJ Vol. 6, p. 50.

the inhabitants, and "compel the magistrates, officers of the crown, and judges of the supreme court of judicature to exert themselves in the discharge of their respective duties."[135] The House voted financial rewards for the apprehension of offenders and in some cases, requested the Governor to direct the Attorney General to enter a nolle prosequi.[136]

What are even more important, are the two occasions on which the Assembly stepped in with legislation to alleviate injustices caused by the rigid execution of the criminal law. On both occasions, the Assembly's actions were disapproved of by the Board of Trade. In the first case, Thomas Kello who had been convicted under the Inveigling Act for harbouring and employing a male slave, was fined over £600 and sentenced to twelve months' imprisonment. His trial had been before a court consisting of two judges and three freeholders which as the Governor reminded the Council for Trade "is the only Court in this Island, from whose judgement there is no appeal."[137] Kello petitioned the Assembly about his case, and in 1756 the Assembly passed an Act reversing Kello's sentence, and discharging him from the penalties.[138] The legal adviser to the Council for Trade, Matthew Lamb, in apparent horror reported that Kello's Act was of the most "extraordinary Nature and the first Instance where the Legislature even of Jamaica, altho' it has assumed great Powers in several Acts," have reversed a "Sentence passed by legal Judges upon a Trial of a Person for a breach of the Laws of the Island." He felt the Assembly should not have reviewed the trial and should not have declared that there was not sufficient foundation for the sentence, "it being very possible some Facts or Circumstances might appear to the Judges upon the Trial which did not appear on passing this Act." Furthermore, the laws of the

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135. Ibid., p. 441.
136. See JAJ Vol. 7, p. 102; Vol. 10, p. 48.
137. CO 137/30/239: Moore to CTP, 28 August 1759.
138. 29 Geo. 2, c. 19.

Island "have invested the Judges with the Power of Trying Persons for the Breach of the Laws and to them only it belongs." In conclusion if the Act were confirmed "it might be a Precedent of the most dangerous Consequences."[139] The Act was disallowed and despite the entreaties and explanations by the Governor that the Inveigling Act was generally considered defective,[140] the Council for Trade remained adamant.

The disallowance of Kelloe's Act did not deter the Assembly from treading on judicial territory a second time. Richard Wade, a free mulatto, had been convicted under the Inveigling Act and being unable to pay the £200 fine had remained in prison for over four years. In 1773 he petitioned the Assembly "from a conviction that the house is ever attentive to the calamities of the distressed" and hoped that as his youth and inexperience had betrayed him into breaking the law the House would "exercise that power", with which the wisdom of society at large has providentially entrusted them, in a remission of that fine, which else will doom him to perpetual imprisonment"; a punishment "more terrible than death" and one which he conceived was "against the genius of our laws."[141] The Assembly inquired into the case and later passed an Act reversing part of Wade's sentence.[142] The Board of Trade was advised by their legal adviser that Wade's Act "which amounts to a Pardon of the fine due to his Majesty ought to have originated with his Majesty's Governor, if not founded on his Majesty's Royal Grace signified from Great Britain"; it would probably be "too much to disallow such a Law, more especially as it has probably had its Effect," but they could consider sending Instructions to the Governor of Jamaica "respecting such Acts of Pardon to be passed for the future."[143]

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139. CO 138/20/414-17: CTP to the King, 13 March 1759.
140. CO 137/30/239: Moore to CTP, 28 August 1759.
141. JAJ Vol. 6, p. 463.
142. 14 Geo. 3, c. 22.
143. CO 137/37/114: Jackson to BOT, 17 March 1775.

It does not seem however that although the Assembly were usurping the prerogative, they intended to usurp the functions of the courts. Following a lengthy examination of a petition, the Assembly resolved

> "That every British subject in this colony having in common with the rest of their fellow subjects, a right to be tried for all offences according to the laws of England and this colony, which place no judicial power in the representatives of the people, except in cases of their own rights and privileges, the bringing motions before this house which are cognizable by the courts of justice, and more especially such as are actually in the course of adjudication, is very improper, and of dangerous consequence; and may be in future cases, perverted to prejudice juries and overawe the courts of justice." 144

However, they drew a distinction between reviewing decisions of the courts on points of law and in investigating charges of corruption in the administration of justice; review of judicial decisions in "mere points of law, belongs to the appellate jurisdiction, and ought not be inquired into by this house", but "charges of corruption and wilful perversion of the law in the administration of justice", in any of the courts of this island, "to wicked purposes, and to such like views, are properly cognizable by the house of assembly as representatives of the people."145

With the Assembly elected by such a small segment of the population , they could scarcely be what they consistently claimed they were — "the representatives of the people." And with the white population, of which the Assembly was exclusively composed, possessing such views about slaves and the system of slavery, much of the penal legislation of the 18th century is immediately understandable.

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144. JAJ Vol. 6, p. 259.
145. JAJ Vol. 8, p. 241.

(d) The Colonial Office

Jamaican legislation had to be reviewed in England, after which it was either confirmed or disallowed by the King. The reviewing body went under various names such as the Council for Trade, the Council for Foreign Plantations, the Joint Council for Trade and Plantations, the Lords Commissioners for Trade and Plantations, and the Board of Trade.[146] In the 19th century, this body came to be known as the Colonial Office.

Governors of Jamaica were instructed not to assent to laws which were repugnant to English laws and Lord Windsor, for example was empowered to pass laws "not repugnant to our laws of England, but agreeing thereto as near as the condition of affairs will permit."[147] One Governor reminded the Assembly that "as we are Englishmen, I think we are obliged as near as possible to assimilate our laws to those made in England."[148] Nevertheless, when Jamaican Acts were patterned on English Acts, they were at times rejected in England, chiefly on the ground that they encroached on the King's prerogative.[149] But novelty was also a ground for rejection: a Jamaican statute was disallowed because there was "nothing in the law or practice of England which favours any such regulation."[150] Some Governors advised the Council for Trade to be extremely cautious in disallowing or amending their laws and Lynch suggested that in examining the laws the criteria should be whether the laws preserved the King's prerogative and improved the revenue", but for the rest the Council for Trade "are hardly competent judges."[151]

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146. In this work the name used in reference to this body is either the Council for Trade or the Board of Trade.
147. Windsor's Commission in JAJ Vol. 1, Appendix 4.
148. JAJ Vol. 1, p. 326: Handasyd's Speech to the Assembly.
149. See Comments on the various Revenue Acts in Chapter 1, supra.
150. See JAJ Vol. 2, p. 18.
151. C.S.P. 1669-74, No. 1130.

Before 1680 laws made by the Jamaican legislature had a life-span of two years, unless they were confirmed before the two years ended. After 1680, laws made in Jamaica were to remain in force until they were disallowed by the King.[152] In examining colonial statutes, the Council for Trade divided them into three categories: (a) those for the "service of the Colonies or the security of private property"[153] which were immediately confirmed, (b) those which were so pernicious "as to demand an immediate Repeal", (c) those whose effect being doubtful were allowed to "lye by as probational",[154] until more information was received about them. From statements made by the Council for Trade there seems to have been a deliberate policy at least in the early 18th century of delaying the confirmation of colonial Acts. In a letter to the Duke of Newcastle in 1724, the Council for Trade stated: But as to the laws of the "Plantations in general we take leave to Observe to your Grace, the fewer Acts there are confirmed 'the greater' will be the dependence of the Colonies upon the Crown, of which the present State of Jamaica is an Instance."[155] We find therefore that in some instances, many years elapsed before some Jamaican Acts were confirmed or disallowed. When the Council for Trade were examining the Jamaican Acts in their office in 1724, they discovered that there were Acts going back as far as 1699, which had not been laid before the King.

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152. See Chapter 1, supra.
153. CO 138/16/476.
154. Ibid.
155. Ibid., p. 477.

C. The Judiciary

The members of the judiciary concerned with the administration of criminal justice were the Governor, the Judges of the Supreme Court, the Justices of assize and the justices of the peace. These officers will be discussed under two main heads, (a) appointment and tenure of office (b) remuneration, because appointment and remuneration were important factors in the selection of men who administered the law. A few general comments will also be made about the judiciary.

(a) The Governor

The Governor's appointment and remuneration have already been discussed. He had no original jurisdiction in criminal matters[156] but it is necessary for us to examine the extent to which he was equipped to dispense criminal justice when he was called upon to do so.

With few exceptions[157] none of the Governors of the 17th or 18th century had had any formal training in the law and their professions did not enable them to acquire considerable legal knowledge. The author of 'Groans of Jamaica' felt that Handasyd's education having been generally confined to the exercise of the pike and the musket, "it need not be much wondered at, if he understood (without Inspiration) little more of the office of Lord Chancellor and the deciding of abtruse and knotty Law-Cases" than he did of what he "commonly (by Mistake) call'd the creed of St. Ignatius meaning that of St. Athanasius," [158] As for Governor Hamilton

156. Except when he acted as Chief Justice as Modyford did. Then he was exercising criminal jurisdiction qua Chief Justice not qua Governor.
157. D'Oyley, Modyford and Lynch were among the exceptions.
158. Anon, The Groans of Jamaica, p. 46.

"having been always bred at Sea, from a youth upward even before the Revolution and never employed or conversant in any other business before he came hither", he could not "apprehend how the bare pre-eminence of a Superior Birth, should entitle him to a more inspired Knowledge of the Laws than the former." [159]

Long, writing over fifty years later echoed similar feelings:

> "From the commander of a brigade of foot, a gentleman is metamorphosed, on a sudden into a graver judge of courts, to discuss cases in equity, solve knotty points of law... what is to be expected from such judges? May they not either commit gross absurdities from ignorance, make arbitrary decisions from avaritious or tyrannical principles, be remiss and dilatory from a scrupulous fear of wrong doing or conscious of their own weakness, rest themselves on the private opinion of some selfish retainer of the law, who had cunning enough to turn this absolute control over a governor's judgement to his own lucre in the course of practice?" [160]

Some Governors, like Edward Trelawny were honest enough to admit their legal limitations, but the majority preferred to soldier on in military bliss and to pontificate on legal matters of which they knew relatively little.

(b) The Judges of the Supreme Court

We will discuss the appointment, security in office and remuneration of the judges in relation to their overall effect on the administration of justice and the development of the law.

Appointment and tenure of office

The legal authority for the judge's appointment was found in the Governors' Commissions and Instructions. Windsor for example

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159. Ibid.
160. Long, op.cit., p. 27

was instructed "to appoint and commissionate under our public seal for the Island, judges, justices, sheriffs and other officers, for the more orderly administration of justice.[161]

The judges held office during the King's pleasure and they could be dismissed at any time by the Governor who was directed to send home the reasons for their dismissal. In the confused and unsettled years of the 17th century judges seem to have been dismissed at the whim of a particular governor. A certain amount of regularity had been introduced in the 18th century but at least four Chief Justices were dismissed from office. Peter Heywood was dismissed inter alia, for "encouraging and abetting that Party of men who have obstructed and opposed the Government and His Majesty's Gracious Instructions for the Advantage and Security of this Colony";[162] John Guy was dismissed on the unanimous advice of the Council for introducing in the Assembly a motion disrespectful of the Governor; Phillip Pinnock was dismissed after the Assembly complained about him and Thomas Fearon bst his post because of his lack of ability and financial embarrassment.[163] Several assistant judges were also dismissed during the course of the century.[164]

This power to dismiss judges was a most potent weapon in the hands of a Governor and a power which seemed to have been abused to the detriment of the proper administration of justice during that period. On one occasion the Attorney General of Jamaica bitterly complained that "the very seats of justice have been altered, the old experienced judges of the Supreme Court have been turned out and their places supplied by the most ignorant indebted, necessitous persons."[165] Such arbitrary behaviour by the Governor did not enhance the image of the law or improve the administration of

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161. Windsor's Instructions in JAJ Vol. 1, Appendix p . 5.
162. CO 138/14/447: Hamilton to CTP, 5 March 1716.
163. CO 137/38/192.
164. Ibid.
165. C.S.P. 1689-92, No. 50.

justice and from very early in the 18th century there were demands to make the tenure of judges more secure. Peter Heywood, the Chief Justice, informed his friend Charles Long about the

> "mighty Indeavours made to put me by being Chief Justice. Broderick was chief manager in ye assembly...in short ye Island can never be happy so long as the Constitution is that the Governor can suspend the Councill at his pleasure and turn in and out the Chief Justice, Browbeat, chide and rail at him at his pleasure as if he wont act in his office as he shall direct wch this or no other Governor shall ever persuade me to doe, it would be well for the Island, if her Majtie gave it in her instructions that the judges Commissn of the Grand Court shd be as the judges commisn in England is Quamdiu se bene gesserint- then they would not be browbeaten but be so fixt yt no temptaions could move them to doe anything that was little." [166]

Up to 1750 no alterations concerning the tenure of the judges were made in the Governors' Instructions and in 1751 the Assembly passed an act that the judges of the supreme court should hold office during good behaviour.[167] Governor Trelawny thought it would be a good Act provided the Chief Justice and an Assistant were appointed from England as he had previously requested; but otherwise it would be a pernicious Act and

> "give greater weight to the Body of Judges (who must be taken from among the Planters) than would be proper to be allow'd of in a Colony... a standing Body of Planters made Judges for life would have a much greater influence and authority in this Island, than the Governor and Council appointed by His Majesty which might prove of bad consequence." [168]

The English Attorney General reported that the Act directly

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166. The Longs of Jamaica and Hampton Lodge (ed. Robert Howard) Vol. 1, p. 53.
167. 24 Geo. 2, c. 10.
168. CO 137/25/236: Trelawny to CTP, 25 March 1752.

affected the prerogative.[169] It was disallowed.

During Dalling's administration the Assembly passed another Act that the judges should hold their offices during good behaviour. Dalling refused to assent to it on the ground that he could not do so without special authority from the Crown.[170] In the following year, 1779, the Assembly passed a similar act, but Dalling refused to give it his assent, "as your former bill of the same Title is before the King in Council."[171] In 1780, Dalling dismissed four assistant judges because they had acted contrary to his wishes. The Assembly inquired into the reasons for the judges' dismissal, found that they had been dismissed "without cause being given",[172] and promptly brought in and passed another bill making the tenure of judges more secure. The Council rejected the Act. After a short prorogation which ensued the bill was again introduced in the House,[173] and finally assented to by Dalling.[174] The Board of Trade stated that although the Act was against the Governor's Instructions they favoured its confirmation as the inhabitants of Jamaica

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169. CO 138/19/485: His two main points were (a) that it was more suitable for the King to reform the judges' security by his authority, than by an Act of the Assembly, (b) that it was not advisable in the colonies that judges should hold their places during good behaviour.
170. JAJ Vol. 7, p. 136.
171. Ibid., p. 225.
172. Ibid., p. 284.
173. On this occasion the Assembly told the Governor that the bill "is of so much importance to our constituents that we intend again to take it into consideration, and are in hopes it will meet with the concurrent sanction of all branches of the legislature. JAJ Vol. 7, p. 355.
174. 21 Geo. 3, c. 25. Dalling gave his assent reluctantly and told Germaine that he hoped the Act would not receive the Royal assent. CO 137/80/59: Dalling to Germaine, 31 January 1781.

> "have from a very recent Transaction in that Island and which gave rise to the Act now before us well founded reasons for wishing to prevent if possible any future abuse of the power delegated by Your Majesty...to your Governor....
> The too frequent displacing of Judges in your Majesty's Colonies, upon light and ill-founded Occasions certainly calls for some effectual Check and Restraint...(The present Act) did not proceed from a desire of Innovation, but was grounded upon a very minute and Solemn Examination into the State of Facts, and the Conduct of Governor Dalling in displacing four Judges of the Supreme Court whom your Majesty has since and upon our said Representation being graciously pleased to re-instate in their Seats and Rank upon the Bench..."[175]

This 1781 Act did not go the whole way of making judges hold their office during good behaviour, but provided that the Judges of the Supreme Court could only be removed on the advice of members of the Council. The Governor also had to deliver a full statement of the cause of suspension to the judge and also submit a copy to the King. But it was one more step towards a greater security for the judiciary and the more efficient administration of justice.[176]

Remuneration of judges

The remuneration of the judges also affected the quality and quantity of justice administered during this period. The Governors were empowered to remunerate the judges and Windsor was authorized to "allow and order them, or such of them as you shall think fit, meet and convenient salaries to be paid after the manner of Barbadoes and Virginia or one of them." [177] At first judges were paid, and by the

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175. CO 137/40/8-9.
176. 57 Geo. 3, c. 17 later enacted that the consent of a majority of the Council was sufficient for the suspension of a Supreme Court judge or a justice of Assize.
177. Windsor's Instructions in JAJ Vol. 1, Appendix, p. 5.

1664 Impost Act, it appears that the Chief Justice received £80 and the assistant judges £20.[178] The Minutes of the Jamaica Council for June 1671 show that on a motion by several judges for their respective salaries the Governor and Council ordered that "inspection be made into the accounts of the Revenue and that if it shall appear if there is any Money in the Treasury that they shall be paid their Sallary out of such monyes."[179] In 1683, without giving their reason in the records, the Assembly resolved that all the judges should not be paid.[180] The Chief Justice was given a salary of £120. This together with his fees and various perquisites gave him an income of between £2000- £3000 per annum. The assistant judges were not paid, probably because every man in the community owes "individually some personal service to his country without any expectation whatever of a 'compensation for such service'."[181]

At this point, it is convenient to turn our attention to the qualifications of the judges who administered the criminal law, because as we shall see remuneration to some extent determined their qualifications. Vice-Admiral Benbow gave us an indication of the quality of the judges in his statement in 1702 that the "inhabitants are grown very rich and value themselves for being Judges and Parties in making and executing their own Laws; they do whatever the desire of gain leads them to without any regard to the Laws of our Country."[182] This, as we shall see was a mild comment in comparison to others.

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178. See F.G. Spurdle, Early West Indian Government, pp. 114-115.
179. CO 140/1/222; 22 June 1671
180. JAJ Vol. 1, p. 74.
181. JAJ Vol. 8, p. 109. Petition of freeholders of St. Mary to the Assembly. See also, JAJ Vol. 1, Appendix, p. 47. The Assistant judges serve for nothing "only the honour and satisfaction to serve the king and country". Another commentator felt that the assistant judges were supposed to have nothing in view but the "Credit to be derived from a sensible and Patriotic Exertion in devoting a portion of their leisure to the Administration of Justice". CO 137/39/71.
182. C.S.P. 1702, No. 560.

The Chief Justices of Jamaica during the 18th century never usually had a legal education and they were generally planters or merchants who headed the judiciary and who were accepted as the most learned of the judges. Sometimes their brand of justice was praised by contemporary writers[183] but the vast majority of comments were unfavourable. We learn from one author that the present Chief Justice was "bred at sea, from a boy upward and happening to get the Command of a frigate had the good or bad luck (I can't tell which) to lose her on a Rock" in sight of Port Royal, "without any Stress of Weather. So not thinking it convenient to return home, settled here and became a Planter and then a judge."[184]

The correspondence of the Jamaican Governors is replete with complaints about the various Chief Justices. Handasyd unenthusiastically wrote that he had no "extraordinary opinion of the new Chief Justice but he was the best he could get."[185] Hunter's remark was that the present Chief Justice was so weak that "the Bench is grown contemptible."[186] In an unparalleled display of candour one Chief Justice informed the Governor that he was resigning because "of his Age and little skill in the Nicetys of the Law."[187] One Assistant judge resigned on the appointment of a new Chief Justice because "of the little opinion I had of the new Chief Justice, and therefore unwilling to be bound up by his Sence, having but small dependence upon my own in matters of Law."[188]

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183. See Francis Hanson, Account of the Island and Government of Jamaica, p. vi; Charles Leslie, A New History of Jamaica, p. 302.
184. Anon, The Groans of Jamaica, p. 46.
185. CO 137/7: Handasyd to CTP, 19 March 1706.
186. C.S.P. 1728-29, No. 392.
187. CO 140/6/266. When Handasyd was reporting the Chief Justice's resignation to the Council for Trade, he discreetly told them that he had done so because of the "Infirmity of his Age and for other Reasons". CO 137/7, 11 June 1705.
188. CO 138/6/103: Bourden to CTP, 7 March 1698.

From an early period there was a movement for reform and requests were made for the chief justice to be appointed from England. Handasyd's request was that a Chief Justice who should be a "man of Learning" and who "will support the laws of Great Britain", should be appointed from England.[189] A few years later the Assembly, more out of pique than anything else resolved that the salary of the Chief Justice shall be augmented to "encourage a gentleman learned in the law to come over from Great Britain."[190] The Assembly did not augment the Chief Justice's salary and no Chief Justice was appointed from England.

Soon after Edward Trelawny's arrival in the Island, he found himself in the centre of an acrimonious controversy between two contenders for the Chief Justiceship. After that episode he persistently requested that a Chief Justice be appointed from England.[191] On one occasion he wrote:[192]

> "Having observ'd several inconveniences that arise from the Judges of the Supreme Court of Judicature in this Island, being chosen out of the Gentlemen Planters in the Island and not Men bred to the Law; and believing that many of them might be obviated, if a Chief Justice and an Assistant Judge of the Lord High Chancellor's nomination, were to be appointed by His Majesty, I took the liberty in a letter to the Board of Trade to make the proposal which I flatter myself their Lordships do not disapprove of; but nothing being yet done...
>
> "It tends to keep up Parties in the Island which burst out with great violence upon every vacancy of a Chief Justice: for that Office, being the next in rank to a Seat in Council, but in Power and Authority much above it, is the object of ambition to every one who thinks himself of Weight and Interest in the Country; by which means it seldom happens, but there are two Competitors upon different pretences; one perhaps, as the eldest Judge claims it as his due by seniority, the other being a Councillor, or more popular in the

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189. CO 137/8: Handasyd to CTP, 31 March 1708.
190. JAJ Vol. 2, p. 419.
191. See CO 137/24/213-4: Trelawny to CTP, 14 July 1747; CO 137/25/54: Trelawny to CTP, 18 November 1748.
192. CO 137/59/32: Trelawny to Bedford, 1 June 1750.

> Island, thinks it an injustice to his Rank and merit to be denied any honour he shall aspire to. As it is impossible for the Governor to please both all he has to consider is, who is the least able to hurt him; for he may be well assur'd that the disappointed person with all his Friends, and Relations will become his utter Enemy. Tho the disappointed Candiatee is so angry, the successful one is not equally pleased; and soon after the pleasure that arises upon the first gratification of his ambition is over he finds the labour of his Office much too great and wants to retire; and then the Governor has the same ugly game to play over again. The disappointed Judge and all the judges that espouse his interest quit their seats on the Bench, this of necessity occasions frequent changes there which almost as often as I am inform'd make a change too in the Rules and Decisions of the Court; nor can it well be otherwise, when the Judges are not Men of Science and thoroughly grounded in the Art or Mystery of the Law."

The Council for Trade was unenthusiastic over Trelawny's idea and kept him at bay by telling him that it was "a Matter of great Consequence" [193] and that it "deserves a good deal of Consideration." [194] Justice therefore, continued to be dispensed by ill-equipped planters.

The demand for reform was nevertheless growing and between 1796 and 1801, three unsuccessful attempts were made to pass legislation enabling the King to appoint barristers of a certain standing as judges.[195] The planters saw this proposal as endangering their power and they uncompromisingly opposed it.

The atmosphere vividly described by Trelawny continued into the 19th century and Lady Nugent was able to describe how on the death of the Chief Justice the Governor's residence was "beset with applicants for the situation."[196] But, fortunately, times were changing. Governor Nugent in 1801 found the death of the Chief Justice a useful opportunity to appoint someone with a more than cursory acquaintance

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193. CO 138/19/113: CTP to Trelawny, 13 August 1749.
194. CO 138/19/89: CTP to Trelawny, 15 June 1748.
195. See JAJ Vol. 9, pp. 546, 561, 584; Vol. 10, pp. 37, 629.
196. Lady Nugent's Journal (F. Cundall ed.), p. 59.

with the law. To the disappointment of the other applicants, he appointed a barrister to the post, and told Lord Hobart that he hoped this would be a "step towards the Introduction of a more competent Judicature in this Island."[197] Nugent's hopes were partially fulfilled by two Acts in 1806 and 1817.[198]

If the Chief Justice was more versed in agriculture than in legal matters it could hardly be expected that the assistant judges would be any better in the law. They too, were usually planters giving "a little of their time" to the administration of justice. John Style in 1671 described the contemporary Bench to Secretary Morrice[199]

> "The first and chief is Lt. Col. Cope, who knows not one letter in the book, yet of late hath learnt to write his name; he was long imprisoned in Dublin and elsewhere to save him from the gallows his crime deserved. Then Capt. Olefield, a man condemned to be hanged in England but who got sent hither to labour as a servant. Major Ascough, judge of the Court of Common Pleas, Capt. Ailemer and Capt. Lahor whose further description may be found in Job XXX, all trained up from boys in rebellion and murder."

We are indebted to Groans of Jamaica for this description of one of the judges - honest Judge Careless;[200]

> "He was a soldier in one of the Regiments of Foot-Guards at White-hall and his Captain willing to save himself the Trouble of paying his Company's weekly Subsistence Money entrusted the same to W - C - less to do it for him. But Mr. C - less aiming (it seems) at greater matters, than carrying a Musket borrowed one Week's Subsistence of the Company, drew his own pass and made the best of his way hither insalutato hospite. Some say he sold himself to the Master of the Ship in which he was transported to be a Servant for a certain term of years; but under Redemption. However, be that as it will, he married a Planter's widow, and is now the first of six Assistant-Judges of the Grand Court. But nevertheless he still retains so much of his

197. CO 137/106: Nugent to Hobart, 21 December 1801.
198. 47 Geo. 3, c. 13; 58 Geo. 3, c.18.
199. C.S.P. 1669-74, No. 7.
200. Anon, The Groans of Jamaica, p.46. The accuracy of these statements must be treated with caution, for in an age when pamphleteering was popular, many pamphlets contained inaccurate statements.

> former integrity that if a bolt or steer happen to struggle out of a Neighboring Penn, he very charitably receives it into his own; and to prevent it struggling further, claps on his own Mark upon it..."

In 1810 an Act for ensuring the more regular administration of justice[201] stated in its preamble that the attendance of the judges had been too uncertain and that it was not "reasonable to expect that any person should devote his time and studies to the service of the public without some compensation." The two assistant judges of the Supreme Court were given £700 and each of the two justices of assize £500.

Although the movement towards a more learned and sophisticated Bench had resulted in a barrister occupying the Chief Justice's chair, this improvement was somewhat nullified by the composition of the court which enabled the unlearned assistant judges to outvote the Chief Justice. This situation was unfavourably commented on by the Legal Commissioners in 1827.[202]

In concluding the investigation of the legal qualifications of the members of the Supreme Court we must point out that during the 17th and 18th centuries Jamaica did not possess a monopoly of agricultural experts who incompetently occupied the seats of justice. In Virginia, there were complaints that the county courts were held by "county gentlemen of no education in the law."[203] Governor Bellomont of New York told the Council for Trade that the Chief Justice, Col. Smith, "is no sort of lawyer, having been bred a soldier."[204] One Chief Justice of North Carolina was a "hasty young man drunk from morning till night",[205] and from Commissioner Larkin's description the Chief Justice of Bermuda was a man of exceptional abilities: He was

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201. 51 Geo. 3, c. 27.
202. Legal Commissioners Report, p. 96.
203. C.S.P. 1696-97, No. 1396.
204. C.S.P. 1699, No. 134.
205. C.S.P. 1731, No. 270.

"an old harpooner, a poor illiterate, sorry fellow, that can scarce write his name." Besides this "he is a man of very ill fame and character; he married a woman in these Islands and got both her daughters with child."[206]

(c) The Justices of the Peace

In the 18th century the magistrate or justice of the peace was a very important person in the Jamaican body politic. He was a judge at quarter sessions, an officer in the militia and usually a member of the Assembly or Council. Yet throughout the 18th century there was no legislation establishing this office in Jamaica: he was one of the post-1661 imports from England and the Jamaican Assembly never found it necessary to legislate for him. Shortly after D'Oyley received his Commission we find an order of the Government Council appointing all the Council members, justices of the peace.[207]

The justice of the peace was appointed by the Governor, generally on the recommendation of the Custos and sometimes after consultation with the Council.[208] It was said that he was selected from among the "principal gentlemen of the parish, in point of consequence, intelligence and fortune."[209] No property qualification was necessary but appointees were generally freeholders.[210]

The justices, like the Supreme Court judges held their commissions at the pleasure of the Crown.[211] They were removable by the Governor "for misconduct or neglect of duty by mandamus or by the issuing of

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206. C.S.P 1702, No. 1042.
207. See CO 140/1/51. Also the Attorney General of England's Report in CO 137/14/333.
208. See Legal Commissioners Report, p. 248. Also CO 140/36, 14 November 1752.
209. Legal Commissioners Report, p. 248.
210. Ibid.
211. See Legal Commissioners Report, pp. 248, 256.

a new general commission in which their names may be left out."[212] In 1754, the Governor and Council struck a Clarendon magistrate from the Commission at the request of his co-magistrates.[213] On another occasion a magistrate's commission was withdrawn as it was alleged he had offered to sell his Commission for two bitts.[214]

At the head of the magistrates in each parish was the Custos Rotulorum. Of this official, Jamaican legislation says nothing, except to refer to him in the performance of certain duties. He may have been imported simultaneously with the magistrates or very soon after,[215] and despite his demise in England, he has survived for over three hundred years in Jamaica. For information about him we have to turn to the English commentators. Holdsworth says: "From an early period one of the justices had been selected by the king to keep the rolls of the peace, and this custos rotulorum had probably always enjoyed an honorary precedence among his fellows."[216] In Lambard's Eirenarcha:

> "Amongst the Officers, the Custos Rotulorum hath worthily the first place, both for that he is alwaies a Justice of the Quorum in the Commission, and amongst them of the Quorum, a man (for the most part) especially picked out either for wisdome, countenance or credit; and yet in his behalfe he beareth the person of an Officer, and ought to attend by himself, or his Deputie."[217]

The duties of a Jamaican Custos, according to a holder of the office, was the same as the Custos Rotulorum in England.[218] His jurisdiction did not extend beyond the parish or precinct for which he was appointed. The Custos was appointed by the Governor and was removable by him "a measure never resorted to but in cases of great delinquency".[219]

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212. Ibid.
213. The reason given was that he was "obnoxious to the rest of the magistrates" - CO 140/36, 8 January 1754.
214. CO 140/32, 28 November 1748.
215. See Lynch's Account of the State of Jamaica, in JAJ Vol. 1, Appendix, p. 47.
216. William Holdsworth, History of English Law, Vol. 4 (2nd ed.), p. 149.
217. Lambard's Eirenarcha, p. 387.
218. Legal Commissioners Report, p. 248.
219. Ibid.

The Custodes and JPs performed important functions in the administration of justice. They officiated at Quarter Sessions where a large amount of criminal work was done; they presided at the numerous slave courts; they acted as examining justices; and under the police laws in certain towns they could exercise a summary jurisdiction in cases of breaches of the peace. Their importance is thrown into sharp relief by a petition of the freeholders of St. Ann complaining to the House that for several years they had had none, and sometimes only two justices, for the administration of public justice; the slaves were induced to commit

> "frequent outrages and thefts in firm confidence, that they shall not even be brought to justice ... (the white servants have been encouraged) to commit violences, and make disturbances, on their estates, which late experience has taught them, and for want of magistrates to bring these insolent and turbulent fellows to a proper trial, and to inflict the punishment due to their crimes, they may have the audaciousness to persist in their villainy, and even to make complaint against their master or overseer..."[220]

It can therefore be easily seen that the justices played a most important role in the administration of criminal justice and it was on them to a very large extent that the local judicial machinery depended. But as planters they laid no claim to legal knowledge and this by itself would make the brand of justice they dispensed "according to law" extremely suspect. As a remedial measure the Legal Commissioners in 1827 recommended that the Chairman of Quarter Sessions should be legally qualified.[221]

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220. JAJ Vol. 4, p. 281. For other complaints about a shortage of justices see JAJ Vol. 3, p. 468.
221 Legal Commissioners Report, p. 113.

D. The Legal System

The legal system will be discussed under (a) the courts (b) the jury: The Courts will be divided into (i) their history, (ii) their jurisdiction.

(a) The Courts

(i) History of the Courts

When D'Oyley was appointed Governor in 1661, his Instructions were that as soon as it was convenient he was, with the advice of the Council, to "settle such judicatories for civil affairs and for the admiralties, as mgy be proper to keep the peace of the Island and may determine all matters of might and controversy according to justice and equity."[222] D'Oyley on the advice of his Council established two courts of judicature.[223] Windsor who succeeded D'Oyley had similar Instructions and he was to settle such judicatories for civil affairs and determine "all causes, civil,and criminal, matrimonial, testamentary and maritime."[224] The first Assembly having taken it "into theire Serious Consideration how necessary and fitting it is not only for the Conveniency of Planters but also for encouragement of trade within the Island"[225], passed 'An Act for Establishing Courts of Judicature for the Island of Jamaica'[226]. Among other provisions, it stated where the courts were to be kept and that the Governor with the advice of the Council should fix the salary of the judges.

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222. D'Oyley's Instructions in JAJ Vol. 1, Appendix, p. 3. Although in the period between 1655-1661, Jamaica was under a military jurisdiction, there was some form of civil government. See The Long Papers. Add. Mss. 12423, 17 January 1659, and Add. Mss. 12410, 2 May 1659.
223. CO 140/1/51.
224. Windsor's Instructions in JAJ Vol. 1, Appendix, p. 5.
225. Preamble.
226. CO 139/1/33.

On Modyford's appointment as Governor he was instructed to examine the judicial institutions and amend them if they were found defective. Modyford examined the Courts which had been established, and made radical changes in their organization. In his words:[227]

> "When I first came here there was but one court of common pleas held in this island, which though enough for the number of people, yet, by reason of their being settled at a very great Distance from the Towne of St. Jago and Port-Royal . . . the charge of their journey and their long absence from their plantations, was an undoing to suitors to that court; and therefore I did upon petition of the representatives of the freeholders, constitute in every parish that was reasonably well inhabited, one court in the nature of a county-court, with power to hold pleas of any sum under £20; and, also, I settled in every of the said parishes, a commission for the peace directing them to hold their quarter sessions duly: And to keep all these in order, I appointed a supreme court at the town of St. Jago in the parish of St. Catherine arming it with king's bench, common pleas and exchequer powers wherein all errors of those inferior courts are to be reformed, and to which matters of difficulty are duly transmitted; and this court being of greatest importance for the peace and welfare of this colony, I have officiated in person ever since my arrival. This order is the nearest I could bring it to that of England, and hath proved very successful, and of infinite satisfaction to the inhabitants; than which we have no other common Law Courts."

He added that there was also a court of equity and a court of admiralty.

Modyford's organization was largely confirmed by the 1681 'Act for establishing Courts and directing the Marshal's Proceedings',[228] but there was no legislative provision for a Quarter Sessions, although

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227. Modyford's Reply to the Commissioners, JAJ Vol. 1, Appendix, p. 22. Patterson's states that after "1758 a Supreme Court, held in Spanish Town, the capital, and two courts of assize were set up", Patterson, op.cit., p. 31. This statement is not completely accurate. The assize courts were established after 1758, but the Supreme Court had been in existence from the 1660's.

228. 33 Charles 2, c. 23.

reference is made to them in the Act. Courts of Quarter Sessions existed from 1664 when Modyford gave Instructions to the Justices of the Peace about these Sessions.[229] These Sessions were held throughout the 18th century and they formed an integral part of the judicial system.

Under the 1681 Act for punishing privateers and pirates,[230] another judicial body was established in Jamaica. This Act empowered the Governor to issue commissions to the judges of the Admiralty or "other substantial persons" to inquire into and try certain crimes committed "upon the sea, or in any haven, creek or bay, where the Admiralty hath jurisdiction." Commissions were issued and during the 17th and 18th centuries when pirates infested the Caribbean waters,[231] these Admiralty Sessions were frequently held.

Up to the mid-18th century therefore the courts exercising criminal jurisdiction were the Supreme Court, the Court of Quarter Sessions, and the Admiralty Sessions. Slave Courts were also in existence but they will be discussed elsewhere.[232]

In the meantime the population of Jamaica was increasing, new areas were being opened up, sugar estates were expanding and trade in general was booming. The demand grew for an increase in the jurisdiction of the parochial court of common pleas - a civil court, and it is interesting to note how a criminal court resulted from demands concerning a civil jurisdiction.

In April 1746, a bill enlarging the jurisdiction of the court of common pleas was presented to the Assembly, but the House was prorogued before the bill had passed through the legislative mill. Five years later, the inhabitants of Kingston, chiefly merchants,

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229. CO 140/1/95-96.
230. 33 Charles 2, c. 8.
231. See Chapter 9, infra.
232. See Section F of this Chapter.

petitioned the Assembly asking that the jurisdiction of the court of common pleas be increased. Almost simultaneously the inhabitants of Westmoreland petitioned the House about the £20 jurisdiction of the common pleas court. They also complained that assaults, batteries, and minor trespasses which were committed in that section of the island, were commonly removed for trial in the supreme court - 150 miles away. "The enacting of circuit courts, after the method used and upon the model of our mother country," the petition continued; "will be an effectual means to relieve our present suffering".[233] In consequence, the Assembly passed an Act appointing justices of assize and nisi prius.[234] Of this Act, the Governor wrote that the "Assembly seem'd very fond of it and imagin'd great benefit from it."[235] The English Attorney General saw the Act as an extensive change

> "in the Constitution of the Government with respect to the Administration of Jutice and so great an Incroachment upon the Prerogative to which Erecting and establishing Courts of Justice belongs that we cannot think it advisable to Admit of such a Precedent. Nor do we think that the variation proposed by this Act wou'd be beneficial to his Majesty's Subjects if carryed into Execution."[236]

The Act was disallowed.

Shortly after this Act was disallowed the Assembly passed another Act increasing the jurisdiction of the inferior courts of common pleas.[237] Despite an address from the Assembly to the King, requesting his assent to the Act, the Act was not favourably received. The English Law Officers advised that the changes proposed by the Jamaican Act, could only be executed by an Act of the Jamaican Assembly or by Parliament. Regarding the latter mode, the Council for Trade stated that it had not been usual for Parliament to intervene in the internal policies of particular colonies and may if "introduced in

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233. JAJ Vol. 4, p. 309.
234. 24 Geo. 2, c. 20.
235. CO 137/25/236: Trelawny to CTP, 25 March 1752.
236. CO 137/25/352-3.
237. 28 Geo. 2, c.5.

this Case excite Jealousy and Uneasiness in the Minds of His Majesty's Subjects in that Island."[238] They therefore submitted whether it would not be better for the King to advise the Jamaican legislature to pass a law establishing circuit courts and to obviate the difficulties as to powers, authorities and jurisdictions; the Attorney General of England should be directed to frame heads of a proper bill for that purpose.[239] This advice was accepted and heads of a proper bill were drafted and sent to the Governor. This draft bill, with the exception of two clauses, was subsequently passed by the Assembly in 1758 under title 'An Act for dividing the Island of Jamaica into three Counties and for appointing Justices of Assize and Oyer and Terminer in two of the said Counties'.[240] The confirmation of this Act is said to "have given great satisfaction in the Island.[241]

Under the Assize Act, as the above Act was popularly known, the Island was divided into three Counties: Cornwall, Middlesex and Surrey. Crimes which were committed in Cornwall and Surrey and which originally had to be sent to the Supreme Court for trial, could now be tried by justices of assize for those Counties. As the Supreme Court was in Middlesex, crimes committed in the County continued to be tried in the Supreme Court at St. Jago.

The introduction of the assize system was the only important addition to the courts during the 18th century. Several acts concerning the courts were passed after 1758, but they did not materially affect the basic structure and organisation of the courts.[242]

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238. CO 138/20/233-234.
239. Ibid.
240. 31 Geo. 2, c. 4.
241. CO 137/35/51: Trelawny to Hillsborough, 11 November 1768.
242. See 8 Geo. 3, c. 1; 16 Geo. 3, c. 6.

(ii) Jurisdiction of the Courts

(1) The Privy Council in England. The Privy Council was the final appellate court for Jamaica and during the 18th century, the Governors were instructed to

> "permit Appeals unto us in Council, in all Cases of Fines imposed for Misdemeanours, Provided the Fines so imposed amount to or Exceed the value of two Hundred Pounds, the Appellant first giving good Security that he will effectually prosecute the same and answer the condemnation, if the Sentence by which such Fine was imposed in Jamaica shall be confirmed." [243]

It does not appear that many £200 fines were imposed, or if they were that the offenders bothered to appeal to the Privy Council.

The King, by the exercise of his prerogative was able to pardon his subjects for offences committed in the Island. A portion of this prerogative was sometimes delegated to the Governors, and Windsor, for example, was instructed that sentence on malefactors should be carried out "unless you find good cause to reprieve any of them; and herein you are to observe as much as may be the practice and proceedings of our laws of England."[244] Modyford's Commission was more restrictive in this respect and he was given authority to pardon all offenders except in cases of treason and murder. In those cases "upon extraordinary reason, you shall have power to reprieve the offender for one whole year until and to the intent that our pleasure may be known."[245] With minor differences in terminology this remained the basic provision for the exercise of the prerogative by the Governors. In the 18th century Governors were also given the power of remitting fines up to the sum of £10.

At this point, it is convenient for us to examine briefly some of the occasions on which the prerogative was exercised. At this

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243. Lawes' Instructions in CO 138/15/412.
244. Windsor's Instructions in JAJ Vol. 1, Appendix, p. 5.
245. Modyford's Commission in JAJ Vol. 1, Appendix, p. 9.

period when reporting of the criminal law in Jamaica was almost non-existent, reports concerning the prerogative of mercy provide useful guidelines as to the content of the criminal law and some operative factors in the administration of criminal justice. We also glean useful information about the Bench, because generally, but not invariably, it was the judges of the Supreme Court who recommended a reprieve. Some factors were legal, others were non-legal.

Social considerations influenced Carlisle in 1679, when he reprieved three sailors convicted of sodomy, "white men being scarce with us."[246] On pleading for a sergeant in his regiment, whom the jury had convicted for murder Handasyd related that his father had been in the army with him and his brother had also been a soldier. The prisoner had been in the army since childhood and had always behaved himself well. However a drunken man told him that "neither he nor any of his Cloth dare fight one of his Country, upon which the Sergeant Answered that he wore the Queen's Cloth and was not to be affronted in that Manner"; An altercation followed and the drunken fellow died as a result of wounds inflicted by the prisoner. Notwithstanding all that "could be said by the Bench upon the Triall in the behalf of the Sergeant, the Jury being managed by the prosecutor", found him guilty of murder. On the request of the Chief Justice and the other Judges he reprieved him.[247]

Political repercussions were foremost in Molesworth's mind when he reprieved a Spanish captain convicted for piracy. If he had been executed this "would have raised a great clamour against us and would have endangered all our traders who are or may in future fall into their power."[248]

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246. C.S.P. 1677-80, No. 894.
247. CO 137/8: Handasyd to CTP, 6 April 1709.
248. C.S.P. 1685-88, No. 609. See also CO 137/59/227: Knowles to Holdernesse, 18 November 1752.

Terence Kennedy's fine of £20 for sending "a Challenge to one Hogg", acted as a perpetual imprisonment for him because of his inability to pay it.[249] After representation was made on his behalf by the Governor, the fine was remitted.[250]

When William Campbell, a private in the regiment, killed his wife by "beating her upon a very high provocation" the judges represented to Governor Trelawny "that there appear'd several circumstances in his favour upon the Tryal which might entitle him to his Majesty's Mercy."[251] Provocation was also recognized as a mitigating factor in the case of a slave, Virgil, who had killed March, another slave whom Virgil had caught committing adultery with his wife. He was convicted of wilful murder but the jury "considering the nature of the provocation too strong for human infirmity to resist", recommended that the prisoner be reprieved.[252] A slave named Rhemus was convicted for killing another slave under circumstances of "great provocation and in self-defence."[253] Governor Clarke referred his petition of pardon to Germaine because he considered himself restrained by his Instructions from extending the King's Pardon "even in the case of a Negro till his pleasure is signified though I understand there have been circumstances heretofore in which it has been done."[254]

In 1781, Governor Dalling transmitted to Germaine the notes of the trial of a free mulatto man, although the judges had not recommended the prisoner's reprieve. Dalling stated that he could not order the execution of a man "whose offence the judges in their direction to the jury have considered to be only manslaughter" and whose case would have

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249. CO 137/26/206: Knowles to CTP, 23 December 1753.
250. CO 137/27/194. See also CO 137/88: Clarke to Grenville, 18 October 1789.
251. CO 137/58/8: Trelawny to Newcastle, 22 July 1747.
252. CO 137/102: Balcarres to Portland, 28 April 1799.
253. CO 137/87: Clarke to Sydney, 9 December 1788.
254. Ibid. See also CO 137/87: Clarke to Sydney, 3 June 1789.

appeared still more favourable had certain other evidence been received by the court.[255]

Drunkenness was the excuse made for Charles Hudson, "a silly illiterate sot who cannot write his own name" when he was convicted of making treasonable statements to the effect that James was not the "rightful King of England and that Monmouth, if God blessed him would make work with him."[256]

Other mitigating factors in the granting of a reprieve were ignorance of the law,[257] perjured evidence[258] and apparent absence of mens rea.[259] Sometimes reprieves were granted on condition that the petitioner left the island.[260]

Usually, the Governors were given no directions on how they should exercise the prerogative of mercy except that it should be "upon extraordinary reason".[261] In one case Balcarres was strongly reprimanded for his granting a reprieve. James Murray had been convicted of wilful murder but both the judges and the jury had recommended a reprieve, apparently on the grounds of his previous good behaviour. "I have now to observe to you," wrote Portland, "that no one circumstance appearing in mitigation of James Murray's Crime," the only reason for which the King had been advised to pardon the prisoner was the "inexpediency of suffering the law to have its course after its having been so long suspended"; a dilemma to which the Crown ought never to be reduced and which need not have existed under the Powers with which your Lordship is entrusted. He could not "too strongly impress" upon him that "Mercy, at the same time that it is the most estimable Prerogative of the Crown, is that of which the exercise is so important, that it only should be permitted

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255. CO 137/81/147: Dalling to Germaine, 30 September 1781.
256. C.S.P. 1685-88, No. 591.
257. See Fryday's Case in CO 137/10: Hamilton to CTP, 11 July 1713; Karby's Case in C.S.P. 1728-29, No. 359.
258. See Clayton's Case in C.S.P. 1731, No. 218.
259. See Wood's Case in C.S.P. 1731, No. 116.
260. See Saldana's Case in CO 137/87: Sydney to Clarke, 3 June 1789.
261. See Medyford's Commission in JAJ Vol. 1, Appendix, p. 9.

on the most serious and mature consideration."[262]

The above examples of the prerogative of mercy take us behind the platform of the criminal trials and give us an indication of the defences which helped to mitigate the severity and rigour of the criminal law. Some anticipated by many years, defences which later became accepted parts of the criminal law.

(2) The Governor. The Governor by virtue of his position as Governor, had no original or appellate jurisdiction in criminal matters and only came in contact with the criminal law in a judicial capacity when he was exercising the prerogative of mercy. It has been said that there was an appeal to the governor in criminal causes.[263] This is inaccurate, because the offender did not "appeal to" but "petitioned" the Governor for mercy. As we have seen above the Governor could reprieve without the King's concurrence offenders of all crimes with the exception of treason and wilful murder. Sometimes the Governor exercised the prerogative after consultation with, and on the advice of the Jamaica Council. In March 1721, Governor Lawes sought the Council's advice as to whether he should pardon some convicted pirates. From the Council Minutes we learn that "several of the Board having sat as Judges at the Tryals of the said persons" they declared they were "unanimously of Opinion that they were objects of His Majesty's most gracious pardon and that the same should issue according to such recommendation."[264]

There remains some doubt whether appeals in criminal matters lay to the Governor in Council. In 1728, Lancelott Tyler, having been convicted under the 1696 Slave Act, petitioned the Governor and Council for a writ of error, alleging a defect in the indictment.

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262. CO 138/42: Portland to Balcarres, 1 February 1797.
263. Bryan Edwards, op.cit., Vol. 1, p. 266.
264. CO 140/17/27.

The Council gave it as their "Unanimous Opinion" that a writ of error could not lie in a criminal cause, "as the Instructions relating to Appeals seemed Calculated for Civil Cases only."[265] But a century later, in 1826, without there being any express statement on the matter, the Attorney General of Jamaica declared that a "writ of error might also be brought before the Governor in Council, on a judgment in an indictment for a misdemeanour or errors apparent on the record."[266]

(3) The Supreme Court. Under the 1681 Act establishing the Courts, the Supreme Court was authorized to have cognizance of all pleas, "civil, criminal and mixt, as fully and amply, to all intents and purposes whatsoever, as the courts of King's Bench, Common Pleas and Exchequer within his Majesty's kingdom of England, have or ought to have."[267] This meant that it had both an original and a limited reviewing jurisdiction in criminal cases. In exercising its ordinary criminal jurisdiction as a court of Oyer and Terminer and Gaol Delivery under the 1758 Assize Act it took cognizance only of such offences committed in the county of Middlesex. In exercising its full authority as a court of criminal judicature it would take cognizance of offences committed outside Middlesex as in the case of informations filed ex-officio by the Attorney General; and in the case of complaints made against magistrates or other officers connected with the administration of justice, for breaches of duty, in respect of which the court might have the power of removing them from their offices.[268]

The judgment of the court could be arrested on a motion based on errors apparent on the record.[269] It was doubtful, although the Attorney General believed otherwise, whether a similar motion would lie

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265. CO 140/20: 11 July 1728.
266. Legal Commissioners Report, p. 192.
267. 33 Charles 2, c. 23. Preamble.
268. See Legal Commissioners Report, p. 51.
269. In Tyler's case above the prisoner had unsuccessfully moved to court in arrest of judgment. See also the Chief Justice's and Attorney General's reply to the Legal Commissioners: Legal Commissioners Report, pp. 171, 192.

on the merits of the conviction.[270] If there was doubt as to the legality of a conviction, the prisoner would petition the Governor who would in turn canvass the opinion of the judges. If the judges saw no objection to the conviction, and the doubts still remained, the Governor usually sent the case to England so that the English Law Officers could be consulted.

(4) The Assize Courts. The assize courts as we have seen arose out of the demands for the decentralization of the courts, and hence more easily accessible justice.[271] As courts of Oyer and Terminer and Gaol Delivery the assize courts had a criminal jurisdiction co-existence with the Supreme Court and the list of offences which the justices of assize were commissioned to try is further proof of this: treasons, misprisions of treasons, insurrections, rebellions, murders, killings, felonies, manslaughters, burglaries, rapes, unlawful meetings and assemblies, unlawful uttering of words, misprisions, confederacies, false allegations, trespass, riots, routs, retentions, escapes, contempts, falsities, negligences, concealments, maintenances, oppressions, champarties, deceptions, and other misdemeanours, offences and injuries whatsoever, as also the accessories of the same.[272] The assize courts were not under the superintendence or control of the Supreme Court.

(5) The Courts of Quarter-Sessions. The Courts of Quarter Sessions were composed of magistrates of whom three or more formed a quorum. The Custos, or in his absence the senior magistrate, presided.

In his Instructions to the Justices of the Peace in 1664, Modyford told them not to "proceed to determine any crime above petty-larcenys".[273] Nonetheless, during the 18th century this jurisdiction seems to have gradually increased. In the early 19th century there is still doubt as

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270. Legal Commissioners Report, p. 192.
271. See the Preamble to the Assize Act, 31 Geo. 2, c. 4.
272. 31 Geo. 2, c. 4, Sec. 5.
273. See CO 140/1/95.

to the limit of the jurisdiction of the Court. In 1826 the Custos of Westmoreland stated that the jurisdiction of this court "extends to the trying and determining all felonies and trespasses whatsoever"; but they never try any capital offence, "they confine themselves to the smaller misdemeanours against the public, not amounting to felony, and to breaches of the peace."[274] In his answer to another question he declared that the court of Quarter Sessions has concurrent jurisdiction with the Supreme Court and the Assize Court, "in all criminal cases which are not by law expressly confined to the latter courts."[275] This account of its jurisdiction by a chairman of that Court, the Legal Commissioners found not "very accurate", for it was afterwards said, that the punishments which can be inflicted by this court are fine, imprisonment, and whipping, "from which we infer that the court has not jurisdiction to try transportable offences."[276]

Doubts were also entertained as to the extent to which the criminal proceedings of these courts could be reviewed. Opposite views are given by two of their presiding officers. The Custos of Westmoreland conceived that the "proceedings of this court are subject to reversal or revision by the Supreme Court by writ of certiorari."[277] The Custos of Trelawny on the other hand, said that in civil cases, the decisions of the Quarter Sessions are subject to revision by the Supreme Court, by writ of certiorari, "but the sentences of the Quarter Sessions in criminal cases are not subject to such revision".[278]

It is characteristic of 18th century Jamaica that as important a matter as the jurisdiction of the criminal courts was a subject of dispute.

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274. Legal Commissioners Report, p. 257. The Custos of Trelawny merely said that in criminal matters the jurisdiction of the court resembled Quarter Sessions in England. P. 249.
275. Ibid., p. 258.
276. Ibid., p. 113.
277. Ibid., p. 258. The Attorney General agreed with him: p. 217.
278. Ibid., p. 250. The Legal Commissioners felt that the court ought lie in both civil and criminal cases: p. 77.

(6) The Admiralty Sessions. The jurisdiction of the Court of Admiralty Sessions is best stated by the Act which established the Commissioners, 'An Act for punishing Privateers and Pirates': [279] That all treasons, felonies, piracies, robberies, murders, or confederacies committed or that hereafter shall be committed, upon the sea, or in any haven, creek or bay, where the Admiral has jurisdiction, shall be inquired, tried, heard, determined and judged within this Island, in such like form as if such offences had been committed in and upon the land.[280]

The Commissioners appointed under this Act were to have full power to try any of the above offences, as any Commissioners appointed under the Statute 28 Henry 8, c. 15, had in England. The Act further provided that the offenders were to be liable to such order, process, judgments, and execution, by virtue of such commissioner "as might be awarded or given against them, if they were proceeded against within the realm of England, by virtue of any commission grounded upon the said statute." [281]

The Commissioners were subsequently given jurisdiction to try offences committed against the Act for the Abolition of the Slave Trade.

Under Act of Parliament 46 Geo. 3, c. 54, a commissioner under the Great Seal of Great Britain could be directed to four or more persons as the Lord Chancellor thought fit. These Commissioners would have the same power over offences committed upon the sea, as Commissioners appointed under 28 Henry 8, c. 15, had for trials in England. This Act was not very much used in Jamaica.

Under the pirates Act, the Commission issued by the Governor was generally directed to the Judge of the Court of Vice-Admiralty; the commander in chief of the Squadron, the members of the Council.

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279. 33 Charles 2, c. 8. See also Piracy Legislation in Chapter 9. infra.
280. Sec. 3.
281. Ibid.

the Chief Justice and Assistant Judges of the Supreme Court, the captains of the navy on the Jamaica station, the judges of assize, barristers at law, the Secretary of the Island, the Receiver General the Naval Officer and the Collectors and Comptrollers of His Majesty's Customs at the different ports. Of this number, three constituted a quorum and the judge of the court of Vice-Admiralty was required to be part of the quorum.[282]

(b) The Jury

The English settlers took with them to Jamaica the English institutions of the grand and petty juries and their composition and functions in Jamaica were similar to their English models.[283] In the 18th century, Jamaican juries were accused of being perverse[284] and in the 19th century they achieved great notoriety.[285]

E. Functionaries Concerned with the Administration of Justice

The main officials who were involved in the administration of criminal justice were the Attorney General, the Coroner, the Clerk of the Peace, the Clerk of the Crown, and the Provost Marshal. Under this heading too we will discuss the militia, which was the main body for the restoration of 'law and order' and the legal profession, from which some of the judicial officers, like the Attorney General were selected.

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282. Legal Commissioners Report, p. 74.
283. See W. Holdsworth, A History of English Law, Vol. 1 (7th ed.) pp. 321-324.
284 See CO 137/9: Handasyd to CTP, 9 June 1710.
285. See Chapter 5, infra.

(i) The Attorney General

The Attorney General was the Crown's Law Officer. He was appointed by letters patent from the King, and was removeable by him alone, although he could be suspended by the Governor on the advice of the Council, until His Majesty's pleasure was known.[286]

All indictments were inspected by him and he generally appeared for the Crown in the Supreme Court. In his capacity as Attorney General he had the important duty of advising the Governor, Council, or Assembly on legal matters, when called upon to do so. Like his English counterpart, he had the power of entering a nolle prosequi and also the power to file information ex-officio, a power which the Legal Commissioners disapproved of.[287] At times he was a member of the Council, at others a member of the Assembly.

Some Jamaican Attorneys General seem to have been affected with the virus of incompetence and corruption so prevalent in the 18th century. Beeston told the Council for Trade that the Attorney General

> "performed his offices so viciously in all things that the whole country cry shame on him and hope never to see him again.... I could not depend upon one word he said, he being known to all this Country to be a man of no manner of veracity, nor moralls, so that if all the things he has done here should be represented he would appear the wonder of mankind." [288]

The Jamaican Council's complaints concerning an appointee to the post was

> "that he is not of Parts sufficient in the Knowledge of the Law for such an Imployment for he that is Attorney General ought to be able to advise the Governor, the Council and Judges in difficult cases

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286. For an example of a Governor advising the Council to be cautious in suspending the Attorney General, see CO 140/17, 11 Dec. 1722.
287. Legal Commissioners Report, op.cit., p. 97.
288. CO 138/9/236: Beeston to CTP, 28 July 1698. Beeston may have been attempting to get his word in before the Attorney General, who was an his way to England to complain about him.

which they think him in no wise capable of doing." [289]

Governor Knowles suspended the Attorney General and informed the Council for Trade that he could produce from the Grand Court records, "such notorious flaws in Indictments in the King's Action (all of which undergo his inspection) as must fill your Lordship with indignation."[290]

There can be little doubt that the administration of justice and the proper development of the law suffered as a result of the dereliction and incompetence of various Attorneys General.

(ii) The Coroner

The institution of the coroner was introduced in the Island in 1661 and has remained in existence ever since. Like the Justice of the Peace, the Coroner was a post-Restoration import from England and the Jamaican Assembly did not bother to establish him by legislation. It was assumed that his appointment, functions and duties were similar to his English counterpart, but this did not prevent doubts arising. Governor Portland in 1725 sought the Council of Trade's advice as to the proper method of appointing a Coroner but they were not very helpful: the question

> "being a matter of Law, and depending in a good measure upon the Custom of Jamaica, we can neither make your Grace answer any question thereto, nor procure any opinion of Counsel upon it, not being sufficiently informed of the Usage of Jamaica, in this Particular But the Coroners in England are chosen as Members of Parliament by a majority of the Freeholders." 291

It appears that the English method of selection was adopted.[292]

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289. CO 138/9/417.
290. CO 137/28/28: Knowles to CTP, 25 June 1754. For complaints about other Attorneys General see CO 137/9, 8 October 1712; CO 137/28/291; JAJ Vol. 2, p. 113.
291. CO 138/17/42: CTP to Portland, 30 June 1725.
292. A candidate for the office in Jamaica addressed his electors as follows: "The Death of your late Coroner, has given me an opportunity of again offering myself to your favour for that office. Should I be so fortunate to succeed, give me leave to assure you, I should endeavour to execute an Office so important to the Community with integrity and attention". CO 141/1: Supplement to the Royal Gazette, 16 August to 23 August 1794.

It also appears from the documents that his functions and duties were similar to the English Coroner.[293] Doubts were finally dispelled by a 1770 Act for settling the proceedings of Coroners,[294] which expressly stated that the laws of England concerning Coroners were in force in the Island.[295]

The Coroners were not paid a salary but were remunerated for each inquisition and for whatever mileage they did. The low remuneration of a Coroner may have affected the type of applicant for office and consequently the administration of justice.

(iii) The Clerk of the Peace and Clerk of the Crown

The clerk of the peace and the clerk of the Crown were minor officials involved in the administration of criminal justice, the former at Quarter Sessions, the latter in the Supreme Court. They mainly performed administrative duties, for example, preparing indictments, and getting witnesses for trials. They do not seem to have been legally qualified. Generally their duties were similar to those which were attached to similar offices in Great Britain.[296]

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293. See CO 137/91 9 June 1710; C.S.P. 1731, No. 25; CO 140/26: 15 July 1735.
294. 11 Geo. 3, c. 15.
295. The preamble stated that the laws and statutes of England relative to Coroners issuing summons for witnesses and taking inquisitions on the bodies of deceased persons "are in force in this Island." This preamble assumes that the English laws concerning Coroners were already in force in Jamaica. Previous to this 1770 Act however there had been no specific Jamaican legislation stating that the English laws relating to Coroners were in force in Jamaica, so the English legislation was most likely brought in under the omnibus phraseology contained in the 1728 Revenue Act.
296. See Legal Commissioners Report, pp. 251, 316. Also Holdsworth, op.cit., Vol. 4 (2nd ed.), p. 150; Vol. 1 (7th ed.), pp. 250, 257-8.

(iv) The Provost Marshal

The office of provost marshal existed in Jamaica from 1663 when Sir Thomas Lynch was appointed the first provost marshal. The holder of the office was appointed by letters patent from the King. The patented Provost Marshal did not reside in the Island but usually hired out the post to a deputy.

The duties of the provost marshal were analagous to those of the sheriff in England, and he had custody of all the gaols and the execution of all civil and criminal process.[297]

By the patented provost marshal absenting himself in England and farming out his office, men of lesser calibre and greater pecuniary interest came to hold the position. This had a deleterious effect on criminal justice in the Island. One of the main duties of the provost marshal was to superintend the gaols and gaols were some of the most abominable institutions in Jamaica. With the provost marshal away in England, there was little hope for improvement.[298]

(v) The Militia and the Constables

In the early period of Jamaica's history, one of the main defences against external attack or internal insurrection was the militia. Legislation establishing a militia was in existence from 1664[299] but the first confirmed militia Act was that of 1681.[300] The reason given in this statute for a militia was:[301]

> "...the situation of this island amidst subtil, rich and potent nations, cannot but sufficiently convince every reasonable man of the necessity the inhabitants have of being well armed and trained up in the art military, as well for the honor and service of his most excellent Majesty, as the preservation of our own lives and fortunes."

297. See Modyford's Reply to the Commissioners, JAJ Vol. 1, Appendix, p. 24.
298. See Legal Commissioners Report, p. 249
299. See CO 139/1/49.
300. 33 Charles 2, c. 21.
301. Ibid. Preamble.

This statute which governed the militia for the greater part of the 18th century, established several regulations, the most important being that every male between 15 and 60 years was to be listed in the militia and colonels of regiments were to ensure this.[302] The members of the militia were to be properly clothed and armed.

The militia was called out on several occasions during the 18th century, mainly to quell slave rebellions or to prepare for slave rebellions. But almost every governor registered complaints against this law-enforcement body. Hunter said they were not "to be at all depended upon";[303] Trelawny found them in a "very unserviceable State";[304] Lyttelton found them "ill trained" and believed that it was only with difficulty they could be "brought into tolerable order";[305] and Campbell declared that they had acquired "habits of Indolence".[306]

One of the primary reasons for this defective state of the militia was that many who were eligible to enlist received exemptions from serving. In 1738 Trelawny was able to state that "a great many of the rich have got exemption from military service"[307] and in 1801 Nugent reported how the white inhabitants tried "every means in their Power" to be exempt from service.[308] The result was that the militia was composed chiefly of hired white servants or those "who have no obligations either of honor or interest for the defence

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302. Only the free population was eligible. On some occasions, a few of the "trusty" slaves were armed.
303. CO 137/18/36: Hunter to CTP, 17 July 1729.
304. CO 137/56/103: Trelawny to Newcastle, 7 July 1738. See also JAJ vol. 3, p. 505.
305. CO 137/32/98: Lyttelton to CTP, 26 January 1762.
306. CO 137/82/3: Campbell to Germaine, 16 November 1781.
307. CO 137/56/159: Trelawny to Newcastle, 4 December 1738. See also JAJ Vol. 3, pp. 434-5.
308. CO 137/106: Nugent to Hobart (private), 17 August 1801.

of their master's propertys."[309] Trelawny however felt it was not equitable to punish those servants because "they never dreamt of such service when they indented themselves at home."[310]

The Constables. Constables were an additional part of the civil forces which helped in maintaining law and order. An Act for the more easy serving of constables, passed in 1715[311] provided that the justices and vestrymen of each parish[312] were to hire "good and sufficient" men to serve as constables in their respective parishes. If the justices and vestrymen neglected this duty they were to be fined.

(vi) The Legal Profession

An enquiry into the legal profession during the 18th century will be directed at discovering the effect which the profession had on the administration of criminal justice and the influence which it ultimately had on the development of the criminal law.

The members of the legal profession, like the members of the judiciary, played an active part in the affairs of Jamaica. They were officers in the militia, local functionaries, and highly-vocal members of the Assembly. Hunter's lament was that some of the lawyers "have got such an Ascendant over the thoughtless Planters, that they have the chief Influence in the Election of Assemblymen" and "great Influence in that House to the destruction of publick business and all the measures for the safety of the Island."[313]

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309. C.S.P. 1733, No. 455.
310. CO 137/56/159: Trelawny to Newcastle, 4 December 1738.
311. 2 Geo. 1, c. 1.
312. Except Port Royal, Kingston, St. Catherine.
313. CO 137/53/379: Hunter to Newcastle, 8 October 1731.

What contributed to their prominence in the country was their familiarity, however slight, with the content and procedure of the law, in a society where education in general was at a premium and where the wealthiest sometimes joined the ranks of the most illiterate. As Jamaica raced to its peak of commercial prosperity in the 18th century, the numbers of lawsuits grew, and at one period the number of lawsuits pending in the courts was equal to a third of the white population. With increased litigation it was only natural that there should have been greater demands for lawyers. Added to this, was the fact that the judges, as we have seen, were not "bred to the law" and this gave the legal profession a much more influential role in the determination of legal disputes.

From the beginning it seems that Jamaicans as "Englishmen or descendants of Englishmen" imported most of the customs and practices obtaining at the English Bar. Even the dress of the profession -- the wig and gown -- was imported into the sweltering heat of Jamaica. During the entire 18th century there was no legislation stating the necessary qualification for pleaders and local practice seems to have followed the English tradition. Some light is thrown on the prevailing attitude by a resolution of the Assembly in October 1722.

Following a motion, a committee of the House was appointed to bring in a bill for 'remedying, and preventing several irregularities, inconveniences and arbitrary proceedings which of late have crept into the courts of law and equity'. The House instructed the committee inter alia to insert a clause providing for the qualifications of pleading lawyers, attorneys, and clerks in chancery:

> "None to be admitted for the future as council, or pleading lawyer, who doth not produce a testimonial of his having been admitted into some one of the four societies or inns of court in London and performed all the duties and exercises of that society, and that he make oath of the truth thereof; and no special declaration or pleading to be received, unless the same be signed by such council; nor any to be admitted for

> the future as attornies or clerks in chancery, who shall not produce a certificate of his having been admitted into or performed all the duties or exercises of some of the known inns of chancery in London or that he hath at least served a full apprenticeship to some clerk or attorney to be admitted; and make oath of the truth of such certificate; being convicted of falsity in said oaths, liable to pains of wilful perjury." 314.

In January 1723 the committee reported that the part of the bill which relates to lawyers "ought to be omitted, for that by declaring the laws of England to be in force, the ends proposed by it will be sufficiently answered." [315] This recommendation was accepted by the House and it appears that under the 1728 Revenue Act, the practice of the English courts concerning the admission of counsel and attorneys, was also meant to be the practice in Jamaica. This unsatisfactory position gave rise to doubts and in the 19th century both the Chief Justice[316] and Attorney General[317] were uncertain as to whether barristers called either to the Scots or Irish Bar could also be admitted to practise in Jamaica. One historian has incorrectly written that there was express provision for the qualifications of barristers.[318] It is characteristic of the Jamaica legal system during the 18th century that no one could speak with certainty even about the qualifications of the barristers.

The qualification for solicitors was stated in 'An Act for the further regulation of Solicitors' passed in 1773. [319] This was enacted to prevent "many who might be useful in the Community", in other ways getting admitted "into a Profession of which they are totally ignorant, to the very great Injury of Persons employing such

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314. JAJ Vol. 2, p. 423.
315. Ibid., p. 456.
316. Legal Commissioners Report, p. 167.
317. Ibid., p. 187.
318. Bryan Edwards, op.cit., Vol. 1, p. 268.
319. 14 Geo. 3, c. 3.

Persons."[320] Under this Act no one was to be allowed to practise unless he was admitted as an Attorney, solicitor, proctor, or writer to the signet in the Supreme Court of the Island, the courts of King's Bench, Common Pleas, Chancery, Exchequer or some of the courts of England, Scotland or Ireland.

Unfortunately for the development of the law, it does not appear that the conduct and ability of the members of the legal profession during the 17th and 18th centuries were of a very high standard. Indeed very early in the history of the civil administration of the Island the conduct of the legal profession was the subject of legislation by the Council. Some Council Minutes of 1668 are most revealing:[321]

> "Whereas complaint hath been made to the Governor and His Majesties Councell now assembled of the great disorders dayly hapning in the respective Courts of Justice in this Island, by reason of the rude and unreasonable interruptions and impertinent disputes of Lawyers and Pleaders, not seldom comeng drunk into the Court whereby many times the most materiall witnesses are baffled and at best not fully heard, and their evidence Suppressed to the great Injury of many his Majesties Subjects in this Island and the Court in the meantime seems more like a Horse Fair or a Billingsgate than a Court of Justice, to the great Scandal of his Majesties Government."

To remedy this situation, a fine or whipping was the prescribed punishment where

> "any lawyer or Pleader or any of the Partyes or any of the Witnesses or other persons that shall presume to come drunken into the Court, or if any of the partyes aforesaid shall bee in an unbeseeming rage and passion and give indecent or evill language and revile the Court or any member thereof or any other person whosover or one another by loose or scandalous language or shall use swearing or blaspheming or beastly expressions in the hearing of the Court". 322.

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320. Ibid., Preamble. The Legal Commissioners observed that the "Act seems very much to proceed on the principle of the laws of England". Report, p. 17.
321. CO 140/1/177-180.
322. Ibid.

In the same period, the lawyers were not the most popular section of the community and King Charles had to instruct the Chief Justice to discourage lawyers and solicitors "who stirr up differences and Suites amongst his Majesty's Subjects."[323] Two years later in 1673, the Assembly actually legislated for the suppressing of lawyers. This was because numerous unnecessary law suits had caused great differences in the Island and on inquiry it appeared that the law suits had arisen more from the "Avaricious designes of the Lawyers" rather than the interests of the plaintiffs.[324] Two years' experience of this Act proved it to be ineffectual and a repealing Act was passed in 1675.[325]

This unfavourable opinion of the lawyers was still prevalent in the 18th century, as we are informed by Long: "The members of the law of course meet with great encouragement here" and among them are many "who no doubt find their account in setting honest planters together by the ears", and in "practicing all the detestable arts and mysteries of chicanery, knavery and pettifogging. Jamaica has its Old Bailey Solicitors as well as London."[326]

The academic standard of the Bar appears to have been low also. Bernard tells us in 1720 that often for "Want of Knowledge both in the Bench and Bar those laws (of England) are wretchedly misconstrued and perverted."[327] Long provides some of the reasons:

> "Of the many students of law natives of Jamaica, who after compleating their terms in London have returned to assume the gown, I have not heard of one who ever gained £5 a year by his practice. This issue we must not ascribe to any defect of parts, but to a youth spent in soppery, licenticusness, and prodigality, under a total renunciation of every other study."[328]

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323. CO 138/2/26.
324. CO 139/3.
325. CO 139/4/71.
326. Long, op.cit., Vol. 1, p. 77.
327. CO 137/13/259: Bernard to Chetwynd, 1 February 1720.
328. Long, op.cit., Vol. 2, p. 249.

Lawyers in other West Indian and American colonies seem to have been no better. Nicholas Blake wrote the King that Barbados "swarms with lawyers, to their great impoverishment, and the other's enriching who suck out much of the fat and marrow of the country and all to little purpose." The lawyers "are for the most part but dabblers in the law and very ignorant."[329] Governor Bellomont reported from New York:

> "As to men that call themselves lawyers here and practice at the Bar, they are almost all under such a scandalous character that it would grieve a man to see our noble English laws so miserably profaned.... So far from being barristers, one of them was a dancing master; another a glover by trade; a third was condemned to be hanged in Scotland for buring the Bible and blastpheming." 330

It is hardly likely that if the Jamaican Bar were consistently of the quality described in the preceding pages it could have been of much help in the proper development of the law.

F. The Administration of Justice

The administration of justice will be treated under two headings: (a) The Administration of Justice generally (b) the Administration of the Slave Laws.

(a) The Administration of Justice generally

From the description of the Bench and Bar already given it is not difficult to draw certain conclusions as to the type of justice administered. Indeed it appears that it is only by a restricted definition that what was done could be called 'justice' at all. And there were additional complaints.

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329. C.S.P. 1699, No. 1113.
330. C.S.P. 1699, No, 134.

One of the major causes of complaint was that the laws were not enforced. This was true particularly, as we shall see, in the case of slave laws. Sometimes the laws were not enforced when there was some dispute as to the judges' commissions,[331] when martial law was in force, or when the laws establishing the courts expired. These were exceptional cases, but in normal times also many of the laws were not enforced through sheer negligence. Beeston commented that one half of the laws were not "observed as they ought to be";[332] Lawes told the Assembly: "Most of the printed acts of the country seem to be dead or in reality so neglected that they are of little use to the public".[333] When Portland arrived in the Island he found "justice everywhere neglected"[334] and Leslie felt "that whatever bad Characters be given to this Place, its wickedness proceeds not from a Want of Good Regulations, but from a Neglect of putting them in Execution."[335]

An equally serious and perhaps related cause of complaint was the malpractices and irregularities which were rampant in the judicial process. Many were due to ignorance, but many were also due to corruption. Leslie tells us that the "Young Squires are not much afraid of the Courts of Justice."[336] They had no reason to be: young squires or young squire's father made the laws, and young squire or young squire's father executed the laws. Handasyd wrote that very few people were put to death for murder or felony[337]— and that was not because these offences were not committed. Lady Nugent was shocked to hear that young Stewart had forged a bill and as a result had to

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331. See C.S.P. 1689-92, No. 873.
332. C.S.P. 1700, No. 71.
333. JAJ Vol. 2, p. 297.
334. CO 137/14/188: Portland to CTP, 2 March 1723.
335. Leslie, op.cit., p. 162.
336. Ibid., p. 40.
337. CO 137/9: Handasyd to CTP, 9 June 1710. See also CO 137/8: Handasyd to CTP, 6 August 1708.

"be got out of the country as soon as possible."[338] The following report by Beeston shows how imprudent it was to emerge victorious in a pugilistic combat with the Chief Justice. The Chief Justice, Col. Long and Sr. James Castillo

> "happening in March last to meet together in a Taverne in this Towne, some discourse brought on words and then ill language, so that in the dispute Sr. James brake his head, at which being incensed and being Chief Justice, he ordered Sr. James to be secured and committed. I urged my Endeavours to pacify them but could not prevaile, so he lay in the Prison all night." 339

But the gravest indictment of the system comes from 'Groans of Jamaica':

> "...were I to launch out into the boundless Ocean of Corruption, the Proceedings in our Chief Courts of Judicature....I could easily give you such flaming Instances of arbitrary, illegal, violent, unjust, oppressive and most scandalously corrupt practices... in the Distribution of what is here called Justice, that any Serious, intelligent and indifferent Observer (if such a one could be here found) would be apt to conclude that in this Climate, Virtue has to pass for Vice and Vice for Virtue; and that Right and Wrong had made a mutual Exchange of their respective Qualities and Properties." 340

One of the Jamaican problems of the 18th century was the small number of white inhabitants of which a great proportion was indentured servants. The result was that there were insufficient persons to fill the judicial offices. In 1699 Beeston stated that the "country is so reduced that there are not fitting men in any of the Parishes to fill up the vacancys for Justices of the Peace."[341] Two years later he again complained that the Island wanted people to strengthen it "particularly such as would be fitting to make both Civill and Millitary Officeрs of which we are very barren."[342] This difficult

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338. Lady Nugent's Journal (F. Cundall ed.), p. 223.
339. CO 138/9/215: Beeston to CTP, 4 June 1698.
340. Anon., Groans of Jamaica, pp. 45-46.
341. CO 138/9/415: Beeston to CTP, 23 October 1699.
342. CO 138/10/149: Beeston to CTP, 17 January 1701

situation caused by the insufficiency of white inhabitants was accentuated by the problem of absenteeism. This problem had disastrous effects on various aspects of Jamaican life. With the plantocracy hurrying home to bask in their newly acquired wealth, it was less easy to find men of the required ability (even in the 18th century terms) to man the judicial posts. This resulted in a lack of magistrates in certain parishes, or in the unhealthy concentration of judicial power at various levels, in the hands of a limited number of planters. Justifying an additional tax on absentees, Trelawny told the Council for Trade that absenteeism

> "makes the duties of Magistracies and all Commissions, Civil and Military very hard on the Residents, and and there is no choice. If Jamaica was like England, it would be hard indeed to lay an additional burden on a Man on account of his absence, when it doth not Signifie to the Community, whether he is absent or present on his Estate, but the case is not so here."[343]

Closely allied to the general problem of absenteeism was the absence of patent officers. Throughout the 17th and 18th centuries many holders of patent offices never resided in the island, but farmed out or rented these posts to deputies. The office of Attorney General seems to have been the only exception. The number of patent officers involved in the administration of criminal justice was small, with the Provost Marshal being the most important. Yet the evils of absenteeism were also to be found within the Provost Marshal's jurisdiction.

Injustice also resulted from delays in bringing offenders to trial — delays sometimes caused by the non-attendance of the judges in the courts. On one occasion the Assembly went as far as instructing the committee inquiring into the courts of justice to

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343. CO 137/24/231: Trelawny to CTP, 14 October 1747.

investigate the attendance of the judges.[344] On another occasion the Chief Justice told a committee of the House that the courts were very negligently attended and that the Supreme Court had been closed for five days because of a shortage of judges.[345] In 1781 a committee of the Assembly was appointed to bring in a bill to limit the number of judges and to enforce their attendance in their respective courts. This bill however, did not complete its legislative journey through the Assembly before the Assembly prorogued. It was therefore not without reason that when the Assembly eventually voted salaries for the two senior assistant judges of the Supreme Court, seniority was determined by attendance at court.[346]

Equally relevant to the administration of justice were the punishments meted out by the courts. Punishment usually consisted of fines, imprisonment, whipping, or transportation: in serious cases there was capital punishment. Although many capital crimes appear to have been committed, the number of white persons who suffered the death penalty was not large. This may have been due to the great demand for white inhabitants who were needed to lessen the vast numerical gap between the white and black population.

In discussing the punishments of the period we may usefully examine the gaols, which, because of their abominable conditions acted as a further punishment to persons confined in them and as a poor reforming influence. This description of the Middlesex prison is given by Long:[347]

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344. JAJ Vol. 6, p. 487.
345. JAJ Vol. 7, p. 514.
346. 51 Geo. 3, c. 27.
347. Long, op.cit., Vol. 2, p. 14.

> "...the room appointed for the reception of felons...is so loaded with filth in general, as to be perfectly pestilential, not only to the miserable wretches who are there confined, but the ppor debtors.... In this delightful place of custody, debtors, malefactors of all sorts, all sexes and complexions, are promiscuously crowded; a circumstance highly disgraceful to the publick humanity, more especially in a country where it is thought politically expedient to maintain a distinction between whites and Negroes. It is therefore not a little astonishing, that the debtor and the criminal should be huddled together; and that white persons who have committed no other offence than that of insolvency, should be associated with the most bestial and profligate wretches of the Negroe race, as if it was intended to shew that incarceration, like death, is a leveler of all distinctions."

A committee of the Assembly inspecting the same gaol in 1766 reported to the same effect.[348] In 1790 the surveyor of the public works described the Kingston gaol as truly "shocking to humanity.... The whole thing is nothing better than a pile of ruins, harbouring from the swampy grounds about them, every noxious vapour that can affect the health of the miserable unfortunate inhabitants."[349] This deplorable state of affairs continued into the 19th century. The Legal Commissioners in their Report unequivocally stated that there was no subject which it had been their duty to notice , which called for more immediate attention, or more important reform, than the state of the gaols. "Such a state of these places must unavoidably lead to unnecessary severity for the purpose of security; to demoralization by intercourse; and to bodily disease by close contact." [350] Under these conditions, it may be that the criminal tendencies of the inmates would be likely to become much more pronounced.

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348. JAJ Vol. 3, p. 563.
349. JAJ Vol. 6, p. 622.
350. Legal Commissioners Report, p. 127.

In concluding this section on the administration of justice or in most cases, the maladministration of justice, it must again be pointed out that during the same period similar conditions existed in the North American and West Indian colonies. The administration of justice in the West Indies , particularly in Barbados was admirably described in an anonymous pamphlet 'Plantation Justice' published at the beginning of the 18th century where, inter alia, it stated:[351]

> "But as Suits grew more numerous and important, incouraged by Profit, and compelled by Necessity many Clerks, and other such small dealers in the Law, went thither from England, who tho ignorant of the Law, yet have so much knowledge of the Forms, as to be able to perplex, delay and confound all the Business of the Courts there; by reason that the Judges there and their Assistants were wholly ignorant of the Forms, as well as of the Law itself and thereby incapable of regulating the said Disorders, which multiplied, and do still multiply every day: Nor can any other be expected of the Judges and their Assistants, who always were, and still are made of Planters, Merchants, Custom-house Officers, Shopkeepers, or other Inhabitants of the Island, who were never bred to, or otherwise versed in the Law."

When Governor Codrington was about to take up his post in Barbados, he was instructed to inquire into the truthfulness of the allegations contained in the pamphlet. Having made his inquiries he informed the Council for Trade:[352]

> "The reflections in the pamphlet...are I fear generally too well grounded....There is more ignorance than corruption amongst us, but however the effect is much the same, and I have seen verdicts, judgments and indeed whole processes so very monstrous that I could not but at first suspect them to proceed from villiany and bribery, when upon further examination I had reason to remaine satisfied they were the medley offspring of wrong principles, irregular methods and want of discernment."

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351. Anon., Plantation Justice (2nd ed.), 1702, pp. 4-5.
352. C.S.P. 1702, No. 294.

In Virginia the justices were "apt to suppose laws that never were in being and to neglect the execution of others that are actually in force." [353] In South Carolina there were "wholesale laws for punishing vice, but better framed than executed." [354] When President Middleton of South Carolina was accused of selling the offices of the Courts he replied that he had merely "received a present of £200 for it" and that without requesting it. "This is," he concluded, "the great crime the Assembly designes to acquaint you with." [355]

(b) The Administration of the Slave Laws

The administration of the slave laws will be examined under four main headings: (i) Trials of Slaves (ii) Institutions to protect Slaves (iii) Punishment of Slaves (iv) Administration of Justice relative to Slaves.

(i) Trials of Slaves

When civil government was established in 1661 it appears that the slaves were tried by the legal tribunals of the Island, in common with the rest of the population. In 1663 however, the Council enacted that for the prevention "of all Mutinies and Insurrections or other mischiefs" by Negroes [356] two justices of the peace were to have jurisdiction to try all offences committed

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353. C.S.P. 1716-17, No. 452.
354. C.S.P. 1731, No. 270.
355. C.S.P. 1726-27, No. 33.
356. In this and the other early slave statutes the word "Negroes" is used but in the context the word appears to be synonymous with slaves.

by them.[357] The justices of the peace were at the same time empowered to order their masters to sell the offending slaves. If the master did not comply within a reasonable time, they could be fined.

When the first Assembly met early in 1664, special legislation was enacted for slaves because punishing slaves by the "formal" [358] processes of the law was expensive and because masters were not competent judges of offences committed by their slaves.[359] The master was to take any slave of his who had committed any offences punishable with death[360] before a justice of the peace who should summon one or two neighbours as an "Inquest"[361] and pass sentence of death, or otherwise, on the slave.

In November 1664, the Assembly repealed this method of trying slaves and substituted three different procedures.[362] Slaves who had committed serious crimes such as murder, burglary, highway robbery, and burning of houses were to be brought before two[363] justices of the peace who could order them to be detained in prison until trial. These slaves were not to be tried by a jury "as the freemen of England are" because being slaves they did not deserve to be tried by twelve of their peers. The Act provided that the

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357. CO 140 1/85-86, 23 October 1663.
358. This appears to mean the normal procedure of the courts.
359. CO 139/1/42, An Act for the punishing and ordering of Negro Slaves.
360. These offences were not enumerated.
361. The Act is not clear as to what "Inquest" in this context means, but the two persons selected seem to have been part of the adjudicating tribunal.
362. CO 139/1/57, An Act for the better ordering and governing of Negro slaves.
363. There appears to be an error in the wording of the statute. The clause at first refers to "any" of his Majesty's Justice of the Peace but immediately goes on to refer to "theyre" and "them" meaning two justices of the peace. In the 1674 Slave Act the wording is specifically "any two" justices.

two justices were then to summon three able, and good freeholders from the place nearest to where the crime was committed. These five persons -- the two justices and the three freeholders -- were then to try the slaves. Where the slaves committed less serious crimes like maiming another slave or killing cattle or stealing hogs, a different procedure was provided. Complaint was to be made to a justice of the peace in the parish where the offence was committed and he was to issue warrants for the apprehension of the slave and all persons who could give evidence against him. If, on examination of these persons it "probably" appeared to the justice of the peace that the slave was guilty of the crime of which he was accused, he was to request another justice of the peace to associate with him and issue summons to three freeholders, who were with the justices, to form a court to try the slave. The third procedure concerned slaves who committed misdemeanours. These complaints were to be heard and determined by the master of the slave, who was authorized to punish the slave. If the person who complained against the slave was not satisfied about the punishment given by the master, he could complain to a justice of the peace who, having heard the complaint, could order that the offending slave be corporally punished. The provisions of the 1674 Slave Act relating to the trial of slaves were similar to those of this 1664 Act.[364]

In 1696, the procddure for the trial of slaves was again altered, and only two procedures were provided.[365] If complaint was made to a justice of the peace that a slave had committed any felony, burglary, robbery, burning of houses or canes, rebellious conspiracy or any other capital offence he was to issue a warrant

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364. CO 139/1/111-112. Patterson says that the procedure for the slave courts was laid down in the Act of 1674. Patterson, op.cit., p. 87. He makes no mention of the Act of 1663 nor the Acts of 1664. His description of the trial procedures in the 1674 Act, is also not entirely accurate.

365. 8 Wm. 3, c. 2.

for the apprehension of the slave. The justice of the peace was then to summon other persons who could give evidence about the crime, and if after inquiry into the offence "it probably appears" that the slave was guilty, he was to commit him to prison to await trial. The justice of the peace was then to associate with another justice of the peace and both together were to summon three freeholders. These five persons were to try the slave. If the slave was found guilty, the sentence of the court could be given by all five, or the majority of them, one of whom was to be a justice of the peace. All petty crimes, trespasses and injuries committed by slaves were to be tried by any justice of the peace. These provisions remained in existence for the rest of the 17th and the greater part of the 18th century.

In 1737 when the campaign against the Maroons was still being waged, a committee of the Assembly reported that the law relating to the trials of slaves was defective. The committee found that under the existing law slaves could go unpunished in cases where the justices and freeholders differed as to the sentence to be pronounced.[366] The Assembly resolved to appoint a committee to prepare a remedial measure, but it does not appear that a bill to this effect was then introduced in the Assembly.

Following a motion in the House in May 1740, a committee was appointed to inspect the laws relating to the trial of slaves.[367] It does not appear that this committee reported.

Minor changes were made in the Consolidated Slave Act of 1781.[368] Whereas the freeholders who were associated with the justices had previously been indiscriminately chosen, the 1781 Act provided that the freeholders were to be chosen by ballot out of a number not less than five. This Act also provided that the petty crimes which were

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366. JAJ Vol.3, p. 416.
367. JAJ Vol.4, p. 122. The Chief Justice was included on the committee.
368. 22 Geo. 3, c. 17.

formerly tried by one justice of the peace, were now to be tried by two justices.

Major changes however, were made in the 1788 Consolidated Slave Act.[369] The main changes related to the constitution of the court when serious crimes were being tried. The Assembly had proposed that the slaves should be tried at Quarter Sessions, where there was both a grand and a petty jury. The Council, however, objected to this, on the ground that the proposed mode of trial "approximated too nearly to the mode of trying white persons, and that local policy requested a distinction."[370] Fearing, as they claimed , that the bill would be lost, the Assembly agreed to a compromise.[371] The number of justices on the bench was increased to three. In addition, there was to be a jury of nine selected from twelve persons who usually serve on juries.[372] If the jurors were unanimous in their verdict the justices were to pronounce the sentence of the court. It was also provided that after the usual business at Quarter Sessions was finished, the justices could by proclamation declare the court a slave-court and select a jury nine from the Quarter Session's panel of jurors to try slaves. Petty offences and misdemeanours were still tried summarily by two justices, but these justices could not now order more than fifty lashes or six months' imprisonment. These provisions remained in existence for the rest of the century.[373]

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369. 29 Geo. 3, c. 2.
370. JAJ Vol. 8, p. 486.
371. Ibid.
372. The owner of the slave was disqualified from serving on the jury. The Consolidated Slave Act of 1801, 41 Geo. 3, c. 26 provided that a jury of nine was to be selected from a panel of eighteen persons.
373. See 32 Geo. 3, c. 23 and 41 Geo. 3, c. 26. It is difficult to understand Patterson's statement that it was not until 1800 that any significant changes were made in the nature of the slave courts: Patterson, op.cit., p. 88. The changes which he describes had been made in the Act of 1788 and were included in the Acts of 1792 and 1801. Furthermore, he incorrectly states that the court was to consist of 3 J.P.s and a panel of 18 Jurors - nine jurors were to be chosen from a list of 18 persons. See 41 Geo. 3, c. 26, Sec. 54.

Although the constitution of the slave courts had been reformed towards the end of the 18th century, the quality of justice dispensed was far from being satisfactory. Peremptory challenges of jurors were not allowed, nor could objection be taken to the indictment.[374] In addition the justices who officiated at Quarter Sessions were either slave owners themselves or persons who had interest in slave property. The same was true of the jury, and also of the justices who presided at the summary trials. It is with great difficulty that these tribunals can be visualized as administering impartial justice, especially when we recall that many of the offences for which the slaves were tried were aimed at slavery itself and the persons who perpetuated the system. Indeed, one author who had been a slave owner in Jamaica did not know anything in the West Indies "so shocking to humanity, and so disgusting to individuals, as the savage and indecent manner in which the trial of slaves is conducted."[375] And all along it must be borne in mind, that there was no appeal from the slave courts to another legal tribunal. The only way in which the slave could get his sentence reviewed, was by petitioning the Governor for mercy.

(ii) Institutions to protect Slaves

The 1788 Slave Act provided for a council of protection for the slaves.[376] If a slave had been mutilated by his owner, complaint could be made to a justice of the peace. The justice of the peace was authorized to examine the slave and if necessary order

374. 41 Geo. 3, c. 26, Sec. 56.
375. W. Beckford, Remarks upon the Situation of Negroes in Jamaica, p. 92.
376. 29 Geo. 3, c. 2, Sec. 10.

him to be placed in the workhouse for protection. The justice of the peace should then inform the other justices and the vestry of the parish at their next meeting and they were appointed a council of protection for the ill-treated slave. The council of protection were empowered to examine the slave, after which examination, they could order that the owner be prosecuted. They could also order that the slave be freed. Composed, like the courts, of persons owning slaves or having interest in slaves, this tribunal could scarcely be described as an impartial body. It is thought that the council of protection, like some of the other innovations of the 1788 statute, was established mainly to placate the English critics of slavery in Jamaica.[377] The defects of the council of protection were to be thoroughly exposed in the following century.

(iii) Punishment of Slaves

The punishments meted out to slaves in the 17th and 18th centuries were unquestionably severe. And it does not seem that there was much difference in the severity of punishment authorized by law and in punishment administered privately on the estates. After his visit to Jamaica in the 1680's, Sloane recorded that slaves convicted for involvement in rebellions were nailed down to t the ground, and burnt; crimes of a lesser nature were punished by cutting off half a foot; for running away, heavy iron rings were put on the slaves' ankles, and their necks were also restrained; sometimes the slaves were whipped, and melted wax was poured into the wounds caused by the whipping.[378] In 1708, a merchant in Jamaica gave a Member of Parliament a vivid account of how a female

377. See W. Beckford, A Descriptive Account of the Island of Jamaica, Vol. 1, p. 6.

378. Hans Sloane, A Voyage to the Islands of Madera, Barbados, Nieves St. Christophers and Jamaica, p. lvii.

slave was punished for stealing a small article from her master:[379]

> "Out she's led to the Whipping - Post in the Market-Place, and tho she was so big with Child that the seem'd near her Delivery yet she was stript stark naked, her Hands ty'd in a Rope, by which she was hoisted till she stood on tip-toe and all her Parts so distended, as one would have thought a Blow must have made 'em cry and fly asunder. Thus naked, thus distended, thus big with Child, the Executioner of Cruelty comes to her with a Whip made of Wires and falls on (her) so mercifully (sic) you would have thought each following lash would sure have made the Child spring from her Body; yet still her cruel Master's Eye pit'd not; nor did the Beadle's Hand spare her. Thus stood this miserable Spectacle in the face of the Sun and of the World, whipt and scourg'd so long, so cruelly, till to the shame of those who call themselves Men good natur'd Men and Christians, till to their lasting shame the poor Wretch felt such Pains and unspeakable Agonys as made her sweat even Drops of Blood; whilst all her Back and hind parts were so gaul'd and flay'd that they no longer look'd like a human Body but all appeared one Piece of mangled Flesh with reeking Gore. The poor Creature enduring all these racking Torments with an invincible Patience, did not so much as open her mouth."

The same correspondent added that sometimes the flesh of a slave's limbs was cut in long furrows by a knife and then a hot liquid made of pitch, tar, oil and wax poured into the open wounds.

As the century progressed the punishments do not appear to have got less harsh. Leslie tells us that the most trivial error is punished with a terrible whipping, and that punishment was sometimes given for no other reason but to satisfy the "brutish Pleasure" of an Overseer. "I have seen their (the slaves) Bodies all in a Gore of Blood, the Skin torn off their Backs with the cruel whip; beaten Pepper and Salt, rubbed in the wounds, and a large Stick of Sealing Wax dropped leisurely upon them."[380] Almost towards the end of the

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379. Anon., Letter from a Merchant at Jamaica to a Member of Parliament in London touching the African trade, pp. 9-10.
380. Charles Leslie, A New History of Jamaica, pp. 9-10.

century, Beckford was able to say that punishments in Jamaica were very frequently inflicted on the slaves to gratify revenge rather than for the sake of example. Many "acts of barbarity committed upon the persons of the dependent slaves", went unpunished.[381] In the latter half of the 18th century the punishments authorized by the law too, were also heavy. In 1768 Ceasar was hung for harbouring a runaway female slave, and Sampson suffered the same fate for running away for six months; for running way William's left leg was to be taken off below the knee; for the same offence Quashy in 1769 was to have a "large piece of his nose" cut off. In 1770 William and Simon were ordered to be staked down and burnt for robbery and attempting to murder a white man. There appears to have been little discrimination in the punishment of the sexes, for in 1768 Ventura was to have a piece of her nose cut off and she was to be given thirty nine lashes for burglary; for running away for thirty days, Charity was to have "a small piece of her right ear cut off" and receive 39 lashes.[382]

These punishments appear to have had important consequences on the content of the criminal law. Although the punishments have been defended on the ground that the slaves were very "perverse" they are said to have produced strong reactions among the slaves. According to Leslie it is "no wonder if the horrid Pain of such inhuman Tortures incline them to rebel."[383] In 1730 one rebel slave is alleged to have shouted to the government party pursuing a number of rebels, that it was the hardships they had met with on the estates which had compelled he and his colleagues to settle in the mountains, and they were resolved to remain there.[384] In complaining about absentee proprietors in 1749,

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381. W. Beckford, Remarks upon the Situation of the Negroes in Jamaica, p. 41.
382. See CO 137/179: Belmore to Goderich (confidential), 21 November 1831, Enclosed letter to the 'Jamaica legislators' by Augustus Beaumont.
383. Leslie, op.cit., p. 306.
384. CO 137/18/87: Hunter to CTP, 4 July 1730, Enclosed deposition of Capt. Soaper.

the Assembly informed the King that where the slaves had no master to resort to for redress or protection against ill treatment, the cruelty of the overseers sometimes forced them to revolt. They illustrated this by stating that the first great rebellion in the Island began on the estate of an absentee proprietor, where the slaves had been cruelly treated by their overseer, and having no master to apply to for relief, executed their own revenge and murdered the overseer and the white servants on the estate.[385] One Governor of Jamaica, Trelawny, did not limit his condemnation to the overseers. In 1750 he declared:[386]

> "The English in general are the worst managers of Slaves of any People under the Sun; they will observe no discipline. There are many wholesale regulations enacted in this Island for the Government of slaves, but as they can be enforc'd only by due Course of Law, they are not and cannot be enforc'd at all and every one in fact does as he lists with his own slaves.
>
> The consequences of this irregularity in former times was that almost as soon as there were any numbersof Negroes in this Island there was a defection and Rebellion."

As we shall see, almost every slave rebellion was accompanied by additional penal measures.[387] If these harsh punishments were some of the reasons for the slaves rebelling, then they must be regarded as factors having a direct and important bearing on the development of the criminal law.

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385. JAJ Vol. 4, p. 222.
386. CO 137/25/128: Trelawny to CTP, 14 April 1750.
387. See Chapter 4, infra.

(iv) The Administration of Justice relating to Slaves

In addition to the criticisms of the legal system previously related, there were specific criticisms of the way in which justice was administered to the slaves in the 17th and 18th centuries. Possibly the most important was the fact that the slaves were totally prohibited from giving evidence against white or free persons in a court of law. This meant that whatever the abuse, whatever the outrage committed on him, the slave could not seek redress by prosecuting the offender in a court and giving evidence against him. This also meant that slaves who were witnesses to the murder of another slave by a white person were unable to testify to this fact in court. It was the white overseers who were in immediate charge of the slaves, the white legislators who made the laws, and the white judiciary who administered the laws. This rule prohibiting slaves giving evidence against white persons, was established solely to protect the white inhabitants and it was a cause of flagrant injustice and abuse.

Another frequent cause of complaint was the speed with which sentence was executed after it had been pronounced. This fact assumes more awesome dimensions when we recall that there was no appeal from the tribunals which tried the slaves. Beckford, a resident in Jamaica for several years, stated that a negro "is often condemned in one hour and receives execution in the next."[388] Such a situation was authorized by law because the 1696 Slave Act stated that the court was to order the immediate execution of a slave; pregnant women were to receive a stay of execution until after delivery.[389] In 1776, several slaves were tried and quickly executed for their alleged participation in a rebellious conspiracy

388. W. Beckford, Remarks upon the Situation of Negroes in Jamaica, p. 93.
389. 8 Wm. 3, c. 2, Sec. 23.

in some of the western parishes.[390] But these hasty executions prevented the courts from acquiring from the convicted slaves, evidence which could lead to the implication of other slaves. The legislature stepped in to remedy this situation. Because "hasty Execution in the case of Rebellious Conspiracies of the Slave may have been of Evil consequence by preventing discovery leading to the safety of the Community," the slave court was empowered in 1778 to order that the execution of sentence on a slave could be delayed for up to one month.[391]

This 1778 statute was repealed by the Consolidated Slave Act of 1781, but the provisions concerning the execution of slaves were re-enacted. The court could delay the execution of the slave's sentence for a period not exceeding thirty days, or until the pleasure of the Governor was known.[392] Provisions for the respite of slaves were also contained in the 1788 Slave Act: The power of the court to stay the execution of convicted slaves was again provided. In addition, the jurors could also apply to the justices to suspend execution of a prisoner's sentence until the pleasure of the Governor was known; the justices were obliged to comply with this request for at least thirty days, except where the slave had been convicted for rebellion; in cases of rebellion, the justices could order the immediate execution of the slaves if they thought it expedient.[393] These provisions were retained in the 1801 Slave Act. In the 1781, 1788 and 1801 statutes, the execution of women was delayed until after delivery -- in the 1801 statute until a "reasonable time" after delivery.[394]

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390. See Chapter 4, infra.
391. 19 Geo. 3, c. 12.
392. 22 Geo. 3, c. 12.
393. 29 Geo. 3, c. 2, Sec. 46.
394. 41 Geo. 3, c. 26, Sec. 54.

In the 1778 Act, it was also provided that at least two days' notice of the trial of the slave was to be given to the owner of the accused slave. The same period was provided in the 1761 statute, but in the Acts of 1788 and 1801, ten days' notice had to be given.

In some instances, sufficient evidence could not be obtainedto convict an accused slave. Such a situation did not provide insuperable difficulties for the administrators of Jamaica, who nevertheless proceeded to punish the accused. In 1736, four slaves, who were believed to have associated with the rebels had been detained in prison for twelve months, but could not be convicted because of insufficient evidence. The Assembly then ordered that they were to be transported to the northern colonies.[395]

The method of compensating owners for their executed slaves may have caused injustice to the slaves. In 1717 slaves who were to be executed or transported were first to be valued and their owners compensated.[396] In 1739, a committee of the Assembly reported that several slaves had been executed for thefts and "other crimes of no great account" and that many of the prosecutions were "put on foot for the sake of lucre." They recommended that in the valuation of slaves, regard was to be had to the amount involved in the theft and that no slave was to be paid for where the value of the stolen article did not exceed £30. In the following year, the Assembly passed legislation providing that no person was to be compensated for his slave, if the executed slave had been convicted for stealing goods valued under £5.[397] In the 1717 Act, the value of the slaves was to be paid for by the public generally, but in the 1740 statute the parish where the slave was tried and executed was to be responsible for payment.[398]

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395. JAJ Vol. 3, p. 35.
396. 4 Geo. 1, c. 4. No slave was to be valued for more than £40.
397. 13 Geo. 2, c. 6.
398. This statute was amended by 22 Geo. 2, c. 18.

CHAPTER 3

19th Century Background to Penal Legislation

This Chapter like the previous one will be divided into six main sections: (A) The Ethnic Composition of the Island; (B) The Legislature; (C) The Judiciary; (D) The Legal System; (E) Functionaries concerned with the administration of Justice; (F) The Administration of Justice.

A. The Ethnic Composition of the Island

At the beginning of the 19th century, there were, as in the previous century three well defined groups in the population: the whites; the free coloureds; and the mass of black slaves. During the 19th century, the population was augmented by various sources. Until 1807, slaves continued to be imported in large numbers; German settlers came during apprenticeship;[1] Irish immigrants arrived after emancipation;[2] and indentured Indians were brought in the latter part of the century.[3] These additions to the population caused no significant alterations in either the political or social structure, and their influence on penal legislation appears to be negligible.

In this century as in the 18th, the population figures were not accurately determined, although censuses were attempted in the Island. Morrison in 1813 felt that there was no mode by which the population could be ascertained,[4] and Manchester repeatedly maintained

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1. CO 137/197: Sligo to Aberdeen, 22 February 1835.
2. See P.P. Relating to the West Indies, Vol. 6 Part III: Metcalfe to Russell, 23 December 1839.
3. See CO 137/383: Eyre to Cardwell, 20 June 1864.
4. CO 137/136: Morrison to Bathurst, 28 July 1813.

that the accuracy of the population figures could not be relied on.[5] At emancipation, the estimated population of the Island was 9,000 whites, 28,000 coloureds, and 320,000 blacks.[6] The 1844 census was the first ever taken in the Island, and though not accurate, gave the population as 15,576 whites, 68,529 coloureds and 293,128 blacks.[7] The 1861 census gave the numbers for the respective groups as 13,616 whites, 81,065 coloureds and 346,374 blacks.[8] In 1895 the estimated figures were 14,000 whites, 121,000 coloureds and 488,000 blacks.[9] Although these figures are not completely accurate they indicate that while the coloured and black population were increasing, the white population was in fact decreasing. Yet, as we shall see, the numerically largest group in the population, and for whom most, if not all of the penal legislation was made, had no representative in the legislative process and this small group of whites helped by the coloureds, remained in absolute control of the legislature.

(i) The Whites

In this century, the attitude of the white population to the black population is just as, in some instances even more important, than their attitude in the previous century. Legally, Jamaica moved from a slave to a free society, but the social attitudes acquired over years of slavery, underwent little change.

During the apprenticeship period, very strong statements were made concerning the oppression of the black apprentices. Referring to the Assembly shortly after the apprenticeship period began, Governor Sligo observed that the deprivation of their "misused power over their Negroes makes them very sore."[10] Such observations were not

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5. See CO 137/163: Manchester to Bathurst, 5 June 1826; CO 137/160: Same to Same, 22 January 1825.
6. See Autobiography of Henry Taylor Vol. 1, pp. 250-251.
7. See VAJ 1844, p. 98.
8. CO 137/364: Darling to Newcastle, 28 February 1862. Both the 1844 and 1861 Censuses were said to be inaccurate: Ibid.
9. CO 137/564: Blake to Ripon (confidential), 29 April 1895.
10. CO 137/193: Sligo to Spring-Rice, 14 October 1834.

limited to the Assembly, and a year later, he sent Glenelg a despatch extremely critical of the actions and attitude of the magistrates and workhouse supervisors; he concluded by warning Glenelg that the recently enacted gaol law would be "perverted into the most gross instrument of persecution and oppression."[11] According to Stephen, Sligo's statements were to the effect that the "white inhabitants are not fit to be trusted with any power at all over the Black people. I have little doubt that this is very true."[12]

Smith who succeeded Sligo, gave an even more caustic view of the Jamaican society. Before emancipation he said that the overseers had during apprenticehsip retained "all the direct and hidden severities" of slavery.[13] After emancipation, he dispairingly told Glenelg that liberty in Jamaica was "still but a name," and the "most dreadful oppressions are Exercised against the Peasantry."[14] His firm opinion was that because the entire "white population is so strongly tainted with the prejudices and abuses of slavery," Jamaica would have to wait for the "departure of a whole Generation," before the mass of the people could have justice.[15] Three months after emancipation, he warned Glenelg confidentially that if the Assembly's demands 'to be let alone', were acquiesced in, the bulk of the population would again be placed in slavery.[16] And in 1840 when Metcalfe fervently demanded that confidence should be reposed in the Jamaican legislature, Russell pointedly reminded him that men "who till a late period were accustomed to consider the mass of their fellow subjects as objects of sale and barter," to be induced to work by compulsion and not allowed to give evidence in the courts, could not by an Act of Parliament, have altogether effaced from their

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11. CO 137/203: Sligo to Glenelg, 13 October 1835.
12. Ibid. Stephen's Minute.
13. CO 137/230: Smith to Glenelg, 10 November 1838.
14. CO 137/230: Smith to Glenelg, 10 November 1838.
15. Ibid. Smith to Glenelg (confidential), 13 October 1838.
16. Ibid. Smith to Glenelg (confidential), 24 December 1838.

minds "every recollection of slave holding, its powers and its habits."[17] At emancipation, therefore, although the props to legal slavery had been removed, the attitudes of the administrators of the Island to the former slaves, do not appear to have changed.

In the post-emancipation period, these attitudes were still extant. In 1856 Barkly was willing to appoint as Chief Justice a coloured barrister who had "much distinguished himself" at the Jamaica Bar; but had he done so, the appointment coming shortly after the appointment of a coloured Attorney General, "would have been regarded almost as an outrage on the White Inhabitants."[18] In the years immediately preceding 1865, the debates of, and the laws passed by the Assembly are additional evidence that the legislators had changed very little since 1838.[19]

After the rebellion of 1865, which was largely caused by oppression of the black labourers and peasants by the white planters and magistrates, the attitude of the white population to the black was certainly not one of brotherly love. The harsh and panic stricken measures passed by the Assembly immediately after the rebellion are proof of this and some of these measures had to be disallowed.[20] Almost twenty years later, Musgrave, who had been Governor of the Island, discloses interesting information about attitudes in the Island:

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17. CO 138/64: Russell to Metcalfe, 7 September 1840.
18. CO 137/330: Barkly to Labouchere (confidential), 9 February 1856. See also James M. Phillipo, Jamaica: Its Past and Present State, p. 148.
19. See debates in the Legislative Council on 18 December 1862 and 18 December 1863 in Debates of the Colonial Parliament of Jamaica Vol. vii, pp. 274-276; Vol. ix, pp. 315-324.
20. See CO 137/409: Law Officers to Cardwell, 6 January 1866.

> "No one who has not lived in Jamaica for some length of time can thoroughly understand how much of the old spirit of slavery still exists - how bitter is the feeling of the upper classes against the black population in that Colony. I am myself a West Indian by birth, was concerned in West Indian family property, had intimate knowledge of the negro population in early life and had resided for some years in the first part of my official career in three other West Indian islands, and I was much impressed by the entirely different moral atmosphere in this respect pervading Jamaica.... It seemed difficult to find any rational excuse or explanation." [21]

Musgrave further felt that the Jews who were very influential in the Island would reimpose slavery, if they were permitted to do so, and that "the majority of the other white population, with many of the 'browns' would agree with them."[22] Towards the end of the century, another Governor, Blake, tells us in relation to Council members, that there "are some men of property who might accept nomination (to the Council), but who would not enter into a contract for, or solicit the suffrages of the black population."[23] Yet it was men with these attitudes who continued to administer the affairs of the Island, supposedly in the interests of the entire population.

(ii) The Coloureds

At the beginning of the 19th century, the free coloureds were still deprived of the right to participate in affairs of state and they could not among other things vote in elections, become Assembly members, hold commissions in the militia, or be appointed to the judicial offices of the Island.[24] But as their numbers and wealth grew, they protested against their disabilities and in 1813 some privileges were granted to them.[25] However, when they later petitioned for the removal of the other disabilities, the Assembly

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21. CO 137/519: Musgrave to Derby (confidential), 10 April 1884.
22. Ibid.
23. CO 137/549: Blake to Knutsford (confidential), 8 August 1892.
24. See CO 137/145: Memorial from John Campbell to Bathurst.
25. See 54 Geo. 3, c. 19.

resolved inter alia that the petition be rejected because the petitioners "seek an admission to political power, a participation in the administration of government," and also "further privileges unknown to the constitution of this island, and incompatible with the subordination and tranquility of the different classes of the population."[26] Eventually after further protests and representations,[27] the Assembly in 1829 removed the disabilities of the free coloureds and permitted them to share in the administration of the Island.[28] Shortly after, free coloureds were returned as Assembly members.

After emancipation, the coloureds gradually increased their representation in the Assembly. By 1854 the coloured members were one third of the Assembly.[29] The coloureds were rapidly acquiring political power, and with it the prospect of their controlling the Assembly in the not too distant future. This process was arrested by the unexpected demise of the Assembly in 1865, but by 1894 the coloureds who had "very pronounced aspirations,"[30] outnumbered the white 5/4 in the Council elections.[31] From emancipation to the end of the century, it was the whites and the coloureds who controlled the political and economic machinery of the state.

Because the coloureds were partners of the whites in the legislative process, it is necessary to examine their attitude to the black population. As in the 18th century, the coloureds gravitated towards the whites, and aligned themselves with the white planters in their fight against emancipation. In 1831, a group of free coloureds assured their white colleagues that they had no intention of

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26. JAJ Vol. 14, p. 202, 27 November 1823.
27. See CO 137/167: Keane to Murray, 13 November 1828. Also the Petition of the coloured inhabitants to Parliament in 1827 in Journals of the House of Commons Vol. 82, p. 551
28. 10 Geo. 4, c. 29
29. CO 137/324: Barkly to Grey (confidential), 17 August 1854.
30. CO 137/565: Blake to Ripon (confidential), 29 April 1895.
31. CO 137/559: Blake to Ripon (confidential), 20 February 1894.

emancipating their slaves, independently of the whites, because "our interests are so united and interwoven, than any disunion on this subject would endanger the whole."[32] Another group considered their interest and "that of the white people of the colony to be inseparable,"[33] and in 1862, the editorial of a newspaper edited by a coloured man, advised the coloured men of Jamaica that "their best policy is to form a bond of union with their white brethren."[34] During the Crown colony period many of the harshest legislative measures were passed with the active support of the 'brown' members; and there is Musgrave's declared belief that if slavery were re-imposed, many of the 'browns' would join in. By the end of the century therefore, the coloureds, like their "white brethren" do not appear to have undergone any fundamental change in their attitude vis-a-vis the black and formerly slave population; and with a few notable exceptions,[36] joined with their white colleagues, to enact harsh and oppressive measures, aimed primarily at the black population.

(iii) The Blacks

The slaves had soberly witnessed the coming of apprenticeship and reverently and just as soberly, the apprentices welcomed the dawn of emancipation. There was no rebellion, riot or disturbance and the black population envinced no desire to avenge any of the atrocities which had been perpetrated on them during slavery and apprenticeship. Much of the harsh and inhuman slave legislation had been enacted and

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32. CO 137/179: Belmore to Goderich, 6 September 1831.
33. P.P. 1831-32 XLVII. Belmore to Goderich, 6 September 1831.
34. Editorial of the Falmouth Post, 14 November 1862 quoted in Philip D. Curtin, Two Jamaicas, p. 175.
35. See notds 21, 22 of this Chapter.
36. For example George William Gordon, Robert Osborn

justified on the grounds of the wildness and savagery of the negro, and it is of the greatest importance to us concerned in the development of penal legislation, to examine the incidence of crime among the black population in the post-emancipation period.

Certain trends are noticeable during the apprenticeship period when, as Sligo said, it was the fashion "to impute every vice to the apprentices."[37] On the basis of the conviction returns since the apprenticeship period began, he was able to show in 1835 that while the number of free persons convicted was one in 600, the number of apprentices convicted during the same period was one in 3,623.[38]

In the years immediately after emancipation, reports from all over the Island provide useful information as to the incidence of crime. From Port Royal in 1840: "Crime is almost a stranger to these parts...."[39] From St. Dorothy's: "there has been a gradual decrease of almost all sorts of crime since slavery was abolished."[40] From St. James, one of the foremost parishes in the 1831 rebellion and where some of the most intractable and rebellious slaves were said to have resided: "Crime is certainly on the decrease."[41] The former slaves were clearly not fulfilling expectations, and the Custos of St. Thomas, himself a landed proprietor even confessed his surprise at the low incidence of crime.[42] The trend continued during the following year and the Stipendiary Magistrate for Kingston excellently expressed the general feeling of the Island:

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37. P.P. Relating to Slavery, Vol. 42: Sligo to Glenelg, 5 December 1835.
38. Ibid.
39. P.P. Relating to the West Indies, Vol 6 Part III: Jamaica. Metcalfe to Russell, 30 October 1840, Kent's Report Enclosed.
40. Ibid.
41. Ibid. Gordon's Report.
42. Ibid. Mc Cormack's Report. See also the other Reports Enclosed.

> "I cannot but record my admiration of, and satisfaction at, the general conduct and peaceable demeanour of so numerous a body of individuals, who, with the slightest previous education and smarting under recent oppression and degradation, have exhibited much propriety of conduct and submission to the laws." 43

Under the mildest group of penal laws in the Island's history up to then, crime had actually decreased!

Ten years after emancipation, Governor Grey gives his impressions of the black population: the negroes appeared to be free from "rebellious tendencies and turbulent feelings and malicious thoughts" as any other race of labourers. He added that "under a system of perfectly fair dealing and real justice, they will come to be an admirable peasantry and yeomanry."[44] Barkly's view in 1856, was that he was "very far from having a bad opinion of the peasantry," and that they were "ignorant but unpracticed in Crime." "For their ignorance," he continued, "they certainly are not alone, nor indeed chiefly to blame. The deficiency in the means of education is dwelt on by nearly every one of the Stipendiary Magistrates..."[45]

By the early 1860's, however, the incidence of theft, particularly of agricultural provisions, increased and persistent demands were made that stringent legislation should be enacted.[46] As more and more complaints reached the Colonial Office concerning conditions in Jamaica Henry Taylor who had been at the Colonial Office for over forty years wrote in May 1865, a most illuminating Minute:[47]

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43. P.P. 1842 (374) XXIX: Metcalfe to Stanley, 3 December 1841; Moresby's Report Enclosed. See also the other Reports enclosed.
44. CO 137/297: Grey to Earl Grey (confidential), 21 October 1848.
45. CO 137/330: Barkly to Labouchere, 6 March 1856.
46. See Praedial Larceny Legislation in Chapter 9 infra.
47. CO 137/390: Eyre to Cardwell, 19 April 1865, Minute by Henry Taylor 30 May 1865.

> "The state into which the population has passed is very much that which was anticipated at the time of emancipation. Probably nothing but a government of enlightened and beneficent despotism cd have made it much better; but if at the time the people cd havebeen taxed in such a measure as at once to enforce some degree of industry & afford large means of education - such means as wd have given high salaries for teachers of a superior class, & means also for a thoroughly efficient magistracy & Police, I have always thought that there wd have been at least a reasonable prospect or chance of raising up a respectable free population of Negroes. It was in this view that in 1838 the bill was brought in for suspending the Jamaica Assembly which was carried by so small a majority (owing to the opposition of Sir R. Peel) that the Govt had to withdraw it & go out of office.
>
> The loss of that bill was I think the loss of the only chance for obtaining great moral results from emancipation in the way of lifting the Negroes out of barbarous indolence and ignorance. Perhaps it wd have been no more than a chance.... But if there was a chance it was to be found in the abrogation of the West Indian Charters...."

Within six months after this Minute was written, the black population of Jamaica was forced to seek, in their own way, redress for grievances about which they had unsuccessfully made representations. Grant, assuming duties as Governor less than a year after the negro 'savages' had made their violent protest, saw no reason to believe as many persons imagined, that there was an "innate and incurable idleness in the character of the Jamaica negro" which made him different from the rest of mankind and consigned him to "hopeless poverty."[48] His opinion was to the contrary, and he could not understand how anyone could pass through the orchard of a negro cultivator, or observe the numerous small coffee plantations springing up everywhere or see "the women and boys coming in twenty miles with their produce to market" and "Doubt their industry."[49]

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48. Grant to Carnarvon, 26 December 1866: P.P. (19147) XLIX.
49. Ibid.

The criminal statistics for the period up to 1900 show that the black population had by and large, remained peaceful and law-abiding. At various periods and for various reasons some offences, particularly pradeial larceny, increased,[50] but as was said, of "the more serious form of crime the Colony is singularly free."[51] And at the end of the 19th century the Attorney General of Jamaica could correctly claim that the criminal statistics "continue to afford valuable testimony to the law abiding character of the population."[52]

B. The Legislature

(a) The Governor

During the 19th century the appointment and powers of Governors remained substantially what they were in the 18th century. As Jamaica passed along its various historical milestones - slavery, apprenticeship, emancipation, Crown Colony Government - the Colonial Office took much greater interest in the affairs of the Colony and this in turn increased the duties and responsibilities of the Governors.[53] It had been said that young colonies were made or

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50. See Chapter 9 infra.
51. CO 137/603: Hemming to Chamberlain, 7 August 1899, Enclosed Report of the Attorney General.
52. CO 137/621: Hemming to Chamberlain, 5 August 1901, Enclosed Report of the Attorney General.
53. Secretary of State, Chamberlain, was in favour of giving Governors more latitude - provided they accepted the responsibilities for their actions. See CO 137/574: Blake to Chamberlain (confidential), 8 June 1896, Chamberlain's Minute. Also CO 137/579: Blake to Chamberlain, 4 February 1897. Chamberlain's Minute.

ruined by the Governors[54] and this was no less true of the 19th as it was of the 17th century. In the words of one 19th century Governor, the West Indian colonies were not "things of natural growth," which could be safely left to the "care of nature," but were "artificial fabrications, formed and sustained for a long time by peculiar political contrivances," which being then prohibited, "left a disjointed and discordant framework," which had "peculiar need of care and assistance."[55]

As in the 18th century, it was not always the best men who arrived in the colonies as Governors. One Colonial Office official has said that before the reform of Parliament, the pressure brought to bear on the Secretary of State by owners of rotten boroughs "constrained him not seldom to send out unfit men from England."[56] But long afterwards, a Colonial Office Minute referred to the "extreme difficulty" they had "in getting able Governors," and Jamaica especially required "a strong man."[57] On one occasion, Stephen having requested permission to "drop all reserve," proceeded to describe the Duke of Manchester, who had been Governor of Jamaica for over twenty years, as the "most indolent of Mankind." He did not believe that for the entire period of his administration, he wrote "for himself a single Despatch or did for himself a single act as Governor beyond acts of mere ceremony. A Colonist, Mr. Bullock, was the real Governor."[58] Belmore was recalled because of his inefficiency and tardiness in discharging his responsibilities.[59]

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54. C.S.P. 1669-74 No. 1066.
55. CO 137/301: Grey to Earl Grey (confidential), 21 April 1849.
56. Autobiography of Henry Taylor, Vol. 2, p. 244.
57. CO 137/504: Musgrave to Kimberley, 22 February 1882, Minutes.
58. CO 137/356: Metcalfe to Russell, 2 August 1841 Stephen's Minute to Hope, 18 September 1841.
59. CO 138/54: Goderich to Belmore (confidential), 18 February 1832.

Mulgrave, his successor, was strongly reprimanded for omitting to perform important duties.[60] Eyre bears a heavy responsibility in relation to the 1865 rebellion and an even heavier one, for what can only be described as the murder of George William Gordon.[61] Musgrave was said by Kimberley to display "a lamentable want of political tact."[62] Blake, who from his letters and despatches, was described in the Colonial Office as having "the fear of black riots on the brain," was in addition classified as "weak."[63]

On the other hand, some Governors were able, and did a fair job in Jamaica. Sligo was active , keen, and perceptive and he performed remarkably well, under difficult circumstances during the apprenticeship period. Sir John Peter Grant, himself more or less, something of a"jurist",[64] was perhaps Jamaica's most able Governor during the century. He was described as a "first rate"[65] Governor, and when he departed, it was, as had been predicted difficult to find a suitable successor.[66]

Administrations of Governors like Eyre on the one hand, and Sligo and Grant on the other show the tremendous influence which Governors had on the content of the criminal law. Eyre was of the opinion that only flogging could reduce praedial larceny, and he ardently and consistently espoused the enactment of corporal punishment legislation.[67] Sligo on the other hand, was able to expose

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60. CO 138/54: Goderich to Mulgrave, 8 December 1832.
61. See the Report of the Jamaica Royal Commission P.P. 1866 (3683) XXX cited hereafter as The 1865 Report.
62. CO 137/506: Musgrave to Kimberley 18 September 1882, Kimberley's Minute.
63. CO 137/551: Blake to Ripon, 12 November 1892. Minutes.
64. CO 137/447: Grant to Granville, 5 February 1870, Henry Taylor's Minute.
65. CO 137/469: Grant to Kimberley, 11 March 1873 Minute following
66. CO 137/469: Grant to Kimberley, 5 February 1873, Minute following
67. See Praedial Larceny Legislation - Chapter 9, infra. Another Governor, Hemming, had the same opinion. Ibid.

some of the many injustices perpetrated on the black population, and this sometimes led to suggestions for amendments in the criminal law. By his detailed reports about Jamaica, he was able to furnish the Colonial Office with information which was invaluable both in regard to the confirmation or disallowance of penal legislation, and in regard to the formulation of policy. Grant effected many reforms in the criminal law and played an important part in the initial stages of the construction of the Criminal Code.[68] But probably, his most important contribution to Jamaica, as far as the criminal law is concerned, was in giving to the mass of the population, a judicial system in which for the first time they had confidence. A Jamaica Puisne Judge, Mr. Justice Ker, described the District Courts established by Grant as "an inestimable boon to the community." For "the first time," he added, "the complaint of the peasant commands the same attention and is as impartially decided as the complaint of the landowner."[69]

(b) The Council

Up to 1865 when the constitution of the Island was radically changed, the composition, powers and functions of the Council remained very similar to what they were in the 18th century. With the exception of the Attorney General,[70] the Council was composed in the main of landed proprietors who were generally supporters of the Government. On his being recommended to the Council, Ballard Beckford Nembhard was not only described as "highly and universally respected in the community," but he was a gentleman of "very considerable property."[71] Cuthbert's qualification included his "rank and property"

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68. See Chapter 10 infra.
69. CO 137/518: Norman to Derby, 1 October 1864, Enclosed Report by Ker.
70. In 1829 the Colonial Office directed the Chief Justice should be a member of the Council. See CO 138/53: Twiss to Belmore, 22 October 1829.
71. CO 137/119: Coote to Castlereagh, 18 October 1807.

in the Island and the fact that he was "a staunch supporter of Government."[72]

But Jamaica appeared to possess an inadequate supply of suitable personnel from which Council members could be drawn, and very trenchant criticisms were on occasions levelled at the members. Sligo was unequivocal in his views about the Council. With few exceptions, they were a "sad set indeed." Several, who were overwhelmed with debt had been put in:

> "merely for the protection of their persons. Would that I could find an opportunity of getting rid of them. If I can it is my present intention to do so. Their poverty and inefficiency is a matter of publick Notoriety, they have no influence, they enjoy no respect & reduce the character of the body to such a degree that it is hardly considered to be a branch of the legislature at all."[73]

A year later when the Presidency of the Council became vacant, his comment on the leading contenders for the job is even more revealing. It was not without the "deepest concern," he visualised the most senior member succeeding, because on the previous occasions on which he had acted as President, it "had been the duty of the Clerk of the Council to stand behind him and to prompt him as to what his duties may be." The "intemperate habits" of another contender were too well known and a third did not have the character for the post. Altogether none of those in line for succession "would command the slightest respect" and would be "mere tools in the hands of the Planters party."[74] In 1836, Sligo confessed himself to be at a loss to know who to recommend to the Council.[75]

As in the 18th century, the non-attendance of Council members was a cause of constant comment, and almost every Governor up to 1865 complained of the small number of effective Councillors, and the

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72. CO 137/119: Coote to Wimham, 14 May 1807.
73. CO 137/192: Sligo to Stanley (private), 15 April 1834.
74. CO 137/198: Sligo to Secretary for the Colonies (confidential), 30 May 1835.
75. CO 137/211: Sligo to Glenelg, 29 June 1836.

difficulty of even getting a quorum.[76] Much of this unsatisfactory state of affairs was caused by the affluent Council members, returning 'home' to England, after acquiring their wealth in Jamaica. In 1812, Morrison tells us that one Council member had been absent for three years.[77]

In this century, the Council remained the junior, very junior, partner in the legislative process, and as long as the Assembly possessed the power of withholding supplies, they could always deter the Council from acting in opposition to them.[78] It was finally settled too that the Council had no power of initiating bills.[79] Mulgrave expressed the view that it was better for some bills to originate in the Council, where there was some legal knowledge, "instead of coming up as they do now in that crude and unintelligible form in which the ignorance or carelessness of the Members of the Assembly suffer them to pass."[80] Frustrated at the Assembly's obstruction and dilatoriness, Sligo regretted that the Council could not initiate bills: under the "existing circumstances," the Council had to be regarded as the "source from which all liberal measures are to emanate".[81] Sligo's suggestion that Parliament should legislate to give the Council such a power was not adopted because of the "insuperable" difficulty for Parliament to legislate on such a subject.[82]

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76. See CO 137/122: Manchester to Castlereagh, 11 September 1808; CO 137/167: Keane to Huskisson, 2 April 1828; CO 137/212: Sligo to Glenelg, 17 July 1836; CO 137/326: Barkly to Russell (confidential), 7 June 1855.
77. CO 137/134: Morrison to Liverpool, 24 June 1812.
78. See CO 137/167: Keane to Huskisson (private), 9 April 1828.
79. See CO 137/183: Mulgrave to Goderich, 16 December 1832; CO 138/54: Goderich to Mulgrave (private and confidential), 5 February 1833.
80. CO 137/183: Mulgrave to Goderich, 16 December 1832.
81. CO 137/209: Sligo to Glenelg, 3 February 1836. He was referring to measures emanating from the Government.
82. Ibid. Glenelg to Sligo, 15 April 1836.

The Council's contribution to penal legislation was on the whole, negligible. The Council, like the Assembly, was mainly composed of the white plantocracy. The planters, whether in Council or Assembly, had a common interest in legislating for the 'common enemy' - the slaves.- and after emancipation, the black labourers. In penal matters therefore, the Council had little cause to differ with the Assembly.[83]

In the new constitutional structure which arose under Crown Colony Government in 1866, there was one legislative body - the Legislative Council. In the post-1865 era the members of the Council, all nominated, were either white or brown. In 1882, when the Jamaica Constitution was being criticized, the Colonial Office, endeavouring to make the Council more representative, favoured the suggestion to nominate "one or two black men" to the Council.[84] This was not done however.

Following Derby's dictum that you "cannot long govern a colony like Jamaica without representative institutions in some shape,"[85] an elected element was introduced into the Constitution in 1884. But this elected element was chosen on a very restrictive franchise and though in 1885, the estimated population was well over 400,000, the number of voters on the roll totalled only 7,000.[86] One reason for the low figure of voters, was that the white inhabitants had deliberately insisted on high voting qualifications, which included a literacy test. During slavery there were no schools for the slaves, and for the entire period after emancipation, the Island remained

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83. Even if the Council possessed the right to initiate bills as Sligo suggested they should, it is difficult to visualize them making a great impact on the criminal law , for this reason.
84. CO 137/507: Musgrave to Kimberley (confidential), 14 November 1882, Minutes.
85. CO 137/509: Musgrave to Derby, 17 April 1883, Derby's Minute.
86. CO 137/523: Norman to Stanley, 10 October 1885

woefully short of schools.[87] And now literacy was the device employed to prevent the vast majority of the population from enjoying the franchise, although more than once criticized in the Colonial Office. One official felt that literacy was no indication of the existence of higher political capacity, and wryly observed that the "President of a Great Republic can only just sign his name."[88] When the Jamaica franchise was under discussion two years later, another official declared that he could not see why "the Jamaicans should be called upon to show more Education than Englishmen."[89] From the size of the voters' roll, there is no doubt that the test achieved what it was intended to - that is to keep control of the Island in the hands of the white and brown inhabitants, and so prevent the mass of the population, which was black, from having any effective voice in the administration of the Island.

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87. See CO 137/210: Sligo to Glenelg, 17 April 1836; P.P. 1842 (374) XXIX, Metcalfe to Stanley, 3 December 1841, Enclosed Stipendiary Magistrates' Reports. See O'Reilly's Report - "Great anxiety is generally shown by all classes of the peasantry to have their children educated." Ibid. In 1860 the number of children between 3-13 years totalled 90,000, while the number attending schools was only 34,000: VAJ 1861-62, pp. 14-15. "For the Government to establish a sufficient number of schools to meet the wants of the children employed on Estates scattered all over this large Island, would cause very great expense." CO 137/495: Musgrave to Kimberley, 16 June 1880. In 1899 the number of children of school age appeared to be 140,000, and only 57,000 were attending schools. It was said by the Governor and the Colonial Office that it was impossible for Jamaica to provide sufficient schools: See CO 137/600: Hemming to Chamberlain, 17 April 1899, Minutes. See also Carl C. Campbell, The Development of Primary Education in Jamaica 1835-1865 (unpublished M.A. thesis).
88. CO 137/513: Norman to Derby, 8 February 1884, Herbert's Minute.
89. CO 137/523: Norman to Stanley, 10 October 1885, Minutes

With the Council composed as it was, and with the white and brown inhabitants having such attitudes towards the black population as previously described,[90] it is not surprising that some of the most oppressive penal statutes of the post-emancipation era were passed during the period of Crown Colony Government. When the Jamaican legislators demanded an extension of whipping, Chamberlain flatly denounced this remedy as the "simple and universal panacea of the white man in a 'black' country."[91] During a debate in 1898 on obeah legislation, the Attorney General's statement was that the "difficulty was to moderate the eagerness of some of the elected members in the direction of severity."[92] And probably the best description of the Crown Colony legislators was that given by Chamberlain towards the end of the 19th century: "These people ought to have lived when men were hanged for stealing a turnip."[93] These were the men who claimed to represent Jamaica.

(c) The Assembly

Up to 1865, when the Assembly legislated itself out of existence, it remained the most important partner in the legislative process. Like the Council, it suffered from the effects of absenteeism, and as a result, the general standard of Assembly men appears to have been low. In 1810, Manchester informed Liverpool that the Assembly was not composed of "the principal landed Proprietors", very few of whom resided in the Island, but it was composed merely of the agents or attornies of these proprietors, or of the British merchants and mortgagees.[94] Sligo in 1835 declared that there was hardly one proprietor in the Assembly;

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90. See the section of this Chapter dealing with the Ethnic Composition of the Island.
91. CO 137/609: Hemming to Chamberlain (telegram), 12 February 1900, Chamberlain's Minute.
92. CO 137/622: Hemming to Chamberlain, 3 December 1901, Enclosed memorandum of Attorney General Schooles.
93. CO 137/582: Blake to Chamberlain, 17 July 1897, Chamberlain's Minute.
94. CO 137/128: Manchester to Liverpool, 27 May 1810.

almost all the members were attornies who had "raised themselves from the most subordinate station"; and all of whose "immense profits" had been cut off by the new system; and who felt with that "intenseness peculiar to little minds, the deprivation of this power of coercion".[95] In the following year, Sligo reminded Glenelg that the members of the Assembly were of a different class from the English representatives and continued:[96]

> "Most of them are totally without education - I know several of them who do not know how to spell:- they have all raised themselves on the plunder of the Absentees, & are devoted heart & Soul to continue those abuses by which they have raised themselves into importance:-they are so blind that they think they can stop the torrent."

Of equal importance to the quality of the Assembly men, was the franchise by which they were elected. In the 18th century, the franchise had been an extremely restricted one. In the 19th century, although the disabilities were removed from the coloureds and Jews, the franchise still remained exceedingly narrow. As emancipation approached, the Jamaican legislators realised that in a short time the black population would be eligible to vote - provided they possessed the necessary qualifications. Frightened at the prospect of free black people being added to the electoral rolls, possibly in thousands, they immediately raised the franchise qualifications.[97] Secretary of State Glenelg promptly disallowed the statute with comments which are apposite even today:[98]

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95. CO 137/201: Sligo to Glenelg, 9 August 1835.
96. CO 137/210: Sligo to Glenelg (confidential), 21 March 1836.
97. 7 Wm. 4, c. 10. The Governor strongly supported the statute: See CO 137/213: Smith to Glenelg, 30 December 1836.
98. CO 138/61: Glenelg to Smith, 30 March 1837.

> "If the franchise created for the benefit of Society at large shall be practically confined to a small minority, they must I fear, become the instruments, not of general liberty and order, but of an arbitrary rule, and a systematic oppression. Such has been the result as often as a similar experiment has been tried in other countries. Such it must infallibly be in a community in which the small privileged class is separated from the great disenfranchised majority by physical distinction, by national origin, and by inveterate Feelings.... The Act under consideration gives both to the constituent and representative Bodies, a palpable and most dangerous interest in the depression of the rest of the Colonial Society, and at the same time invests them with the means of acting effectually upon that policy."

But although the Colonial Office officials were concerned about the raising of the franchise qualifications, they did not attempt to get the qualifications lowered. The result was that the franchise continued to be very narrowly based. In addition to this, the white and coloured groups were able, through adroit manipulation, to prevent the black labourers from obtaining the necessary voting qualifications.[99] In 1840 the number of electors appeared to have been 2199, in an estimated population of over 300,000.[100] In December 1864, Eyre told Cardwell that at the last elections, the number of qualified voters was 1903, and the actual number of persons voting 1457; the result was that 436,807 inhabitants had "no voice at all" in the selection of the 47 members.[101] Calculations by Colonial Office officials showed that the average number of votes for each member of the Assembly was about 31, and if Kingston were to be excluded, the

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99. For one of the devices used, see P.P. Relating to the West Indies, Vol. 5 Part I - Jamaica: Smith to Normanby, 16 August 1839, Enclosed Report of Stipendiary Magistrate Fishbourne.
100. P.P. Relating to the West Indies, Vol. 6 Part III: Metcalfe to Russell, 9 June 1840.
101. CO 137/385: Eyre to Cardwell, 19 December 1864.

number would fall to about 22! [102] It can therefore be seen that the bulk of the population - the black peasants and labourers - had "no voice" in the election of the representatives, yet they were the ones against whom most, if not all, the penal legislation was directed.

The powers of this narrowly elected Assembly remained enormous, and the members acted in full accordance with their declaration that every "right and privilege" exercised by the House of Commons in England was "inherent in the representatives of the people of this island, met in general assembly."[103] Of all their powers, the one of greatest importance was undoubtedly the power of initiating or refusing to initiate legislation.

The exercise of this power had remarkable consequences on the content of the criminal law, and it seems almost certain that had Jamaica not possessed this power, much of its penal legislation in the early 19th century would have been different. Whereas in the 18th century, it appears that in penal matters there was little difference of opinion between the Assembly and the Colonial Office, and most of the penal statutes were confirmed, when the 19th century brought new policies to England, a vastly different situation arose, and the tremendous powers of the Assembly were thrown into very sharp relief. In the conquered or ceded territories, the British Government could legislate directly by Order in Council and effect the necessary amendments to the law. In Jamaica, the position was different, and the British Government could only suggest or recommend amendments to the criminal law. In the last resort, the British Parliament had the power of legislating directly for the Island, but this power was little exercised. The result was that if the Assembly refused to adopt the recommendations of the British Government, which they often did, the original law remained in force.

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102. Ibid. Minutes.
103. JAJ Vol. 12, p. 62.

Again and again the Colonial Office proposed amendments to the Slave Codes, again and again the Assembly refused to enact the amendments.[104]

Employing their extensive powers of legislation, the Assembly could enact the harshest of penal measures, and unless the Governor refused his assent, these measures could take effect immediately; even if they were finally disallowed, they would have already been in force in the Island for a period. During slavery and apprenticeship especially, this legislative power was greatly abused and the most oppressive statutes were enacted by the Assembly. After emancipation Metcalfe strongly demanded that confidence be placed in the Assembly, and that the members should not be regarded as likely to oppress the black population. Stephen's Minute on this despatch is instructive:[105]

> "Popular Franchises in the hands of the Masters of a great Body of Slaves, were the worst instruments of tyranny which were ever yet forged for the oppression of mankind. If no Assembly had been established in the Island, I doubt whether any wise man would create such an institution even now when Slavery is extinct. For still there survive indelible natural distinctions and recollections which divide Society into Castes and which must make the legislation of the European more or less injust and oppressive towards the African Race. Whatever Sir Chas. Metcalfe may say to the contrary, I am convinced that this is inevitable. Many of the laws which he himself has passed give proof of it."

Up to 1865 when the Assembly went out of existence, it was still employing its extensive powers in this way.

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104. See Chapter 5 infra and the Autobiography of Henry Taylor Vol. 1, p. 122.

105. CO 137/256: Metcalfe to Russell, 2 August 1841, Stephen's Minute to Hope, 15 September 1841. In Richard Hill's phrase the "constitutional outcry of the Assembly in every page of its history, has been for right to be oppressive without accountability." See Richard Hill, Lights and Shadows of Jamaican History, p. 82.

(d) The Colonial Office

During this century, the Colonial Office was much more efficiently organized than in the previous one, and for various reasons, a much greater interest was taken in colonial affairs.[106]

As far as the penal legislation of Jamaica was concerned, the Colonial Office performed several functions. As in the 18th century, it continued to review the legislation, and when necessary, suggest amendments, or recommend that statutes be disallowed; and it proposed legislation which the Assembly should enact. But in this century, it began the practice of reviewing capital trials of slaves, thereby acting as a kind of appellate tribunal. This was a most important function, for in Jamaica, there was no appeal from the slave courts. The only chance a slave had of getting his case reviewed, was by petitioning the Governor for clemency. By this practice of the Colonial Office much abuse in the administration of criminal justice was discovered.[107]

For the first four decades of the century, slavery, and the dismantling of the brutal apparatus erected under it, were some of the main concerns of the Colonial Office. Because of embarrassing questions being asked in Parliament, and because of the damning exposures by the abolitionists, the Colonial Office adopted a much more rigorous supervisory role in colonial affairs. From the various despatches and minutes we glean very useful information about the factors operating in the Colonial Office. On one occasion, Goderich told Belmore that if he were fully aware of the "jealous vigilance with which everything connected with the proceeding of the Jamaica legislature" is watched in England, he would understand the importance which the Government attached to acquiring

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106. See generally D. J. Murray, The West Indies and the Development of Colonial Government 1801-1834.

107. See CO 138/54: Goderich to Belmore, 15 May 1832.

"the fullest, the earliest, and the most authentic information" upon certain subjects.[108] Referring to a statute affecting the apprentices, Glenelg informed Sligo that he had no wish to disguise the "more than usual care and even scrupulosity", with which he had examined it.[109]

But it is from Stephen, the bulwark of the Colonial Office at this period, that we discover some of the operative factors in the Colonial Office concerning Jamaican legislation. After becoming Governor of Jamaica in 1839, Metcalfe had waged a campaign to get the Colonial Office to stop distrusting the Assembly and to give credence to their professions of goodwill and amity to the black population. He concluded a strong and lengthy despatch by advising the Secretary of State to "abstain from habitual and incessant interference" in Jamaican affairs.[110] Stephen, in his Minute on this despatch, stated that Metcalfe had confined his attention "exclusively to the scene before him," forgetful of the responsibility to Parliament and to public opinion, and of the recent interest taken in England in "matters of this kind." And he continued:[111]

> "There can be no doubt that since the Commencement of the anti-slavery controversy - that is during the last 23 years (for so long, in one form or other, it lasted) the practice of this Office has been to regard Jamaica legislation with jealousy and distrust on every subject connected, however remotely, with the condition of the manual labourers, whether as Slaves, as Apprentices, or as Freemen. Such jealousies may have been carried too far, but that they were justified and required by the former state of Society in Jamaica, to a very great extent, appears to me as incontrovertible a truth as any proposition of the kind can be made."

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108. CO 138/53: Goderich to Belmore, 2 June 1831.
109. CO 138/57: Glenelg to Sligo, 13 June 1835.
110. CO 137/256: Metcalfe to Russell, 2 August 1841
111. Ibid. Stephen's Minute to Hope, 15 September 1841.

After 1840, the Colonial Office, due largely to Metcalfe's insistence, changed their policy of 'jealousy and distrust', and only recommended a law for disallowance if it was essentially unjust. In 1864, Newcastle had to remind Eyre that the British Government had to bear in mind the fact that the "bulk of the population of Jamaica are not represented in the Assembly," with the result that the Crown may be compelled to "extend its protection to the unrepresented classes" by exercising a veto in 'purely internal matters'.[112]

The 1865 rebellion brought home to the Colonial Office, in no uncertain terms, the oppression of the Assembly and the atrocious social conditions in the Island. After this, Jamaica's penal legislation was subject to the greatest scrutiny, and from their Minutes, Colonial Office officials appeared to be endeavouring to prevent oppressive legislation from reaching the statute book. Great care was therefore taken before the corporal punishment statutes were finally sanctioned;[113] the Criminal Code was amended to reduce the whipping offences, and Chamberlain's forthright remarks on some praedial larceny statutes need little comment.[114] In some cases, although doubts were expressed in the Colonial Office about certain Jamaican statutes, respect was paid to the sentiments of the legislature, and the statutes sanctioned.[115]

There is one aspect of the Colonial Office's contribution to Jamaican law which merits special treatment. It is the manner in which, by the end of the 19th century, Jamaica's penal legislation

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112. CO 138/75: Newcastle to Eyre, 26 January 1864.
113. See CO 137/395: Eyre to Cardwell, 24 November 1865, Minutes following; CO 137/401: Stokes to Cardwell, 9 March 1866, Minutes.
114. See Chapters 9 and 10 infra.
115. See CO 137/573: Blake to Chamberlain, 16 May 1896, Minutes. CO 137/574: Hallowes to Secretary of State, 2 July 1896, Minutes. CO 137/622: Hemming to Chamberlain, 3 December 1901, Chamberlain's Minute.

became almost identical with England's, when in the early part of the century, there had been such a great gulf between the two systems. During the 17th and early 18th centuries, the settlers in Jamaica had uncompromisingly fought the British Government for the right to have English laws in the Island. In the 19th century it was the British Government who were most desirous of having English statutes in force in Jamaica.

The 'movement' for the adoption of English laws appears to have begun after English criminal law had been reformed in the late 1820's. The Jamaica Slave Code was still, at this period, a severe measure, and death was the penalty for a very large number of offences. This was noted in the Colonial Office, and in August 1830, Murray made his views known to Belmore. He referred Belmore to the recent reforms in the English statute law and told him that it was only in cases of murder, robbery with violence, rape, arson and forgeries of an aggravated nature, that death was usually inflicted. He continued:[116]

> "It seems very desirable that both the law and the practice of Jamaica should in these respects be assimilated to the Law and practice of England, as closely as local peculiarities will admit. Your Lordship will consider whether it may not be practicable to induce the Council and Assembly to concur in adopting the recent Amendments in the English Criminal Code, and you will enforce any recommendation to the effect by the assurance that His Majesty will gladly concur with the other branches of the Legislature in such a reform."

These remarks were sent to the Assembly, but they took no action.

As the apprenticeship period approached, it became more obvious that the slave legislation would soon be obsolete and that new criminal laws had to be framed. Sligo was aware of this, and

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116. CO 138/53: Murray to Belmore, 31 August 1830.

in June 1834, told the Assembly that "a general consolidation of the criminal law, similar to that which has taken place in England," was most desirable.[117] The Assembly subsequently appointed a committee to consolidate the criminal law. Bills were introduced in the Assembly as a result, but none completed its passage. In 1837 however, the law concerning offences against the person, malicious injuries to property, and larceny was amended and consolidated.

But several other penal measures remained on the statute books -- measures which had been enacted in a different age, in different circumstances, and for different purposes. In November 1837, Glenelg sent a circular despatch to the Governor requesting information about the criminal law and its administration. Glenelg stated that the purpose of this enquiry was to discover the state of the law and to prepare new measures for forthcoming emancipation. Some laws, he said, would be "ill adapted to a state of things in which compulsory labour will be no longer practised": others would require "an entirely new sense and effect although undergoing no alteration in the letter; it was therefore necessary that a "considerable revision" of the criminal laws should take place in order to "adapt them to the new state of affairs".[118]

Before this reply was sent, Glenelg was compelled once more to comment on Jamaican criminal law. Smith had sent to the Colonial Office, the notes of the trial of some prisoners sentenced to death. After he had examined the evidence, Glenelg affirmed that there was no doubt as to the guilt of the prisoners. He added however, that it was greatly wished that the "penal law of Jamaica might be brought into greater conformity with the Law of England," and that the death

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117. VAJ 1834, p. 6, 3 June 1834.
118. P.P. Relating to Slavery Vol. 44 Part V - Jamaica: Glenelg to the Governor of the West Indies (Circular), 6 November 1837.

penalty be abolished for cattle stealing.[119] In the meantime, Jamaican legislation was treated with wariness and caution, and it was rigidly scrutinized as to its applicability "to the new state of Society which is so fast approaching."[120]

But, with the exception of the 1837 Consolidations, up to 1839, the Assembly had done very little in revising their penal statutes. In their first completed session after emancipation however, several penal statutes were passed. Mindful of the Assembly's record during slavery, the Colonial Office was taking no chances, especially where the statutes deviated widely from the corresponding English legislation. They were carefully examined and most of them sent to the English Law Officers for them to report on. To some they stated objections, some they approved. One statute concerning the pronouncement of death, for instance, was "entirely in accordance with the law of England and quite unobjectionable."[121] They further observed that it was desirable that as soon as possible the law of Jamaica should be made to conform to the law of England in the matter of capital punishment. Where the Jamaican statutes differed from their English models especially by a looser terminology and more severe penalties, they were subject to rigorous examination and close questioning.

For the rest of the century, English legislation was used as the model, and the basic Jamaican criminal laws were largely enactments of English statutes. No directive to this effect had

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119. CO 137/226: Smith to Glenelg, 8 February 1838.
120. CO 138/62: Glenelg to Smith, 4 July 1838.
121. CO 137/252: Law Officers to Russell, 19 June 1840.

been issued but as Newcastle made clear, English law was the standard used to test Jamaican statutes. In disallowing a Jamaican statute authorizing the infliction of flogging, Newcastle told Eyre:[122]

> "I do not require the Law of Jamaica should be closely adjusted to the practice of England - But it is impossible for me to allow so wide a departure from that practice as would be effected by authorizing the punishment of flogging in any case of a third conviction for felony."

When Jamaica adopted the provisions of the Consolidated Criminal Law Statutes of 1861, Cardwell welcomed this "prompt adaptation," by Jamaica.[123] So complete had been the assimilation of Jamaican law with English law, that in 1899 the Attorney General of the Island was able to pronounce:[124]

> "In this Colony, all our Laws are more or less based on the English Statutes and their interpretation is controlled by the decisions of the Courts of the Mother Country which are invariably followed by the Colonial Court. It is seldom, therefore, that a decision of the Colonial Court would be of service to the Society of Comparative Legislation."

In relating the role of the Colonial Office in the 19th century, the work of one official deserves especial mention. The official is James Stephen, for he, above any other single person, was responsible for the content of Jamaican criminal law, and the direction which it assumed in the first part of the 19th century. In 1813, Stephen had been appointed Counsel to the Colonial Department, and in 1825, he was appointed Counsel to the Colonial Office. Nine years later he was appointed to the newly created office of Assistant Under-Secretary of State in the Colonial Office, and in

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122: CO 138/73: Newcastle to Eyre, 19 January 1863.
123. CO 138/75: Cardwell to Eyre, 16 May 1864.
124. CO 137/603: Hemming to Chamberlain, 11 August 1899, Enclosed Memorandum from Attorney General Schooles.

1836, promoted to Under-Secretary of State. Ill health forced him to resign from the Colonial Office in 1847.

As Counsel to the Colonial Department and the Colonial Office, one of Stephen's most important duties was to report on Jamaican statutes, and this included the crucial slave legislation. It is on his recommendation that some of this legislation was disallowed. He was also responsible for examining the notes of the slave trials and it was he who helped to expose the unsatisfactory nature of the criminal proceedings and the putrid state of the administration of justice generally. In the post-slavery period Stephen endeavoured to give Jamaica a less severe penal system by urging that English laws be adopted in the Island.

But his work at the Colonial Office was not limited to criminal law -- it spanned the entire colonial administration. When the Jamaica legislature raised the electoral franchise in 1836, Stephen was quick to respond: "It seems to me of the greatest importance that some immediate and very grave notice" should be taken of the proceedings. He recommended that the electoral act under review should be disallowed "by the first opportunity" and that the intention to disallow it "should be signified by the very next mail".[125] The Act was disallowed. When in 1839-40 Metcalfe had urgently demanded confidence in the local institutions and had strongly criticized the despatches from the Secretary of State, Stephen wondered whether "some more full and direct encounter with such remarks is not necessary".[126]

Two factors tended to increase Stephen's influence in the Colonial Office. The first was the high turnover of Secretaries of State. Stephen has stated that while at the Colonial Office he

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125: CO 137/213: Smith to Glenelg, 30 December 1836, Stephen's Minute, 9 February 1837.

126. CO 137/248: Stephen to Vernon-Smith, 6 November 1840.

served under almost forty Secretaries of State, and he has referred to them as his "bird of passage chief for the time being".[127] The second factor was that the Secretaries of State did not consider it important enough to acquaint themselves with all the relevant documents in colonial matters. Henry Taylor, whose remarks are buttressed by a sojourn at the Colonial Office of almost fifty years has stated that in ninety-nine cases out of one hundred, the consideration given to a subject by the Secretary of State consisted in his reading the draft submitted to him and his decision consisted in adopting it.[128] Stephen, as a mere official at the Colonial Office, had to work within narrow confines, but because of his extensive knowledge it was not difficult for him to have his views adopted. His influence on colonial law in particular and on colonial policy in general was unquestionably tremendous. He was by no means indulging in rhetoric when in 1838, he referred to himself as reigning over the colonies.[129]

C. The Judiciary

(a) The Governor

During slavery, the Governor played an important role in the administration of justice.[130] No appeals were provided from decisions of the slave courts, and the slave's case could only be reviewed by petitioning the Governor, who in effect acted in a judicial capacity. Following the illegal execution of a slave in 1822, the Assembly legislated that in all capital cases, except

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127. Caroline Emelia Stephen, The First Sir James Stephen, p. 105.
128. Autobiography of Henry Taylor, Vol. 1. pp, 139-140
129. Caroline Emelia Stephen, op.cit., p. 56.
130. Up to 1840, the Governor played a more general role in the civil courts, since for example, he was the Judge in the Court of Chancery.

rebellion, the sentence of the court could only be executed on the Governor's warrant.

But most of the Governors were not legally trained, and as a result were not as effective as they might otherwise have been. In 1832, four out of five slaves found guilty for murdering an overseer were executed on the Governor's orders. Goderich commented that evidence seems to have been received with laxity; and he pointed out other fundamental defects at the trial.[131] Two years later a similar case arose. A slave had been tried for the murder of two women, found guilty for the murder of one, and hanged. In his Minute on this case Stephen pointed out that in the "chain of circumstantial evidence", some "important Links" were missing, and that it had not been established that the woman came to her death by violent means. He went on to illustrate the delicate position which a Governor held. He felt that considering how painful an office a Governor had to discharge in deciding the fate of a prisoner, caution should be used in imputing neglect or indifference on Sligo's part; yet with all due regard for Sligo's feelings it should be intimated to him that there seems to have been some irregularity in completing the proof as to the cause of death; this remark should be made merely to suggest some caution for the future without conveying any censure for the past. It appeared scarcely possible to do less than this,

> "without an acquiescence on the part of the Secretary of State himself, in a Proceeding, which however innoxious in its immediate Consequence, is Yet dangerous as a Precedent, and remarkable as a symptom of Negligence in the asministration of the Criminal Law." 132

A despatch on the lines of Stephen's Minute was sent to Sligo. In the latter part of the century, the prerogative of mercy was exercised by the Governor on the advice of his Privy Council. More than one

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131. CO 137/182: Goderich to Mulgrave, 5 July 1832.
132. CO 137/192: Stephen to Sir George Grey, 24 July 1834.

Governor however, commuted sentences against the advice of the majority of the Privy Council.[133]

(b) The Chief Justice

As head of the judiciary, the Chief Justice had a most important role to play in the administration of criminal justice in Jamaica. In this century, as in the last, the qualifications of the various Chief Justices and the methods of their appointment are of vital importance.

In 1801 Nugent had as a matter of deliberate policy appointed the first Chief Justice from the ranks of the barristers. This policy continued and throughout the century all the Chief Justices were legally qualified. In 1804 the Assembly provided a salary of £4,000 per annum for the Chief Justice in lieu of the fees he received, but they stipulated that the person appointed Chief Justice had to have been admitted to practise as a barrister in Jamaica for at least three years.[134] It was said that the Assembly would not "pass the Bill without that Restriction" because they feared someone might be sent from England to fill the post.[135] This law, though described in the Colonial Office as "improper" and an "illegal restraint upon the Right of Appointment" was not disallowed.[136]

In the appointment of a Chief Justice, the practice had been for the Governor to nominate a person, and the Colonial Office to confirm the nomination. Whereas in the previous century the Governor's nominee had been invariably confirmed, in 1832 the Colonial Office vetoed the Governor's choice and made their own selection, by reason of the special circumstances arising from slavery as Goderich

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133. See CO 137/384: Eyre to Cardwell, 20 September 1864, Enclosed Minutes of the Privy Council; CO 137/459: Grant to Kimberley, 14 December 1872.
134. 45 Geo. 3, c. 17. See also 47 Geo. 3, c. 13 and 58 Geo. 3, c. 18.
135. CO 137/114: Nugent to Cooke (private), 17 November 1805.
136. Ibid. Minutes.

explained:[137]

> "It appeared to me that a strict and severe, impartiality- a mind unbiased by the feuds which had prevailed in the Colony, and exempt from the passions and party feelings engendered by the protracted discussions here - was .... the indispensable qualification of the New Chief Justice. But it was obvious that such qualifications were more likely to be found in a person selected in this Country, than in one who, from his position and standing at the Colonial Bar, could scarcely be expected to have kept himself entirely aloof from a controversy in which every Inhabitant of the Island is more or less directly interested."

The angry Assembly reacted by refusing for a time to vote any money for the Chief Justice's salary. Similarly long after emancipation, Barkly's reason for requesting a Chief Justice from England was that in "any Small Colonial Community and particularly in one so divided and suspicious as this," there were "obvious advantages" in appointing a Chief Justice, who is "quite unconnected with the Country, by family ties, by party connexions or by Class prejudices".[138] Soon after, Labouchere informed Bell of the practice the Colonial Office had been desirous of establishing - that judicial appointments should not be made in a colony, from persons connected with it, "by birth and family ties, by practice at its Bar or by long residence in it."[139]

Between 1832, therefore, when the Chief Justice was first selected from outside Jamaica, and 1900, only one local barrister was appointed Chief Justice[140] - even before the Colonial Office had firmly embarked on their policy of external appointments.

The increasing interest of the Colonial Office in Jamaican affairs in the aftermath of the 1865 rebellion was clearly demonstrated

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137. CO 138/54: Goderich to Mulgrave, 6 November 1832.
138. CO 137/330: Barkly to Labouchere (confidential), 9 February 1856.
139. CO 138/70: Labouchere to Bell, 30 January 1857.
140. Bryan Edwards in 1856. See CO 137/331: Barkly to Labouchere, 10 May 1856.

in 1869 when the Chief Justiceship became vacant. There were no less than 19 applicants for the job and they seem to have been thoroughly vetted.[141] But the person eventually selected, Attorney General Lucie-Smith of British Guiana, did not qualify under the restrictive Jamaica legislation.[142] The Governor was accordingly instructed to have the statute amended, and in this way Lucie-Smith, an "active and able lawyer" was able to take up his appointment in Jamaica.[143] When another Chief Justice was required in 1883, there were at least 14 applicants holding an impressive array of judicial posts.[144] When the Chief Justiceship fell vacant in 1894, the Colonial Office again appeared to be taking pains to find a proper person.[145] The appointee, Hancock, died shortly after his arrival in Jamaica, and the process of selection had to be started all over. In Chamberlain's words, a "strong man is wanted for this place (Jamaica)."[146]

But in the appointment of the Chief Justices, a factor which pervaded Jamaican society for the entire period under review, was also taken into consideration. This was the factor of colour and race. In 1856, Barkly related that he would have appointed as

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141. The following are some of the comments on the applicants: "weak", "not first rate", "want of temper", "an able man but incorrigibly idle". See CO 137/441: Grant to Granville, 4 June 1869, Minutes.
142. 19 Vic., c. 10.
143. CO 138/79: Granville to Grant, 29 July 1869. He was also described as "one of the ablest and best of our Colonial Judges". See CO 137/491: Newton to Hicks-Beach, 18 December 1879, Henry Taylor's Minute.
144. The applicants included the Puisne Judges of Jamaica and Trinidad, and the Attorneys-General of Trinidad, Jamaica and Hong Kong. See CO 137/512: Individuals (W). The Chief Justice of Mauritius, Adam Ellis, was thought the most suitable.
145. See CO 137/561: Bengough to Ripon, 30 August 1894, Minutes.
146. CO 137/568: Blake to Chamberlain, 24 October 1895, Chamberlain's Minute. Sir Fielding Clarke was appointed.

Chief Justice, a coloured barrister who had "much distinguished himself" at the Jamaica Bar; however, as he had shortly before appointed a coloured Attorney General, to have done so "would have been regarded almost as an outrage on the White Inhabitants."[147] And colour was not only seen in terms of pigment , for when the applicants were being vetted in 1869, we find this comment on one of the applicants, Mr. Gorrie: "I should rather doubt the wisdom of what will be considered in Jamaica, a 'black' appointment - especially to a Judgeship".[148] Gorrie was not selected.[149]

In this century attempts were also made to reduce the risk of bias and partiality by the judges. A feature of 18th century Jamaica had been the intimate relationship between the law and politics. This was inevitable, for as we have seen in may instances, the judges of the Supreme Court including the Chief Justice, were active and vocal members of the legislature. Manchester sought to terminate the relationship, and in nominating Jackson to the post of Chief Justice in 1816 he called upon him to resign his seat at the Council, on the principle that the Chief Justice, should be "entirely unconnected with Colonial Politcks".[150] The Colonial Office supported Manchester in his attempt to insulate the administration of justice against corrosive political forces.

In 1829 however, the Colonial Office reversed their policy. The Governor was then instructed to make the Chief Justice a member

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147. CO 137/330: Barkly to Labouchere (confidential), 9 February 1856.
148. CO 137/441: Grant to Granville, 4 June 1869, Minutes.
149. Gorrie was counsel for the Jamaica Committee before the Royal Commission inquiring into the 1865 rebellion, and he watched the proceedings on behalf of Gordon's widow. He subsequently became Chief Justice of Fiji, the Leeward Islands, and Trinidad. While in the last-named post, he was the first defendant in Anderson v. Gorrie [1895] I Q.B. 668. Frank Cundall, Political and Social Disturbances in the West Indies, p. 14 and the Concise Dictionary of National Biography, p. 515.
150. CO 137/142: Manchester to Bathurst, 30 November 1816. See also CO 137/154: Manchester to Bathurst, 17 March 1823.

of the Council, as he (the Governor) might desire "material aid" from him in that chamber.[151] In 1860, the Colonial Office appears to have modified its 1829 policy and Darling was told that because there was no paucity of competent candidates for seats in the legislature it would be best that "judicial or quasi-judicial Offices should be conferred on the condition of not occupying seats there".[152]

(c) The Puisne Judges

Although a legally trained Chief Justice had been appointed in 1801, the assistant judges of the Supreme Court remained legally untrained. The result was that the two assistant judges could always outvote the Chief Justice, and thus the improvement hoped for in the administration of justice was to a great extent nullified. The Legal Commissioners, noting this in 1826, commented:[153]

> "When we consider the importance of a learned and able court to the due administration of justice, and the wrongs which must result to the subject from the erroneous judgments of an incompetent court, (a court so constituted that the assistant Judges who are unlearned in the law, may, in the decision of any cause pronounce the judgment of the court against the opinion of the only learned Judge on the bench) we feel it important to suggest to your Lordship the urgent necessity which exists for an early reform in the constitution of this court...by which this court should have the addition of two barristers, of a certain standing, as puisne Judges, in the place of the present assistant Judges."

Four years later some inhabitants of Kingston protested against the entrusting of justice to "persons uneducated in the law, whose avocations have been exclusively of an agricultural or commercial nature;" they felt that the primary need was for the appointment of

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151. CO 138/53: Twiss to Belmore, 22 October 1829. Presumably because the Governor needed all the support he could get in the political situation.
152. CO 138/71: Lewis to Darling (confidential), 27 August 1860.
153. Legal Commissioner's Report, p. 96.

men of "legal education and knowledge as judges of the Supreme Court." [154]

This need for legally trained judges was sorely felt and attempts were made to redress the situation by law. A bill to that effect was introduced in 1829, but after a hard struggle it was defeated on a 19/17 vote.[155] The following year a bill with the same object in view, was introduced. It was petitioned against because, "independently of its expediency, it would entail a very heavy additional burden on the already impoverished inhabitants of this island."[156] The bill was killed.

During apprenticeship Sligo begged and pleaded with the Colonial Office about the appointment of a legally qualified judiciary.[157] After the notorious case of Mason v. Oldrey,[158] he pleaded yet again, at the same time sending his observations of the Jamaican judiciary. With the exception of the chief justice, every one of the judges were "deeply interested in Apprentice property"; some were solicitors, physicians and merchants, but all without "a single exception, were either Overseers, or Managers, or Land Attornies for others, of Apprentices; most of them came to Jamaica for bettering their fortunes, and they did so by "a close attention to their respective pursuits", of which "the law formed no part." "How then" he asked, "can they be supposed to be qualified to interpret its niceties[?] How can they divest themselves of prejudices acquired in a long residence here, during the existence of slavery[?]" [159] Despite Sligo's fervent representations, professionally trained judges were not appointed: they would have to be paid, and

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154. VAJ 1830-31, p. 38.
155. VAJ 1829-31, p. 104. See also JAJ Vol. 12, p. 240.
156. VAJ 1830-31, p. 133.
157. See CO 137/203: Sligo to Glenelg, 11 October 1835; CO 137/204: Sligo to Glenelg (confidential), 22 November 1835.
158. CO 137/209: Sligo to Glenelg, 24 February 1836.
159. Ibid.

the Jamaica Assembly showed no inclination to provide the necessary funds. Failing the Assembly, the cost would have to be borne by the British Government -- and this they were distinctly unwilling to do.

Referring to sections of the legal system in 1839, a committee of the Assembly reported that "one defect pervades them all, namely that the administration of the law is entrusted to persons not legally educated."[160] Ironically it was only in an attempt to get rid of the Stipendiary Magistrates whom they loathed, that the Assembly in the following year passed legislation providing for professionally trained puisne judges, and at the same time provided for legally qualified chairmen of Quarter Sessions.[161] 1840 thus marked a turning point in Jamaica's legal history and ever since the puisne judges have been legally qualified.

As in the 18th century, economic considerations also affected the quality of the judiciary. In the 18th century the assistant judges of the Supreme Court were not paid a salary, and it was claimed that this job should be done as a public service. The result was that the judges were frequently absent, and the courts irregularly held. Following the Chief Justice's urgent representations, this situation was partly remedied by the Assembly providing salaries for the assistant judges.[162]

But the salaries paid to the judiciary, including the Chief Justice, were too low to attract the best people. Thus we find Manchester informing Bathurst in 1815, that the Chief Justiceship was not an "object to the leading Gentlemen of the profession (barristers)".[163] In 1840, after the Assenbly had legislated for the appointment of legally qualified judges, Metcalfe told Russell that all the barristers to whom he had offered the puisne judgeships

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160. VAJ 1839-40, p. 323.
161. See P.P. Relating to the West Indies, Vol. 8 Part III - Jamaica: Stanley to Metcalfe, 19 October 1841; Ibid. Metcalfe to Stanley, 7 December 1841.
162. 51 Geo. 3, c. 27.
163. CO 137/141: Manchester to Bathurst, 31 December 1815.

declined, because they either held offices or had practices of a greater value.[164] The majority of the legally trained Chairmen of Quarter Sessions were 'imported' from England, but again the salaries were not high enough to attract the best available talent. Barkly's observation in 1856 was that they had not generally enjoyed "much reputation here as lawyers, or stood on par with those selected from the Island Bar".[165] He was not surprised at this, because the Government had been forced to make its selection "from such Members of the various Inns of Court as were ready to sacrifice all prospect of professional Advancement at home" for £1,000 per year in an "expensive and unhealthy country".[166] And in 1895 when the Chief Justiceship became vacant the Governor hoped that the position would not "remain long unfilled as we have not a strong Bench."[167]

(d) The Stipendiary Magistrates, District Court Judges and Resident Magistrates

During apprenticeship, a new judicial officer was introduced into the Island. He was the Stipendiary Magistrate or, as he was more popularly called, the special justice. The Jamaica justices of the peace, all directly or indirectly interested in slave property, had shown themselves totally incapable of administering the law with fairness and justice. The Stipendiary Magistrates, were intended to form, an in most cases did form an impartial tribunal to which the apprentices could refer their complaints. They were paid by the British Government, and the majority of them were appointed in England.[168]

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164. CO 137/250: Metcalfe to Russell, 23 December 1840.
165. CO 137/330: Barkly to Labouchere (confidential), 9 February 1856.
166. Ibid.
167. CO 137/568: Blake to Chamberlain, 29 October 1895.
168. See further W.L. Burn, Emancipation and Apprenticeship in the British West Indies.

These Stipendiary Magistrates, whom Sligo felt should be closely watched to see whether their conduct was likely "to promote the Success of this great Measure of Emancipation",[169] were a very assorted crowd. Some were legally qualified, but the majority were not. Above all, some were very bad choices for so important a post, and intemperance was a common failing. Stipendiary Magistrate Jackson, who, "if not absolutely intoxicated" when he called on Sligo, was "not altogether Sober".[170] In addition, he could hardly write his name, and had to travel about with a clerk to write his entries for him. Of White it was said: "His manners are very rough, and I may almost say violent, I am informed his habits of swearing on the bench are most offensive."[172] Pearson, in Sligo's inimitable phrase, didd "a complete Victim of Intemperance".[173] Some Stipendiary Magistrates also had other failings. Jackson eventually had to be dismissed because of his cruelty and his "manner of administering injustice (for I cannot call it Justice in his case)."[174] Sowley was dismissed because a "love of Torture pervades all his Sentences."[175] Norcott was considered unfit for office because he had become "a decided partisan of the Negroes."[176]

On the other hand, some Stipendiary Magistrates rendered invaluable service to the Island, and were highly commended. Sligo described Lyon as "a man of Colour, very well Educated, and of most gentlemanlike manners and appearance;" he had secured the confidence of both the apprentices and the planters and "has been most remarkably successful in making arrangements for working."[177]

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169. CO 137/198: Sligo to Aberdeen, 22 April 1835.
170. Ibid.
171. Ibid.
172. CO 137/197: Sligo to Secretary of State, 7 February 1835.
173. CO 137/193: Sligo to Spring-Rice, 14 September 1834.
174. CO 137/199: Sligo to Secretary for the Colonies, 5 June 1835.
175. CO 137/213: Smith to Glenelg, 20 November 1836.
176. CO 137/198: Sligo to Aberdeen, 5 March 1835.
177. CO 137/197: Sligo to Aberdeen, 20 February 1835.

Sligo felt it was "impossible to say more in praise" of Hardy, than he deserved.[178] Hamilton and Richard Hill were also highly commended.

Despite the lamentable shortcomings of a few, the Stipendiary Magistracy as a whole performed a satisfactory job. Sligo, perceptive in his observations and frank in his comments, declared in 1835 that with the exception of two of the fifty-four Stipendiary Magistrates whom he then had, there was not one he would wish to change.[179] They seemed too, to have achieved success in gaining the confidence of the apprentices. It was remarkable as Sligo himself stated that in many instances, the apprentices would not enter into any kind of bargain with their masters, but whenever the Stipendiary Magistrate was present and guaranteed the due performance of the bargain, they immediately agreed.[180] This confidence continued after emancipation, and Baynes, himself a Stipendiary Magistrate, summed up the position very well:[181]

> "In the paid magistracy alone have the Negroes any confidence; to them they refer all their grievances, carry all their complaints; their dissatisfaction and distrust are manifest when they are absent from the bench."

Governor Metcalfe, a firm and zealous supporter of the planters, seemed to have been only deterred from championing the removal of the Stipendiary Magistrates for fear of the "serious and deplorable consequences", that such an action might produce among the labouring population.[182]

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178. CO 137/200: Sligo to Glenelg, 18 July 1835.
179. CO 137/200: Sligo to Glenelg, 8 July 1835.
180. P.P. Relating to Slavery, Vol. 41: Sligo to Spring-Rice, 25 December 1834.
181. P.P. Relating to the West Indies, Vol. 3 Part I - Jamaica: Smith to Normanby, 14 May 1839, Enclosed Report of Baynes.
182. P.P. Relating to the West Indies, Vol. 8 Part III: Metcalfe to Russell, 21 December 1839

But after emancipation the British Government who paid for the upkeep of the Stipendiary Magistracy, were anxious to be relieved of the "very heavy annual expenditure".[183] In 1842 they decided that when vacancies occurred among the Stipendiary Magistrates, they should not be filled,[184] but in 1846, the Colonial Office directed that the number of Stipendiary Magistrates should not be reduced further.[185] Yet four years later this policy was reversed and Earl Grey decided that future vacancies were not to be filled[186] and as the Jamaica Assembly were also unwilling to pay for the Stipendiary Magistracy, the number of Stipendiary Magistrates kept declining.

But the unpaid justices, who were re-invested with jurisdiction over the labouring population after emancipation, were neglecting their judicial tasks. Complaints began to pour in. In 1855 Barkly told the Assembly that public feeling seems to demand the adoption of some arrangement for "perpetuating the benefits derived from the employment of a paid magistracy, now that the British parliament has ceased to provide the means of filling up vacancies."[187] The Assembly remained unmoved. In 1857 the Jamaica Government introduced a modest measure relating to the Stipendiary Magistrates. It was summarily thrown out by the House.[188] In the following year yet another unsuccessful attempt was made to get the Assembly to enact a bill to provide for Stipendiary Magistrates.[189] Following this, Darling directed the Stipendiary Magistrates then in the Island, to withdraw from the towns where the attendance of the unpaid

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183. P.P. Relating to the West Indies, Vol. 8 Part III:- Jamaica: Stanley to Metcalfe, 22 January 1842.
184. CO 138/64: Stanley to Metcalfe, 1 March 1842.
185. P.P. Relating to the West Indies, Vol. 8 Part III: Circular despatch from Earl Grey to Governors of the West Indian Colonies, 28 December 1846.
186. Ibid., Vol. 14 Part III: Circular despatch from Earl Grey to the Governors of the West Indian Colonies, 8 October 1850
187. VAJ 1855-56, p. 12.
188. VAJ 1857, p. 104.
189. VAJ 1858-59, pp. 25, 282.

justices was less irregular, and station themselves in the rural areas where their attendance was infrequent and irregular.[190]

This arrangement, not surprisingly, failed to solve the problem. In St. Mary the situation had deteriorated to such an extent that in 1862 and again in 1863, the justices of the peace, and the vestry of that parish, were compelled to petition the Assembly for the appointment of a Stipendiary Magistrate for the parish. On inquiring into the facts surrounding this petition, a committee of the Assembly reported that there was "great necessity for the immediate appointment" of a Stipendiary Magistrate for St. Mary because the local justices were unable to devote sufficient time to their judicial functions, which resulted in the inhabitants suffering "great loss and inconveniences."[191] They recommended that early in the next session a bill providing for the appointment of a Stipendiary Magistrate in St. Mary should be introduced into the Assembly; they recommended further that similar appointments should be made in parishes where they were needed.

Early in the following session, the Government introduced a bill to provide for the maintenance of a limited number of Stipendiary Magistrates. Although one of their own committees had reported in favour of the bill, the Assembly fought it bitterly. In one debate, only the Speaker's vote prevented it from being thrown out.[192] Following its stormy reception, the bill was eventually withdrawn by the Government. Within twelve months the black population who had felt the lack of justice most acutely were forced to register their bloody and unforgettable protest. After the introduction of Crown Colony government, the District Courts with paid judges, came into existence in 1867.

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190. CO 137/343: Darling to Lytton, 26 January 1859.
191. VAJ 1863-64, p. 371.
192. VAJ 1864-65, p. 104.

But even after the District Courts were established the Stipendiary Magistrates were still employed to supplement the unpaid justices. Of the five Stipendiary Magistrates in existence in 1866, there was only one left in 1872. On Grant's recommendation, three more were appointed. Two years later an additional two were appointed, the reasons for the appointments being the same as they were in 1872: "Stipendiary Magistrates are greatly needed in many parishes, owing to the non-attendance of Justices of the Peace at the Courts of Petty Session."[193] The lessons of 1865 had not fallen entirely on deaf ears, and the efficient administration of justice was being safeguarded. Eventually with the re-organization of the courts in the 1880's the Stipendiary Magistrates ceased to be an important part of the legal system.

After the establishment of the District Courts in 1867, English and Irish barristers, and Scottish advocates, were brought to man them. Again the salaries were not high enough to attract men with ability and men who could act "with discretion and with marked judicial decorum."[194] On the contrary, some of those selected were a discredit to themselves, their profession and the Island. In 1869 when a vacancy in a District Court arose, it was remarked that "a good choice is very important as two of these Judges sent out in the last two years have gone wrong & been removed."[195] In 1884 Norman confidentially told Derby that the habits of some of the Judges who had been sent out, "have caused much scandal here." He submitted that in selecting future judges "very searching inquiry was necessary as to their general character and reputation for discretion", apart from "possession of the requisite legal qualifications."[196] In one case, he added, a judge had even been engaged in a personal conflict with a solicitor within the precinct

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193. CO 137/476: Grant to Kimberley, 16 January 1874.
194. CO 137/424: Grant to Buckingham (confidential), 8 June 1867.
195. CO 137/440: Grant to Granville, 8 January 1869, Henry Taylor's Minute.
196. CO 137/518: Norman to Derby (confidential), 1 October 1884.

of his court.

When the District Courts were replaced by the Resident Magistrate Courts in 1887, financial considerations once more played a part in the selection of the Resident Magistrates. English and Irish barristers and Scottish advocates, and solicitors were qualified to become Resident Magistrates. It was proposed to pay them £600-£900 per annum. One Colonial Office official thought that it would be difficult "to find good English lawyers to go out for so small a salary."[197] This apprehension turned out to be well founded and a few years later we find a very pessimistic view of the Jamaica judiciary. Commenting on a case which threw "great doubt on the fitness"[198] of the Resident Magistrate for his position, Lucas did not think that the "personnel of the Jamaica bench is at all satisfactory."[199] And expressing his fears that the 1902 Vagrancy Law might be unjustly administered, Cox wished he had "more confidence in the administration of the law" in Jamaica.[200]

(e) The Justices of the Peace

During the 18th century, the justices of the peace were the fulcrum on which the administration of justice balanced. This was no less true of the early 19th century. Besides their other judicial duties, the magistrates presided over the slave courts -- and the slaves were nine-tenths of the population. When it is recalled that there was no appeal from the slave courts, the enormous powers of the justices are seen in true perspective.

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197. CO 137/531: Norman to Holland, 14 June 1887.
198. CO 137/626: Hemming to Chamberlain, 26 March 1902, Cox's Minute.
199. Ibid. Lucas' Minute.
200. CO 137/628: Hemming to Chamberlain, 6 June 1902, Cox's Minute.

It was impossible for the justices of the peace, like the other members of the judiciary to be impartial adjudicators, because they too had a deep and vested interest in slave property and the maintenance of slavery. The first four decades of the 19th century furnish the greatest documetary indictment in the history of Jamaica for negligence, injustice, and corruption, by the local magistracy. And it was no coincidence that this was the period when the fight against the abolition of the slave trade and then slavery itself was at its peak. Evelyn, a Collector of Customs and a fearless critic of the administration of justice in Jamaica summed up: the magistrates were genefally

> "the intimate associates of the dependents of the Party against whom the complaint is made: they also follow a similar routine of business, and are embued with the same interests, prejudices, and passions which actuate them: pause then my Lord for a moment - and view this court who are at once to be the examiners - the judges and the jury; without even the control of a respectable law Agent Barrister or Attorney to direct their Course of Enquiry - or to awe them into form and decency And say - Is it likely the Negro will obtain justice?" 201

In the short, but pungent phrase of the slaves, justice was administered by 'Massa or Massa friend'.

But besides their partiality, the magistrates were frequently criticized for incompetence and ignorance of the law. And it was with monotonous regularity that the Colonial Office was compelled to comment on the gross injustices committed by the magistrates. But then, as the Attorney General and Chief Justice of Jamaica jointly observed, when justice "is gratuitously administered by persons of no legal education many omissions and irregularities must be

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201. CO 137/180: Evelyn to Goderich, 20 August 1831. Governor Mulgrave's opinion which was not dissimilar was that the "feelings of the Majority of the Magistrates are too much prejudiced"for them to be entrusted with indefinite discretion. CO 137/189: Mulgrave to Stanley, 7 July 1833.

expected to occur."[202] As far as the slaves were concerned, these 'irregularities' were very expensive indeed!

The magistrates were also guilty of deliberately subverting the administration of justice. One instance occurred in a celebrated case in 1817. There Manchester, dismissed the Chief Magistrate of Clarendon because he had allowed a planter who had killed a slave, to escape.[203]

In the early 1830's many of the magistrates were leading lights in the general persecution of the dissenting missionaries, and many were rabid supporters of the uncompromisingly pro-slavery Colonial Church Union. When the Baptist chapels at Savanna-la-mar were burnt in 1832 the magistrates of the parish were alleged to have been inplicated. This event throws much light on Jamaican justices of the period. Mulgrave the Governor, felt that it would be "quite useless" to instigate legal proceedings against them and it would scarcely be possible at that time "to visit so many persons filling the situation of Magistrate with that mark of displeasure which such Proceedings would appear to call for."[204] This episode showed in no uncertain terms the impunity with which the supposed upholders of the law, the justices of the peace, could break it, and it was because of such a situation that Stipendiary Magistrates had to be appointed.

During apprenticeship, the magistrates like the rest of the white Jamaica, changed very little and Sligo commented that he could not place the "slightest dependence" on them.[205] He himself had the "painful duty" of removing several from the commission - the majority for ill-treatment or cruelty.[206] And justice from the

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202. CO 137/167: Keane to Murray, 26 August 1828, Enclosing the joint Report of the Attorney General and Chief Justice.
203: CO 137/144: Manchester to Bathurst, 21 June 1817.
204. CO 137/183: Mulgrave to Goderich, 12 November 1832. See also CO 138/54: Goderich to Mulgrave, 7 November 1832.
205. CO 137/192: Sligo to Stanley (private), 15 April 1834.
206. See CO 137/197: Sligo to Aberdeen, 9 February 1835; CO 137/198: Sligo to Aberdeen, 27 April 1835.

magistrates was apparently still a rarity. Because there was great difficulty in obtaining justice at Quarter Sessions (where the magistrates presided), Sligo was in 1836 compelled to order any case which could be tried at Assize or by the Grand Court, to be transferred there.[207] Commenting on the frequency of the corporal punishment sentences awarded at Quarter Sessions, Glenelg declared in May 1838, that that information was further proof of the necessity for more effective control over the proceedings of the local justices, not only during apprenticeship, but also afterwards.[208] It was with this impressive record of abuse, oppression and injustice that the Jamaican magistrates entered the emancipation period.

In the first complete legislative session after emancipation, the Assembly (many of whom were magistrates) promptly re-invested the local magistracy, with the powers over the labouring population, which had been withdrawn during apprenticeship. As Russell remarked, the principle of "reposing implicit confidence in the local magistracy", pervaded the whole series of laws passed in the session.[209] But mindful of the magistrates' baneful catalogue of delicts, right up to, and beyond emancipation,[210] Russell was unwilling to permit a return to that state of affairs. He told Metcalfe that the statutes would only be confirmed on condition that the authority of the magistrates was not rendered "vague, arbitrary or uncertain", and on condition that a revised list of the magistrates was prepared, with the Governor omitting from the Commission those whom he did not think "worthy of

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207. CO 137/212: Sligo to Glenelg, 30 July 1836.
208. CO 138/61: Glenelg to Smith, 15 May 1838.
209. P.P. Relating to the West Indies, Vol. 6 Part II - Jamaica. Russell to Metcalfe, 25 May 1840. Smith, like Sligo before him, also had to exercise his powers of dismissal because of oppression. See CO 138/62: Glenelg to Smith, 8 August 1838.
210. In May 1839 the Custos of Trelawny was convicted for committing a violent assault on one of his labourers. His resignation saved Smith the "painful necessity" of dismissing him: CO 137/238: Smith to Normanby, 4 May 1839.

that important office."[211] Russell also said that in view of the "extensive powers" vested in the magistrates by the statutes, the number of Stipendiary Magistrates should not be reduced for 4 to 5 years.[212] Metcalfe, however, came to the spirited defence of the magistrates. He declared himself "ready to answer for the whole body" of magistrates, and held himself responsible for the due administration of justice to the people, with "the magistracy as it exists". "I believe", he added, "that they are generally worthy of trust."[213] With these assurances, Russell retreated from his position, and the laws were subsequently sanctioned. The magistrates therefore, regained their full jurisdiction over the labouring population.

With the reconstruction of the judicial system, and the presence of the Stipendiary Magistrates in the judicial machinery, there seem to have been few complaints concerning the justices or concerning the type of justice rendered by them.[214] By the 1850's however the situation appears to have changed and in 1854, Barkly gives us an interesting explanation.[215] He said that when he arrived in the Island, there was remarkable unanimity concerning the evil resulting from the unfitness of many of the justices of the peace; this he attributed solely to the "vicious system of Government," which had grown up. He explained:

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211. P.P. Relating to the West Indies, Vol. 6 Part II - Jamaica: Russell to Metcalfe, 25 May 1840.
212. Ibid., Russell to Metcalfe, 25 June 1840.
213. P.P. Relating to the West Indies, Vol. 6 Part II - Jamaica: Metcalfe to Russell, 29 July 1840.
214. In 1842 certain magistrates seem to have been lax in the attendance at Petty sessions: See P.P. 1842 (374) XXIX, Stanley to Metcalfe, 1 March 1842. But Elgin spoke of the general feeling of respect and confidence which the peasantry had for the magistrates - feelings which he thought were "symptomatic of a most important and salutary change in our Social condition". CO 137/273: Elgin to Stanley, 20 April 1843.
215. CO 137/324: Barkly to Grey, 25 November 1854.

> "The power of recommending Candidates for the Magistracy had been claimed almost as a right by the Custodes, and when it is borne in mind that these High Officials preside in the Vestries, at which every Justice of the Peace has an equal right with the elected Members to sit and vote in the disposal of the Parochial Funds and Local Patronage... it certainly requires but slight knowledge of human nature to suppose it probably that in order to carry some Resolution or secure some situation for a friend, highly improper persons have occasionally been recommended to the Executive for Commissions."

He added that it was not difficult for members of the Assembly to obtain commissions for themselves or their supporters, without any rigid scrutiny and concluded by expressing his determination to carry out a policy essential to the welfare of Jamaica, which was to gradually purify "the fountain heads of the Administration of Justice."[216]

Added to the unfitness of some of the magistrates, was the fact that the attendance of the magistrates at petty sessions was very irregular. In 1854 Barkly related that the magistrates however competent and willing, were generally too immersed in their own affairs to give much time to the administration of justice, and added that complaints from "all classes" had reached him about it.[217] Two years later, he referred to the crying want of "magisterial Attendance" at the petty session courts.[218] On recommending the appointment of a number of Stipendiary Magistrates, his successor, Darling, told the Assembly of the increased difficulty of obtaining the "active services of thejustices of the peace," because of the universally acknowledged necessity of their giving "constant and vigilant attention to their agricultural and commercial pursuits."[219] Because of these complaints,

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216. Ibid.
217. P.P. Relating to the West Indies, Vol. 9 - Jamaica: Barkly to Newcastle, 21 February 1854.
218. CO 137/331: Barkly to Labouchere (confidential), 9 April 1856.
219. VAJ 1857, p. 10.

Darling in 1859 refused his assent to a bill increasing the jurisdiction of the justices.[220]

In 1862, Eyre called the Assembly's attention to the non-attendance of the justices at petty sessions and in the light of what happened a few years later, Eyre's statement is extremely important. He told them that

> "in some of the country districts great difficulty is experienced in procuring a sufficient number of magistrates to form the courts of petty sessions, and in consequence of which, the administration of justice is greatly impeded, or often frustrated altogether, suitors being compelled to attend successive days at great inconvenience and expense.... This is an especial hardship to the poorer classes of the community." 221

In the same year a solicitor told a committee of the Assembly inquiring into the administration of justice that many of the justices were so "bound up with 'party' under local ties of business, trade and petty prejudices, that impartial decisions form the exception rather than the rule in some of the provincial courts."[222]

The situation was therefore that many of the justices of the peace were corrupt and lax in their attendance at the petty sessions. At the same time, the Assembly had consistently refused to appoint Stipendiary Magistrates to remedy the situation. The result was that the poor, who were mainly the black labourers, were deprived of justice. In 1865, the black population was forced to redress, by violent means, a situation to which the attention of the proper authorities had been repeatedly called and which they had persistently refused to remedy.

After 1867 the establishment of the District Courts remedied the the evil which had long been in existence. But even after this,

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220. VAJ 1858-59, p. 282.
221. VAJ 1862-63, p. 9.
222. Ibid., Appendix 42. Memorandum by D.P. Nathan.

the non-attendance of the magistrates was frequently referred to. It was for this reason that additional Stipendiary Magistrates were appointed in 1872 and 1874. The magistrates do not appear to have improved in attendance, for in 1884 Norman told Derby:[223]

> "It is quite true that these justices are in the majority of cases slack in attendance....The non-attendance of many of the Justices at any Court whatever is a serious evil, and I am now endeavouring gradually to remedy it by declining to nominate anyone to a Justiceship who will not engage regularly, as far as he can to perform the duties of the office."

Fortunately, the District Courts, and the Resident Magistrate Courts which followed, had taken over much of the work done by the justices in the pre-1865 period.

D. THE LEGAL SYSTEM

(a) The Courts

At the end of the 18th century, the main criminal courts in the judicial system were: the Supreme Court, the Assize Court and Quarter Sessions and Petty Sessions.[224] Under certain conditions appeals could go to the Privy Council in England. The slaves, for either serious or minor offences were tried by special slave courts, which were manned by the justices of the peace and no appeal was provided for them. During apprenticeship the jurisdiction of the local justices in petty cases concerning the apprentices, was

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223. CO 137/518: Norman to Derby, 1 October 1884.
224. There were no courts officially called 'Petty Sessions', but the magistrates had a limited criminal jurisdiction under some statutes regulating the police in certain parishes and these are what are here called Petty Sessions. See 35 Geo. 3, c. 35, and the Legal Commissioners Report pp. 44, 213. The Maroons had their own courts. See 32 Geo. 3, c. 4.

replaced by that of the Stipendiary Magistrates. The local justices continued to preside at Quarter Sessions and Petty Sessions. Despite Sligo's recommendations to the Assembly to reorganize the legal system, this basic 18th century structure remained in existence up to emancipation.

Emancipation ushered in new relations in the society and the labouring population formerly under the jurisdiction of the local justices and the Stipendiary Magistrates, now came under the jurisdiction of the legal tribunals hitherto reserved for free people. This situation not surprisingly put this judicial system which had never been designed for this size of population under great strain. Shortly after emancipation, the Chief Justice sent a letter to the Governor stressing the urgent need for a re-organization of the courts. He stated that since 1834 when all the slave courts had been abolished most of the offences formerly tried in them, had had to be tried in the superior courts, without any alteration being made to meet the additional cases. According to him, no "less than 350,000 persons were brought within the jurisdiction of the supreme court and the two courts of assize."[225] No change was made and a year later, he again complained to the Governor: "No length of sitting which human strength can endure will keep down the accumulation of arrears."[226]

But by now the Colonial Office was directing its mind to the reformation of the judicial system. Early in 1840, Russell told Metcalfe that the improvement of the judicial system was among "the topics foremost in importance in connection with the present state of affairs in Jamaica."[227] After various proposals were examined by Russell and Metcalfe,[228] an arrangement was agreed on, and this was given statutory effect by the Jamaican Act 3 Vic., c. 65.

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225. VAJ 1839-40, pp. 75-76.
226. Ibid.
227. CO 138/62: Russell to Metcalfe, 31 January 1840. The Legal Commissioners had made recommendations in 1827 concerning the judicial system. See Legal Commissioners Report, pp. 92-114.
228. See especially Russell to Metcalfe, 12 February 1840, and Metcalfe to Russell, 26 March 1840, in P.P. Relating to the West Indies, Vol. 6 Part II - Jamaica.

The reforms effected consisted more of a reorganization of the existing courts, rather than of the creation of new tribunals. The main criminal courts were the Supreme Court, Assizes, Quarter Sessions and Petty Sessions, presided over by the local justices.[229] But the radical changes came in the personnel of the Courts. For the first time in the Island's history legally trained puisne judges were as a matter of policy appointed to the Supreme Court, and as we have seen the administration of justice taken out of the hands of persons whose "previous studies and pursuits in life had given them no preparation for the right discharge of it."[230] Qualified barristers were also appointed chairmen of Quarter Sessions. Even more important was the attempt to insulate the courts from the prejudices which had hitherto characterized Jamaican justice. To get adjudicators exempt from the "prepossessions engendered by local feuds and party animosities", the chairmen of Quarter Sessions were recruited in England.[231] After the completion of these reforms, the new system appears to have begun well, and in 1841 Russell offered Metcalfe his congratulations for the success of those judicial reforms "which were so much required."[232]

In an attempt to economise, the Assembly in 1855 partially remodelled this structure. The Courts of Quarter Sessions were abolished and instead the Judges of the Supreme Court were to go on Circuit at certain times of the year. But complaints were levelled at this arrangement and in 1862, a committee of the Assembly declared that the "defects and imperfections of the present system" were obvious and that a "radical reform" was needed.[233] No reform was effected.

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229. The Stipendiary Magistrates supplemented the local justices at Petty Sessions.
230. P.P. Relating to the West Indies, Vol. 6 Part II - Jamaica, Russell to Metcalfe, 12 February 1840.
231. Ibid.
232. CO 138/64: Russell to Metcalfe, 19 August 1841. See also CO 137/256: Metcalfe to Russell, 12 July 1841.
233. VAJ 1862-63, p. 214.

The old system having been found defective, in 1867 Grant established the District Courts. He stated that his object was to distribute a sufficient number of courts over the Island so that no place would be too far from a court; and at the same time make the system as inexpensive as possible. He rejected a return to the system of Stipendiary Magistrates, and felt that an adequate number of district judges would best meet his object.[234] The District Courts as established by Law 35 of 1867 had a limited jurisdiction in criminal cases, and they also possessed powers which any two or more justices of the peace sitting together had.

In the early 1880's the District Courts came under criticism and various reforms were proposed.[235] After an inquiry by two Commissions into the working of the District Courts, they were replaced in 1887 by the Resident Magistrate Courts. These courts were established with the same objects with which Grant had established the District Courts, and with similar powers. The Resident Magistrate Courts are still in existence in Jamaica.

(b) The Jury

(i) The Grand Jury

This institution achieved great notoriety in the decade before emancipation. The grand jury consisted mainly of the magistrates and the landowners - and these gentlemen, were bitterly opposed to the abolition of slavery. The result was that whenever bills were brought against landowners or their sympathisers, the grand jury usually returned the bill 'ignoramus'; on the other hand true bills were usually found when they were brought against advocates of abolition.[236] Referring to the result of the proceedings instituted

234. Grant to Carnarvon, 26 December 1866 in P.P. 1867(19147) XLIX.
235. See CO 137/518: Norman to Derby, 1 October 1884.
236. See CO 138/59: Glenelg to Smith, 13 January 1837; CO 138/61: Glenelg to Smith, 15 December 1837.

after the destruction of the Baptists' chapels in 1832, Goderich stated that it proved that in the existing state of public feeling in Jamaica, justice was not to be expected from preferring indictments to a grand jury.[237] One notorious case involved the Revd. George Wilson Bridges, a rector of the Chruch of England. Bridges had helped to beat his female slave to such an extent, that one magistrate declared that he had never seen "a woman so ill-treated" and the Custos of the parish confessed that he had never seen "anything so severe of the kind."[238] A bill of indictment was preferred against Bridges but the grand jury returned the bill 'ignoramus'. When reports of these proceedings were conveyed to Goderich, he left the Governor in no doubt as to his view of the case: "I cannot but be apprehensive," he stated, "that the Grand Jury have committed an error of judgment, which for every consideration of what is due to the ends of public justice, to their own good repute and to the credit of the Colonial Society, is deeply to be deplored."[239]

The Grand Jury remained in existence after abolition and emancipation although it was still criticized,[240] but in the aftermath of the rebellion, it came once more into the limelight. A bill of indictment was preferred against an official, Ramsey. The grand jury, composed chiefly of magistrates and sympathisers of the accused, proceeded to throw out the bill. Taking this case and the general utility of grand juries into account, Grant declared that they were at best

> "useless for any of the true ends of justice, and always cumbrous, inconvenient and ill-adapted to the circumstances of this Colony, where the classes from whom Grand Juries are, or should be taken are small in number and do not bear the same relations to the bulk of the population that the corresponding classes bear in such a homogenous and noble country as England ....Grand juries here are an obstacle to the administration of criminal justice." 241

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237. CO 138/54: Goderich to Mulgrave, 1 October 1832.
238. P.P. Relating to Slavery, Vol. 52, p. 790.
239. Ibid., p. 794.
240. See CO 137/307: Grey to Earl Grey (confidential), 26 August 1850.
241. CO 137/407: Grant to Carnarvon (confidential), 24 October 1866.

Although at the time he thought it inexpedient to propose its abolition in 1871 the grand jury was abolished, Grant declaring that all considerations of principle or of public convenience combined to justify its abolition.[242] On receiving this despatch Kimberley was unequivocal: "Yes!" he pronounced, "I only wish we could abolish this useless institution in England."[243]

(ii) The Petty Jury

Trial by jury, "one of our dearest birthrights," as the white Assembly described it,[244] remained in existence throughout this century. But from all reports, it seemed to have been the source of much iniquity and perversion of justice. In the early 19th century, the jury like the other judicial institutions of Jamaica was composed exclusively of white inhabitants, and this was not conducive to the rendering of impartial justice. In reference to prosecutions against persons involved in destroying the Baptists' chapels, the Attorney General of Jamaica, felt that under all the circumstances, he had no hope of a successful prosecution. The juries, he continued, must necessarily have on them some of the persons who were either engaged in or who did not disapprove of the riots; in Jamaica the juries "have much to learn, much prejudice to free themselves from", and these were cases "just calculated to enlist the prejudices" of the jury in favour of the accused.[245] William Knibb, who with his colleagues suffered severely at the hands of the Jamaican juries, regarded any reformation of the minds of the juries as impossible.[246]

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242. CO 137/457: Grant to Kimberley, 19 August 1871.
243. Ibid. Kimberley's Minute.
244. JAJ Vol. 11, p. 611.
245. CO 137/188: Mulgrave to Goderich, 30 January 1833, Enclosed Report of the Attorney General.
246. CO 137/239: Smith to Normanby, 1 August 1839, Enclosed Report of the Baptist Missionary Society.

Emancipation was not accompanied by any great change in the jury particularly as to its method of selection. In 1839 Fishbourne, the Stipendiary Magistrate for Buff Bay, complained that although a year had elapsed since emancipation, not one of the "emancipated blacks" had been called on to serve as a juror. And he proceeded to give an episode illustrative of the operation of the system.[247] At the last Quarter Session, a juror was required to make up the legal number of jurymen. He suggested calling a negro who was before 1838 a confidential headman on an estate, but who since 1838 resided on land presented to him for his long and faithful service. His colleagues objected to his suggestion on the grounds that it was not usual to call labourers to serve as jurors, because the man named could not write, and because it was "very desirable to keep up the respectability of juries." He replied that a white man then serving on the jury, was a labourer; that he had seen jurors who were unable to write; and that the negro named was well known to be of "undoubted honesty, intelligence, and respectability," Eventually, a white man, who is "as frequently drunk as sober", was found and sworn. This he concluded, was one of the methods "silently enforced for maintaining invidious distinctions between this class and the other free inhabitants."[248] Thus in 1840, Russell rightly told Metcalfe that even at that time the juries with few exceptions were composed of persons "whose descent is either wholly or chiefly European to the exclusion of those whose origin is entirely African. Of the evils which have resulted from this circumstance it would be easy to draw from authentic and recent records a very formidable catalogue."[249]

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247. P.P. Relating to the West Indies, Vol. 5 Part I - Jamaica: Smith to Normanby, 16 August 1839, Fishbourne's Report Enclosed.
248. Ibid.
249. P.P. Relating to the West Indies, Vol. 6 Part II - Jamaica: Russell to Metcalfe, 12 February 1840.

Frequent complaints were made, and in 1862 James Allwood told a committee of the Assembly that an "opinion extensively prevails that in some parishes the juries act corruptly, and I fear there is much cause for this opinion."[250] Two years later some inhabitants of St. Catherine petitioned the Assembly that there were so few eligible voters, that in many instances, justice was defeated, and a fair and impartial trial was almost impossible, where the case was an important one.[251] In February 1865 the Assembly resolved to reform the jury system,[252] but they had waited too long and the rebellion of the following October rendered their resolutions academic and obsolete.

Under the Crown Colony government, Grant reformed the jury system among other things widening the area from which juries were chosen. His reforms seem to have been successful for in 1882, the Attorney General of Jamaica felt that the Jamaica juries do their duty "fairly well". He added that they were always of "composite character as regards colour".[253] But by the 1890's further complaints were levelled at the jury system, especially by the Chief Justice. He referred particularly to the method by which the lists were prepared and related that on one occasion at Spanish Town 32 jurors had been summoned; of that number; one was dead, six could not be found, two had left the Island, one was completely deaf, and one was over age.[254] As a result amendments were made to the system by the Jury Law of 1898.

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250. VAJ 1862-63, Appendix 42.
251. VAJ 1864-65, p. 79. See also Ibid. p. 126.
252. Ibid., p. 370.
253. CO 137/505: Musgrave to Kimberley, 13 June 1882, Enclosed Report of the Attorney General.
254. CO 137/567: Blake to Chamberlain, 13 August 1895, Enclosed letter from the Chief Justice.

E. Functionaries Concerned With the Administration of Justice

(i) The Attorney General

As in the 18th century, the Attorney General continued to occupy a very prominent position in the government of the Island, and it was customary for him to be a member of the Council. The fact that most of the Governors were not legally trained helped to make the Attorney General an even more important officer than he would normally have been. Manchester emphasized the point that the Attorney General's post was one which required a "constant and confidential Intercourse with the Governor and the Ease and indeed Success of his Administration materially depends upon the prudence and good Judgement of the Attorney General." [255] And it was the same Governor who spelled out the qualities which he thought an Attorney General should possess: he should be a person of "prudence and discretion", together with "a competent knowledge of his profession and "great civility of manners." [256]

The Attorney General was usually selected from among the members of the Jamaican Bar, and William Burge who was Attorney General of the Island between 1816 and 1828 appears to have been very active and competent.[257] But sometimes an already limited choice was further narrowed because of the unacceptable political views -- especially over the question of slavery -- of some of the candidates. One member of the Jamaican Bar on being approached by the Governor, told him of the conflict which might arise from his interest and duty:

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255. CO 137/142: Manchester to Bathurst, December 1816 (undated).
256. CO 137/141: Manchester to Bathurst, 31 December 1815.
257. He was commended by the Legal Commissioners in 1827. See the Legal Commissioners Report, p. 89. Burge was also the author of Commentaries on Colonial and Foreign Laws.

in his position as Attorney Gener l, he felt disposed to support the measures of the Government; but as a member of the Assembly possessing large property in the Island, he could not pledge himself to support all the measures which might be recommended to the Legislature, because some might be injurious to his own property.[258] So badly had the position deteriorated that in 1831, Belmore informed Goderich that there was no one practising at the Jamaican Bar, whom he could recommend for the appointment of Attorney General. He therefore hoped that Goderich would experience no difficulty in finding a gentleman of "intelligence and ability" to fill the post.[259]

The Colonial Office accordingly appointed an Attorney General from the United Kingdom. It appears however that the appointee, Dowell O'Reilly, an Irish barrister if not lacking in intelligence was certainly lacking in ability and efficiency. This was most unfortunate for Jamaica, because this period was one of crucial importance in the Island's history: slavery was about to be succeeded by apprenticeship and apprenticeship was to be followed by emancipation. There was much legal work of immense importance to be done by the Attorney General especially in reporting on the laws passed by the Assembly and advising on the multitude of legal questions arising from the altered social relations in the Island. The Governors seemed to have differed little in their views of O'Reilly. Sligo stated that his "legal acquirements stood at a very low ebb"[260] in public opinion and that he was honest but indolent.[261] Smith complained that the Government's measures were often "crippled by his habits of procrastination or neglect."[262] In disgust he later appealed to Glenelg to be

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258. CO 137/179: Belmore to Goderich 17 November 1831.
259. Ibid. Belmore to Goderich, 11 October 1831.
260. CO 137/192: Sligo to Stanley (Private) 15 April 1834.
261. CO 137/212: Sligo to Glenelg (private) 1 July 1836
262. CO 137/221: Smith to Glenelg (private and Confidential) 26 December 1837; See also CO 137/220: Smith to Glenelg 9 September 1837.

relieved of such "a useless and mischievous public Servant."[263] The Colonial Office's assessment of O'Reilly was similar to that of the Governors, Henry Taylor for example declaring in 1839 that there could be no doubt that O'Reilly was inefficient and had been so for some years past.[264]

The complaints against O'Reilly multiplied. Matters reached a head when O'Reilly's report on the important Criminal Law Amendment Act of 1838 reached the Colonial Office, three years after the statute was passed.[265] Early in 1842 Stephen in a very comprehensive Minute, reviewed O'Reilly's conduct. According to Stephen, such a "series of Complaints from successive Governors against any public officer, as those which relate to O'Reilly, I never happened to see". He further described O'Reilly as the most "indifferent and indolent Functionary of his Class in the British Colonies."[266] But only a very weak despatch admonishing O'Reilly followed.[267] Despite all this, O'Reilly remained as Attorney General of Jamaica for twenty-two years!

O'Reilly's immediate successor seems to have been more competent and efficient. He was Alexander Heslop, a coloured Jamaican barrister. Darling described him as possessing "considerable ability and legal knowledge."[268] Eyre's opinion was that he was an "accomplished scholar and a clever lawyer," but that he was intemperate.[269] Rogers of the Colonial Office said Heslop did his work "fairly or more than fairly,"[270] Henry Taylor on the other hand felt that Heslop was an "able man, but incorrigibly idle."[271] After fourteen years as Attorney General, Heslop was retired to make way for a younger and more active man.

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263. CO 137/237: Smith to Glenelg, 3 January 1839.
264. CO 137/247: O'Reilly, Henry Taylor's Minute, 29 March 1839.
265. CO 137/257: Metcalfe to Stanley, 14 December 1841, Enclosed Report of the Attorney General.
266. Ibid. See also CO 137/260: O'Reilly to Russell, 1 October 1841 Minutes.
267. Ibid. Stanley to Metcalfe, 18 March 1842.
268. CO 137/351: Darling to Newcastle (confidential), 24 November 1860.
269. CO 137/374: Eyre to Newcastle (confidential), 29 September 1863.
270. CO 137/374: Eyre to Newcastle, 29 September 1863, Roger's Minute.
271. CO 137/441: Grant to Granville, 7 June 1869, Taylor's Minute.

In 1870 discussions began concerning the construction of a Criminal Code for Jamaica.[272] The Attorney General of the Island would be an important cog in the construction machinery, and it was necessary for the right man to be selected. Grant requested an Attorney General who "having besides all the qualifications of a Colonial Attorney General," possessed qualifications for the "purpose of digesting, codifying and reforming our law; and of taking a leading part in the conduct of our legislation, especially upon legal subjects."[273] Ernest Schalch of the Temple was appointed. In his eulogy of him at his death, four years later, the Officer Administering the Government spoke of his "untiring zeal and industry," his "painstaking and conscientious discharge of his public duties, without ever one thought of self," and the "solid worth of his personal character which commanded the esteem and respect of all classes."[274]

The Attorneys General for the remainder of the century also appear to have been fairly competent. O'Malley was highly commended by Musgrave,[275] and in the Colonial Office, Hocking was said to have the best "claim of all officers in the Colonial Service for promotion to an important Chief Justiceship - both for length of service and for ability."[276] It seems therefore that in the latter half of the 19th century, Jamaica possessed fairly competent Attorneys General.

But as in the 18th century, there was one defect in the terms of appointment of the Attorneys General, which militated against their efficiency in the service of the Government: it

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272. See Chapter 10, infra
273. CO 137/451: Grant to Kimberley, 23 November 1870.
274. CO 137/476: Young to Kimberley, 31 January 1874.
275. CO 137/490: Musgrave to Hicks-Beach, 23 June 1879.
276. CO 137/561: O.A.G. to Ripon, 20 August 1894, Wingfield's Minute.

was the rule which permitted the Attorney General to practise privately, while he held his post with the Government. It had been considered desirable to allow him to practise because of the small salary he received in his post. This was in a way false economy for as long as he was allowed to practise privately, there was always the possibility of his advice to his clients, conflicting with his position as legal adviser to the Government. This situation was brought into sharp focus in a case in 1839 and Metcalfe declared that it was remarkable that the Attorney General "in his private practice was counsel for the defendants, who have now appealed, in his official Capacity is Law Adviser of the Governor, and as a Privy Councillor, is one of the Judges of the Court of Errors."[277]

In 1883 there were discussions as to whether the Attorney General should be permitted to practise privately. Musgrave felt that in some cases his duty to the public and his private interests would conflict if he were allowed to practise; on the other hand, if he were allowed private practice he might suffer from want of familiarity with current questions.[278] The dispute between the Railway Commissioners and the Jamaica Government in the early 1890's again highlighted the inexpediency of allowing the Attorney General to practise privately. Shortly after in 1895, the Colonial Office sanctioned an increase in the Attorney General's salary, and ruled that he should not practise privately. This was a long overdue reform.

In 1872, the Colonial Office began a new and useful practice. They directed the Attorney General to comment on the annual criminal statistics of the Island. They did this because they thought that to a man as intelligent as the Attorney General, "many reflections would occur as to the social state of the Country and the working of

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277. CO 137/240: Metcalfe to Russell, 14 November 1839.
278. CO 137/509: Musgrave to Derby (confidential), 7 April 1883.

the law amongst the people."[279] The first Attorney General who was asked to comment on the statistics, not surprisingly took a narrow view of his duties. He felt that he could not make any useful observations on the statistics because in the scope of his duties no criminal statistics ever came before him. The Attorney General "is constantly consulted respecting purely legal questions arising in the Administration of the Criminal Law in the Criminal Courts."[280] Subsequent Attorneys General however, interpreted their functions much more widely, and made interesting comments on various offences, particularly praedial larceny.

(ii) The Solicitor General

During the 18th century, the office of Solicitor General did not exist in Jamaica. In 1803, a barrister practising in Jamaica suggested to the Colonial Office that the office of Solicitor General be established, and he volunteered to give his services gratuitously. Nugent however, opposed the proposal, one of his grounds being that the Attorney General was capable of doing all the work of the Crown.

In 1827 the Legal Commissioners recommended that to "obviate the manifest inconvenience which must arise from the Attorney General being taken ill during the sitting of the Courts," a Solicitor General should be appointed.[281] This recommendation was not acted on. Possibly, because of O'Reilly's inefficiency and the mounting backlog of legal work, Smith told Glenelg that they were "greatly in want of a Solicitor General." He added however, that they "had no means of paying one."[282] The Colonial Office was in favour of the appointment of a Soliciter General, but it was not willing to pay

279. CO 137/469: Grant to Kimberley, 11 March 1873, Fairfield's Minute.
280. Ibid. Enclosed Report of Attorney General Schalch. See also CO 137/505: Musgrave to Kimberley, 13 June 1882, Enclosed Report of the Attorney General.
281. Legal Commissioners Report, p. 89.
282. CO 137/227: Smith to Glenelg, 24 April 1838.

his salary.[283] As a result no steps appear to have been taken to appoint a properly established Solicitor General.[284]

Towards the end of the century the question of a Solicitor General came up again. In 1895, Chief Justice Hancock mainly on account of his judicial experience in the Leewards Islands, recommended the abolition of the two offices of Assistants to the Attorney General which had been created in 1870, and proposed the appointment of a Solicitor General.[285] The following year a bill providing for the appointment of a Solicitor General was introduced in the Council, but it was rejected -- the elected members voting against the measure. In 1897, a similar bill was introduced but on this occasion it was passed. The first Solicitor General, Thomas Oughton was appointed, with a salary of £500 per annum. The office was however abolished in 1906 and an Assistant to the Attorney General substituted.[286]

(iii) The Coroner

The institution of Coroner remained in existence during this century also and in the early 19th century, he appeared to have been just as corrupt as the other white administrators of justice. In one case, a wealthy property owner Ludford, killed one of his slaves. The Coroner was informed of the death of the slave but he did not hold an inquest. The Custos of the Parish omitted also to issue a warrant for Ludford's arrest. In the meantime Ludford fled from

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283. CO 138/62: Glenelg to Smith, 14 November 1838.
284. A Jamaican barrister, Middleton, had volunteered his gratuitous services as Solicitor General, and Smith was authorized to nominate him to the office. This arangement does not appear to have materialized: CO 138/62: Glenelg to Smith, 14 November 1838.
285. CO 137/567: Blake to Chamberlain, 13 August 1895, Enclosed letter from Hancock.
286. Law 7 of 1906.

the Island. The Governor ordered that "every exertion", should be used to bring the Coroner to justice for his improper conduct.[287] But bringing a man of the Coroner's standing to justice in the slave society of Jamaica was not an easy task. The Attorney General himself took charge of the case and directed the collection of evidence against the Coroner, Howell. Evidence was not easily obtainable, and the Attorney Generally finally told the Governor:

> "From the influence possessed by Mr. Howell as the Colonel of the Regiment of the Parish and from his Family connections there, a degree of reserve and silence has been maintained by those from whom information might have been expected to have been obtained which has rendered it very difficult to elicit the necessary Evidence."

'Monk' Lewis supplies important details, which help in a proper understanding of the circumsfances surrounding this case. He tells us that Ludford's mistress "was the coroner's natural daughter, and the coroner was similarly connected with the custos of Clarendon." In consequence of "this family compact, no inquest was held, no inquiry was made; the whole business was allowed to be slurred over, and the murder would have remained unpunished", if accident had not brought some rumours about it to the Governor's ear.[289] In 1827 the Legal Commissioners wondered whether it was not advisable to have a qualified barrister as a Coroner in each county, "to whom the parochial Coroners should be amenable." They made it clear, however, that this was a suggestion "which we throw out merely for considaration."[290] No reform was made in the institution. In 1831, the Secretary of State had occasion to advert to the non-holding of a Coroner's Inquest, and he gave firm instructions for them to be held.[291]

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287. CO 137/144: Manchester to Bathurst, 29 August 1817. See also Ibid., Same to Same 21 June 1817.
288. CO 137/144: Manchester to Bathurst, 22 October 1817, Enclosed letter from the Attorney General.
289. Matthew G. Lewis, Journal of a West Indian Proprietor, p. 335.
290. Legal Commissioners Report, p. 129.
291. CO 138/53: Goderich to Belmore, 25 July 1831.

After emancipation there were still complaints about the Coroners and the Coroners' Inquests.[292] As a result of wounds inflicted by the police during a riot at Falmouth in 1859 a person died, but no inquest was held on the body. The Attorney General investigated the circumstances in which this happened. He reported that however much the omission can be regretted, "it can scarcely be wondered at" because "thoroughly competent Officers can hardly be expected here when it is considered in whom the right of electing the Coroner is vested, and how very inadequate is the remuneration incident to this Office."[293] With the reforms introduced after 1866,[294] there does not appear to have been so many complaints about the Coroners.

(iv) The Clerk of the Peace and Clerk of the Crown

Complaints were frequently registered about how the duties of these offices were performed. Sligo, in 1835, stated that since he arrived in the Island, there had not been a single assize where complaints had not been made publicly in court concerning the office of the Clerk of the Crown. "There are great irregularities in the manner in which that office is conducted," and he complained specifically that the patentee of the office, Sir Molyneaux Nepean, would not employ efficient clerks in his office to direct the proceedings, "which he being no lawyer, cannot understand."[295] In a later despatch Sligo declared that the irregularities in the office of Clerk of the Crown were "quite subversive of punctuality in business."[296] Sligo also commented

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292. See P.P. Relating to the West Indies, Vol. 5 Part I - Jamaica: Smith to Normanby, 16 August 1839, Enclosed Report of Stipendiary Magistrate, Fishbourne.
293. CO 137/346: Darling to Newcastle, 10 November 1859, Enclosed Report of Heslop.
294. See Law 23 of 1888 - The Coroners Inquest Regulation Law.
295. CO 137/199: Sligo to Grant (confidential), 26 June 1835.
296. CO 137/201: Sligo to Glenelg, 7 August 1835.

adversely on the Clerk of the Peace.[297]

In the 1840's there were criticisms that the two offices of the magistrates and clerk of the peace were usually held by the same person. A committee of the Assembly found that this combination of offices was improper because under the present system of payment of fees, it was in the interest of the clerk to the magistrates to multiply business for the clerk of the peace.[298] The offices were not separated. In the early 1860's there were again complaints about how the duties of those offices were discharged.[299] No reform appears to have been carried out at the time. These offices were finally abolished by Law 3 of 1870.

(v) The Provost Marshal

In this century, the duties of this office appear to have been as inefficiently executed as they were in the previous century. At one period, Manchester was compelled to inform Liverpool of the "flagrant abuses, which have been found to exist in that Office."[300]

One of the main responsibilities of the Provost Marshal was the supervision of the gaols. There were frequent criticisms of the gaols and the way they were supervised. In 1818 Manchester called the Assembly's attention to the number of persons escaping from the gaols, which he felt indicated either insufficient security of the buildings, or lack of vigilance of the gaol keepers.[301] The gaols continued to be badly run, and there appears to have been little hope for improvement, as this pessimistic statement by the Custos of Trelawny suggested:[302]

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297. CO 137/203: Sligo to Glenelg, 20 October 1835.
298. VAJ 1845, pp. 439-440. After 1840 clerks of the peace had to be qualified solicitors - 3 Vic. c. 65, Sec. 46.
299. See CO 137/372: Eyre to Newcastle, 14 May 1863.
300. CO 137/128: Manchester to Liverpool, 10 June 1810.
301. JAJ Vol. 12, p. 224.
302. Legal Commissioners Report, p. 249.

> "I could recommend certain measures for the improvement in the mode of conducting and keeping the gaols; but as the patentee of the Provost Marshal's office in this Island, whose duty it is to superintend these establishments, stays in England, in defiance of a British statute, I do not see how these measures can well be carried into effect."

In 1832, the Jamaica Assembly went as far as complaining to the King about the absentee patent officers.[303] With a reformed judicial system after emancipation and with the Attorney General playing a much more active role in the administration of justice, the Provost Marshal decreased in importance. The office was finally abolished in 1872.[304]

(vi) The Police and Militia

Tentative gropings towards a police force began in the early 1830's when the white inhabitants, in the wake of the slave rebellion, felt it necessary to have a permanent localised body of protectors. Members of this force were inevitably taken from the white population, whose sympathies they shared. We get an idea of the kind of men comprising the force, when Sligo reports that many of the white overseers who had been dismissed for cruelty to the apprentices were believed to be enlisting in the police force.[305] Sligo himself suggested that Chelsea pensioners should be recruited for the force. but this proposal was found inexpedient.[306]

After emancipation, the calibre of the police force was not one which inspired confidence in the mass of the population. The force was still largely comprised of men who were still 'strongly tainted with the prejudices and abuses' of slavery, and this feeling, not

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303. VAJ 1831-32, p. 245.
304. Law 35 of 1872
305. CO 137/212: Sligo to Glenelg, 13 August 1836.
306. Objections were taken to their age, but it was feared that their predisposition to alcohol in a country like Jamaica, would impair their usefulness. See CO 138/56: Aberdeen to Sligo, 30 March 1835.

unnaturally influenced their attitude to the labouring population. In fact, the labourers showed a distinct distrust of the police. In one case of rioting in Westmoreland in 1859, the persons alleged to be involved refused to submit to the police so that they could arrest them, but presented themselves of their own accord, to the Court.[307] Evidence of distrust of the police is also seen in the riots at Falmouth shortly after.[308] In 1862, Eyre complained of the inefficiency of the police force and observed that the "pay given to them is too small to induce a good class of men to enter it".[309] and it was hardly likely that the efficiency of the force would be increased by its Inspector "whose long continued habits of intoxication had undermined both his mental and physical energies."[310]

In the suppression of the 1865 rebellion, the police force displayed the most ruthless brutality and one of Grant's first acts was to reform it. His comments at the time when the law was passed re-constituting the force is of more than passing interest:[311]

> "The inefficiency of the old police is a fact universally admitted....For ordinary purposes the inadequacy of the Police Force has forced itself upon my notice, on sevefal occasions. Nevertheless this weak and worthless body cost a large sum of money, namely £25,235 in the year 1865-66, much of which I regard as having been thrown away."

He went on to refer to the remarkable state of contentment and willing obedience to the law, which in contrast to the feeling reported to have existed in the Island two years previously, had shown itself in the absence of any riotous spirit and in a great diminution of ordinary crime. But for these facts, he would not have felt easy,

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307. See CO 137/344: Darling to Lytton, 25 March 1859.
308. See CO 137/345: Darling to Newcastle, 9 August 1859.
309. CO 137/366: Eyre to Newcastle, 26 May 1862.
310. Ibid.
311. CO 137/425: Grant to Buckingham, 19 July 1867

with no "civil power at command to support law and order, except the old police."[312]

The Constabulary Force established by Grant in 1867, was modelled on the Irish Constabulary, with, as Grant said, a little more appearance of military element in it. It has formed the basis for the present Constabulary Force in Jamaica.[313] In the years which followed its establishment, the Force was not regarded as entirely satisfactory. Grant stated that in connection with the police the "native material available is not of the best for the particular purpose."[314] He attempted to employ a number of Europeans in the Force, for example, soldiers who had been discharged. This attempt failed however "owing to the incurable intemperance of too many of this class of men, in this climate."[315] At the end of the century, the Constabulary Force had still not achieved a satisfactory standard of competence and efficiency. In 1898 it was not improperly observed in the Colonial Office that the "Force, from the Inspector Genl downwards, is very inefficient."[316]

The militia remained in existence during this century. In the 18th century, it had been one of the main tools of the planters in suppressing slave disturbances and revolts, and up to the abolition of slavery, it was similarly used. In the slave rebellion of 1831-32, the western regiments of the militia showed themselves as merciless and cruel as any of their predecessors of the 18th century.

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312. Ibid.
313. In November 1967, the Jamaica Constabulary Force celebrated it Centenary.
314. CO 137/444: Grant to Granville, 8 November 1869, Enclosed Blue Book for 1868.
315. Ibid.
316. CO 137/590: Hemming to Chamberlain (confidential), 6 June 1898, Minutes.

In 1837, the various militia laws of the Island, in existence from as far back as 1681, were amended and consolidated.[317] In the post-emancipation years the militia was little used, mainly because there was no need for it, and also because there was some sort of police establishment. Darling felt that the militia was an unsuitable force for the repression of civil disorders, although it might be effectual in assisting the regular troops in case of invasion.[318] The militia came back into its own in the 1865 rebellion, and it was responsible for many of the indiscriminate whippings, burnings and murders, which took place then.[319] For the rest of the century, the militia does not appear to have been much used.

(vii) The Legal Profession

The legal profession, particularly the Bar, was even more important in this century than in the previous one, for it was from the Bar, that the Attorney General and the Chief Justice were usually chosen. With the reforms in the legal system in the post-emancipation period, more legally trained personnel was required and the Jamaican Bar supplied some.

During slavery, the legal profession played an active part in the political life of the country. As in the 18th century, members of the legal profession were often members of the Assembly, and the opinions they expressed there and the position they adopted over issues, particularly slavery, sometimes disqualified them from holding judicial office. In 1828, Keane nominated as Attorney General a barrister, James, who "in point of Professional attainments" was

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317. 7 Wm. 4, c. 37.
318. CO 137/345: Darling to Newcastle, 9 August 1859.
319. See the Evidence given to, and the Report of, the Royal Commissioner investigating the rebellion: P.P. 1866 (3683) XXX; 1866-I(~~XXXI~~ 3683-I) XXXI.

"far beyond any other Gentleman at present in the Island."[320] But, as a member of the Assembly, James had been one of the most implacable opposers of the reception of slave evidence, and Keane told Huskisson that part of James' political conduct may have left an impression prejudicial to his interest, at the Colonial Office. However, he sincerely regretted "any errors which perhaps too great a facility of temper may have involved him in."[321] James' nomination was not objected to in the Colonial Office then. Three years later, the Chief Justiceship became vacant and Belmore proposed James for the office, but he was told on this occasion by the Secretary of State that James was not satisfactory.[322] As there was no other suitable barrister of the Jamaican Bar, a Chief Justice was appointed from England.

When, after emancipation, it was proposed indirectly to limit the judicial offices to barristers in Jamaica, Russell told Metcalfe that some of them had "earned much distinction in those controversies from which the judges of the colony cannot stand too completely aloof." He reminded him also that in the immediate past the Bar in England had had to be resorted to, in order to obtain judges of the courts, and legal advisers from the government "exempt from the prepossessions engendered by local feuds and party animosities."[323] When the two legally qualified puisne judges were to be appointed in 1840, Russell advised Metcalfe to appoint two gentlemen who were not only qualified by their legal ability, but also by their "absence from all party feeling or connexion."[324]

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320. CO 137/167: Keane to Huskisson (private), 9 May 1828.
321. Ibid.
322. CO 137/179: Belmore to Goderich, 11 October 1831; Ibid. Goderich to Belmore, 2 January 1832.
323. P.P. Relating to the West Indies, Vol. 6 Part II - Jamaica: Russell to Metcalfe, 12 February 1840.
324. CO 137/248: Russell to Metcalfe, 2 September 1840.

The Bar was not a very large body. In 1840 it was said that there were no more than twelve practising barristers in Jamaica.[325] Grant in 1867 described them as a "small but respectable body of gentlemen".[326] In 1869 it appears that there were only four practising barristers in the Island, as a result of which a law had had to be passed enabling attorneys to practise as counsel in certain cases.[327] From 1869 to 1887, it appears that besides the Attorney General there were only two barristers and six advocates. From 1887 onwards a few English barristers came to practise and in 1896 there were, besides the Attorney General, seven members of the English Bar practising in Jamaica.[328]

The generally small number of practising barristers may have been due to the economic state of the Island. In 1843 Elgin told Stanley that the general poverty of the Island had materially reduced the profits of the legal profession.[329] Grant in 1867, said that the business of the barristers had fallen off very much owing to lack of work in the Supreme Court.[330]

The number of solicitors was greater than that of the barristers. In 1881 there were 57 solicitors admitted to practise, but three were off the Island. In 1896 the number of solicitors had increased to 88 of which 20 had either retired or were precluded from practice by reason of Government posts which they held. In 1900 the number was 97 of which 15 had either retired or were precluded from practice.[331]

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325. P.P. Relating to the West Indies, Vol. 6 Part II - Jamaica: Russell to Metcalfe, 12 February 1840.
326. CO 137/427: Grant to Buckingham (confidential), 9 October 1867.
327. CO 137/447: Grant to Granville, 24 February 1870.
328. CO 137/573: Blake to Chamberlain, 16 May 1896, Enclosed Report of the Attorney General on the Jamaica Bar Regulation Law.
329. CO 137/275: Elgin to Stanley (confidential), 3 October 1843.
330. CO 137/427: Grant to Buckingham (confidential), 9 October 1867.
331. See the Handbook of Jamaica for 1881, 1896, and 1900.

Yet it appears that throughout the century the legal profession -- barristers and solicitors -- played a role in the affairs of the Island, completely out of proportion to their numbers. In 1840, thirteen out of the eighteen persons who voted not to extend the qualifications of the puisne judges to members of the Bar practising in England, were either members of the legal profession, or persons who had relations in the profession.[332] In 1856, there were ten lawyers in the fortyseven seat Assembly.[333] And when elected representation was allowed in the Legislative Council, a Minute in the Colonial Office declared that this Council of "solicitors and doubtful merchants is not the happy birth we had hoped for."[334]

F. The Administration of Justice

The administration of justice in this century will be divided inot four periods: (i) the period up to 1833; (ii) the apprenticeship period; (iii) the post-emancipation period up to 1865; (iv) the period of Crown Colony Government. There will be a separate section dealing with the administration of justice and the slaves.

(a) The Administration of Justice generally

(i) The period up to 1833

A fair idea of the way in which justice was administered during this period would have been acquired from our discussion concerning the Judiciary and the Legal System. Only two additional

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332. CO 137/261: Metcalfe to Stanley, 10 January 1842.
333. CO 137/330: Barkly to Labouchère, 25 January 1856.
334. CO 137/534: Norman to Holland, 14 January 1888.

illustrations will therefore be given.

After houses belonging to the dissenters had been destroyed in riots at Savanna-la-mar in August 1832,[335] some persons were arrested and charged with participation in the outrages. They refused to be bailed and there were strong rumours that the jail would be broken into and the accused freed. On hearing this, Musgrave, who had been touring nearby, journeyed to Savanna-la-mar to see for himself. He informs us of the scene:[336]

> "I proceeded to the jail which I found in a most disgraceful state; the jailer and his Assistant beihg both Partizans of the Colonial Union, had suffered the Union Party Banners to fly on the Walls of the Prison, and the Young Men, who had been committed for their conduct in the Riots, were there rather in triumph than confinement, with free ingress allowed to their friends."

Musgrave ordered the banners to be removed immediately and he notified the jailers that they would be dismissed. Since he could not rely on the jailers to keep the prisoners securely, he asked the Custos who was in charge of the militia if he had any men he could rely on to guard the jail. The reply was: "On such a Service none".[337]

But keeping the prisoners securely was, as it turned out, a minor task in the attempt to administer justice. Earlier in the year the chapels of the Baptists had been razed to the ground. In the proceedings arising from this, bills of indictment had been preferred to the grand jury against persons alleged to have been implicated in the crime. The grand jury returned all the bills 'ignoramus'. Bearing these events in mind, Goderich, told Musgrave on this occasion that justice was not to be expected from preferring indictments to a grand jury; yet with "the proofs before me of the scandalous violation of Law, of which the Missionaries were the victims",

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335. CO 137/183: Mulgrave to Goderich, 24 August 1832. See especially the enclosed letters from the Custos of Westmoreland.
336. CO 137/183: Mulgrave to Goderich, 5 October 1832.
337. Ibid.

he was bound to leave "no method of obtaining justice unattempted".[338] He therefore directed Mulgrave that the Attorney General should proceed by ex-officio information. But there were still other hurdles. The Attorney General had difficulty in obtaining evidence against the offenders and stated that he was unable to obtain satisfactory affidavits to institute prosecutions. In any event, he felt there was no hope of obtaining a conviction against them for the juries would be necessarily composed of persons who were either engaged in the riots, or persons who did not disapprove of the riots.[339]

Another incident, this time at St. Ann's Bay, supplies additional information about the administration of justice. In August 1833, one of the missionaries, Greenwood, applied to the justices in sessions for a license. On Greenwood's entry into the Court the court room reverberated with cries 'Turn him Out!' 'No Methodist Parson!' The worst was yet to come. One of the leaders of the mob in the courtroom, a leading citizen in the town, Rose, addressed the court in "violent language" and issued threats of what would ensue unless Greenwood was immediately removed. By now Rose had moved to the front of the court. His mob followed him pulling at the railings of the court, and, with obvious reference to Greenwood, screaming, 'Pull him out!' 'Murder him!' The Custos who was presiding at the court was now convinced that the mob intended to give effect to their threats, and he hurried Greenwood to safety through the back door of the court. The Custos summed up this affair thus:[340]

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338. CO 138/54: Goderich to Mulgrave, 10 October 1832.
339. CO 137/188: Mulgrave to Goderich, 30 January 1833, and enclosed report of the Attorney General.
340. 137/189: Mulgrave to Stanley, 4 August 1833, Enclosed letter from the Custos.

> "The obstruction to the Law by a combined and arranged plan at the head of which was a Member of the Assembly; The insult to the Court and the attempt to murder a defenceless Minister of Religion for endeavouring to obtain the sanction of Law to his preaching the Gospel, together present a scene seldom exceeded in the annals of Brutality."

But that was not the end of this unhappy episode. Those allegedly responsible for the disturbance in the Court were prosecuted. As many of the grand jurors were members of the pro-slavery Colonial Church Union,[341] to which some of the accused also belonged, the Attorney General by-passed the grand jury, and proceeded by ex-officio information. This case was regarded with the utmost gravity by the Governor, and accordingly, the Chief Justice presided at the trial, while the Attorney General prosecuted. The trial lasted three days, and according to the Governor the charges were substantiated, and the evidence remained unshaken. But with the jury taken from among the white population, the verdict was predictable. All the accused were acquitted.[342] These two incidents illustrate in a most vivid way the what the white Jamaicans meant by the phrase to "stand by one another".

(ii) The apprenticeship period 1834-38

In this period, the documents are just as replete with complaints against the administration of justice, as they were in the previous period, and it can only be a matter for surmise what the situation would have been, had the Stipendiary Magistrates not been present in the Island. Sligo said that the overseers were using "the last dying embers of their Authority for the worst purposes."[343] Three years later, in reference to an apprentice who had been severely ill-treated, Smith declared that no man of experience would deny that in the present state of the late

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341. One of the founders of the Colonial Church Union, Hilton, was the foreman of the Grand Jury.
342. CO 137/189: Mulgrave to Stanley, 23 November 1833.
343. CO 137/192: Sligo to Glenelg (private), 15 April 1834.

slave colonies many abuses still exist, and it was impossible to control the tempers and dispositions of all the persons put in charge of the apprentices.[344] These abuses were not being punished because the juries were just as perverse and the judiciary just as corrupt as ever. Indeed, it was in this period that several magistrates had to be dismissed for personal cruelty to the apprentices. In addition, corporal punishment was still being illegally administered to women and apprentices were beaten to death in the work houses.

Due to Sligo's activity, one aspect of the administration of justice in Jamaica was fully exposed. With a view to "make myself informed on every point connected with my administration", Sligo directed that the jail returns should be sent to him. In his words, the "very loose and incorrect manner in which I found all legal transactions of a criminal nature to have been in times past conducted in this Island, induced me to make the enquiries I did."[345] Among the worst cases he discovered, was a man who had been detained in prison for seven years, without any reason being given for his committal.[346] In another case a prisoner had been in prison for twelve years waiting for his sentence of transportation to be executed.[347] At emancipation Smith extended the act of grace to some prisoners. On the receipt of this despatch, Glenelg declared that it was impossible "to contemplate without deep concern so long a Catalogue of Prisoners confined, in so many cases for so long a time, and as it appears, in some cases without even the nature of the Offence, or the date of the imprisonment being known."[348]

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344. P.P. Relating to Slavery, Vol 44 Part V - Jamaica (1): Smith to Glenelg, 25 August 1837.
345. CO 137/209: Sligo to Glenelg, 3 January 1836.
346. CO 137/202: Sligo to Glenelg, 21 September 1835; See Glenelg's reply in CO 137/57: Glenelg to Sligo, 9 November 1835.
347. CO 137/198: Sligo to Secretary for the Colonies, 24 May 1835. See also CO 137/211: Sligo to Glenelg, 3 May 1836.
348. CO 138/62: Glenelg to Smith, 26 September 1838.

In this period, it was therefore not without cause that both Sligo and Smith were extremely critical of the administration of justice in the Island, and extremely pessimistic that if that state of affairs were to continue into emancipation, the mass of the population would be deprived of justice.[349]

(iii) The post-emancipation period up to 1865

At emancipation, the Assembly showed no signs of correcting the countless abuses which existed in the administration of justice. In December 1839 therefore Russell called Metcalfe's attention to the defects in the administration of justice in Jamaica — defects, "which cannot escape animadversion and ought not to be left without a remedy". For proper effect, he added that it was his wish to avoid legislation on the subject by the British Parliament.[350] A month later Russell informed Metcalfe that the administration of justice in the Island was a subject of "deep importance", and it had "engaged the serious attention" of the British Government.[351] In a subsequent despatch, Russell analysed some of the reasons for the maladministration of justice in Jamaica over the years:[352] the two assistant judges of the Supreme Court were not legally qualified; as far as the courts were concerned, "the judgment-seat had been occupied exclusively by the privileged and more wealthy, although the much less numerous race, to the entire exclusion of the great numerical majority"; justice was tardy and expensive; the magistrates

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349. See CO 137/211: Sligo to Glenelg, 21 June 1836; CO 137/209: Sligo to Glenelg, 24 February 1836; CO 137/228: Smith to Glenelg, 15 May 1838.
350. P.P. Relating to the West Indies, Vol. 5 Part I - Jamaica: Russell to Metcalfe, 31 December 1839.
351. CO 138/62: Russell to Metcalfe, 29 January 1840.
352. P.P. Relating to the West Indies, Vol. 6 Part II - Jamaica: Russell to Metcalfe, 12 February 1840.

"either as individuals, or as conspicuous members of the privileged race", had interests to promote or prejudices to gratify "at the expense of the great body of people over whom their magisterial authority was exercised"; both the grand and petty juries were composed of persons "whose descent is either wholly or chiefly European, to the exclusion of those whose origin is entirely African." It was with these defects in mind that the Assembly carried out reforms, especially of the personnel of the courts, in 1840.[353]

It does not appear that there were many complaints about the administration of justice in the decade after 1840. But in the 1850's complaints began to be registered, particularly concerning the infrequent and irregular attendance of the magistrates at the petty session courts. The complaints mounted and by the early 1860's the courts, the magistrates and the juries were strongly criticized. In the words of some of the poorer inhabitants, favouritism was rampant in the courts of justice and there appeared to be "a law for the rich and a law for the poor".[354] With the entire administration of justice being impugned, representations were repeatedly made to the Assembly for reform. Eventually, in February 1865, the Assembly resolved that it was the "imperative and urgent duty" of the government to introduce, early in the following session, measures for the reform of the court of chancery, the jury system, and the office of the provost marshal.[355] Previously to this, in the same session, an attempt had been made to provide for an additional number of Stipendiary Magistrates, but the measure was withdrawn after it met with fierce opposition in the Assembly. The Assembly evinced no intention of redressing the complaints of the poorer classes, and the present resolution said nothing of improving the administration of justice in the lower courts, about which there had been complaints ad nauseam.

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353. See the Legal System section of this Chapter.
354. P.P. 1866(3595) LI. Eyre to Cardwell, 29 July 1865, Enclosed resolution passed by meeting at Easington.
355. VAJ 1864-5, p. 370.

In October 1865, Paul Bogle and his courageous followers from Stony Gut, having put "their shoulders to the wheel", violently protested at this state of affairs in what has now come to be known as the '1865 Rebellion'.[356] For us, concerned in the administration of justice and the development of the criminal law, the causes of the rebellion are more important than the details of the rebellion. In this connection, the statements of Alan Ker, a Judge of the Supreme Court at the time, are not only invaluable but highly remarkable, coming as they do from a member of the Judiciary:[357]

> "No words can utter the iniquitous and cruel oppression that went on in the neglected and miserable district when that unhappy rising took place. Redress was not to be had for the most outrageous wrongs: wages were habitually withheld for months, or never paid at all: Some of the owners and managers of Estates, and therefore the most influential persons in the parish, were among the most brutal Specimens of Humanity that have ever come under my notice; and the very clergy, never as a class backward to succour the weak, sided with the oppressors. I recollect the heaviness of heart with which I used to leave Bath, seeing the evil and powerless to remedy it.
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> That in such circumstances an ignorant and uninstructed population should raise a disturbance and that murder should be committed in the process who can wonder at? It was simply a proclamation to the world that their Sufferings were past endurance, and that any risk was worth running to put an end to them. In the estimation of the parties engaged, murder was merely a means to an end, and that end a justifiable end."

In the words of the Royal Commission which investigated the rebellion, one of the causes of the rebellion was "the want of confidence generally felt by the labouring class in the tribunals before which most disputes affecting their interests were carried for adjudication".[358]

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356. See generally S.O. Olivier (Baron), The Myth of Governor Eyre; Bernard Semmell, The Governor Eyre Controversy; Douglas Hall, Free Jamaica 1838-1865; Eric Williams, British Historians and the West Indies, chapters 6-8.

357. CO 137/497: Musgrave to Kimberley, 6 December 1880, Kerr's letter enclosed.

358. The 1865 Report, p. 40.

The suppression of this rebellion furnishes vivid evidence of the way in which justice was administered in Jamaica in 1865. It is not known how many people were killed by the militia; but 439 persons were executed, 85 of these without any trial of any kind.[359] A minimum of 600 people were flogged and 1,000 huts and cottages burnt. The Royal Commission found that the punishment of death was "unnecessarily frequent"; that the burning of 1,000 houses was "wanton and cruel"; and that the floggings were reckless and, at Bath, "positively barbarous".[360] Such comments are very reminiscent of the suppression of the rebellions in the days of slavery which had been abloished over three decades previously.

The case of George William Gordon merits special attention in our discussion of the administration of justice. Gordon, a coloured member of the Assembly, had on several occasions drawn the attention of both the Assembly and the Governor, to the injustices which the labouring population suffered. He was little heeded, Eyre for example, dismissing him as an "insane fanatic". When the rebellion occurred, it was strongly felt in governmental circles that Gordon was responsible for, or otherwise implicated in the outbreak. Largely at Eyre's instigation, Gordon was taken from Kingston, where martial law had not been declared, to Morant Bay, where martial law was in force, tried by court-martial, convicted and quickly executed. We turn the pages of the Royal Commission to see to what extent Gordon was implicated in the rebellion:

> "...we cannot see in the evidence which has been adduced, any sufficient proof either of his complicity in the outbreak at Morant Bay or of his having been a party to a general conspiracy against the Government." 361

This was Jamaican justice!

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359. The rioters killed in all about 22 people and wounded about 34.
360. The 1865 Report, p. 40.
361. Ibid., p. 38.

(iv) The period of Crown Colony Government

By his actions in October 1865, Paul Bogle had rendered invaluable service to justice in Jamaica. Following the rebellion, the Assembly, which had consistently refused to provide remedies for the blatant wrongs and injustices committed on the labouring population, acted like a 'herd of stricken deer', and legislated itself out of existence. Under Crown Colony Government, Grant executed many reforms aimed at improving the administration of justice. His main reform was the establishment of the District Courts, which ensured quick, cheap, and to a great extent, impartial justice, for all.[362] He also carried out important reforms in the jury system, the judiciary and the police.

The events of October 1865, therefore, had the immediate effect of improving the administration of justice in the island. But even more important, they remained throughout the century, salutary reminders of what could happen if the administration of justice were allowed to deteriorate to the pre-1865 level. Accordingly, when the future of the District Courts was being discussed in 1884, Musgrave said he was convinced that the abolition of the District Courts "would go far to affect the peace of the Colony", and lead to disturbances similar to those of 1865. This was because the negro peasantry had confidence in the District Courts, but little or none in the magistracy.[363] In 1898, when a praedial larceny statute for Jamaica was under discussion, Chamberlain's opinion was that if the law were generally enforced, it might be "the cause of a bloody negro insurrection".[364] The significance of 1865 had certainly not been

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362. Supra, p.
363. CO 137/519: Musgrave to Derby (confidential), 10 April 1884.
364. CO 137/590: Hemming to Chamberlain (confidential), 6 June 1898.

lost on the Colonial Office, least of all on the Colonial Secretary. All these factors worked towards a proper and efficient administration of justice in this period.

An example of the marked improvement in the administration of justice in the Island is given in 1878. After convictions had been obtained in a murder trial, the Chief Justice confessed himself to be very uneasy about the case. The main reason for his anxiety was that, although the accused had been convicted for murder, the body of the murdered man had not been found. Because of the "peculiar circumstances" of the case, he requested the opinion of the highest legal authority in England. The case was submitted to the English Law Officers, Holker and Gifford. They gave a very full opinion on it, declaring that there was no reason to doubt the validity of the conviction.[365] Imagine this happening in the nasty, brutish and short days of 1800! Then, if the accused was a slave, with the untrained and prejudiced magistracy, he would most likely have been convicted on one day, executed the next, with no notes kept of the trial, and none to question the proceedings. Jamaica had indeed gone a long way.

(b) The Administration of the Slave Laws

(i) Trials of slaves

In the early part of the 19th century, slaves accused of capital offences, were tried as they had been in the latter part of the 18th century: by a tribunal consisting of three justices of the peace and a jury of nine. In 1827 the Legal Commissioners declared

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365. See CO 137/492: Law Officers to Hicks-Beach, 24 January 1879. The Law Officers however regarded it as unfortunate that no evidence had been adduced to the Court either to corroborate or to contradict evidence of the burial of the body.

that the constitution and jurisdiction of the slave courts were "decidedly objectionable" and they recommended their "entire abolition" except in respect to petty offences and misdemeanours.[366] Changes were made in both the 1826 and 1831 Slave Codes.[367] They provided that slaves accused of capital offences were to be tried at Quarter Sessions and by indictment before a grand and a petty jury. Special slave courts could still be held if it was necessary or expedient for the furtherance of justice and the safety of the public. The proceedings at these special slave-courts were to be similar to the proceedings at Quarter Sessions for indictable offences against free persons.

Two justices of the peace continued to possess the power to try summarily, inferior crimes such as swearing, using obscene language, drunkenness, and indecent and noisy behaviour.

Complaints continued to be made against untrained magistrates having such vast powers as they possessed when they presided at Quarter Sessions. In commenting on the 1826 Slave Code, Huskisson regretted that no provision had been made for the attendance of legally trained judges at slave trials.[368] In reference to this comment the Assembly retorted that the unpaid magistrates who preside at the trials are acquainted with "the habits and vices of the negroes"; the Slave Code which was the magistrates' guide was neither "intricate nor voluminous" and it is believed that "equal and substantial justice is dealt out by the court so constituted, as if it were composed of lawyers, versed in all the subtleties and refinement of English jurisprudence."[369] To this Huskisson replied

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366. Legal Commissioners Report, p. 97.
367. 7 Geo 4, c. 23; 1 Wm. 4, c. 25.
368. Huskisson to Keane, 22 September 1827, printed in VAJ 1831-32, p. 18.
369. VAJ 1827, p. 180.

that it was not without surprise that they found it seriously disputed that a legal education would be highly important for the due administration of justice in the slave courts; that the Slave Code is neither intricate nor voluminous is an opinion which the act under consideration "sufficiently refutes."[370]

Reference has already been made in previous pages of this Chapter concerning the type of persons who were appointed magistrates. In this section, only a few criticisms of the proceedings relative to slaves need be given. And these criticisms were made despite the fact that both the 1826 and 1831 Slave Codes provided for a professional person to defend the slaves in capital cases.[371] In one case four slaves were executed for the murder of an overseer. Goderich's comment on the trial was that the evidence "seems to have been received with singular laxity"; and he particularly criticized the evidence relating to certain confessions which were alleged to have been made.[372] In the case of another executed slave Goderich confessed himself to be "not entirely satisfied with the evidence on which the conviction proceeded."[373] In another case where a slave had also been executed Goderich described the evidence as deficient in an important respect in that the single witness examined did not assert that he saw the crime committed nor explain where he was when the crime was committed.[374]

(ii) Institutions to protect the Slaves

As in the previous century the Council of Protection continued to be the main institution which was supposed to protect the slaves. It was also composed of the justices and vestrymen as it had been in

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370. Huskisson to Keane, 22 March 1828, printed in VAJ 1831-32, p. 26
371. 7 Geo. 4, c. 23 Sec. 100; 1 Wm. 4, c. 25 Sec. 100.
372. CO 137/182: Goderich to Mulgrave, 5 July 1832.
373. CO 138/54: Goderich to Belmore, 15 May 1832.
374. Ibid.

the 18th century. The Legal Commissioners observed that the inadequacy of such an institution for the proper purposes must be "evident at first sight".[375] The Council of Protection was a mere sham and various cases illustrated the futility of an ill-treated slave applying to a Council of Protection for a remedy.[376] Governor Belmore expressed his conviction of their "entire inefficiency to accomplish any practical good."[377] Evelyn was less reserved in his comments:[378]

> "My Lord I have witnessed only two Councils of Protection and I do not hesitate to say that they were the greatest mockeries of a Court which can possibly be imagined; alike disgraceful to law - and to justice; alike debasing and debased."

The defects of the Council of Protection were notorious and it was for this reason that Bathurst had suggested in 1824 the appointment of an independent officer called the Protector of Slaves. Despite the comments of subsequent Secretaries of State,[379] the Jamaica Assembly refused to appoint such an officer. The Council of Protection remained in existence up to the end of slavery.

(iii) Punishment of Slaves

From the available reports, it appears that the inhuman and arbitrary punishment of slaves continued up to the abolition of slavery. In 1815, the Assembly stated that the slave law ebuld hardly be violated by any white person other than the overseer, or the owner of the estate, and were they to do that they would have "no great chance"

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375. Legal Commissioners Report, p. 123.
376. P.P. Relating to Slavery, Vol. 52, pp. 783-794; Vol. 53, pp. 1013-1016.
377. CO 137/181: Belmore to Goderich, 10 January 1832.
378. CO 137/180: Evelyn to Goderich, 20 August 1831.
379. See Huskisson to Keane, 22 September 1827, printed in VAJ 1831-32, p. 15 and same to same, 22 March 1828, printed in VAJ 1831-32, p.22; CO 138/53: Goderich to Belmore, 2 August 1831.

of escaping detection. "It is quite certain that very few instances of oppression or personal violence to slaves do take place here."[380] At the same period Lewis, who had at first expressed the belief that instances of tyranny to slaves were very rare, later declared that he had detected beyond a doubt "some very flagrant violations" of the slave laws.[381] He mentions finding on one estate, a female slave who had been crippled for life as a result of being kicked in the womb by a book-keeper. On another estate, he found another female slave who had been kicked by a book-keeper, as a result of which her child had been crippled.[382] Lewis also referred to the arbitrary nature of the overseers' punishments.[383] And despite repeated recommendations from the Colonial Office for its abolition whipping of female slaves continued to be sanctioned by Jamaican law.

(iv) The Administration of Justice relating to slaves

Certain 18th century features of the administration of justice pertaining to slaves were carried over into the 19th century. As in the 18th century, slaves were punished even though there was insufficient evidence to convict them. In 1807 some slaves who were alleged to have been engaged in a rebellious conspiracy, were tried and acquitted. But the Lt. Governor, being "fully sensible of the danger to which the Colony must be exposed in critical times like these from the propagation of such rebellious principles", had the two slaves transported.[384] Two years later, the Assembly passed a bill authorising the transportation from the Island of some slaves who were alleged to

380. JAJ Vol. 12, p. 792.
381. Lewis, op.cit., pp. 115, 367.
382. Ibid., pp. 388-389.
383. Ibid., p. 404.
384. CO 137/118: Coote to Windham, 20 February 1807.

have been involved in another conspiracy. The Council rejected the bill and the Assembly complained about the Council's behaviour. Liverpool commented that it is difficult "conceive that the practices of these Negroes can have been very Criminal if there is a want of legal evidence to convict them."[385]

Another feature of slave trials which was at times criticized was the speedy execution of the sentence of convicted slaves. In 1816 Lewis criticized "the ordering the culprit to such immediate execution" that sufficient time was not allowed for the exercise of the royal prerogative, should the Governor have been disposed to exercise it.[386] This state of affairs remained unaltered until 1821, when some magistrates in Hanover illegally ordered the execution of a slave who had returned from transportation. In the aftermath of the outcry raised against these proceedings,[387] the Assembly enacted legislation providing that the Governor had to sign a warrant before a slave could be executed. Exceptions were made in cases of rebellion or rebellious conspiracy, when immediate execution could be ordered.[388] This legislation was an improvement on the previous position but as the Governors were not legally trained, some of the utility of the provision was lost.

'Rebellions' and 'rebellious conspiracies' are also examples of another feature of the slave laws: the loose and imprecise terminology of slave legislation. Thus a slave committed an offence if he were to 'offer any violence' to a white person; if he were to be involved in a 'rebellion' or a 'rebellious conspiracy'; if he were an 'obeahman' or if he possessed materials "notoriously used in the practice of obeah."

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385. CO 138/44: Liverpool to Morrison, 8 February 1812.
386. Lewis op.cit., p. 179.
387. See CO 137/153: Conran to Bathurst, 23 March 1822; Ibid., same to same, 19 April 1822.
388. 2 Geo. 4, c. 16.

"These terms were never defined and it needs no great imagination to see that such vague generalised offences were capable of much abuse. In three obeah cases where the accused had been sentenced to transportation, the Secretary of State on examination of the notes of the trials, stated that the offences committed did not come within the ambit of obeah.[389] On disallowing the 1826 Slave Code, Huskisson observed that the capital crimes of 'rebellion' and 'rebellious conspiracy' were unknown to the law of England; and it was therefore not fit that they should remain on the statute book "without some legislative definition of their meaning."[390] The Assembly took no action towards rendering the offences more precise. After the 1831 Rebellion, several slaves were tried and executed for their alleged involvement in it. Goderich then told Mulgrave that in reference to Huskisson's remarks about the imprecision of the offence, "the justice of that observation was never more evident than at the present."[391] On examining the notes of some of the trials on that occasion, Goderich noticed that in some indictments the prisoners were charged "generally with a guilty participation in the Rebellion without any specific allegation of the overt Acts for which he was to answer."[392] He directed that in future trials for rebellion, the indictment should be made sufficiently specific so as to place the accused in full possession of the exact nature of the charge upon which it is intended to proceed. It is not difficult to understand the Jamaican legislators' preference for these vague offences, which were capable of such broad usage. The legislators no doubt intended to help the magistrates to effect convictions for what were regarded as the most

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389. See CO 138/59: Glenelg to Sligo, 12 April 1836.
390. Huskisson to Keane, 22 September 1827, printed in VAJ 1831-32 p. 19. Huskisson also stated that the terms 'assault' and 'offering violence to a white person' were framed "with an an extreme laxity of expression". Ibid.
391. CO 138/54: Goderich to Mulgrave, 4 July 1832.
392. Ibid., Goderich to Mulgrave, 4 September 1832.

important offences in the Island. With no precedents to be observed and no specific acts to be proved, the court would have no trouble in obtaining convictions for rebellion or rebellious conspiracy. But as far as the equitable administration of justice was concerned, such a situation was highly objectionable, and both Huskisson and Goderich acted correctly in indicating the defects of the laws.

Possibly the greatest defect was the refusal until a very late period, to permit slaves to give evidence against white persons in the criminal courts. The injustice of this rule, which the white legislators had established to protect themselves, is blatantly obvious. In Stephen's phrase the Jamaican law "stopped the Mouths of the Chief Witnesses."[393] Various attempts were made to permit slaves to give evidence. When the suggestion was made in 1815, the Assembly declared that in the present condition of the slaves, to give them the unqualified right of delivering testimony affecting the persons and property of their owners in the courts, would be "wild" and would have "consequences as fatal as a general manumission".[394] In 1824 Bathurst had recommended that evidence of slaves should be admissible in the courts against white persons, and in the same year a bill to that effect was introduced in the Assembly. The Governor related however that the "Clamour out of Doors was so great and violent" that on the second reading it was rejected by a majority of thirty-six to one.[395] In the following year, the Assembly appointed a committee to report on whether slaves should be able to give evidence.[396] A very restricted bill allowing slave evidence was subsequently introduced, but not even that would the

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393. CO 137/172: Stephen to Twiss, 27 August 1830.
394. JAJ Vol. 12, p. 791.
395. CO 137/157: Manchester to Bathurst, 24 December 1824. Possibly the vote was 34 to 1. See JAJ Vol. 12, p. 306.
396. See JAJ Vol. 14, pp. 455-465, for an interesting set of views as to whether slaves should be allowed to give evidence.

Assembly countenance. The bill was objected to by the white inhabitants and petitions against it were submitted to the Assembly. One petition stated that if slaves were allowed to give evidence against those in authority over them, there would be an end to all authority and that an oath in a court of justice would be of no avail against a compact entered into by the slaves "over the graves of their shipmates and relations and solemnized with grave-dirt and blood."[397] In the end, as we are again informed by the Governor, the "Clamour out of Doors was so great, and the Resolutions entered into at Parochial Meetings so strongly expressed the Publick feeling" that many members who were favourable to the measure, yielded to the opinions of their constituents and voted against the Bill.[398] The Bill was lost on a 24/13 vote.

In 1826 the Assembly succeeded in including provisions relative to the admissibility of slave evidence in the Slave Code. These provisions however were hedged around with various restrictions:[399] Slave evidence could only be received when certain stated offences like murder, burglary, rape and mutilation, were being tried; before the evidence of the slave was received, his certificate of baptism had to be produced; two slaves at least had to give supporting evidence before any white or free person could be convicted on such evidence; no white person was to be convicted on evidence of slaves unless the complaint was laid within twelve months. Huskisson, though welcoming the advance made towards a better system of administration of justice, pointed out that there was no necessary connection between the baptism of a witness and his credibility.[400]

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397. JAJ Vol. 14, p. 472. The petition of the inhabitants of St. John.
398. CO 137/160: Manchester to Bathurst, 22 December 1825.
399. 7 Geo. 4, c. 23. Sec. 128 - The 1826 Slave Code.
400. Huskisson to Keane, 22 September 1827, printed in VAJ 1831-32, p. 17. This provision is somewhat ironic for the white inhabitants never even paid lip service to Christianity in particular or religion in general. See R.C. Dallas, The History of the Maroons, Vol. 1, p. 118; Lady Nugent's Journal (ed. F. Cundall), pp. 118, 120; Lewis op.cit., pp. 343-344.

He also suggested that in some cases, for example rape, the restriction requiring two slaves to testify to the same facts, would greatly diminish the value of the general rule. The Assembly eventually withdrew the stipulation that a slave had to produce his certificate of baptism, but up to the end of slavery the other restrictions remained.[401]

Conclusion

This Chapter exemplifies in a very vivid manner the close relationship between the content of criminal law in Jamaica, and its administration. The judiciary, the jury, the administrators of justice are all indispensable cogs in the machinery. Their importance cannot be overemphasized, for maladministration of the law by them affect the content of the criminal law.

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401. 1 Wm. 4, c. 25, Sec. 130 - The 1831 Slave Code.

CHAPTER 4

Slave Laws of the 17th and 18th Centuries

The object of this Chapter is to trace the development of the slave laws up to the end of the 18th century. When civil government began in Jamaica in 1661, no special slave laws were enacted. At that time the English had few slaves in the Island, and it appears that these slaves came under the jurisdiction of the general law of the land. In 1663, it was enacted that slaves could be tried and punished by two justices of the peace.[1] When the Assembly came into existence in 1664, a short act for the punishing of negro slaves was passed. Later that year, a more detailed act was passed, and similar acts were subsequently passed in 1672 and 1674. These later slave statutes were declared necessary because the slaves were a "heathenish, Brutish .... and dangerous Kinde of People" and in the laws of England, there was no "Track to guide us where to walke nor any Exact Rule Sett us How to govern such Slaves as wee have."[2] Like the other statutes, none of these acts passed in the pre-1680 period was confirmed.

During Sir Henry Morgan's governorship, an act governing slaves was passed and sent to England for confirmation. After examining the statute, the Council for Trade informed the Governor that it would not be confirmed

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1. CO 140/1/85-86.
2. Preamble of the 1674 Act in CO 139/1/109. See also the 1664 Act in CO 139/1/55.

because it only provided a fine for the killing of a slave.[3] In 1688 another act governing slaves was enacted, but as it was passed by the Assembly elected in the infamous election of that year, it was not laid before the King for confirmation.[4] Subsequently, abortive attempts were made to enact a law governing slaves and Governor Beeston had to remind the Assembly that the act governing the negroes "greatly wants to be settled".[5] In 1696 an act governing slaves, 8 Wm. 3, c.2 was passed and subsequently confirmed. This Slave Code, as it was called, was for almost a hundred years the basic legislation governing the slaves and its provisions will be examined in greater detail than the earlier legislation.

In 1781, a Consolidated Slave Act[6] was passed because as its preamble stated many sections of the previous Acts had been repealed, and the slave laws had "become very much confused", and in parts "contradictory and uncertain". This Consolidated Act was in force for three years.[7] In 1787, another Consolidated Act was passed, but in the following year it was repealed and replaced by another, which was also of limited duration.

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3. C.S.P. 1681-85, No. 948.
4. See JAJ Vol. 1, p. 130. This Act was expressly repealed by the Slave Code of 1696. See 8 Wm.3, c.2, Sec. 49.
5. JAJ Vol. 1, p. 152. See also JAJ Vol. 1, p. 158.
6. 22 Geo.3, c.17. It is somewhat difficult to understand Patterson's statement that "In 1800 the first of what the Jamaican Assembly called 'The Consolidated Slave Laws' was passed." Patterson op.cit. p. 78. In the first place, the records do not reveal any Consolidated Slave Law as being passed in 1800. Secondly, the first of what the Jamaican Assembly called the Consolidated Slave Laws was passed in 1781. See JAJ Vol. 8, p. 427.
7. Patterson incorrectly states that the "act did not receive the Royal Assent and lapsed after three years." Patterson op. cit. p. 77. Section 58 of the Act expressly stated that the Act was to be in force from 1 January 1782 to 1 January 1785.

Subsequent Consolidated Acts were passed in 1792 and 1801. Three of these Consolidated Acts will be examined - 1781, 1788 and 1801[8] - as illustrative of the various changes made in the slave laws between 1781 and the beginning of the 19th century.[9]

The slave legislation will be classified under four heads: laws to prevent rebellion and other violent protests; laws to protect the slave owners' property; laws to protect the slave owners' commercial interest; laws to protect the slaves.

A. Laws to prevent rebellions and other violent protests.

These laws will be divided into two periods: (a) 1655-1740, (b) 1741-1801.

(a) 1655-1740

When the English captured Jamaica from the Spanish the majority of the slaves who belonged to the Spaniards fled to the woods. The few who were caught had to be kept with shackles to prevent them running away. From their mountain fastnesses these ex-Spanish slaves who ran away and who later came to be known as the Maroons, proceeded to harass the English. Sedgwicke in 1656 predicted that the Spanish negroes would become "thorns and pricks in our sides".[10] The houses of the English were burnt and English soldiers killed. In 1656, it was said that not a week passed without one or two soldiers being killed by the

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8. 22 Geo.3, c.17; 29 Geo.3, c.2; 41 Geo.3, c.26. These statutes are hereafter referred to as the 1781 Act, the 1788 Act and the 1801 Act.
9. For purposes of this Chapter, the 18th century extends to 1801.
10. Thurloe State Papers, Vol. 4, p. 605.

Maroons and in 1660 after an encounter with them, it was "God's mercy a man of our regiment was left alive".[11] In 1662, some of the Maroons submitted. They were declared free and given land.[12] But the others remained out and continued to resist the English. One group, the Carmahaly negroes, did great damage in 1665.[13]

By this time the English were importing slaves into the Island in large numbers. But the slaves did not willingly accept their unrequested transportation to Jamaica, and the regime of forced labour involved. From the beginning, they protested clearly and loudly. In 1661, the Council found it necessary to enact legislation against the wanderings of servants and slaves.[14] Legislation aimed at the slaves was passed two years later because of murder and "other Enormities" committed by them and to prevent "Mutinies and Insurrections".[15] An Act of November 1664 referred to crime such as murder, burglary, robbery and burning of houses and canes often committed by the slaves.[16] This Act also referred to the mutinies which had previously been attempted by the slaves. At the same time the slaves were running away from the plantations. In 1670 John Style told the Secretary of State that from the number of slaves brought to prison, it appeared that many had run away from their masters.[17] Many of these slaves who had run away most likely joined the Maroons who had remained in the hills.

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11. C.S.P. 1675-76, No. 335.
12. See an Order for Juan du Bola and the rest of the negroes of his Palenque to be in the same state and freedom as the English: CO 139/1/27.
13. See CO 140/1/135.
14. C.S.P. 1661-68, No. 182.
15. CO 140/1/85-6.
16. CO 139/1/57.
17. C.S.P. 1669-74, No. 180.

In the 1670's the slaves began a more violent form of protest. We are told that in 1673, three hundred slaves in St. Ann murdered several white persons and fled to various parts of the Island.[18] This violent resistance continued in the 1680's and 1690's. In 1685 about one hundred and fifty slaves rebelled at Guanaboa and killed some white persons.[19] In the following year more slaves rebelled and the Lt. Governor called the Council and Assembly into session to make provision against "the barbarous treachery" of their slaves.[20] In 1687, some negroes were whipped and others transported for alleged conspiracy to revolt.[21] A few months later, there was a report of a rebellion of slaves at Withywood but it turned out to be only a quarrel between slaves on neighbouring plantations.[22] In July 1690, about four hundred slaves on Sutton's estate rebelled, seized some of the arms and killed some white persons.[23] At Christmas special precautions were taken to prevent any further disturbance by the slaves.

At the same time, the Maroons continued to harass the English settlers by attacking the plantations and killing the settlers. The settlers were therefore faced with a dual threat - from the Maroons and from the slaves - and on occasions the records are not clear whether it is the Maroons or the slaves

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18. See Patterson, op. cit. p. 267.
19. CO 138/5/87: Molesworth to Blathwayt, 29 August 1685.
20. JAJ Vol. 1, p. 82.
21. CO 138/6/79: Albermarle to CTP, 19 December 1687.
22. CO 138/6/92: Albermarle to CTP, 6 March 1688. This episode excellently illustrates the extreme caution with which alleged conspiracies by the slaves in the 17th, 18th and 19th centuries must be treated.
23. CO 138/7/2: Inchiquin to CTP, 31 August 1690.

who are being referred to.[24] In 1676, the Governor told the Jamaica Council that the rebellious negroes[25] in St. Mary had not yet been subdued. The number of rebellious negroes continued to grow and in 1685, it was said that they had grown more formidable than ever.[26] Almost a decade later, they were not subdued and the Jamaica Council were still arranging to send out parties against them.[27]

It was in this situation of violence and protest from both the Maroons and from the recently imported slaves, that the 1696 Slave Code[28] came into existence. The society had had a thirty year experience of slavery and the reasons for the Code were succinctly stated in its preamble:

> "Whereas it is found by Experience, that the often Insurrections and Rebellions of the Slaves within this Island have proved the Ruin and Destruction of several Families: To the End therefore that they may be punished according to their Demerit, and their bloody and inhuman Practices ..."

This Code, which the Governor described as being of "great moment to the Safety of the country"[29], contained several provisions aimed at preventing rebellions. Some of these provisions had been included in earlier slave legislation.

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24. In this early period a firm distinction between slave revolts and Maroon attacks is unnecessary. Both were equally to be feared by the planters: slaves who rebelled successfully would probably combine with the Maroons and pose a greater danger to the Island.
25. When, in this period up to 1740, the terms 'rebellious negroes' and 'rebels' are used, they refer to the Maroons. After 1740, those terms refer to the slaves.
26. C.S.P. 1685-88, No. 560.
27. C.S.P. 1693-96, No. 1603.
28. 8 Wm. 3, c.2. Hereafter referred to as the 1696 Code or the 1696 Slave Code.
29. C.S.P. 1696-97, No. 48.

The killing of white persons was understandably one of the main provisions of the Code. Death was the penalty for any slave who "shall compass or imagine" the death of any white person.[30] But death was also the penalty for offences less than killing - for offering "any violence by striking or otherwise" to any white person.[31] Poisoning was regarded as an equally serious offence, and the Code contained a very wide retrospective provision relating to slaves giving or attempting to give poison even before the Code came into force.[32] The punishment was death.

To prevent slaves meeting in great numbers on Sundays and holidays when they have taken liberty "to continue and bring to pass many of their bloody and inhuman Transactions", section 34 provided that no master or overseer was to allow any slaves not belonging to his plantation, to rendezvous, feast or beat drums on his plantation. He was to endeavour to disperse any assembly of strange slaves and if he was unable to, he was to notify the Commission Officer, who was to raise men for that purpose. Assemblies of strange slaves do not appear to have been regarded as very serious offences because if the master, or overseer neglected his duty, he was only to be fined forty shillings.

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30. Sec. 24.
31. Sec. 2. Almost any act could apparently be included in "otherwise".
32. Sec. 32.

The slaves were to be prevented from getting weapons. Section 13 provided that every master or overseer was to cause the slave houses to be searched every fourteen days for clubs, wooden swords or "other mischievous Weapons". Every such weapon found was to be taken away and burnt.

One of the main sections of the Code related to unauthorized travel. Section 1 enacted that no person in charge of slaves was to give them permission to leave the plantation without being accompanied by a white servant or without possessing a ticket containing the name and number of the slave, his place of departure and his destination. If persons who were in charge of slaves allowed any strange slave to enter their plantations without apprehending and punishing him, they were to be fined forty shillings.[33] Also no owner was to give any slave permission to hire out himself[34] nor was he to make a contract with the slave to employ himself as he thought fit.[35] Owners of boats and canoes lying in Port Royal harbour were not to carry any slaves without tickets from their owners.[36] It was lawful to kill a slave found at night out of his plantation.[37] By running away, slaves could augment the bands of rebels which were already causing considerable damage. It was therefore provided that slaves who had been in the Island for three years and who ran away and remained

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33. Sec. 1.
34. Sec. 35.
35. Ibid.
36. Sec. 38.
37. Sec. 30.

away for twelve months were to be deemed rebellious and transported if caught.[38] Slaves who hid runaway slaves were to be severely whipped. The Code contained detailed provisions as to how runaways were to be treated.[39]

The Code made an attempt to ensure that slaves who committed serious offences were brought to trial. This was done by providing a £100 fine for persons who concealed any slave who was suspected of committing any capital offence.[40]

Slaves were only transported for what the legislators regarded as serious offences,[41] and these included violent protests by slaves. The Code contained provisions that if a slave was ordered to be transported, his owner was to ensure that he was in fact transported.[42] Transported slaves who returned to the Island were to be executed,[43] as could slaves who were ordered to be transported and not sent by their owners.[44]

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38. Sec. 19. Section 21 provided that if a plantation had been deserted for six months or more it was to be destroyed "lest it become a Receptacle for Fugitives." Under the Code Noir of 1685 which was in force in the French colonies, if a slave ran away for a month he was to have his ears cut off and be branded on one shoulder; if he ran away for another month he was to have his tongue slit; and if he ran away a third time he was to be sentenced to death. See F.R. Augier and Shirley C. Gordon, Sources of West Indian History, p. 168.
39. Secs. 7-11.
40. Sec. 40.
41. Some years before this Code was passed the Jamaica Council ordered a "negro woman named Daphne", who had been convicted for robbery at Port Royal to be transported. See CO 140/4/283.
42. Secs. 19-20.
43. Sec. 20.
44. Ibid.

Besides these methods contained in the Code, the legislators also attempted to prevent rebellion by other means. One of these was to prohibit the importation into the Island of slaves who had been involved in rebellion elsewhere, particularly Barbados.[45] Another was to suppress the Sunday markets of the slaves;[46] a third was to order that the slave laws be strictly enforced;[47] and a fourth was to offer rewards for captured rebels.[48]

The 1696 Slave Code however did not deter the slaves from rebelling against the iniquitous conditions under which they were forced to exist; nor were the Maroons in the hills any less active. In 1702 Beckford wrote that the negroes had "mightily increased" their numbers in the last twelve months[49] and that one party of them had burnt several out-settlements and killed some white people.[50] Two years later Governor Handasyd wrote of a small insurrection by about thirty slaves. He added that he was more apprehensive of "some bloody Design from them" than from any other enemy, as on some estates there were only two white men to two or three hundred slaves.[51] A few years later in 1711, some slaves at Bath caused a disturbance and some in Westmoreland rebelled.[52] The Governor then told the Assembly that the "greatest circumspection" was necessary to prevent "further Insolencies and barbarites" by the slaves.[53] The

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45. See C.S.P. 1675-76, No. 661; CO 140/5/230.
46. C.S.P. 1681-85, No. 182.
47. C.S.P. 1675-76, No. 741.
48. C.S.P. 1693-96, No. 114.
49. CO 138/10/388: Beckford to CTP, 25 August 1702.
50. CO 138/10/400: Beckford to CTP, 22 September 1702.
51. CO 138/11/330-331: Handasyd to CTP, 28 July 1704.
52. See JAJ Vol. 2, pp.31,60. Those at Bath were sold and deported from the Island. Ibid., p.33.
53. CO 140/11/117.

'insolence' of the slaves continued in the following year. They murdered some white persons and Governor Hamilton feared that the Island may be "lyable to some very unlucky Disaster by an Insurrection."[54]

Faced with this increasing threat of insurrection, the Assembly in 1714, appointed a committee to consider whether it was necessary to alter any of the methods or powers contained in the several acts to suppress rebellious negroes. In the same session a bill for the more effectual punishing of crimes committed by slaves was passed by the Assembly, but it does not appear to have completed all the legislative stages.[55] Three years later, in 1717, an Act for the more effectual punishing of crimes committed by slaves was passed.[56]

This Act legislated against two offences frequently committed by slaves - running away and assembling together. The penalty provided in the 1696 Code for running away, was increased and if a slave who had been in the Island for a year ran away and remained absent for thirty days, he could have one of his feet cut off, if he were caught.[57] In attempting to punish gatherings of slaves, the Assembly punished slaves who played with dice or cards,[58] and retailers of rum were not to allow slaves to game or drink on their premises.[59] More important was the provision prohibiting the assembly of strange slaves on the plantations - an offence which had also been provided for in the 1696 Code. No master or overseer was to permit more than five strange slaves to assemble on his plantation; nor was he to allow the beating of any drums or boards of "other

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54. CO 138/13/478: Hamilton to CTP, 10 October 1712. See also CO 138/13/445: Hamilton to CTP, 19 January 1712.
55. See JAJ Vol. 2, pp. 122,123.
56. 4 Geo. 1, c.4.
57. Sec. 5.
58. Sec. 6. The offending slaves were to be whipped.
59. Sec. 7.

such like instruments of noise" on the plantations. The reason for the latter provision was that by beating drums or blowing horns slaves could signal each other "at a considerable Distance" concerning "their evil and wicked Intentions."[60] Owners who offended against this section were to be fined £10, and overseers £5. In an effort also to stop unauthorized travel by slaves every free mulatto or negro who did not have a settlement with at least ten slaves, was to possess a certificate of his freedom and wear a badge on his right shoulder. If he was not in possession of the certificate or the badge, any free person could imprison him as a slave passing without a ticket.[61]

In 1719[62] legislation was again enacted to deal with owners permitting slaves to hire out themselves wherever they thought fit.[63] It was said by the Governor that by allowing slaves to ramble throughout the Island they got an opportunity of "carrying on a dangerous Correspondence between the Slaves otherways distant"[64]. Whereas in the 1696 Code, the penalty for owners allowing their slaves to hire out themselves was forty shillings, in this Act the penalty was increased to £50.[65]

These efforts by the legislature were not however producing the desired result. Late in 1719, Lawes was writing about the rebellious negroes who had recently committed "several outrages" and who had appeared in great numbers in the vicinity of the remote settlements.[66] In 1720 he related the episode of a body of rebels attacking a plantation, freeing

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60. Sec. 8.
61. Sec. 14.
62. 6 Geo. 1, c.2.
63. See the 1696 Code, Sec. 35.
64. CO 137/13/247: Lawes to CTP, 31 March 1720.
65. 6 Geo. 1, C.2, Sec. 6.
66. CO 137/13/190: Lawes to CTP, 6 December 1719. He was apparently referring to the Maroons.

about thirty slaves and taking away a quantity of arms.[67] Two years later he beseeched the Assembly to find some way of reducing the rebels.[68]

In the meantime, several methods were being employed to suppress the rebels and to prevent them increasing their manpower and ammunition. Parties continued to be sent out after them. In 1720, Indians from the Mosquito Coast were imported to hunt them.[69] In 1722, the Assembly resolved that if the slave laws prohibiting travel without tickets were strictly enforced, that might prevent the rebellious negroes being supplied with arms and ammunition.[70] They then sent an Address to the Governor requesting that the magistrates be directed to enforce the slave laws. Three years later, with the rebels still causing damage, it was decided to issue a Proclamation pardoning the rebels and runaway slaves if they surrendered. But as the Proclamation made clear, should the rebels persist, "they must expect such Exemplary punishments as will deter others from the like Attempts for the future".[71]

All these methods failed to induce the rebels to surrender or to prevent runaway slaves from joining them. In 1725 Portland complained that much of his time was taken up in sending out parties against the rebels[72] and three years later Hunter exhorted the Assembly to find some effective method for reducing the "wretched crew".[73]

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67. Ibid. 242: Lawes to CTP, 31 March 1720.
68. CO 137/14/158.
69. See CO 137/13/253; CO 140/16: 5 October 1720.
70. JAJ Vol. 2, p. 412.
71. CO 140/19: March 1725.
72. CO 137/16/215: Portland to CTP, 2 August 1725.
73. JAJ Vol. 2, p. 638.

From the beginning of the 1730's, the Maroons increased theiractivity. The Government responded by sending out parties against them; but party after party was thrown into confusion and put to flight. On one occasion a party of ninety-five was surrounded and routed, with fifteen killed or captured and many wounded.[74] As the rebels continued their successes, fear gripped the Island and the Governor and Council sought the King's help. They were convinced of the weak and defenceless condition of the Island by the defeat of the various parties, and they were under "the greatest Apprehension of a General Insurrection, which may be the Entire ruin of this Colony".[75] Troops were then quickly despatched from Gibraltar to Jamaica.

But these troops did not contribute very much to the fight against the rebels, especially as they were unaccustomed to the terrain over which they had to fight. They were soon recalled. At the same time it was suggested that peace should be made with the rebels. The Jamaica Council however scoffed at this suggestion and continued to send parties after them. The rebels, however, were decidedly having the better of the fight. Throughout 1732 and 1733, with superior organization and better discipline they continued to gain victory after victory. The commander of one party informed Hunter how the party had been driven from a stronghold of the rebels with heavy losses and "not the ear of a Rebel brought in".[76] Inspired by

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74. CO 137/18/78: Hunter to CTP, 4 July 1730. See also CO 137/18/70: Hunter to CTP, 12 March 1730.
75. CO 140/21. 21 November 1730.
76. CO 137/54/292: Ashworth to Hunter, 27 June 1733.

success, the rebels grew more daring and attacked a large plantation within sight of Titchfield; elsewhere in the Island they were also making their presence felt.[77]

Faced with a desperate situation, the Jamaica Council in 1733 pleaded for help as they were in "daily Apprehensions of a General Defection" of the slaves.[78] Other reports were equally depressing. "Unhappy Jamaica is in a tottering state", wrote one correspondent.[79] We "are in terrible Circumstances respecting the rebels" wrote another. They got the "better of all our partys, our men are quite despirited and dare not look them in the face" or in the open ground or in equal numbers. It was "God's mercy they are not joyn'd by our Own Slaves; if that should happen this Country must be Cutt off".[80]

1734 was no more heartening for the government and white inhabitants of the Island. The rebels continued to out-manouvre the parties and defeat them. Terror-stricken, the Governor, Council and Assembly, despatched a "melancholy address"[81] to the King requesting help. According to the Address "this may possibly be the last opportunity we may have of applying for help".[82] British troops were again sent to the Island but again they were not of much help as they were not able to pursue the rebels into the woods. The Assembly now realizing the impossibility of defeating the rebels, sent out peace feelers. At first the rebels spurned them, declaring

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77. C.S.P. 1733, No. 311. See also JAJ Vol. 3, pp. 267, 273; C.S.P. 1732, No. 250.
78. CO 137/20/171: The Council to CTP, 17 August 1733.
79. See C.S.P. 1733, No. 331(ii).
80. CO 137/21/11: Undated Letter from Jamaica.
81. JAJ Vol. 3, p.292.
82. Ibid., p. 226.

that they could not trust the white inhabitants[83], but eventually in 1739 peace was concluded with one set of rebels under Cudjoe.[84] A few months later, peace was concluded with another group under Quao.[85] The right of the Maroons to their freedom was at last finally acknowledged. This brought to an end a long struggle which had cost the Island dearly in men, money and trade.[86] It had also affected the content of the criminal law in the 1730's. Before examining the effect which their fierce struggle had on the criminal law, the reasons for the Maroons' success should be adverted to.

The Maroons were agile, and they chose where and when they would fight. In addition, they were intimately familiar with the terrain and they brilliantly adapted themselves to the topographical conditions. Governor Trelawny gives an insight into the conditions under which these battles were fought. He stated that the service in Jamaica was not like in Flanders, because the "great difficulty is not to beat but to see the enemy"; his men were forced to march up through currents of rivers and over steep mountains and precipices and through thick woods where they were obliged to cut their way almost every step; "in short, nothing can be done in strict conformity to usual military preparations, and according to a regular manner; Bush-fighting as they call it, being a thing peculiar by itself".[87] Perhaps the greatest single factor which

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83. See CO 137/22/54: Gregory to CTP, 10 April 1736.
84. See 12 Geo. 2, c.5. See also R. v. Rowe, 7 J.L.R.45.
85. See 13 Geo. 2, c.8.
86. At this period there were slave insurrections or plots in Barbados, New York, North Carolina, Virginia. See C.S.P. 1675-76, No. 661; C.S.P. 1711-12, No. 454; C.S.P. 1720-21, No. 125; C.S.P. 1728-29, No. 690, 696.
87. CO 137/56/158: Trelawny to Newcastle, 4 December 1738.

enabled the rebels to wage successful guerilla warfare was their possession of gunpowder and their adroit use of arms. How they were continuously able to receive ample supplies of gunpowder, indeed how they were able to wage such a protracted struggle, were questions which baffled the legislature. In their frantic search for an answer, the Assembly turned to penal legislation.

One way in which the legislature hoped to reduce the rebels was by a strict enforcement of the slave laws. In 1731, the Council advised the Governor to issue a proclamation prohibiting the masters of all vessels trading around the Island, from selling any gunpowder contrary to the Gunpowder Act. Shortly after, they advised the Governor to issue instructions that the laws against slaves travelling without tickets be enforced.[88] In January 1732, a committee of the Assembly reported that if the laws then in force prohibiting the selling of arms and ammunition to slaves and prohibiting their travelling without tickets were enforced, it would "not only prevent the increase of the numbers of rebel negroes, but likewise tend to the easier and more speedy discovery and reduction of those already subsisting".[89] Another committee of the House, reported to the same effect in the following November. In 1733 the Assembly sent a message to the Governor, that it had been the recent practice of slaves to assemble in great numbers in the night, to drum in the towns and to fire off squibs; he was to issue a proclamation requiring the civil and military officers

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88. CO 140/21: 14 December 1731.
89. JAJ Vol. 3, p. 51.

"to put in strict execution the several laws for regulating and punishing slaves, and for prevention of their using gunpowder in manner aforesaid".[90] He should also order a strict search to be made for all arms and ammunition among the slaves. In 1734, the Assembly again sent a similar message to the commander-in-chief, Ayscough.

The struggles had shown how the rebels had, by using horses and mules, been able to cover long distances in a short time, thus quickly making contact with their fellow-fighters in different parts of the Island and co-ordinating their operations.[91] With this in mind, a bill was introduced in the Assembly in 1736 to prevent negroes, or mulattoes from purchasing or becoming owners of horses, mares, mules and cattle. This bill did not complete all the legislative stages. As we shall see, however, arising out of a rebellious conspiracy forty years later, a similarly titled bill was successfully passed by the Assembly.

At the centre of the rebels' success lay the fact that they were able to obtain large quantities of arms and ammunition. It was known that they got a certain amount of arms from the parties which they defeated and from the houses of the settlers which they over-ran. It was for a while alleged that the Spaniards from Cuba were supplying them with arms but the evidence to support this allegation was not very strong, and seems to have been quickly discounted. From the rebels'

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90. Ibid., p. 203.
91. The leader of the Windward Maroons had arrived in Cudjoe's area shortly before peace was concluded with Cudjoe in 1739.

scale of operations, their supply of ammunition was much greater than that which they were able to obtain from these sources and in 1730 the legislature attempted to staunch the flow of arms and ammunition by enacting legislation to prevent the selling of gunpowder to rebellious or other negroes.[92]

Hunter, the Governor thought this Gunpowder Act a "necessary and good law", but was not optimistic about the results to be gained from it; the rebels were so numerous and so well provided with arms that "I am persuaded they must have some Intelligence and Encouragement from some either without or within this Island".[93] Under this Act, no person was to be entrusted with the sale of gunpowder of less than 50 lbs. without having first obtained a licence from the Governor. Before each vendor obtained a licence he was compelled to swear that he would not "vend, sell, or dispose of" any gunpowder to any white person unless that person had a certificate from a justice of the peace. Free mulattoes also could only be sold gunpowder on the production of a certificate. As far as slaves were concerned, he was not to sell or deliver any powder to them "upon any pretence whatsoever". Each licensee had to deposit a security of £500 for the performance of his trust according to his oath. If unlicensed persons sold gunpowder in less than 50 lb. quantities, they were to be fined £500 and sentenced to six months' imprisonment.

In June 1731, a joint committee of the Council and Assembly reported their opinion that the rebellious negroes were in communication with most of the negro hunters in the

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92. 3 Geo. 2, c.13.
93. CO 137/19/38: Hunter to CTP, 24 December 1730.

Island, and that they were usually supplied with ammunition and other necessaries by them. To prevent this they recommended that no slave hunter was to be allowed to hunt in any mountain, or more than a certain distance from his master's house, without being accompanied by at least one white male.[94] This recommendation does not appear to have been given legislative effect. In November 1732, the Assembly resolved that the justices of each parish were to be entrusted with the distribution of gunpowder and were to have the power of allotting particular quantities to each person; that each person who received gunpowder was to be obliged on oath to give an account of it; and that no mulatto or negro was to be allowed into the woods with any arms or powder without being accompanied by a white male.[95] These resolutions do not seem to have been enacted into law.

In the following year, 1733, evidence came to light that the rebellious negroes were being supplied with gunpowder by merchants in Kingston. In March, the Assembly received information that a white man and a negro had been apprehended while rolling a barrel of gunpowder in Kingston at midnight.[96] There was also the alleged confession of a negro slave that the rebels had obtained powder from a "Jew Jacob" in Church Street.[97] A committee appointed to investigate the obtaining of powder by the rebels recommended that the selling or disposing of powder to any negro should be made a felony without

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94. JAJ Vol. 3, p. 30.
95. Ibid., p. 101.
96. Ibid., p. 123.
97. CO 137/20/179. The Jews in Jamaica had previously been accused of supplying arms to the rebels. See Journal of the Commissioners for Trade and Plantation 1729-34, p. 206.

benefit of clergy.[98] An amending bill was subsequently introduced but it was rejected without any reason being given in the Journals.[99]

In the same year, another attempt was made to reduce the risk of the rebels obtaining gunpowder. This was done by legislating against the making, throwing or firing of squibs or rockets.[100] A 1709 Act had provided a penalty of forty shillings for free persons and whipping for slaves throwing any squib or rocket in Kingston.[101] This 1733 Act did not refer to the 1709 Act but it provided that any white person throwing squibs was to forfeit £10 or be whipped. Any offending negro or mulatto was to be whipped. Persons directing or encouraging any negro or mulatto to throw squibs were to be liable to the same punishment as white persons who threw or fired squibs. Unlike most of the other penal statutes of this period, this Act did not make a distinction between the free negroes and mulattoes and the slaves. This may have been because it was rumoured that the free negroes and mulattoes supplied powder to the rebels. This Act remained in force until 1837.

Despite this legislation and the other efforts aimed at preventing the rebels getting hold of gunpowder, the rebels were nevertheless amply supplied with gunpowder. When peace was concluded in 1739, Trelawny suggested that the Assembly examine the effectiveness of the Gunpowder Act. A committee

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98. JAJ Vol. 3, p. 199.
99. Ibid., p. 206.
100. 6 Geo. 2, c. 13.
101. 8 Anne, c. 8.

of the Assembly on examining the Act, reported that although sufficient precautions were taken to prevent the sale of powder by retail, insufficient care was taken when it was being sold wholesale and "everybody is at full liberty both to buy and sell any quantity not under fifty pounds".[102] The committee also found that the rebels had obtained a great part of their supplies by attacking the small settlements which provided themselves with excessive quantities of gunpowder. The committee further submitted to the House whether the importation of gunpowder should not be restricted to a commissioner appointed for that purpose; he would distribute it to each parish as was necessary.[103] The House agreed to the report and a bill was introduced in accordance with it. The bill was given a second reading but the House was prorogued shortly after.

(b) 1741 - 1801

Under the pacification agreements of 1739 and 1740,[104] the Maroons secured freedom for themselves and agreed to help in crushing slave revolts and in apprehending runaway slaves. The Maroons may have acted as inhibitors to slave insurrections for, although there was a disturbance on one of the plantations in 1742,[105] for the next twenty years the Island remained relatively quiet. However, all along, the slave population had been growing rapidly[106] and the white settlers lived in constant fear of a general insurrection of their slaves. As

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102. JAJ Vol. 3, p. 464.
103. Ibid.
104. See 12 Geo. 2, c.5, 13 Geo. 2, c.8.
105. JAJ Vol. 3, pp. 590, 594.
106. By 1739, the white population was estimated at 10,080, and the slave population at 99,239. Roberts op. cit. pp. 33, 35.

the Governor told the Council for Trade, there was "scarce a Man of any reflection in the Island but is of opinion there is cause to be continually apprehensive of danger from the Insurrections and Rebellions of their Negroes"[107]. In attempts to stave off this general insurrection which haunted them, the Assembly took various precautionary measures.

One precautionary measure was to amend the gunpowder laws. In 1744, a conspiracy which "might have been of very fatal consequence"[108] was alleged to have been discovered among the slaves. This alleged conspiracy appears to have had some effect on the gunpowder legislation. For five years the Assembly had done nothing to remedy the defects which one of their committees had exposed in the Gunpowder Act. Then the Assembly met on the 18th December 1744 - the first time since the alleged conspiracy was discovered. Two days later they appointed a committee to prepare a bill regulating the sale of gunpowder. This bill was introduced in the Assembly on the 21st, rushed through the Assembly, passed by the Council and assented to by the Governor - all in the same day[109]. The legislators were determined that the gunpowder laws should be amended before the Christmas recess, and 17 Geo. 2, c.17 resulted.

This 1744 Gunpowder Act was enacted because by the sale of gunpowder without restriction, "it often falls into the Hands of Negroes and other Slaves, which may prove of pernicious consequences to the Inhabitants of this island, if not timely prevented"[110]. This Act made no reference to the

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107. CO 137/24/197: Trelawny to CTP, 10 May 1747.
108. CO 137/57/428: Trelawny to Newcastle, 20 December 1744.
109. See JAJ Vol. 3, pp. 673, 674.
110. 17 Geo. 2, c.17 Preamble.

1730 Gunpowder Act but it seems to have amended it by implication. It broadly followed the 1730 Act but there was more emphasis on the selling of gunpowder and firearms to slaves. This Act, like the 1730 Act, provided that vendors of gunpowder had to obtain a licence before they could sell gunpowder; and make an oath identical with that of the 1730 Act. But instead of a limit of 50 lbs. as the 1730 Act provided, the retail limit was decreased to 12 lbs. In a new provision, this Act stated that any person who sold gunpowder to slaves was to be fined £50 and sentenced to six months' imprisonment. A similar penalty was provided for persons selling guns, pistols and other firearms to slaves.

Unauthorized travel by slaves was also examined. In 1745, Trelawny told the Assembly that the clause of the 1696 Slave Code prohibiting travel without tickets had not been effective, and slaves had been "suffered and accustomed to pass and ramble without tickets, which has given them opportunities of contriving and perpetrating mischiefs".[111] He warned that if the clause were not amended, fatal consequences would ensue. The Assembly appointed a committee to review the slave laws, but by the time the House was prorogued, no amending bill had been presented. Following their usual pattern the Assembly seem to have been waiting on events to spur them into action.

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111. JAJ Vol. 3, p. 675.

The Assembly attempted to prevent unauthorized travel by another method. In 1719, the penalty for slave owners allowing their slaves to hire out themselves had been increased from forty shillings to £50. In 1753 the Assembly found that the previous laws forbidding owners hiring out their slaves were ineffectual, and passed an act for more effectively preventing slave owners hiring out their slaves. This Act, however, decreased the penalty on slave owners to £10.[112]

Another precautionary measure was the proper enforcement of the slave laws. On one occasion Governor Knowles exhorted the Assembly to enforce the laws suppressing the robberies and insolencies of the slaves because the lives and properties of the inhabitants were endangered.[113] Seven days later a committee of the Assembly was appointed to review the slave laws, but it does not appear to have handed in a report. The slave laws, however, do not seem to have been efficiently enforced and everyone "does as he lists with his own Slaves".[114]

Despite these exhortations and precautionary measures, the slaves continued to plot. Eventually in 1760, what white Jamaica had been fearing for half a century or more happened. The dreaded slave rebellion broke out. In April 1760, the slaves in St. Mary rose in revolt. They began by "murdering the White People on the Estates, and after making themselves masters of a great quantity of Arms and Ammunition, they set

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112. 26 Geo. 2, c.6. The penalty may have been decreased in an attempt to obtain more convictions.
113. 4 JAJ p.400, 18 September 1753.
114. CO 137/25/128: Trelawny to CTP, 14 April 1750.

fire to the Plantations, in order to spread the Terror as much as possible".[115] Martial law was declared and with the help of the Maroons and the British troops, this revolt was crushed. At least 16 white inhabitants lost their lives. Most of the rebel slaves were killed and many more apprehended as suspects. But no sooner had the revolt in St. Mary been suppressed, when another broke out in Manchioneal in St. Thomas-in-the-East. This revolt was easily suppressed, with little loss of life. Shortly after an estimated 1,000 slaves rose in Westmoreland. They killed about "twelve White people and committed great ravages there and put all that part of the Country into the utmost confusion."[116] British troops were despatched to the areas, and with the help of the local militia, put an end to the revolt. After this, the Lt. Governor stated that the disorders were totally suppressed and "Peace again returned to the Country".[117]

But peace did not return to the Island. The Island had taken a long time to ignite but it was now brightly aflame. From east to west, north to south, slave revolts had either broken or were alleged to be plotted. During the troubles in Westmoreland, slaves on several estates in neighbouring Hanover and St. James were said to have conspired to rebel. This alleged plot was discovered before it was executed and the alleged conspirators put to death.[118] In Clarendon, St. John's, St. Dorothy's and St. Thomas-in-the-East conspiracies among the slaves were said to have been discovered

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115. CO 137/32: Moore to CTP, 19 April 1760.
116. Ibid. Moore to CTP, 9 June 1760.
117. Ibid.
118. The available evidence does not conclusively prove the existence of a conspiracy but the important thing is that the white inhabitants fully believed in its existence.

and troops were sent to these areas. And despite the number of slaves executed for rebellion in St. Mary earlier on, a second insurrection was there attempted. This was crushed and the leaders put to death. It was not until the end of the year that peace returned to the Island. By then Long estimated that about 60 white persons and not less than 1,000 slaves lost their lives. He estimated the financial loss to the Island at £100,000.[119]

These intense Island-wide revolts were most traumatic experiences for the white population, and could not fail to affect the content of the criminal law. Addressing a shaken and panic stricken Assembly in September, the Lt. Governor told them that the "late calamaties" have fully shown where "our laws are defective and where new regulations will be required to prevent any future attempts of the like nature"[120]. The Assembly then appointed a committee to review the various slave laws. The committee reported that the purposes intended by those laws had been ineffectual; that many of them could not be carried into execution for want of proper penalties, and that it was highly necessary to the safety of the Island to make further regulations to keep the slaves in subjection. Following the committee's recommendations, an Act to remedy the evils arising from irregular assemblies of slaves emerged.[121] This is undoubtedly one of the most important slave Acts of the 18th century.[122]

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119. Long op. cit. p. 462.
120. JAJ Vol. 5, p. 162.
121. 1 Geo. 3, c.22.
122. Patterson does not mention this Act as being one of "lasting significance for the status and treatment of the slaves". Patterson op. cit. p. 75. It is suggested however that this is an important statute, not the least reason being the legal cloak with which it surrounded the social phenomenon of obeah.

This Act made several provisions aimed at preventing rebellions. One method of preventing rebellions was to prohibit the unauthorized movement of slaves. The 1696 Code contained provisions to this effect, but these appear to have been widely disregarded. In this 1760 Act penalties were laid against both the offending slave and his master. Any slave owner or overseer who permitted his slave to leave his plantation without a ticket was to be fined forty shillings, and the offending slave was to be whipped.[123] At every Quarter Sessions the justices were directed to order the constables of every parish to attend the slave markets and apprehend slaves travelling without tickets.[124]

Since some slaves travelled around the country "under pretence of being free", section 12 enacted additional provisions to the 1717 Act dealing with free negroes. The free negroes were to be registered and were to be given a certificate of freedom which was to be renewed annually; they were also to wear badges of freedom. The penalty for failing to do this was £10. Any free negro who neglected to be registered could be committed to gaol for six months.[125]

Another method was to prevent gatherings of slaves. Section 3 provided that although the slaves were to be allowed the usual number of holidays, no two holidays were to follow immediately one after the other; any slave owner or overseer offending against this section was to be fined £100. Overseers were not without permission to leave their plantations

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123. Sec. 1.
124. Sec. 2.
125. Sec. 13.

on holidays or Sundays.

The unauthorized gathering of slaves on plantations was also reviewed. Provision against this had previously been made in the 1696 and 1717 Acts but the penalties were now greatly increased. Under the 1717 Act, if a slave owner allowed slaves to assemble on his plantation and beat drums, he could be fined £10; now the penalty was increased to £100.[126] In the 1717 Act, offending overseers were to be fined £5, now they were to receive a six month sentence.[127]

The subject of firearms was again considered. This subject was considered during the 1730's and again in 1744. This Act now provided that any slave who was found with any gun, lance or "other military offensive weapon", could suffer death.[128] Exceptions were made for slaves in the company of a white person or for slaves who had tickets from their owners.[129] It was not only the slaves who were penalised - their masters were also drawn into the net: any slave owner or overseer who permitted any slave to possess any guns or pistols contrary to the Act, was to be fined £100.[130]

This 1760 Act contained an innovation whose importance lies in the fact that it has formed the basis of an offence which has remained in the criminal law of Jamaica up to the present day.[131] That innovation refers to the practice of obeah. Previous to 1760 there had been references to obeah, especially during the Maroon rebellion in the 1730's.[132] We

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126. Sec. 4.
127. Sec. 5.
128. Sec. 6.
129. See also the section of this Chapter dealing with laws to protect livestock.
130. Sec. 9.
131. See the section on the Obeah Laws in Chapter 9, infra.
132. See C.S.P. 1731, No. 25; C.S.P. 1735-36, No. 73.

are informed how this all-important provision found its way into the statute-book. During the 1760 rebellion,

> "an old Coromantin Negro, the chief Instigator and Oracle of the Insurgents in that Parish (St. Mary), who had administered the Fetish or solemn Oath to the Conspirators, and furnished them with a magical Preparation, which was to render them invulnerable, was fortunately apprehended, convicted and hung up with all his Feathers and Trumperies about him; and this Execution struck the Insurgents with a general Panic, from which they never afterwards recovered. The Examinations which were taken at that Period first opened the Eyes of the Public to the vary dangerous Tendency of the Obiah Practices and gave birth to the Law which was then enacted for their Suppression and Punishment".[133]

Believing fully in the power of the obeah men, and bent on suppressing anything which could be regarded as contributing to rebellion or revolt, the Assembly made due provision for the practice of obeah. Section 10 provided that if any slave pretended to any supernatural power, or was detected making use of any blood, feathers, parrots' beaks, dogs' teeth, grave dirt, rum, egg-shells or any other material relative to the practice of obeah or witchcraft "in order to delude or impose on the Minds of others", he was to be sentenced to death or transportation. The practice of obeah was obviously regarded by the legislators as a very serious offence.

But neither the numerous executions nor the harsh legislation of 1760 deterred the slaves from rebelling. In

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133. Report of the Lords of the Committee of Council for Trade and Plantations, Part III - Jamaica: Answers to Questions 22-26. See P.P. 1789, Vol. xxvi.

1763, a state of uneasiness was reported in Westmoreland because of the "barbarous Murders and Impudent attacks which these fellows (the slaves) have lately made on Settlements".[134] Nothing further happened then in Westmoreland. In November 1765, some slaves on an estate in St. Mary revolted and killed two men. At first this revolt was considered as a "drunken sally of a few negroes", but on investigating further, a committee of the Assembly stated that a plot had been laid as early as July for the slaves to revolt shortly after Christmas. More disturbing to the white inhabitants was the Assembly's statement that slaves on at least seventeen estates were implicated. The committee then recommended that as the insurrection had been planned almost wholly by the Coromantee slaves "whose turbulent, savage, and martial temper is well known", an additional duty should be laid on all Coromantee slaves imported into the Island.[135] This recommendation was not however enacted into law by the legislature.

In October 1766, some slaves in Westmoreland revolted and in an hour killed or wounded nineteen white and black persons. At least six slaves were executed for their part in the revolt.[136] In December 1769, the Governor communicated to the Jamaica Council, intelligence he had received about a proposed insurrection of slaves in Kingston and St. Mary.[137] The Council advised that a circular letter be sent to the

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134. CO 140/42: 5 April 1763.
135. JAJ Vol. 5, p. 592.
136. JAJ Vol. 6, p.26.
137. CO 137/35/235.

Custodes to cause a search to be made for runaway slaves and ammunition, and martial law was declared. No insurrection, however, took place.

By this time the slaves had vastly outnumbered the white population. While in 1658 the number of slaves was 1,400 and the number of whites 4,500, in 1768 the respective numbers were 166,914 and 17,949.[138] The white inhabitants were increasingly fearful of slave insurrections, the Council and Assembly stating that they were in "hourly danger of extirpation by their own negroes".[139] The threat from the slaves was a very real one.

In August 1774, two slaves who held important positions on estates in Westmoreland are alleged to have planned a revolt. Their plans were said to have been overheard by a female slave who informed her overseer. As a result, one of the slaves was executed and the other transported. The informer received her freedom.[140]

In July 1776, another plot among the slaves was discovered.[141] On this occasion, it was mainly the creole slaves in Hanover who were involved. This conspiracy appears to have been one of the most methodically organized for the century, and it "would probably have been perpetrated with every Circumstance of savage Barbarity had it not been providentially discovered before it was ripe for Execution".[142] The chief conspirators were the creole slaves who "never before engaged

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138. Roberts op. cit. pp. 33,35.
139. JAJ Vol. 6, p. 500.
140. Ibid., p. 520.
141. Slaves born in Jamaica.
142. CO 137/71/332: Germaine to Keith, 5 November 1776.

in Rebellions and in whose Fidelity we had always most firmly relied".[143] Between 20 July and 18 September, 135 slaves were tried for their involvement in the conspiracy. Of this number 17 were executed, 45 transported, 11 received severe corporal punishment and 62 were acquitted.[144]

A committee of the Assembly was appointed to investigate the circumstances surrounding this conspiracy. They reported that one of the main causes of rebellion was allowing slaves to keep horses and mares; for had the slaves not had the opportunity of riding twelve or fifteen miles in a night, their plots would be "confined in a narrow circle" and consequently more easily prevented. They observed that some slaves were allowed to keep six or more horses on their master's plantation.[145] They also suggested that if the laws against harbouring runaway slaves were strictly enforced, many of the conspiracies would be prevented, "it being an almost universal practice in many parts of this island for the free negroes and mulattoes to receive and conceal the runaways, from the different estates in the neighbourhood".[146] Following the committee's report, a committee was appointed to prepare a bill to prevent slaves keeping horses. When the House was prorogued two days later, the bill had not yet been presented. Eventually in 1778, the Assembly enacted legislation to prevent slaves keeping horses.[147]

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143. CO 137/71/228-229: Keith to Germaine, 6 August 1776.
144. This conspiracy modified the widely held belief that rebellion was a monopoly of the Coromantee slaves, especially the newly arrived ones.
145. JAJ Vol. 6, p. 693.
146. Ibid.
147. 19 Geo. 3, c.18.

The main aim of the 1778 statute was to prevent slaves keeping horses, and this was done by penalising the owners of estates. Owners who then had on their estates any horses, mules or asses belonging to slaves were to deliver them at an appointed place to be sold. If the owners refused or neglected to do so, they were to be fined £20. They were also to be fined a similar sum in future if they knowingly permitted or suffered any slave to keep horses on their plantations. When making returns of slaves and stock on their plantations, the owners were obliged to swear that to their knowledge, none of the horses belonged to any slave. Provisions were also included in the Act to prevent slaves purchasing horses. If any person sold any horse to any slave or to any person in trust for a slave, he was to be fined £20, as could persons who purchased or were concerned in the purchase of any horse or mare. Horses or mares which had been purchased by slaves were to be forfeited. This statute was in force for only two years, but in 1781, its provisions were included in the Consolidated Slave Act of that year.[148]

Although Jamaica continued to live in constant fear of slave rebellions, great anxiety was not expressed about the slaves until 1791,[149] when the repercussions of the French Revolution were felt in the French colony of St. Domingo. In one section of St. Domingo, the black and coloured slaves rose in rebellion. This act struck a fatal blow at slavery in St. Domingo and that colony was never the same again. Fourteen years later, after much bloodshed and destruction of property,

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148. The Deficiency Acts also provided that plantation owners had to swear that no stock belonged to any slave. See 35 Geo. 2, c.15.

149. A conspiracy was said to have been discovered in 1784 in St. Mary. See JAJ Vol. 8, p.11.

Haitian independence resulted.[150] Events of such profound importance in the Caribbean were bound to have an effect on neighbouring Jamaica.

In St. Domingo the slaves had revolted against their owners and the Jamaican slave-owners, vastly outnumbered by their slaves, took cautious note. The Island watched anxiously as the first refugees from St. Domingo arrived in Kingston, and spoke of more refugees to come. "If that should be the case", said Governor Effingham "my Chief Care will be to prevent their Negroes from coming to mix with Ours, and Orders have been given to prevent their Landing without particular permission".[151] But as time passed, the rebels in St. Domingo were successful and the trickle of refugees which had started in September 1791 grew into a torrent. White Jamaica became increasingly alarmed, and demanded that the French refugees who came with their slaves were to be deported from the Island.

Throughout the 1790's this alarm grew and Jamaica was tense. When in this highly charged atmosphere, the Maroons protested about wrongs done to them, what has been incorrectly described as the Maroon Rebellion, broke out in 1795.[152] At the time of the Maroons' protest, white Jamaica, including the Governor, did not doubt that there was a definite link between the Maroons and the St. Domingo rebels. No such link was ever

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150. See generally C.L.R. James, The Black Jacobins.
151. CO 137/89: Effingham to Dundas, 17 September 1791.
152. See R.C. Dallas, The History of the Maroons.

proved. Early in 1796 peace was concluded with the Maroons, but because of the treachery of the Governor, Balcarres, many of the Maroons were transported from the Island.[153] The Assembly attempted to ensure that the transported Maroons did not return to the Island, by prescribing the death penalty for returning Maroons or persons concealing them.[154]

But after the Maroon affair, the conflict in St. Domingo was still unresolved, and more refugees continued to arrive in Jamaica. Many were deported. In October 1795, Balcarres had reported that he had deported "above one thousand of the greatest Scoundrels in the Universe, most of them French Men of Color and a Multitude of French Negroes".[155] 1797 was just as tense and anxious for Jamaica and Balcarres trembled "at the idea of the smallest Insurrection taking place".[156] In 1798 the British, who had involved themselves in the St. Domingo conflict, were forced to evacuate the parts of that Island over which they had exercised control. At this evacuation multitudes of French refugees arrived in Jamaica with their slaves.[157] The Jamaica Assembly waged a ceaseless campaign to get the French out of the Island, and in 1799 they resolved that the Governor should rid the Island of what was "a nuisance of the most dangerous nature", that is, all such French persons, whether they be white, free coloured or free black who did not have some lawful means of subsisting;[158] and in reference to the

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153. See JAJ Vol. 9, pp. 436-468. Because of the Governor's breach of faith, the officer who negotiated peace with the Maroons refused to accept the honour bestowed on him by the Assembly. See also Dallas op. cit.
154. 36 Geo. 3, c.34.
155. CO 137/96: Balcarres to Portland, 27 October 1795.
156. CO 137/98: Balcarres to Portland, 7 April 1797.
157. CO 137/101: Balcarres to Portland, 3 November 1798.
158. JAJ Vol. 10, p. 352.

French slaves, they regarded the "residence of any such people here to be incompatible with the peace, security and safety of the island".[159] When in 1800, the Governor informed the Assembly that he had deported the French slaves, the Assembly thanked him for the "unexampled assiduity and attention which he has paid to the safety of this valuable colony".[160]

The reasons for the unease in Jamaica over the French are not difficult to discover. In 1791 Lt. Governor Williamson stated the matter very briefly. He felt that it was natural for the people to be alarmed lest "the same spirit of revolt should take place" for there was no doubt that there were thousands of slaves who "would willingly enter into a rebellion, if they thought they could succeed, not from any oppression or ill usage, but merely with a view to becoming free".[161] The Jamaican slaves were said to have composed songs about the rebellion in St. Domingo and it was also said that they were "perfectly acquainted with everything that has been doing at Hispaniola".[162] The fears of white Jamaica could not have been allayed in 1797 after Balcarres produced to the Assembly, a copy of a letter allegedly written by Sonthonax, one of the rebel leaders in St. Domingo, to one of his colleagues. In it, he is said to have advocated the landing of an expeditionary force in

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159. Ibid.
160. Ibid., p. 435.
161. CO 137/89: Williamson to Dundas, 6 November 1791.
162. CO 137/89: Extract of letter from Jamaica, 18 November 1791.

Jamaica and with the help of the Maroons and slaves, the members of the force were to "plant the tree of liberty in Kingston".[163] Added to this was the apprehension in Jamaica of two alleged spies from St. Domingo.[164] In this tense situation created by St. Domingo, the Assembly not unnaturally turned to the criminal law.

One of the main methods of dealing with this unwanted influx of 'dangerous' slaves was to prevent any intercourse with them and the local slaves. This was what a 1799 statute[165] attempted to do. This statute provided generally for the deportation from the Island of slaves who had been in St. Domingo. The penalty for acting contrary to the Act was £200. These proscribed slaves were not to be employed on plantations in the Island nor on vessels operating between the Island's ports. Slaves from St. Domingo were not to be landed in Jamaica without permission and heavy fines were provided for infringements of this rule. An important section of the Act concerned sedition. It was declared necessary to legislate against sedition because there was reason to believe that some of the negroes or coloured persons from St. Domingo may have been sent from St. Domingo "for the purpose of exciting sedition, or raising rebellions".[166] Any foreign negro or person of colour who was convicted of "seditious or rebellious practices", could suffer death.[167] There was an additional proviso that if the evidence was not sufficient to

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163. JAJ Vol. 9, p. 645.
164. See CO 137/103: Balcarres to Portland, 7 December 1799.
165. 39 Geo. 3, c.29. Parts of this act had been in force since 1792. Some unimportant and temporary penal statutes were also passed, but these will not be discussed.
166. Sec. 27.
167. Ibid.

convict the accused, and the jury stated that the prisoner was a danger to the "safety and tranquility" of the Island, he was to be transported for life.[168]

In 1801, 41 Geo. 3, c.17,[169] enacted regulations for aliens who mainly were the French from St. Domingo. Masters of vessels coming to Jamaica had to make declarations concerning the aliens they had on board. The penalty was £70 for every alien not declared. If aliens were landed at other than prescribed places, the ship could be seized. The major part of the statute concerned the movement of aliens in the Island and aliens could be transported for breaking these regulations. If any of these transported persons returned to the Island, they were to suffer death. These provisions remained in force in the first half of the 19th century.

Another important statute passed as a result of the St. Domingo and Maroon scares was the Gunpowder Act of 1795.[170] This Act repealed the Gunpowder Act of 1744, because the latter had been found "insufficient for the purposes for what it was intended". Some sections of the Act were similar to previous enactments. Masters of ships were still prohibited from landing gunpowder without permission; persons selling gunpowder were to obtain a licence and make an oath before doing so; persons selling gunpowder without a licence could still be fined[171] and imprisoned.

This statute however contained some new provisions. Section 6 made it an offence for any person to sell or "with

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168. Ibid.
169. This Act had first been enacted temporarily in 1794, but it was renewed until 1801 when it was made permanent.
170. 36 Geo. 3, c.11.
171. The fine was increased from £50 to £500.

an evil intent" give or lend any gunpowder or firearms to slaves or Maroons. It was also an offence to make or repair any firearms for any slave or Maroon.[172] But in addition negligence in allowing slaves or Maroons to get possession of firearms was also punished. Any person who "even without any evil intent" gave any slave or Maroon any gunpowder or firearms, was to be fined and imprisoned according to the circumstances of the case.[173] Persons in possession of excess of 10 lbs. of gunpowder should report it and failure to do so could incur a £200 penalty.[174] Persons in possession of powder were to give an account of how they disposed of it. Section 15 was a wide one and made it an offence for any person to offer or sell or barter "under any pretence whatsoever" and gunpowder or firearms to any slave or Maroon. The punishment was a discretionary fine and imprisonment. This Act, though at first temporary, was kept in force during the first half of the 19th century.[175]

In the preceding pages the origins of the various legislative devices which came into existence in the 18th century to prevent rebellions have been traced. At the end of the 18th century it is appropriate to summarise these devices, which were mainly contained in the Consolidated Slave Acts. These Acts repealed most of the earlier enactments. As we intimated above the 1792 Act[176] will be omitted, and we will examine the Acts of 1781,[177] 1788[178] and 1801.[179]

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172. Sec. 6.
173. Sec. 7.
174. Sec. 9.
175. See Chapter 6, infra.
176. 32 Geo. 3, c.22.
177. 22 Geo. 3, c.17.
178. 29 Geo. 3, c.2.
179. 41 Geo. 3, c.26.

In all these Acts it was declared absolutely necessary for the slaves to be "kept in due obedience to their owners and in due subordination to the white people in general"; and all opportunities for slaves to commit rebellious conspiracies and other crimes to "the ruin and destruction of the white people" should be minimised.[180] The major devices employed by the legislature were to punish the following offences severely: involvement in rebellion; assault of white persons; possession of firearms; practice of obeah; administering of poison; owning of horses by slaves; unauthorized travel; running away by slaves; unauthorized assemblies by slaves; concealment of accused slaves; gaming by slaves. In addition there were also severe rules concerning transportation.

(i) Involvement in rebellion and other acts of violence.

In all three Codes it was a capital offence for a slave to commit any burglary, robbery or burning of houses or canepieces; to compass or imagine the death of any white person; and to be involved in any rebellious conspiracy.[181] Death was the usual punishment for these offences. The terms 'rebellious conspiracy' or 'compassing and imagining' the death of a white person were never defined by the legislature.

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180. 1788 Act Sec. 16. See also 1781 Act, Sec. 9, and 1801 Act, Sec. 22.
181. 1781 Act, Sec.28; 1788 Act, Sec.45; 1801 Act, Sec. 54.

(ii) Assaulting white persons.

In the 1781 Code the punishment for offering violence to white persons was discretionary but did not extend to life or limb. In the two later Codes, however, the penalty was death.[182] No definition of the term 'offering violence to white persons' was given.

(iii) Possession of firearms.

All three Codes contained enactments which prohibited slaves from possessing arms and ammunition. In the 1781 Code a slave did not commit an offence if (a) he was in the company of a white man, (b) he had a ticket from his owner or overseer stating the reason for him being armed.[183] In 1788 only the latter reason was provided and the 1801 Code did not provide any exemptions at all.[184] The 1788 and 1801 Codes specifically prohibited slaves from hunting with guns.[185] Outside of the Codes, there was also the Gunpowder Act of 1795 which we have already described.

(iv) Practice of obeah.

The provisions relating to obeah were retained in all three Codes.[186] Any slave who pretended to any supernatural power in order "to promote the purposes of rebellion" or use any such practices with intent to affect the life or health of any other slave could suffer the death penalty.

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182. 1781 Act, Sec.16; 1788 Act, Sec.24; 1801 Act, Sec.32. None of the Codes provided a plea of self-defence for the slaves.
183. 1781 Act, Sec.15.
184. 1788 Act, Sec.23; 1801 Act, Sec.31.
185. 1788 Act, Sec. 76; 1801 Act, Sec. 85.
186. 1781 Act, Sec.49; 1788 Act, Sec.41; 1801 Act, Sec.50.

This offence was undoubtedly one of the vaguest on the statute book - and the punishment was usually death or transportation.

(v) Administering of poison.

Administering poison was regarded as a very serious offence. This offence was contained in the 1696 Code but it was apparently omitted from the 1781 Code. It was, however, included in the two later Codes.[187] It was an offence punishable with death to prepare or give poison, although death did not ensue. The administering of poison was closely associated with the practice of obeah.

(vi) Prohibition against slaves owning horses.

The provisions of the 1778 Act against slaves possessing horses were retained in all three Codes. Plantation owners were to take up horses belonging to slaves; they were not to allow slaves to keep horses on their plantations, and they were to swear that none of the horses on the plantations belonged to the slaves. No slave was to purchase horses; and no person was to sell horses to slaves.[188]

(vii) Measures to prevent unauthorized travel.

Provisions against slaves travelling without tickets were included in all three Codes.[189] In the 1781 Code justices at every Quarter Sessions were to order the constables to

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187. 1788 Act, Sec.42; 1801 Act, Sec.51.
188. 1781 Act, Secs.39-42; 1788 Act, Secs.60-63; 1801 Act, Secs.72-75.
189. 1781 Act, Sec.9; 1788 Act, Sec.16; 1801 Act, Sec.22

attend at the slave markets and apprehend slaves travelling without tickets. This provision was omitted from the 1788 Code and in the 1801 Code, slaves going to or returning from market were exempted from having a ticket.

There was also the 1753 Act which punished masters who allowed their slaves to hire out themselves as they thought fit.[190]

(viii) Measures to prevent slaves running away.

Detailed provisions were included in all three Codes to prevent slaves running away.[191] This was done as it was "very dangerous to the peace and safety of this island, to suffer slaves to continue out as runaways". Runaways could be transported. Other sections of the population were penalised for helping runaways. Free persons who gave runaway slaves tickets to conceal them or prevent their apprehension were to be deemed guilty of forgery.[192]

(ix) Measures to prevent unauthorized assemblies of slaves.

The suppression of unauthorized assemblies of slaves was one of the most important duties of those who were in charge of slaves. In all three Codes owners who allowed slaves to assemble on their estates and beat drums were to be fined, but the fine was reduced in the 1788 and 1801 Codes.[193] The 1801 Code also narrowed the scope of the offence by limiting it to "strange slaves" not exceeding twelve in number.

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190. 26 Geo.2, c.6. This Act was repealed by the 1781 Act but not by the later Acts.
191. 1781 Act, Secs.17-21; 1788 Act, Sec.26-29; 1801 Act, Secs.34-37.
192. 1781 Act, Secs.22-23; 1788 Act, Secs.33-34; 1801 Act, Secs.42-43.
193. 1781 Act, Sec.12; 1788 Act, Sec.20; 1801 Act, Sec.26.

Overseers who allowed slaves to assemble and beat drums were to be imprisoned for six months. In all three Codes it was expressly stated that owners could permit slaves to assemble and engage in "any innocent amusements", provided they did not use drums or horns.[194] In the 1801 Code it was provided that slave burials had to be over by sunset and any overseer permitting a burial to take place contrary to the Act was to be fined £50. Free negroes and mulattoes were punished by the 1788 and 1801 Codes. If they permitted any unlawful assembly of slaves in their houses or on their plantations, they could be sentenced to six months' imprisonment.[195]

Holidays were the times when slave rebellions were feared most and regulations were made concerning them. No two holidays were immediately to follow each other. The importance of this provision may have diminished with time, for while in 1781, the penalty for an offence against this section was £50, in 1788 and 1801, it was reduced to £5.[196] In the 1781 and 1788 Codes a duty was placed on the overseer to remain on the estate during slave holidays but this provision was not included in the 1801 Code.[197]

(x) Concealment of accused slaves.

A penalty had been included in the 1696 Act for slave owners who concealed their slaves who had been accused of criminal offences. In 1761 a committee of the Assembly had

194. 1781 Act, Sec.14; 1788 Act, Sec.22; 1801 Act, Sec.28.
195. 1788 Act, Sec.50; 1801 Act, Sec.30.
196. 1781 Act, Sec.11; 1788 Act, Sec.17; 1801 Act, Sec.23.
197. 1781 Act, Sec.50; 1788 Act, Sec.69

recommended that further provision be made to prevent the concealment of slaves offending against the laws.[198] After the Westmoreland revolt in 1766 another committee of the House had reported that the principal reason for the rebellion was the "screening from justice" of slaves who had been "concerned in such villanies".[199] In all three Codes it was an offence punishable with a £100 fine for owners or overseers wilfully to detain or conceal slaves accused of crimes.[200]

(xi) Slaves and gaming.

In the 1781 Code it was provided that no retailers of rum were to allow slaves to game in their establishment.[201] This provision was not included in the 1788 and 1801 Codes.

(xii) Measures for the transportation of slaves.

Slaves were only transported for offences which were regarded as serious, and many of these offences disturbed the tranquility of the Island. In 1781, slaves returning from transportation were to suffer death. In 1788 slaves returning from transportation were to be confined to the workhouse for life, but in 1801, the death penalty was again provided.[202]

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198. JAJ Vol. 5, p.273.
199. JAJ Vol. 6, p.26.
200. 1781 Act, Sec.43; 1788 Act, Sec.64; 1801 Act, Sec.76
201. 1781 Act, Sec.38.
202 1781 Act Sec. 33; 1788 Act Sec. 55; 1801 Act Sec. 69

B. Laws to protect the slave owners' property

Second in importance only to the slave owners' lives were their properties. The high esteem in which property was held and cherished is understandable, for property was the basis of wealth and wealth enabled the slave-owners to achieve one of their greatest desires - to return 'home' to England after their sojourn in Jamaica. "Our Tobacco Colonies send us home no such wealthy planters as we see frequently arrive from our sugar islands".[203] The Longs, the Beckfords, the Hibberts, who were well known in 18th century England, all had vast estates in Jamaica. And Eric Williams has written:[204]

> "The wealth of the West Indians became proverbial. Communities of opulent West Indians were to be found in London and Bristol, and the memorial plaques in All Saints' Church, Southampton, speak eloquently of the social position they once enjoyed. The public schools of Eton, Westminster, Harrow and Winchester were full of the sons of West Indians. The carriages of the planters were so numerous that, when they gathered, Londoners complained that the streets were for some distance blocked".

With property occupying so commanding a position, it is not surprising that several penal laws were passed in the 17th and 18th centuries, aimed at its protection. The laws to protect property will be divided into (i) protection against theft in general (ii) protection of livestock and other animals.

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203. Adam Smith, The Wealth of Nations, quoted in Eric Williams, Capitalism and Slavery, (Chapel Hill ed.) p.85.

204. Eric Williams, Capitalism and Slavery, (Chapel Hill ed.) p.91.

(i) Protection against theft in general.

From as early as 1661 legislation was enacted to punish slaves stealing their owners' goods.[205] For that offence they were to be whipped. The Assembly in 1664 also enacted legislation aimed at preventing theft by slaves.[206] The 1696 Code provided that slaves who bought or sold goods not belonging to their owners or who bought goods which were not for their owners' use were to be immediately whipped at the discretion of a justice of the peace.[207] It was also an offence to buy from, or sell goods to, slaves. The theft of wood, timber or bark was specifically provided for, and any slave in whose custody stolen articles such as clothes were found, were to suffer death, transportation or dismembering.[208] That Code also provided that a master should on request, cause the slave houses to be searched for any stolen goods. If a master refused the request of any person to search the houses of his slaves for any goods lost by him, the master could be fined.[209] Burglaries and robberies by slaves were serious crimes and were made capital offences.

The provisions of the 1696 Code were repealed by the 1781 Code and although burglary and robbery remained capital offences, the other provisions relating to theft were not re-enacted.

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205. C.S.P. 1661-68, No.182.
206. CO 139/1/55.
207. Sec.36.
208. Sec.29.
209. Secs. 13-14.

(ii) Protection of livestock and other animals.

No special legislation appears to have been enacted in the 17th century to protect the slave owners' livestock, and probably at that time the theft or destruction of livestock was not a frequent offence. In the 1717 Act for more effectually punishing crimes committed by slaves,[210] negroes or mulattoes were prohibited from keeping horses or mares.[211] This enactment was declared necessary because by negroes being permitted to keep livestock on commons, many abuses had been committed, "they having destroyed the old Breeders, and marked the Young with their own Marks".[212]

Further attempts were made to protect livestock in 1749 by the Act to prevent the clandestine killing of cattle.[213] Section 6 provided that no slave was to hunt any cattle or horses with guns or cutlasses unless he was accompanied by his master or some other white person deputising for him. The offending slave was guilty of a felony.

It was said that slaves had been accustomed to go about with firearms to kill or injure stock on waste lands bordering the plantations. It was also said that it had been difficult to obtain sufficient evidence to convict these slaves as their defence was that they had been sent out by their owners to shoot pigeons. Section 7 of the 1749 Act prohibited a slave from carrying any firearms without having a ticket from his owner specifying the purpose for which he was armed.

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210. 4 Geo. 1, c.4.
211. Although free negroes and mulattoes who possessed land and a certain number of slaves were exempted, it is not clear whether both free negroes and slaves were included in the Act.
212. 4 Geo. 1, c.4, Sec.12.
213. 22 Geo. 2, c.22.

The 1778 Act[214] against slaves keeping horses also attempted to protect livestock. This additional protection was said to be necessary because a great number of cattle, sheep and goats "are daily stolen, killed and destroyed" by slaves so secretly that it was with "the greatest difficulty they can be found out and discovered", although large quantities of meat were found on them.[215] The Act proceeded to punish slaves in possession of meat. If unknown to his master, a slave had in his possession quantities of meat exceeding 10 lbs., he was to be whipped; if he was found in possession of more than 10 lbs., the punishment was discretionary.[216]

The Consolidated Slave Acts of 1781, 1788 and 1801 repealed and replaced some of the older provisions. The Acts of 1717 and 1749 were repealed by the 1781 Consolidated Act and the provisions of the temporary 1778 statute were also included in it. The 1781 Act provided that slaves were not to be found with guns or other offensive weapons unless they were in the company of a white man or unless they had a ticket stating why they were armed.[217] The 1788 Act more explicitly prohibited slaves from hunting cattle or horses with guns or lances without being accompanied by their owner, or without having written permission to do so.[218] The 1801 Act extended this provision by prohibiting slaves from travelling the public roads with cutlasses, or other offensive weapons.[219]

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214. 19 Geo. 3, c.18.
215. Sec. 5.
216. Ibid.
217. 1781 Act, Sec.15.
218. 1788 Act, Sec.76.
219. 1801 Act, Sec.85.

The provisions punishing the possession of meat were also re-enacted in the Consolidated Acts. The provisions of the 1781 Act were similar to those of the 1778 Act[220] but they were amended in the 1788 Act, which stated that if slaves were found in possession of between 5 and 20 lbs. of fresh meat, they were to be whipped; if they were found in possession of a greater or lesser quantity and could not satisfactorily account for it, the punishment was discretionary, but did not extend to life or imprisonment for life.[221] This provision was retained in the 1801 Act.[222]

The 1788 Act also contained another provision dealing with livestock. Section 44 made it an offence for any slave to steal any cattle, sheep or goat or kill any of these animals with intent to steal the carcass. The punishment for this offence could be death.[223] A similar provision was contained in the 1801 Act.[224]

(iii) Protection of agricultural produce.

Under the 1735 Act to prevent hawking and peddling,[225] slaves were prohibited from selling or giving away sugar or sugar-canes without their owners' permission. Offending slaves were to be whipped.[226] The Act also provided that if any person bought or received from any slave any sugar, rum, cotton, ginger, cocoa, or other product, "provisions and small stock excepted", he was to be fined £10 for the first offence; for the second and subsequent offences he was to be fined and whipped.[227]

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220. 1781 Act, Sec.44.
221. 1788 Act, Sec.43.
222. 1801 Act, Sec.52.
223. 1788 Act, Sec.44.
224. 1801 Act, Sec.53
225. 8 Geo.2, c.6.
226. Sec. 4.
227. Sec. 5.

C. Laws to protect the slave-owners' commercial interest in their slaves.

Slaves were among the most valuable investment which slave-owners possessed and Governor Trelawny was not exaggerating when in 1751 he said that the "most valuable and usefull part of the Property of His Majesty's Subjects" in Jamaica was slaves.[228] In 1672, the price for slaves on landing in the Island was £22, but in the 18th century the average price seemed to have been about £60.[229] When it is recalled that by the end of the 18th century there were well over 200,000 slaves in the Island, the size of the investment may be readily appreciated.[230] The slave owners (who were also the legislators), were never slow in attempting to protect this investment by legislation.

Laws to protect the slave owners' investment in their slaves were among the first passed when civil government was established in the Island. In August 1661, it was made an offence punishable with a fine of £1 for any person to entertain another person's slave for longer than a night.[231] This legislation was re-enacted by the Council in 1662.[232] When the Assembly came into existence in 1664, it enacted legislation against persons keeping runaway slaves, and against persons enticing or stealing slaves.[233]

The theft of a slave was also made a punishable offence by the 1696 Code. That statute provided a £100 fine for any

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228. CO 137/25/170: Trelawny to CTP, 4 July 1751.
229. C.S.P. 1669-74, No.729; Report of the Lords of the Committee of Council for Trade and Plantttions, Part III Jamaica: Answer to Question 29. After a Jamaican slave had acquired certain 'skills' and had become a mill-wright or a carpenter, he could be worth up to £300.
230. In 1795, Governor Balcarres estimated the investment in Jamaica as £100 million. See CO 137/95: Balcarres to John King, 1 September 1795.
231. C.S.P. 1661-68, No.164.
232. CO 140/1.
233. CO 139/1.

person who attempted or endeavoured to steal, hide, or carry off the Island any slave. Whoever actually stole a slave or defaced his mark was guilty of a felony and was to be deprived of clergy.[234] In 1728 one Lancelott Tyler was convicted and sentenced to death under this section for stealing and defacing the marks of two slaves belonging to the South Sea Company. He unsuccessfully moved the court in arrest of judgment and then petitioned the Governor to reverse the judgment on the grounds that the indictment did not allege that he 'did take or carry away' the slaves. He further stated that he was advised that those words "are by Law absolutely necessary" in all indictments of that nature, and cannot be "Satisfied by any other words". The Governor sought the Jamaica Council's advice as to whether a writ or error would lie but the Council felt that they had no jurisdiction as the case in question was a criminal one.[235]

In the early 18th century, it appears that slaves were being dishonestly dealt in and legislation was stated to be necessary in 1719, because

> "it hath been a Practice of the People of this Island, under Colour or Pretence of Title, to entice and enveigle Negroe and other Slaves from the Possessors of them; and them so enticed or enveigled away, to send off this Island, or hide or conceal them in remote or distant Parts from such Possessors; whereby great Inconveniences have happened, to the utter Ruin of several Orphans and other Inhabitants of this Island". 236

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234. Sec. 16.
235. CO 140/20. 11 July 1728.
236. Preamble of 5 Geo.1, c.5.

In his report on this Inveigling Act of 1719,[237] the Governor stated that the benefits to be expected from the Act were so evident, that it was not necessary to urge "the usefulness of it to this country".[238] To prevent the undesirable practice of persons inveigling slaves away from their possessors, Section 1 made it an offence punishable with a forty shilling fine, for any person, who without due course of law, took or defaced any slave who had been in the possession of another person for six months of more. It was also made an offence for mortgagors or tenants for life to send away any slave without the consent of the mortgagee or anyone to whom the slave would have descended. For this offence £100 was to be paid to the mortgagee.

In 1725 the penalties for these offences were increased.[239] In addition to the penalty contained in the 1719 Act, anyone who was convicted for enticing, hiding or employing the slave of another person, was to be imprisoned for one year. If a free negro or free mulatto committed the offence, he could lose his freedom and be transported from the Island.

But these statutes did not apparently prevent the practice of persons concealing or inveigling other persons' slaves and during the remaining years of the 18th century, various methods were employed by the legislature in attempts to stamp out the practice. One method used was to enforce

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237. 5 Geo.1, c.5.
238. CO 137/13/247: Lawes to CTP, 13 March 1720.
239. 12 Geo. 1, c.6.

the laws then in force. In October 1757, the Assembly complained to the Governor of the prevalent practice of persons taking up and keeping runaway slaves, instead of returning them to their owner or the provost marshal. They requested the Governor to issue a proclamation reminding the inhabitants "of the illegality and evil tendency of the said practice".[240]

At the same time there seems to have been growing dissatisfaction with the Acts dealing with the inveigling of slaves. In October 1757, a committee of the Assembly reported that the laws relating to the inveigling of slaves required amendment. A committee was appointed to prepare an amending bill but the House was prorogued before the bill was introduced. After a period of almost two years, another committee was appointed to inspect the various Inveigling Laws. In their report this committee stated that the Inveigling Laws were not only contradictory but difficult and precarious to enforce.[241] A committee was then appointed to prepare a bill to amend the various Inveigling laws, and the Inveigling Act of 1759[242] was subsequently passed.

The following year, a committee was appointed to inquire how effective the 1759 Inveigling Act had been. Their report[243] was one of the most extensive in relation to penal legislation of the 18th century and this indicates the importance attached to this statute. The committee examined two trials which had

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240. JAJ Vol. 5, p.19.
241. Ibid., p.124.
242. 32 Geo. 2, c.11. This Act repealed most of the earlier Inveigling statutes.
243. JAJ Vol. 5, p.166.

been held under the 1759 Act. In one, the proceedings had been removed by certiorari to the Supreme Court, which quashed it because of irregularity. In the other, the accused was convicted, but the prosecutor was not allowed to give evidence. The committee then proceeded to make several recommendations: considering the nature of the offence, the prosecutor ought to be a witness otherwise it might "be of dangerous consequence", and subject the proprietors to the loss of their slaves; the difficulty in complying with the form of the Act was "so nice", that unless the clerk of the peace was "very exact in his proceedings", they could be removed by certiorari to the Supreme Court and quashed, the form of the warrant ought to be inserted in the Act; the Act provided punishment for persons defacing the mark of slaves, and it should also provide punishment for people marking slaves which did not belong to them; in many parishes, it was difficult to obtain a quorum of three justices for a trial, and as the sentence under the Act was mandatory, one justice should be sufficient; under the present law the clerk of the peace had to prepare the charge and personally prosecute, but as in some instances the clerk might be the prosecutor or the accused, it should be provided that the clerk of the peace or his deputy had the power to prosecute; the jury constituted to try offenders under the Act ought to be freeholders and not "left at large to any person" whom the deputy marshal thought fit to warn; as doubts existed as to whether the evidence of witnesses at the trial should be taken down in writing, it should be provided that writing was not necessary.

A bill to give effect to these recommendations was introduced in the Assembly shortly afterwards, but the Council and

Assembly disagreed on certain amendments and the Bill was lost. Such a bill was however passed in 1761. The 1759 Act and most of the amendments to it were incorporated into the Inveigling Act of 1766.[244] This Act was a temporary one but its provisions were renewed by temporary Acts passed in 1773, 1780 and 1788.[245] In 1795, a permanent Inveigling Act was passed.[246] To obtain a clearer picture of the various changes made in the Inveigling Acts, the 1780 and 1788 Acts will be examined.[247] The Acts will be discussed under the following heads: taking away or marking slaves; enticing or harbouring slaves; taking slaves from those in possession of them or mortgaging them.

(i) Taking away or marking slaves.

In all three Acts, it was made a felony punishable with death to steal another person's slave or to deface his mark.[248] Although the provision was not included in the 1766 and 1780 Acts, the 1788 Act made it an offence punishable with death for anyone to steal a slave with intent to send him off the Island.[249]

(ii) Enticing or harbouring slaves.

The Inveigling Acts made it an offence to "hide, conceal, inveigle, entice, knowingly harbour or employ" another persons slave.[250] In 1766 the penalty was a £200 fine and a twelve month sentence for every slave so harboured or concealed.[251]

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244. 6 Geo. 3, c.11.
245. 14 Geo. 3, c.12; 21 Geo. 3, c.4; 29 Geo. 3, c.3.
246. 36 Geo. 3, c.10.
247. Hereafter referred to as the 1766 Act, the 1780 Act and the 1788 Inveigling Act. The 1795 Act will not be discussed as it was almost identical with the 1788 Act.
248. 1766 Act, Sec.6; 1780 Act, Sec.2; 1788 Inveigling Act, Sec.2.
249. 1788 Inveigling Act, Sec.3. See also the 1696 Code, Sec.16.
250. 1788 Inveigling Act, Sec.4. See also the 1766 Act, Sec.8; 1780 Act, Sec.3
251. 1766 Act, Sec.8

The offender also had to remain in gaol until the fine was paid. In the 1780 and 1788 Acts, the punishment was reduced to £100 and a six month sentence.[252]

The provisions of the 1725[253] Act punishing free negroes and mulattoes who hid or employed another person's slave were incorporated in the 1780 and 1788 Acts.

(iii) Taking slaves from those in possession of them.

All three Inveigling Acts contained provisions similar to the 1719 Act and punished persons who, without due course of law, detained another person's slave "under colour or pretence of title".[254] However, while in the 1719 Act the penalty was forty shillings for every day's detainer, in 1766 it was £200. In 1780 and 1788 it was reduced to £100 for every slave taken or detained.

Persons who held slaves under a lease and detained them after the expiration of the lease were to be punished as if they had inveigled the slaves.[255] Mortgagors of slaves, who in prejudice to the rights of the mortgagees sent the slaves off the Island, were to pay a £100 fine.[256]

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252. 1780 Act, Sec. 3; 1788 Inveigling Act, Sec.4.
253. 12 Geo. 1, c.6.
254. 1766 Act, Sec.10; 1780 Act, Sec.4; 1788 Inveigling Act, Sec.5.
255. 1766 Act, Sec.11; 1780 Act, Sec.5; 1788 Inveigling Act, Sec.6.
256. 1780 Act, Sec.30; 1788 Inveigling Act, Sec.31.

Despite the Inveigling Acts, it seemed that there was still a fairly extensive practice of people secretly taking away other persons' slaves and selling them to foreign purchasers. After unsuccessful attempts in 1772,[257] an Act to prevent slaves being carried from the Island by masters of ships was passed in 1773.[258] In 1776, a committee of the Assembly inquiring into the effectiveness of the Act reported that the patrolling parties established under the Act seemed to have been "real nuisances rather than answering the good purposes for which they were raised".[259] They recommended that the Act be repealed and this recommendation was accepted.

The practice of clandestinely taking slaves from the Island appears to have continued and in 1777 the Assembly found that the "Wicked Practice of carrying Slaves from this Island is becoming very common under Pretence that such slaves were supposed to be free".[260] An Act to prevent masters of ships from clandestinely carrying all slaves was therefore passed.[261] This Act had a life span of seven years but it was made permanent in 1784.[262]

This 1784 Act prescribed large fines for the taking of slaves from the Island. Captains of ships were to be fined £500 if they carried from the Island, any free negro or mulatto

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257. JAJ Vol. 6, pp. 412,430.
258. 14 Geo. 3, c.19.
259. JAJ Vol. 6, p.660.
260. Preamble of 18 Geo. 3, c.20.
261. 18 Geo. 3, c.20.
262. 25 Geo. 3, c.17.

who did not possess a certificate of his freedom. Captains were also punished for carrying slaves from the Island. If a slave was carried from the Island in a ship, the captain, though he had no knowledge of it at the time of his departure, was to be fined £500. This fine could be avoided if after learning of the slave's presence, he sent him back by "some good opportunity", or brought him back to the owner on his return journey. If, however, the captain, wilfully and knowingly carried away a slave without the owner's consent, he was to be deemed guilty of a felony and suffer death.

A 1736[263] statute had also provided that persons who ran away with, or carried off another person's slave from the Island, was guilty of a felony, without benefit of clergy.

A slave owner could also be deprived of the services of his slave other than by people harbouring them or selling them. One method was highlighted by a petition of the Kingston tradesmen to the Assembly in 1753, in which they stated that their slaves were sometimes inveigled to work during their rest periods and on Sundays, as a result of which they were made weak and sickly.[264] The tradesmen of Spanish Town also sent a similar petition to the Assembly. An Act was subsequently passed by the Assembly but its provisions do not appear to have been directed at this complaint.[265]

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263. 9 Geo. 2, c.9. This was the re-enactment of 4 Geo.2,c.8.
264. JAJ Vol. 4, p.417. See also the petition of the Spanish Town tradesmen in JAJ Vol. 4, p.414.
265. 26 Geo. 2, c.6.

Slaves escaping to Cuba.

One of the peculiar problems which confronted the Jamaican planters in the 18th century was the frequency with which their slaves fled from the Island and sought sanctuary in Cuba. With Cuba being less than one hundred miles from Jamaica at the nearest point, slaves from the north side of the Island could easily escape in small boats. Jamaican slaves began fleeing to Cuba in the late 17th century and in 1699 Beeston complained to the Council for Trade that the Cubans "secure all our Negroes that run from us"; and when inquiry was made about the slaves in Cuba, they were told that under a Spanish Law they became free citizens.[266] The Council for Trade requested to be informed of the practice on both sides in this "Matter of great importance".[267] Beeston does not appear to have furnished the information requested.

In 1718, the Assembly turned to legislation to prevent slaves leaving the Island. By an Act of that year it was made an offence for any slave to leave or attempt to leave the Island.[268] The punishment for this offence was discretionary.

By the mid-18th century more and more slaves were finding their way to Cuba. In 1751 the Governor of Jamaica requested the return of the slaves from the Governor of Cuba but he was

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266. CO 138/9/318: Beeston to CTP, 8 February 1699.
267. CO 138/9/318: CTP to Beeston, 12 October 1699.
268. 5 Geo. 1, c.2, Sec.4.

told that the slaves had embraced the Catholic faith and had become free.[269] Trelawny told the Duke of Bedford that as this was a "matter of last importance", to the Island, some method may be found to prevent this growing evil.[270] Trelawny also complained to the Board of Trade.

As Trelawny stated, the Jamaicans were very concerned particularly on account of the "continual dread of others following" the fugitive slaves.[271] With the problem growing more acute,[272] the Assembly decided to enact legislation in an attempt to solve it. In November 1766, a bill to prevent slaves going off the Island was introduced but it did not complete all its legislative stages.[273] In 1768, the Assembly returned to the question and appointed a committee to inquire into the number of slaves who had fled from the Island within the last five years and whether the laws then in force were sufficient to suppress and prevent such a practice. After examining several witnesses the committee reported that they were unable to give a definite figure as to the number of

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269. CO 137/25/170: Trelawny to CTP, 4 July 1751. The King of Spain's Proclamation dated 24 September 1750, was the latest in a series of proclamations from 1680 onwards commanding the Spanish Governors to grant freedom to any slaves fleeing from the English or Dutch colonies and they were not to permit them under any circumstances whatsoever to be sold as slaves. See CO 137/59/225. The Jamaicans apparently returned the slaves who fled from the Spanish territories. See CO 137/59/223-24.
270. CO 137/59/96: Trelawny to Bedford, 2 July 1751. See also Long op. cit., Vol. 2, pp.87-88.
271. CO 137/25/170: Trelawny to CTP, 4 July 1751.
272. See CO 137/59/223: Knowles to Holdernesse, 6 November 1752.
273. JAJ Vol. 6, p.5.

slaves who had escaped to Cuba in the five years previously but added that "a great many others have made their elopement than such as are mentioned in the affidavits";[274] if the evil were not remedied quickly many planters, especially those on the north side of the Island would be ruined; the laws then in force were not sufficient to prevent so "alarming a practice".[275] Their recommendation was therefore that not only should a bill be introduced to prevent this practice, but an Address should also be sent to the King representing the "danger arising therefrom to many of his good subjects of this island".[276]

In the Address sent to the King as a result of the committee's recommendations, the Assembly beseeched him to obtain from the Spanish monarch orders that his Ministers in Cuba not only "deliver up all such Slaves as have already taken refuge there", but to return all who might afterwards go there.[277] The Assembly also hurriedly passed an Act to prevent slaves deserting their owners and departing from the Island.[278]

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274. Ibid., p.158.
275. Ibid.
276. Ibid.
277. CO 137/35/91.
278. 9 Geo. 3, c.12.

In 1771, this 1768 Act was repealed and additional provisions made in a replacing Act.[279] By this 1771 Act, slaves who went off or conspired to go off the Island could suffer death, as could slaves aiding or abetting other slaves to escape. Free negroes or mulattoes who knowingly aided or assisted any slave to escape was to lose their freedom and be transported from the Island. White persons knowingly aiding or assisting slaves to escape were to be fined £100 and be imprisoned for up to twelve months. This 1771 Act was repealed by the 1781 Consolidated Act, but its provisions were retained by that statute, and those of 1788 and 1801.[280]

For a while there were few complaints about slaves escaping to Cuba, but in the 1780's these complaints were heard again. In November 1788, a slave-owner on the northside of the Island petitioned the Assembly about his slaves escaping to Cuba.[281] After considering the petition, the Assembly sent a message to the Governor requesting the commanding officer to send a ship of war to Cuba to demand the slaves. The ship was sent but the Cuban Governor refused to return the slaves.[282] In November 1789, another planter on the northside of the Island told the Assembly how he had gone to Cuba in search

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279. 12 Geo. 3, c.10.
280. See 1781 Act, Secs.45-48; 1788 Act, Sec.65-68; 1801 Act, Secs.77-80.
281. JAJ Vol. 8, p.458.
282. See CO 137/88: Clarke to Sydney, 30 May 1789. In his reply to the Governor of Jamaica, the Governor of Cuba stated that the slaves from Jamaica were then in Havanna "instructing themselves in the Catholic Religion which was their object of coming here. The absolute freedom granted to these Slaves by the laws of Spain merely in consequence of their having presented themselves here, for the beforementioned purpose, puts it beyond the power of this Government to deliver them up". CO 137/88: Clarke to Sydney, 30 May 1789, Enclosed letter from the Governor of Cuba to Clarke, 25 March 1789.

of five of his slaves. He found one working in the Governor's house; another was working in the hospital; and he was informed that three were working on the town Mayor's plantation. All he received on his demand for them, was a copy of the Spanish Law which declared slaves taking refuge in Cuba free.[283]

The Assembly may have realized the inefficacy of additional legislation for they did not attempt to amend the laws preventing slaves going off to Cuba.[284] Instead, they sought a remedy at the diplomatic level and petitioned the English sovereign about the impossibility of preventing their slaves fleeing to Cuba: by "means of the frequency of these desertions, many of your majesty's subjects of this island have been most materially injured and the cultivation of their settlements impeded."[285]

The slaves nevertheless continued to flee to Cuba. The Assembly was further petitioned that the "evil is arisen to such magnitude as to threaten ruin and destruction" to many of the proprietors.[286] Significantly, however, the House seemed to have recognized the futility of legislation to prevent the slaves escaping and never attempted to amend the laws. After discussions between Britain and Spain, the Spanish authorities rescinded the

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283. JAJ Vol. 8, pp. 514-515.
284. Having already made attempted escapes by slaves an offence punishable with death, the Assembly could scarcely do much more by legislation.
285. JAJ Vol. 8, p.538.
286. Ibid., p.565.

earlier laws. In 1790 the Governor of Cuba was able to state that it "is the royal pleasure that in future slaves deserting from their masters in foreign colonies shall not be received".[287] This appears to have solved the problem of the slaves escaping to Cuba.

D. Laws to protect the slaves.

In the 17th, and the greater part of the 18th century, protection of the slaves was not a matter of high priority to the slave-owners, who regarded the slaves as their absolute property. They ill-treated them as much as they wished. For a variety of reasons[288], in the latter part of the 18th century, trends to protect the person of the slave are discernible.

(i) Killing of Slaves.

Before the Slave Act was enacted in November 1664, there was no specific provision against the killing of slaves. It is therefore not known whether the killing of a slave was punishable at common law, or whether the offence went unpunished.

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287. Ibid., p.596.
288. Particularly the strictures by the abolitionists.

The Act of November 1664, enacted that if a man killed his own slave he was to be fined £30. If he killed another man's slave, he was to pay to the owner double the value of the slave and be fined £50.[289] During Sir Henry Morgan's governorship, a Slave Act was passed but the Council for Trade informed the Governor that the King would not confirm it because one of the clauses provided only a fine for the killing of a slave and that "seems to encourage the wilful shedding of blood".[290] They added that some better provision must be found to deter men from such acts of cruelty. In 1683, the Assembly voted that the penalty for killing a slave was to be imprisonment for three months. The 1696 Code provided that if a person"willingly, wantonly or bloody-mindedly" killed a slave, he was for the first offence to be guilty of a felony and have the benefit of clergy. A second offence was to be deemed murder and the offender suffer for the said crime "according to the Laws of England".[291] The killing of a slave was excusable if the slave were found at night outside the plantation to which he belonged.[292]

Amendments were made to the 1696 Act by an Act of 1751[293] and the 1781 Act which was very similar, provided that if a master killed his slave, for a first offence the punishment was a maximum of twelve months' imprisonment; if he killed

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289. CO 139/1/55.
290. C.S.P. 1681-85, No.948.
291. Sec. 37. A Barbados Act of 1688 provided a fine of £15 for killing a slave: Acts of Barbados 1648-1738, No. 329.
292. Sec. 30.
293. 24 Geo. 2, c.17.

another person's slave, he was to pay £100 to the owner of the slave. For a second offence, the owner was to suffer death. The 1788 and 1801 Codes simply made the punishment for killing a slave, death.[294]

(ii) Mutilation of Slaves.

In the 17th and 18th centuries, dismembering of slaves was frequent and castration was far from being a rare occurrence. The Slave Acts of the 17th century did not punish the mutilation of slaves and the first legislative enactment which did so was the 1717 Act for the more effectual punishing of crimes committed by slaves.[295] That Act declared that no slave was to be dismembered at the will or pleasure of his owner. A £100 fine was prescribed for the offence.

After further complaints about the mutilation of slaves by their owners were made to the Assembly in 1748, the House appointed a committee to prepare a bill to prevent the castration or dismembering of slaves. A bill was introduced in the

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294. 1788 Act, Sec. 12; 1801 Act, Sec.12.

295. 4 Geo. 1, c.4. An act of New Jersey was disallowed in 1709 because it imposed "inhumane penalties" on slaves. C.S.P. 1708-9, No. 778. When the St. Christopher's legislature imposed a fine on persons murdering, maiming and castrating their slaves, the Governor hailed it as "a great point gain'd" as there was previously no law which penalised any of the offences mentioned. C.S.P. 1724-25, No.82.

House but the white inhabitants of Kingston and Spanish Town petitioned against it, and the House killed the bill.[296]

The mutilation of slaves does not appear to have received further legislative treatment until 1781 when the Consolidated Slave Act of that year made certain amendments. Like the 1717 Act which it repealed, the 1781 Act provided a fine of £100 for a person mutilating or dismembering a slave. It also provided that any person who wantonly or cruelly whip, beat, bruise or wound any slave, who was not his property, was to be fined and imprisoned as the court thought fit.[297] Probably because of the critical comments of the abolitionists, additional changes were included in the 1788 Consolidated Act. Any owner or possessor of slaves who mutilated his slave was to be fined a maximum of £100 and imprisoned for twelve months.[298] Where the owner was convicted in "very atrocious" cases, the court was given the power to declare the slave free. Persons who cruelly beat or bruised any slave were to be fined or imprisoned as the court thought fit. A Council of Protection was also established by this Act.[299] The 1801 Act was similar to

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296. See JAJ Vol. 4, pp.119-121.
297. 1781 Act, Secs. 6-8.
298. Sec.10.
299. See Chapter 2, supra.

that of 1788 and, in addition, it prohibited the placing of iron collars on the neck of slaves.[300] In both the 1788 and 1801 Acts, owners were obliged to give accounts of births and deaths of slaves and surgeons were also to give an account of any slaves who died.[301]

(iii) Punishment of Slaves.

Throughout the 17th and 18th centuries the punishment inflicted on the slaves was harsh. On many occasions the person administering the punishment abused his powers. It was not until 1788 that attempts were made to regulate the punishment inflicted on the slaves in the workhouse. The Consolidated Act of that year enacted that no slave on any plantation or in any workhouse was to receive more than ten lashes at one time unless the owner of the slave or the supervisor of the workhouse was present. It was also made an offence to punish a slave with more than thirty-nine lashes at one time and for one offence. The 1801 Act was similar to that of 1788.[302]

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300. 1801 Act, Sec.15.
301. 1788 Act, Secs. 30-32; 1801 Act, Secs. 38-40.
302. 1788 Act, Sec.14; 1801 Act, Sec.14.

(iv) Food and Clothing of Slaves.

The 1696 Code provided that slave-owners were to provide their slaves with food and clothing.[303] To ensure that the slaves were provided with food, each slave-owner was, for every five slaves, required to have one acre of land planted with provisions. The slaves were also to be provided with a minimum amount of clothing per year and a slave-owner could be fined if his slaves lacked the stated amount. This provision could not have been of much practical value, for if the owner swore that the complaint was unjust "the said Oath shall be a sufficient Discharge".[304] Provisions for food and clothing were contained in the 1781, 1788 and 1801 Codes and the penalties for offences against the Acts greatly increased.[305]

Conclusion

One of the most striking illustrations of this Chapter is the hasty and panic-stricken way in which the legislators enacted many of the penal provisions. Many of these laws were passed in the aftermath of rebellion and anything which could be considered as promoting rebellion was legislated against. It is not surprising that these frantic measures, conceived in panic and administered in fear, failed to prevent rebellions.

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303. Secs. 3-6.
304. Sec. 4.
305. 1781 Act, Secs. 2-4; 1788 Act, Secs. 2-7; 1801 Act, Secs. 2-7

A feature of the 18th century which this Chapter fully illustrates is the use to which the criminal law was put. Whenever a social problem arose, the criminal law was thought of as the panacea. Whether the problem was rebellion by slaves, inveigling of slaves, or desertion by slaves, the criminal law was quickly brought into service in an attempt to solve it.

This Chapter is also illustrative of the limitations of the criminal law. In this connection the history of the desertions of the slaves to Cuba and the slave rebellions and conspiracies are of profound importance. Death was the penalty for slaves attempting to flee to Cuba, but this never deterred them. Death was also provided for involvement in rebellion and by the end of the century the legislature had created a plethora of devices aimed at preventing rebellions. But despite this enormous variety of suppressive legislation, rebellion broke out again and again. Thousands of slaves died in the course of rebellions, but thousands continued to rebel. The urge to be free existed even among 'savages', many of whom had been born in servitude. This is a phenomenon which the Jamaican legislators never understood, and hence their crude recourse to law as a solution. At its harshest and severest, the criminal law failed to solve the most important social problem which faced the 18th century legislators.

CHAPTER 5

SLAVE LAWS OF THE 19th CENTURY

In the previous Chapter, our examination of the slave legislation had taken us to 1801, and we had noted certain features of 18th century slave legislation: that almost every rebellion or alleged conspiracy was followed by hasty stringent measures on the part of the Assembly; that the British Government, in the form of the Colonial Office, had by their inaction permitted the Jamaican planters to erect their structure of brutality and oppression unhindered; and that towards the end of the century, the Assembly were making very small improvements in the slave laws. In this Chapter, we intend to trace the development of the penal provisions of the slave laws up to the abolition of slavery. The Chapter will be divided into two sections (1) The history of the penal legislation (2) An outline of the penal provisions.

1. The History of the Penal Legislation

At the start of this period, three factors were uppermost in the minds of the slave-owners of Jamaica. The first was rebellion by the slaves. During the 18th century, slave rebellions and what the colonists termed 'rebellious conspiracies' had occurred with monotonous regularity.[1] There could have been few events which the colonists feared more than rebellions, which as they fully recognized were aimed at their lives and properties. In the preceding decade they had nervously regarded St. Domingo as a source of inspiration to the Jamaican slaves:[2] it had been the nearest point from which the subversive words of 'liberty', 'freedom' and 'equality' had streamed forth, and as long as it remained in the control of its new rulers, with their 'dangerous' principles, only the greatest dangers could be expected. Referring

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1. Chapter 4, supra.
2. Ibid.

to St. Domingo in 1803, Governor Nugent related that precautionary measures had had to be employed "to guard against the Introduction of rebellious Principles amongst the Slaves in Jamaica."[3] On relating to the "entire Evacuation"[4] of St. Domingo by the French forces in 1803, Nugent mentioned that over 7,000 prisoners of war had come to Jamaica with the French forces.[5] He added that because of the alarm and apprehension of the inhabitants, he had issued a proclamation compelling the more dangerous ones among them to retire to Cuba or North America.[6] In 1804, because of the great number of French prisoners of war in the Island, Jamaica was in a "critical and delicate" situation.[7] But no rebellion or insurrection occurred at that time.

The slaves in Jamaica however, did not need St. Domingo to tell them that slavery was not 'natural' -- the numerous rebellions and conspiracies of the 18th century bear silent and irrefutable testimony to this. For the slaves, as long as the regime of forced labour and cruelty existed, it was to be rebelled against. Although Nugent had taken pride in asserting that the "Negroes in Jamaica are generally extremely well inclined and not disposed in any Degree to Conspiracy or Insurrection",[8] early in 1807, his successor was able to report the discovery during the Christmas holidays of a rebellious conspiracy among the slaves in two of the northern parishes.[9] It was never proven that there was any connection between the conspiracy and St. Domingo, but the extent to which St. Domingo had mesmerized white Jamaica, including the Governor, may be seen in the Lt. Governor's reactions on hearing of the conspiracy. He admitted that his knowledge of the conspiracy was very limited but proceeded to pronounce that he

3. CO 137/110: Nugent to Hobart, 19 November 1803.
4. CO 137/110: Nugent to Hobart, 19 December 1803.
5. Ibid.
6. Ibid.
7. CO 137/111: Nugent to Hobart, 11 March 1804.
8. CO 137/112: Nugent to Cooke (private), 30 August 1804.
9. CO 137/118: Coote to Windham, 9 January 1807.

"should not be surprized if the origin of this Bad and dangerous spirit was in the vicinity of one Parish (nearest) to the island of St. Domingo and in the great number of French Negroes settled in the other."[10] Castlereagh described this relationship between the conspiracy and the French negroes as an "alarming Feature" and advised Coote to seek information as to whether the French negroes had any communication with St. Domingo, and if they had, he should endeavour to prevent it.[11] However, when in 1809 another conspiracy was discovered and two of the alleged ringleaders executed, no attempt was made to link the conspiracy with St. Domingo.[12] At this time, there was still an "immense influx of French people, of all colours and descriptions,"[13] despite the periodic deportations from the Island. By now, there was less talk of the dangers that the independent republic of Haiti presented and tensions about that quarter seems to have subsided. Jamaica, nevertheless continued to take precautionary measures, and it still retained the laws which had first been enacted in the 1790's to cope with the dangers from St. Domingo. These laws were repealed only after emancipation.[14]

Secondly, there were the missionaries. In the early years of the 19th century missionaries started coming to Jamaica in greater numbers. They then attracted the attention of the white inhabitants who suspected them of propagating doctrines "tending to the immediate destruction of the Community."[15] As the movement for the abolition of slavery progressed, the intensity of hatred for the missionaries rose very sharply, at times reaching awesome dimensions. It may be difficult to understand why the missionaries were regarded with

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10. Ibid.
11. CO 138/43: Castlereagh to Coote, 4 April 1807.
12. CO 137/124: Manchester to Castlereagh (secret), 16 April 1809.
13. JAJ Vol. 12, p. 66, 3 May 1809, Letter from the Corporation of Kingston.
14. Thirty years later, when slavery had been abolished in Jamaica one Governor felt that Haiti had much more to fear from contact with a free Jamaica, than Jamaica had to fear from Haiti.
    CO 137/249: Metcalfe to Russell, 21 July 1840.
15. See note 17, infra.

suspicion and a resident in Jamaica whom the Governor described as most likely to give him "authentick and unbiassed"[16] information, enlightens us:[17]

> "The equality of mankind in the eyes of their Maker, The wickedness and weakness of all who are reckoned great and powerful in this world when brought to the bar of the Almighty, are very valuable truths and of great efficacy when properly understood and expounded by Christian preachers - But in the mouths of low and ignorant enthusiasts, addressing savages, whose passions were previously enflamed, they were very dangerous topics for declamation, and likely to produce the most fatal consequences, where there was perhaps no actual intention to excite insurrection."

In addition some of the residents of Jamaica, were warned by correspondents in the United Kingdom, to be on their guard against the missionaries. In February 1800, a member of the Assembly laid before the House a letter he had received from Edinburgh advising the Jamaican planters to be wary of some missionaries who were about to depart for Jamaica. "I do not know what doctrine they may pretend to preach," said the writer in part, "but I know that their strenuous advocates and supporters are for no less than a total abolition of slavery; and, whatever, outward profession they may make, I am well assured their hidden sentiments are the same."[18] Ominously, the writer warned that the introduction of the missionaries would be "pregnant with mischief to the colony."[19] Shortly afterwards a bill aimed at preventing sedition in general, but directed at the missionaries in particular, passed the Assembly,[20] but the House was prorogued before it could become law.

In 1802, the Assembly again addressed their minds to the missionaries and passed an Act to prevent preaching by persons not duly qualified by law.[21] It was declared necessary because

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16. CO 137/121: Manchester to Castlereagh, 31 July 1808.
17. Ibid. Enclosed Report.
18. JAJ, Vol. 10, p. 453, 5 February 1800.
19. Ibid.
20. JAJ, Vol. 10, pp. 468, 473.
21. 43 Geo. 3, c.30.

"there now exists, in this island, an evil, which is daily increasing, and threatens much danger to the peace and safety thereof, by the preaching of ill-disposed, illiterate or ignorant enthusiasts" to meetings mainly of slaves, "thereby not only the minds of hearers are perverted with fanatical notions, but opportunity is afforded to them, of converting schemes of much private and public mischief."[22] Under the Act, persons who, acting in the position of a minister of religion, preached to, or taught negroes or persons of colour without being qualified to do so, were to be deemed rogues and vagabonds, and punished accordingly.[23] Persons who allowed these proscribed meetings to take place on their premises were also punished.[24] This Act was disallowed and a draft bill sent to the Governor, which he should take "an early opportunity of proposing to the Assembly to be passed into a Law."[25] Gingerly the Governor submitted the draft to the Assembly but having "maturely weighed the purport of the proposition," the Assembly declared that any attempt "to direct or influence the proceeding of this house in matters of internal regulation, by any previous proposition or decision on what is referred to or under their consideration or deliberation," is an interference "with the appropriate functions of the house, which it is their bounden duty never to submit to."[26] This Assembly did not pass another Act.

While the 1802 Act was in force, the activities of the missionaries were greatly circumscribed, but after its disallowance, the missionaries were said to have boasted with "a considerable degree of insolence"[27] of the triumph obtained over the magistracy of the Island.

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22. Ibid. Preamble.
23. Ibid. The Act did not state the qualifications. It merely punished persons who preached without being "duly qualified and authorized, or permitted, as is directed by the laws of this island and of Great Britain."
24. Ibid.
25. CO 138/43: Camden to Nugent, 7 June 1804. The despatches, The Privy Council Register, the Privy Council Unbound Papers, and the Plantation Register, have all been searched, but they have failed to reveal this draft.
26. JAJ Vol. 11, p. 287, 17 December 1804.
27. CO 137/121: Manchester to Castlereagh, 31 July 1808. Report Enclosed.

"This conduct did not tend to reconcile the inhabitants either to their persons or doctrines."[28] As the majority of preachers were based in Kingston, in June 1807 the Corporation of Kingston passed a by-law prohibiting the preaching of unqualified persons. In the following session of the Assembly the subject of the missionaries was once more considered, and a Bill, which was said to have been "in great measure"[29] based on the draft sent to Nugent, introduced. We are informed that due to a misunderstanding the bill was lost and as it was already late in the session it was decided to include its provisions in the Slave Code which was then under examination by the Assembly.[30] An examination of these provisions is postponed until the Slave Code is considered.

The third factor influencing slave legislation at this period was the controversial issue of the abolition of the slave trade. At the beginning of this period this burning question had not yet been resolved and the abolition movement which had begun in the late 18th century, was gathering rapid momentum.[31] Eventually, in 1807 the slave trade was abolished.[32] It is the reaction of the Assembly representing the white planters which concerns us here. Ever since the agitation for abolition of the slave trade began, the Jamaica Assembly had consistently maintained that the abolition of the slave trade would prove fatal to their interests.[33] In 1806 they shrank "with horror from a contemplation of those scenes which a neighbouring country has frightfully exhibited, the inevitable result of theory and experiment."[34] The bill abolishing the slave trade was said to have

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28. Ibid.
29. Ibid.
30. Ibid.
31. See R. Coupland, Wilberforce (2nd ed.); R. Coupland, The British Anti-Slavery Movement.
32. Act of British Parliament, 47 Geo. 3, c.36.
33. See JAJ Vol. 8, p. 524; Vol. 10, pp. 413-5.
34. JAJ Vol. 11, p. 466, 13 November 1806. Address of Council and Assembly to the King.

"occasioned very violent sensations"[35] in the Island and the Lt. Governor's correct prognosis was that certain members of the Assembly would be "extremely violent"[36] on the subject. "We are on the very brink of ruin and destruction," wailed the Assembly.[37] For effect they added that a "spirit of insubordination and disaffection" had been manifest in some of the parishes, and "we receive daily and alarming accounts of the prevalence of the same spirit, and acts of rebellion and revolt in different parts of the island....Such are the effects of the said abolition bill already experienced."[38] The Assembly were extremely critical of the abolition of the slave trade Act[39] but Castlereagh hoped that their comments would merely be "temporary effusions of warmth, upon a Measure which they consider, however erroneously, destructive to their Personal Interests, and not as Deliberate Resolutions for their permanent Conduct."[40] It was in this atmosphere of bitterness and acrimony that the Slave Code came up for re-examination.

The Slave Code which was passed in 1801,[41] was due to expire in December 1807. Assuming that any liberalising tendencies existed on the part of the Assembly, the period for a re-examination of the Code could scarcely be less opportune. The Assembly were plagued by fear of rebellion inspired by St. Domingo; they were bitter and 'violent' over the abolition of the slave trade; and they saw the missionaries as purveyors of doctrines which could easily lead to rebellion and their destruction. In the end, the Slave Code was not made less harsh, and on this occasion, as we previously indicated,[42] provisions were included in it affecting the missionaries.

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35. CO 137/120: Lyons to Castlereagh, 4 August 1807. Shand's letter enclosed.
36. CO 137/119: Coote to Castlereagh, 14 June 1807.
37. JAJ Vol. 11, p. 611, 11 November 1807, Address by Council and Assembly to the King.
38. Ibid.
39. Ibid.
40. CO 138/43: Castlereagh to Manchester, 19 January 1808.
41. 41 Geo. 3, c.26.
42. Note 30 supra.

Under the Code, the masters were to endeavour to have their slaves instructed in the Christian religion, but the instructions were to be confined to the doctrines of the Church of England.[43] No "methodist, missionary, or other sectary preacher", was to instruct the slaves or receive them in their houses or chapels and an offender could be fined £20 for each slave who was proved to have been in his house.[44]

After a period of delay in Jamaica, which was inquired into by the Secretary of State,[45] the Slave Code was sent to England for confirmation. The missionaries protested against it[46] and it was disallowed on grounds of religious intolerance.[47] In addition, the Governor was instructed not to assent to future acts pertaining to religion, unless a suspending clause was inserted in them.[48] He was also sent a draft bill on religion to indicate the lines along which the Assembly could proceed, should they be desirous of legislating on religious matters.[49]

The Assembly did not take kindly to their Act being disallowed and two days before they met, the Governor warned that "a little intemperance"[50] may mark their proceedings. The Assembly's behaviour

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43. 48 Geo. 3, c.17.
44. Ibid.
45. See CO 138/43: Castlereagh to Manchester (Private), 7 May 1808, and CO 137/121: Manchester to Castlereagh, 10 July 1808.
46. CO 137/122: T. Coke to Lord Hawkesbury, 13 April 1808. Inter alia, he stated that the "regular Clergy of the Island...do not consider it as their duty to instruct the Blacks, but confine their ministerial instructions entirely to the Whites."
47. CO 137/125: Order in Council, 26 April 1809.
48. CO 138/44: Castlereagh to Manchester, 7 June 1809; CO 138/44: Liverpool to Manchester, 19 March 1810.
49. CO 138/44: Liverpool to Manchester, 19 March 1810.
50. CO 137/125: Manchester to Castlereagh, 29 October 1809.

exceeded the Governor's misgivings and at the end of the session, he communicated the news to Castlereagh that the rejection of the Act produced "such an hostility of disposition," that he was compelled to dissolve the Assembly.[51] Before the dissolution, however, the Assembly had passed another Slave Code[52] - this time of unlimited duration. "This Innovation" stated Manchester, "was avowedly introduced" into the Slave Code" to prevent the King from ever again exercising his prerogative in the way he did when the last Act was refused in April."[53] This Act did not contain the provisions relating to the dissenting missionaries and it was not disallowed.[54]

Although the provisions concerning the missionaries were excluded from the Slave Code, in the following year, 1810, the Assembly passed another Act relating to them.[55] This Act, Manchester said, was "agreeable to the Draft" sent him in March.[56] It was enacted because "ignorant and ill-designing persons, who under the pretence of preaching the Gospel may disseminate principles subversive of the peace and good order of society."[57] Under the Act the qualifications necessary for missionaries who wanted to preach were outlined;[58] the judges of the supreme court (all local men) were to be the arbiters of an applicant's fitness to preach; meeting places were to be registered; meetings were to be held before sunrise or after sunset; the doors of the meeting

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51. CO 137/125: Manchester to Castlereagh, 18 December 1809.
52. 50 Geo. 3, c. 16.
53. CO 137/125: Manchester to Castlereagh, 24 December 1809.
54. CO 138/44: Liverpool to Manchester, 1 November 1810.
55. 51 Geo. 3, c. 1. An Act to prevent preaching and teaching by persons not duly qualified, and to restrain meetings of a dangerous nature, on pretence of attending such preaching and teaching.
56. CO 137/129: Manchester to Liverpool, 25 November 1810.
57. 51 Geo. 3, c. 1. Preamble.
58. To qualify himself, a preacher had to take the oaths of allegiance and supremacy and make the declaration against popery which was contained in the English Statute 30 Charles 2 Stat 2, c. 1, and also the declaration contained in the English Statute 19 Geo. 3, c. 44.

houses were always to be kept open; penalties were provided for persons attending meetings, where a person not qualified, preached. The Act was to be in force for one year.

Liverpool's opinion of the Act was entirely different from that of Manchester's and it was disallowed because it appeared to be "so directly repugnant to every principle of Religious Toleration."[59] A copy of the draft bill on religion sent in 1810, accompanied the despatch, and the Governor should "understand it to be the Prince Regent's positive Commands" not to assent to any act of religion without a suspending clause, unless it was "strictly conformable" to the draft enclosed. Furthermore, "it must be distinctly understood that the Alternative must be between such An Act as the one enclosed, and the non existence of any Legislative Provision whatever in the Island upon this important Subject."[60] When the Act expired at the end of the year the Assembly did not re-enact it, and for a while the subject of the missionaries lay dormant. Some years later it came to the fore again and from the 1820's onwards, it was one of the main preoccupations of the Jamaica Assembly.

At this juncture, events in England were again having effect on Jamaica slave legislation. Allegations had been made in England concerning the evasion of the slave trade abolition laws and one result was that in 1815 Wilberforce introduced in the House of Commons a Bill registering the slaves in the colonies. Castlereagh, on behalf of the Government requested that the colonists be first given the opportunity of enacting such a measure in their own legislatures, so the Bill was not carried through Parliament that session.[61] But the introduction of the Registry Bill in the Commons had the catalytic effect of opening discussion on slave legislation in Jamaica. The Jamaica Assembly reacted swiftly to the introduction of the Registry Bill -- but not in the manner Castlereagh desired. In October 1815 they appointed a committee to report on the Bill, the proceedings which followed it, and what measures ought to be

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59. CO 138/44: Liverpool to Morrison, 13 November 1811.
60. Ibid.
61. R. Coupland, Wilberforce (2nd. ed.) pp. 376-77.

adopted by the House to prevent the Bill becoming law.[62] In a very lengthy report which the House adopted, the committee defended in very strong language their "inherent right" to legislate for their internal affairs.[63] More important, they examined some aspects of slavery as it existed in Jamaica, and recommended certain improvements in the law.[64] However, no bill to effect these changes was introduced during that session, which was already nearing its close.

At the same time, the white colonists were becoming victims of their own vociferous protests. In addition to the debate in the Assembly over the English Registry Bill, meetings were held all over the Island, strongly deprecating Parliamentary interference in the internal affairs of Jamaica. It was said that these meetings combined to create a firm belief among the slaves that the Registry Bill contemplated something in their favour, which the Assembly, supported by the white inhabitants wanted to withhold.[65] Excitement was reported among the slaves but although "considerable alarm" prevailed during the Christmas holidays, in no part of the Island "did there appear the smallest symptom of disorder or Riot amongst the slaves." However, "nocturnal Assemblages" of slaves were said to be very frequent.[66] In April 1816, Manchester informed Bathurst that from the evidence of a slave trial recently held in St. Elizbeth, it appeared that nightly meetings of slaves had been held on the property to which the accused slaves belonged. The object of the meetings was to impress upon the slaves that Wilberforce was to be "their Deliverer and if the White Inhabitants did not make them free, they ought to make themselves free."[67] One accused is also reported to have said that the "moment he was released he would revenge himself of the White Inhabitants."[68]

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62. JAJ Vol. 12, p. 688, 20 October 1815. See also pp. 691, 695.
63. Ibid, pp. 781-799, 20 December 1815.
64. Ibid.
65. CO 137/142: Manchester to Bathurst, 26 January 1816. See also JAJ Vol. 12 p. 798.
66. Ibid.
67. CO 137/142: Manchester to Bathurst, 13 April 1816.
68. Ibid.

Two days after Manchester wrote his despatch about the St. Elizabeth trials, the slaves in Barbados staged one of the most destructive rebellions in that colony's history.[69] They succeeded "in setting fire to the Canes and Destroying the Buildings and Dwelling Houses on several Plantations."[70] When the reports of the extensive damage reached Jamaica they created the greatest possible alarm for the safety of the Island and the principal planters requested troops for their protection.[71] No insurrection followed in Jamaica. But the reports of disaffection in the Island, coupled with news from Barbados, could not fail to create an atmosphere of trepidation among the upholders of the slave regime.

In the meantime, Bathurst had in a circular despatch of June 1816 informed Manchester that progress on the Registry Bill had been suspended on the Government's assurance that a "sincere disposition" existed in the West Indian legislatures to pass similar acts for this "important subject." He was therefore giving the planters the opportunity of vindicating their character "which has been with so much uncharitable vehemence attacked," but warned that Parliamentary interference could not be successfully resisted if the measure were to be rejected by the Colonial Assemblies.[72]

At the beginning of the session in October 1816, the Governor informed the Assembly of Bathurst's request for them to pass a bill for the registration of slaves similar to the one introduced in the House of Commons.[73] After recording their protest as to their competence to decide on their own legislative measures,[74] they succeeded in passing a registry bill which the Council would have amended but for "the opposition made to it in the House at every stage."[75] This Act[76] was confirmed but amendments to it were

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69 See R. Coupland, Wilberforce (2nd. ed.) pp. 378.
70. CO 137/142: Manchester to Bathurst, 4 May 1816, Enclosed Letter from John Spooner to Manchester.
71. CO 137/142: Manchester to Bathurst, 4 May 1816.
72. CO 138/47: Bathurst to Manchester, 28 June 1816 (Circular Despatch).
73. JAJ Vol. 13, pp. 7-8, 31 October 1816.
74. Ibid.
75. CO 137/142: Manchester to Bathurst, 20 December 1816.
76. 57 Geo. 3, c.15.

suggested by the Secretary of State.[77]

Another important act passed during the session was the Slave Code.[78] At the beginning of the session the Governor had told the Assembly that because of "lapse of time and change of circumstances the best laws require occasional revision;" he wondered whether additional legislation was not necessary to provide for the moral and religious instructions of the slaves, "as well as to improve their general comfort and happiness."[79] The Assembly repealed the 1809 Code and passed a new one. With the recent alarm in the Island it was not to be expected that the Assembly would make many improvements in the Code. According to Manchester, "so far as it manifests a disposition to consider the subject, it is well, but it does not extend so far as it ought to do."[80] He related that the Assembly had finally rejected two amendments to the Code — the prohibition of collars or instruments of iron on slaves and a duration clause in the Act. Even more important was his synopsis of the current mood in the Assembly, relative to the slaves and the Slave Code:[81]

> "I am sorry to say that there appears a tenacity of opinion and sentiments on the subject of the Slave Code, and a disinclination to adopt new regulations adapted to the improved State of civilization to which the negroes have arrived, which it is difficult to reconcile to the professions which they have constantly made of their readiness to accede to any practicable mode of improving the condition of the Slave population."

This Code though not considered entirely adequate and though containing clauses pertaining to religion[82] against which the missionaries protested,[83] was left to its operation, it being regarded "as the commencement of a System of greater liberality and justice than which has previously prevailed."[84]

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77. CO 138/47: Bathurst to Manchester, 7 April 1817. See also CO 138/47: Bathurst to Manchester, 9 May 1818.
78. 57 Geo. 3, c.25.
79. JAJ Vol. 13, p. 4, 29 October 1816.
80. CO 137/142: Manchester to Bathurst, 20 December 1816.
81. Ibid.
82. 57 Geo. 3, c.25 Sec. 50: slaves were prohibited from preaching without permission of their owners.
83. See CO 137/145: Petition from the Methodists to Bathurst, 8 April 1817.
84. 138/47: Bathurst to Manchester, 17 March 1817.

The slaves, however, were not depending on the legislations or the laws to give them justice, if indeed justice could be had under a system of slavery. At this time too, they were demanding better treatment from their masters as one told 'Monk' Lewis: "...blacks must not be treated now, massa, as they used to be; they can think, and hear and see, as well as white people: blacks are wiser massa, than they were, and will soon be wiser."[85] So unreconciled to the system of forced labour, the slaves continued to record their protest.

In 1819, the St. Catherine magistrates made representations that a number of runaway slaves had established settlements in the Healthshire hills of the parish and had burnt a neighbouring plantation. With the help of the Maroons, the settlements were destroyed and more than three hundred slaves apprehended. Of this number two were tried and executed and some others transported.[86] Two years later information concerning a conspiracy among the slaves of the parishes of St. David and Port Royal was divulged by some other slaves and several of the alleged conspirators were convicted for their participation in this "horrid plot."[87] The informers were duly rewarded by being given their freedom.[88]

Within three years the Island was once more in ferment. Writing to Bathurst in December 1823, Manchester gave him some of the details:[89] "Very considerable alarm has for some time existed in the parish of St. George," he wrote, and added that preparations had been taken to guard against any troubles. In St. Mary a reported plan for a general uprising of the slaves on the sea-side estates was "happily frustrated" by a slave who disclosed the plan to his master. The alleged principal activists,

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85. Matthew G. Lewis - Journal of a West Indian Proprietor 1815-1817, p. 165
86. CO 137/148: Manchester to Bathurst, 8 November 1819; See also Manchester's Speech in JAJ Vol. 13, p. 320, 2 November 1819.
87. JAJ Vol. 13, p. 620, 27 November 1821.
88. Ibid. See also the statute bestowing freedom on the informers: 2 Geo. 4, c.15 -- An Act for making free and rewarding three slaves, named Gerrard, Ben and Maxine, and for paying to the proprietors of the said slaves their value.
89. CO 137/154: Manchester to Bathurst, 24 December 1823.

eight in number, were convicted for being engaged in a "Rebellious Conspiracy;" there was no pardon for any as "all were equally guilty and four of them positively refused to turn King's Evidence." At the same time, the St. James magistrates announced that the slaves in the parish had displayed a "rebellious disposition." Manchester hoped that when the execution of the slaves in St. Mary became known throughout the Island it would "repress any attempt which might have been meditated to disturb the publick tranquility."[90] This hope was not fulfilled and by early January, he was reporting that a "considerable number of slaves" had been apprehended in St. George and that the depositions taken, had proven the existence of a rebellious conspiracy in that parish.[91] In St. James an unceasing investigation was taking place, and Manchester reluctantly admitted that the "bad spirit" exhibited by the slaves in St. Mary, had "extended itself further than I had anticipated."[92]

Several of the slaves who were apprehended in St. George and St. James were tried and executed or transported for conspiracy to rebel; some were imprisoned and others whipped.[93] In St. George the Governor reported the apprehension of an obeah-man who appears by the "most decisive Evidence" to have deluded a "great number" of slaves into a "Belief that he could by his Art render them invulnerable." Manchester trusted that since the obeah-man's influence had ended "the Peace of the Parish will be completely restored." He also hoped that the "examples of Severity" would restore "the Colony to its former tranquillity."[94]

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90. Ibid.
91. CO 137/156: Manchester to Bathurst, 12 January 1824.
92. Ibid.
93. CO 137/156: Manchester to Bathurst, 9 February 1824.
94. Ibid. Serious doubts must remain as to whether there were any actual conspiracies in some cases because the scant and unsatisfactory evidence on which some of the slaves were convicted and executed in 1823-24 is far from conclusive as to conspiracies having taken place. In one instance one of the magistrates who was to preside at a slave trial, was apparently in no doubt as to the prisoner's guilt even before the trial had started. He stated that he had insisted on the slaves being tried immediately because it was "highly important for the safety of the parish, and probably of the island, that they should be executed before the holiday": Letter from Col. Cox quoted in Parliamentary Debates N.S. Vol. 14, col. 1063, 1 March 1826. For a full (contd.)

But these executions and other "examples of Severity" do not appear to have been sufficient, and in June 1824 the slaves on some estates in Hanover are said to have revolted. The British troops, stationed in the Island, were rushed to the area, and the revolt was "by the imposing Force which was with great rapidity" brought against the rebels, suppressed.[95] At this time also, it was believed that the presence of the troops in the western area restrained the slaves in St. Elizabeth from rebelling.[96] Following the usual pattern, several of the captured slaves were tried and executed or transported. In all, between September 1823 and September 1824, 22 slaves were executed and three sentenced to transportation for rebellion;[97] and others were given various terms of imprisonment.

To the white inhabitants the 1823-24 conspiracies and revolts show the slaves as possessing a new spirit, and one which could not have commended itself to them: a confident spirit of active, articulate defiance. The evidence taken at the trials indicated to them that the slaves believed that they were entitled to their freedom, and this freedom was being denied them by their masters.[98] As a result, the slaves were contending that they were "entitled to their Freedom and that the cause they had embraced was Just, and in vindication of their own Rights."[99] On one estate, the slaves were "with difficulty restrained from interfering with the Execution" of the convicted rebels;[100] some of the alleged

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94. (contd.) criticism of some of these trials see Parliamentary Debates N.S. Vol. 14, cols. 1007-1074, 1 March 1826. Though treating the actual existence of conspiracies with reserve, because the evidence adduced at the trials does not allow us to do otherwise, we must remember that what is important is that the white colonists fully believed in their existence. Since they were the legislators it is necessary to see what their attitude to the alleged conspiracies was, and in turn how far slave legislation was affected as a result of this attitude.
95. CO 137/156: Manchester to Bathurst, 1 July 1824.
96. CO 137/156: Manchester to Bathurst, 31 July 1824.
97. JAJ Vol. 14, p. 260, 9 November 1824.
98. CO 137/156: Manchester to Bathurst, 1 July 1824.
99. CO 137/156: Manchester to Bathurst, 31 July 1824.
100. Ibid.

rebels even preferred to commit suicide than to be punished by their captors;[101] more inauspiciously for the rulers of the society, one of the alleged rebel leaders, unrepentant of his participation in the revolt, is said to have warned shortly before his execution, that although it might be supposed that the revolt had been subdued, "the war had only began (sic)."[102] At this point, we turn once more to events in England to see what effect they were having on Jamaican legislation.

All along, the advocates of the abolition of slavery had been pressing on with their agitation, and following a debate in May 1823 in which Buxton had denounced slavery, and pronounced his object as the "extinction of slavery in nothing less than the whole of the British dominions"[103] the British Government through its spokesman, Canning, committed itself to the eventual abolition of slavery.[104] Abolition was, nevertheless, to be a gradual process and in the meantime measures of amelioration would be framed.[105]

Reaction of white Jamaica was predictable, and resolutions were passed at "publick meetings held throughout the Island, all recommending resistance to any interference in their internal Legislation."[106] The Assembly, reflecting this mood, in December 1823, urged resistance to any attempt to violate their constitution and passed several resolutions:[107] The house could not contemplate "without sensations of astonishment and the most serious apprehension," the measures adopted by Parliament in May, and a decree had been issued by which the inhabitants of Jamaica, "hitherto esteemed the brightest jewel in the British crown" are "destined to be offered a propitiatory sacrifice at the altar of fanaticism;" and having proudly recalled that "the blood which flows in their veins is British blood,"

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101. Ibid. See also CO 137/156: Manchester to Bathurst, 1 July 1824.
102. Ibid.
103. Parliamentary Debates N.S. Vol. 9, col. 265. Mr. Buxton's Speech 15 May 1823.
104. Ibid., cols. 275-287. Mr. Canning's Speech 15 May 1823.
105. See Note 104 supra, and especially the resolutions at cols. 285-286.
106. CO 137/154: Manchester to Bathurst, 10 November 1823.
107. JAJ Vol. 14, p. 227, 11 December 1823.

they pronounced that they needed no

> "pharisaical dictator to prompt them to the discharge of their duty, but will, if left to their own guidance, steadily puruse that line of conduct which comports with the loyalty of their feelings, their regard to the safety, honour, and welfare of the island, and the peace and happiness of their fellow-subjects and dependents."[108]

Needless to say, the attitude in the Assembly (and outside it) was not conducive to any major, or, for that matter, any minor change, in the Slave Code. Indeed, in September 1823 Manchester had warned that the feeling of irritation was so great even amongst those on whom he had previously placed the "greatest confidence" that he was inclined to think that the Assembly would not discuss the Slave Code.[109] In October 1823 Manchester had informed Bathurst of the "dread of innovation which now pervades the whole Community here."[110] Two weeks later, when the session opened, Manchester had exhorted the Assembly to revise the Slave Code.[111] Despite the flatteries and assurances of the Governor, the Assembly had remained unmoved. Their reply had been that they had carefully examined the slave law and found it "as complete in all its enactments, as the nature of circumstances will admit, to render the slave population as happy and as comfortable in every respect as the labouring class of any part of the world."[112] They had assured him that "if left to themselves," they would take every opportunity of improving the condition of their slaves and to make such laws "as may be consistent with their happiness and the general safety of the colony." But

> "under the critical circumstances in which the colony is now placed, by reason of the late proceedings in the British parliament, the house think the present moment peculiarly unfavourable for discussions, which may have a tendency to unsettle the minds of the negro population, which the house have the greatest reason to believe is at present perfectly quiet and contented." 113

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108. Ibid. An address was also drawn up to be sent to the King: 14 JAJ, pp. 229-30, 12 December 1823. Compare Rhodesia 1965.
109. CO 137/154: Manchester to Bathurst (private), 6 September 1823.
110. Ibid. Manchester to Bathurst (private), 13 October 1823.
111. JAJ Vol. 14, p. 157, 28 October 1823.
112. JAJ Vol. 14, p. 227, 11 December 1823.
113. Ibid.

As the session ended Manchester's unenthusiastic report had been that "the Assembly have separated without adopting any measure in favour of the Slaves with the single exception of extending to them the Statute of Elizabeth with respect to violence offered to females." And he had despaired of the present Assembly "being induced to do anything which would be at all likely to satisfy Your Lordship's expectations."[114] The Slave Code was therefore left unamended but within days, the perfectly "quiet and contented" slaves seemed to have given their reply to the Assembly.

In July 1824, Bathurst sent Manchester a copy of an Order in Council concerning regulations for the slaves in Trinidad.[115] These regulations which were improvements on the Slave Code of Jamaica were to be submitted to the Assembly for them to adopt. The more important provisions of the Order in Council relating to the criminal law were the appointment of an independent officer called the Protector of Slaves; the abolition of Sunday markets; the abolition of the whip while superintending the labour of slaves; the number of lashes a slave could get in any one day (25); the abolition of whipping for females; the establishment of the Plantation Record Book -- a record of punishments inflicted on estates; the enabling of slaves to purchase property; the admission of slave evidence in the courts; the prohibition of persons twice convicted of cruelty to slaves, from holding slaves. In October 1824, Manchester submitted the Order in Council to the Assembly and, closely following Bathurst's despatch, told them that the legislature had exhibited "so much anxiety" for improving the condition of the slaves, as shown by the 1816 Slave Code, that "it is impossible to believe," the house will refuse to go further. He was recommending the regulations to the Assembly and he knew the "serious disappointment" which the British Government would feel, if the house were to reject the

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114. CO 137/154: Manchester to Bathurst, 23 December 1823.
115. CO 138/47: Bathurst to Manchester, 14 July 1824.

substance of the regulations proposed to them -- "regulations which have received the unqualified sanction of parliament and the general approbation of the empire."[116]

The Assembly's reply showed that they had not moved from the position they had assumed over the slave law in the previous session. They bluntly told Manchester that they considered the present season "of alarm and agitation, when the negro mind is peculiarly liable to receive false impressions, unfavourable for the adoption of any measures interfering with long established institutions...."[117] And the usual polite assurance followed:[118]

> "They will, notwithstanding, continue to bestow their most serious consideration on all subjects connected with the welfare of the slave population in this island, and will embrace every favourable opportunity to make such enactments as may be deemed prudent and advisable."

So, for yet another year the Slave Code remained unaltered.

In the same session, a secret committee of the Assembly, inquiring into the disturbance of 1823-24 submitted their report which was accepted by the House. This report gives a clearer insight into the attitude of the planters to Parliament, the slaves and the Slave Code. According to the committee, the convicted negroes had pronounced that they were "contented and happy" until they "imbibed notions that the King and Wilberforce had made them free." Because of this all "notions of dependence and subjection to the authority of his master were" excluded and the slave far from regarding his master with his "wonted feelings of respect and affection," looks upon him as his "bitterest enemy" in withholding from him the enjoyment of those privileges, which the mother-country is supposed to have conceded. The discussions in Parliament keep alive

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116. JAJ Vol. 14, p. 263, 11 November 1824.
117. JAJ Vol. 14, p. 318, 26 November 1824.
118. Ibid.

> "those feelings of distrust and dissatisfaction, and will, if persisted in, continually place a barrier of insurmountable hostility between the master and his slave, and inevitably defeat the object which even the advocates of emancipation themselves entertain, for, instead of diffusing a pure and salutary light, which might gradually prepare the negro mind for that improvement in its condition, which may be alone contemplated, they infuse notions inimical to their own happiness and to the welfare of the colony, the effect of which your committee dread will be to kindle a flame, which, if ever extinguished, will only be quenched in blood." 119

Because of the "agitated state in which the negro population...is happily placed," the committee deprecated as "impolitic the discussion at this particular season of any question relative to our slave code."[120]

When the 1825 session opened, the Governor immediately adverted to the subject of the Slave Code. He reminded them of his representations over the last two years and stated that no period was more propitious than the present for "a calm and dispassionate consideration" of the slave laws. With "the colony enjoying perfect repose, no discussions having taken place in parliament either to excite irritation, or encourage unreasonable expectations," you are "left to yourselves to act as your own judgment and discretion dictate."[121] The Assembly's reply was that they would give their "most serious consideration" to improving the condition of the slave population and that they were "disposed to do all that can be done with safety in that respect."[122] The Assembly's 'all' amounted to nothing, and as far as the Slave Code was concerned, the session was a barren one. On prorouging the Assembly shortly before Christmas, Manchester told them that another year had been allowed to pass without any effectual measure having been adopted for improving the condition of the slaves.

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119. JAJ Vol. 14, p. 356.
120. Ibid.
121. JAJ Vol. 14, p. 385, 1 November 1825.
122. JAJ Vol. 14, p. 394, 3 November 1825.

> "It does not become me," he continued, "to anticipate what the result may be of the great disappointment his majesty's government will experience, when they learn that the reiterated representations, which have been made to you, to do what your own interests calls for as much as a due regard for those who look up to you for protection and relief, have totally failed." 123

At this stage Bathurst instructed Manchester to dissolve the Assembly and hold new elections in an attempt to get a more amenable body of legislators.[124] Bathurst was also making another attempt to have the Slave Code amended, and in May 1826, he sent to Manchester eight bills containing the substance of the Order in Council of March 1824, which had previously been submitted to the House without effect. Manchester was instructed to submit these bills to the Assembly. Carefully, Manchester submitted the "propositions" to the Assembly during the following session.[125] The eight propositions dealt with the establishment of an officer to be called a protector and guardian of slaves; the admission of evidence of slaves; the enabling of slaves under certain condition to purchase their freedom; the celebration of marriage among slaves; the suppression of Sunday markets; the enabling of slaves to acquire property; preventing the separation of families; the punishment of slaves under judicial sentence, or by authority of the owner, or other person having the management of slaves. This Assembly appears to have been more favourably disposed to a re-examination of the Slave Code, and in December 1826, for the first time in ten years a new Slave Code was passed.[126] This Code was in some respects, an improvement on the previous one, and Manchester's opinion

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123. JAJ Vol. 14, p. 586, 21 December 1825.
124. See CO 137/163: Manchester to Bathurst, 6 May 1826. In 1823 when Manchester had contemplated dissolving the Assembly he dismissed the idea on the ground that only the "most virulent" would be returned and some of the "better disposed" would be "replaced by others of a different description."
125. So as to avoid any charge of breach of privilege by the Assembly. CO 137/163: Manchester to Bathurst (private and confidential), 28 August 1826.
126. 7 Geo 4, c.23. It was to be in force for four years.

was that throughout the new Code there was a "Spirit of Mildness and Moderation which certainly improves the Condition of the Slave in many important particulars."[127] But he realized that the Code fell short of Bathurst's recommendation and hoped that Bathurst would feel that "considerable progress has been made in improving the condition of the Slave Population though not accomplished in the manner or to the extent recommended by Your Lordship."[128] Under this Code the evidence of slaves, though hedged with restrictions, was for the first time admitted against white persons in criminal trials.

Some of the notable provisions in this 1826 Code were those pertaining to religion. In 1810, the Assembly's attempt to restrict the activities of the missionaries by legislation had been thwarted. In the 1816 Slave Code, slaves had been prohibited from preaching without their owner's permission but that provision had not been objected bo by the Secretary of State. Since then the dissenting missionaries had again come to occupy a prominent place in the minds of the white colonists. The colonists regarded them as inculcating in their slaves doctrines inconsistent with the state of society existing in Jamaica, and were thus only to be numbered with their enemies. The missionaries were harassed and in 1825 Manchester had had to reassure Bathurst that he would "afford them all suitable protection should they appear to require it."[129]

It was against this background, that the 1826 Code was enacted, and clauses were inserted to curb the activities of the missionaries.[130] The main aim was to prevent contact between the missionaries and the slaves. The slaves were still prohibited from preaching without their owners' consent; in addition, meetings for religious worship were prohibited between sunset and sunrise, and persons collecting financial contribution from slaves were penalised. These provisions, particularly the prohibition of meetings between sunset and sunrise, would have

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127. CO 137/163: Manchester to Bathurst, 23 December 1826.
128. CO 137/167: Manchester to Bathurst, 12 February 1827.
129. CO 137/160: Manchester to Bathurst, 18 April 1825.
130. 7 Geo. 4, c.23, Secs. 83-85. Some missionaries also protested against Secs. 86, 87.

effectively curtailed the ministrations of the missionaries. The working hours of the slaves were between 5 a.m. and 7 p.m. and since it was not likely for the sun to set after 7 p.m. nor rise before the slaves started working at 5 a.m. religious meetings were virtually prohibited on weekdays. The missionaries particularly the Wesleyans and the Baptists immediately protested at these clauses.[131]

In the Colonial Office the Code was rigidly scrutinized, and the objections to it, mainly by the missionaries, noted.[132] Many months passed before a decision on it was arrived at. In the end, it was disallowed. Huskisson made it clear that religious intolerance was the main ground for the disallowance. "I cannot too distinctly impress upon you, that it is the settled purpose of his majesty's government to sanction no colonial law which needlessly infringes on the religious liberty of any class of his majesty's subjects...." And having outlined the objections to which the Act was liable, he declared that even "were the law unobjectionable on every other ground it would be impossible to surmount the difficulty presented by the clauses for restraining religious liberty."[133]

It would not be irrelevant to outline the rest of Huskisson's criticisms of the penal provisions of the Code, for, when we recall that many of these provisions had been confirmed on the advice of successive Secretaries of State from the 18th century onwards, we get an indication of the extent to which the policy of the Colonial Office had changed.[134] One of the criticisms of the council of protection as established under the Code was that it could not be considered an "effectual substitute for the office of a distinct and independent protector." On the subject of punishments inflicted by the domestic authority of the owner, the use of the whip in the field was not

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131. See CO 137/166: Watson to Bathurst, 10 February 1827; Ibid. Watson to Bathurst, 3 April 1827; Ibid. Dyer to Godrich, 16 May 1827; Ibid. Dyer to Bathurst, 29 March 1827.
132. See CO 137/166: Horton to Watson, 13 February 1827.
133. Huskisson to Keane, 22 September 1827, printed in VAJ 1831-32, pp. 14-19. See also in CO 138/51, Huskisson to Keane, 22 September 1827.
134. Ibid.

forbidden; women were not exempted for punishment by flogging; the law did not require an interval to elapse between the commission of the crime and the infliction of the punishment. "In all these respects the provisions of this act fall short of the recommendations of his majesty's government." On the "important subject" of slave evidence the advance made towards a "better system of law" was approved. But in some instances the provision was unduly restrictive, for example, there being no "necessary connection between the baptism of a witness and his credibility." The rules for the prevention of mutilation and other cruelties, though valuable in principle would lose much of their efficacy "from the peculiar complexity of the process which is to be observed in bringing the offender to justice;" in cases of dismembering or mutilation of slaves, fine and imprisonment "would seem a very inadequate punishment." The provision for the trial of slaves in criminal cases appear to be a "material improvement" on the former law; but in such trials the evidence of slaves was not stated to be admissible on their behalf, "although of course, this must have been the intention." Concerning slave trials too, it was to be regretted "that no provision is made for securing the attendance of judges, regularly educated to the legal profession."

Huskisson also referred to the punishment of slaves and to some of the crimes, which slaves could commit.[135] The crime of harbouring runaways was punishable with greater severity when the offender was a slave, than when he was free -- "a distinction which reverses the established principle of justice, that malignity of crimes is enhanced by the superior knowledge and station of the criminal." In many cases the nature and amount of the punishment to be inflicted were in the exclusive discretion of the court. "I am not aware of any necessity for so unlimited a delegation of authority." 'Rebellion' and 'rebellious conspiracy' were included among the capital crimes, but

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135. Ibid.

as "these terms are unknown to the law of England, it is not fit they should remain on the statute-book without some legislative definition of their meaning." The case of clergyable felonies by slaves was not noticed in the Act. The clauses which declare 'assault' or 'offering violence to a free person,' capital "are framed with an extreme laxity of expression, and have an appearance of severity," which "I am persuaded was not really comtemplated by the framers of this law." The definition of the offence of obeah embraced many acts, against which it could not have been really intended "to denounce the punishment of death." The definition of the offence of 'preparing to administer poison' is "so extensive, as to include many innocent and even some meritorious, acts." The offence of possessing materials used in the practice of obeah is "imperfectly described," since "no reference is made to the wicked intention, in which alone the crime consists." Huskisson also condemned the rule whereby the owner of a slave condemned to death or transportation, was indemnified at public expense for the loss of his property. The many "wise and beneficent" provisions of the Act had been fully appreciated, "although they have not been sufficient to compensate for the irreparable injury which the best interests of the colony might sustain from some of the enactments to which I have particularly referred."

When news of the disallowance reached the Assembly, the members exploded. They passed several resolutions excoriating the British Government, and made a detailed reply to the objections which Huskisson had outlined against the Code.[136] They rounded off their unanimous declamations by issuing a firm, clear challenge to the King and his advisers. They had now

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136. VAJ 1827, pp. 171-182, 14 December 1827. See also the Assembly's reply to the Governor's message in VAJ 1827, p. 117, 4 December 1827.

> "calmly reviewed the reasons, which are given for disallowing the slave act of the last session. They cannot pass a new bill, containing the amendments suggested in Mr. Huskisson's despatch without sacrificing their independence, and endangering the safety of the island. And as the lieutenent-governor is forbidden to sanction such a bill as the house can consent to pass the slave population must again be governed by the act of 1816. When it shall please his majesty, to withdraw the instruction to the governor, which limits the legislative power of the assembly, the house will once more take the slave code into their serious consideration." 137

The battle between the Jamaica Assembly and the British Government was on in earnest and the next move was the British Government's.

Huskisson observed the proceedings of the Assembly with "serious concern and surprise" and trusted that the Assembly would "resume the discussion of this question, with the calmness so justly due to the magnitude of the interests involved in the result of their deliberations." He replied at length to the Assembly's observations, and sent His Majesty's hopes that another Slave Code would be passed, divested of the provisions "which imposed upon him the painful necessity" of disallowing the 1826 Act.[138]

In November 1828, another Slave Code Bill was introduced in the House. Feelings against such a move ran high and the Bill barely survived its introduction -- the first reading being carried by a majority of one! At every stage the Bill was strongly opposed and several attempts were made to defeat it.[139] After what the Governor described as a "violent and continued opposition," the House passed the Bill, but in precisely "the same words as the old Law with the difference of Dates."[140] The Code was also passed by the Council, but it appears that the Governor refused to give his assent, as he had threatened,[141] and it never became law.

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137. Ibid, p. 182.
138. Huskisson to Keane, 22 March 1828, printed in VAJ 1831-32, pp. 20-28.
139. VAJ 1828, pp. 31, 32, 90.
140. CO 137/167: Keane to Murray, 11 December 1828.
141. Ibid.

In the following year, 1829, the Assembly passed another Slave Code and one to which the new Governor, Belmore, assented.[142] The missionaries again protested against this Code.[143] On examination in the Colonial Office, it was found that the clauses concerning religious restrictions were no less rigorous and in one instance, was even more severe than that of the 1826 Code.[144] Murray strongly reprimanded Belmore for disobeying his instructions, and recapitulated the history of the recent Slave Codes. "It would be impossible," he summed up, "without a total sacrifice of consistency, to sanction the measure under such circumstances."[145] The Act was therefore disallowed. Belmore optimistically promised to use his "best endeavours to lead the Assembly to a calm and dispassionate re-consideration of the Slave Question."[146] In the tensions of the period, this was a virtual impossibility and although a Slave Code Bill was introduced in the Assembly in November 1830, within a week it was comfortably thrown out.[147]

In January 1831, another Slave Code Bill was introduced in the Assembly. Attempts were made to defeat the Bill[148] but it succeeded in becoming law.[149] Belmore reported that some of the objectionable clauses referring to religion had been excluded and that he would be disappointed if the Code "does not meet the approbation of His Majesty's Government, when the difficulties which I had to contend with are considered and the strong and determined opposition which has been given to it in all its stages."[150] This Act was left to its operation, although as Goderich explained, it was not entirely satisfactory:[151]

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142. 10 Geo. 4, c.8. It was to be in force until 1 August 1833.
143. See CO 137/168: Wesleyan Missionary Society to Hay, 17 March 1828. Ibid. Dyer (Baptist Missionary Society) to Hay, 17 March 1828.
144. Murray to Belmore, 8 April 1830, printed in VAJ 1830-31, pp. 28-30.
145. Ibid, p. 29. He did not think it necessary to comment on the other provisions of the Code.
146. CO 137/171: Belmore to Murray, 3 June 1830.
147. VAJ 1830-31, p. 72, 23 November 1830, and p. 111, 30 November 1830.
148. See VAJ 1830-31, pp. 8-9, 27 January 1831.
149. 1 Wm. 4, c.25. It was to be in force for three years.
150. CO 137/178: Belmore to Goderich, 19 February 1831.
151. Goderich to Belmore, 16 June 1831, printed in VAJ 1831-32 (1831) pp. 31-34.

the objectionable clauses on religion had not been included, and this was approved of. He outlined the amendments necessary and commented that the advance made since 1826 could not be "truly stated as considerable." However, on the whole, by this Act, "the colonial slave code will be improved." "It is for that reason," he concluded "and not as regarding this statute as a satisfactory compliance with the repeated remonstrances" of the Government, that the Ministers advised the King to leave the Act to its operation. This latest Jamaica Slave Code, still fell far short of the recommendations which the Colonial Office had made, and still wished to see enacted.

Later that year, 1831, the Colonial Office decided on a change in tactics in dealing with the West Indian colonies possessing elected legislatures, foremost among which was Jamaica. The Colonial Office decided to offer these colonies a measure of fiscal relief provided they enacted unamended, an Order in Council of 2 November 1831 concerning slave regulations, which had been put into effect in British Guiana, Trinidad, St. Lucia, Mauritius and the Cape of Good Hope. Simplified, this could be looked at as a bribe, but in Goderich's terminology, he was making one object "contingent upon the other." The content of this important despatch reflects in no uncertain terms, the Colonial Office's frustration in its dealings with the West Indian legislatures, and its pessimism for any future improvement.[152] At first Goderich made reference to the results of Colonial Office recommendations to the legislatures since 1823, and explained why he had been forced to pursue a different line. He recalled the entreaties and admonitions which the Colonial Office had issued since 1823 and related that the language of admonition had been exhausted. He went on to give reasons for making fiscal relief contingent on legislative enactment. And among the reasons he gave for stipulating that the Colonies should have no discretion in amending the Order in Council, was the fact that the assemblies' opinions had been

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152. Circular from Goderich, 10 December 1831, printed in VAJ 1831-32 (1832) pp. 21-25.

"too distinctly and repeatedly expressed, to leave it doubtful, what would be the result, if the task of reconstructing the order in council were referred to them instead of the option of unconditionally adopting or absolutely rejecting it."

The Governor submitted this despatch and the enclosures to the Assembly but the sullen Assembly brusquely informed the Governor that they feel "it an imperative duty they owe their constituents, and in candour to your excellency explicitly to acquaint you that any further amelioration of the condition of the slave population must emanate from ourselves."[153] The session ended without any amendment being made to the Slave Code. This was in April 1832.

When the session opened in October, the Governor told the Assembly that as Parliament was then enquiring into colonial slavery, he had been authorized not to press for the adoption of the Order in Council. He hoped however that they would make amendments to the Code where they were deemed necessary. The intransigent Assembly quickly retorted that they could never concede that the House of Commons

> "which is to exist upon the principle that actual representation should be the foundation of legislation, can justly claim to legislate over us, their free fellow-countrymen, in all respects their equals, but who have not, and cannot have, any voice whatever at their election, by whom, in consequence, we are not represented - who are strangers to our condition and interest, and whose attempt to dictate to us would consequently upon their own principles, the principles of their own existence as a legislative body, be tyranny and not legislation." 154

The Assembly further expressed their happiness that the Governor had not been compelled to make "the unavailing effort" of inducing them to enact the Order in Council.[155] They then struck up their hollow refrain that they had always declared

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153. VAJ 1831-32 (1832), p. 36, 6 March 1832.
154. VAJ 1832, p. 22, 2 November 1832.
155. Ibid.

> "that they will constantly and readily adopt every measure for substantially benefitting the condition of the slave population which our local experience convinces us would really conduce to their welfare, and not ignore those rights of property which our constituents were forced by the British government to acquire." 156

And the Slave Code remained unaltered.

For us to get a clearer picture of the mood of white Jamaica at this period, it is fundamental that we retrace our steps and go back to some events of 1831. In July 1831, Belmore had pronounced the slave population of Jamaica collectively "sound and well disposed."[157] In August he had not changed his views and nothing had happened "to manifest the least uneasiness or excitement among the slaves."[158] Towards the end of 1831 however, the "sound and well disposed" slaves in the western parishes of the Island, having revolted, had razed to the ground a considerable number of buildings in that section, and were well on their way to causing almost £2 million damage. This rebellion was of profound importance to slavery and the slave laws, and must be treated with more than passing comment.

Shortly before Christmas 1831, reports were circulating in several parishes, particularly those in the western section of the Island, that the slaves were disaffected and showed signs of insubordination.[159] Two days after Christmas, the slaves in some of the western parishes headed by those in trustworthy positions on the estates, revolted. The target on this occasion was not the slave owners, but the property associated with slavery. On the 28th December 1831, the Custos of Trelawny writes:[160]

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156. Ibid.
157. CO 137/178: Belmore to Goderich, 20 July 1831.
158. P.P. 1831-32 (285) XLVII: Belmore to Goderich, 4 August 1831.
159. Ibid. Belmore to Goderich, 6 January 1832, and Enclosures.
160. Ibid. Belmore to Goderich, 6 January 1832, Enclosure No. 9.

> "...many of the estates in this parish are at this moment in an actual state of rebellion, and I believe nine tenths of the whole slave population have this morning refused to turn out to work; the whole country was in a blaze last night.... I would recommend to his Lordship to proclaim martial law without a moment's delay.... I fully expect to see a number of fires to-night, and our situation is truly dangerous...whatever is done must be done quickly."

As more slaves joined in the revolt, more estates were burnt. For several nights, the raging fires illumined the sky of St. James, Trelawny Hanover and Westmoreland. On the 3rd January, a letter from Savannalamar gives the feeling in that sector:[161]

> "A conspiracy has broken out. The work of destruction has commenced. The Island (at least the county of Cornwall) will be ruined. The slaves are well armed, and are firing sugar estates, pens and settlements. They say they are fighting for their freedom, and executing their diabolical schemes with glee. Fires are seen every night in several directions. The town is threatened and the females are preparing for embarkation...."

The Governor had in the meantime declared martial law, and had dispatched the commander-in-chief and the British troops to the area. The insurrection was ruthlessly supressed, mainly with the help of the British troops,[162] and in a short while, comparative calm had been restored. In the suppression of the rebellion, an unknown number of slaves died in the field. Of the hundreds apprehended, the official records show that up to February 1833, one hundred and eleven had been tried. Of this number sixty three were executed or shot, and two transported.[163] In all, the number of slaves who lost their lives as a consequence of the rebellion was estimated in hundreds.[164] Very few, if any, white persons were killed[165] but damage to the estates and the expenses incurred in the suppression of the rebellion, was estimated at almost £2 million.[166]

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161. Quoted in The Watchman and Jamaica Free Press, Vol. 4 No. 2, 7 January 1832.
162. P.P. 1831-32 (285) XLVII. Belmore to Goderich, 6 January 1832 and Enclosures.
163. CO 137/188: Mulgrave to Goderich, 4 February 1833. Three years later trials were still taking place for participation in the rebellion.
164. Autobiography of Henry Taylor, Vol. 1, p. 123.
165. Ibid.
166. VAJ 1831-32 (1832), p. 197, 26 April 1832.

When Belmore visited those parishes a few weeks later he reported that the whole of the area "presented one scene of devastation, the buildings on every estate being burned down, and the greater part of the canes destroyed by cattle."[167]

This rebellion of December 1831-January 1832 had most important repercussions both inside and outside the Island. In the Island, the immediate reaction of the white inhabitants was one of increased bitterness and hostility to the slaves. On this occasion too, their venom was directed against the dissenting missionaries, who to say the least had not been very popular. The Baptists particularly, were generally believed to have fomented the rebellion and tickets denoting membership of the 'Baptish Church' were alleged to have been found on some of the captured rebels;[168] other 'incriminating' evidence is said to have conclusively proven the guilt of the Baptists[169] and the call went out for their blood. One correspondent gives his views:[170]

> "The manner in which the rebellion has been conducted affords abundant proof that it has been concocted and carried on by individuals possessing much more knowledge than negroes in general can be possessed of; and it is the opinion of almost every one here, that the Sectarians, especially the Baptists, are its principal source, as it is well known that the ringleaders on every estate have been Baptists."

An editorial from the Courant observed that three "Baptist Preachers" were then in custody and hoped that they would be given "impartial justice."[171] But the publication seemed to have been in no doubt as to the verdict of any trial and allowed itself the treat of recommending some exotic punishment for the accused:[172]

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167. P.P. 1831-32 (482) XLVII: Belmore to Goderich, 10 February 1832.
168. See extract from the Cornwall Courier quoted in The Watchman and Jamaica Free Press, Vol. 4 No. 2, 7 January 1832, p. 1.
169. See VAJ 1831-32 (1832) p. 196, 26 April 1832 and Appendix 18.
170. A letter in the Cornwall Courier dated 2 January 1832 quoted in The Watchman and Jamaica Free Press, Vol. 4 No. 2, 7 January 1832, p. 1.
171. From the editorial of the Courant quoted in The Watchman and Jamaica Free Press, Vol. 4 No. 2, 7 January 1832, p. 3.
172. Ibid.

> "Shooting is, however, too honourable a death for men whose conduct have occasioned so much bloodshed, and the loss of so much property. There are fine hanging woods in St. James and Trelawney, and we do sincerely hope that the bodies of all the Methodist Preachers who may be convicted of sedition may diversify the scene - after this, our hostility even to men so reckless of blood, carnage and slaughter, shall cease."

Resolutions from all over the Island, condemned the missionaries, and called for their immediate expulsion from the Island,[173] the aggressively pro-slavery Colonial Church Union was also formed with the avowed object of expelling the missionaries;[174] Burchell, a Baptist missionary, narrowly escaped death at Montego Bay,[175] and shortly after the rebellion, the chapels and other buildings belonging to the Baptists at Montego Bay, Lucea and Savannadamar were razed to the ground.[176] This rebellion could not, understandably, have endeared the white inhabitants to the slave population and convince the intransigent Assembly to enact more ameliorating measures. In fact they proceeded to pass very repressive measures. Furthermore, the House felt that one of the main causes of the rebellion was the external discussion concerning the slave laws:[177]

> "The primary and most powerful cause arose from an evil excitement created in the minds of our slaves generally by the unceasing and unconstitutional interference of his majesty's ministers with our local legislature, in regard to the passing of laws for their government, with the intemperate expression of the sentiments of the present ministers, as well as other individuals, in the commons house of parliament in Great-Britain, on the subject of slavery."

So when the Governor submitted to the Assembly the Secretary of State's recommendations for ameliorating the condition of the slaves, he was instantly rebuffed.

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173. See VAJ 1831-32(1832), p. 14, 15, 100; and CO 137/182: Cuthbert to Goderich, 12 July 1832.
174. CO 137/182: Cuthbert to Goderich, 12 July 1832.
175. Ibid. Belmore to Goderich, 9 April 1832.
176. PP. 1831-32 (482) XLVII: Belmore to Goderich, 10 February 1832, and Enclosures.
177. VAJ 1831-32 (1832), p. 196, 26 April 1832.

This 1831 insurrection was of critical importance in determining the attitude of the British Government to the continued existence of slavery. Henry Taylor, who helped in the formulation of Colonial Office policy at this period, wrote that this "terrible event with all its horrors and cruelties, its military slaughters and its many murders by flogging, though failing of its object as a direct means, was indirectly a death-blow to slavery."[178] The rebellion had been quelled almost solely by the British troops stationed in the Island. The colonists were now pleading their inability to pay these troops, and requesting the British Government to do so. "At a crisis so momentous as the present" Goderich sent Mulgrave a very long despatch outlining the views of the Government.[179] With the rebellion in mind he told Mulgrave that recent experience showed the absolute necessity of maintaining a large naval and military force to keep the slaves in subjection; as during the present session the Assembly had stated their inability to bear their expense for them,

> "it follows that the existing system of slavery must be maintained, if at all, by a constant and formidable drain upon the Treasury of Great Britain, and by a constant sacrifice of the lives of British Soldiers and Seamen - that to require of the British Nation that they should bear these burthens, while urging to no purpose on the Assembly the Amendments of that slave Code which alone renders them necessary, and while denied by that Assembly the right of originating such Amendments by Acts of Parliament, would be to assert, not so much the independence of Jamaica on Great Britain, as the dependence of Great Britain on Jamaica; and that it would be in vain to believe that this country would submit to the great annual cost of maintaining a Naval and Military force for the support of slavery without being permitted even to stipulate for, and enforce the observance of the Conditions on which alone that expenditure of life and money ought to be afforded." 180

This despatch signalled the end for slavery and after this only two questions remained (a) whether slavery was to be abolished immediately

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178. Autobiography of Henry Taylor, Vol. 1, p. 123.
179. CO 138/54: Goderich to Mulgrave, 2 January 1833.
180. Ibid.

or with a transitional period before eventual emancipation, and (b) whether emancipation was to be effected, with or without compensation to the planters.[181] By August 1833, the Emancipation Act had reached the English Statute Book, with a transitional period provided and the principle of compensation accepted.[182]

So legal slavery ended with the white colonists of Jamaica clinging desperately to their system and adamantly refusing to make any worthwhile amendments to the Code last passed in 1831. When news of the Emancipation Bill reached Jamaica, Mulgrave reported that the "Excitement during the first few hours was very great... The language of the White inhabitants of Kingston was, I understand, violent and inflammatory, and there was no project of resistance so insane as not at first to find some Advocates."[183]

To the end the white colonists had maintained that slavery was their internal affair, which the British Government should and could not be concerned with; also from their local experience they knew best what to do in the interest of their slaves. When the Island remained relatively quiet, the Assembly pointed to the 'happiness' and 'contentment' of the slaves as indicating no necessity to change the slave laws; when the slaves revolted, the Assembly felt that amendments could not properly be made when the minds of the slaves were in such an 'agitated' state; and when the British Government suggested amendments to the slave laws, the Assembly either ignored them or declared that amendments to the laws must 'emanate' from the Assembly. This may to some extent explain why in the state of slavery as existed in Jamaica, rebellions were inevitable and frequent; and they illustrate in no small way Marcus Garvey's immortal phrase that "you can shackle the hands of men, you can shackle the feet of men, you can imprison the bodies of men, but you cannot shackle or imprison the minds of men."[184] These rebellions will remain everlasting monuments to the 'savages' and 'half-savages' who preferred to die in their attempt to be free, than to live under the atrocities, degradations, and abuses, inherent in the institution of slavery.

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181. Taylor, op. cit., p. 123
182. 3 & 4 Wm. 4 c. 73. The Jamaica statute abolishing slavery was 4 Wm. 4 c. 41.
183. CO 137/189 Mulgrave to Stanley, 6 July 1833.
184. Quoted in A. Edwards, Marcus Garvey 1887-1940, p. 26.

2. An Outline of the Penal Provisions

In this section we intend to compare the penal provisions of various Slave Codes enacted during the 19th century. This is done in an effort to discover the shape the Codes assumed and the direction they headed as the century developed. Of the eight enacted Codes,[185] those of 1809, 1816, 1826 and 1831 [186] may be treated as representative, and they will be discussed.

Five other important statutes which relate to slavery were also passed during the period.[187] Some, although initially enacted separately were incorporated into subsequent codes, and their history will be outlined.

As in the previous Chapter, the provisions of the Codes will be classified as follows: Laws to prevent rebellions; Laws to protect the slave owners' property; Laws to protect the slave owners' commercial interest in their slaves; Laws to protect the slaves.

A. Laws to prevent rebellions and other violent protests

Conduct which had the tendency to foster or lead to rebellion by the slaves, was not unnaturally regarded with proportionate gravity, and this was reflected in the punishment - usually death. During the 18th century a large number of mechanisms had been manufactured by

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185. 1801, 1807, 1809, 1816, 1826, 1828, 1829, 1831. The 1801 Code had been discussed in the previous Chapter; the 1807 Code was similar to the 1809; the Governor refused to give his assent to the 1828 Code.

186. Hereafter referred to as the 1809 Act, the 1816 Act, the 1826 Act and the 1831 Act.

187. 2 Geo. 4, c. 16 passed in 1821; 3 Geo. 4, c. 21 passed in 1822; 4 Geo. 4, c. 15 passed in 1823; 2 Wm. 4, c. 29 passed in 1832; and 2 Wm. 4, c. 43 passed in 1832.

the legislature with the clear intention of preventing the slaves from rebelling or having an opportunity to rebel. This number was added to in this century, and by the time slavery was abolished the list was quite a formidable one. But as we have seen, this did not prevent the slaves from rebelling and attempting to tear the social fabric apart.

(i) Involvement in rebellion and other acts of violence

Provision was made in all four Codes to punish slaves involved in rebellion because it was "absolutely necessary that the slaves in this island should be kept in due obedience to their owners and in due subordination to the white people in general."[188] It was an offence punishable with death for a slave to be involved in any rebellion or rebellious conspiracy. The terms 'rebellion' and 'rebellious conspiracy' were never defined and they indicate a dangerous vagueness, capable of very broad usage. On more than one occasion Secretaries of State stated that there should be some definition of these terms.[189] After the 1832 rebellion, Goderich told Mulgrave that in reference to Huskisson's despatch of March 1828 concerning the lack of a definition for rebellion, the "justice of that observation was never more evident than at present."[190] In a later despatch Goderich pointed out to Mulgrave that some defects to which the slave trials were liable.[191] Death was also the punishment

188. 1809 Act, Sec. 34; 1816 Act, Sec. 46; 1826 Act, Sec. 79 This preamble was not included in the 1831 Act, See 1831 Act, Sec.80.
189 See Huskisson to Keane, 22 September 1827, printed in VAJ 1831-32 (1831), p. 19; Huskisson to Keane, 22 March 1828, printed in VAJ 1831-32 (1831), p. 26.
190. CO 138/54: Goderich to Mulgrave, 4 July 1832.
191. CO 138/54: Goderich to Mulgrave, 4 September 1832. See also Chapter 3.

for committing any murder, burglary, robbery, or setting fire to any house or cane-piece; or breaking into any houses, or committing any felony, or committing any crime for which white persons or persons of free condition could be indicted for felony.[192] Both the 1809 and 1816 Codes retained the old offence of a slave compassing or imagining the death of a white person.[193] That offence was however omitted from the two later Codes.

(ii) Assaulting white or free persons

This offence had been in existence from the 17th century and it was retained in all four Codes. A slave could incur the death penalty, if he were to assault or "offer any violence, by striking or otherwise" to any white or free person.[194] In all four Codes, it was a defence if the assault was committed at his owner's command, or in defence of his owner or his owner's goods.[195] None of the Codes recognized the slave's right of self-defence.

(iii) Possession of firearms

In all four Codes it was an offence for a slave to possess with "evil intent" any firearms, gunpowder, cutlasses or lances, without hiw owner's knowledge or consent.[196] As the century progressed this offence appears to have decreased in importance for while death was the ultimate punishment in 1809 and 1816 it was reduced to transportation in the two later Codes.[197]

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192. 1809 Act, Sec. 34; 1816 Act, Sec. 46; 1826 Act, Sec. 79; 1831 Act, Sec. 80. Felony is twice referred to in the description of capital offences but the second reference seems to be merely superfluous.
193. 1809 Act, Sec. 34; 1816 Act, Sec. 46.
194. 1809 Act, Sec. 35; 1816 Act, Sec. 47; 1826 Act, Sec. 80; 1831 Act, Sec.81.
195. Ibid.
196. 1809 Act, Sec. 36; 1816 Act, Sec. 48; 1826 Act, Sec. 81; 1831 Act, Sec. 82. "Evil intent" was not defined by the legislature.
197. Ibid.

The provisions of the Gunpowder Act,[198] which were of particular importance in the period of the St. Domingo scare, were kept in force up to abolition.[199] Sections 6 and 7 of the Act were described by Bathurst in 1825 as being "unnecessarily severe, and may therefore tend to defend their own object".[200] The Assembly replied by re-enacting the statute without amending it.[201]

(iv) Practice of obeah

This provision concerning slaves pretending to possess supernatural powers had found its way in the statute books since the rebellions of 1760. In the Codes, this provision was enacted to prevent the mischief that might arise from

> "the wicked art of negroes going under the appellation of obeah or myal men[202] and women, and pretending to have communication with the devil and other evil spirits, whereby the weak and superstitious are deluded into a belief of their having full power to exempt them whilst under their protection, from evils that might otherwise happen."[203]

Any slave who pretended to any supernatural power in order to promote a rebellion, or used or pretended to use such practices to affect or endanger the life or health of any other slave, could be punished with death.[204] In the 1816, 1826, and 1831 Codes, 'or other evil purpose'[205] was inserted after 'rebellion'.[206]

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198. 36 Geo. 3, c. 11.
199. See Chapters 4, 6.
200. Extracts from Bathurst's despatch printed in JAJ Vol. 14, p. 399. See also CO 138/47: Bathurst to Manchester, 8 January 1825.
201. See 10 Geo. 4, c. 3.
202. The reference to myal men was inserted in the 1831 Act.
203. 1809 Act, Sec. 37; 1816 Act, Sec. 49; 1826 Act, Sec. 82; 1831 Act, Sec. 83.
204. Ibid.
205. This phrase was not defined.
206. 1816 Act, Sec. 49; 1826 Act, Sec. 82; 1831 Act, Sec. 83.

The 1809 and 1816 Acts stated that if materials such as "powdered glass, parrots' beaks, dogs' teeth, alligators' teeth", or other materials "notoriously used in the practice of obeah or witchcraft and in a state of evident preparation for carrying out such dangerous or nefarious practice" were found in possession of a slave, he could be transported.[207] In the 1826 Act, the penalty was the same but with the exception of poisonous drugs and powdered glass the materials were not specified. This section was not included in the 1831 Act.

Obeah legislation is another example of the extremely vague way in which the legislature described criminal offences - in some instances offences serious enough to carry the death penalty. Huskisson had objected that the description of obeah embraced many acts against which the legislature could not really have intended to provide the punishment of death.[208] Yet the legislature made no attempt to make the definition of obeah more precise. In the meantime several slaves were convicted and in some cases executed for a crime which was never defined and which few people seem to have understood.

(v) Administering of poison

Closely allied to the practice of obeah was the administering of poison. A belief had been formed in the 18th century that it was the obeahmen who usually administered poison, and as a result administering of poison came to be intimately associated with the practice of obeah. It was an offence for slaves to give or attempt to give poison, or other noxious drugs, "in the practice of obeah or otherwise", although death did not ensue; accessories could also be capitally punished as their principals.[209]

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207. 1809 Act, Sec. 31; 1816 Act, Sec. 53.
208. Huskisson to Keane, 22 September 1827, printed in VAJ 1831-32, p. 19.
209. 1809 Act, Sec. 38; 1816 Act, Sec. 52; 1826 Act, Sec. 82; 1831 Act, Sec. 85.

(vi) Prohibition against slaves owning horses

In the aftermath of the 1776 rebellious conspiracy legislation to prevent slaves owning horses or mules had reached the statute book.[210] This provision was retained in the 19th century, and under the 1809 and 1816 Codes, owners of plantations allowing slaves to keep horses or mules on their plantations could be fined £30.[211] The Deficiency Acts also stated that when slave-owners were making up their returns, they were to swear that no horses or mules on their estate belonged to any slave.[212] The inexpediency of inserting such a provision in the Deficiency Act of 1822 was adversely criticised and the Act[213] disallowed for that reason. It was said that in

> "the extensive island of Jamaica horses and mules are bred in great numbers, and constitute a valuable species of property. It may be a question whether the slave population should be prohibited from holding property of this kind or not; but at all events their lordships think that such a prohibition ought to have been made one of the distinct and avowed objects of the Act instead of being enacted in the midst of a very long Act, every paragraph of which relates to a subject essentially different..."[214]

Although prohibition of slaves owning horses was not expressly challenged the legislature apparently took the hint, and never re-enacted the provisions of the 1809 and 1816 Codes in the 1826 and 1831 Codes.

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210. See Chapter 4 supra.
211. 1809 Act, Sec. 21; 1816 Act, Sec. 39.
212. See for example 55 Geo. 3, c. 22, Sec. 4; 59 Geo. 3, c. 16, Sec. 5.
213. 3 Geo. 4, c. 9.
214. Report of the Council for Trade printed in JAJ Vol. 14, p. 398

(vii) Measures to prevent unauthorised travel

Another device aimed at reducing the opportunities for rebellions, but of much older vintage than the last named one, was the measure to prevent unauthorized travel. This provision was retained in the 19th century Codes. Except when going to or returning from market, slaves were not permitted to travel without a ticket from their owners. Slaves found travelling without tickets were to be punished, and the persons permitting them to infringe the law fined;[215] justices refusing to impose the penalties provided by the law could be fined.

Notice was also taken in the 1809 and 1816 Codes of persons who gave tickets to slaves to avoid being apprehended. If the offender was a free negro or mulatto, he could be transported, but if he were a white person the punishment was not as severe.[216] These clauses were not included in the 1826 and 1831 Codes but provision was made for free persons concealing or harbouring runaway slaves.

In the 1831 Codes, a clause was inserted to regulate slaves in the towns. If a master intended to hire a slave in "any other manner than by lease, or for a shorter time than three months", he was required to apply to a police officer; the officer was authorized to grant the slave a ticket to hire out himself in the town, for a period of time not exceeding three months; a slave found working in the town without such a ticket was to be whipped, and if the owner was aware that the slave was working without such a ticket, he could be fined up to £5.[217]

(viii) Measures to prevent slaves running away

Regulations to prevent slaves running away from their masters were in existence almost from the beginning of the slave regime in

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215. 1809 Act, Sec. 22; 1816 Act, Sec. 30; 1826 Act, Sec. 40; 1831 Act, Sec. 39.
216. 1809 Act, Secs. 24-25; 1816 Act, Secs. 32-33.
217. 1831 Act, Sec. 40.

the Island. To the legislators the frequency with which the slaves ran away rendered this legislation indispensable and the Codes recognised that it was very dangerous to the "peace and safety" of the Island "to suffer slaves to continue as runaways".[218] Differential punishment was provided for those who were absent for less than six months and those who were absent for a longer period or those who were declared "incorrigible runaways".[219]

Persons who knowingly harboured or concealed runaways were also penalised. In the 1809 and 1816 Acts, only slaves who concealed or harboured runaways were punished, but in the 1826 and 1831 Acts white and free persons were included.[220] Any white or free person who gave a runaway a ticket or letter to enable him to be absent from his owner could be fined and/or imprisoned.[221]

Lengthy regulations existed in all the Codes as to how apprehended runaways were to be treated and disposed of.[222]

(xi) Measures to prevent unauthorized assemblies of slaves

Measures to prevent unauthorized assemblies of slaves were in existence in the 17th and 18th centuries, and the four 19th century

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218. 1809 Act, Sec. 48; 1816 Act, Sec. 62; 1826 Act, Sec. 42; 1831 Act, Sec. 41.
219. The term "incorrigible runaway" is not found in the 1809 Act. If the slave ran away for less than 6 months he was to be flogged or confined for a period of up to three months; if he ran away for longer than 6 months or if he were declared an incorrigible runaway he could be transported. 1816 Act, Secs.63-64; 1826 Act, Secs. 43-44; 1831 Act, Secs. 42-43.
220. 1809 Act, Sec. 51; 1816 Act, Sec. 65; 1826 Act, Secs. 45-46; 1831 Act, Sec. 45. In the 1831 Act an addition was made for persons who instigated slaves to run away. 1831 Act, Sec. 45.
221. 1826 Act, Sec. 48; 1831 Act, Sec. 47.
222. 1809 Act, Secs. 52-57; 1816 Act, Secs. 66-73; 1826 Act, Secs. 47, 49-56; 1831 Act, Secs. 48-57.

Codes under review contained clauses with the same end in mind. Indeed, in the 19th century, additional efforts were made to prevent the slaves assembling and by 1831 no less than six measures were entrenched in the Codes. The measures related to strange slaves; the owner's slaves; funerals; nocturnal meetings; unlawful oaths; holidays. Following the earlier statutes, the Assembly penalised both the slaves and/or their masters for infringement of some of the provisions.

Under a clause in the first three Codes owners were to pay a fine of £50 for allowing "strange" slaves to assemble and beat drums or blow horns on their plantations, without attempting to disperse them.[223] The legislators aimed at preventing not only assemblies of "strange" slaves but also assemblies of the plantation owner's slaves. It was necessary to make this enactment because it "has been found by experience that rebellions have often been concerted at negro dances and nightly meetings of slaves".[224] For what was obviously regarded as a very serious offence in permitting slaves to assemble and beat drums or blow horns on their plantations without attempting to disperse them,[225] owners or overseers could be imprisoned for up to six months.[226] Provided the assembly ended by 10 p.m., and provided military drums or horns were not used, owners could permit slaves to assemble and entertain themselves in "any innocent amusements".[227] The 1831 Act rationalized the two sections referring to "strange slaves" and "any slaves" and merely provided a £50 fine for owners who permitted slaves to assemble on their property and blow horns or beat drums.[228]

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223. 1809 Act, Sec. 26; 1816 Act, Sec. 24; 1826 Act, Sec. 60.
224. 1809 Act, Sec. 28; 1816 Act, Sec. 36; 1826 Act, Sec. 62.
225. Owners were not included in the 1809 Act.
226. 1809 Act, Sec. 28; 1816 Act, Sec. 36; 1826 Act, Sec. 62.
227. 1809 Act, Sec. 28; 1816 Act, Sec. 36; 1826 Act, Sec. 62; 1831 Act, Secs. 62-63. In the 1826 and 1831 Acts the time was extended to midnight.
228. 1831 Act, Sec. 62.

The 18th century provisions as to slave funerals were retained in all four Codes. If an owner or overseer permitted a contravention of the enactment, he was to be fined £50; if the funeral took place in the towns after sunset every free person who permitted the slaves to assemble at his house or on his property, could be fined between £5 and £40, and the slaves flogged.[229] There was also a separate provision that any white or free person who permitted an unlawful assembly of slaves at this house could be given a term of up to six months' imprisonment.[230]

Following widespread reports in 1816 of secret nocturnal slave meetings, the Assembly lost no time in legislating against such alleged tête-à-têtes. Because such meetings were "injurious to health of the slaves, and [were] of dangerous tendency", they were declared unlawful, and persons attending them punished; if the persons attending these meetings were slaves they could be flogged or sentenced to hard labour; if the offenders were free people, they could be sentenced to a maximum of three months' imprisonment.[231]

The Codes also legislated against meetings convened for administering unlawful oaths, "by drinking human blood, mixed with rum, [or] grave dirt " or for "learning the use of arms" or for any other "unlawful or dangerous purpose".[232] This was regarded as a very serious offence and slaves found at such meetings, and free persons present at the meetings and assisting in the unlawful purpose, could suffer the death penalty.[233] Persons withholding knowledge of such unlawful meetings, could be fined and/or imprisoned, or whipped.[234]

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229. 1809 Act, Sec. 29; 1816 Act, Sec. 37; 1826 Act, Sec. 63; 1831 Act, Sec. 64.
230. 1809 Act, Sec. 30; 1816 Act, Sec. 38; 1826 Act, Sec. 64; 1831 Act, Sec. 65. In all the Acts, except that of 1809, an alternative fine of £100 was provided.
231. 1816 Act, Sec. 51; 1826 Act, Sec. 86; 1831 Act, Sec. 84;
232. 1809 Act, Sec. 40; 1816 Act, Sec. 54; 1826 Act, Sec. 89; 1831 Act, Sec. 86.
233. Ibid.; also 1809 Act, Sec. 41; 1816 Act, Sec. 55; 1826 Act, Sec. 90; 1831 Act, Sec. 87.
234. 1809 Act, Sec. 42; 1816 Act, Sec. 56; 1826 Act, Sec. 91; 1831 Act, Sec. 88.

Throughout slavery the despatches are full of reports of the trepidity with which the white inhabitants approached the holidays, especially the Christmas holidays. It was thought that, with more leisure, the slaves would have more time to plan rebellions. As in the previous centuries, the slave-owners were prohibited from allowing their slaves more than the number of holidays permitted by law.[235]

(x) Concealment of accused slaves

All four Codes punished owners or overseers who concealed slaves who were accused of criminal offence. The punishment was a £100 fine.[236]

(xi) Slaves and gaming

Provisions concerning gaming with slaves were included in the two later Codes. If any free person or slave was found gaming with any slaves, or if any person, free or slave, permitted anyone to game with any slave in any house under his charge, he was to be punished. If the offender was a free person he could be imprisoned for a term not exceeding six days;[237] if the offender was a slave, he was to be whipped.

(xii) Measures for the transportation of slaves

The 19th century laws concerning transportation were on the whole similar to those of the 18th century. If slaves who had been transported for capital offences[238] were to return to the Island voluntarily,

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235. 1809 Act, Sec. 13; 1816 Act, Sec. 21; 1826 Act, Sec. 27; 1831 Act, Sec. 23.
236. 1809 Act, Sec. 69; 1816 Act, Sec. 85; 1826 Act, Sec. 105; 1831 Act, Sec. 104.
237. 1826 Act, Sec. 65; 1831 Act, Sec. 66.
238. In the 18th century there was no distinction between capital and non-capital offences. See an interesting argument by the Attorney-General of Jamaica in the case of an illegally executed slave: CO 137/153: Conran to Bathurst, 19 April 1822, Enclosed opinion of the Attorney-General Burge.

they were to suffer death. Captains of ships knowingly bringing back a transported slave were to be fined £300 and serve up to twelve months' imprisonment.[239] It is no mere coincidence that most of the enactments designating capital offences were aimed at preventing rebellions.

(xiii) Regulations for escaping prisoners

All the Codes contained regulations aimed at deterring imprisoned slaves from escaping. If slaves sentenced to a period of years escaped and were recaptured they were to be whipped; if they were undergoing life sentence, they were to be transported.[240]

(xiv) Measures aimed to restrict the work of the Missionaries

These have been previously outlined and discussed.[241]

Separate to the Codes were the regulations pertaining to foreign slaves which came into existence because of St. Domingo.[242] They remained on the statute books throughout slavery, and as time went on, assumed the character of alien regulations. Bathurst commented adversely on the 1823 renewal of this Act.[243]

Also apart from the Codes are two statutes which came into existence as a result of the 1832 rebellion. They are An Act for the better prevention of rebellion and rebellious proceedings,[244] and An Act for preventing the mischiefs arising from the printing and publishing of newspapers and papers of a like nature, books and pamphlets, by persons not known.[245] Previous to 1832, the Assembly had

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239. 1809 Act, Secs. 80-81; 1816 Act, Secs. 96-97; 1826 Act, Secs. 117-118; 1831 Act, Secs. 112-115.
240. 1809 Act, Secs. 82-84; 1816 Act, Secs. 98-100; 1826 Act, Secs. 121-123; 1831 Act, Secs. 123-125.
241. See Part 1 of this Chapter.
242. See Chapter 4 supra.
243. JAJ Vol. 14, p. 399.
244. 2 Wm. 4, c. 29.
245. 2 Wm. 4, c. 43.

unsuccessfully attempted to curtail the activities of the missionaries by legislation. After the rebellion, for which the missionaries were held partly responsible, they wanted to have the activities of the missionaries restricted, but they faced the problem of having their laws disallowed if the missionaries were expressly named in the edict. They therefore decided to leave the terminology of the Act very vague, at the same time leaving no doubt as to whom they meant to enmesh.

The Act for the better prevention of rebellions was passed because, as its preamble stated,

> "there is ample reason to suppose that the late rebellion has been produced among other causes by the evil instigation of vagrants, and other ill disposed persons reading and expounding to slaves inflammatory and seditious tracts and other printed and written papers, and by malicious and advised speaking subversive of the public peace, and tending to seduce them from their duty and fidelity to their masters...."

Under the Act, any persons reading or expounding to any slave "any inflammatory or seditious tract or tracts, or other printed or written matter", or disseminating any doctrines "subversive of the public peace and exciting to insubordination or disobedience to their masters" could be transported for life. Any persons found strolling or wandering about the country, without any visible means of obtaining a livelihood, and not giving a good account of themselves, or hiding in any slave houses for the purpose of disseminating subversive doctrines, were to be deemed vagabonds or vagrants and apprehended.[246] The penalty for this offence was imprisonment for up to three months or up to fifty lashes. Any slave harbouring or concealing a vagrant, as described, could be imprisoned and/or flogged. Any slave "joining

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246. Sec. 1.

or associating with such person or persons in any treasonable act for disturbing the public peace" could, on conviction, suffer death.[247] Any slave "holding or engaging in meetings, for the purpose of hearing and joining in inflammatory or seditious discourses, either for free persons or slaves" could receive 39 lashes or one month's imprisonment.[248] The Act only had a life span of eight months, but during that period, the Assembly no doubt hoped to reap its benefits.

This Act took a longer than usual time to reach England, for which Mulgrave was reprimanded. It was not disallowed, but Goderich pointed out to Mulgrave the fatal objections to which it was subject: In Section 1, the grammatical construction seemed to include papers which were not inflammatory or seditious; in the colonies, enactments of this nature are "brought to the Test of rigid verbal criticism", and "under the excitement of the present times might not improbably be enforced with the utmost rigour".[249] He also objected to a "term so indefinite as the word 'inflammatory'" which could not "properly enter into the legal definition of a transportable offence". The phrase 'doctrines subversive of public peace and exciting to insubordination' was an "inconvenient designation of so serious a crime" since it leaves to the judge "the decision of a question upon which there is room for endless variety of opinion as to the real tendency of particular statutes". Considering the severity of the punishment, and the nature of the tribunal by which it is to be adjudicated, the Laws describing a vagrant appear "pecularily ambiguous and ill selected". For example, in determining what is a 'good account', the magistrate is left to "his own peculiar views to decide what is and what is not a good account". He further objected to the indefinite authority vested in the magistrates in Section 3. Finally, he told Mulgrave that since the Act would shortly expire it would have been useless

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247. Sec. 4.
248. Sec. 5.
249. CO 138/54: Goodrich to Mulgrave, 8th December 1832.

to disallow it but if it were to be re-enacted, he was to refuse to give his assent to it.[250] The Act was not re-introduced in the Assembly.

The other Act passed with the rebellion in mind was the Act regulating newspapers.[251] The statute enacted regulations for the printing and publishing of newspapers, but it had its sting in its tail. The penultimate section declared that any person printing or publishing "any matter tending to excite hatred and contempt of the constitution and Government established in this island, or endeavouring to excite dissatisfaction and discontent among the slaves" or printing or publishing any matter having such a tendency, was to be guilty of a misdemeanour.[252]

Goderich told Mulgrave that although the Act appeared to have been transcribed from a British statute[253] there were some very "material alterations" in it. His main objection was to the language of Section 17. The terms 'endeavouring to excite dissatisfaction and discontent' were wanting in precision, "indispensable on such an occasion"; the extension of the law not merely to newspapers and periodicals, but to books and pamphlets is a restraint on the liberty of publishing for which the law of England affords no precedent.[254] The penalties of the Act were also objected to as being more severe than those of the British statute. The Act was subsequently disallowed.[255]

These two Acts which were passed as a result of the 1832 rebellion, followed the familiar 18th century pattern. Then, slave rebellions were swiftly followed by hastily enacted and severe legislation. In 1832, the Assembly's reply to rebellion is a determined effort to deal with a critical situation by vague legislation, capable of broad construction. As far as the Assembly were concerned slavery was to be maintained and the criminal law must be used to uphold the system.

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250. Ibid.
251. 2 Wm. 4, c. 43.
252. Sec. 17.
253. 38 Geo 3, c. 78
254. CO 138/54: Goderich to Mulgrave, 8 December 1832.
255. See James Minot, A Digest of the Laws of Jamaica, p. xxvii.

B. Laws to protect the slave-owners' property

(i) Protection of livestock and animals

In all the Codes slaves stealing livestock or killing livestock with intent to steal the carcass could suffer death.[256] Also aimed at preventing theft of livestock was the provision under which slaves found with quantities of fresh meat, and could not account for it satisfactorily, were to be whipped.[257]

Slaves injuring or maiming livestock could be whipped or imprisoned for two months, and if the injured animal died within ten days, the death penalty could be inflicted.[258]

It was a non-capital offence for slaves to travel the roads with dogs or other offensive weapons without tickets from their owners; nor were the slaves allowed to hunt any cattle or horses with guns or cutlasses without being accompanied by a white person or without written permission.[259]

(ii) Protection of agricultural produce

The 1809, 1816 and 1826 Codes do not appear to have contained any provisions aimed at protecting agricultural produce. Such a provision was however provided in the 1831 Code, and Section 91 was included to "prevent and punish depredations on agricultural produce". Slaves found in possession of quantities of sugar, coffee or pimento in quantities not in excess of 5 lbs, and quantities of rum not exceeding one gallon, without being able to account for it satisfactorily, were to be whipped; if they were found with greater quantities of the

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256. 1809 Act, Sec. 43; 1816 Act, Sec. 57; 1826 Act, Sec. 92; 1831 Act, Sec. 89.
257. 1809 Act, Sec. 44; 1816 Act, Sec. 58; 1826 Act, Sec. 93; 1831 Act, Sec. 90.
258. 1809 Act, Sec. 45; 1816 Act, Sec. 59; 1826 Act, Sec. 94; 1831 Act, Sec. 92.
259. 1809 Act, Sec. 62; 1816 Act, Sec. 78; 1826 Act, Sec. 59; 1831 Act, Sec. 61.

above mentioned products, the punishment was discretionary, though not extending to life, transportation or imprisonment for life. The slaves may have taken their owners' agricultural produce to supplement their inadequate food supply, and it is in this legislation that we find the germ of the voluminous praedial larceny legislation of the post-emancipation period.[260]

One method of protecting property was to prohibit slaves from clearing their grounds by fire as that practice was "highly dangerous to the neighbouring properties, and frequent instances of damage and injury occur for some restraint in that respect".[261] If the adjoining property were damaged as a result of the fire, the slave using the fire to clear his ground was punished; if the owner in charge of the slave using the fire knew of the slave using the fire and did not promptly attempt to extinguish the fire, he could be fined up to £10.[262]

C. Laws to protect the slave-owners' commercial interest in their slaves

The Inveigling Act[263] on which so much importance had been placed in the 18th century, remained in force until after emancipation, and this may have helped to protect the slave-owners' interest in their slaves.

In all the Codes penalties were provided for both slaves who attempted to leave the Island and persons who aided or assisted them in their attempt. As the century wore on the penalties were reduced. In the 1809 and 1816 Acts it was a capital offence for slaves to attempt to leave the Island or assist another slave to leave. The 1826 and 1831 Codes made this a non-capital offence.[264] Free coloured people who assisted slaves in leaving the Island were to be transported

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260. See Chapter 9, infra.
261. 1809 Act, Sec. 47; 1816 Act, Sec. 61; 1826 Act, Sec. 96; 1831 Act, Sec. 94.
262. Ibid.
263. See 36 Geo. 3, c. 10 and Chapter 4 supra.
264. 1809 Act, Sec. 58; 1816 Act, Sec. 74; 1826 Act, Sec. 56; 1831 Act, Sec. 58.

and suffer death if they returned.[265] If the offenders were white they were to be fined £300 and undergo up to 12 months' imprisonment.[266] In the 1826 and 1831 Codes white and free coloured persons were to be fined £300 and imprisoned for up to 12 months for aiding or assisting.[267]

Under both the 1826 and 1831 Codes, no person was allowed to employ or hire another person's slave on the slave's rest day, without the written permission of the owner.[268]

D. Laws to protect the slaves

(i) Killing of Slaves

In all the Codes the offence of killing a slave was punishable with death -- the only difference between the Codes being one of terminology. In the 1809 and 1816 Codes, the offence was to "wantonly, willingly or bloddymindedly" kill a slave.[269] The definition in the two last Codes approximated to the modern definition of murder and the offence was for any person to kill a slave "with malice aforethought."[270]

(ii) Mutilation of Slaves

Mutilating, dismembering or cruelly beating a slave was made an offence in all four Codes and in atrocious cases the mutilated slave could be freed. In the earlier Codes an offender could be fined up to £100 and sentenced to a maximum of 12 months' imprisonment, but in the 1826 and 1831 Codes the penalty was either the fine

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265. 1809 Act, Sec. 59; 1816 Act, Sec. 75.
266. 1809 Act, Sec. 60; 1816 Act, Sec. 76.
267. 1826 Act, Sec. 57; 1831 Act, Sec. 59; In all the Codes accessories could be proceeded against although the principals were not convicted.
268. 1826 Act, Sec. 9; 1831 Act, Sec. 9. This clause was taken from An Act to amend the slave Law; 3 Geo. 4, c. 21. This Act had been disallowed, but not because of this clause. See JAJ Vol. 14, p.398.
269. 1809 Act, Sec. 16; 1816 Act, Sec. 24.
270. 1826 Act, Sec. 30; 1831 Act, Sec. 25.

or the prison sentence, or both.[271]

(iii) Punishment of slaves

With the intention of restraining arbitrary puhishment, the Codes enacted regulations concerning the flogging of slaves. Under the first three Codes it was a penalty to give a slave more than ten lashes without the owner or workhouse keeper being present; no owner or workhouse keeper was to punish a slave with more than 39 lashes, at one time for any one offence, in the same day; further flogging was not to be administered until the slave had recovered from the effects of any previous flogging.[272] Persons placing weights, chains or iron collars on slaves were penalised. In the 1809 Act, weights, chains or iron collars were prohibited but light collars without hooks were declared lawful.[273] When the 1816 Code was being debated, the Council tried to get all weights and collars prohibited but the only concession the Assembly would make, was that the collars were only to be put on at the direction of a magistrate. This was the position in all the Codes after 1816.[274] In all the Codes the penalty was a fine of between £5 and £50.

(iv) Food and clothing of slaves

Enactments concerning food, clothing, hours of work and holidays had existed from the 17th century. They remained in force

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271. 1809 Act, Sec. 17; 1816 Act, Sec. 25; 1826 Act, Sec. 33; 1831 Act, Sec. 29. If a slave mutilated another slave he could be sentenced to death. See 1809 Act, Sec. 46; 1816 Act, Sec. 60; 1826 Act, Sec. 95; 1831 Act, Sec. 93.
272. 1809 Act, Sec. 20; 1816 Act, Sec. 27; 1826 Act, Sec. 36; 1831 Act, Sec. 33. See also 1826 Act, Sec. 37 and 1831 Act, Secs. 34-35.
273. 1809 Act, Sec. 21.
274. 1816 Act, Sec. 29; 1826 Act, Sec. 39; 1831 Act, Sec. 38.

in the 19th century.[275] The Codes also provided that no master was to turn out his infirm slave.[276]

(v) Carnal Abuse and Rape of slaves

Provisions concerning carnal abuse and rape of slaves were only found in the 1826 and 1831 Codes and these offences have an interesting and important history.

In 1823 Thomas Simpson, a white Jamaican landowner was convicted under an Elizabethan statute[277] in an excruciatingly painful case, of raping a nine year old female slave.[278] But doubts arose as to whether Simpson could be legally convicted under the statute, and the case was referred to England. There were two points in issue: whether the English Statute was (a) in force in the Island (b) and if it was in force, whether it applied to slaves. By the Revenue Act of 1728 all the English statutes used or adopted or acted upon were declared in force in Jamaica. There was no direct evidence that the Statute of Elizabeth had been so acted upon, for the earliest records of the crown office only went back as far as 1731.[279] In the records however, there were several trials concerning white persons where the Elizabeth statute, 18 Eliz., c. 7, had been acted upon. There was one indictment under the statute for rape on a slave by a

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275. 1809 Act, Secs. 1-4, 12-13; 1816 Act, Secs. 4-8, 20-21; 1826 Act, Secs. 6, 8, 10-14, 26-27; 1831 Act, Secs. 6, 8, 10-13, 22-23. There were minor variations in the penalties.
276. 1809 Act, Sec. 5; 1816 Act, Sec. 13; 1826 Act, Sec. 18, 1831 Act, Sec. 17.
277. 18 Eliz., c. 7.
278. CO 137/153: Conran to Bathurst, 5 May 1822.
279. CO 137/153: Conran to Bathurst, 5 August 1822, Enclosed letter of the Chief Justice.

white person in 1817, but the accused was acquitted. In that case the application of the statute was not raised by counsel or considered by the court. But assuming that the statute was in force in Jamaica, the question was whether it applied to slaves. The Slave Acts and Codes had made punishable certain crimes against slaves. Were these provisions to be regarded as including all the punishable offences against slaves? Or were they to be regarded as restrictions on the common or statute law in force in the Island? If the answer to the second question was in the affirmative, the result would be that if the Slave Codes were silent on a certain point, the common or statute law applied. The Chief Justice of Jamaica referred to "dreadful immunities" claimed by the planter-legislators and agreed that the Island statutes concerning slaves should be taken as comprehensive of all the crimes which could be committed against slaves.[280] Burge, the Attorney General of Jamaica, shared the Chief Justice's doubts as to the extension of the statute to slaves and recommended that the case be referred to the Colonial Office for their opinion.[281] The Counsel for the Colonial Office, James Stephen, felt that Simpson's conviction was valid and that the Chief Justice's objections were ill founded.[282] But the English Law Officers, Gifford and Copley, agreed with the Chief Justice, and it was therefore decided to refer the question to the English judges for their opinion.[283] It is not certain whether the judges ever gave

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280. Ibid.
281. Ibid., Enclosed letter from Attorney General Burge.
282. CO 138/50: Horton to Hobhouse, 27 June 1825
283. Ibid., the Law Officers said this "is a shocking case, but we do not see how the objections stated in the Chief Justice's Report are to be got over." CO 137/155: Hobhouse to Wilmot, 29 April 1823, Opinion enclosed

an opinion,[284] and while judgment was awaited, Simpson died in prison.[285]

But in the meantime Bathurst had directed Manchester to propose to the Assembly, legislation to remedy the defective state of the law.[286] Accordingly, in 1823, the Assembly passed an Act to deprive persons convicted of raping slaves, of the benefit of clergy.[287] Under Section 1, carnally knowing and abusing a female slave under ten years old, was declared a felony without benefit of clergy and under Section 2 rape of a female slave was made punishable with death without benefit of clergy. This Act was repealed by the 1826 Code and its provisions incorporated in it.[288] The provisions were also included in the 1831 Code.[289]

Slaves as objects and subjects of the criminal law

Simpson's case above brings to the fore the important issue of the applicability of the ordinary criminal law to slaves. The question is: were the slave laws intended to be all exclusive in relation to crimes which could be committed by and against slaves, or did the criminal laws concerning free persons apply if the slave laws were silent on a particular point? In Simpson's case this question was raised but not conclusively answered.

While at first the slaves may have come under the general law of the land, from the 1660's it appears that they were regarded in law as a separate and distinct class for whom special legislation was to be enacted. Thus from 1664 offences like theft and rebellion

284. A member of the House of Commons, stated in a speech in the House in 1826, that the judges had reported along the lines of the Law Officers' Opinion. See Parliamentary Debates (NS) Vol. 14 col. 1060, Speech of Sir Robert Wilson, 1 March 1826. The Judges' Opinion has not however been found.
285. CO 138/50: Horton to Hobhouse, 9 May 1825.
286. CO 138/47: Bathurst to Manchester, 6 May 1823.
287. 4 Geo. 4, c. 15.
288. Secs. 31-32.
289. Secs. 26-27.

by slaves were statutorily provided for; at the same time offences which could be committed against slaves were also statutorily provided for.

It is by no mere coincidence that throughout slavery, the penal legislation pertaining to slaves was grossly unbalanced. On the one hand, the slave laws provided for numerous offences which the slaves could commit. And it is by no accident that definitions were never provided for many of the offences - even capital offences. At no time did the legislature state the meaning of 'compassing or imagining' the death of a white person, 'offering violence' to a white person, and being involved in 'rebellion' or 'rebellious conspiracy.' On the other hand, the crimes which could be committed against slaves were few. And at first the penalties provided were very light indeed. So while the Jamaica Assembly were fighting for English laws which provided the death penalty for murder, they were simultaneously prescribing the penalty of a small fine for the killing of a slave.[290] And while the Assembly felt that trial by jury was "one of our dearest birthrights",[291] the slaves were until the late 18th century denied the right to be tried by a jury.

It seems therefore that whatever legal rights and duties the slaves possessed were those which the Jamaican legislators deemed it fit to give them. There was no reference to the common law or statute law of England and if an offence was not provided for by Jamaican statute no cognizance was taken of it in law. In 1788 a committee of the Assembly reported that the slaves were "under the protection of the common law, with the rest of his majesty's subjects" in the Island "except in cases where it has been found necessary to enact limitations."[292] When this report was brought to the House, it was hastily

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290. CO 139/1/58.
291. JAJ Vol. 11, p. 611.
292. JAJ Vol. 8, p. 410.

referred back to the committee. The report was accordingly amended and the slaves were then said to be "under the protection of lenient and salutary laws, suited to their situation and circumstances."[293] With separate legislation providing "dreadful immunities"[294] for the planters, the entire system of slavery was undoubtedly cruel, unjust and oppressive.

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293. Ibid., p. 411.
294. See note 279 supra.

CHAPTER 6

Laws to Protect the State

Acts against the state are undoubtedly of the greatest importance in any penal system, for some of them, if successful, can render the entire criminal jurisprudence of a country obsolete. Up to 1833 in Jamaica, many of the provisions aimed at protecting the state were not surprisingly contained in the Slave Codes, because it was from the slaves that the greatest threat to the security of the state had come.[1] Laws to protect the state will be divided into two categories: (A) Laws to preserve the established order of Government and the maintenance of the peace and (B) Laws to punish other offences against the state. Because the English common law was and still is in force in Jamaica, together with some English statutes which had been received into the Island prior to 1728, an examination of these offences during Jamaica's early history will necessitate an examination of the state of these offences in England at the corresponding period.

A. Laws to Preserve the established order of Government[2]

(i) Treason and related offences

Treason was an offence at English common law from the earliest times. Because of the indefinite character of the offence at common law, it was defined in 1351 by 25 Edw. 3, c. 2. This statute, broadly following the common law position, declared three main situations to be treason: (a) forming and displaying by any overt act an intention to kill the King; (b) levying war against the King; (c) adhering to the King's enemies. During the reign of Henry the Eighth, statute law created several new treasons aimed mainly at bolstering Henry's position

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1. Supra Chapters 4, 5.
2. The English law concerning most of these offences, as described in this section is adopted from James Fitzjames Stephen, A History of the Criminal Law of England, Vol.2, Chapter 23.

in his dispute with the Pope, and at maintaining the succession of the crown, after the King's various marriages. These statutes were repealed after Henry's death.

As religious conflict again threatened the status quo in Elizabeth's reign, the law of treason was extended. 1 Eliz. c. 5, re-enacting 1 & 2 Phil. and Mary, c. 10, made it treason to attack the Queen's title in writing or by words. Following the Pope's famous Bull of Deposition, and the presence in England of Mary Stuart, a rival claimant to the English throne, 13 Eliz. c. 1 was passed. This Act made it treason to compass the death or bodily harm of the Queen, and to declare such compassing by writing or words; to deprive her of the imperial crown, to levy war against her; to affirm the title of any other person, or to deny the power of Parliament to bind the succession. In 1581, another statute, 23 Eliz. C. 1 made it treason for any person having power to absolve any subject from obedience to Her Majesty, or with that intent to withdraw them from the Church of England to the Church of Rome, or to move them to promise obedience to the See of Rome. This statute was re-enacted in stricter terms by 3 Jas. 1, c. 4.

After the period of the Commonwealth, several statutes relating to treason were passed. It was at this time that the English were settling Jamaica and these statutes may have been firmly in their minds. 13 Charles 2, c. 1 of 1661, made it treason to display any treasonable intention by writing or by preaching or by malicious and advised speaking, during the King's life. Disputes in the reigns of William and Anne about the succession, again led to further enactments on treason: 9 Wm.3, c. 1 passed in 1698, made it treason for supporters of James II who had followed him into France to return to England without license; 12 & 13 Wm.3, c. 3 made it treason to correspond with the "pretended Prince of Wales". Under 1 Anne c. 17 it was treason to attempt to prevent the succession as established by the

Act of Settlement; and 7 Anne c. 4, made it treason for officers to hold correspondence with rebels or enemies.[3]

Up to 1728 therefore there were several English statutes relating to treason which could have been "used" or "received" in Jamaica.[4] The main one was the 1351 Treason Act, 25 Edw. 3, c. 2,, which under the 1968 Interpretation Act would still be in force in Jamaica today.

Jamaica, like England,[5] specifically made certain coinage offences and forgery of the Broad Seal, treason.[6] But, like England also, Jamaica recognised other types of offences which were categorised as treason.

In early Jamaica, accusations and counter-accusations of treason were frequently banded about. In March 1665, articles of "treasonable crimes" by Samuel Long were read in the Assembly.[7] In 1689, the Chief Justice of the Island, Roger Elletson, was accused by the Island's Attorney General of "treasonable matter",and arrested.[8] One Creagh was charged in 1712 with high treason for corresponding and trading with the Queen's enemies. Following the advice of the Island's Attorney General, to the effect that this species of treason was only triable in England, the Governor sent the accused there for trial.[9] Creagh's indictment might have been under the 1351 treason statute or under 7 Anne,c. 4, passed in 1709.

One particular factor - religion - was as divisive an element in Jamaica as in England, and gave rise to frequent charges of treason. In this area we see in a vivid way the striking interrelationship between English and Jamaican history. The first sixty years of Jamaica's

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3. Other statutes in Anne's reign pertaining to treason were 3 & 4 Anne,c. 14 and 4 Anne c. 8.
4. See Chapter 1 supra.
5. See W.S. Holdsworth, A History of English Law, Vol.2 (4th ed.) pp.366, 450-52; Vol.4 (3rd ed.) pp.498, 501-3.
6. 33 Charles 2,c. 14; 33 Charles 2, c.16.
7. JAJ. Vol. 1, p. 3, 14 March 1665.
8. CO 137/2: Watson to CTP, 27 October 1689. Among his other delicts the Chief Justice is alleged to have said that the people should be ruled with "Rods of Iron": CO 137/2: 18 July 1690.
9. CO 138/13/466: Hamilton to CTP, 15 May 1712.

settlement coincided with an unsettled period in England about the monarchic succession. As political arguments over the rights of the respective claimants to the English throne polarised religious attitudes in England, supporters of the established church clashed violently with adherents to the Church of Rome.[10] Such a situation did not fail to have a profound effect on Britain's distant possessions. Jamaica was no exception, and any remark which could be interpreted as impugning the Governor's authority or reflecting on the Protestant monarch of England, was not treated lightly.

From the beginning, Jamaica's Governors were left in no doubt as to where their loyalties should lie, and a corollary of this involved the promotion of the Protestant religion. D'Oyley, the first civil Governor, was given instructions to ensure that "Christianity and the Protestant Religion according to the Profession of the Church of England may have a due Reverence and exercise among you."[11] As a reminder to subsequent Governors, a clause relating to the practice of religion was always included in their Instructions. Instructions to Sir Thomas Lynch ran:

> "But we oblige you in your own house and family to the Profession of the Protestant Religion according as it is practised by us in England, And the recommending of it to all others under your Government as farre as it may consist with the Peace and quiett of the said Island."[12]

As the tensions between Catholics and Protestants increased in England Catholicism was more vigorously suppressed,[13] and Governors were directed to permit liberty of conscience to all persons except Papists.[14] In addition, they were to take especial care that God was devoutly served, that the Book of Common Prayer was read each Sunday and that the Blessed Sacrament was administered according to the rites

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10. The Political History of England (Lodge) Vol. 8, Chapters 6-13 and Vol. 9, Chapters 14-15.
11. CO 138/1/7.
12. CO 138/1/92.
13. "It was further necessary to deal firmly with the papists, and with all who refused adhesion to the new government": The Political History of England, Vol. 8, p.306.
14. CO 138/11/221: Handasyd's Commission.

of the Church of England.[15] With this background, it is not surprising that practise of the Roman Catholic religion was regarded as tantamount to treason. A firm marriage of church and state developed and the chief officials of the state had to be members of the Church of England.[16] One Jamaican statute, 33 Charles 2, c. 18, specifically provided that the churchwardens and vestrymen were to be chosen from "such as shall conform to the Church of England."[17]

At the same time other factors tended to make religion a more potent force in Jamaica. As seen above,[18] the authorities in their desperate efforts to increase the white population, encouraged the importation of Irish indentured servants. British troops were stationed in the Island, and many of the soldiers were Irish Catholics. Added to this, was the fact that at one time or another during this period, Britain was at war with either France or Spain, which were predominantly Roman Catholic countries.

Owing to these factors, the allegiance of the Roman Catholic section of the Jamaican population was always suspect and the Roman Catholics were persecuted. In May 1690, the Jamaica Council protested against the Lt.Governor's not taking action against a Papist for expressing the view that the Prince of Orange was a "Dutch bastard".[19] One man was accused of treason for giving money to a Roman Catholic priest to furnish a chapel,[20] and Governor Handasyd promised to send

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15. Ibid. 235.
16. In England the Test Act of 1673 had rendered Roman Catholics ineligible for political or military office and the 1678 Act had expelled them from the Houses of Parliament: See The Political History of England, Vol. 8, Chapters 6-8.
17. Sec. 1.
18. See Chapter 2.
19. C.S.P. 1689-92, No. 874.
20. C.S.P. 1689-92, No. 938, 12 June 1690.

to England an "Irish Popish Priest" whom he had apprehended.[21] In another case, Dominick Cavanagh was brought before the Jamaica Council and questioned as to whether or not he was a "Popish Priest".[22] According to the report, he replied "in a very indecent and insolent manner that he did not think himself obliged to Answer such Questions."[23] The Council then requested the opinion of the Attorney General of Jamaica concerning these "treasonable practices."[24] In his opinion given a month later, the Attorney General stated that the evidence was not sufficient to found a prosecution against Cavanagh on any of the Statutes made against Popish Priests in Queen Elizabeth's reign. However, by the English Statute 11 & 12 Wm. 3, c. 4, life imprisonment was the penalty for anyone exercising the function of a Popish Priest and as that Act expressly extended to His Majesty's Dominion's, it was in force in Jamaica. He concluded that although Cavanagh admitted in conversation the "exercise of a priest" which "might be a foundation for his prosecution and be a very good Piece of Evidence to give Creditt to and to Coroborate the testimony of a Witness", who might swear more directly against him, "yet I believe as that stands alone, it will not be sufficient to induce a Jury to convict him."[25]

After the unsuccessful French attack on Jamaica in 1694, the Governor told the Duke of Shrewsbury that some of the people who betrayed him were the Irish deserters.[26] In a more detailed letter he related how the deserters informed the Governor of Hispaniola about the fortifications of the Island and told him that 500 Roman Catholics would help him if he landed.[27] When recruits for the army arrived in the island in 1703, Handasyd apprehensively wrote that many of

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21. C.S.P. 1702-3, No. 1119, 5 October 1703.
22. CO 140/19: 5 October 1726.
23. Ibid.
24. Ibid.
25. Ibid., 2 November 1726.
26. C.S.P. 1693-96, No. 1236, Beeston to Shrewsbury, 18 August 1694.
27. CO 137/18/59: Beeston to Secretary of State, 23 June 1694.

these "poor sorry sick scrubs" had Irish names, and "I'm afraid Papists may be of ill consequence in these parts in case of an attempt from the enemy."[28] Two years later a bill to prevent the growth of popery was passed by the Assembly but it does not seem to have completed all the legislative stages.[29]

When the Jacobite rebellion was crushed in 1715 the Jamaica Council sycophantically assured the Council for Trade of their aversion "to the thoughts of the Pretender and the miserys of Popery and Slavery that must attend his success."[30] In an Address to the King, the Governor and Council communicated their "utmost detestation and abhorrence of the unnatural Rebellion" in favour of the Pretender "whose success must inevitably be attended with the loss of what is dearest to us our religion and liberty. This we are sensible as we are Protestants and Englishmen."[31]

Soon after, the Assembly passed an Act for the discovery of persons disaffected to His Majesty, 2 Geo. 1, c. 3. The Council for Trade delayed their recommendation concerning the Act and directed Governor Lawes on his arrival in Jamaica to acquire all the information he could on the subject and advise them accordingly.[32] Lawes subsequently informed them that on the whole he felt the Act was not suitable "in many many respects to our Condition as an Unpeopled Colony, the same obliging all officers, Civil and Military within this Island to receive the holy communion within a month after the publication of their Commissions."[33] He added that this had made many who were really well affected to the King and the Government become Reformed Officers. Furthermore, he could not say that there were many Roman Catholics or Dissenters in the Island.[34] The Act was disallowed.

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28. C.S.P. 1702-3, No. 885: Handasyd to CTP: 7 July 1703.
29. See JAJ Vol. 1, pp. 383, 386-387.
30. C.S.P. 1716-17, No.203 (ii).
31. CO 140/13/437: 21 April 1716.
32. CO 138/16/105: Popple to Lawes, 4 April 1718
33. CO 138/16/135: Lawes to CTP, 1 September 1718.
34. Ibid.

Because of the unsettled state of affairs between Britain and Spain in 1727-9[35] Jamaica braced itself for an attack by the Spanish in case war was declared. As it happened, war was not declared and the Island was not attacked, but the Governor's correspondence is an interesting revelation as to the temper of the Island at the time. In one letter Hunter wrote how the militia was "not at all to be depended upon" as it consisted chiefly of hired servants who were generally Irish and "a turbulent faction of Irish lawyers" who pleased themselves in opposing measures proposed for public security.[36] "You'll think it strange but it is true," he wrote in another letter, "my chief dependence in case of an attempt was upon trusty slaves, for whom I prepared arms."[37]

Following this unnerving experience the Assembly wasted no time in passing 2 Geo. 2, c. 2, 'An Act to prevent dangers that might arise from disguised as well as declared Papists'. This 1729 statute prohibited any Papist or reputed Papist from holding any civil or military office in the Island. Papists were disqualified from voting for, or sitting as members of the Assembly, or from practising as attorneys or solicitors. No male servants except Protestants or reputed Protestants were to be imported from Ireland. Priests who were found guilty of keeping mass were to be subject to "perpetual Imprisonment" and persons present at the mass were to be fined £500. On sending this Act to the Council for Trade, the Governor commented at length on the reasons for the Act. He explained that the evil which it was intended to remedy was a long standing one and he told the story which he had heard of some militia men saying that they had no quarrel with the Spaniards and would not fight against them; he thereupon issued a public declaration that he would place a reserve of negroes and order them to knock down any men who deserted.[38] He wrote

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35. The Political History of England Vol. 9, pp. 329-338.
36. C.S.P. 1728-9, No.830: Hunter to Delafaye, 17 July 1729. See also in CO 138/17/36.
37. Ibid. No. 836. Hunter to Col. Bladen, 17 July 1729.
38. CO 137/18: Hunter to CTP, 6 September 1729.

again recommending the Act, "upon the Approbation of which the future Security of this Island depends."[39] The Council for Trade at first had doubts about certain sections of the Legislation[40] but on being pressed to confirm it, sent it to the King for confirmation, advising him that it would be a "seasonable check to the growth of Popery in Jamaica."[41] It was duly confirmed. But within less than 18 months the Assembly passed an Act repealing it.[42] The Governor explained to the Council for Trade that he was induced to give his assent to the repealing statute because "all or almost all of the Romish Religion" had "publickly renounced or recanted."[43] The Council for Trade expressed their surprise at the necessity for the repealing statute and reminded Hunter that the original Act had been passed at Jamaica's insistence: "If the Protestant Act is of so much Consequence to the welfare of Jamaica, We can by no means give our Consent to the annulling of it."[44] Hunter replied hoping that the repealing Act would be disallowed as it may be of some use at least in deterring the "native Irish Papists of which Our Servants and Lower Kind of People chiefly consist." They are a "lazy useless Sort of people who come cheap and serve for deficiencys and their hearts are not with us."[45] The statute was not disallowed. For the rest of the century, Roman Catholicism does not appear to have been as important a factor in Jamaica.

In 1823 at the height of the emancipation debates, the Assembly passed an act for the more effectual punishment of treason, and treasonable conspiracies.[46] The Governor described it as a "very necessary" statute but did not expand on this brief comment.[47] It was

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39. Ibid. Hunter to Popple, 25 October 1729.
40. C.S.P. 1730, No. 317: CTP to Hunter, 7 July 1730.
41. Ibid. No. 524. CTP to The King, 10 November 1730.
42. 3 Geo. 2, c. 12.
43. CO 137/19/38: Hunter to CTP, 24 December 1730.
44. CO 138/17/335: CTP to Hunter, 28 July 1731.
45. CO 137/19/111: Hunter to CTP, 13 November 1731.
46. 4 Geo. 4, c. 13. This statute made no mention of any treason acts which might have been "received" in the Island.
47. CO 137/154: Manchester to Bathurst, 24 December 1823.

made a felony for any person to compass, imagine or levy war or excite insurrection against the government of the Island or to compel the Governor to change the established constitution of the Island. It was also made a felony punishable with death to excite or stir up any free person or slave to commit any act of insurrection or rebellion or to engage in any conspiracy other than "by lawful means" to effect a change in the state or condition of the free people or slaves of the Island. This statute did not mention the missionaries explicitly but they could not have been very far from the legislators' minds. At the time the statute was passed, 1823, the controversy over the abolition of slavery was raging and it was the missionaries (aided by Wilberforce and his supporters) who were regarded as most likely to excite discontent and rebellion among the slaves.

In 1867 Buckingham sent Grant a circular despatch concerning the desirability of assimilating the law governing treasonable offences in the colonies to that of the United Kingdom.[48] The Jamaica Attorney General prepared a bill, and the following year, the Council passed a law, Law 15 of 1868, similar to the English Treason Felony Act of 1848, 11 Vic., c. 12. This law repealed the provisions contained in the 1823 Act.

This statute was rigidly scrutinized in the Colonial Office and its provisions compared with 11 Vic., c. 12 and corresponding statutes in force in Antigua, Prince Edward Island, and New South Wales.[49] The Governor was then told that since it was desirable that the law on treason felony should in all parts of Her Majesty's Dominions "be similar, in substance at all events, to the Law which prevails in the United Kingdom", his attention was being called to one or two points. It was pointed out that several important provisions contained in the third section of the English Statute were omitted from

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48. See CO 137/432: Grant to Buckingham, 5 March 1868.
49. CO 137/435: Grant to Buckingham, 23 July 1868. Minutes following.

the Jamaican Law. Reference was particularly made to the omission of the words "open and advised speaking", which had probably been inserted in the Imperial Act "to prevent any question being raised whether words alone make an overt act". Until these amendments were made a decision on the law would be suspended.[50] In the following year, 1869, Law 10 repealed Law 15 of 1868 and incorporated in a new statute the suggestions made by Buckingham.

Section 3 of Law 10 of 1869 was almost identical to Section 3 of the English statute 11 Vic., c.12. This made it a felony to "compass, imagine, invent, devise ... or depose" the Queen or her heirs from the style or honour of the imperial crown of the United Kingdom; or levy war against the Queen or move any foreigner to invade the United Kingdom. It was also made a felony to "levy war or excite insurrection" against the government of the Island or to compel the governor to alter the constitution as established by law.[51] If persons "maliciously and advisedly endeavour to excite, or stir up any person to commit any act of insurrection or rebellion" or to make any "traitorous or rebellious assembly" for the purpose of effecting other than by lawful means a change in "the state or condition" of the inhabitants, they were guilty of a felony.[52] This statute, as Cap. 390 in the Revised Laws of Jamaica, is the current Treason Felony Law of Jamaica. This 1869 Treason Felony Law repealed the 1868 Law which had itself repealed sections 1 and 2 of the 1823 Act. But the 1869 Law did not <u>expressly</u> repeal sections 1 and 2 of the 1823 statute which were revived when the 1868 Law was repealed. Although it can be argued that the 1869 Law has repealed those sections by <u>implication</u>, the position is not free from doubt. As suggested earlier in this Chapter, the important Treason Act of

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50. CO 138/79: Buckingham to Grant, 31 August 1868.
51. Sec. 4.
52. Sec. 5.

1351, was received in the Island and is currently in force. This statute together with that of 1869 and possibly that of 1823 might therefore comprise the present treason legislation of Jamaica.

(ii) Seditious Words and Libel[53]

In Jamaica, seditious language was recognized as a criminal offence, and it appears to have been taken to the Island in the English common law. In describing the law concerning seditious language, Stephen said:[54]

> "Everyone commits a misdemeanour who publishes verbally or otherwise any words or any document with a seditious intention. If the matter so published consists of words spoken, the offence is called the speaking of seditious words. If the matter so published is contained in anything capable of being a libel, the offence is called the publication of a seditious libel."

He defined seditious intention thus:[55]

> "A seditious intention is an intention to bring into hatred or contempt, or to excite disaffection against the person of Her Majesty, her heirs and successors, or the Government and Constitution of the United Kingdom, as by law established, or either House of Parliament, or the administration of justice, or to excite Her Majesty's subjects to attempt otherwise than by lawful means the alteration of any matter in Church or State by law established or to raise discontent or disaffection amongst Her Majesty's subjects, or to promote feelings of ill-will and hostility between different clases of Her Majesty's subjects."

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53. The description of these offences in English law is mainly adopted from Stephen, op.cit. Vol. 2, Chapter 24.
54. James Fitzjames Stephen, A Digest of The Criminal Law (Crimes and Punishments), Article 91.
55. Ibid., Article 93.

This description of the law by Stephen, appears to be, by and large, a correct exposition of the law in the seventeenth and early eighteenth centuries. It is likely however, that up to the early seventeenth century, opinions hostile to or critical of the government could be brought within the fairly extensive crime of treason. In addition, there were at least two statutes which punished libels, both of which could have been "used" in Jamaica. In 1581, 23 Eliz., c. 2, made it a felony to write or print any book defamatory of the Queen or encouraging any rebellion. In 1662, 13 & 14 Charles 2, c. 33, punished persons who printed any "heretical, seditious, schismatical, or offensive books or pamphlets" assisting any doctrines contrary to the Christian faith, "or which shall or may tend to be to the scandal of religion, or the Church, or the government or governors of the Church, State, a Commonwealth, or of any corporation and particular person or persons whatsoever." This statute expired in 1694. There was also a 1275 statute, 3 Edw. 1. c. 34, which made it an offence to "cite or publish any false news or tales whereby discord or occasion of discord or slander may grow between the king and his people or the great men of the realm."

In 17th century England, there were frequent prosecutions for political libels and seditious words. In 1684 alone there are on record sixteen trials for these offences between April 30 and November 28.[56] In Jamaica, prosecutions for and allegations of these offences were proportionately as frequent. It appears that on more than one occasion, the Council and Assembly used accusations of seditious language to silence their critics. In a 1672 case, Humphrey Freeman, on being asked in the Council for his patent replied that there was "no law for it and that he believed there was a trick

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56. See Stephen, op. cit., Vol. 2, p. 313

in it, but ere long they should find it out."[57] Whereupon the Council ordered him to be committed for trial for speaking seditious and contemptuous words of the Government.[58] In another case, an attorney in the Island presented a petition to the Council, accusing the Chief Justice of bribery and partiality. The Council declared the petition to be "nothing else but a malicious and rude Defamation and Reflection."[59] They found also that the attorney had spoken "very lessening things of Divers Gentlemen of the Councill" and had made "observations of the Government."[60] As a result, they immediately committed him to prison until he could be tried at the grand court. David Pugh, a member of the Assembly was accused of remarking "That the Prince of Wales was a bastard" and "That the princess was but a left-handed wife."[61] He was expelled from the House and the Attorney General was ordered to prosecute him for "having spoken scandalously" of their royal highnesses.[62] In 1686, John Favell was ordered by the Council to be detained for "scandalous reflections" on the Lt.-Governor,[63] and two years later Charles Sadler was fined £300 for speaking "scandalous words" of the Chief Justice.[64] While imbibing alcohol in a house at Port Royal, Harvey Nicholls, in reference to the Governor, is alleged to have declared that if there was martial law "my Lord would be shot in his own house."[65] For these "seditious words" he was immediately arrested.[66] In 1690, one John Bodle was committed to prison for "spreading vain tales"[67] concerning the Governor's Instructions. An example of how strongly

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57. C.S.P. 1669-84, No. 747, 1 February 1672.
58. Ibid.
59. CO 140/3/321: 4 August 1672.
60. Ibid.
61. JAJ Vol. 2, p. 226, 25 October 1716.
62. Ibid.
63. C.S.P. 1685-88, No. 797, 30 July 1686.
64. C.S.P. 1685-88, No. 1870, 27 August 1688.
65. CO 140/13/240, 16 November 1714.
66. CO 140/13/243, 17 November 1714.
67. C.S.P. 1689-92, No. 946, 18 June 1690. Sec. 3 Edw. 1, c. 34, Supra p.

the Assembly felt about some matters is given in 1722, when the Attorney General of Jamaica had the temerity to suggest that the inhabitants were not entitled to the laws of England. The House resolved unanimously that this was a "dangerous and seditious doctrine and insinuation highly reflecting on his majesty, as if he intended to govern his people otherwise than by the laws and by the virtue of his oath, he is obliged to do."[68]

The first Jamaican enactment against sedition, 4 Geo. 4, c. 13, reached the statute book in 1823 - at a time when the Jamaican plantocracy was more than usually apprehensive about the rebellious intentions of their slaves. Section 8 provided that if any justice of the peace or police officer received information on oath or had reasonable cause to suspect that any meeting was held for the purpose of stirring up or exciting any free person to commit any act of insurrection or insubordination or to obtain otherwise than by lawful means a change in the constitution of the Island, or for "any seditious purpose whatsoever", the justice of the peace or police officer could order the persons to disperse. If they still continued to assemble half an hour after they were ordered to disperse, the persons gathering, were to be guilty of a felony on proof that the meeting was of a seditious or treasonable nature. Under Section 9, persons who wilfully opposed or obstructed the justice of the peace or police who ordered the meeting to disperse, were also to be guilty of a felony and subject to a similar punishment of transportation for seven years.

These provisions were not objected to by the Colonial Office when they were first enacted, but in 1829, Murray strongly criticized the provisions of the statute as contained in the renewal legislation.[69] As the statute had expired it was impossible to disallow it, but as

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68. JAJ Vol. 2, p. 416, 23 June 1722. For other references to sedition see JAJ Vol. 1, p. 305; CO 140/14/453; C.S.P. 1689-92, No.938.

69. CO 138/53: Murray to the Lt.-Governor, 7 May 1829.

it could be renewed in the following session, it would become "requisite to enquire whether the necessity which in the year 1823 was supposed to authorize a Law of so much severity still continues." Except on the ground of some exigency which "requires and justifies a departure from the ordinary principles of legislation, the measure is indefensible." The Act authorized any police officer, having what "he may deem reasonable cause for suspicion", to disperse any meeting whatever be the place, or whatever the number of persons present. Belmore was directed to suggest to the Assembly the propriety of considering whether the enactment could not be permitted to cease, or whether, if the revival of it was necessary, "some modification of its rigour may not be safely and advantageously adopted." In any event, it should not be re-enacted "without complete and produceable evidence of the existence at the present time of circumstances rendering its continuance indispensable to the welfare of the Colony." The Assembly did not amend the Act and continued their annual renewal of it.[70]

Following the slave rebellion of 1831, the Assembly legislated against seditious writings. This statute was disallowed.[71]

In 1836, the Assembly made their hitherto temporary seditious meeting legislation permanent.[72] Secretary of State Glenelg informed the Assembly that it was now necessary to examine the statute with "greater attention" than what was required when it was first enacted to meet a "passing exigency" and to serve a temporary purpose.[73] He felt that indirectly the Act could abridge the "free utterance of public opinion", and he was very critical, like Murray before him, of the wide powers which the police possessed under the Act. Although the punishment was to be preceded by certain proofs, "yet the right

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70. One member of the Assembly, Mitchell, seems to have taken on himself the task of introducing the renewal bills, See VAJ 1828 p. 149, 1832 p. 181, 1833 p. 152. These provisions bear some resemblance to the Riot provisions described in this chapter.
71. See Chapter 5 supra.
72. 7 Wm. 4, c. 12.
73. PP. Relative to the Abolition of Slavery in the British Colonies Part V. Jamaica: Glenelg to Smith, 2 September 1837.

of dispersion may be exercised and will be respected" and the constable's order would be obeyed in the case of the "most innocent assemblage which may excite his suspicion." He did not think it reasonable to attribute so much weight to the opinions of a "common police officer" especially when it was not required that they should point to treason or sedition; it will be sufficient if he suspects that the object is to excite any person to 'insubordination', a term which, "however significant at present", would lose "or at least entirely change" its meaning after August 1840.[74] Glenelg then instructed Smith to recommend the amendment of the Act to the Assembly, along the lines which he had indicated; in the meantime, a decision on the Act would be suspended.

At this period, amendments had been suggested to some other Jamaica statutes by the Secretary of State, and some statutes were disallowed by him. The Assembly were extremely critical of the exercise of the Crown's right to disallow their laws, and they were even more sore at what they described as the anomalous and dangerous power of dictating amendments to the laws passed by the legislature.[75] In his reply,[76] Glenelg told Smith that "in the altered relations of Society in Jamaica", it was impossible for him to advise the Queen to acquiesce in a law which enables any constable to prevent any meeting of the free subjects, on his suspicion of its character or tendency. "As the Assembly had announced their final adherence to the Act, in its present form" the disallowance of it was "inevitable".

Not having had any information about the amendment of the statute, in January 1839, Glenelg told Smith that he was anxious to know "whether the statute had been amended or whether it remained in

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74. The date when, at the time of writing, the apprenticeship period was to terminate.
75. CO 138/62: Glenelg to Smith, 25 May 1838.
76. Ibid.

force as originally enacted.[77] Three months later, Smith replied that the Act remained unamended.[78] In December 1839, Russell brought the unamended Seditious Meeting Act to Metcalfe's attention, and warned that if it was not amended the British Government would be obliged to consider whether the Act should not be disallowed after August 1840.[79] The Assembly did not amend the Act and in the tremendous confusion in the Colonial Office in 1840 involving Jamaican legislation,[80] the Seditious Meeting Act appears to have been forgotten.[81] After that year we hear no more about the statute. With minor amendments,[82] this statute, which has been in existence from 1836, and which has been so forcefully criticized, is the current law of Jamaica.[83]

(iii) Unlawful Oaths

In 1823, the Assembly decided to enact legislation prohibiting the administering of unlawful oaths. This statute, 4 Geo. 4, c.13, was most likely enacted with the slaves in mind, for they were now said to have possessed an "active spirit of enquiry", which was attributed to the renewed debates in Parliament on the slave question.[84] The Assembly, in their search for legislation, turned once more to the English statute books and transcribed almost word for word, 37 Geo. 3, c. 123, passed in 1795, the year of the mutiny at the Nore, and from its preamble the statute appears to have been directed

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77. CO 138/62: Glenelg to Smith, 15 January 1839.
78. CO 137/238: Smith to Glenelg, 20 March 1839.
79. P.P. Relative to the West Indies Vol. 5: Russell to Metcalfe, 20 December 1839.
80. See Chapter 3, supra.
81. See CO 137/248: Minute from Blunt to Stephen commenting on the unamended Seditious Meeting Act.
82. See Law 6 of 1961.
83. Laws of Jamaica (Revised Ed. 1953) Cap. 354. See also the Newspaper Libel Law of 1896, Sec. 6.
84. See Chapter 5, supra.

at mutinies.[85] Nevertheless, the Jamaicans regarded it as a suitable statute to fill the needs of their slave society.

In the traumatic weeks after the 1865 Rebellion, the panic-stricken Assembly again addressed their minds to the question of unlawful oaths and again they went to the English statute books. 29 Vic., c. 9 replaced the previous Jamaica legislation by re-enacting the provisions based on the English statute 37 Geo. 3, c. 123, and at the same time introducing the provisions of the English statute 52 Geo. 3, c. 104.

The preamble of 29 Vic., c. 9, referred to attempts made to seduce Her Majesty's subjects from their duty and allegiance to Her Majesty, and "to incite them to acts of sedition". Persons who administered or assisted in administering any oaths purporting to bind the person taking the oath to commit any treason, arson or murder were liable to be sentenced to penal servitude for life. Persons who administered any oath purporting to bind the person taking it to "engage in any mutinous[86] or seditious purpose, or to disturb the public peace, or to be of any association, society or confederacy, formed for any such purpose", could receive a seven year term of penal servitude. The same punishment was provided for persons voluntarily taking these oaths, or for persons not revealing the administering of oaths. Compulsion was no excuse to the taking of these oaths, unless the taking was declared within fourteen days. Persons aiding at the administering of these oaths and persons who, though not present, caused the oaths to be administered, were to be deemed principals. It was also provided that any engagement or obligation in the nature of an oath, intending to bind the person

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85. Whereas "evil disposed Persons have of late attempted to seduce Persons serving in His Majesty's Forces by Sea and Land, and others, of His Majesty's Subjects from their Duty and Allegiance to His Majesty, and to incite them to Acts of Mutiny and Sedition." See Also Stephen, op. cit. Vol. 2, p. 294.

86. 4 Geo. 4, c. 13, Sec. 3 had referred to "rebellious".

taking it to commit any treason, arson or murder, was to be deemed an oath. This statute was referred to the English Law Officers for their opinion. They saw no objection to the statute and like 29 Vic., c. 8,[87] was "probably required by the circumstances of the Colony".[88] The provisions of this statute are still in force in Jamaica.[89]

(iv) Unlawful Drilling

The 1865 Rebellion was also the occasion which inspired the Assembly to pass legislation for unlawful drillings. It was believed in Jamaica, that Bogle and his supporters had, previous to the rebellion, been engaged in secret drillings and training; no doubt the legislature wished to prevent by any means, a recurrence of "Morant Bay". The Assembly once more took English law as their model and transcribed the substantive sections of the English statute 60 Geo. 3 & 1 Geo. 4, c. 1. This English statute was passed in 1820, at a time when there was widespread belief that unlawful drilling with a view to insurrection, was nocturnally carried on in different parts of England, especially in the northern counties.[90] The Assembly now adopted its provisions in 29 Vic., c. 8.

29 Vic., c. 8 attempted to achieve two main objects: to prohibit meetings where persons were being drilled without authorisation from the State, and to punish persons who participated in these meetings. Section 1 prohibited all meetings for the purpose of training or drilling persons or for practising "military exercise, movements, or evolutions", without authority from the Governor. Persons who attended such meetings for the purpose of training others

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87. Infra.
88. CO 137/409. Law Offices to Cardwell, 6 January 1866.
89. Laws of Jamaica (Revised Ed. 1953) Cap. 264, Secs. 24-30.
90. See Stephen op. cit. Vol. 2, p. 296.

were liable to be sentenced to seven years penal servitude. Persons who were present for the purpose of being trained could be fined and imprisoned for a maximum of two years. This statute, like 29 Vic., c. 9, was referred to the English Law Officers, and they did not object to it.[91] This legislation had been enacted in haste and panic within weeks of the rebellion and the irony is that the Royal Commission on the 1865 Rebellion found that the drillings "were wholly unconnected with illegal objects".[92] Nevertheless this statute remains in force in Jamaica today.[93]

(v) Riots, Unlawful Assemblies, and Combinations

Riots, routs and unlawful assemblies are common law offences and it was towards the end of the sixteenth century that their modern characteristics were settled.[94] A riot has been described as a tumultuous disturbance of the peace by three or more persons who assemble together of their own authority, with an intent mutually to assist one another against any who oppose them in the execution of an enterprise of a private nature, and afterwards actually execute the same in a violent and turbulent manner to the terror of the people.[95] An unlawful assembly at common law is an assembly of three or more persons for purposes forbidden by law, or with intent to carry out any common purpose, lawful or unlawful, in such a manner as to endanger the public peace, or to give firm and courageous persons in the neighbourhood of such assembly reasonable grounds to apprehend a breach of the peace in consequence of it.[96] A rout has been distinguished from a riot where there is a tumultuous meeting of

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91. CO 137/409: Law Officers to Cardwell, 6 January 1866.
92. Report of the Jamaica Royal Commission 1866 P.P. 1866 (3683) XXX.38
93. Laws of Jamaica (Rev. Ed. 1953) Cap. 311, amended by Law 12 of 1962, Fourth Schedule.
94. Holdsworth, op. cit. Vol. 8 (2nd ed.) p. 324.
95. Archbold Criminal Pleading and Practice (36th ed.) par.3581. See also Holdsworth, op. cit. Vol. 5 (2nd ed.) pp.197-199 and Vol. 8 (2nd ed.) p.327.
96. Archbold, op. cit. par. 3571.

persons who attempt to commit an act, which if committed would make them rioters.[97]

In the 16th century there had been statutory provision for riots but these statutes had expired at the end of Elizabeth's reign in 1603.[98] The Riot Act of 1714[99] re-enacted the main provisions of the statutes which had been in force during the reigns of Mary and Elizabeth. This statute provides that if twelve or more persons unlawfully assemble to the disturbance of the peace, and a magistrate commands them to disperse, then if they do not disperse within an hour, all who continue to assemble together are guilty of a felony. This statute could have been "used" or "received" in Jamaica before 1728.

In the 1688 Assembly elections in Jamaica, it was said that the "irregularities were so many that hardly" five members of the thirty-two were "fairly elected".[100] According to the Governor, there were various practices to prevent a fair election and in Clarendon, some persons disaffected to the Government, including a Colonel, "whom I should never have suspected of such a thing", made a "public riot".[101] These persons were arrested and later fined heavily for their behaviour.[102] On another occasion, a captain of one of His Majesty's convoy was tried and fined for rioting at Port Royal.[103] The Governor hoped that on his following visit "his manner will be a little mended".[104]

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97. Ibid., par. 3572.
98. See 1 Mary Sess. 2, c. 12. See further Holdsworth, op.cit., Vol. 4 (3rd ed.), p. 497; Vol. 8 (2nd ed.), p. 327.
99. 1 Geo. 1, St. 2, c. 5.
100. C.S.P. 1689-92, No. 1698, Inchiquin to CTP, 12 August 1691.
101. C.S.P. 1685-88, No. 1858, Albemarle to CTP, 8 August 1688.
102. Ibid., No. 1870.
103. C.S.P. 1689-92, No. 1698, Inchiquin to CTP, 12 August 1691. It is not stated whether other persons were also prosecuted.
104. Ibid.

During slavery, no statute was enacted by the Assembly to deal with riots, probably because provisions were contained in the Slave Codes for dispersing unlawful assemblies of slaves. In 1833, as the end of slavery was approaching, the Colonial Office informed the Assembly that one of the ways in which the "peace and good order of society" would be endangered by the apprenticed labourers "considered as a distinct class", was by riot, and indicated the kind of legislation necessary to deal with this offence.[105] The Assembly proceeded to enact a statute for 'preventing tumults and riotous assemblies', 4 Wm. 4, c. 28, which was almost identical with the English Riot Act, 1 Geo. 1, St. 2, c. 5, passed one hundred and nineteen years earlier.

The Jamaican statute, like its English counterpart enacted that if twelve or more persons "unlawfully riotously and tumultuously assembled together, to the disturbance of the public peace", they could be required by a justice of the peace to disperse, and if they had not done so within an hour they could be declared guilty of a felony, and suffer the death penalty.[106] If the persons so assembled demolished churches, chapels, or other buildings, they could also suffer death; as could persons opposing or hindering the reading of the proclamation ordering them to disperse. This statute was at first only in force for three years but it was subsequently renewed.[107]

In June 1840, some labourers rioted at Falmouth after it appeared that justice had not been impartially administered to some of their colleagues.[108] The Riot Act was on that occasion utilised. During the Christmas holidays of 1841, there was a riot at Kingston, when the Mayor, in a most ham-handed manner, attempted to stop the innocent annual revellings of some labourers. Two people were

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105. See VAJ 1833, Appendix.
106. 4 Wm. 4, c. 28, Sec. 1. Compare this statute with the Seditious Meeting Act above.
107. 7 Wm. 4, c. 28.
108. CO 137/249: Metcalfe to Russell, 23 June 1840.

killed on the spot and some died afterwards as a result of wounds they received.[109]

Probably because of these riots, the Riot Act of 1833 which had already been renewed was again subsequently renewed,[110] and in 1857 was made permanent.[111] In this statute, the death penalty for the various offences was abolished, and transportation for life provided as the maximum punishment. With the exception of the penalties which have been amended, these provisions are the current law of Jamaica.[112]

Power was also given to magistrates under 7 Vic., c. 14 as amended by 11 Vic., c. 15, to fine or imprison persons guilty of any "rittous or indecent behaviour" while drunk, in any public place.

After emancipation, estate owners no longer had the unfettered control over the labourers' services, and sought to prevent them from combining to improve their economic conditions. They therefore enacted 3 Vic., c. 30, which, though similar to the English statute 5 Geo. 4, c. 95, was much more comprehensive than its model. The preamble of 3 Vic., c. 30, stated that all combinations for the fixing of wages and labour "are injurious to trade and commerce dangerous to the tranquillity of the Country and especially prejudicial to the interests of all who are concerned in them". Section 1 provided punishment for persons who by violence or threats, or by molesting or obstructing another person, forced him to leave his employment, or to prevent him being employed; or induced him to belong to any club or association or to contribute to a common fund. A person found guilty of any of these offences could be imprisoned and kept in solitary confinement for up to three months.

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109. CO 137/261: Metcalfe to Stanley, 3 January 1842.
110. 6 Vic., c. 12, 11 Vic., c. 6, 16 Vic., c. 35, 17 Vic., c. 27.
111. 21 Vic., c. 11. In 1851 there were riots at St.David's elections. See CO 137/309: Grey to Earl Grey, 27 February 1851. In 1854 there were riots at Montego Bay and among the soldiers at Camp. See CO 137/322: Barkly to Newcastle, 19 January 1854. In 1859 riots occurred in Westmoreland and at Falmouth. See CO 137/344: Darling to Lytton, 25 March 1859; ibid., Darling to Newcastle, 9 August 1859.
112. Laws of Jamaica (Rev. Ed. 1953), Cap. 344.

When this statute was sent to England, the Colonial Office thought it important enough to seek the opinion of the English Law Officers on it. The Attorney General and Solicitor General began their report by observing that the statute would require "very serious consideration". They did not object to the provisions concerning violence and intimidation but they had "great apprehension" that the words 'molesting or in any way obstructing' might lead to "vexation and oppression and prevent the free laborers from resisting the attempts which may be made to deny them a fair compensation for their labour."[113] It does not appear that the Assembly was asked to amend the statute and it remained in force as originally enacted. As part of Cap. 240 of the 1953 Revised Laws, this statute is still in force in Jamaica today.

(vi) Ammunition and Firearms

During slavery, the Assembly, in an effort to prevent the slaves obtaining ammunition, enacted legislation regulating the disposal of gunpowder and firearms.[114] After slavery was abolished, some of these provisions were still retained.

The Gunpowder and Firearms Act of 1836[115] was similar to previous statutes with the same title and, like the earlier statutes, it was enacted because, by their unrestricted importation and sale, gunpowder and firearms "often fall into the hands of improper persons" and this "may prove of pernicious consequence" to the Island.[116] As provided in the previous statutes, masters of vessels who landed gunpowder and firearms without licence were still liable to have their ship forfeited. No person was to sell any gunpowder or firearms without having first obtained a licence for that purpose; the penalty for

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113. CO 137/252: Law Officers Report, 19 June 1840.
114. See Chapters 4, 5, supra.
115. 6 Wm. 4, c. 30.
116. Ibid. Preamble.

doing so was £100 or three months' imprisonment. The vendor was also to swear that he would not sell any gunpowder or firearms except to "proper persons fit to be entrusted with the same for legal purposes". Justices of the peace could issue warrants to search for ammunition, and if any unlicensed ammunition was found, the occupier of the premises on which it was found could be fined £100 or imprisoned for three months. Persons in possession of more than 10 lbs. of gunpowder were to disclose it; otherwise they could be fined £50. Persons selling gunpowder were, under a penalty of £100, to make returns of the gunpowder sold. This act was only in force for four years but it was renewed in 1840, with reduced penalties. It was subsequently amended and kept in force. Eventually in 1870 it was further amended and made permanent.

The gunpowder and firearms legislation of the slave era had contained provisions punishing persons who sold, with or without evil intent, gunpowder or firearms to slaves.[117] With the abolition of slavery, these caluses became obsolete, but the legislators devised another method to prevent the former slaves obtaining firearms. The method employed was to institute a licensing system.

The Registration of Firearms Act of 1834, 5 Wm. 4, c. 9,[118] provided that at the time when the Act was passed, any person in possession of firearms was to make a return of the firearms in his possession. This return was to be accompanied by an affidavit to the effect that he believed he was entitled by law to keep arms. If the justices then felt that he was a fit and proper person to keep arms they were to issue him with a licence authorizing him to keep the arms. Persons who were found in possession of unregistered firearms could be fined £10 and, in default of payment, imprisoned for two months; on a second offence the fine was increased to £20 and the term of imprisonment to four months. Licences for the possession of arms

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117. See Chapters 4, 5, supra.
118. 5 Wm. 4, c. 9.

could be withdrawn from improper persons, and if those persons failed to deliver up the arms in their possession, they were to be treated as having unregistered firearms. Justices of the peace could issue warrants to search for unregistered firearms and if admission to the premises was not given, force could be used to enter and search for them. Only 4 lbs. of gunpowder could be kept without a licence, on any estate or settlement. The act also contained provisions against persons trespassing on land presumably to shoot birds or animals. This statute was to remain in force until December 1838.

In July 1838, Glenelg informed Smith that although this statute may have been justified in 1834, when it was enacted, the penalties were exceedingly severe; also without any satisfactory reason being given, the provisions were extended to trespassers on land. Smith was instructed that if the Act should be revived in its present shape, it should not be sanctioned.[119]

The following year the act was renewed, with most of the penalties being reduced to £5. It was also made permanent. Metcalfe, the new Governor, defended its provisions: the objects were probably to check the too general possession of firearms by the peasantry and the clandestine acquisition of arms by them, also to guard against the trespasses and violence which they may commit in the unrestrained pursuit of game, with firearms or other weapons of offence in their possession. These objects "appear to be legitimate" and unless the objections to it were deemed of sufficient importance, the act should probably remain as it is, "without further agitation devoting suspicion of motives".[120] On receipt of this despatch, Russell referred Metcalfe to Glenelg's previous instructions and he also objected that the act had been made perpetual instead of remaining temporary.[121] In 1840, the Assembly repealed this statute and

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119. CO 138/62: Glenelg to Smith, 4 July 1838.
120. P.P. Relative to the West Indies, Vol. 6 - Part II - Jamaica: Metcalfe to Russell, 12 January 1840.
121. Ibid.: Russell to Metcalfe, 25 May 1840.

replaced it with other provisions.[122] The penalties were further reduced, the majority to £3, and the trespass clauses were omitted. The act was also made temporary. When it expired in 1843, it does not appear to have been revived by the Assembly.

In 1848, Secretary of State Earl Grey called the Governor's attention to what he termed the general disposition on the part of the negroes to obtain firearms. Though the firearms may be obtained without any improper object, possession of arms by "so ignorant and easily excited a Population must be a source of considerable danger and ought as much as possible to be checked". He doubted whether it would be expedient to prohibit by legislation any class of the population from possessing arms, but it was better to discourage acquisition of arms by a licensing system.[123] The Governor, Sir Charles Grey, replied that although there had been an actual resistance to the collection of parochial assessment in which there had been an assault on the police, the negroes appeared to be generally "free from rebellious tendencies turbulent feelings and malicious thoughts" as any other race of labourers. If at present it were to be made unlawful to keep firearms without a licence it would cause "an agitation and alarm in all corners of the Island and would excite much irritation between the police and magistrates on one side and the laborers on the other". For those reasons he should be sorry to see such a measure proposed when "no instance has occurred of any improper uses having been made of firearms as far as I am aware even in a single instance".[124] Legislation as proposed by the Secretary of State was therefore not enacted on this occasion and it does not appear that any was subsequently enacted.

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122. 4 Vic., c. 29.
123. CO 138/68: Earl Grey to Sir Charles Grey (confidential), 15 August 1848.
124. CO 137/279: Sir Charles Grey to Earl Grey (confidential), 21 October 1848.

B. Other Offences of a Public Nature

(1) Coinage Offences

Coinage offences have always been regarded seriously in Jamaica, and as early as 1681, the Jamaica Assembly, following the English pattern,[125] declared certain kinds of coinage offences treason. 33 Charles 2, c. 16 enacted that whoever shall by any way or means, "coin, falsify, impair, diminish, seal, wash, clip, file or lighten", any of the type of money mentioned in the Act was to be guilty of high treason.[126] Jamaica possessed no mint of its own and it was dependent on Spanish and to a lesser extent Portuguese coinage. It is probably to this fact that much of the subsequent troubles are attributable.

The enactment of this 1681 statute might be indicative of a fair amount of counterfeiting. Even if this were not the case in 1681, the records after that date show that coinage offences were far from being infrequent. From the Council Minutes of 1692, we read of a warrant being ordered for the arrest of a "notorious coiner".[127] In 1714, John Fryday was convicted and sentenced to death for clipping and lightening Spanish money which was current coin of the Island. He petitioned the Governor for a reprieve on the grounds that he did not know his offence was a crime and that he had erred by following the practice in New England, where it was not a crime to lighten money. The Governor consulted the Judges, who reported that because the prisoner appeared in "a great measure ignorant of the Heinousness of the Crime and the Fatal Consequences attending it", the prisoner could be reprieved.[128] In a similar case in 1728, John Kirby was sentenced to death for coining two

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125. See Holdsworth, op.cit., Vol. 2 (4th ed.), p. 450, Vol. 4 (2nd ed.), pp. 297-8, 498.
126. Sec. 2.
127. C.S.P. 1689-92, No. 2221, 9 May 1892.
128. CO 137/10, 19 January 1714.

"pieces of base money". He petitioned for a reprieve on the grounds that he was "wholly ignorant" that it was penal to do what he did. The Judges of the Supreme Court recommended him for a reprieve.[129] In 1740, Leslie informs us that the Jamaica Jews "Clip and debase the Coin". He added that there was recently several trials for the offence, but "Strong Interest with some in Power has eluded the deserved Punishment".[130]

Such counterfeiting practices were brought to the attention of the Jamaican authorities, and in March 1733 Governor Hunter advised the Assembly to take remedial action. He referred to one practice "for whatsoever other real causes there may exist that of carrying off your heavy coin, diminishing it a fourth or fifth of its weight in places where it may be done with impunity, and returning it upon you at the former value is a palpable and undesirable one".[131] The House resolved to appoint a committee to investigate the practice alluded to by the Governor,[132] but nothing further was done. The following October Hunter addressed himself once more to the Assembly. "I must again put you in mind of the growing disorder in your current coin", that it "may not be said hereafter that I have been wanting in my duty of forewarning you of an evil which if not speedily stopped, will grow too great for a remedy".[133] The Assembly did not find it necessary to act.

To meet the great scarcity of money in the Island, the Assembly in 1758 passed 32 Geo. 3, c. 16, which provided that certain Spanish coins were to have the letters G R stamped on them, and that to counterfeit the coins after they were stamped was high treason.

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129. C.S.P. 1728-29, No. 559.
130. Leslie, op. cit., p. 39.
131. JAJ Vol. 3, p. 111, 14 March 1733.
132. JAJ Vol. 3, p. 113, 15 March 1733.
133. JAJ Vol. 3, p. 198, 3 October 1733.

Governor Moore explained the currency position of the Island:

> "We have no other Currency here, than the Spanish stamp'd Money,[134] which from its irregular form is so liable to be Clipp'd and otherwise debased, that it is easily reduced from its real value without a Discovery. This having obliged the Spaniards (as we are informed) to give Orders for the calling in All the Stamp'd Money and issuing Mill'd Money in the Room of it".[135]

The Council for Trade reported adversely against the Act: The Provisions of the Act appeared "not only unnecessary, but extremely prejudicial to the welfare of that Island, in its internal Traffic, in its Commerce with the other Colonies, and in its Intercourse with Great Britain". They gave their detailed objections to the Act, and continued:

> "the putting a Stamp upon Money to ascertain its Value, to make it legal Tender and to impose the Penalties of high Treason on those who shall counterfeit the said Stamp, is to all Intents and Purposes setting up a Mint which we conceive to be no less than a Usurpation"

of the King's Prerogative.[136] Despite the Jamaica Agent's representation that the Act had several advantages,[137] the Council for Trade recommended its immediate disallowance.

During the following years the unsatisfactory state of the currency continued to pose problems for the Island. In 1770, Governor Trelawny told the Assembly:

> "The introduction of an adulterated or debased coin, which has of late been too successfully attempted, has so much impeded and will if suffered to increase prove so fatal to the circulation of money, and the trade and credit of this country, that I think it worthy your attention."[138]

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134. See Leslie, op.cit., p. 37.
135. CO 137/30/149: Moore to CTP, 25 January 1759.
136. CO 138/21/23-28: CTP to The King, 16 May 1760.
137. Ibid., 42.
138. JAJ Vol. 6 p.277, 23 October 1770.

He added that he would, as far as his Instructions permitted, agree to whatever means they adopted "to stop the progress of so pernicious an evil".[139] The Assembly replied that adulterated or debased coins, if too successfully introduced would injure the credit and trade of the Island and that they would use every means in their power "to check, and in future prevent, so destructive an evil".[140] On the same day, they appointed a committee to prepare a bill to prevent the introduction of debased coins in the Island. Eventually, 11 Geo. 3, Cap. 8 was enacted. This Act was to be in force for three years.

From the moment it was passed, this Counterfeiting Act seems to have been severely criticised. Writing to Hillsborough in 1771, Trelawny laconically commented that "all attempts made here for a remedy against this Evil (counterfeiting) will ever prove unsuccessful; especially as the Financiers of this Island" were very unequal to the task.[141] In another letter some months later, he mentioned a specific defect, which was that the present Act "intending only to prevent the future Introduction and increase of base and light Money, avoids medling with what it found in circulation".[142] This was also the criticism voiced by one hundred and fifty-nine planters and merchants in a petition to the Governor in which they added that "the temptations of Profit, and the facility of imitating and counterfeiting unmilled Gold Coins, together with the Secret Means by which these Practices are Committed", often eluded the best framed laws; as the door had been left open "for the further increase of this Evil, little benefit has hitherto been found from the said Act".[143] At the same time, Hillsborough told Trelawny that the

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139. Ibid.
140. Ibid., p.279, 25 October 1770.
141. CO 137/36/44: Trelawny to Hillsborough, 4 January 1771.
142. CO 137/36/79: Trelawny to Hillsborough, 12 April 1771.
143. CO 140/28. Petition of the Planters to the Governor.

adulteration in the species of foreign coins brought to Jamaica was "certainly an object proper for the Consideration of the Legislature of the Island" and that they could rest assured that the King would concur readily with any proper measure "for checking a practice big with so much Fraud and Abuse".[144] In another letter to Trelawny, he suggested that the base coin should be taken out of circulation.[145]

When the 1770 Counterfeiting Act reached England, objections to it were hinted at. The Board of Trade's legal adviser, Jackson, stated that the Act had created a felony which would "whenever His Majesty signify his Pleasure become High Treason".[146] He wondered to what extent this was a law of an extraordinary nature.[147] However, the Act was not disallowed, probably because it was only temporary.

In November 1771, an attempt was made to amend the 1770 Counterfeiting Act. A bill to that effect was introduced but after it was examined by the House, the House voted to reject it.[148] Almost simultaneously a bill for calling in all Spanish unmilled money was introduced and given a second reading but it was not passed before the House prorogued.[149] In 1773, 14 Geo. 3, c. 18 was passed to amend the 1770 Counterfeiting Act.[150] Lt.-Governor Dalling had doubts about the former Act and told Lord Dartmouth that "as this Bill was of a very nice and delicate nature, I thought it my duty not to give my consent to it without the advice of His Majesty's Privy Council". The Board of Trade's legal adviser commented adversely on the Counterfeiting Act. This Act was not, however, disallowed. The problem of the base coins seems to have been solved eventually by the coins being taken away to Hispaniola.[151]

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144. CO 137/66/34: Hillsborough to Trelawny, 11 February 1771.
145. Ibid. 198: Hillsborough to Trelawny, 3 July 1771.
146. CO 137/36/216, 9 March 1772.
147. Which would have necessitated a clause suspending its operation until it was confirmed by the King.
148. JAJ Vol. 6, p. 385.
149. Ibid., p. 379.
150. The House also passed an act calling in the Spanish milled money: 14 Geo. 3, c. 24.
151. See CO 137/68/57.

The preamble to Counterfeiting Act, 1773 described the evil which the Act was intended to remedy:

> "Whereas for some Time past a most wicked and pernicious Practice hath been carried out by many of His Majesty's Subjects, and others trading from the American Colonies, and other Parts, by introducing into this Island, base and counterfeit Coins resembling and like to the Spanish and other gold Coins made current in this Island, or which have heretofore been taken and received by general Consent and uttering the same to divers of His Majesty's Subjects in this Island, to the great Deceit and Prejudice of his Majesty.... And whereas, there are at this Time considerable Quantities of Spanish Gold, and other gold Coins, passing current in this Island, and taken and received here; which gold Coins have been diminished and reduced much below their original Weights and Value, by clipping and other fraudulent Practices. And whereas, evil disposed Persons, for wicked Lucre and Gainsake thinking themselves loose from the Penalty of any Laws, may hereafter continue such fraudulent Practices."

The Act penalised three main categories of persons: persons counterfeiting the currency, persons being found in possession of clippings or filings of any coins, and persons importing false coin into the island. Section 1 made it an offence for any one by any means to "Coin, Falsify, falsely Forge, or Counterfeit Impair, Diminish, Scale, Wash, Clip, File, or Lighten, any of the Money or Coins of foreign Realms" which were the lawful currency of the Island. Such persons and their aiders and abetters were, on conviction to be deemed guilty of felony, and suffer death, without benefit of clergy.[152]

Persons who bought or sold, or knowingly had in their custody or possession any clippings or filing of the current coin of the Island, were to forfeit the clippings found in their possession and pay £500.[153] In addition, they were to be branded on the right

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152. 14 Geo. 3, Cap. 18. Sec. 1.
153. Ibid., Sec. 2.

cheek with an hot iron and were to be imprisoned until the fine was paid.[154] Justices of the peace, were empowered to enter the premises of any person suspected of an offence under this Act and search for counterfeiting equipment, and clippings of the current coin.[155] In case the owners or occupiers refused to allow the justices to search, the justices could with the assistance of constables break into the premises and seize any counterfeiting implements or any clippings they found there.

The third category of persons legislated for in the Act, was those who imported counterfeit coins into the Island. Masters or commanders of ships or any other person whatsoever who knowingly imported or caused or procured to be imported into the Island, any false, base, forged or counterfeit gold coins resembling coins of foreign realms then or thereafter current in the Island, were to be guilty of a felony and suffer death without benefit of clergy.[156]

This Act remained the main statute governing coinage offences until 1872.[157] In that year, Law 21 repealed the provisions of 14 Geo. 3, c. 18, and incorporated almost all the provisions contained in the English Coinage Offences Act, 24 & 25 Vic. c. 99. So, like its English model, the Jamaican legislation punished persons counterfeiting gold and copper coins; colouring counterfeit coins; unlawfully possessing filings or clippings of gold coins; buying or selling counterfeit coins; importing counterfeit coins; uttering counterfeit coins; uttering foreign coins as current coin with intent to defraud; defacing coins; counterfeiting coins; and possessing coining tools.

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154. Ibid
155. Ibid., Sec. 3.
156. Ibid., Sec. 4.
157. See also the temporary statute 10 Geo. 4, c. 36.

(ii) Smuggling

The smuggling of produce into the Island seems to have been fairly extensive in the 18th century. In 1773, the practice had become so widespread that one Lt. Governor was compelled to recommend remedial measures to the Assembly. From "considerations of duty" and a "sincere regard for the welfare of this community", Dalling addressed the Assembly concerning the "pernicious practice of smuggling foreign coffee into this island, by which a considerable check is given to the industry of a very useful body of people."[158] He further stated that there were no measures they could take "more grateful to me, than those which may in any degree remedy this important evil."[159] The Assembly assured him that "animated as we are, with zeal to perpetuate the happiness of our constituents", they would endeavour "to check, not only the smuggling of coffee, but every illicit introduction of foreign produce, prejudicial to their interest."[160] A committee was accordingly appointed to examine the extent to which smuggling was carried on, and whether a bill was necessary to remedy the mischief.

The committee found that very large quantities of foreign coffee had been imported into the Island and that large amounts had been seized by customs-officers at Kingston; no less than seventy to eighty thousand pounds weight of coffee which had been seized were then in the possession of Kingston collector; they had also received information about much larger quantities which could not be seized because the officers had no power to enter the stores and other places where they were deposited. In addition, about eighty-eight casks of French sugar had been seized at Montego Bay. With these considerations in mind, they therefore recommended that a bill be introduced to prevent

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158. JAJ Vol. 6, p. 443, 19 October 1773.
159. Ibid.
160. Ibid., p. 447.

"such pernicious practices in future."[161] The result was 14 Geo. 3, c.9. This Act was a temporary one, but it was renewed in 1774, 1778, 1780.[162] Although 21 Geo. 3, c. 8 expired in 1786 and was not renewed, in 1788, some of the provisions were incorporated in 28 Geo. 3, c. 15.[163] In examining the provisions made against smuggling we will discuss two statutes, 21 Geo. 3, c. 8 as being typical of the provisions made between 1773 and 1783 and 28 Geo. 3, c. 15 which was a permanent statute.

21 Geo. 3, c. 8 was enacted because several persons carried on a "most pernicious Trade", with the French, Spanish, Dutch and Danish colonies in America, "by illicitly and Clandestinely" importing into Jamaica, as the produce of the British Colonies, sugar, rum, molasses, coffee, ginger, pimento and tobacco.[164] In an attempt to stop this traffic the Act punished two main types of offenders: persons importing produce into the Island, contrary to the Act and persons neglecting to perform their duties under the Act.

Except as prescribed by Acts of Parliament, no sugar, rum, molasses, coffee, ginger, pimento, or tobacco of the French, Spanish, Dutch or Danish colonies were to be imported into the Island on board any boat, ship or other vessel.[165] If this were done, the produce and the boat were to be forfeited. In addition, the master of the boat and the owner of the produce were to be fined £500. A similar penalty was imposed on whaffingers or other persons, who "wittingly, willingly and knowingly" suffered any such produce to be landed, or aided or assisted in the landing or concealment of it. No vessels having foreign produce on board were to be landed at any port of the Island other than a port of entry or clearance established by law. The penalty was the "absolute Forfeiture" of the ship together with the whole of its cargo. Within 24 hours after their arrival in port

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161. Ibid., p. 448.
162. 15 Geo. 3, c.19; 18 Geo. 3, c113; 21 Geo. 3, c18.
163. Minor amendments were made to 28 Geo. 3, c.15 by 29 Geo. 3, c.15.
164. Preamble.
165. 21 Geo. 3, c.8. Sec. 1.

and before they broke bulk, masters of ships with foreign produce were to answer on oath, questions concerning their cargo. If the masters refused or neglected to reply, his ship together with all its foreign cargo was to be forfeited. Masters of vessels who, with intent to defraud, took on board their ship more goods than were inserted in their lists, were to be fined £500 for each offence. In any dispute over imported foreign produce, the onus of proof was to be on the owner of the produce and not on the prosecutor.

To ensure that this Act was properly enforced, certain persons and officers were heavily penalised for failing to do their duty as stated in the Act. Customs officers and other named officers were required to seize imported foreign produce together with the ships in which it was imported.[166] If they failed to do this they were to be fined £100. Persons who seized these goods were to send an account of them to the Attorney General who was authorized to prosecute the offender. For refusing or neglecting to do this, he was to be fined £500. Officers seizing vessels were under an obligation to detain at least three of the crew for examination and if they failed to do this could be fined £500. Magistrates were empowered to commit persons to prison to give evidence at the trial; but the justices could also accept a recognisance for them to appear at the trial. If justices received information on oath of any illicitly imported goods being concealed or lodged in any store or house, they were obliged to issue writs for entering and searching such suspected places, if the owner or occupiers could not be found or refused to open the house. For failing to do this the justice could be fined £500. If the Provost Marshal or any constable refused or neglected to execute such writs he could be fined £100. If the Receiver General or his deputy cleared a ship before the master of the ship had appeared before him and produced a list of

166. Ibid., Sec. 2.

all the sugar, rum, molasses, coffee, ginger, pimento and tobacco shipped on board, he was to be fined £500. This section was enacted because masters of vessels often obtained empty casks and filled them with the produce of the French Islands, under a pretence that they were produce of Jamaica. Persons who swore falsely about any particulars required under this Act were to be found guilty of "wilful and corrupt Perjury".

In its preamble, 28 Ge. 3, c.15 stated that the laws then in force "for preventing the clandestine importation of foreign produce goods and manufactures, into this island, are in many cases defective and insufficient". Regulations were therefore made to minimise the incidence of smuggling, and like similar Acts before, obligations were laid both on persons importing goods into the Island, and officials charged with the enforcement of the Act.

If certain goods were landed without the duty being paid or a bond given for them, they and the ships in which they were landed were to be forfeited.[167] Masters of ships, having goods on board liable to duty, were within 48 hours and before they broke bulk to pay the duties or in default of that deliver up the ship's original register. Failure to do this could lead to a £200 fine.

As also provided in 21 Geo. 3, c.8, magistrates were on application required to grant warrants for breaking open, places where illicitly imported goods were being or were suspected of being concealed. They could be fined £200 for failing to do this, and officers who were to execute the writs, could be fined £200 for neglecting or refusing to execute them. The Receiver General was not to clear any vessel having wine on board until a master produced a duplicate of the manifest.

Despite this legislation, however, smuggling was still carried on. In January 1802, Nugent told Hobart that he would as far as possible prevent supplies being sent to the contending parties in the St. Domingo conflict. But he added that the Jamaica merchants

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167. 28 Geo. 3, c. 15, Sec. 2.

had been "so much in the Habit of smugling Gunpowder and other Articles" and the custom officers were generally so "inattentive to their Duties" that "it will not be easy to counteract their Proceedings."[168] In August 1816, Bathurst told Manchester that from information gleaned from intercepted letters between parties in South America and Haiti, it appeared that some Jamaican merchants were involved in the supply of arms to the parties in Haiti. Bathurst further warned of the effect such actions by the merchants would have on the emancipation of slaves in Jamaica.[169] The Governor passed on this information to the Assembly, and they in turn directed a secret committee of the House to enquire into the allegations. The committee found that a "nefarious trade", between Jamaica and Haiti, was being carried on by several Kingston merchants and that through them, arms and ammunition had been supplied to the Haitian chiefs. In conclusion, they recommended that a bill be introduced in the Assembly to more effectually prevent intercourse between Jamaica and Haiti, and to prevent "the frequent and prevailing practice of smuggling in this island."[170] A bill tightening up the alien regulations was subsequently passed.[171]

In 1830, the Assembly passed a bill to prevent smuggling, but the Council rejected it.[172] In 1853, 17 Vic., c. 2 based on the English statute 16 and 17 Vic., c. 107 was passed to establish regulations for warehouses keeping goods imported into the Island, and to prevent smuggling it incorporated the provisions of the annual Impost Acts. Various warehousing and customs regulations were made including the punishment of persons making a false declaration,[173] and persons clandestinely removing goods from a warehouse.[174] This statute was

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168. CO 137/107: Nugent to Hobart, 20 January 1802.
169. CO 138/47: Bathurst to Manchester, 13 August 1816.
170. JAJ Vol. 13, pp. 76-77, 10 December 1816.
171. 57 Geo. 3, c. 30. See the Preamble especially.
172. VAJ 1830-31, p. 179, 187.
173. 17 Vic., c. 2. Sec. 36.
174. Ibid. Sec. 38.

repealed by Law 18 of 1877 - The Customs Consolidation Law - which contained provisions against smuggling.[175] The Law was based on the English Customs Consolidation Act of 1876,[176] but as the provisions were of so "technical a character", the opinion of the English Commissioner of Customs was sought.[177] Law 18 was eventually sanctioned. By 1877, therefore, the Jamaican customs regulations were similar to the English provisions, and they have formed the basis for the modern law.

(iii) Gambling.

In 17th Century Jamaica, gambling appears to have been indulged in to such an extent that it necessitated legislative intervention. The preamble to a Council order in 1671, prohibiting gaming in public houses, gives a clue to the existing state of affairs:[178]

> "Whereas by the immoderate use of unlawful gaming many mischiefs daily arise, both in the maintaining several idle and disorderly persons in their lewd and dishonest course of life, and in the cozening and debauching many young gentlemen and others to the loss of their time and fortunes, whereby they are disabled from making any settlement in the island, and few escape a prison or being made servants in a short time ..."

This order contained a proviso to the effect that it was not intended to restrain persons known to be men of an estate of at least £2,000 "from innocent diversion in said games."[179] 33 Charles 2, c. 5 of 1681 prohibited licensees of taverns from keeping or permitting any common gaming in their establishments and whoever won any money by false dice or deceit was to forfeit treble the value.

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175. Secs. 145-178.
176. 39 & 40 Vic., c. 36.
177. CO 137/485: Musgrave to Carnarvon, 2 November 1877. Minute.
178. C.S.P. 1669-74, No. 645, 26 October 1671.
179. Ibid.

In the 18th century, there seems to have been as much gambling as in the previous century and Leslie tells us that Jamaicans in general "seem to have a greater Affection for the modish Vice of Gaming than the Belles Lettres, and love a Pack of Cards better than the Bible."[180] A species of gambling was the running of lotteries. In May 1742, the Assembly considered the "dangerous consequences that may attend the introducing lotteries into this island", and the Assembly inquired of the Governor whether he had granted any licences for lotteries.[181] On being informed by the Governor that he had granted a licence, the Assembly told him that as the licence granted "is not warranted by law and is destructive to the interest of a trading colony", they requested its withdrawal.[182] The Governor complied with their request.

In April 1744, a committee of the Assembly was appointed to prepare a bill to prevent gaming[183] but before it was presented, the House discussed proposals by two persons for establishing lotteries in the Island. Following this discussion, the House resolved that "the setting up of lotteries, by private persons is contrary to the laws of England, and a practice highly injurious to his Majesty's subjects in general."[184] The House also resolved that other persons offending against the resolution, would incur the displeasure of the House. A few days later, a bill for the more effectual preventing of gaming and suppression of lotteries was introduced in the House and it eventually became 17 Geo. 2, c.7.

17 Geo. 2, c. 7 was enacted because:

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180. Leslie, op.cit., p. 36.
181. JAJ Vol. 3, p. 597, 8 May 1742.
182. Ibid., p. 598, 11 May 1742.
183. Ibid., p. 643, 4 April 1744.
184. Ibid., p. 651, 9 May 1744.

> "many Mischiefs and Inconveniences do arise and are daily found, by frequenting of publick Billiard Tables and by playing at Dice and other unlawful Games, the same tending to encourage a loose and disorderly life, and to cozening and debauching the Youth of this Island, to the loss of their Time and the Ruin of their Estates and Fortunes...."[185]

This Act though at first temporary was made permanent in 1747 by 20 Geo. 2, c. 9.

An abortive attempt to amend these Acts was made in 1763.[186] Nothing further was done until 1772 when 13 Geo. 3, c. 19 was passed. It stated that as both the 1744 and 1747 Acts had been found ineffectual for preventing the setting up of lotteries, it was enacted to "put an End to so growing an Evil, and to prevent the drawing such unlawful Lotteries".[187] In 1798, 39 Geo. 3, c. 7 was substituted for the 1744 Act. In the following year, the 1747 Act was repealed because it had been rendered unnecessary by the 1798 Act.[188] These various statutory provisions against gambling and lotteries will now be examined.

The 1798 Act had the same object in view as the 1744 Act.[189] The main differences between the two pieces of legislation were that billiard-playing ceased to be a proscribed game in 1798 being instead controlled by regulations; and the penalties of certain offences were increased between 1744 and 1798. Both the persons keeping gaming houses and the persons betting were punished.

Section 2 of the 1798 Act provided that no person, either by himself or his servant was for gain to erect or maintain, any common gaming house for playing certain enumerated games. These

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185. 17 Geo. 2, c. 7.
186. See JAJ Vol. 5, p. 387, 389.
187. Preamble.
188. 40 Geo. 3, c. 14.
189. See the Preambles.

included shovel-board, Pharoh, ace of hearts, passage, hazards, games with any machine "or device of chance, of any kind whatsoever". Billiards, back-gammon, skittles, nine-pins and bowls were excluded.[190] Offenders against this section could be fined between £10 and £200 or be imprisoned between three and six month, or could be both fined and imprisoned.[191] Because

> "divers loose and dissolute persons, free and other negroes, mulattoes and Indians do meet at private houses, and other places, where the games herein before mentioned, or some or one of them, is or afe played at or carried on, and frequent riots or disorders are committed,"

the houses where such gaming was carried on, were to be deemed common gaming houses.[192] Justices were empowered to search gaming houses and arrest both the house keepers and the gamblers whom they found there.[193]

Persons "using and haunting any of the said houses" or who were "adverturers" in any of the proscribed games could, on conviction, be fined between £10 and £100 or be imprisoned for a period of between five and thirty days.[194] The 1744 Act provided that if persons convicted under the Act could not pay the penalty, they were to be sent to prison for a period of up to a month,[195] a provision not included in the 1798 Act.

The 1744 Act contained another provision which was omitted from the 1798 Act. Sec. 7 stated that the Act was not to extend to persons

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190. 17 Geo. 2, c. 7, Sec. 1.
191. Sec. 2. In 1744 the fine was £10.
192. Sec. 10, 39 Geo. 3, c. 7; 17 Geo. 2, c. 7, Sec. 4.
193. Ibid., Sec. 11; 17 Geo. 2, c. 7, Sec. 5.
194. Ibid., Sec. 3.
195. 17 Geo. 2, c. 7, Sec. 3.

who had estates in land or slaves of a clear yearly value of £100 or who were worth £1000 after all their debts had been paid and who did not keep public houses. They were entitled to erect billiard tables in their houses or permit any of the proscribed games to be played, passage and hazard excepted, for their private recreation, provided the persons playing did not lose above £20 at any one session.

In both the 1744 and 1798 Acts lotteries and raffles were forbidden. They were to be deemed public nuisances and declared illegal. In both Acts, the organizers of lotteries were to be fined £100 and the "adventurers" in the lotteries fined £10.[196] The 1798 Act laid down for the first time regulations for licensing the public playing of billiards. Parties were to be fined in both Acts for neglecting their duty. In the 1798 Act, a penalty of £100 was laid on gaol-keepers for neglecting their duty.

The 1747 Act, 20 Geo. 2, c. 9, which made the 1744 Act perpetual also amended it. The amendments were intended to close certain gaps in the 1744 Law. Sec. 2 stated that tavern keepers, with an intent to evade the law, had kept and maintained billiard tables in out-houses, adjacent to the main houses or had hired the out-houses to persons who played or invited others to play the proscribed games. Justices of the peace were therefore empowered, under a £50 penalty, to issue their warrants for the seizure of such billiard tables, which were then to be sold. In addition, if under the 1744 Act or the present Act, the persons convicted were tavern keepers, in whose possession erected billiard tables were found, they were to be declared incapable of selling liquors or of obtaining any licence for that purpose.

13 Geo. 3, c. 9 stated that both the 1744 Act and the 1747 Act had been found ineffectual for the prevention of lotteries. It was therefore enacted to "put an End to so growing an Evil, and to prevent

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196. Ibid. Secs. 15-16; 17 Geo. 2, c. 7, Sec. 8.

the drawing such unlawful lotteries."[197] Persons setting up or advertising any schemes of lotteries or lotteries were penalised. But the Act went further and made it an offence for persons to "make, print, advertise or publish, or cause to be made, printed, advertised or published" proposals for lotteries. Offenders were to be fined £200, and suffer a maximum of six months' imprisonment. Purchasers of tickets in any such lotteries were to be fined £20. If the organizers of the lotteries of the purchasers of tickets in the lotteries, could not pay the fine imposed, they could be imprisoned for up to three months. The sale of houses by such lotteries were to be declared void. Justices neglecting their duty under the Act were to be fined £10.

The problem of gambling was again looked at in the next century after emancipation when new provisions were made for gambling. 7 Vic.,c. 14 passed in 1843 authorized any constable to enter any gaming houses and arrest the persons found gambling. Keepers of such houses were also penalised. In 1847, the Assembly increased the penalty for a second offence from forty shillings to sixty shillings.[198] This statute also provided for the apprehension of idle persons assembling together and gambling. This provision was repealed by 18 Vic., c.46, which provided that idle and disorderly persons who assembled in any street or in front of any wharf or tavern could be ordered by a policeman to disperse, and if they refused, they could be arrested. There was also a new provision that if a policeman had reason to believe that if any loose, idle or disorderly persons were assembled in any house kept or used as a gambling house, he could enter the premises and arrest the persons he found there.[199]

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197. Ibid., Preamble.
198. 11 Vic., c. 14.
199. Ibid., Sec. 5.

In 1898, the gambling laws then in force were repealed by Law 25 [200] and new provisions enacted. This statute was a result of the frequent complaints against Chinese lotteries in Kingston. It was drafted by one of the Resident Magistrates, Thornton, and was based on an enactment in force in the Straits Settlement "where gambling is prevalent amongst the Chinese".[201] In the Colonial Office, the Straits Settlement ordinance was described as "an excellent one"[202] and after further correspondence with the Governor concerning billiard tables[203] the law was sanctioned.

Law 25 of 1898, which adopted a law founded on oriental needs, introduced several innovations into Jamaica. The statute defined things like 'common gaming house', 'gambling' and 'lottery'[204] and provided several penalties for persons found gambling.[205] But the greatest penalties of a £200 fine or a twelve month term of imprisonment was given to owners or occupiers of premises who permitted premises to be used as a common gaming house; to persons who printed any lottery ticket; and to persons who announced that a place was to be used as a common gaming house.[206] Justices of the peace were authorized to issue search warrants for places believed to be kept as common gaming houses.[207] And Section 14 provided in a new feature of Jamaican law that if any instruments of gambling were found in such a place or persons were seen or heard to escape[208] from it on the approach of a constable, or if a constable was obstructed on his approach to the place, then until the contrary is proved, the place is presumed to be a common gaming house. Section 15, also an innovation,

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200. It repealed 13 Geo. 3, c. 19; 39 Geo. 3, c. 7; Secs. 12-14 of 7 Vic., c. 14; Sec. 5 of 18 Vic., c. 46 and Law 25 of 1894 which amended 13 Geo. 3, c. 19.
201. CO 137/602: Hemming to Chamberlain, 20 June 1899.
202. Ibid. Minute.
203. See CO 137/602: Chamberlain to Hemming, 28 July 1899 and CO 137/603: Hemming to Chamberlain, 15 September 1899.
204. Sec. 3.
205. Secs. 6, 10. 11.
206. Sec. 5.
207. Sec. 12.
208. Italics supplied.

provided that a place was, until the contrary was proved, presumed to be a common gaming house and kept for such a purpose by the occupier if:

> in the case of a place entered under this Law any passage, staircase, or means of access to any part thereof is unusually narrow, or steep, or otherwise difficult to pass, or any part of the premises is provided with unusual or unusually numerous means for preventing or obstructing an entry, or with unusual contrivances for enabling persons therein to see or ascertain the approach or entry of persons, or for giving the alarm, or for facilitating escape from the premises."

A justice of the peace could order that any place fixed with such contrivances was to be demolished.[209] In an effort to secure convictions under the statute, it provided that the Resident Magistrate could order up to half of the fine to be paid to informers.[210]

(iv) Swearing and Blaspheming

From all accounts swearing was a common practice from the earliest periods of Jamaica's history.[211] In 1670, John Style wrote the Secretary of State about the "horrid oaths, blasphemies" and "abuse of Scriptures" which went unpunished in the Island.[212] Seventy years later, one correspondent wrote very critically about the inhabitants' "Vice in Swearing". "It is confessed" he said, "that among the lower sort of people as odious as it is, it much prevails, but it is not so much with the Gentlemen and better sort." He further felt that if the Clergy were to let "the White Servants, as are addicted to it, know how unprofitable and silly a vice it is,"

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209. Sec. 17.
210. Sec. 23.
211. Jamaica was by no means singular in this respect. For an attempt to suppress swearing in Virginia see C.S.P. 1689-92, No. 1477.
212. C.S.P. 1669-74, No. 138: John Style to Principal Secretary of State, Whitehall.

they may be persuaded "to leave off those shocking Sounds".[213] But some members of the clergy may not have qualified for this role; Long.for instance, telling us how detestable some were "for their addiction to lewdness, drinking, gambling and iniquity".[214] The Assembly found it necessary to make a rule that the Speaker could imprison any member for being drunken or profane in the House.[215] This rule was invoked in 1703, when one member, Capt. Thomas Freeman, was ordered to be detained for swearing in the House and other "contemptuous behaviour."[216]

The Assembly regarded the vice of swearing as a serious one and very quickly passed legislation to punish swearing. A 1664 Act[217] against Tipling, Cursing, and Swearing, authorized a constable to levy by distress 12 pence for every oath or curse that an offender was heard to utter; if no distress could be found, the offender was to sit in the stocks one whole hour for every oath or curse uttered. Under Act 33 Charles 2, c. 5, no persons were to be given a licence to retail strong liquors unless they first gave security that they would suffer no "disorders" to be committed in their place of business.[218] "Disorders" might also have conceivably included swearing as the Act also punished profanity.

But it appears that members of the legal profession were some of the main offenders where swearing was concerned and legislation had to be specifically enacted for them! The Council Minutes of 1668, reveal that certain regulations were found necessary

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213. Anon., The Importance of Jamaica to Great Britain Considered, p. 21.
214. Long, op.cit., Vol. 2, p. 238.
215. See JAJ Vol. 1, p. 24.
216. Ibid., p. 298.
217. CO 139/1. Similar Acts were passed in 1672 and 1674.
218. Sec. 2.

> "by reason of the rude and unreasonable interruptions and impertinent disputes of Lawyers and Pleaders, not seldom comeng drunk into the Court whereby many times the most materiall witnesses are baffled and at best not fully heard and their evidence Suppressed...and the Court in the mean time seems more like a Horse Fair or a Billingsgate than a Court of Justice, to the great Scandal of His Majesties Government of this Place...."[219]

One of the regulations made was that if a lawyer or pleader came drunk into court or

> "shall be in an unbeseeming rage and passion and give indecent or evill language and revile the Court or any member thereof..or one another by loose or scandalous language or shall use swearing, blaspheming or beastly expressions in the hearing of the Court",

he was to be fined.[220] If he could not pay the fine he was to be whipped.

Provision was also specifically made for the respect of the Deity and anyone who "by publick and open Profaneness or Blasphemy dishonour Almighty God" was to be fined £200 or more at the Court's discretion;[221] if the offender was a servant or "not worth so much" he was to be corporally punished.[222]

After the destruction of Port Royal by earthquake in 1692, the Jamaica Council felt that "nothing but a General Reformation of Manners", would stop God's avenging hand and make them "fitt for the divine pardon and Blessing".[223] They therefore ordered that all those articles of war which related to "Piety to Almighty God or to the preventing the dishonouring him either by Comon Swearing, prophaneness, Blasphemy or otherwise" were to be put into execution.[224]

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219. CO 140/1/177-8.
220. Ibid., 179.
221. 33 Charles 2, c. 5, Sec. 4. This statute was repealed by Law 19 of 1873.
222. Ibid. A Leewards Island statute was unfavourably reported on by the English Attorney General because one of the sections declared that a soldier blaspheming a second time was to have his tongue bored with a red hot iron: C.S.P. 1706-8, No. 164.
223. CO 140/5/197: 28 June 1682. Proclamation issued by the Council.
224. Ibid.

But the destruction of Port Royal by earthquake, and later by fire, does not seem to have caused any "Reformation of Manners" and in 1706 Governor Handasyd proposed to the Assembly that some methods should be found for punishing profaneness and immorality.[225] When the House debated the Governor's speech, it resolved that there were sufficient laws in the island against profaneness, if they were duly executed.[226] At the prorogation of the House in February 1723, Governor Portland exhorted the members to do their utmost to suppress all manner of immorality and profaneness and encouraged them by their own example to enforce the laws relating to religion.[227] Following a petition from the Bishop of London, the Governors of the Plantations in America, including Jamaica, were instructed to cause all laws already made against blasphemy, profaneness, adultery, fornication, polygamy, incest, profanation of the Lord's Day, Swearing and Drunkenness in their respective countries to be vigorously executed.[228] The newly appointed Governor of Jamaica was to encourage the Jamaican Assembly "to provide effectual Laws for the restraint and punishment of all such of the aforementioned Vices against which no Laws were as yet provided", and he was to endeavour to render the laws in existence more effectual.[229]

A century later after emancipation, provisions against the use of obscene language and profanity was included in the statute for good order in towns and communities in 7 Vic., c. 14, passed in 1843.

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225. JAJ Vol. 1, p. 391, 5 September 1706. Previous to this he had informed the CTP that there was a great need for "Divines" and unless this situation were remedied, it would give an "inlett to prophaness and Immorality: CO 137/6: Handasyd to CTP, 27 August 1703.
226. JAJ Vol. 1, p. 391.
227. JAJ Vol. 2, p. 461, 9 February 1723.
228. CO 138/17/197: Hunter's Instructions.
229. Ibid.

This Act, based on the Metropolitan Police Acts of London, the Colonial Office sent to the Commissioner of the Metropolitan Police for his opinion.[230] The statute was not objected to.

Under Section 1(12) of 7 Vic., c. 14 every person who sold or distributed any obscene figure or painting, or sang any profane, indecent or obscene song, or used any profane, indecent or obscene language, could be fined. This provision is still the law of Jamaica today.[231]

Conclusion

This Chapter is illustrative of some of the features of 18th and 19th century penal legislation in Jamaica. Firstly, there is the use of the criminal law to silence critics of the administration and the state. In the early 18th century, religion was one of the issues which helped to divide loyalties, and the nominally Protestant Assembly appeared to have tolerated little criticism from the Roman Catholic inhabitants of the Island. Again, when the state of slavery was being attacked in the early 19th century, the Assembly attempted to silence the advocates of emancipation by reference to sedition.

Secondly, there is the hurried enactment of ill-considered legislation. This was common occurrence in the days of slavery, but the 1865 rebellion showed that this was not a feature limited to slavery. After the 1865 rebellion, the Assembly moved so quickly

230. CO 137/278: Elgin to Stanley, 9 January 1844 and Minutes.
231. See the Laws of Jamaica (Red. Ed. 1953), Cap. 384, Sec. 3(1)

that it did not even have time to investigate the purposes for which drilling was alleged to have been practised. Having speedily enacted legislation against unlawful drilling it was subsequently discovered that the drillings which had taken place, were for all peaceful purposes.

A third feature, and one closely related to the second, is the adoption of English legislation with apparently little examination of the purposes for which it had been enacted in England. The statute dealing with unlawful oaths for example, was enacted in England with the mutiny at the Nore in mind. For completely different purposes, it was enacted almost verbatim in Jamaica.

Finally, this Chapter helps to illustrate the extent to which legislation in Jamaica tended to be a monopoly of the wealthy classes. Gambling was considered a punishable offence, but in 1671 men of at least £2,000 estate were exempted. If they gambled they were regarded as being engaged in "innocent diversion". Similarly, in 1744 persons who were worth £1,000 or more were also exempted from the gambling penalties.

CHAPTER 7

Laws to Protect Persons

Any attempt to discover the content of the law relating to persons in the early years of the English in Jamaica, is as difficult and exacting as scouring the Atlantic for debris from a wrecked submarine. Few statements about the law in force in Jamaica at that period can be made with certainty. It was said with a fair degree of unanimity that the common law of England was in force in the Island. Also in force were any English statutes which had been "used" or "received" in the Island.[1] What these are we do not know and it must be borne in mind that it was claimed, perhaps not unjustly, that the laws of England were perverted in the course of their administration in Jamaica. The evidence available to the researcher at present is too slender for any firm conclusions to be drawn.[2] As a result, we cannot say to what extent the offences described in Jamaica corresponded to the offences which went under the same name in England. We will, however, proceed on the assumption that the essentials of the offences in Jamaica were the same as the offences in England. Therefore, an examination of early Jamaican law against persons, must necessarily be an examination of the state of English law at the corresponding period.

Of all the offences against the person, the common law crimes of murder and manslaughter, were probably the best known. In phrases reminiscent of Macbeth, one Governor related how the Assembly fell into such "warm Debates about Turning out their Speaker that they put the whole town in an uproar and murder was cry'd out in several places."[3]

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1. Supra, Chapter 1.
2. It is regrettable that the early criminal law records of the Island, now at the Jamaica Archives at Spanish Town have had to be withdrawn from public use because of their fragile condition. It is fervently hoped that every effort will be made to preserve them and make them available for examination in the future.
3. CO 137/9: Handasyd to CTP, 9 April 1710.

It appears however that at this period very few people were put to death for committing this offence.[4] In England it had been already settled that the offence of murder broadly consisted of a voluntary act causing death - death ensuing within a year and a day.[5] The right of self defence had long been recognized but in the mid-17th century, the rules pertaining to "malice aforethought" were far from being settled. Through a series of cases, the most important rules as to provocation were determined between 1642 and 1672.[6]

The closely allied crime of causing death by chance medley was recognized in Jamaica. On one occasion, the King's Special Commissioner in Surinam, Edward Cranfield, ran his cane through the eye of a ship's mate because he had given him "unhandsome language."[7] At his trial in Jamaica for malicious assault, the jury returned a verdict of death by chance medley.[8] The common law of England recognized chance medley, but its exact scope was never certain.[9] One of the most detailed accounts of the nature of the offence in modern times, has come from the English Court of Criminal Appeal. After examining the authorities on chance medley, Lord Goddard C.J., in delivering the judgement of the Court in Semini's case said:[10]

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4. CO 137/9: Handasyd to CTP, 9 June 1710. For other references to the offence of murder see: CO 137/8: Handasyd to the Earl of Sutherland, 6 August 1708; CO 137/9: Handasyd to CTP, 9 June 1710; CO 140/20: 13 April 1727.
5. Holdsworth, op.cit., Vol. 3 (5th edition), p. 315; Stephen, op.cit. Vol. 3, Chapter 26.
6. Stephen, op.cit., Vol. 3, pp. 62-63.
7. C.S.P. 1676 No. 673.
8. Ibid., No. 668.
9. Stephen one of the leading authorities on the criminal law deals very shortly with the offence: Stephen, op.cit., Vol. 3, p. 59.
10. R. v. Semini [1949] 1 A.E.R. 233, pp. 234-236.

> "It (chance medley) was excusable, as opposed to justifiable, homicide....Where, however, the killing was the outcome of a quarrel or fight, it was excusable, though not justifiable, if the killer had not begun but had taken part in the fight, or if, having begun it, he endeavoured to decline any further struggle and retreated, but being closely pressed, killed his antagonist to avoid himself being killed or maimed....The expression seems also to have been applied to cases where the killing was due to misadventure in the performance of a lawful act and where there was no such negligence in its performance as would amount to manslaughter...
>
> The old learning, such as it was, with regard to chance medley has long been obsolete and was finally laid to rest, by the Offences Against the Person Act, 1828."

Goddard expressed the hope that chance medley would cease to be treated as an existing offence, and this hope has been fulfilled. In the latest (36th) edition of Archbold it is stated in reference to chance medley:[11]

> "This doctrine no longer has any place in the law of homicide. Cases cited under this heading in earlier editions of this work are to be regarded as illustrations of what the courts have accepted as sufficient to reduce a killing from murder to manslaughter..."

On the basis of Goddard's statement, it would appear that chance medley is no longer an offence in Jamaica.

The law relating to bodily injury was also very limited and uncertain.[12] An assault was an offence at common law, and in Cranfield's case,[13] where he had been charged with "maliciously assaulting" the ship's mate, the offence may have been a common law one. Some of the most important statutes dealing with bodily injuries were: 5 Hen. 4, c.5, passed in 1403, which made it a felony to cut out the tongue or to put out the eyes of a person; 37 Hen. 8, c.6, passed in 1545, provided a fine of £10 for cutting off another

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11. Archbold, Criminal Pleading Evidence and Practice (36th ed.) par. 2494.
12. Stephen, op.cit., Vol. 3, pp. 108-109.
13. Supra, note 7.

person's ear; 5 & 6 Edw. 6, c.4, passed in 1552, legislated against drawing or striking with weapons in churches or churchyards.[14] In 1670, after the English came to Jamaica, the Coventry Act[15] was passed. This Act made it a felony to lie in wait for and injure or disable another person. In 1710,[16] it was declared a felony to attempt to kill or wound any of Her Majesty's Privy Councillors, in the execution of their duties. The Black Act of 1722[17] made it a felony wilfully and maliciously to shoot at any person in a dwelling house or "other place." These statutes could have been received in Jamaica.

Rape was also known in Jamaica. John Style for example, telling us that rapes, among other delicts, were "not punished" but "made a jest of even by authority."[18] Previous to the advent of the English in Jamaica, rape had been made a felony,[19] and the essentials of the crime had been clearly defined.[20] 18 Eliz., c.7, passed in 1576, had taken away the benefit of clergy from offenders in rape cases, and the same statute made it a felony to know carnally and abuse a female under 10 years old.[21] In the early 19th century there was great discussion in Jamaica as to whether 18 Eliz., c.7, had been one of the statutes "used" or "received" in Jamaica as described in 1 Geo. 2, c.1, and further, if it had been adopted in Jamaica whether it applied to slaves.[22] It appears that 18 Eliz., c.7, was used in Jamaica, but only in reference to free persons.

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14. The punishment was for the offender to have one ear cut off, but if he had no ear, he was to be branded on the cheek.
15. 22 & 23 Charles 2, c.1.
16. 9 Anne, c.16.
17. 9 Geo. 1, c.22. See generally Stephen, op.cit., Vol. 3, pp. 108-117.
18. C.S.P. 1669-74, No. 138.
19. 13 Edw. 1 St.1, c.34.
20. Holdsworth, op.cit., Vol. 3 (5th ed.), p. 316.
21. See Chapter 5 supra.
22. Supra, Chapter 5.

Sodomy was an offence in Jamaica. In the early years of the English in the Island, the Governor reprieved three sailors convicted of this offence, "white men being scarce with us."[23] In another case, one Captain Boy was arrested and charged with committing this offence on two boys of his own ship.[24] Like rape, and the other offences against the person, there was no specific Jamaican legislation providing for this offence, so the penal provisions were most likely 'imported' from England. In England this crime was at first an ecclesiastical offence, but by 25 Hen. 8, c.6, it was made a felony. After various repeals and re-enactments this statute was made perpetual in 1562.[25] This might have been the law which was taken to Jamaica.

Other offences against the person such as bigamy[26] were more than likely recognized in Jamaica, especially with the Church of England being the established church. The laws dealing with the abduction of women may also have been in force.

These offences then, seem to be the most important ones with which Jamaica may have begun. However, the development of Jamaican law in these areas was not simultaneous with England's; for while statute after statute was passed in England, there was no corresponding legislative activity in Jamaica. Indeed for the entire 18th century it appears that not one statute relating to offences against the person was passed in the Island. This may have been because crimes against the person were rare; but probably more important was the fact that crimes which "persons" would normally commit were being committed by the slaves and a plethora of provisions were being enacted for them in the various slave laws and Codes of the century.

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23. C.S.P. 1677-80, No. 894.
24. CO 137/7: Handasyd to CTP, 11 June 1705. The accused escaped while awaiting trial.
25. 5 Eliz., c.17. See Holdsworth, op.cit., Vol. 4 (3rd ed.), p. 504 and Pollock and Maitland, The History of English Law, Vol. 2 (2nd ed.) p. 556.
26. See Stephen, op.cit., Vol. 2, p. 430.

In 1801 Jamaica passed an Act abolishing burning in the hand as a form of punishment.[27] Instead, a prisoner could be fined, imprisoned for up to one year, and in cases of larceny only, whipped.

This was followed in 1812 by 53 Geo. 3, c.18. With Jamaica being substituted for England, and the Jamaica courts being substituted for the English courts; this statute was identical with the English Act 2 Geo. 2, c.21. It enacted provisions for two contingencies; (a) where a person was poisoned or stricken out of Jamaica, but died in the Island; (b) where a person was stricken or poisoned in the Island but died out of the Island. In either case the principals and their accessories could be proceeded against as if the poisoning and death had happened in the Island.

Six years later the Assembly passed an Act,[28] identical with certain sections of the Imperial Act 43 Geo. 3, c.58 -- Lord Ellenborough's Act. It was equally true of the Jamaican statute as was said of the English Act, that the first section "may be regarded as the germ of much subsequent legislation, as it punishes many of the worst forms of bodily violence."[29] Like its English model, the Jamaican Act was enacted because "divers cruel and barbarous outrages have been of late wickedly and wantonly committed in this island upon the persons of divers of his majesty's subjects, either with an intent to murder or to maim, disfigure or disable, or to do other grevious bodily harm to, such subjects."[30] Various offences were provided for: persons wilfully shooting at, or attempting to shoot at, another person; persons stabbing or cutting another with intent to murder, rob or maim, or do some grevious bodily harm; persons who obstruct the apprehension of persons stabbing or cutting another; persons who administer or cause to be administered any deadly poison or noxious drug with intent to murder.

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27. 42 Geo. 3, c.18.
28. 59 Geo. 3, c.19.
29. Stephen, op.cit., Vol. 3, p. 113.
30. 59 Geo. 3, c.19.

In all of these cases the principals and their aides and abettors were declared felons and were to suffer death.[31]

By 1 Wm. 4, c.8, the punishment for manslaughter was increased and an offender could now be sentenced for up to three years. This Act was similar to Section 1 of the English Statute 3 Geo. 4, c.38.

In 1833 the fourth section of the English Statute 43 Geo. 3, c.58, was adopted in Jamaica by 4 Wm. 4, c.6. The English statute was limited to illegitimate children but the Jamaica Act was not so limited. It was made a misdemeanour, punishable with two years imprisonment for any woman to attempt to conceal the birth of her child by burying or otherwise disposing of the body. It was not necessary to prove "whether the child died before, at, or after its birth."

Up to 1833 when laws were passed abolishing slavery, these few and varied acts appeared to have been the total of Jamaica's effort in enacting laws against the person. The Jamaica Assembly were now being encouraged by the Colonial Office to adopt the recent reforms which had been made by English legislation. Prodded by the Governor, the Assembly after more than one attempt amended and consolidated the various laws against the person in 1837. This statute, 7 Wm. 4, c.41, repealed the various Jamaica acts described above and took as its model the English Consolidated Act, 9 Geo. 4, c.31. The differences between the Jamaican and the English statutes were few and minor, and the Jamaica Attorney General, not incorrectly, described the Jamaica statute as "nearly the same" as the English Act. One of the more notable differences between both statutes was in the age of females in carnal abuse cases: in the Jamaica act it was made a year lower.[32]

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31. Lord Ellenborough's Act also provided for persons administering poisons with intent to procure a miscarriage (Sec. 2); it also amended the law concerning women who murdered their bastard children (Sec. 3). These provisions were not included in the Jamaica legislation.
32. 7 Wm. 4, c.41, Sec. 13, English Statute 9 Geo. 4, c.31.

In the post-emancipation period the Jamaica Assembly, again encouraged by the Colonial Office, passed several statutes adopting similar provisions in English acts. They dealt mainly with abolishing the death penalty for various offences against the person, like sodomy and rape.[33] When England enacted legislation to protect women, Jamaica adopted the provisions.[34] In 1861 England enacted a new Consolidated Statute;[35] Jamaica followed shortly after and adopted almost all the English provisions into the Jamaican law.[36] The differences between the statutes were minor: the age of females in carnal abuse cases was still lower in Jamaica;[37] and in Jamaica the attempt to destroy a ship with intent to murder carried the same penalty as the actual destruction.[38] By a process of assimilation, the Jamaican provisions for offences against the person were, by 1864, similar to, if not identical in most cases with, English legislation. In the Jamaican law therefore, there were provisions for murder, manslaughter, attempts to murder, acts causing danger to life, assaults, abduction and defilement of women, child stealing, bigamy, attempts to procure abortions, concealing the birth of a child, and unnatural offences.

After 1864 there was very little legislation dealing with offences against the person. In 1888 the Governor of Jamaica was sent a circular despatch from the Colonial Office enclosing the provisions of the English Criminal Law Amendment Act of 1885,[39] and suggesting the

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33. 6 Vic., c.14, adopting the provisions of the English Statute 4 & 5, Vic., c.56. See also 4 Vic., c.45, adopting provisions of the English Statute 7 Wm. 4, and 1 Vic., c. 85.
34. 15 Vic., c.6 and 17 Vic., c.16. English Statute 12 & 13 Vic., c.76 Sec. 1, and 16 & 17 Vic., c.30 Sec. 1.
35. 24 & 25 Vic., c.100, known as the Offences Against the Person Act, 1861.
36. 27 Vic., c.32.
37. 27 Vic., c.32, Secs. 41-43, 24 & 25 Vic., c.100, Secs. 5052.
38. 27 Vic., c.32, Sec. 11, 24 & 25 Vic., c.100, Sec. 13.
39. 48 & 49 Vic., c.69. For the debates in Parliament on the statute, see Hansard's Parliamentary Debates, Vol. 300, cols. 686-807; 850-919; 1397-1398; 1461-1508; 1549-1557.

desirability of enacting any of the provisions in Jamaica. This statute punished persons who procured any girl under 21, who was not a common prostitute, to have unlawful connection; persons who threatened or intimidated any girl to have unlawful connection; persons who had carnal knowledge of girls under certain ages; persons who abducted girls under 18, with intent to have carnal knowledge; persons detaining women against their will with intent that they should be carnally known. Also included in the section for the 'Protection of Women and Girls' was the famous Labouchere Amendment which provided that any male person who in public or private committed any act of gross indecency with a male person was guilty of a misdemeanour. There were also clauses aimed at the suppression of brothels.

The Governor sought his Privy Council's opinion on the contents of the despatch, and they recommended that the only section of the Act which it was necessary to adopt in Jamaica was that of raising the age of girls in carnal abuse cases. They recommended that the age under which connection was punishable should be increased to within two years of the English Act -- the minimum age in Jamaica being 9, while in England it was 13.[40] When the Governor reported his intention to enact legislation to raise the age to 11, he was requested by the Colonial Office to reconsider his proposal and bring the age nearer to the English law. The request was considered but the original proposal stood, and by Law 10 of 1890 the minimum age was raised to 11. From the Acting Attorney General Henry Kirke we learn the reasons for the variation in age between the two countries. Having stated that it was generally accepted that the age of consent should be raised but that "considerable difference of opinion" existed as to the limit to be imposed, he continued:[41]

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40. CO 137/336: Norman to Knutsford, 6 November 1888.
41. CO 137/343: Blake to the Secretary of State for the Colonies, 13 May 1890.

> "Owing to the influence of race and climate, girls are precocious and attain the age of puberty and the desire for sexual intercourse at an earlier age than in England. Owing to the freedom of intercourse between the sexes, and the large share of outdoor labour which the women in Jamaica take upon themselves, the suggestion for unlawful union in many instances originates with the girls themselves, as (sic) there was great fear that if the age of consent, as it is called, was raised too high, no good would accrue to those sought to be benefitted, and at the same time a wide door would be open for the purpose of extortion and blackmailing."

The Colonial Office, though not completely satisfied, sanctioned the law because it was "at any rate a great improvement" on the previous age and because the reasons given were as good as those in some of the other West Indian colonies.[42] An unsuccessful attempt was made to amend this Law in 1898.[43]

Law 21 of 1893 amended the provision of the 1864 Act relating to unnatural offences.[44] The Attorney General's report on the Act stated that it was enacted because the punishment of penal servitude for life in the 1864 Act was generally regarded as excessive; as a result juries, on the recommendation of the Judges frequently found persons guilty of the attempt only, an offence which carried a lesser penalty.[45] Section 1 of Law 21, reduced the punishment to a maximum of ten years' imprisonment and 39 lashes.

Three elected members of the Legislative Council registered a protest against the flogging provisions of the Law.[46] One member in addition, complained to the Secretary of State about this "unnecessarily harsh measure."[47]

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42. Ibid., Minutes. In a recent debate in the Jamaica Senate, one Senator asked why the age of consent in Jamaica should be different from that in England: Speech of Senator Dr. McNeill, The Daily Gleaner, 4 December 1967. The preceding pages might provide an answer.
43. See CO 137/593: Hemming to Chamberlain, 25 August 1898.
44. 27 Vic., c.32, Secs. 52-53.
45. CO 137/553: Blake to Ripon, 15 May 1893, Enclosed Report of the Attorney General.
46. Ibid., Enclosed Protest by Andrews, Harvey, Bourke,
47. Ibid., Enclosed Letter from Andrews.

In the Colonial Office, opinions were divided as to whether the Law should be sanctioned or disallowed.[48] Ripon felt that the Law should be disallowed and stated its two fatal objections to Blake: (a) that the infliction of corporal punishment was not left to the discretion of the courts; and (b) corporal punishment was to be inflicted on the convicts on their being released from prison. He added that if a similar law were to be enacted, devoid of the objectionable provisions it was not likely to be disallowed.[49] In the following year, the Council enacted a similar law omitting corporal punishment altogether for the offence. This law -- Law 21 of 1894 -- was sanctioned.

Up to the end of the 19th century the legislation of 1864 remained the main law governing offences against the person. With minor amendments, it is, after one hundred and four years, still the current law of the Island.[50]

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48. Ibid., Minutes.
49. Ripon to Blake, 16 June 1893, printed in Appendix 5 of Minutes of the Legislative Council, 1894.
50. Laws of Jamaica (Revised ed. 1953), Cap. 268.

CHAPTER 8

Laws to Protect Property

In this Chapter we intend to outline the development of the crimes affecting property and proprietary rights. From the start of Jamaica's history under the English, property rights assumed added importance, because of the Island's agriculture-based economy. Indeed settlers never failed to impress on the Imperial Government the high regard which they had for their lives and properties. In the early 18th century, one Governor found it necessary to assure the Assembly that he was aware of the fact that liberty and property were the foundation and blessing of the Constitution and "I would no more invade either of them, than I would sacrifice my son."[1]

The laws in this Chapter will be classified into three main categories: (A) Laws to prevent dishonest acquisition of property in general; (B) Laws to prevent theft of certain specific property; (C) Laws to prevent damage to property. This Chapter will be divided into two main periods: (i) the pre-emancipation period; (ii) the post-emancipation period.

(i) The Pre-emancipation Period.

A. Laws to prevent dishonesty in general

Of the crimes associated with the dishonest acquisition of property, stealing was probably the best known. This is not surprising considering (i) the large number of pirates who used Jamaica as their base, and (ii) the convicts who were transported to Jamaica in an effort to augment the population. The preamble to a 1672 regulation prohibiting masters of ships from selling convicts

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1. JAJ Vol. 1, p. 226

to inhabitants of Port Royal stated that "divers thefts, felonies, and other enormities" which had lately been committed at Port Royal could not be imputed to anything but the "great number of malefactors and other convicts, yearly brought from His Majesty's prisons in England."[2] But dishonest acquisition of goods was not an offence confined to convicts, for as early as 1660 we read of a captain being indicted for the burglary of £8 from a chest;[3] a member of the Jamaica Assembly was accused "of no less a crime than robbery;"[4] some officers were strongly rumoured to have embezzled money[5] and allegations were made against a Governor that he had connived at the embezzlement of stores and ammunition.[6] Other kinds of dishonesty included cheating, and an order of the Jamaica Council in 1671 enacted that any person winning money at any game by fraud or by the use of false dice was to forfeit double the money he won, and in addition was to be punished as a cheat.[7] Receiving was also known in Jamaica though in the early days it was said that receivers of stolen goods were rare, owing to the size of the country. As these offences were 'imported' from England, we have to examine their stage of development in English law at the period when they were 'received' into Jamaica.[9]

Larceny

Larceny was one of the most important felonies in the common law of England, and in the early 18th century, its scope was still the subject of discussion. At an early period it had been determined

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2. C.S.P. 1669-74, No. 881. See also complaint of Governor Lawes, C.S.P. 1722-23, No. 382.
3. C.S.P. 1675-76, No. 334.
4. JAJ Vol. 2, pp. 291-2, 15 November 1718. In 1732 a guard had to be provided at night for Kingston, because of the burglaries and robberies committed in that City. 5 Geo. 2, c. 2.
5. C.S.P. 1696-97, No. 1080, Beeston to Blathwayt, 12 June 1697. For other embezzlement charges see C.S.P. 1685-88, No. 128, 129.
6. CO 137/9: Mackenzie to CTP, October 1712.
7. C.S.P. 1669-74, No. 645.
8. Hanson, op.cit., p. x.
9. For the English law and the movement for reform see generally, L. Radzinowicz, A History of English Criminal Law, Vol. 1.

that larceny broadly consisted of the taking of another's property without his consent. Uncertainties still revolved around the theory of possession, the value of the property stolen and property which could be the subject of larceny.[10]

The offence of larceny was a narrow one particularly because of the rules declaring that certain objects were incapable of being stolen, and the rules governing the asportation of goods. From an early period the scope of the offence was widened, the judges holding for example that a very small physical interference with property would amount to an asportation.[11] Uncertainty as to whether the appropriation of bed linen by a lodger in furnished apartments was theft led to such a case being declared larceny.[12] There was still conflict in cases of theft where husband and wife, and co-partners were involved.[13]

Both in the pre- and post-1681 periods, one kind of larceny was specifically provided for in Jamaica: this was larceny of a boat, an offence which was made a felony.[14]

Embezzlement

The offence of embezzlement arose because of the limitations of the doctrine of possession in larceny cases.[15] In 1529, 21 Hen. 8, c.7 made it a felony for servants not being apprentices or under the age of eighteen, to embezzle goods entrusted to them valued forty shillings or over. This statute was later repealed, but it was subsequently revived and made perpetual by 5 Eliz. c. 10. Persons who embezzled munitions of war valued twenty shillings or over which had been

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10. Holdsworth, op.cit., Vol. 3 (5th ed.), pp. 360-368.
11. Ibid., p. 361. See also Russell on Crime Vol 2 (12th ed.), pp. 907-8.
12. English Statute 3 Wm. & Mary, c. 9, Sec. 5.
13. Holdsworth, op.cit., Vol. 8 (2nd ed.), p. 304.
14. See C.S.P. 1669-74, 15 February 1672 and 35 Charles 2, c. 4, Sec. 32.
15. Holdsworth, op.cit., Vol. 3 (5th ed.), p. 365; Vol. 4 (3rd ed.), p. 501; Stephen, op.cit., Vol. 3, pp. 151-154; Russell, op.cit., Vol. 2 (12th ed), pp. 161-162.

entrusted to them were in 1589 declared guilty of a felony.[16] Jamaica could also have adopted 9 Anne, c. 10 which dealt with servants of the Post Office stealing things committed to their charge but that seems unlikely. Jamaica could also have received 9 & 10 Wm. 3, c. 41 providing for embezzlement of the King's Stores, but by the Assembly's enactment of this legislation in the late 18th century it does not appear to have been received. One kind of embezzlement seems to have been frequently committed in Jamaica during the 18th century: embezzlement of stores belonging to the troops in the Island. It was even alleged that one Governor, Hamilton, was involved. A correspondent for Jamaica told the Council for Trade in 1712 that Hamilton "conived at several considerable Embezlements of stores and Ammunition out of her Majesty's Chief fforts in this Island, after he had apprized him thereof."[17]

In 1737, the Jamaica Governor was empowered by an Order in Council, to appoint a keeper for the Stores. This wad done because "there is reason to apprehend that great quantities of stores formerly transmitted to that Island, have been lost or embezzled for want of due care being taken thereof."[18] Despite this, embezzlement of the stores continued, and in 1792 the Assembly found it necessary to pass an Act declaring that an Act of the English parliament which passed in the reign of William the third,[19] was to be in force in the Island.[20] This Jamaica Act provided that the English Act was to "extend to, and be in force in, this island, and be introduced, used, accepted, received, and esteemed, as a law in this island, and shall and is hereby declared to be and continue to be, a law of this island for ever."[21] The English Act had been amended in 1714 by 1 Geo. 1, c. 25 which was in turn made perpetual in 1723 by 9 Geo. 1, c. 8.

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16. 31 Eliz., c. 4.
17. CO 137/9: Mackenzie to CTP, 8 October 1712.
18. Order in Council, 8 March 1737: See JAJ Vol. 3, p. 459.
19. 9 & 10 Wm. 3, c. 41
20. 32 Geo. 3, c. 27.
21. Ibid. Sec. 1.

This amendment was not included in the Jamaica Act.

Section 1 of the English Act stated that no stores of war or naval stores were to be made with the King's mark, except they were for the King's use. The penalty was forfeiture of the goods and a £200 fine. Unauthorized persons in whose custody any of the described goods were found or persons who concealed such goods were to forfeit the goods and fined £200. They were to be imprisoned unless the fine was paid.[22] It was also made an offence to impersonate any seaman or forge any letter of attorney, bill of sale or will.[23] Offenders, together with their aiders and abettors, were to be fined £200 over and above the penalties imposed by any laws then in force for the like offence. This statute appears to have been the only one enacted in Jamaica in the 18th century to deal with embezzlement. It was repealed in 1867.

In 1833, two statutes relating to embezzlement were passed -- one concerned servants, the other public officers. 4 Wm. 4, ø. 35 punished clerks and servants who embezzled their employer's or master's property, for which offence they could be transported for 14 years. This Act was similar to the English statute 39 Geo. 3, c.85, and its provisions seems to have been borrowed from the English Act. The other statute, 4 Wm. 4, c. 25, was said to have been rendered necessary because "divers sums of public moneys of this island have lately been embezzled and made away with by persons appointed to collect the same."[24] Public officers who embezzled any public money or security were guilty of a misdemeanour and could be fined £500 and sentenced to twelve months' imprisonment. To deter others from encouraging public officers to embezzle public money, the same punishment was provided for persons who with a public officer entered any joint trade or adventure in which public money was used. This Act bears a closer resemblance to the English statute 50 Geo. 3, c. 59,

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22. Ibid. Sec. 2.
23. Ibid. Sec. 3.
24. 4 Wm. 4, c. 25. Preamble.

which made the corresponding offence a misdemeanour than to the later English statute 2 & 3 Wm. 4, c. 4, which made it a felony. In neither of the two English Acts however, was there any provision for persons who entered any joint trade with a public officer. Both 4 Wm. 4, c. 25 and 4 Wm. 4, c. 35 were repealed by the Consolidating Statute 7 Wm. 4, c. 40. The relevant provisions were contained in sections 39-47, which are very similar to sections 46-52 of the English Consolidated Act 7 & 8 Geo.4,c. 29. These clauses provided for larceny by servants, embezzlement by clerks, agents and bankers; and factors pledging goods entrusted to them. Provisions concerning embezzlement by public officers were not contained in the English Statute 7 & 8 Geo. 4, c. 29.

At emancipation therefore the main embezzlement provisions were contained in 7 Wm. 4, c. 40 and 32 Geo. 3, c. 27.

Cheat

Cheating was and is still an offence at common law.[25] It has been defined as "the fraudulent obtaining the property of another, by any deceitful and illegal practice or token (short of felony) which affects or may affect the public."[26] The limited interpretation of cheating, particularly in excluding private cheating from the list of crimes, led to the creation in 1757 of the statutory offence in England, of obtaining money by false pretences.[27] Jamaica did not enact a similar provision until when the larceny laws were consolidated in 1837, when Jamaica followed the English Consolidated Larceny Act and included a clause for obtaining money by false pretences.[28]

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25. For a discussion of the scope of the offence see Russell, op.cit., Vol. 2 (12th ed.), pp. 1155-1164, also Holdsworth, op.cit., Vol. 3 (5th ed.), pp. 362-3, Stephen, op.cit., Vol. 3, p. 161.
26. 2 East P.C. 818 quoted in Russell, op.cit., p. 1163.
27. 30 Geo. 2, c. 24, Sec. 1.
28. 7 Wm. 4, c. 40, Sec. 48.

Robbery

Robbery, another common law crime, was regarded as a felony since the reign of Henry II.[29] Hale defined it as "the felonious and violent taking away of any money or goods from the person of another, putting him in fear."[30] Holdsworth tells us that by the beginning of the 18th century "putting in fear" and acts amounting to "taking from the person", were liberally interpreted, although it was still maintained that there must have been a taking, and that taking must have been effected by violence or putting in fear.[31] In Jamaica, robbery appears to have remained a common law offence until 1837 when it was statutorily provided for in 7 Wm. 4, c. 40.

Burglary and House-breaking

From a very early period, burglary and the cognate crime of house-breaking were offences at English Common Law.[32] In his Institutes Coke described a burglar as a felon "that in the night breaketh and entreth into the mansion house of another, of intent to kill some reasonable creature, or to commit some other felony within the same, whether his felonious intent be executed or not."[33]

In Coke's period the essentials of the crime of burglary do not seem to have been completely determined but by 1700, the ingredients of the offence were settled. It was decided that a mere breaking in law was not sufficient[34] -- there had to be an

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29. Holdsworth, op.cit., Vol. 3, p. 368.
30. Hale Pleas of the Crown I 532 quoted in Holdsworth, op.cit., Vol. 3 (5th ed.), p. 368.
31. Holdsworth, op.cit., Vol. 8 (2nd ed.), p. 304. For an account of the law of robbery at this period see Stephen, op.cit., Vol. 3, p. 149, and Russell, op.cit., pp. 851-867.
32. See Holdsworth, op.cit., Vol. 2, p. 359, 452; Vol. 3, p. 369; Vol. 8, pp. 304-305. Stephen, op.cit., Vol. 3, p. 150.
33. Third Institute 63, quoted in Holdsworth, Vol. 3, p. 369. See also Archbold (36th ed.) para. 1788.
34. According to Hale, everyone who enters into another's house against his will or to commit a felony "doth in law break the house" though the doors are open: Hale, Pleas of the Crown I. 551 quoted in Holdsworth, op.cit., Vol. 8, p. 305.

actual breaking.[35] It was also settled that if entry to the house was gained under false pretence in order to commit a felony, there was a sufficient breaking, as was breaking of an inner window by one who had come in through an open door.[36] These essentials of burglary may have been in force in Jamaica.

In 1801, Jamaica enacted 42 Geo. 3, c. 12, because as it was stated, "divers wicked and ill disposed servants, and other persons are encouraged to commit robberies in houses," owing to the fact that they could claim the benefit of clergy.[37] Section I provided that persons who "at any time by night" stole money or goods valued sixty shillings of more from a house, although the house was not actually broken, or persons who assisted in committing the offence, were to be absolutely debarred from the benefit of clergy. Under 18 Eliz., c. 7, passed in 1576 and 3 & 4 Wm. and Mary c. 9, passed in 1691 principals and their accessories in these offences had been denied the benefit of clergy in English Law. These statutes could have been "used" or "received" in Jamaica.

The second section of the Act clarified doubts concerning burglary. It was stated that if any person entered the dwelling house of another person by night without breaking it, "with an intent to commit felony" or being in the house at night committed a felony, that person was to be guilty of burglary and deprived of the benefit of clergy in the same manner as if the person had broken and entered the house at night with intent to commit a felony. In their comment on this statute in 1827, the Legal Commissioners regretted "this extension of the criminal law of England, already sufficiently severe in cases of this kind."[38] The act was repealed by 7m Wm. 4, c. 40.

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35. Holdsworth, op.cit., Vol. 8, p. 304-305.
36. Ibid. p. 305.
37. 42 Geo. 3, c. 12. Preamble.
38. First Report of the Commissioners of Enquiry into the Administration of Criminal and Civil Justice in the West Indies (Jamaica) P.P. 1826-27 (559) XXIV, 24.

Statutory provisions were made for both burglary and house-breaking in 7 Wm. 4, c. 40, Secs. 12-17. These provisions were similar to the English ones contained in 7 & 8 Geo. 4, c. 29, Secs. 11-15.

Receiving

At common law, receivers of stolen goods were punishable only for a misdemeanour.[39] By the English statute 5 Anne, c. 31 receiving stolen goods was made a felony. Statute law has specifically provided for some instances of receiving but the common law appears to cover cases of receiving which are not specifically covered by statute.[40] Receiving stolen goods appears to have been one of the most frequently committed crimes of 18th century Jamaica. In 1682 Francis Hanson had written that there was hardly any house-breaking and robbery in the Island "for want of receivers, most persons there generally knowing each other as they do in country cities here"[41](England). However, even if that were a correct description of the position in 1682, by the mid-18th century stealing was apparently a common practice, and the legislature attempted to stop this practice by punishing the receivers of stolen goods.

One of the complaints against the Jamaica Jews in 1741 was that they encouraged "the negroes to steal commodities from their masters," which were then sold to, or bartered with, the Jews, "at inconsiderable and under values."[42] By 1753, other protests were made. The tradesmen of Spanish Town petitioned the Assembly about various people

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39. Holdsworth, op.cit., Vol. 3 (5th ed.), p. 363; Russell, op.cit., Vol. 2 (12th ed.), p. 1138.
40. Russell, op.cit., Vol. 2 (12th ed.), p. 1138. And see R. v. Garland [1910] 1 K.B. 154 and 157-158.
41. Hanson, op.cit., p. x.
42. JAJ Vol. 3, p. 571.

employing the petitioners' slaves on Saturday afternoons and Sundays and also during the slaves' rest periods. One of the unfortunate results of this, was that the slaves were enticed to "steal and carry away the petitioners' tools as well as their stuff and materials."[43] Having considered this petition, the Assembly proceeded to pass 26 Geo. 2, c. 6, which has been discussed in Chapter 4.

Stealing with its concomitant crime of receiving seem to have increased as the century progressed. In September 1760 the House appointed a committee to prepare a bill to inflict further punishment on persons buying or selling stolen horses, mares, mules and asses knowing them to be stolen.[44] A bill was introduced and given a second reading but it did not become law. In October 1761, a committee of the Assembly was appointed to prepare a bill for regulating slaves, more effectually to discover the receivers of stolen goods and to prevent the hawking of goods and merchandise about the streets. Before the bill was introduced the merchants of Kingston petitioned the Assembly about the "many evil disposed persons," who frequently inveigle the slaves of the petitioners to rob their stores and their houses of large quantities of valuable goods, by giving such slaves small sums of money for the sale or otherwise; which they received with such privacy and under such circumstances, as rendered it difficult and often impossible to detect the fraud.[45] After the bill was introduced the House resolved to divide it: the part regulating slaves and preventing hawking and abuses committed by free negroes was to be separated from the part preventing concealment of slaves offending against the laws, and the part dealing with receivers of stolen goods. Each part was to be made a separate bill. This is the last we read of the measure for that session.

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43. JAJ Vol. 3, p. 414. See also the petition of the Kingston tradesmen in JAJ Vol. 4., p. 441.
44. JAJ Vol. 5, p. 172.
45. JAJ Vol. 5, p. 293. The truth of these allegations were referred to a committee which included the Chief Justice.

In 1764, a bill to inflict further punishment on persons receiving stolen goods, knowing them to be stolen, was passed by the Assembly. It was sent to the Council, but we hear nothing further of it before the House was prorogued. In 1766, a bill with a similar title became law.[46] This statute was a temporary one and in the following year, an act to keep it in force was passed by the Assembly. This act was sent to the Council, but the House on inspecting the Council's journals discovered that the Bill was rejected by the Council "before commitment, without any debate or dissent entered."[47] In the following year, a Receivers' Act having a duration of three years was enacted. This Act, 9 Geo. 3, c. 14, was passed, it was said, because the laws then in force were insufficient to deter people from receiving stolen goods; as a result many white persons and free Mulattoes, Indians, Negroes received, bought or took by way of pawn or pledge for a trifling consideration gold or silver wares and other goods which had been feloniously taken.[48] These receivers also harboured and concealed the principal offenders and encouraged "Slaves and domestic Servants to rob and plunder their Masters or Owners and to commit other Enormities."[49] This Act was revived and amended in 1771 to include wider provisions for accessories.[50] It was made a permanent statute in 1774.[51]

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46. 6 Geo. 3, c. 3.
47. JAJ Vol. 6, p. 76. Following this discovery, a motion introduced in the Assembly was to the effect that a message be sent to the Governor, recommending him to remove such members of the Council who have "interrupted public business." It was defeated on a procedural point: JAJ Vol. 6, p. 76.
48. 9 Geo. 3, c. 14. Preamble.
49. Ibid., sec. 2.
50. 12 Geo. 3, c. 8.
51. 15 Geo. 3, c. 10.

15 Geo. 3, c. 10 made it an offence for any person to receive, buy, take by way of pledge, pawn or otherwise, any gold or silver plate, jewels, wearing apparel, furniture, sugar, rum, molasses, coffee, or any other goods, chattels, wares, or merchandise, knowing the same to be feloniously taken. It was also an offence to receive, entertain, maintain, harbour, aid, abet or conceal any such thieves or felons, knowing them to be such. They were to be declared accessories to the felony and suffer death as provided for the principals. Even if a convicted principal had the benefit of clergy or was otherwise pardoned, accessories could still be proceeded against. Because receivers often hid the principals, who as a result, could not be convicted of the felony, receivers of stolen goods could be punished "as for a misdemeanour" although the principal had not been previously convicted. This exempted them from being punished as accessories, should the principals be afterwards convicted.[52]

Forgery

Forgery, with the exception of forgery of certain seals, was a misdemeanour at common law. At first its scope was quite narrow, but statutes were passed extending it. One of the most important was 5 Eliz., c. 14, passed in 1562 providing for the forgery of deeds, court rolls or wills and the giving of evidence on forged documents.[53]

In 1742, Jamaica passed 15 Geo. 2, c. 3 which closely resembled Sec. 1 of the British Statute 2 Geo. 2, c. 25. Part of its title was for the "further Punishment of Forgery." This suggests that

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52. Sec. 3. See also the English Statutes 30 Geo. 2, c. 24 and 22 Geo. 3, c. 58.
53. See Holdsworth, op.cit., Vol. 4 (3rd ed.), pp. 501-503; Stephen, op.cit., Vol 3, pp. 180-183; Russell, op.cit., Vol. 2 (12th ed.), pp. 1216-1218.

although there was no Jamaican statute punishing forgery, the crime of forgery was in fact known in Jamaica and it could have been either forgery at common law or under statute or both. The Preamble of 15 Geo. 2, c. 3 spoke of the "wicked pernicious and abominable crime of forgery" which had recently been "so much practised to the subversion of justice." It made it an offence for anyone to "falsely make, forge or counterfeit", or cause, or procure to be falsely made, forged or counterfeited, or wilfully act or assist in the false making, forging or counterfeiting of several documents with the intention to defraud any person. It was also an offence to utter or publish as true, any false or forged documents of the type named with the intention of defrauding any person. This statute was repealed by 4 Vic., c.46.

Breach of Trust

We have already adverted to the fact that the owners of many of the estates in Jamaica did not themselves reside in the Island, and the management of the estates were often left to attornies. In 1740, 13 Geo. 2, c. 9 was passed, to protect the interests of these absentee proprietors. Because in the absence of the owners several frauds and breaches of trust could be committed by attornies, administrators and trustees, it was provided that they were to make a sworn yearly return of the annual produce of the estates. The penalty for neglecting or omitting to make this return was £100. This Act was at first temporary but it was made permanent in 1751.[54]

This Act was amended by 33 Geo. 3, c. 21, which provided that trustees of estates were to record within eighteen months, the whole account of every crop. The trustees were to state the sales of the

54. 24 Geo. 2, c. 19.

crop, the current accounts respecting the crop, and the actual payments made. The penalty for failing to do this was £500. These two statutes remained in force after emancipation.

B. Laws to prevent theft of specific property

(a) Laws to protect livestock and animals.

Under this heading we will also discuss laws protecting fish and birds.

Almost from the beginning of Jamaica's capture by the English, legislation existed for the protection of livestock. This legislation will only be understood against the background of the social conditions of the period. When the English soldiers suddenly found themselves in possession of Jamaica, they found no one to work for them, the Spaniards and their slaves, having either fled to Cuba or to the mountain recesses of the Island. To exist, therefore, the soldiers had to do whatever labour was necessary, and this involved providing themselves with food. The army was not adequately supplied with provisions; Venables for instance, telling Thurloe in June 1655 that the "men dye daylye, eating rootes and fresh flesh (when any food is gott) without bread."[55] Food was scarce, but in addition, the soldiers, more versed in military operations than in agricultural pursuits, refused to till the land. In April 1856, D'Oyley relates how some of the soldiers "being discontented at plantinge...conspired to revolt from us."[56] Brayne on arrival in Jamaica found "the souldery here in good health, but most of them very averse to plantinge."[57] And Sedgwicke's

55. Thurloe State Papers, Vol. 3: Venables to Thurloe, 13 June 1655.
56. Ibid., Vol. 4: D'Oyley to Thurloe, 18 April 1656.
57. Ibid., Vol. 5: Brayne to the Protector, 9 January 1657.

complaint to Thurloe leaves no doubt as to his opinion of the army:[58]

> "I believe they are not to be paralleled in the world, a people so basely unworthy, lazy and idle, as it cannot enter into the heart of any Englishman, that such blood should run in the veins of any born in England, so unworthy, slothful and basely secure, and have out of a strange kind of spirit desired rather to die than live."

Being averse to manual labour, particularly planting, the soldiers found it easier to get food by killing animals and livestock which they had found in the Island. They stole and killed even the horses belonging to the army, and in February 1656, a Council of War in the Island made it an offence punishable with death to kill any horse or mares "under any pretence whatsoever."[59] But this, apparently, did not deter the offenders, and within months another edict was issued because the "Offenders still persist, and goe on, and will take no warninge."[60] On this occasion, the punishment was for the offenders to labour as servants for three years. In their killing of animals the soldiers had not spared the cattle either, and by 1665 Modyford was able to state that the "ill-governed soldiers have made sad havoc of the cattle, killing them for their hides, which they sell for a bottle of brandy."[61]

It was against this background that the Assembly acted and their early legislation included laws for the preservation of cattle and regulating of hunting.[62] The first confirmed statute with this aim in view was passed in 1681.[63] It provided that persons killing any

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58. Ibid., Vol. 4: Sedgwicke to Thurloe, 12 March 1656.
59. Journal of Col. D'Oyley at Jamaica, 14 February 1656: B.M. Add. Mss. 12423.
60. Ibid., 20 October 1656.
61. C.S.P. 1661-68 No. 942. Modyford to Bennett: 20 February 1665. See also T. Malthus: The Present State of Jamaica, pp. 31, 44 and C.S.P. 1675-76 No. 237.
62. See C.S.P. 1661-68 No. 836; C.S.P. 1669-74 No. 829; C.S.P. 1669-74 No. 1247.
63. 33 Charles 2, c. 10.

cattle, horse, mare or mule were to forfeit £15 for each animal killed. Horse-catchers or cattle drivers who caught horses in any savannah, without first giving security for their honesty and obtaining leave from the proprietor of the savannah could incur a penalty of £20. If a horse-catcher sold any horse or cattle without two witnesses vouching that they were legally his, he could be fined £50; and anyone buying animals from him under such circumstances also committed an offence. Section 10 made it a felony for any horse catcher "fraudulently or designedly" to put false marks on animals or deface their old marks. Provisions concerning common horse-catchers were also found in a 1683 statute[64] Sec. 4 of which enacted that every horse-catcher was to give security before he could ride as a horse-catcher, and it was specifically provided that no common horse-catcher was to mark any horse, mare or neat cattle without first giving notice in the parish church on the Sabbath Day before he intended to mark.

Hunting with dogs, without being properly qualified was also an offence under the 1681 Act. It was an offence for planters to hunt with a gang of dogs which did not belong to them. Tame stock killed by dogs were to be paid for by the owners of the dogs and penalties were provided for persons killing or maiming tame stock "by hunting or otherwise", and not informing the constables.[66] Hunting with dogs within four miles of any settlement was prohibited, as was the setting of traps. This 1681 statute was repealed by the Consolidated Malicious Damage Act of 1837.[67]

During the 18th century, the protection of livestock was of particular concern to the legislature. In 1749, 22 Geo. 2, c. 22 was enacted because many "evil-minded and disorderly persons, who, under pretence of hunting or going after wild cattle", have clandestinely entered the grazing lands of planters and the waste lands adjacent to

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64. 35 Charles 2, c. 7.
65. 33 Charles 2, c. 10.
66. Sec. 15.
67. 7 Wm. 4, c. 36.

them and "disabled, killed, and carried off great numbers of cattle."[68] It proceeded to enact various provisions for the protection of livestock: No persons other than the owners of cattle pens or their servants were allowed to hunt, or kill any cattle or horse in any waste-land; those hunting with lances, guns, or "other instruments of death" were first to obtain a licence from a magistrate and give at least forty-eight hours notice to the proprietor of adjoining settlements. Within twenty-four hours after a hunter had killed any animal he had to inform owners of adjacent plantations, so that they could view the carcass if they wanted to. Hunters were not to hunt beyond ten miles of their plantations. The penalty for any infractions of this law was £100. Marking cattle fraudulently was considered a grave offence, and section 5 made it a felony for any person, to "fraudulently or designedly put any false brand mark, carved mark or any other marks, or deface any old mark on any cattle." This statute was repealed in 1842.[69]

The crime of horse and cattle stealing does not appear to have decreased and we have seen attempts made in the 1760's to prevent theft of horses by punishing the receivers. In 1781, 22 Geo. 3, c. 10[70] was passed because the stealing of horses, mares, mules, asses and cattle "is grown so common, that the same cannot be kept in safety, and which is generally occasioned by the ready selling or exchanging" of these animals in distant places.[71] It was also stated that it had become a frequent practice for persons to drive away great numbers of sheep and goats, secretly kill them and take the carcasses away. Section 1 made it a felony, punishable with death, without benefit of clergy for anyone to drive away "or in any other manner feloniously steal," any horse or cattle with intent to steal the whole or part of the carcass. The same penalty was stipulated for taking off or paring the horns of cows with

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68. 22 Geo. 2, c. 22. Preamble.
69. 6 Vic., c. 35.
70. This statute was a re-enactment of an earlier statute, 19 Geo. 3, c. 20.
71. 19 Geo. 3, c. 20. Preamble.

an intent to disguise the cows' age or to deface their marks. Aiders and abettors were to suffer in a manner similar to the principals. Death was also the punishment for persons stealing sheep or goats or wilfully killing them with an intent to steal the carcass.

This statute was only a temporary one but it was revived and in 1791 made permanent by 31 Geo. 3, c. 19 which was very similar in terms. The main differences related to the punishment. Persons stealing cattle were still to suffer death. But in case any person "shall hereafter take off the horns, or pare or rasp the same, with an intent to disguise the age or deface" the marks thereon, with an intent to steal, "and shall not actually take and carry away the same," he was for the first offence to be imprisoned for six months, for the second twelve months, and for the third suffer death without the benefit of clergy. Stealing of sheep and goats was also declared a felony but the punishment for the offence was made discretionary instead of mandatory.

The 1791 Act was repealed in 1806 by 47 Geo. 3, c. 22, which re-enacted the provisions of the former act, at the same time closing loopholes in the statute. In 1830, the legislature found it necessary to alter the punishment for horse and cattle stealing; instead of death being the only punishment, offenders could now be transported for life, or imprisoned for life.[72]

But despite all the legislation, the offence of cattle stealing seems to have increased and in 1835 Sligo, in justifying his actions for transporting some convicts, contrary to Glenelg's instructions, stated that "the Crime of Cattle Stealing has got to such a tremendous pitch here, that something must be done to check it."[73] Two years later Smith informed Glenelg that the "Crime of Horse and Cattle Stealing, has encreased to such a frightful extent, that I consider some severe example necessary."[74]

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72. 1 Wm. 4, c. 12.
73. CO 137/204: Sligo to Glenelg, 4 November 1835.
74. CO 137/219: Smith to Glenelg, 28 January 1837.

In 1837, some of the laws relating to the theft of animals were repealed and new regulations provided in the Consolidated Larceny Act, 7 Wm. 4, c. 40. 7 Wm. 4, c. 40 is stated to have repealed the 1791 Act and the 1830 Act. But the 1791 Act had already been repealed by the 1806 Act and there is no mention of the 1806 Act being repealed by 7 Wm. 4, c. 40. The 1806 Act was however repealed in 1842.

At emancipation therefore the statutory provisions relating to horse and cattle stealing were found in the 1749 Act and the 1806 Act, both of which we have already described, and 7 Wm. 4, c. 40. Section 27 of 7 Wm. 4, c. 40 which provided punishment for the stealing of horses or cattle, was very similar to the corresponding provision in section 25 of the English statute 7 & 8 Geo. 4, c. 29. The 1749 and 1806 Acts were repealed in 1842.

Early in the 18th century, the legislature acted to protect birds and fish because several persons "frequently use evil and illdisposed methods of destroying the Fish...and also destroy the Pigeons at an unseasonable time of year."[75] 10 Anne, c. 16 enacted that no person was to destroy any fish in any harbour or river by poisoning; nor was he to set fish-pots in or make stops over any river or creek unless the land on the side of the river belonged to him; no mesh of less than a certain width was to be used in catching fish and no person was to destroy turtle eggs; wild pigeons were not to be killed in certain parishes in certain months of the year. Offences against this act do not appear to have been regarded as serious ones and the penalty was forty shillings; if the offender was a Negro, Mulatto, Indian or Slave he was to receive thirty-nine lashes. Turtle eggs had also been previously protected in 1681 by 33 Charles 2, c. 4 which provided a fine of forty shillings or thirty-nine lashes for the destruction of turtle nests or eggs.

10 Anne, c. 16 was repealed by 8 Geo. 4, c. 14 passed in 1827 but the later act followed the lines of the earlier one. One of the reasons for the enactment of the later act was that if pigeons were killed out of

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75. 10 Anne, c. 16, Preamble.

season, it defeated "one of the inducements which gentlemen have for residing on their properties, by destroying country sports." The 1827 Act gave a longer list of birds which it was prohibited to shoot, and increased the penalty for offences against the act from forty shillings to £20. Failure to pay the fine could result in imprisonment for up to twenty days. 8 Geo. 4, c. 14 was still in force at emancipation. This act was replaced by Law 32 of 1885 but the provisions of that statute were similar to those of 8 Geo. 4, c. 14.

(b) Laws to prevent the theft of agricultural produce

It does not appear that in the 17th and 18th centuries the theft of agricultural produce was a serious problem in Jamaica - at any rate serious enough to warrant legislative action. But towards the end of the 18th century, there are indications that the stealing of agricultural provisions was giving rise to concern. Following a motion in the Assembly in November 1799, a committee was appointed to prepare a bill to prevent the theft of coffee and other products.[76] After the House in Committee had considered the bill, it was resolved that the bill should be remitted for consideration to the committee which had prepared it. The bill was re-introduced on the following day, but it was killed by the House.

In December 1806, 47 Geo. 3, c. 29 was passed aimed at preventing the theft of coffee and other produce. Three years later, a committee of the Assembly finding it necessary to make "considerable alterations" in the 47 Geo. 3, c. 29 recommended that it be repealed and a new act passed. This recommendation was followed and 50 Geo. 3, c. 20 was enacted because "the stealing of coffee and other produce has for some time past, been practised to a very great degree."[77] To prevent this theft, the act sought to penalise both buyers and sellers of coffee in

76. JAJ. Vol. 10, p. 376.
77. 50 Geo. 3, c. 20.

certain circumstances. Slaves were prohibited from selling or disposing of any quantity of coffee, sugar, rum or pimento,[78] and persons purchasing or offering to purchase quantities of such produce were to be fined £50.[79] The Maroons also were not permitted to offer any coffee for sale, unless the superintendent of the town had signed an affidavit to the effect that the coffee was grown on the Maroon lands. Persons purchasing any coffee from a Maroon without such an affidavit could be fined £50. Unless they were furnished with a ticket from their owners slaves were not to have any of the above-mentioned articles in their possession, when they were absent from the property in which they belonged. A ticket was also required of a slave if he wished to carry provisions to market on a horse or mule. Without being licensed as stated in the act no person was to sell any coffee in any quantity of less than 100 lbs. or sugar or pimento in less than 50 lb. quantities. When a person was selling coffee of a hundred pounds weight or more, he was to swear in writing that the coffee was a product of his plantation. The forging of any certificate of affidavit required by this act, was an offence punishable with death. Retailers of coffee were heavily penalised for not making quarterly returns of the coffee and pimento and sugar bought by them. Shippers of coffee were also penalised for not carrying out certain duties as stated in the act. This act was repealed by Law 19 of 1873.

The theft of coffee continued to worry the legislature and unsuccessful attempts were made in the legislature to have new legislation passed.[80] Eventually in 1821, following recommendations by a committee of the House, 2 Geo. 4, c. 22, amending the 1809 Act, was passed. This 1821 statute was passed, it was stated, because 50 Geo. 3, c. 20 had not been effective enough in preventing the theft of coffee or in detecting the receivers who "annually ship large quantities from this island under false affidavits."[81]

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78. Sec. 2. The penalty was whipping.
79. Sec. 5. This section did not exempt them from being charged with receiving stolen goods.
80. See JAJ Vol. 12, p. 586; Vol. 13, pp. 278, 296.
81. 2 Geo. 4, c. 22. Preamble.

Sections 9 and 10 of 50 Geo.3, c.20 were repealed and more detailed provisions made and heavier penalties enacted for persons engaged in the shipping of coffee. Minor amendments were made to 2 Geo.4, c.22 by 3 Geo.4, c.22.

But this legislation does not appear to have solved the problem and shortly afterwards further attempts were made to amend these statutes.[82] In addition it seems that other varieties of produce were being stolen. In December 1825, a member of the Assembly presented a bill to prevent depredations of ginger and to more effectively discover the receivers. The bill was examined by the Assembly but it was subsequently killed.

Four years later 10 Geo.4, c.15 was passed because "great depredations are committed on sugar, pimento, and coffee, on their passage from the place where they are grown and manufactured to the barquedier, as well as on the plantation." To prevent these thefts which previous legislation had failed to check, the Assembly tried a new method -- that of confiscating produce suspected of being stolen. If a person was found in possession of any of the named produce in quantities greater than 50 lbs., a free person could, if he suspected the produce to have been stolen, give this information to the magistrates. The magistrates were in turn to summon the suspected person, and if he could not satisfactorily account for the produce, it was to be forfeited.

But even this latest device by the Assembly does not appear to have achieved its object. In 1831 another bill for the more effectual prevention of stolen produce was introduced in the Assembly.[83] It was killed by the House. In 1833 a bill aimed at regulating the sale and shipment of produce was introduced in the House, but not passed.[84] Shortly after, a bill for the purpose of preventing theft of produce was passed by the Assembly [85] but it does not appear to have completed the legislative process.

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82. See JAJ Vol.14, pp. 197, 336.
83. VAJ 1830, p. 140.
84. VAJ 1833, p. 109.
85. VAJ 1834, pp. 33, 52.

During apprenticeship there were still complaints about the theft of agricultural provisions. On one occasion Sligo stated that the theft of produce had "got to an alarming extent", and he had "directed the attention of the police to the necessity of watching this". In about a fortnight, in one area "the police captured nearly a hogshead of sugar..."[86]

Under 6 Wm.4, c.32, persons who had in their possession any sugar, rum, coffee, pimento, or ginger and could not satisfactorily account for it could be fined £5 or committed to prison for up to 30 days.

In 1837, provisions for the theft of agricultural produce were included in the Consolidated Larceny Act 7 Wm.4, c.40. These provisions attempted to follow similar provisions in the English statute 7 & 8 Geo.4, c.29 very closely.[87] The Jamaican provisions punished the theft or destruction of trees or fruits growing in gardens. In addition, persons who could not satisfactorily account for their possession of any tree above the value of two shillings, and any produce of the island, valued at least one shilling and eight pence were to be punished.

At emancipation the following acts aimed at preventing the theft of agricultural produce were still in force: 50 Geo.3, c.20; 2 Geo.4, c.22; 3 Geo.4, c.22; 10 Geo.4, c.15 and 7 Wm.4, c.40. Some provisions of 7 Wm.4, c.40 could be interpreted as superseding some clauses in the older statutes, but as the older statutes were not expressly repealed, they must be taken as still being in force at emancipation.

(c) Laws to prevent damage to property

Of all the offences which resulted in damage to property, arson was undoubtedly one of the most important. It was most likely known in Jamaica in the 17th century because it had long been recognized as

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86. P.P. Relating to Slavery Vol.41: Sligo to Aberdeen, 31 March 1835. See also CO 137/209: Sligo to Glenelg, 8 February 1836.
87. Compare 7 Wm.4, c.40 Secs. 29 - 30 and Secs. 33 and 35 with the English Statute 7 & 8 Geo.4, c.29 Secs. 38 - 39, 41 - 43.

a common law felony in England.[88] Arson was said by Coke to have been committed by "any that maliciously and voluntarily in the day or night burneth the house of another."[89] The offence was narrowly interpreted, it being decided in the early 17th century for example, that the building burnt must belong to another person.[90] Statutory provisions extensively widened the offence.[91]

In Jamaica, the destruction of cane-fields by fire, carelessly or deliberately, had to be guarded against, and from an early period the legislative body composed mainly, if not entirely, of estate owners, attempted to protect the sugar plantations around which the Jamaican economy was built and by which many of the legislators accumulated their fortunes. Indeed one of the first orders promulgated by the Jamaica Council made it an offence for a person to carry a stick of fire or lighted pipe of tobacco through a field of cane.[92] When the Assembly came into existence successive acts aimed at preventing damage by fire were passed in the pre-1680 period.[93] These were all superseded in 1681 by 33 Charles 2, c.10, which made it an offence to carry fire or to smoke tobacco in any savannah or plantation. Under section 7 the offender had to pay for all the damage which was caused by the fire and if he could not pay he was to be whipped.

In April 1736, the Assembly acting on a motion that Robert Thackeray a member of the Assembly "being guilty of ordering or advising the burning of Colonel Orgill's store house, with some sugars, rum puncheons, and other things in it, and that he had absented himself from the service of the House," expelled him from the House.[94] Thackeray's behaviour appears to have spurred his colleagues into legislative action,

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88. Holdsworth op. cit. Vol.3 (5th ed.) p.370. Russell op. cit. Vol.2 (12th ed.) pp.1332 - 35.
89. Third Institute 66 quoted in Holdsworth, op. cit., Vol.3 (5th ed.) p.370
90. Holmes' Case (1635) Cro. Car. 377 referred to by Holdsworth, op. cit., Vol.3, p. 370.
91. Holdsworth op. cit., Vol.3 (5th ed.) p.370. See also Russell op. cit., Vol.2, (12th ed.) Chapter 81.
92. CO 140/1/28, 27 August 1661.
93. See C.S.P. 1669 - 74 No. 827; C.S.P. 1669 - 74 No. 1247.
94. JAJ Vol.3, p.342. He was expelled from the House on at least three occasions.

and on thesame day, the House appointed a committee to prepare a bill "making the burning of any out-houses, store houses or cane-pieces, in this island," a felony without benefit of clergy. The Assembly eventually passed 9 Geo.2, c.5, an Act to prevent the malicious burning of houses and plantations.[95] This Act, one of the most comprehensive property acts passed during the century, was declared necessary because "several ill-disposed mischievous persons have of late been engaged in and practiced unlawful and wicked courses, in burning of houses and cane-pieces, in contempt of the laws," and to the great damage and impoverishment of many of his Majesty's subjects in this Island.[96]

Thackeray's Act, as this act can be appropriately called, made it a felony for any one to "maliciously burn, or cause to be burnt, or aid, procure, advise or consent to such burning" of any of the following objects: any mansion or dwelling house, any inset or outset house being parcel of a mansion or dwelling house; any mill-house, boiling house, still house, curing house, or any other house, properly or necessarily belonging to a sugar-work or plantation; any store house or wharf-house; any ship, canoe, or other vessel, having sugar, rum, molasses, or other goods, wares or merchandize on board.[97]

Certain plants and trees were also protected: sugar canes and plantain walks were not to be burnt, neither were coffee or cocoa trees to be cut down or destroyed.[98] Commenting on this section in 1827, the Legal Commissioners declared: "The latter part of the Act, making it a capital felony to pluck up or cut down coffee or cocoa trees, seems

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95. In Virginia, an Act was passed in 1730 to prevent the malicious burning of tobacco houses. The Governor said that the act was intended to remedy a defect of the common law which made only the burning of dwelling houses a felony. C.S.P. 1730, No. 348.
96. 9 Geo.2, c.5. Preamble.
97. Sec. 1.
98. Ibid.

to us unusually severe as they are little more than bushes."[99] These trees may have been regarded as bushes in the 19th century but in the early 18th century, the cultivation of coffee trees especially, was of great sociological, strategic and commercial importance to the white inhabitants of Jamaica. Coffee planters were mainly white people of which Jamaica was so desperately short, and as coffee was grown on the more elevated lands, it would help to open up territory adjacent to that occupied by the slaves who had run away. In their petition to the King in 1732, the coffee planters and merchants of Jamaica had submitted "whether the encouraging coffee plantations is not the most likely way to promote the settling of Jamaica in a very few years," which would be the "effectual means of destroying the rebellious negroes who have been and are the cause of so great a charge and expence to the Nation and Island."[100] Referring to this petition the Council for Trade told the King that in all probability, great advantage might be gained from the growth of coffee particularly in Jamaica

> "as well with regard to peopling that important Island, as the good effect which it may have in time upon the general commerce of this Kingdom, by supplying your Majesty's subjects with coffee, both for their home consumption and for exportation to other European markets."[101]

Over forty years later we find similar comments being made about the importance of coffee and the coffee planters. Governor Keith told Lord Dartmouth that as the coffee planters were inclined to settle among the mountains they could be looked to for inland defence. A population of this kind is the "true, and natural Bulwark of a Country, so prodigiously mountainous as this is and so liable to the frequent rebellions and depredations of a numerous, cruel and ferocious an Enemy."[102]

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99. Legal Commissioners Report p. 15.
100. C.S.P. 1732, No. 29.
101. C.S.P. 1732. No. 44.
102. CO 137/69/345: Keith to Dartmouth, 4 October 1774. For further reference to the importance of coffee and the problem of smuggling coffee into the Island see JAJ Vol.6, p.443, 448, 533; CO 137/37/71; CO 137/68/75.

As the apprenticeship period approached, the Assembly sought to guard against the former slaves maliciously damaging or destroying property. Under 4 Wm. 4, c.34, passed in December 1833, it was made an offence for persons wilfully and maliciously to damage any buildings or lands under cultivation. This act was repealed by 7 Wm. 4, c.36. Another statute, 6 Wm. 4, c.32, passed in 1836, also provided for malicious damage to property. Section 6 made it an offence wilfully to damage any house, provision ground, lamp-post, and canoe. This provision was repealed by 27 Vic., c.34.

In 1837, the Consolidated Act pertaining to malicious damage to property, 7 Wm. 4, c.36, was passed. It repealed 33 Charles, c.10, 9 Geo. 2, c.5 and 4 Wm. 4, c.34. 7 Wm. 4, c.36 adopted the provisions of the English statute 7 & 8 Geo. 4, c.30 and punished persons who damaged chapels, warehouses, manufactured goods, sugar works, steam engines, vessels, bridges, turnpikes, fishponds, houses, and provision grounds.

2. The Post-emancipation Period

As we previously indicated most of the laws relating to larceny and damage to property were consolidated in 1837. These consolidated statutes, 7 Wm. 4, c.40 and 7 Wm. 4, c.36, took as their mode, the consolidated English statutes 7 & 8 Geo. 4, c.29 and 7 & 8 Geo. 4, c.30, and they contained similar provisions. Thereafter in these areas with a few exceptions, the development of Jamaican law followed closely on the heels of English law. Jamaica's embezzlement by public officers Act, 14 Vic., c.48, contained similar provisions to its English counterpart 2 Wm. 4, c.4; Jamaica's Act to prevent the stealing of dogs, 14 Vic., c.42, contained provisions similar to the English statutes 7 & 8 Geo. 4, c.29 and 8 & 9 Vic., c.47. Jamaica's breach of trust Act of 1857, 21 Vic., c.15, was based on the English statute 20 & 21 Vic., c.54. And when the English larceny and malicious damage statutes were again consolidated in 1861, Jamaica quickly adopted the provisions. Thereafter and for the rest of the century, Jamaica's law continued to run parallel[1]

with English developments; thus when England enacted a falsification of accounts Act, in 1875,[103] Jamaica enacted a similar Act a year later.[104]

In the field of forgery the development was the same. In 1840 Jamaica consolidated its forgery laws and in doing so followed closely the English legislation of 11 Geo. 4, & 1 Wm. 4, c.66. When Jamaica again consolidated its forgery laws in 1872,[105] the Island's Attorney General reported that the law "is taken from and is in almost the same words" as the English statute, 24 & 25 Vic., c.98.[106]

In three areas, Jamaican law tended to veer away from English legislation: the theft of agricultural produce, the trespassing on property, and the obtaining of credit by fraud. The theft of agricultural produce has been separately dealt with.[107]

Trespassing on property by the ex-slaves, ex-apprentices, was considered a serious problem by the Jamaican legislators in the post-emancipation period. Disputes between the now free, but landless, labourers and the estate owners started almost from the beginning of emancipation.[108] At the root of the problem lay the fact that the former slave was not compelled to work and live on the estate as formerly. At and after emancipation he was given no land and with his meagre wages, he was unable to buy any for himself and his family on which to settle. The result was that he often 'squatted' on unoccupied land, and this brought him in conflict with the proprietors. The legislature, composed mainly of landowners, therefore sought to remedy this situation by use of the criminal law. In 1843 the Assembly passed an Act to prevent trespassing on property and prohibited the carrying of torches at night. Elgin, the Governor, refused to give his assent to the bill on the grounds that the representations made to him did not appear to justify "the large departure from constitutional principles."[109]

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103. 38 & 39 Vic., c.24.
104. Law 14 of 1876.
105. Law 22 of 1872.
106. CO 137/464: Grant to Kimberley, 10 July 1872, Enclosed Report of Attorney General Schalch.
107. Infra, Chapter 9.
108. See CO 137/230: Smith to Glenelg, 10 November 1838.
109. CO 137/278: Elgin to Stanley, 8 March 1844.

He related that if the bill had become law it would have caused panic especially among the small free-holders.[110] Both the Chief Justice and Attorney General of Jamaica had different opinions of the bill; the former agreeing with the Governor. Because of the divergence of views the measure was referred to the Law Officers of England for their opinion. Following their report the Governor was told that he acted correctly in refusing his assent particularly because of the absence of a period of limitation in the act, after which summary power of ejectment could not be exercised. The following year the Assembly passed a statute free of the objections of the previous one.[111] This was replaced in 1851 by 14 Vic., c.46, which enacted that trespassers on private lands could be summarily tried; persons occupying lands without title could be dispossessed, but not if they had been in possession for a year; persons trespassing on enenclosed lands for the purpose of damaging trees or cutting wood were to be fined; persons passing along any private road at night, with a gun or a lighted torch could be fined. Although minor amendments were made to this statute by law 7 of 1895, it is still in force in Jamaica as the present Cap. 392. Provisions against trespass were also contained in 5 Wm. 4, c.9.

In the 19th century, Jamaica did not think it necessary to enact legislation relating to the obtaining of credit by fraud, which England had done by the Debtors Act, 32 & 33 Vic., c.62, Section 13. However in 1967 Jamaica 'caught up' with England and provided for the obtaining of credit by fraud.[112]

By the end of the century therefore, except in the areas described above, Jamaican legislation relating to larceny and damage to property, had developed along parallel lines with English law, and to all intents and purposes was the same as English law.

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110. Ibid.
111. 8 Vic., c.18.
112. Under Section 2 of The Law Reform (Miscellaneous Provisions) Act 1967, it is a misdemeanour for every "person, who in incurring any debt or liability, obtains credit under false pretences or by means of any other fraud." Under Section 13 of the English Debtors' Act 32 & 33 Vic., c.62 a person commits a misdemeanour if "in incurring any debt or liability he has obtained credit under false pretences, or by means of any other fraud."

CHAPTER 9

Problems of Particular Interest to Jamaica

In this Chapter, we shall examine the penal legislation relative to four problems which have, at various periods in the Island's history, been of especial importance. The problems are Piracy, Obeah, Praedial Larceny and Vagrancy. At the end of our period under review, 1900, the Obeah, Praedial Larceny and Vagrancy legislation was at an unsatisfactorily inchoate stage. In an attempt, therefore, to place the history of the legislation on a more conclusive footing, we have journeyed a few, but rewarding, years into the 19th century.

A. Piracy Legislation

One of the first problems with which the Jamaican authorities had to contend, was piracy and its close relative privateering. Piracy has been defined by Stephen as:

> "Taking a ship on the High Seas or within the jurisdiction of the Lord High Admiral from the possession or control of those who are lawfully entitled to it, and carrying away the ship itself or any of its goods, tackle, apparel or furniture under circumstances which would have amounted to robbery if the act had been done within the body of an English county." 1

In Windsor's Instructions in 1662 it was deemed piracy, "for any Shipps to lay waite or pursue or take any of our Enemies Shipps or Goods upon those coasts but by Commissions from our high Admirall or Authority from him."[2] These Commissions we are told were frequently issued by a belligerent State to a private shipowner giving him leave to employ his vessel as a ship of war. "A ship of war so used is a privateer."[3]

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1. James Fitzjames Stephen, Digest of the Criminal Law, Art. 108.
2. CO 138/1/14.
3. Encyclopaedia Britannica (1961 ed.), Vol. 13, p. 969: "Privateer" was also the name used to describe a member of the ship's crew.

We are told further that the privateer was a common source of piracy because it drifted into piracy, when its legitimate prey was not forthcoming to supply the prize-money which paid the wages of the officers and crew.[4]

Piracy throughout the world has had a long and colourful history and the history books are replete with the daring escapades of the flamboyant, swash-buckling pirates. In the 17th century, the main arena for piracy was the Caribbean, where the pirates plundered ships and molested trade in general.

At this period in England, piracy was disapproved of officially, but as we are told, it was very difficult to get a jury to convict a pirate, for he was "looked upon as a public benefactor."[5] In Jamaica at first, piracy, if not actively and enthusiastically encouraged, was not, at least, discouraged. One Governor of Jamaica, Sir Thomas Modyford, pointedly disobeyed the King's orders not to grant any commissions to privateers. For this he was recalled and imprisoned in the Tower of London.[6] Henry Morgan, who was later knighted and became Lieutenant Governor of Jamaica, was in his younger days one of the most famous pirates of the Caribbean. Port Royal in Jamaica was his base, as it was for many other pirates, and it was from there he sallied forth to plunder, and it was there he returned with his booty.[7]

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4. Ibid., Vol. 17, p. 952.
5. Ibid., p. 951.
6. When Lynch was taking up his appointment as Governor, he was thus directed: "Whereas Sir Thomas Modyford, late Governor of Jamaica, hath, contrary to the King's express commands, made many depredations and hostilities against the subjects of his Majesty's good brother the Catholic King, it is the King's pleasure that as soon as he has taken possession of that Government and the fortress 'so as not to apprehend any ill consequences, thereupon' he cause the person of Sir Thomas Modyford to be made prisoner, and sent home under a strong guard to answer for what shall be objected against him": C.S.P. 1669-74, No. 405 January 1671.
7. See W. Adolphe Roberts, Life of Henry Morgan.

In fact, Jamaica was gaining much from piracy, for not only did it provide an outlet for persons who might not have been gainfully employed in the Island -- "ill humours" as Lyttelton termed them -- but it also increased the wealth of the country.[8] By 1683, Port Royal was described by a resident of Jamaica as the "store-house or treasury of the West Indies" and it was like "a continual mart or fair."[9]

Piracy was an offence at common law.[10] It had also been statutorily provided for by the Imperial Statute 28 Henry 8 c.15, but this statute was not expressly extended to the colonies -- its jurisdiction was limited to England. But before there was any specific Jamaican legislation on the subject, pirates were prosecuted in Jamaica, so they may have been prosecuted under the common law. Alternatively 28 Henry 8 c.15 might have been used, thus becoming one of the English statutes which may have been "esteemed, introduced, used, accepted or received" in the Island.[11] What is certain is that as more and more British ships were being plundered and piracy was becoming a distinct liability, the Jamaican legislature stepped in and passed a law for calling in and suppressing privateers. This law was approved in 1678 but it never came into force, by reason of the constitutional crisis in Jamaica. When constitutional peace returned to the Island, the Assembly immediately legislated for piracy by

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8. Lynch however felt that privateering was the "sickness of Jamaica" for it was "absolutely inconsistent" with planting: C.S.P. 1669-74 No. 777.
9. Francis Hanson, Account of the Island and Government of Jamaica, p. xi. Prosperity seemed to have been accompanied by other social ills and one visitor to the Island felt that "Virtue is so Despised and all sorts of Vice Encourag'd by both Sexes that the Town of Port Royal is the Very Sodom of the Universe": Edward Ward, A Trip to Jamaica p. 16.
10. James Fitzjames Stephen, A History of the Criminal Law of England Vol. 2, p. 27.
11. See Chapter 1 supra.

passing 'An Act for the Restraining and Punishing Privateers and Pirates'.[12]

Section 1 of this 1681 Act made it a felony "for any Person/(sic) which now doth, or within Four Years last past heretofore hath, or hereafter shall inhabit or belong to this Island, to serve in America" in an "hostile Manner under any Foreign Prince...or any employed under any of them against any other Foreign Prince...in Amity with his Majesty of Great Britain, without special License for so doing." Convicted offenders were to be sentenced to death without benefit of clergy. There was a proviso to the effect that the Act was not to extend to any who returned to the Island by a fixed date and gave the Governor security for their future good behaviour. All piracies, robberies and murders committed at sea or in any haven, creek or bay, were to be tried and determined in the island "as if such Offence had been committed in and upon the Land." For that purpose, commissions similar to the commission issued in England under 28 Henry 8, could be issued. Commission officers in the Island were empowered to raise a body of armed men, to seize and imprison any privateers, pirates or other persons "suspected to be upon any unlawful Design"; if those persons resisted, or refused "to yield Obedience to his Majesty's Authority" it was lawful to kill them; persons who opposed or resisted by striking or firing on any of the commanded parties were to be judged felons without benefit of clergy; every officer who neglected his duty in this connection was to forfeit £50.[13]

Despite the punishment of death provided for pirates by the Jamaican Act, pirates still continued to flourish in the Caribbean and in 1687, Molesworth informed Blathwayt that piracy had never received "such checks as I have given it in the last few months, nor have we ever been so free as lately from such vermin."[14] One reason why

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12. 33 Charles 2, c.8.
13. 33 Charles 2, c.8.
14. C.S.P. 1685-88, No. 1212, 17 April 1687.

piracy did not diminish may have been the maladministration of the law. In October 1687 the King had to send a circular letter to the West Indian Governors, directing that the laws against piracy be strictly enforced; this was necessary because a practice had grown of bringing pirates to trial before the evidence against them was ready, and with the use of other "evasions", ensuring their acquittal.[15]

Some colonies however did not yet possess legislation to try pirates and under the English statute 28 Henry 8 c.15, passed in 1536, pirates had to be sent to England for trial. A copy of the Jamaica Pirates' Act was therefore sent to the Governors of all the American colonies, and they were requested to encourage their Assemblies to enact similar measures.[16] But the Assemblies of these colonies were tardy in enacting such a measure, and the British Parliament stepped in. The Governor of Massachusetts was told that because of the "refractoriness of New England and other plantations", Parliament had passed an act for the supression of piracy, extending to the colonies; and it was brought to his attention that where the public good suffered as a result of the Assemblies' obstinacy, "the proper remedies will be easily found here".[17] This Statute,[18] being an enactment of the British Parliament, took precedence over all the colonial enactments on piracy. It followed the general lines of the Jamaican statute, by authorizing the appointment of Commissioners, and by providing the death penalty for piracy. Accessories of pirates could only be tried as provided by 28 Henry 8 c.15, and that was interpreted to mean that they could only be tried in England.[19]

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15. Ibid., No. 1463, 14 October 1687.
16. Beeston, the Governor of Jamaica, described himself as being "much pleased to find that this Island which formerly had the greatest name for privateering in these parts, should now have its laws made an example to the rest of the King's dominions": C.S.P. 1697-98 No. 551.
17. C.S.P. 1700, No. 312. CTP to Bellomont, 11 April 1700.
18. 11 & 12 Wm. 3, c. 7.
19. CO 138/16/231: CTP to Lawes, 9 July 1719.

The statute was at first a temporary one, butit was made perpetual in 1719.

The Act of the British Parliament does not appear to have had the effect of suppressing piracy, and other methods were attempted. In 1714, the Jamaica Council, after complaining about the pirates who "daily molested our Trading Vessells" and rendered trade to the Island "very precarious", advised the Governor to issue a proclamation pardoning the pirates.[20] The Governor complied and a proclamation was issued pardoning pirates who surrendered or returned to the Island before a stated date. Later a Proclamation offering to pardon pirates who surrendered was announced by the King. Although a considerable number of pirates are said to have surrendered, a substantial number still remained active. In June 1718, Lawes acquainted the Council for Trade "of the dayly complaints received of Pyracys and Robberys committed in these parts, insomuch that there is hardly one Ship or Vessell coming in or going out of this Island that is not plunder'd."[21] At the same time the Council and Assembly were petitioning the Governor that despite the promises of pardon, the pirates "are grown so numerous and insolent, that the subduing them requires not only a greater Number of Ships but a much greater Vigilance than has hitherto been shewn by the Commanders of those Ships."[22] In 1720, Lawes was still complaining about the pirates — they were "Swarming round in great numbers" and "we are dayly Robb'd and Plunder'd".[23]

Since the offer of pardon had not decreased the number of pirates, Lawes turned his attention to other methods. One such was to provide alternative employment. He felt that want of employment

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20. CO 140/13/236: 19 October 1714.
21. CO 137/13/33: Lawes to the CTP, 21 June 1718.
22. CO 140/14/418: Address of Council and Assembly to the Governor, 9 August 1718.
23. CO 137/13/281: Lawes to CTP, 13 November 1720. For similar complaints from the Leeward Islands see C.S.P. 1719-20, No. 561; C.S.P. 1720-21, No. 251.

was the "Chief Occasion" of so many "going a pyrating."[24] He suggested that agreement should be reached with Spain, allowing Britain to cut logwood in the Bay of Campeachy. If Britain had a settlement there, that would be the best means "I can think of to bring the Pyrates to become good Subjects."[25] Another method was a strict enforcement of the piracy laws and exemplary execution of guilty offenders. In 1720, Lawes reports that "Rackum the Pirate and ten more have been tryed and Executed which I hope in time will have a good Effect."[26] When, in 1721, he was sending the notes of the trials of some pirates to England, he commented that their execution, had had "good Effect, these seas having been more Free of late from Such Villains than for some time before."[27] The third method by which Lawes hoped to suppress piracy was to tighten the laws against pirates. He, like Beeston[28] felt that the Commission under which pirates were tried should also provide for the trials of accessories of pirates. He maintained that had accessories of the pirates not kept them supplied with necessaries and not given them intelligence from the shore, a greater number would have been forced to surrender. For this reason he pleaded with the Council for Trade for such a power, but they told him that that power could only be given by an Act of Parliament, as the present Act of Parliament governing the trial of pirates stipulated that accessories of pirates had to be tried in England.[29]

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24. CO 137/13/34: Lawes to CTP, 21 June 1718. The number of unemployed seamen increased after each European war. See Encyclopaedia Britannica (1961 ed.), Vol. 17, p. 951.
25. CO 137/13/184: Lawes to CTP, 6 December 1719. See also CO 137/13/257, Lawes to CTP, 24 August 1720.
26. Ibid. 289. Lawes to CTP, 28 December 1720.
27. CO 137/14/7: Lawes to CTP, 12 June 1721.
28. See C.S.P. 1701, No. 251.
29. CO 137/13/129: Lawes to CTP, 24 March 1719; CO 138/16/231: CTP to Lawes, 9 July 1719.

During the latter part of the 18th century, pirates were still active in the Caribbean, though not to the same extent as they were in the earlier years of the century.[30] After the Napoleonic Wars, the number of pirates increased, probably because of unemployment among the seamen of the merchant navy. In 1822, the Assembly passed several resolutions concerning "the atrocious piracies committed on the merchant vessels trading to and from this colony."[31] However, they passed no legislation relating to piracy because they received information that the British Government were about to take steps to exterminate piracy.[32]

Piracy on the whole, therefore, did not give rise to much legislation in Jamaica. Apart from 33 Charles 2 c. 8, passed in 1681, the only other statute passed by the Assembly was 50 Geo. 3 c. 14, passed in 1809. This statute gave the judges of the supreme court and the justices of assize concurrent jurisdiction with the court of vice-admiralty in piracy cases. It also provided that if a person had been tried for murder committed on the high seas, and was at the trial found guilty of manslaughter, he was also entitled to benefit of clergy, in a similar manner as if he had committed manslaughter on land; and in indictments for murder where the offence appeared to be manslaughter, a manslaughter verdict could be given. These two Jamaican statutes were eventually repealed in 1842. The British statute 11 & 12 Wm. 3 c. 7, however, remained in force, with its scope extended by 46 Geo. 3 c. 54.[33]

Although the roots of the problem of piracy were extraneous to Jamaica, the Assembly appeared to have thought that legislation could solve the problem. Following the Assembly's example, the British Parliament also seemed to have been of the opinion that legislation was the proper solution. In the 18th and 19th centuries, piracy was

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30. See JAJ Vol. 6, p. 404.
31. JAJ Vol. 14, p. 68.
32. Ibid., p. 129. In 1822-23, at least ten persons were executed for piracy: See CO 137/154: Manchester to Bathurst, 8 February 1823.
33. See Stephen op.cit., Vol. 2, pp. 20-29.

prevalent at certain periods, despite the legislation which provided death as the ultimate penalty. The fact that the incidence of piracy increased immediately after the European wars tends to support the view that this was caused by lack of employment among the seamen, whose number had had to be previously increased because of the war.[34] If this is a tenable view, piracy appears to provide another example of the law being employed in an attempt to solve what was essentially an economic problem.

B. Obeah Legislation

The practice of obeah was, as we have seen, first made a criminal offence after the bloody slave rebellions in 1760, and in the Chapters on the Slave Laws, we traced the history of the offence up to the end of slavery. But the slave laws did not define obeah and it was apparently presumed that the inhabitants knew what it was. The laws only spoke of persons who "pretend to any supernatural power" and who had in their possession certain articles like blood, and feathers which were used in the practice of obeah. In 1789, a Committee of the Privy Council attempted a definition of obeah:[35]

> "It is very common among these People, who have so small a Portion of human Endowments, for some to pretend to supernatural Powers, and thereby to practice upon the Imagination of those, who believe they can be protected by them from the Harms of this Life: This Practice of Witchcraft is commonly called Obeah, and is always made an Offence punishable with Death."

The legislators and white inhabitants of Jamaica generally believed that obeah was a force to be reckoned with, and they saw in the "obeah man" the incarnation of all that was evil, including their own destruction. An example of the power with which the obeah man was

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34. See Encyclopaedia Britannica (1961 ed.)
35. Report of the Lords of the Committee for Trade and Plantations Part III: Jamaica. Answers to Questions 22-26: P.P. 1789 Vol. XXVI.

credited is vividly seen in 1824. Then, in referring to some slave conspiracy trials recently completed, Manchester had "the satisfaction" of stating to Bathurst that:[36]

> "an Obeah Man who it appears by the most decisive Evidence had deluded these and a great number of other slaves into a Belief that he could by his Art render them invulnerable has been apprehended and I trust now that the influence of this Man is at an End the Peace of the Parish will be completely restored."

With the practitioners of the art being held in such esteem, the obeah laws remained an integral part of the Slave Codes.

But the harsh laws did not exterminate the practice of obeah. In 1789, the Jamaica Agent told the House of Commons that neither the "Terror of this Law" nor the strict investigation concerning the "Professors of Obi", nor the "many Examples of those who from Time to Time, have been hanged or transported, have hitherto produced the desired Effect." The conclusion was therefore that either "this Sect, like others in the World, has flourished under Persecution; or that fresh Supplies are annually introduced from the African Seminaries."[37] Up to the abolition of slavery, slaves continued to be sentenced to death or transportation[38] for practising obeah.

When slavery was legally abolished the Slave Codes went with it, and new laws had to be devised to meet the new "state of society." The obeah provision found its way into the Vagrancy Act of 1833 and "all persons pretending to be dealers in obeah" were deemed rogues and vagabonds and punished as such.[39] This provision was the most lenient in relation to obeah, since the practising of obeah was first made an offence in 1760. Also included in the definition of rogues and vagabonds were all persons "pretending to tell fortunes, or using any subtle craft, means, or device by palmistry or otherwise, to deceive or impose on any of his majesty's subjects." This Vagrancy Act was

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36. CO 137/156: Manchester to Bathurst, 9 February 1824.
37. See note 35 supra. See also Patterson op. cit. Chapter 7.
38. See note 40, infra.
39. 4 Wm. 4, c.36 Sec. 2.

subsequently disallowed but not because of the obeah provision.

In 1836, the practice of obeah in the days of slavery was strikingly brought to the attention of Secretary of State Glenelg. Governor Sligo had been considering the commutation of transportation sentences passed during slavery, on three men convicted of practising obeah. He had consulted the Chief Justice (recently out from England) as to the expediency of such an action and the Chief Justice had replied that since he had never presided over any trial for that offence he felt a "delicacy" in giving an opinion.[40] Sligo then referred the cases to Glenelg at the same time pointing out how serious the crime of practising obeah was regarded in Jamaica, and requesting directions for his future guidance in cases involving obeah.[41] After a detailed examination of the documents submitted to him, Glenelg stated that the acts for which the prisoners had been convicted did not fall within the ambit of the offence of practising obeah, and instructed Sligo to grant each prisoner a free pardon.[42] He then turned to Sligo's query, as to his future guidance in obeah cases. In his opinion, when the obeah men administered poison to their victims, that offence should be regarded as one of the "deepest malignity," and rigorously punished, and where the obeah man avail themselves, for selfish purposes, "of the superstitious terrors of an ignorant People," so that they endangered the health or invaded the happiness of others, "the general welfare of Society may perhaps require and justify the affliction of a severe Penalty." It was only in very extreme cases however, that transportation for life should be the penalty for obeah practices. In conclusion, he gave Sligo his general views on obeah and how best he thought obeah should be treated by the law:[43]

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40. CO 137/209: Sligo to Glenelg, 9 February 1836.
41. Ibid.
42. CO 138/59: Glenelg to Sligo, 12 April 1836. One prisoner had already been in prison for 7 years, and the other two for 5 years.
43. Ibid.

> "Obeah appears to be one of the African superstitions which adhere with peculiar closeness to the minds of the Negroes long after their removal to the European Settlements in the West Indies, & which, being transmitted from one generation to another, is likely to endure until the opinions & barbarous habits of which it forms a part should yield to the influence of Christianity and Civilization. Religious instruction is the obvious and only remedy by which this evil can be effectively eradicated. In the meantime it may well be doubted whether great severity of punishment except in very extreme cases will not be rather injurious than beneficial. To vulgar apprehension it will probably appear that the Rules of the Country participate in the feelings of the multitude respecting an Offence to the commission of which so grave a penalty as Transportation for life is attached. I cannot but think that the Public exhibition of a Juggler of this Class working for a short time on the Public Roads with other Criminals would do much more real good than could be effected by any more solemn proceedings. Pretenders to Magical Acts can thrive only upon the respect of their Dupes, and they will be rendered powerless exactly in proportion as they can be degraded and made contemptible in popular estimation."

After emancipation, the legislators again included obeah in the law. This was done, as in 1833, in the Vagrancy Acts of 1839-40,[44] and one of the descriptions of a rogue and a vagabond was "every person pretending to be a dealer in obeah or myalism."[45] Also described as a

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44. 3 Vic., c. 18 and 4 Vic., c. 42.
45. Patterson distinguishes obeah from myalism thus: obeah was essentially a type of sorcery which largely involved harming others at the request of clients. Myalism on the other hand, was a form of anti-witchcraft and anti-sorcery; the proponents of myalism were aware of the techniques of the obeah-man, but used them for good rather than evil: Patterson, op.cit., p. 188. As far as the discussion of obeah legislation in this thesis is concerned, a distinction between obeah and myalism is unnecessary. In the legislators' minds, both practices were closely associated and were both regarded as sufficiently injurious to warrant legislation.

vagrant, was "every person pretending or professing to tell fortunes, or using or pretending to use any subtle craft, or device, by palmistry or any such like superstitious means to deceive, or impose on any of her majesty's subjects."

Shortly after, in January 1843, Governor Elgin transmitted a verbose despatch to the Secretary of State, concerning the evils of obeah and myalism, and their deleterious effects on the population of Jamaica. Stephen's Minute that the subject to which the despatch relates "is of very little real importance and will be best disposed of by being left unnoticed," was accepted.[46] No further notice appears to have been taken of the despatch.

For many years, there was no legislative activity concerning obeah offences. Comments, however, continued to be made about the practice of obeah in the Island.[47] In January 1855, Grey sent Barkly a despatch to the effect that in Barbados obeah was treated like other petty offences, without being designated obeah, and this had led to the obsolescence of the crime. This information was sent to him "in the Event of new Legislation being required on the subject of the Crime of Obeah."[48]

Notwithstanding this despatch, early in the following year, the Jamaican Assembly passed 'An act for the more effectual punishment of persons practising obeah.'[49] This statute was enacted because as its preamble stated it was "expedient to increase the punishment of persons convicted of being leaders in obeah or myalism, or pretending, or professing to tell fortunes, or using, or pretending to use any subtle, craft, or device by palmistry, or any such like superstitious means to deceive or impose on any of her majesty's subjects."

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46. CO 137/273: Elgin to Stanley, 30 January 1843; Stephen's Minute to Hope, 6 March 1843.
47. For an amusing episode concerning an obeahman and some horse thieves see CO 137/322: Barkly to Newcastle, 27 February 1854, Enclosed report of Stipendiary Magistrate Bell.
48. CO 138/70: Grey to Barkly, 15 January 1855.
49. 19 Vic., c. 30.

If an accused were convicted by justices of the peace, he could be sentenced to up to three months' imprisonment. The justices were also empowered to send an accused brought before them, for trial at the criminal court of the parish, and if convicted, the accused could be sentenced to 12 months' imprisonment and up to 78 lashes. Whether by accident or design, this act created a new offence. The preamble said it was expedient "to increase the punishment" of persons "convicted of being dealers in obeah or myalism." But no statute existed under which such a conviction could take place. It was therefore erroneous to speak of increasing the punishment for the offence. The offence which had been provided for by statute,[50] was "pretending to be a dealer" in obeah or myalism, while this act referred to persons "being dealers" in obeah or myalism. In any event, persons engaged in the practice of obeah, were to be severely punished.

When he was reporting on this Act, Barkly confessed that it would probably be regarded with some surprise, considering the recent despatch from Grey on the subject. He went on to explain that when Mr. Costello[51] introduced the bill in the Assembly, he was shown the correspondence on the subject, but declared his intention of persisting with the bill, whether or not he was opposed by the Government; the bill was subsequently passed without a dissenting voice in either the Council or Assembly. Barkly then related his personal conduct in the matter: he would have withheld his assent to the act, had he been convinced of its "mischievous tendency." On the contrary, he felt that the circumstances of Barbados were different from those of Jamaica: there "this remnant of Africanism" might be dying out, not for the reasons assigned to it, but owing to the effects of education and supervision to which the population was subjected. A "widely different" state of affairs existed in the "mountain fastness" of Jamaica, where

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50. 4 Vic., c. 42.
51. Editor of the Falmouth Post newspaper.

"the face of a White man is often not seen from one year's end to another." He felt that the belief in obeah was as universal then as during slavery and a modified version of it termed Myalism, which "blasphemously combine the Christian Doctrines of Faith and Election with pagan rites and the most lascivious ceremonies," had sprung up and was "spreading to a fearful extreme." Since his arrival, hardly one murder had occurred, which was not "directly or indirectly to be traced to the instigation of the wretched professors of those Arts," and at that moment a "celebrated obeahman" convicted of administering poison, lay under sentence of death in Kingston. In conclusion therefore, although he had "no great faith in the improvements expected from Mr. Costello's Act, I thought it better to let it be tried."[52] No objections were raised to this Act in the Colonial Office.

The following year, the Assembly passed another Act[53] again aimed at more effectively punishing obeah practices. Because the practice of what was termed "obeah and myalism" was found to "practise superstition, to cloak criminal intentions, and to endanger human life within this island,"[54] the Act attempted to define 'obeah' and 'myalism' and to increase the punishment for persons engaged in those practices. The very confusing Section of the Act in attempting to define obeah for the first time, reflects adequately the muddled state of the draftsman's mind and the muddled thinking on obeah and myalism then current in the Island. After the passing of the Act,

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52. CO 137/331: Barkly to Labouchere, 9 April 1856.
53. 21 Vic., c. 24.
54. Ibid. Preamble.

> "any person who shall, for false, crafty, or unlawful purposes, pretend to the possession of supernatural power, or who, by threat, promise, persuasion, or action, shall induce, or attempt to induce, any other person to believe that he can, by the exercise of any such supernatural power, bring about or effect any object, or carry out any design of his own, or of any other person, or for the purpose of carrying out any such design or object, shall falsely, cunningly, or unlawfully make use of omens, spells, charms, incantations, or other preternatural devices, shall be deemed and taken to be an obeah or myal man, or a dealer in obeah and myalism; and the words, 'obeah' and 'myalism' shall be understood to be of one and the same meaning and the like offence."

If a justice of the peace was given information that a person was "by habit, an obeah or myal man," he was authorized to issue a warrant to search for "charms" and "characters" which were alleged to possess some occult or unintelligible power in assisting the obeahman. But the act also punished persons consulting obeah or myal men -- and these were divided into two classes. Persons, either on their own or another person's behalf, who consulted a person pretending to be a dealer in obeah with the intention of injuring someone else or his property, or with the intention of committing any crime, could be sentenced to three months' hard labour. In addition, persons consulting anyone pretending to be a dealer in obeah, to effect by the exercise of his pretended power any object, "although not injurious to others, nor connected with any criminal intent," could be fined forty shillings, exclusive of costs; failure to pay the fine could result in a thirty day term of imprisonment.[55]

Commenting on this statute, the new Governor, Darling, felt that although the act was not a measure of the government, there was no doubt that the legislation was approved "by men of judgement living among the Rural population and acquainted with the extent to which these wretched practices prevail and exercise an injurious influence." After he stated that this Act was well received in both the Council and

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55. Ibid. See secs. 2-3.

Assembly, his summing up was that[56]

> "however defective in judgment and an accurate knowledge of human nature the Act of last Session may be considered in its penal provisions to be; yet the effect produced upon the minds of the Mass of our Population, by its disallowance, would be very prejudicial to its object and policy."

A curious, and in parts, an obscure observation.

But the Attorney General of Jamaica, Alexander Heslop, (a local man) did not share the Governor's views and gave a brilliant and coruscating exposition of the crime of obeah. His close analysis of the legal treatment of obeah, is probably the best of the century, and his remarks will be extensively quoted.[57] He began by comparing the corresponding practices in Jamaica with England:

> "The practice of this black Art in Jamaica, though immediately derived from Africa, is almost identical even in its minute particulars, with that of witchcraft among the Romans as depicted in Horace and Ovid; and in England during the reigns of the Tudors and early Stewarts, as detailed in Dalton's Justice of the Peace."

He then referred to the course of the Jamaican post-abolition legislation on the subject which had been precisely, "one might say deliberately", the reverse of the course adopted in England. He outlined the various English statutes dealing with witchcraft, from which it "will be seen that the offence gradually came to be considered more venial," until the convict was merely punished as a rogue and vagabond. "At this last stage of English Legislation the Jamaican Statute-law commences, by adopting it," and including persons who pretend to deal in obeah and myalism as rogues and vagabonds. "Gradually the desire for an increased punishment became general, until it amounted to an infatuation" and the 1856 Act was passed. After the 1856 Act was passed a difficulty arose as to the legal definition of obeah and myalism and the present Act was

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56. CO 137/336: Darling to Stanley, 26 March 1858.
57. Ibid. Enclosed report of the Attorney General.

an attempt to remove that difficulty. "But in the attempt to do so, I fear the Legislature has, in terms opened the question whether or not one of the Rites of our religion may be comprised within the first section." He proceeded to criticize the Act on several grounds, the third section for example, simply prescribing "the punishment of ignorance and superstition." It seemed to him that "no legislation on the subject was desirable in respect of Obeah" after the Vagrancy Acts of 1839-40, and the question was now whether the present Act should be assented to by Her Majesty. His very important concluding remarks left no doubt as to how he thought Her Majesty should act:

> "Of the bad policy of extending legislation in this direction, I am thoroughly satisfied both by a long personal and uninterrupted experience as a member of the legal profession here for nearly 14 years, and from information derived from persons of undoubted intelligence and respectability resident in the rural districts.
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> "The superstition has been extended and elevated by accumulated legislation, to higher ranks of Society, than it was wont to soar at when treated with comparative contempt. The law is as able to punish the crimes of obtaining money under false pretences - of murdering or attempting to murder by poison - and of inciting to the committal of felonies - as it is in England - and this without any provisions for penalties on a practically undefinable Offence, or the punishment of almost unavoidable ignorance.
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> With all the superstition of our peasantry, we cannot rival the community which raised Mr. James Tunnicliff to the rank of a seer."

The Act was received with reservations in the Colonial Office [58] and Lytton outlined his views on it:[59]

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58. See CO 137/336: Darling to Stanley, 26 March 1858. Henry Taylor's Minute, 22 April 1858.
59. CO 138/71: Lytton to Darling, 15 June 1858.

> "My own opinion of the policy to be pursued on this and similar subjects would lead me to concur in the objections raised by the Island Attorney General to the Act in question.
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> "I cannot but believe that practices having no foundation except in abject credulity are rather apt to gain strength than to lose it when they are seriously treated as the objects of special and severe legislation."

He then went on to explain the course of action he had adopted towards the Act with his reasons:

> "But I do not think myself qualified to oppose an opinion of this description to the deliberate judgment of the legislature on a question of domestic interest, without at least a reasonable experience of the results of the course which that judgment recommends. Her Majesty's Government have therefore not advised the disallowance of the Act; but I do not think it ought to be confirmed without hesitation.
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> "You will therefore report to me, after this Act has been in operation for 12 months, how far it has succeeded in answering the object of its promoters."

In January 1859, another bill amending the obeah law was passed by the Assembly[60] but it did not reach the statute book.[61] The Government had during the same session submitted to the Assembly, a bill to establish dispensaries and make medical attention available, especially in the rural districts but it did not receive a "favourable reception"[62] by the Assembly. On proroguing the Assembly, the Governor told them that the population was now abandoned to

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60. CO 140/160: VAJ 1858-59, p. 276.
61. The House was prorogued on the same day on which the bill was passed, so it might not have been considered by the Council.
62. CO 140/160: VAJ 1858-59, p. 285, Governor's Speech to the Assembly.

> "spells and debasing superstitions of the workers of obeah and myalism and to the scarcely less injurious practices of the other ignorant empirics of the lowest grade. For this fearful evil, and blot upon a civilized country, alike physically and morally destructive the remedy at once the most prompt, and the most practical, appears to be in the distribution, through the country of competently educated medical practitioners, supported by dispensaries, where drugs and medical preparations might be readily obtained."[63]

But as far as obeah was concerned, it appeared that the Jamaican legislators had more faith in the efficacy of stringent legislation, than in the effects of medical knowledge and treatment. With Governors changing, and with crises developing, it does not appear that any report on the working of the 1858 Act was ever made.[64] In the meantime it remained in force in the Island.

Thus by the mid-nineteenth century, there were three separate pieces of legislation dealing with obeah: (a) The Vagrancy Acts of 1839-1840 which declared persons pretending to be dealers in obeah, vagrants; (b) the 1856 Act punishing dealers in obeah; (c) The 1857 Act, defining a dealer in obeah and punishing persons consulting obeahmen.

For a time there appears to have been a decreasing practice of obeah. Thus when in November 1866, the Bishop of Kingston said that certain excesses and blasphemies had been alleged to have been committed by people calling themselves revivalists, Sir John Peter Grant reported that although obeahism and revivalism still prevailed among the negroes in some districts, "these mischievous and demoralizing practices are, upon the whole, on the decline." He added that no proof had been obtained of any particular acts of blasphemy which were alleged to have occurred.[65]

But by 1892, concern over obeah was again in evidence. The Obeah and Myalism Acts Amendment Law 1892[66] increased the punishment for

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63. Ibid.
64. See CO 137/367: Eyre to Newcastle, 23 September 1863. Minutes.
65. CO 137/422: Grant to Carnarvon, 23 February 1867.
66. Law 10 of 1892.

persons convicted under Section 2 of the 1857 Act.[67] Persons convicted under the first part of that section, that is, persons who consulted obeahmen with the intention of effecting a criminal object, could now be sentenced to six months' imprisonment, and in addition, in the courts' discretion, receive up to thirty-nine lashes on the bare back with the cat-o-nine tails. Persons consulting obeahmen, without any criminal purpose in mind, as provided in the second part of the 1857 Act, were now to be imprisoned for up to 6 months, without the option of a fine.

When this Act was examined in England, attention was drawn to the inconsistency of its provisions relating to corporal punishment and those of another statute which fixed the corporal punishment for other offences at 36 lashes.[68] The Governor was therefore informed that the law would not be disallowed but it was to be amended by either abolishing corporal punishment for these offences, or by reducing the maximum number of lashes to 36.[69] The Council preferred to reduce the number of lashes and this was done by Law I of 1893. It was now enacted that under Sec. 2 of the 1856 Act, as amended by the 1892 Act, corporal punishment was limited to thirty-six lashes in the case of a person aged 16 and over, and eighteen in the case of a person under 16. At the same time Section 2 of the 1892 Law was amended by limiting the number of lashes to 18 in the case of a person aged 16 and over, and nine in the case of a person under that age.

When the Secretary of State had instructed the Governor to see the 1892 Law amended, he had also directed him to send a return of the number of obeah convictions for the last five years. The returns signed by the Inspector-General of Police, and sent in by Blake in

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67. He also resolved doubts by providing that both the Resident Magistrate Courts and the Circuit Courts, had jurisdiction in obeah cases.
68. CO 137/549: Blake to the Secretary of State, 26 May 1892. Wingfield's Minute.
69. Ibid. Knutsford to Blake, 4 July 1892.

September 1892,[70] showed that there were 91 convictions[71] between August 1887 and July 1892. Most of the cases were for practising obeah; a few were for consulting obeahmen and some were for professing to tell fortunes.

In 1898, the Council purported to consolidate the various statutes concerning obeah into one Law — The Obeah Law 1898. But this Law was more than a mere consolidating statute, because it amended some of the previous statutes and inserted additional provisions.

This law repealed the four main statutes relating to obeah[72] and made additional provisions, also, with the suppression of obeah as the objective. In its interpretation Section, the Law declared 'obeah' and 'myalism' to be the same thing; a person practising obeah was one who, to effect any fraudulent or unlawful purpose, or for gain, or for the purpose of frightening any person, uses, or pretends to use any occult means, or pretends to possess any supernatural power or knowledge; and an "Instrument of Obeah" was anything "used, or intended to be used by a person, and pretended by such person to be possessed of any occult or supernatural power." Persons practising obeah could be imprisoned for up to 12 months and whipped. Persons, who, for any "fraudulent or unlawful" purpose consulted any person practising obeah, were liable to receive a 6 month term of imprisonment and be whipped. Whoever, for "the purpose of effecting any object, or of bringing about any event, by the use of occult means or any supernatural power or knowledge" consulted a person practising obeah and agreed to reward him, was liable to a fine of £50 or up to 12 months' imprisonment. Justices of the peace were authorized to issue search warrants for "instruments" of obeah; and in a new provision in the law, the person in whose possession the

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70. CO 137/550: Blake to Ripon, 28 September 1892.
71. The returns, signed by the Inspector General of Police, stated that the number of convictions was 92, but I have only been able to find 91.
72. 19 Vic., c. 30; 21 Vic., c. 24; Law 28 of 1892; Law 1 of 1893.

instrument of obeah was found, was unless and until, the contrary was proved, deemed to be a person practising obeah at the time when the instrument of obeah was found. By another innovation the police were authorized to arrest, without warrant, any person practising obeah. Also, in another addition to the law, 'obeah literature' was suppressed: if a person were to "compose, print, sell, or distribute any pamphlet, or printed matter calculated to promote the superstition of Obeah," he could be fined £20, and in default of payment, imprisoned for up to six months.

During the debates on the Law in the Council, the elected members advocated much more severe legislation. In the Governor's words subsequently, they proposed various amendments, "of which the object in each case was to strengthen the Law and make it more severe and drastic."[73] The Attorney General's comments were similar to those of the Governor, he stating that in the passage of the bill through the Council "the difficulty was to moderate the eagerness of some of the elected members in the direction of severity," and that from the views expressed during the debate, the consensus of opinion was that the practice of Obeah "had a lamentable dangerous and far reaching influence throughout the Island, and that the evil was growing."[74]

This Law received little comment in the Colonial Office, and it was sanctioned. The following year, a law amending it was passed with a view to solving some difficulties created by judicial decisions.[75] Section 2 of this law provided that when any person was charged with practising obeah, it was sufficient in the charge that "he is a person practising obeah," amd if any of the acts mentioned in section 3 of the 1898 Law for the definition of a person practising

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73. CO 137/620: Hemming to Chamberlain, 4 July 1901.
74. CO 137/622: Hemming to Chamberlain, 3 December 1901, Enclosed Memorandum of Attorney General Schooles.
75. Law 18 of 1899. See CO 137/602: Hemming to Chamberlain, 12 July 1899, Enclosed Report of the Attorney General.

obeah is proved against him, he could be liable to conviction on such charge. Sections 5 and 6 of the 1898 Law concerning persons consulting obeahmen, were amended and these persons could now be convicted not only for consulting a person practising obeah, but also any person "reputed to be a person practising obeah, or reputed to be an obeah-man, or any person who has been convicted of any offence under any Law relating to obeah, or any person pretending to possess supernatural powers."[76] In the Colonial Office, the wide definition of 'pretending' in the Law was adverted to,[77] but the Law was nevertheless sanctioned.

Shortly after, one of the Puisne Judges, Dr. Lumb, delivered, in a case which had come up on appeal from a Resident Magistrate, one of the strongest strictures against the Obeah Laws. Bearing in mind, previous pronouncements on the subject of obeah particularly by Secretary of State Glenelg and the Jamaican Attorney General Heslop, Lumb's comments deserve to be set out in fair detail.[78]

> "I have now been a Judge in the West Indies for over 13 years and I have never had any crime arising out of Obeahism to try. Why flogging should be inflicted for this particular offence we have not been told. Would it not be more in accordance with our civilization to trust to education and enlightenment and to the influences of religion to diminish this folly rather than to resort to violence as was done in the old days of superstition and ignorance when old women were burnt at the stake as witches."

He went on to refer to the punishment which should be inflicted for the crime of obeah:

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76. Sec. 6.
77. CO 137/602: Hemming to Chamberlain, 12 July 1899. Minutes.
78. CO 137/620: Hemming to Chamberlain, 5 July 1901, Enclosed Judgment of Dr. Lumb in R. v. Chambers.

> "And does not this severity give the practicers in Obeah greater power over their dupes by making it appear that they must be considered to possess such supernatural power in order to justify the employment of such a drastic and unusual punishment? Would not fine and imprisonment, as in England, be a sufficient and more effective punishment, especially as flogging has not, so far, stamped out Obeahism."

He particularly criticised Section 8 of the 1898 Law, which stated that when an "instrument of obeah" is found, the person in whose possession it is found, shall unless the contrary be proved, be deemed to be a person practising obeah. "This astounding piece of legislation is a danger and a menace to the liberty of the subject," as under its "sweeping provision any person might be convicted."

Opinion within the Colonial Office was divided.[79] Vernon felt that a judge has the "perfect right to criticise the law though he is of course bound to administer it;" and in Jamaica such criticism is often badly wanted; the Secretary of State has before now "had occasion to comment on the illiberal views of the Jamaica Legislature in the matter of criminal law..." Ellis on the other hand, felt that one must have regard to "the relative civilisation of the peoples, and there is no doubt that the superstition of the Jamaicans enables these Obeahmen to exercise a very real power over them." He compared an 1893 Lagos statute which punished possessors of certain amulets and added that the "Obeah man besides the supernatural terrors with which he is armed, also frequently purveys the trade of a poisoner." On attempting to counter some of Lumb's criticisms he said that it could "hardly be common knowledge what sorts of rubbish are used as instruments of Obeah and the Court should I think, be enlightened [by] the evidence of experts on the subject;" as the Court could not call rival obeahmen, for the purpose, the only expert evidence otherwise "is that of those concerned in the punishment or detection of the crime." He was

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79. CO 137/620: Hemming to Chamberlain, 5 July 1901. Minutes.

inclined to let the Governor inform Lumb that his strictures on the Law were "unduly vehement and intemperate." Lord Onslow however, admitted to sharing Lumb's views. In the light of this conflict of opinion it was decided that Sir Fielding Clarke, the Chief Justice of Jamaica, who was then in England, should be consulted on the matter.

The Chief Justice was consulted orally and in writing and he submitted a Memorandum on the subject.[80] Although he described the practice of obeah as "very dangerous to the peace and good order of the Island," he agreed with some of Lumb's criticisms of the obeah legislation. On examination of this memorandum in the Colonial Office, Onslow did not regard it as a "satisfactory condition of affairs" and felt that "a very unpleasant case might be made in Parliament;"[81] while Secretary of State Chamberlain referred to this "double condemnation" of the Obeah law.[82] The Governor was then sent Fielding Clarke's memorandum, and his observations on it were requested.[83] At the same time he was given an indication of Chamberlain's views on the legislation. While Mr. Justice Lumb appeared to have expressed himself "with perhaps unnecessary strength," Sir Fielding Clarke's criticism amounted to a "reasoned and moderate condemnation" of certain provisions in the obeah law and it was doubtful whether the law as it then stood could be "adequately defended."[84] In addition the arguments against the infliction of flogging appeared to be "very strong" and the "powers given to Resident Magistrates in cases where no appeal is possible is unduly great." Hemming said that he was not prepared to contend that the law was "not open to objection" but questioned whether it was proper for Lumb "to denounce the law of the land."[85] Shortly after, he submitted a Memorandum to the Jamaican Attorney General, Schooles, on the points referred to by Lumb and Fielding Clarke, and stated that since he entirely agreed with Schooles' opinions, he had no further observations

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80. CO 137/625: Fielding Clarke to Lucas, 24 September 1901.
81. Ibid. Onslow's Minute, 5 October 1901.
82. Ibid. Chamberlain's Minute, 8 October 1901.
83. Ibid. Chamberlain to Hemming, 15 October 1901.
84. Ibid.
85. CO 137/622. Hemming to Chamberlain, 5 November 1901.

to offer.[86] In this Memorandum the Attorney General traced the history of the recent obeah laws and declared:[87]

> "It is the belief, and is alleged to be the experience of the large majority of those who know these West Indian Islands well, and who are qualified to express an opinion that flogging has a substantially deterrent effect, and that, in fact, it is the only punishment which will deter those who, by pretending, as Obeah men, to be possessed of supernatural powers, make a business out of the ignorance superstitions and revengeful feelings of the people."

On the receipt of Attorney General Schooles' memorandum, the Colonial Office once again considered the Obeah Laws. The Minutes, on which Chamberlain based his final decision, were generally in agreement with each other.[88] According to one Minute, Schooles' Memorandum "illustrates the extraordinary strength of the local sentiment in favour of severe punishments." Another: "Perhaps in the face of Mr. Schooles' testimony to the gravity of the offence of Obeah in the existing social and educational circs of Jamaica" the Secretary of State "may be willing to allow the law to remain in force." A third: "It is very difficult to steer the line between countenancing what is obviously a very severe law" and "giving due weight to local feeling and experience...I think that if this law is administered with moderation by the magistrates" it might not work "offensively and I am inclined to let it stand and have reports as to its working." Lucas: "We had better let the law stand and watch it." Secretary of State Chamberlain, was unconvinced as to the propriety of the legislation but capitulated under the weight of departmental advice: "I do not like it but in view of the Minutes I will give it a trial."

Within a few months, the provisions of the 1898 Obeah Law were again brought to the attention of the Colonial Office.[89] This arose

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86. Ibid. Hemming to Chamberlain, 3 December 1901.
87. Ibid. Hemming to Chamberlain, 3 December 1901, Enclosed Memorandum of Attorney General Schooles.
88. Ibid. Minutes.
89. CO 137/626: Hemming to Chamberlain, 26 March 1902.

out of a case under the Obeah Law, in which the accused had been charged with consulting an obeah man. The Resident Magistrate found the accused guilty and sentenced him to six months' imprisonment with hard labour and eighteen lashes of the cat-o-nine tails. In his Memorandum[90] on the case, the Solicitor General of the Island, T.B. Cughton, stated that there was no reason why persons consulting obeah men should be punished with severity "except possibly when they have consulted the obeahman for the purpose of carrying out criminal or unlawful" purposes. "It would seem," he continued, "that in the absence of special circumstances, there is no necessity to whip persons consulting obeahmen - their offence being the result in most cases of ignorance rather than a wicked mind." In the Colonial Office the Obeah Law was not commented on, but the sentence imposed was said to have thrown "great doubt on the fitness of the magistrate for his judicial position,"[91] and the Governor told that the punishment appeared to have been "out of all proportion to the gravity of the offence."[92]

These laws however were not having the desired effect and yet another statute was enacted "in the hope that it may assist in checking the practice of Obeah." This Law -- Law 8 of 1903 -- gave the Resident Magistrates the power of ordering police supervision for a person convicted under the obeah laws. This supervision could be for a maximum period of seven years.

This statute was received very sceptically in the Colonial Office and Chamberlain told Hemming that the Obeah Law had been "administered with severity" by the Resident Magistrates. "This law adds considerably to the penalties of obeah" and he desired to hear more fully why the statute was passed; in the meantime, any advice to the King on the law would be deferred.[93] Hemming related the circumstances which led to the enactment of the statute and, explained that police supervision was

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90. Ibid. Enclosed Memorandum.
91. Ibid. Cox's Minute.
92. Ibid. Chamberlain to Hemming, 25 April 1902.
93. CO 137/633: Chamberlain to Hemming, 25 April 1902.

considered to be a better remedy against obeah, than flogging.[94] Chamberlain then stated that the act would not be disallowed, but he requested a report on its working after a year's operation.[95]

Commenting on the Obeah Laws in 1905, the Inspector General of Police regarded the powers of ordering police supervision as an "excellent one." He further stated that flogging was more a deterrent than police supervision and wondered whether it should not be made imperative for the Resident Magistrates to order police supervision in all cases.[96] But there were different opinions on the law, particularly by the Resident Magistrates. One Resident Magistrate felt that if "the halo of importance" with which the Legislature had surrounded the obeahman were removed, the offence would kill itself.[97] Another thought that the power to flog should only be given where the evidence disclosed an attempt at some grave injury to person or property — he however, had never come across such a case; in all, he considered that the "statutory crime of Obeah owes its existence in Jamaica to the benighted ignorance of the masses, which begets superstition, and that the remedy will not be found in stringent laws but in a system of education that would kill the superstition."[98] A few years later the Acting Attorney General of the Island stated that the punishment inflicted by the laws for the practice of obeah, "invest it with an importance that it does not now possess."[99] The Obeah Law of 1898 is the current law of Jamaica.[100]

It is quite clear from the account of obeah given in this section that severe penal measures did not curb the practice of obeah. The criminal law has never proved to be the best tool to effect reforms in

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94. CO 137/635: Chamberlain to Hemming, 3 June 1903.
95. Ibid. Chamberlain to Hemming, 3 July 1903.
96. CO 137/647: Swettenham to Secretary of State for the Colonies, 15 November 1905, Enclosed Report of the Inspector General of Police.
97. Ibid. Enclosed Summary of Report of Resident Magistrate for Hanover.
98. Ibid. Enclosed Summary of Report of Resident Magistrate for St.Catherine.
99. CO 137/673: Olivier to Crewe, 15 October 1909, Enclosed Memorandum by the Acting Attorney General.
100. Laws of Jamaica (Rev.Ed. 1953) Cap. 266.

areas where superstitious beliefs are seriously held and firmly maintained. But, caught up in this superstition, from 1760 when everything which was alleged to contribute to rebellions or disturbance of the status quo was to be repressed, the Jamaican legislators right up to the present day, have shown no appreciation or understanding of the problem of obeah. As a result, their crude attempt to eradicate obeah by severe legislation has failed. As so often happened in the Island's history, the criminal law was the first weapon employed in attempting to solve the problems of society.

Belief in obeah is by no means a rare event in Jamaica today, and some obeahmen and women possess Island-wide fame. It must be seriously questioned whether the practice of obeah should remain an offence in the criminal jurisprudence of the Island. In the days of slavery particularly, obeah was intimately associated with the administering of poison, and in the criminal records most of the persons charged with practising obeah were simultaneously charged with the administering of poison.[101] The criminal law already makes adequate provision for the administering of poison. In regard to the other offences which might be committed by persons who are alleged to practise obeah, the opinion of the Attorney General in 1858 was that they had been provided for elsewhere in the criminal law. This opinion appears to be correct. Above all, the punishing of obeah seems to be nothing but the futile and cruel punishment of superstition and ignorance. It is therefore submitted that the offences relating to obeah could, without detriment to society, be erased from the statute books.

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101. P.P. Relating to The West Indies, Vol. 2 No. 14. Jamaica. Morrison to Bathurst, 28 January 1813, Enclosures. See also Preamble to 55 Geo. 3, c. 37.

C. Praedial Larceny Legislation

From Chapters 5 and 8 we saw that during slavery, statutes had been enacted with the object of preventing theft of agricultural produce. At emancipation, the most important provisions against this offence were included in the 1837 Consolidated Larceny Act,[102] which was very similar to the English Consolidated Larceny Act, 7 & 8 Geo. 4, c. 29.

The Jamaica Larceny Act of 1837, 7 Wm. 4, c. 40 provided that[103] persons stealing or destroying any tree or shrub growing in any garden or orchard and which was in excess of £1 value were guilty of a felony; if the offence was committed in places other than those mentioned, and the value of the stolen article was in excess of £5, it was also a felony. If any person in whose possession any tree or shrub was found could not satisfy a justice of the peace that he had come in possession of it lawfully, he was to be fined. If persons, found in possession of any coffee or pimento or other produce of the Island, of at least one shilling and eight pence value, and could not satisfy the court that they were legally in possession of it, they were to be fined. Persons stealing plants used for food and not growing in a garden could be imprisoned for one month and fined.

Thefts of agricultural produce are said to have increased in the 1850's and the legislature applied more than one type of remedy. In the 1850-51 session, the Assembly passed 'An act for preventing depredations on pimento.'[104] This statute was enacted because the previous acts had been found inadequate to prevent the large quantities of pimento which were annually stolen, and for which ready purchasers were found. The act was primarily concerned with the shippers of

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102. 7 Wm. 4,c.40
103. The provisions are to be found in Sections 29-36. These provisions were very similar to the English statute, 7 & 8 Geo. 4, c. 29, Secs. 38-39, 41-43.
104. 14 Vic., c. 45.

pimento who were required to deliver certain affidavits before shipping pimento; and it was made a serious offence to forge any certificate or affidavit required by the act. But in practice, it proved difficult to procure the affidavits required, and the act was repealed in 1836,[105] because the "stringent regulations tramelled the fair dealer only, and were quite ineffectual to prevent theft."[106]

Another method used by the Assembly was to increase the penalty for the theft of growing produce. This they did in an act, 15 Vic., c. 21, but in the following year this act was repealed, together with certain sections of 7 Wm. 4, c. 40 relating to theft of produce, and the penalties further increased.[107] It was now declared a felony for any person to steal or destroy any plant, root or fruit in excess of ten shillings value, and which was being grown in any cultivated land; if the value of the plant stolen did not exceed ten shillings, the punishment was a one month term of imprisonment. The punishment for stealing or destroying agricultural produce on land, other than a cultivated field, was a month's imprisonment and monetary compensation; persons stealing trees, saplings, shrubs and plants could also be imprisoned for a month. A second offence of the offences enumerated in the act was declared a felony.[108] This Act was repealed and replaced by the Consolidated Larceny Act of 1864.

From the Stipendiary Magistrates' Reports of 1859, it appears that the stealing of agricultural produce had increased. Darling's comments were that the offence of stealing from "each other's Provision Grounds...is one which has recently developed itself, and appears to be Encreasing." He added that although the facility with which "this Species of Theft can be committed, renders it difficult to deal with," he intended to consult with others as to how best it could be checked.[109]

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105. 19 Vic., c. 19.
106. CO 137/331: Barkly to Labouchere, 9 April 1856.
107. 16 Vic., c. 42.
108. Ibid. Secs. 3-5.
109. CO 137/346: Darling to Newcastle, 8 September 1859.

Later that year a law increasing the terms of imprisonment for praedial larceny was passed.[110]

In 1864, a new Consolidated Larceny Act was passed.[111] It repealed 7 Wm.,4, c. 40 and 16 Vic., c. 42, and enacted other provisions for the larceny of agricultural produce,[112] in terms similar to the English law.[113]

It was made a felony to steal or destroy any tree or shrub growing in any garden or avenue, where the value of the article exceeded £1; if the trees or shrubs were not growing in any garden or avenue, and their value was in excess of £3, it was also a felony. In both cases a financial penalty was also imposed, and a second offence was punishable with twelve months' imprisonment. A third offence was a felony. If a person, found in possession of trees or shrubs, could not satisfy the justice that he got possession of them lawfully, he was to be fined. Persons stealing or destroying any plants, roots or fruit growing in any garden or orchard could be imprisoned for six months or fined; a second offence was a felony. If the plant was not in a garden the term of imprisonment was a month.

Within months the Consolidated Larceny Act was amended because "the stealing of growing produce and other products, attached or growing on land, has become so frequent an occurrence."[114] The 23rd and 24th sections of 27 Vic., c. 33 were repealed and more stringent provisions substituted. Stealing or destroying any tree, plant, root or fruit growing in a garden or provision ground, and in excess of ten shillings value was now made a felony. Where the value did not exceed ten shillings the punishment was six months' imprisonment, and a second offence was declared a felony. If the plants were not being grown in gardens, the punishment was a two month term of imprisonment, and a

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110. 23 Vic., c. 14.
111. 27 Vic., c. 33.
112. Secs. 19-20, 22-24.
113. 24 & 25 Vic., c. 96, secs. 32-33, 35-37.
114. 28 Vic., c. 4. Preamble.

second offence was made a felony.

At this period, with Jamaica in the grip of an economic depression, partly as a result of the American Civil War, and partly as a result of successive years of drought,[115] offences concerned with the stealing of agricultural produce had increased significantly, and demands were being made for the introduction of much harsher penal legislation to combat this increase. In September 1864, Governor Eyre spoke of the "lamentable prevalence of stealing," and pronounced the general opinion in the Island to be that "no remedy would be efficacious but whipping." He informed Cardwell of his intention to introduce an act to make larceny punishable by whipping and hoped that:[116]

> "under the peculiar state of things which exists here, and the almost universal feeling which prevails in favor of whipping as the only means likely to put a stop to the wholesale system of plundering which is now going on, you will feel yourself justified in recommending the Act, if passed, to be confirmed by Her Majesty."

At the opening of the session, Eyre told the Assembly that the great increase in praedial larceny calls for "most prompt and stringent measures" to repress the evil, and added that it was "clear that the punishments at present in force have not that deterring effect which should be the chief object of penal law."[117] An act providing for corporal punishment in certain larceny cases, was accordingly passed[118]

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115. See P.P. 1866 (3595) LI. "...during the thirty years I have officiated in the Colony as a stipendiary magistrate...I have never seen the Colony sink so low in the wretchedness of 'difficulty of living' as at present....A great proportion of the community, how have no employment, and they are drifting into the vicious condition of people living how they can". Ibid., Eyre to Cardwell, 19 April 1865, Enclosed Letter from Richard Hill. See also Douglas Hall, Free Jamaica 1838-1865, Chapter 8.

116. CO 137/384: Eyre to Cardwell, 10 September 1864.

117. VAJ 1864-65, pp. 9-10.

118. 28 Vic., c. 18. Another statute passed during the same session, 28 Vic., c. 4, made minor amendments to 27 Vic., c. 33.

and again Eyre pleaded that the Queen's assent may not be withheld:[119] "A long experience in the West Indies in several different Colonies convinces me that the best and, I may add, I believe the only means of repressing the crime of larceny, which so universally prevails will be to introduce whipping as a punishment."

This Act, 28 Vic., c. 18, provided that in addition to the other punishments which could be given for larceny, whipping could now be administered for stealing or destroying any plant, root or fruit growing in any garden. A person under sixteen could receive twenty-five stripes and one above that age, fifty stripes. This Act was reserved for Her Majesty's assent.

Simultaneously with this statute, the Assembly tried another device "to repress petty larceny which has increased to a frightful extent during the last two years."[120] This was to authorize by statute,[121] the apprenticing of persons under 16, who had been convicted of stealing any ground provision, and who were proved to the Justice's satisfaction to be leading "an idle and vagrant life," or not attending any school; or not sufficiently under the control of their parents. Apprenticeship was to be in lieu of any punishment provided in the Consolidated Larceny Act or any act amending it.

Objections were taken in the Colonial Office to both Acts, but they appeared to be rather objections of degree than of principle.[122] Cardwell instructed Eyre to have both Acts amended. In the meantime, the Queen's assent would be withheld from both statutes.

Before the Assembly convened again, the Rebellion of 1865 had occurred. Meeting after this traumatic experience, the members hurriedly, before resolving upon this final dissolution, passed an Act

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119. CO 137/388: Eyre to Cardwell, 22 March 1865.
120. CO 137/388: Eyre to Cardwell, 22 March 1865, Enclosed Report of the Attorney General.
121. 28 Vic., c. 19.
122. CO 137/388: Eyre to Cardwell, 22 March 1865, Minutes.

amending the earlier corporal punishment Act, but enacted no legislation to amend the apprenticeship act. The corporal punishment act, 29 Vic., c. 7, repealed Sec. 3 of 28 Vic., c. 18 and made new provisions. The maximum number of stripes for persons under 16 was now eighteen, and for persons above that age, thirtysix. Regulations were also made for the type of instrument to be used in administering corporal punishment. This Act, like the one it amended, was not to come into operation until the Queen assented.

The unamended apprenticeship act was disallowed, Cardwell telling Storks in January 1866 that a provision "open under any circumstances to great abuse, cannot in the present very critical state of the Island be allowed any longer to remain in force."[123]

The corporal punishment acts, however, had a different treatment. From the Minutes in the Colonial Office, it appears that the acts were on the verge of being sanctioned[124] when Forster penned a forceful Minute to Secretary of State Cardwell, urging caution "in the present circumstances of the Colony." He argued that when the Commissioners inquiring into the Rebellion reported, they would have then "far more knowledge of the real social condition" of Jamaica and they would learn whether such an "exceptional law" as thirty-six stripes for petty larceny will not degrade the labourers "by the frequency of a degrading punishment;" they now had "hopes of giving Jamaica a new start by better laws — juster magistrates — more efficient police — a more complete system of education," and they may have to pass an Act like this, "but is it not better to let the new legislators begin their work untramelled?" Finally, he asked whether it was not undesirable to bring permanent laws into operation, "especially laws of unusual severity," before they learn "how far the negroes have reason for discontent with the recent measures of repression?"[125] Cardwell agreed

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123. P.P. 1866 (3594) LI. Cardwell to Storks, 29 January 1866.
124. CO 137/395: Eyre to Cardwell, 24 November 1865. Minutes.
125. Ibid. Forster's Minute.

with Forster, and Storks was told that because of recent events in Jamaica, the introduction of that mode of punishment would not be authorized for the present. However, any suggestions which he had as to mode of repressing praedial larceny would be welcomed.[126]

Giving his observations in March, Storks supported the corporal punishment laws and requested that they be confirmed. He had inquired among all classes and all seem to agree that corporal punishment "is the only hope which remains of putting a stop to petty larceny."[127] On the receipt of this despatch, Forster stated that the opinion of the other members of the Royal Commission, Maule and Guerney, would be "overvaluable"; as they would soon return, it would be best to consult them. And he gives a further indication of the lines along which he was thinking: "It is desirable to know their opinion not merely on the mode of punishment but also on the constitution...of the circuit courts in whom the power rests."[128] Maule was consulted on his return to England, and he strongly advocated corporal punishment as a proper punishment for the offence of praedial larceny.[129] After Maule's opinion was given, Henry Taylor, who had from the first recommended that the amended corporal punishment/be sanctioned, betrayed his impatience and asked "May not the Act be now confirmed?"[130] The Queen accordingly gave her assent to the two laws -- 28 Vic., c. 18 and 29 Vic., c. 7.

But the infliction of flogging did not have the effect hoped for, and other methods were sought to solve the problem. In 1868, it was suggested that an old Anglo-Saxon plan be adopted: this involved the creation of townships which would make good the larcenies suffered by undetected larcenies within them. The benefit of this plan was that

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126. P.P., 1866(3594-I), LI. Cardwell to Storks, 29 January 1866.
127. CO 137/401. Storks to Cardwell, 9 March 1866.
128. Ibid. Forster's Minute, 28 May 1866.
129. Ibid. Maule's Minute.
130. Ibid. Taylor's Minute.

"every inhabitant would act as a detective, and his interests would lead him to watch over his neighbour's plantations as well as his own."[131] This plan was universally disapproved by the municipal boards as being impracticable, but as the Governor informed the Council, no reasons showing why such a principle was impracticable had been given. The municipal boards on the other hand, favoured the re-establishment of the rural constable system. The Governor, however, warned against the establishment of rural constables on the old footing:[132]

> "The old system of rural constables, a greedy and disorderly set of men, under no discipline or effective command, when it was in actual operation, and when its working was before men's eyes, was very generally admitted to be practically inefficient, and was by many believed to be absolutely noxious. The story of St. Thomas in the East tells against the rural constables."

But eventually in 1869 a law establishing/[a]rural police (Law 28 of 1869) was passed.[133] The Law was confirmed. Granville expressed unease at the extensive powers given to the police by certain sections of the Law, but felt that the larceny of crops required a "severe check". The Governor was instructed to "watch the working of the law carefully," and report on its working after sufficient time had elapsed to test it.[134].

With the prevention of praedial larceny in mind, Grant established a detective body within the constabulary force, which he thought would deal more effectually with thefts.[135]

At about this same period, yet another legislative tool was being used in an attempt to stem the incidence of praedial larceny.

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131. Minutes of Legislative Council 1868-69. Appendix I. Circular from the Governor's Secretary to the Custodes.
132. Ibid. Minute of the Governor.
133. Law 28 of 1869.
134. CO 138/81: Granville to Grant, 7 October 1869.
135. CO 137/449: Grant to Granville, 23 April 1870.

In June 1869, Granville inquired from Grant the reasons for the apparent prevalence of praedial larceny in Portland. Referring generally to praedial larceny, Grant pointed out that it was only in 18 cases that the corporal punishment act had been utilized. Under the "Whipping Act", punishment could only be inflicted for second offences and the small number of whipping cases may have been due to the absence of any systematic record of previous convictions. He was hoping to order the Clerks of the Peace to keep Index Books of all convictions and sentences. He also intended to adopt the recommendations of the Inspector General of Police by passing an Act similar to the recently enacted English Habitual Criminals Act,[136] "which I believe to be a useful measure."[137] The reactions to this despatch are fully outlined in Chapter 10, because this despatch acted as the midwife for the Jamaica Criminal Code. Suffice to say here, that the legislative measure which Grant had referred to, eventually became Law 16 of 1870. Under this law, the machinery for keeping records of convictions was established.

Despite all these efforts, the incidence of larceny of growing produce had not decreased by 1871, and the Secretary of State admitted that he could not understand why praedial larceny continued to be so prevalent in Jamaica.[138] Soon after, another attempt was made in Jamaica to curb this offence: since most of the cases were larcenies of a petty kind, it was now decided to extend the power of authorizing corporal punishment, hitherto limited to the circuit courts, to the District Courts. This was effected by law 4 of 1872. But this extension of whipping failed to achieve its object, for in commenting on the criminal statistics contained in the 1872 Blue Book, Grant observed that the praedial larceny offences had actually increased.

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136. 32 & 33 Vic., c. 99.
137. CO 137/447: Grant to Granville, 5 February 1870.
138. CO 138/81: Kimberley to Grant, 4 March 1871.

"This is", he said, "attributable to the prolonged drought and the consequent scarcity of provisions", and this offence "increased to a great extent during the months when the drought was most severe."[139]

From the preceding pages, it would have been seen that the praedial larceny legislation had by this time become fairly severe. Illustration of this in practice can be found in a case where a man had been sentenced to thirty days imprisonment with hard labour for stealing a breadfruit valued at three farthings. No alternative power existed either to imprison without hard labour or to impose a fine in the most trivial cases. Law 12 of 1874 was therefore enacted to give the justices in petty sessions discretionary powers in cases of petty larceny.[140]

In 1875 representations were made yet again to the Governor about the increase of praedial larceny offences. The Governor in turn sought the opinion of the Supreme Court Judges, the District Court Judges, and the Custodes, as to the best remedy for the evil. The replies indicated approval for an extension of whipping, but no law was in fact introduced in 1875. But two years later, legislation was again resorted to when Law 6 of 1877 was passed. According to Rushworth, "so great has been its (praedial larceny) increase in this Island during the last few years that a cry has arisen in every parish for the infliction of some more deterrent punishment than has hitherto existed."[141] As the Island's Attorney General informs us, "the principle of whipping for a first offence has been adopted" instead of the existing system whereby whipping could up to then only be administered after a second offence.[142]

This Law — Law 6 of 1877 — repealed parts of sections 19, 20 and 22 of the Consolidated Larceny Act, 27 Vic., c. 33, as related to

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139. CO 137/470: Grant to Kimberley, 23 April 1873. Enclosed Blue Book Report.
140. CO 137/477: Grey to Carnarvon, 2 October 1874.
141. CO 137/483: Rushworth to Carnarvon, 18 May 1877.
142. Ibid. Enclosed Report of Attorney General O'Malley.

offences punishable under this statute, also 28 Vic., c. 4, Sec. 2 of Law 4 of 1872, and Law 12 of 1874. A person stealing or destroying any tree, plant, root or fruit which exceeded a value of £5, and growing in certain cultivated grounds, was to be guilty of a felony, and in addition to the punishment as in larceny convictions, could be whipped; if the value of the tree or plant stolen did not exceed £5, the punishment was a term of imprisonment not exceeding six months, and whipping. Persons stealing or destroying any tree, root, fruit or other vegetable matter used for the food of "man or beast", growing on any land "open, or enclosed", but not being a cultivated field, were guilty of a felony if the article stolen exceeded £20 in value, and they were subject to the same punishment as in larceny cases. If a person, having been convicted of an offence under any of the above sections, committed an offence under any of the same sections, he was guilty of a felony, and in addition to receiving punishment as in larceny cases, he could be whipped. Where a sentence of imprisonment was imposed, the Court was empowered to order solitary confinement for the prisoner. An Inspector of Police had power to issue warrants to search premises for stolen trees, roots or plants, and if any were found on the premises, the person in whose possession they were found, or the owner of the premises, had to account for the articles; if he could not satisfy the court that he came by this property lawfully, he had to forfeit the property, pay its value and also a maximum of £5 above that value. In another section a dealer in dyewoods was prohibited from purchasing dyewoods in quantities of less than 500 pounds weight.

In the Colonial Office, the Law was received with some doubt, Secretary of State Carnarvon commenting that he did "not much like the flogging in these cases."[143] He told the Governor, Musgrave, that before the Law could be sanctioned, a report on how it had operated in

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143. Ibid. Carnarvon's Minute.

the Colony had to be furnished.[144] Musgrave suggested that the Law should be left in operation for at least a year before a decisive view was formed on it.[145] But Carnarvon was still having misgivings about the corporal punishment provisions, and he requested information from his Colonial Office officials as to the extent, practice and results of flogging in the colonies. After this information was passed on to him, Carnarvon who confessed himself to be "strongly against all public flogging," told Musgrave that he was preparing a circular to the Governors, requesting information as to the practice of public flogging in their territories; he added that a final decision would not be taken on the Law until he received a reply to that inquiry and a further report on the working of the Law. He further told Musgrave that he did not think it advisable "unless under very exceptional circumstances to sentence prisoners to flogging on the occasion of their first conviction."[146]

In February 1879, Musgrave sent his report on Law 6. His report was not favourable to the Law:[147]

> "The Reports of the Judges upon the whole represent beneficial results to have been produced by the Law, which I confess do not appear to me to be exhibited by the Statistics which accompany them."

He related that Falmouth had produced the largest number of praedial larceny cases, and there was no doubt that there, the Law had been administered with "strictness if not in some cases, with severity";

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144. Ibid. Carnarvon to Musgrave (confidential), 30 August 1877.
145. CO 137/485: Musgrave to Carnarvon (confidential), 8 November 1877.
146. Ibid. Carnarvon to Musgrave (confidential), 4 January 1878.
147. CO 137/489: Musgrave to Hicks-Beach, 3 February 1879.

he had no "sentimental objections to any reasonable degree of severity" which would prevent and finally stamp out the offence, but his firm view was that "a punishment revolting in character" should not be lightly inflicted. "Only the certainty that crime is repressed by it will warrant its retention." In all, he did not propose any amendment of the statute, but he indicated a preference for the relevant provisions of the new Criminal Code which he hoped would soon be passed.[148] In the meantime it appears that this Law was sanctioned.

Early in 1881, meetings were held all over the Island as a result of a circular letter from the Bishop of the Church of England in Jamaica concerning methods of dealing with praedial larceny offences, which were alleged to have increased significantly. One speaker at a meeting in Mandeville, pronounced that there was no doubt that there was a scarcity of provisions in the Island generally --"amounting in some districts almost to the verge of famine;" persons were driven by "pangs of hunger" to pilfer their neighbour's grounds, who would not under ordinary circumstances have stolen.[149] Nevertheless, more stringent legislation was demanded. On submitting a report of these meetings, Musgrave declared: "I fail to see that anything more can be done by legislation."[150] In referring to the Bishop of Jamaica's suggestion about apprenticing praedial thieves, Secretary of State Kimberley, remarked that this "re-introduction of a kind of slavery would probably be very acceptable to white employers" and declared that the Bishop's "simplemindedness" was annoying.[151] In his reply to Musgrave he expressed the hope that the increase in praedial larceny offences was due to transitory causes.

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148. The Criminal Code was not passed until October 1879. See Chapter 10 infra.
149. CO 137/500: Musgrave to Kimberley, 21 July 1881. Enclosed Speech of Palache.
150. Ibid. A stringent vagrancy law had been proposed but Musgrave discountenanced it.
151. Ibid. Kimberley's Minute.

In Jamaica, meetings continued to be held in protest against praedial larceny, and suggestions continued to pour in as how best it could be solved. One lady's serious and salutary solution was the public whipping of men and women with wire whips.[152] Musgrave informed Kimberley that he had been asked to draft a more stringent praedial larceny bill, but, as he said, neither "my own administrative experience nor the general experience of mankind leads me to believe that the moral character of a population can be raised by severity of penal legislation." And he unequivocally declared: "The law as it stands is amply severe."[153] In the Colonial Office, it was felt that the Bishop and clergy of the Island "would do more good by striving to improve the morals of their flocks than by agitating for more flogging."[154] Musgrave was told that the 1879 Codes would soon be brought into operation and no further legislation on praedial larceny was required.

In June 1881, it was brought to the attention of the Colonial Office that public floggings were still taking place in Jamaica. Under Law 6 of 1877, public floggings were permitted although they were not to be permitted in the Criminal Code. As the Code had not yet been brought into operation, Law 6 remained in force. Wingfield regretted that the Criminal Code had not been put into force and this "objectionable Law" repealed.[155] Although Law 6 was disliked, its demise was dependent on the operation of the Criminal Code which was never to take place. Law 6 remained on the statute books. In 1887 and 1888, Law 6 of 1877 was amended. Under Law 19 of 1887, whipping was abolished for a person stealing a tree or a plant which did not exceed £5 in value. But by Law 27 of 1888, the provisions of Law 6

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152. CO 137/501: Musgrave to Kimberley, 26 December 1881. Enclosed reply of Mrs. Strachan. Other suggestions included transportation to Siberia and Haiti.
153. Ibid.
154. Ibid. Minutes.
155. CO 137/502: Colonial Office. Wingfield's Minute, 25 June 1881.

were extended to cover any roots or trees or parts of a tree attached to the soil, although they were not growing in it.

Although praedial larceny offences appear to have decreased between 1883 and 1885[156] there was an upward trend in 1886 which continued up to 1889. Against this background Law 15 of 1890 was passed. In his report, Acting Attorney General Henry Kirke explained that the number of praedial larceny convictions before the Resident Magistrates showed, by the previous year's returns, "a marked increase over those of the preceding years; so it was thought expedient to amend the laws dealing with this offence." He hoped that the Law, if properly executed, would put a stop to the "depredations of a number of loafing vagabonds who, too idle to work themselves, prey upon the industrious poor throughout the Island."[157]

Under this Law — Law 15 of 1890 — a constable could arrest and take before a Magistrate any person found in possession of named articles of agricultural produce, under circumstances which afforded reasonable grounds for suspecting that possession was not lawful. The refusal of inability of the arrested person to satisfy the Magistrate that possession was lawful, was to be deemed prima facie evidence of larceny.

Doubts about the Law were expressed in the Colonial Office, but it was sanctioned, probably because as one Minute ran, stringent laws of that description had been sanctioned in other colonies.[158] The Secretary of State however, requested a report on the Law, after it had been in operation for six months. When the Governor reported on it, he enclosed the report of the Inspector General of Police, in which the statute was described as a useful law, and which as far as he knew had not been abused.[159]

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156. This was the period when Jamaicans were going to Panama in their thousands to seek employment.
157. CO 137/543: Blake to Secretary of State. Enclosed Report of Henry Kirke.
158. Ibid. Minutes.
159. CO 137/544: Blake to Knutsford. Enclosed Report of the Inspector General of Police.

But the legislation of 1877, 1888 and 1890 did not solve the problem, and praedial larceny offences continued to increase. In 1896, the legislature attempted to solve the problem by two methods. One was by passing a produce protection law, which will be dealt with subsequently; the other was to enact more stringent praedial larceny legislation — Law 38 of 1896.— The first section of the Law attempted to simplify the law as to growing plants and things severed or taken from the land. They were made subjects of simple larceny. But the core of the Law lay in its third section: whenever a policeman or private person found any other person ("a suspected person") in possession of certain articles of agricultural produce, under circumstances as to induce the officer or private person to suspect that the article was stolen, he was empowered to detain the suspected person; and if the "suspected person" did not "promptly give a satisfactory account of himself and of the manner in which he became possessed of any such article" that alone constituted sufficient cause for the police to arrest the suspected person without a warrant and take him before a justice of the peace as soon as possible; pending an investigation of the matter, the justice of the peace could detain the suspected person in custody for up to seven days, or release him on bail with the direction to appear before a court within 21 days, and in either case, the justice of the peace could order the article to be detained. If after the inquiry, or after his appearance before a court, no case or prima facie case was found against the suspected person, he was to be discharged, unless a duly sworn information was laid against him in the ordinary way. Most important too was the provision that in any inquiry or trial under this section, the suspected person had the onus of proving that his possession of the article was honest. If a person was twice convicted of larceny or attempting to sever or steal certain articles, and if it appeared that he was a vagrant or an idle person not having

any visible means of subsistence, he could be whipped.

One of the most remarkable features of this Law was the power it gave to anyone to detain any person found under suspicious circumstances in possession of practically any article of agricultural produce; if the suspected person did not give a satisfactory account of himself and his possession of the produce he could be arrested without warrant. The Governor expressed unease about this provision in the Law, but declared that without that clause "the Law would be practically inoperative in certain districts." He spoke of the "strong feeling" in the Island that "something must be done" to check praedial larceny, and his suggestion was that the Law should not be confirmed for the present, but that the Governor should be instructed to report on it after two years.[160]

In the Colonial Office, the measure was received with undisguised disapproval.[161] Wingfield's Minute begins: "I hardly think such a law as this can be allowed to remain in operation." He outlined detailed criticisms of the Law and concluded: "I should suppose it was introduced by some elected member" of the Legislative Council. Chamberlain told Blake, that since some of the provisions of the statute were of a "very unusual character" he would like to receive the views of the Supreme Court Judges and the Resident Magistrates before tendering any advice about the Law to the Queen.[162]

From the reports[163] requested by Chamberlain, we learn that the measure was drafted by one of the Resident Magistrates, Walcott, who handed it to an elected member to introduce in the Council. Walcott strongly defended his progeny, and prognosticated that the powers in the Law "will be found to work beneficially." But this Law did not

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160. CO 137/573: Blake to Chamberlain, 11 May 1896.
161. Ibid. Minutes.
162. Ibid. Chamberlain to Blake, 6 June 1896.
163. CO 137/575: Hallowes to Chamberlain, 25 September 1896. Enclosed Reports by the Chief Justice and Resident Magistrates.

receive such high commendation from other members of the judiciary. It was condemned by all the Supreme Court Judges, and by almost all of Walcott's Resident Magistrate colleagues. Resident Magistrate Perry described the measure as being "badly conceived, inequitable in spirit [and] unworkable in practice." Chamberlain described the enactment as being not "very creditable" to the Government of the Colony and suggested that the Colonial Office should express surprise that a law which could be thus described by the Supreme Court Judges and the Resident Magistrates, "should have been suggested by a Resident Magistrate."[164] The Law was disallowed and proper hints given to its draftsman.[165]

The Resident Magistrates had in the meanwhile been asked to submit reports as to their feasons for the increase in praedial larceny offences. These reports arrived in England in the Spring of 1887, and were hailed in the Colonial Office as "one of the most remarkable and interesting series of reports" from the West Indies.[166] Most of the Resident Magistrates seem to have been in agreement as to the cause of the praedial larceny offences:[167] Egerton in St. Thomas: "I find that the cause is generally attributed to poverty;" Cole in St. Elizabeth: the increase in offences was due to "considerable amount of distress in this parish;" Clark in Hanover attributed it to the depressed state of agriculture. Huggins in Westmoreland explained that wages for labourers had dropped from 1/6d to 9d per day; "This alone, I think, accounts for many cases of Praedial Larceny - the labourers are hungry, see the canes standing around, and are tempted to cut one or two to eat;" this class of offenders are generally caught red-handed, and when brought up for trial generally plead guilty." The causes listed by Walcott were:

164: Ibid. Chamberlain's Minute.
165. Ibid. Chamberlain to Blake, 11 December 1896.
166. CO 137/580: Blake to Chamberlain, 12 March 1897. Minutes.
167. Ibid. Enclosed Reports of the Resident Magistrates.

drought and distress in some districts; great diminution of expenditure of money in sugar cultivation; sudden decline in the price of logwood and consequent cessation of the employment of labourers to cut it; stoppage of expenditure on cattle pens on account of losses from disease and depression of prices for cattle caused by their importation; cessation of money for railway construction. "All these," he said, "have stopped the circulation of money among the labouring classes, increased their wants and the temptation to steal."

On these "remarkable" reports, Sir Henry Hocking, who was until recently Attorney General of Jamaica, appended one of the most influential Minutes to be made in the Colonial Office.[168] His opinion was that during his 15 years as Attorney General in Jamaica he had not had reason to believe that praedial larceny had increased or decreased. In his analysis, he divided praedial larceny into (a) the minor offences - petty pilfering and (b) the more serious offences - the pilfering of provision grounds. The minor offences, he continued, always constituted a large proportion of the whole numbers which go to swell the statistics and a "year of distress would always be a time for the minor crime to be on the increase." The pilfering of provision grounds was a "great curse" to the country and in that connection Law 15 of 1890, which was passed in his absence from the Island, was a very badly drafted law. Referring to remedies, he felt that flogging was "out of the question." His suggestion was the enactment of a properly framed law, making possession under certain circumstances, if unexplained, evidence of guilt. But he was clearly not happy about his proposal: such a law being "incompatible with well regulated freedom and so contrary to the spirit of English law that I do not know whether it would not be better to cope with this great evil as best we may than introduce it." This Minute was

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168. Ibid. Hocking's Minute.

highly commended in the Colonial Office, and for many years afterwards it played a decisive role in the examination of Jamaican praedial larceny statutes.[169]

On the basis of the Resident Magistrate's Reports and the Minutes on them, Chamberlain told Blake that the statements which the Reports contain "as to the lamentable social conditions of the negro population certainly demand the earnest attention of the Government."[170]

Later that same year, 1897, another Praedial Larceny Law, introduced by an elected member, was passed by the Council. Blake, remembering that the 1896 Law had been disallowed, prudently reserved his assent. Nevertheless, he felt that the objections which had been fatal to the previous Law had been removed and "having regard to the condition of the Country, I consider it a Law promising good results."[171] This Law followed the general lines of the 1896 Law and three elected members of the Council protested against it.[172]

Views expressed in the Colonial Office did not coincide with the Governor's and it was suggested that the Law be shelved. When the despatch reached Chamberlain, he could not restrain himself from resorting to strong language:[173]

> "As at present advised, I think it is a d - d bad law. Shelve it by all means. These people ought to have lived when men were hanged for stealing a turnip."

The Governor was confidentially informed that the Law would require considerable amendment before advice could be given to the Queen about it; the Law would be left in abeyance for six months, after

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169. See CO 137/669: Oliver to Under Secretary of State for the Colonies, 19 May 1908. Crewe's Minute, 10 June 1908.
170. CO 137/580: Blake to Chamberlain, 27 May 1897.
171. CO 137/582: Blake to Chamberlain, 17 July 1897.
172. Ibid. Enclosed Protest by Clarke, Cornaldi, Gideon.
173. Ibid. Chamberlain's Minute.

which he should furnish a confidential report as to whether "there is any necessity for such a law and whether it cannot be dropped altogether."[174]

In June 1898, Hemming who had replaced Blake as Governor, submitted a confidential report on the Law. He expressed a belief that it would be of "considerable benefit to the Colony" and hoped that it would not be disallowed.[175] Simultaneously he enclosed reports favourable to the Law from the Police and the Attorney General.[176] In the light of these reports, the Law was again examined in the Colonial Office[177] and Cox was requested to suggest amendments to the statute: "I am unable," re replied, "to suggest any amendments to this law which seems to me to be contrary to every principle of criminal legislation.... This law seems to me a model of all that a law should not be". Chamberlain left no doubt as to his opinion of the statute, and his statement is striking evidence of how far Jamaica had 'advanced' in fully 50 years since emancipation:[178]

> "I have the gravest distrust of all this legislation. It puts the blacks at the mercy of the whites and, what is much worse, at the mercy of the black officials who think they are gaining favour from the whites by overzeal. It lays the way open for blackmailing and personal spites and if generally enforced, it might easily be the cause of a bloody negro insurrection."

Two despatches — one public, one confidential — were then sent to Hemming. In the public despatch, detailed objections to the law were given. In the confidential one,[179] Chamberlain took the opportunity of commenting on the inefficiency of the "whole Constabulary Force." He also referred to the Praedial Larceny Law

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174. Ibid. Chamberlain to Blake (confidential), 23 August 1897.
175. CO 137/590: Hemming to Chamberlain (confidential), 6 June 1898.
176. Ibid. Enclosed.
177. Ibid. Minutes.
178. Ibid. Chamberlain's Minute.
179. Ibid. Chamberlain to Blake (confidential), 18 November 1898.

and stated that the "gravest objection" to the measure was founded on the fear that its provisions for the arrest and detention of persons, could give rise to blackmail and they could "arouse racial animosities which would be fatal to the peaceful development of the Colony." And referring to Hemming's ardent advocacy of corporal punishment as the only remedy for praedial larceny, he stated that he was prepared to assent to more stringent punishment if it could be shown that the present punishment was inadequate; but he saw no reason for inflicting "personal pain," for "petty offences like the majority of those contemplated in the Bill."

In January 1899, Hemming again wrote to Chamberlain on the subject of praedial larceny.[180] Adverting to the power of arrest by private individuals which Chamberlain had objected to, he felt that some "such provision as that referred to is absolutely necessary if Praedial Larceny is to be put down;" Law 6 of 1877 had proved inadequate and the need "for more stringent legislation is severely felt." He reported a local suggestion for the return of the stocks as a form of punishment and commented that it might not be "unworthy of consideration, if it is considered undesirable to have recourse to compulsory flogging in case of Praedial thieves." Chamberlain regarded Hemming as "unnecessarily persistent"[181] but he merely told him that he had not found sufficient reason to alter his previous decision on the subject.[182]

Within days, Hemming was writing once more about praedial larceny and he sent an extract from the Inspector General of Police's report calling for some "drastic law" to curb praedial larceny.[183]

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180. CO 137/599: Hemming to Chamberlain, 8 January 1899.
181. Ibid. Chamberlain's Minute.
182. Ibid. Chamberlain to Blake, 18 February 1899.
183. CO 137/590: Hemming to Chamberlain, 10 January 1899. Enclosed Report of the Inspector General of Police.

In February, Hemming sent a praedial larceny Bill, drafted by one of the Resident Magistrates, Thornton.[184] This Bill did not satisfy the Colonial Office. Seeing proposals which he had objected to being repeatedly brought before him, Chamberlain's patience was almost at an end:[185]

> "I think Sir A. Hemming - after several conversations with me - should be in sufficient possession of my mind on this subject not to repeat proposals which I have negatived.
>
> I quite understand that praedial larceny is a serious evil in such a community as that of Jamaica and I am ready to consider any proper means of dealing with it. But I will not ignore the whole principles of English law nor consent to a wholesale system of flogging (torture) merely because the Jamaica lawyers and Government are too lazy or too incompetent to find a civilized remedy for a special form of petty larceny."

Chamberlain's short reply to Hemming was that a previous despatch to him had crossed.[186]

In May, Hemming, after receiving Chamberlain's latest despatch sent him a precis of letters from the Resident Magistrates supporting the infliction of corporal punishment in praedial larceny cases. He added that there was strong concensus of opinion as to the necessity of corporal punishment but "in deference to the views expressed by you", he did not propose taking any action in the matter.[187] Chamberlain did not think it necessary to reply to this despatch.

Five months later, Hemming returned to the praedial larceny topic.[188] He submitted a copy of a resolution passed by the Royal Jamaica Society of Agriculture and extracts from several local

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184. Ibid. Hemming to Chamberlain, 28 February 1899.
185. Ibid. Hemming to Chamberlain, 28 February 1899. Chamberlain's Minute.
186. Ibid. Chamberlain to Hemming, 14 April 1899
187. CO 137/601: Hemming to Chamberlain, 26 May 1899.
188. CO 137/604: Hemming to Chamberlain, 21 October 1899.

newspapers as evidence of how general was "the feeling that some action should be taken in the matter of praedial larceny." The Agricultural Society asked for a more stringent vagrancy law and the newspapers demanded a more stringent praedial larceny statute. Hemming requested information on vagrancy legislation but made it clear that what was required "is a stringent law dealing with the evil (praedial larceny) itself." Mindful of the previous correspondence on the subject, he continued:

> "I know that you are opposed to the infliction of flogging, and it is therefore with much diffidence and hesitation that I venture to affirm my confident belief that it is the only form of punishment which will reduce this particular form of crime...
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> I hope you will excuse me pressing this matter again, but I feel strongly that the increase of praedial larceny is inflicting incalculable harm on the Colony in checking cultivation, and disheartening the honest labourers, that I feel it to be my bounden duty to bring it once more under your notice."

This despatch was sympathetically received in the Colonial Office.[189] Opinion in the Office was that something should be done to curb praedial larceny in Jamaica and the other West Indian territories from which complaints had come. One Minute enquired whether some "new start cannot be made with regard to praedial larceny which seems to be a perfect curse throughout the West Indies. Chamberlain told Hemming in a confidential reply that the subject of praedial larceny had recently engaged his attention in the other West Indian colonies and he was desirous of finding effectual means of checking this "very mischievous form of theft."[190] He suggested

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189. Ibid. Minutes.
190. Ibid. Chamberlain to Hemming (confidential), 23 January 1900.

a law along the lines of a British Guiana Ordinance which provided for 'proclaimed districts' and the formation of Vigilance Societies. He also suggested the employment of specially trained detectives to deal with praedial larceny. At the same time he authorized him to consider the enactment of a harsher Vagrancy Law. Finally, he instructed Hemming to send for his consideration, drafts along the lines which he had indicated. Hemming requested permission to publish this despatch but was told that it was not to be published as it was only intended to convey general outlines of policy and not to direct the enactment of any specific measure. Hemming, without much hesitation, expressed himself against the employing of detectives, as there were complaints about the burden of taxation.[191]

In August 1901, Hemming, disobeying Chamberlain's instructions, to send him a draft of the legislation prepared on the basis of his despatch, sent him two Laws which had recently been passed by the Council -- a Praedial Larceny Law (Law 21 of 1901) and a Produce Protection Law.[192] He also sent the draft of a Vagrancy Bill. He explained that replies of persons whom he had consulted about the remedies for praedial larceny showed that the majority were strongly in favour of increased flogging; that they did not believe the stocks to be a suitable remedy; that they doubted the working of the Vigilance Societies; and they favoured increased stringency of the vagrancy laws, some even advocating forced labour for vagrants. He then related the principles on which the Government had thought it fit to proceed: to amend the existing laws for the repression of praedial larceny; to diminish the temptation and opportunities for dishonest dealing in produce, by strengthening the existing Agricultural Protection Laws; and to "identify and as far as possible

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191. CO 137/610: Hemming to Chamberlain (confidential), 9 May 1900.
192. CO 137/621: Hemming to Chamberlain, 21 August 1901.

to diminish the loafing class of persons that chiefly and habitually support themselves by praedial larceny." It was on these principles that the legislation had been drafted.

The provisions of the Produce Protection Law [193] will be subsequently outlined. The main features of the Praedial Larceny Law[194] were: the creation of a body of authorized persons on whom the power of arrest without warrant was conferred; the power of arresting without a warrant; trial for unlawful possession of produce of which the prisoner was in possession; the onus of proving honesty of possession was cast on the accused. Under Section 7 of the Law, whenever a person committed an offence under that Law or any offence under Law 6 of 1877, or any Law incorporated with it, a Resident Magistrate could order the offender to be whipped. For a second offence, whipping was declared mandatory, provided the second offence was committed within three years.

The Praddial Larceny Law, however, was not unopposed in Jamaica, and the Island's Colonial Secretary, Sydney Olivier, took the exceptional step of disagreeing with the Government and publicly expressing his views. In what the Governor described as "a brilliant speech" in the Council, Olivier flayed the measure, particularly the flogging provisions.[195] He argued that the Council were going back to "those barbarous methods of violent punishment which had long ago been considered and abolished;" and that was not a "matter to be dealt with lightly." Then he turned to an analysis of the relationship of flogging with praedial larceny:[196]

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193. Law 15 of 1901.
194. Law 21 of 1901.
195. CO 137/621: Hemming to Chamberlain, 21 August 1901. Enclosed speech by Olivier. Olivier's views must not be dismissed lightly, because as Governor of the Island, at a later date, he was instrumental in getting the much discussed praedial larceny Law on to the statute books.
196. Italics supplied.

> "...the material condition of the island had much to do with the question. Take the three parishes with the largest number of praedial larceny cases. St. Elizabeth, which came first, was known to be the poorest parish in the island; St. Ann was second and Clarendon third, both as to the number of cases and depression of material conditions. These figures reflected the circumstances of the parishes to some extent...the largest number of whippings in 1898-99 occurred in Clarendon, next St. Ann and then St. Elizbeth. And in each of those parishes they found an increase of flogging - an increase of flogging that brought them an increase of cases. They could not therefore, say that the infliction of flogging in any way regulated or controlled the number of praedial larceny cases. The real causes which controlled praedial larceny were altogether outside the scope of flogging."

He maintained further that they could make changes in other areas for example, prison discipline, rather than grabbing "a weapon of violence whenever they met a difficulty which they could not deal with." And amidst cheers he pronounced: "Any government which could not deal with such an evil as praedial larceny without having recourse to flogging could well be said to be impotent." Other protests were also made to the Law.

The two Laws and the draft Bill were carefully examined in the Colonial Office. The draft Vagrancy Bill was approved and the Produce Law sanctioned. But the Praedial Larceny Law was not favourably received. It purported to create a new charge of being "unlawfully in possession of agricultural produce," and Chamberlain's verdict was: "the law must be disallowed."[197]

At the same time, Lucas, in the Colonial Office, who had confessed that praedial larceny "so far has beaten me," stated that the West India Committee had asked Chamberlain to order a special inquiry into the subject. As a last resort, and in order to obtain uniformity of legislation on the subject in the West Indies he felt

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197. CO 137/621: Hemming to Chamberlain, 21 August 1901. Chamberlain's Minute.

that "some lawyer of high standing" should be sent out to all the colonies, to enquire on the spot and recommend remedies, which would be effectual "without being repugnant to English public opinion."[198] Chamberlain was favourably inclined to the proposal, and, given the green light, Lucas expounded his views:[199]

> "What I want is a report by some Known Authority on criminal law in England or on methods of dealing with crime, whose name - affixed to a report must carry weight. I want him to say whether anything can be done which has not been done and whether - looking at it from the point of view which prevails in England - he condemns the practice of flogging for praedial larceny in the West Indies....
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> Some retired Judge who would enjoy a winter trip to the West Indies, or some leading London police magistrate is the type of man I want."

In informing Hemming of the fate of the 1901 Praedial Larceny Law, Chamberlain tersely told him that he (Hemming) was familiar with his views on the subject, and it was unnecessary for him to enlarge "upon the reasons which led me to adopt this course." Continuing, he said that although he was unable to accept the measures recommended by the legislature, he was unwilling to believe that "no solution to the problem is possible." The evil of praedial larceny""exists in a greater or lesser degree in all the West Indian Colonies" and it had been suggested that a lawyer of high standing familiar with the administration of the criminal law, shall be sent out to the colonies, to inquire into praedial larceny and to report on measures likely to lead to its repression; he was communicating with the Governors of the other West Indian Colonies on the subject, and he would be glad to learn that the proposed mission met his approval, and whether Jamaica was prepared to share the cost of the mission.[200]

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198. Ibid. Lucas' Minute, 20 October 1901.
199. Ibid. Lucas' Minute, 5 November 1901.
200. Ibid. Chamberlain to Hemming, 3 January 1902.

The reception of Chamberlain's proposal in Jamaica was not altogether unpredictable. Although the proposal and willingness to bear a part of the cost was approved by the Council, five out of six elected members voted against it. Hemming himself was lukewarm towards the proposal: he did not feel "very sanguine that the Lawyer who may be selected for this important mission" would succeed in "eliciting more materials and facts on which to frame a Praedial Larceny Law suited to this Colony than have already been gathered by this Government" from all persons of all classes in the community, "familiar with the special local conditions which affect the question."[201] It was decided in the Colonial Office to wait until all the other Governors replied. It appears however, that this inquiry was never undertaken.

Nevertheless, the dialogue on praedial larceny in Jamaica continued. Commenting on the criminal statistics for 1902-3, the Acting Attorney General, Oughton, stated that there was a "marked decrease" in praedial larceny offences. This decrease could be attributed to the "improved condition of affairs in the Island."[202] Having been asked by the Secretary of State whether the Vagrancy Law had had any effect on praedial larceny, Hemming replied in the negative, and declared himself "as firmly convinced as ever that the only cure for praedial larceny is the enactment of a drastic Law as that of 1901 (which was disallowed), by which the infliction of flogging was made compulsory on a second conviction."[203] In 1904-5, there was a "most extraordinary increase" in praedial larceny offences. Attorney General Schooles believed that this was due to the effects of the hurricane of 1903 which were still being felt, and the fact that the estates "do not afford the same amount of

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201. CO 137/626: Hemming to Chamberlain, 14 March 1902.
202. CO 137/636: Hemming to Chamberlain, Enclosed Report of Oughton.
203. CO 137/639: Hemming to Lyttelton, 29 February 1904.

employment as they did previous to that event."[204] In 1905, Swettenham, the new Governor, submitted suggestions on the increase in praedial larceny offences. The Secretary of State replied that he was willing to consider "any mature proposals" for dealing with "this evil", but reminded him that the statistics seem to indicate "the predominance of economic influences over the influence of punishments."[205]

Following the earthquake of 1907, praedial larceny offences increased again. Demands once more arose in Jamaica for a stringent praedial larceny law. Olivier who formerly acted as Colonial Secretary of the Island, was now Governor. "There has," he said in 1908, "been in the course of the last year a great deal of discussion on the subject of praedial larceny in Jamaica and strong recommendations have been made to me for the amendment of the law, both as regards methods of procedure and as regards methods of punishment."[206] On a visit to England he discussed the subject with the Secretary of State, the Earl of Crewe, and suggested that he should be authorized to introduce legislation on the lines of the disallowed 1901 Law, but omitting the whipping provisions. Opinion in the Colonial Office tended to favour Olivier's proposals.[207] Colonel Seely was not in agreement with the proposals, remarking that arrest "on suspicion and throwing the onus of proof on the accused person are methods attractive to those whose business is to prevent crime, but to no other class of the Community;" further, he felt it impossible to defend such a Law in the House of Commons.[208] His superior, Crewe, was not of this opinion. Although he thought that it was a difficult question whether the prevalence of praedial larceny justifies a

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204. CO 137/646: Swettenham to Secretary of State, Enclosed Report of Attorney General Schooles.
205. CO 137/647: Lyttelton to Swettenham, 30 November 1905.
206. CO 137/669: Olivier to Under Secretary of State for the Colonies, 19 May 1908.
207. Ibid. Minutes.
208. Ibid. Seely's Minute.

departure from the ordinary rule, some "analogy may be found in the Poaching Prevention Acts here, which are not found to work hardly on innocent people."[209] Olivier was then instructed to submit a draft of his proposed measure.

Olivier had, however, before hearing from Crewe, introduced a Praedial Larceny Bill in the Council, on the lines of the disallowed 1901 Law, but with the whipping clauses omitted. After receiving Crewe's despatch, he sent him a copy of the Bill as it passed on third reading as a copy of the draft. In the Colonial Office the Bill was described as "word for word a repitition" of the Law 21 of 1901, with the omission of the corporal punishment clauses.[210] The principle of the Bill was accepted.[211] But three amendments were suggested. After further correspondence between Olivier and Crewe,[212] another Praedial Larceny Bill incorporating the suggested amendments, was introduced in 1909. This Bill became Law 4 of 1909 - a Law in aid of the Laws relating to Praedial Larceny 1909 - and was sanctioned by the Secretary of State. Thus ended the protracted discussion to get permanent praedial larceny legislation on the statute books of Jamaica.

The provisions of Law 4 were as follows: whenever any person (a "suspected person") has been or is in possession of certain described articles of agricultural produce, under circumstances as shall reasonably cause any constable or "person authorized", to suspect that such article has been stolen or has been received knowing the same to be stolen, or "in any other way dishonestly come by", it was lawful for the constable or the "authorized person" to arrest the suspected person without a warrant and take him with the articles,

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209. Ibid. Crewe's Minute.
210. CO 137/664: Olivier to Crewe, 28 July 1908. Minutes.
211. Seely was still unconvinced of the necessity for the statute but agreed not to persist in his objection, "as the authorities are against me"; ibid., Seely's Minute.
211. See CO 137/666: Olivier to Crewe, 22 October 1908; Ibid. Crewe to Olivier (telegram), 19 November; ibid: Olivier to Crewe (telegram), 21 November 1908); ibid: Crewe to Olivier (telegram), 7 December 1908; ibid: Crewe to Olivier, 8 December 1908.

forthwith before a justice of the peace. The Jamaica Agricultural Society could nominate persons who, with the Governor's sanction, could become "authorized persons" having authority to arrest and deal with suspected persons as provided in Section 1. Under Section 4 the onus of proof was placed on the accused; and on conviction a person could receive up to six months' imprisonment and on a second conviction twelve months'.

So in 1909, the Laws governing Praedial Larceny were: Law 6 of 1877 as amended by Law 19 of 1887 and Law 27 of 1888; Law 15 of 1890; and Law 4 of 1909.

As we have mentioned, subsidiary legislation also aimed at the prevention of praedial larceny was passed. This was done through the Produce Protection Laws. Under Law 37 of 1896, persons carrying on the business of buying or selling agricultural produce were required to take out a licence. Various regulations were made, one being that dyewoods were not to be purchased in less quantities than 500 lbs. An interesting feature of this statute was that in proceedings taken under it, the onus of proof was placed on the accused. This law was amended in 1898, and 1901. In 1903, all three statutes were repealed and new provisions included in Law 31 of that year. These laws however, were not regarded as being of great importance in checking praedial larceny.

In this fairly detailed account of praedial larceny legislation, there are two aspects of praedial larceny which demand special attention. The first concerns the nature and value of articles involved in praedial larceny offences. In July 1881, Governor Musgrave gives most enlightening information about the value of these articles, in his examination of some praedial larceny cases[213] in the judicial District comprising the parishes of St. James, Trelawny and St. Ann, where praedial larcenies were most numerous: in 1880, the total

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213. CO 137/500: Musgrave to Kimberley, 21 July 1881.

number of cases tried there was 159 and the total value of all the property stolen in the 159 cases was £15.8.8¾d. In about one half of the cases the value of the articles ranged from ¾d to 6d; in no case did the value exceed 30 shillings. He also examined the 137 cases tried in another District - the Central District. There he found that in 79 cases the total value of the articles stolen was £2.3.9½d or an average of 6½d; in the other 58 cases the average was 4/6½d, with only three rising above 16 shillings. The opinion of Attorney General, Henry Hocking, tend to support these statistics.[214] According to him what was in England regarded as a trivial offence, especially when committed by boys, for example stealing a few apples or a turnip, "is here dignified by the name of praedial larceny and the offender...is prosecuted with the same force and circumstance as if he had committed a murder, except that he does not have a Jury." In a "great many cases, the value of the article stolen is contemptible - few mangoes, or oranges, or a piece of sugar cane." And one Colonial Office Minute on the subsequently disallowed Praedial Larceny Law of 1897, suggested that as the Law stood "a lad taking a wild pine or picking up a banana dropped by a market cart would be convicted; and for a second offence flogged."[215]

Secondly, it was unequivocally clear that the problem of praedial larceny, was largely an economic one, and the solution for which did not lie within the bounds of the criminal law, particularly, not with increased severity. The statistics[216] show an astounding correlation between praedial larceny offences and the economic barometer of the Island, and this point comes to the fore with monotonous repetition in our discussion. Praedial larceny offences increased significantly in the early 1860's, but the economic conditions

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214. CO 137/505: Musgrave to Kimberley, 13 June 1882, Enclosed Report of the Attorney General. See also CO 137/580: Blake to Chamberlain, 12 March 1897, Enclosed Report of Resident Magistrate Walcott.

215. CO 137/590: Hemming to Chamberlain (confidential), 6 June 1898. Minutes.

216. See Appendix B.

of that period are only too well known. One commentator had never seen "the Colony sunk so low in the wretchedness of 'difficulty of living'" as in 1865.[217] In 1872, Grant attributed the increase in praedial larceny offences to the prolonged drought and the consequent scarcity of provisions.[218] In 1881, the Island's Attorney General believed that the large number of praedial larceny offences was attributable "to the great temporary distress caused by the hurricane of August 1880 and the long drought which followed upon it."[219] A considerable decrease in praedial larceny offences in 1884, coincided with a period when thousands of Jamaicans were journeying to Panama in search of employment. Governor Norman subsequently told Derby that he was inclined to attribute this diminution to "improvement in the condition of the people, the fluctuations of this crime being largely coincident with the rise or fall in their resources and circumstances."[220] And this decrease continued "notwithstanding the practical abolition of flogging."[221] In the years immediately preceding 1889, there was again an increase in praedial larceny offences. The Acting Attorney General of the Island was of the opinion that the increase was due to the "return in large numbers" from Panama, of persons "in a destitute condition without any visible means of subsistence."[222] Praedial larceny offences again increased after 1895. We have already outlined the views of the Resident Magistrates as to the causes -- and almost all felt that the increase in the offences was due to the economic circumstances. In addition, it will be recalled that at this period, because of a depression, the sugar

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217. See Note 115 supra.
218. CO 137/480: Grant to Kimberley, 23 April 1873, Enclosed Blue Book Report.
219. CO 137/505: Musgrave to Kimberley, 13 June 1882, Enclosed Report of the Attorney General.
220. CO 137/520: Norman to Derby, 4 February 1885.
221. CO 137/525: Clarke to Granville, 22 February 1886, Enclosed Report of the Attorney General.
222. CO 137/542: Blake to Knutsford, 10 January 1890, Enclosed Report of the Acting Attorney General.

producing territories of the British West Indies, including Jamaica, found themselves in great economic difficulties, and a Royal Commission was appointed to inquire into the problem,[223] In 1901, Governor Hemming admitted that:

> "there is a certain amount of correspondence between the prevalence both of the offence and of cases dealt with by the Courts in seasons of drought, depression and scarcity of work and of diminished prevalence with seasons of prosperity and of abundance of employment in such industries as logwood cutting, Railway working, and other means of employment, which attract large numbers of those who do not devote themselves to the permanent industry in agriculture ....
>
> I think there is ground for the view that the noticeable increase in the prevalence of the evil (in 1900-1901) was in a measure attributable to the scarcity and depression, and especially to the lack of demand for labour, which were experienced during that year." 224

Yet despite all this, Hemming remained an unrepentant advocate of stringent praedial larceny measures, and an uncompromising supporter of flogging as the proper remedy to check the offence. And it was not without justification that the Secretary of State observed in 1905, that the praedial larceny statistics indicated "the predominance of economic influences over the influence of punishments."[225]

The history of praedial larceny legislation puts in a crucible much of what went wrong in Jamaica during the 19th century: wasted opportunities and the persistent application of the wrong remedies to the Island's problems. When we take into account the value of the articles involved in praedial larceny cases, and the intimate relationship between the offence and the economic conditions of the Island, the conclusions concerning the Jamaican legislators, including the

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223. See Report of the West India Royal Commission, P.P. 1898 (C.8655)L.
224. CO 137/621: Hemming to Chamberlain, 21 August 1901.
225. CO 137/647: Lyttelton to Swettenham, 30 November 1905. See also CO 137/646: Swettenham to the Secretary of State, 27 September 1905. Olivier's Minute: "In all these parishes the causes were basically economic."

Governors, and the Jamaican society, are blatantly obvious. The problems of praedial larceny, had its roots in the land, and it is well to point out that at the same time the Jamaican legislators were clamouring for severe penal measures, the Royal Commission of 1897 was recommending that the number of settlements for peasants should be increased.[226] Yet in Jamaica it was felt that as the "proportion of the population which owns land is already considerable," it was not necessary to adopt any additional measures to increase the Peasant Proprietary in Jamaica."[227] Land settlement may have been only one of the solutions to the problem, but it would have been a more effective solution than severe criminal legislation which proved totally ineffective. In the praedial larceny issue are to be found indidators of the trouble which beset and bedevilled Jamaica and which culminated in the protests of 1938.[228] They were there to be seen, but the criminal law -- the nearest and easiest tool -- was the device employed to force a solution, when the economic conditions would not allow.

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226. See Report of The West India Royal Commission, P.P. 1898 (C. 8655)L.
227. CO 137/594: Hallowes to the Secretary of State, 15 November 1898.
228. See The West India Royal Commission Report (The Moyne Commission), P.P. 1944-45 (Cmd 6607) VI.

D. Vagrancy Legislation

Almost from the beginning of the English settlement in Jamaica, laws aimed at idle persons were enacted by the legislature. The necessity for these laws was the consequence of the peculiar way in which Jamaica was settled.

After Jamaica was captured from the Spanish, various types of people were brought to the Island in an attempt to increase the population.[229] The records give us a lively account of one type of 'settler'. In 1655, Cromwell instructed the Council of Scotland that "for the West India expedition," they were to cause "all the knowne idle masterlesse vagabonds and robers, menn and weomen, the only instruments of trouble, plots and projects in the commonwealth" to be apprehended, prior to transportation.[230] In 1656 there is an Order of the Council of State pertaining to the apprehension of "lewd and dangerous persons, rogues, vagabonds, and other idle persons, who have no way of livelihood, and refuse to work, "with a view to transportation to the English plantations in America."[231] Five years later, we find certain gaolers being authorized to release for transportation to Jamaica, the "incorrigible Rogues and Vagabonds" then condemned to death.[232] In 1664, the 'Jamaica Merchant' leaves England bound for Jamaica with several "idle and vagabond Persons" and in 1665, a list of criminals to be transported included "vagabonds, idle or disorderly Persons, or else Sturdy Rogues and Beggars."[233]

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229. Chapter 2, supra.
230. Thurloe State Papers Vol. 4, p. 129.
231. C.S.P. 1574-1660 No. 447, 14 August 1656. Jamaica was included in the "plantations in America".
232. APC. (Colonial Series) Vol. 1, 1613-1680, No. 527, 24 July 1661.
233. Ibid., No. 638, 23 November 1664. See also C.S.P. 1574-1660 p. 492, Commission to the Lord Chancellor, 1 December 1660.

Most of these persons became indentured servants for a number of year years, at the expiry of which, they were declared free. Other people were also recruited in England and brought to Jamaica as indentured servants; when their period of indenture expired they also became free persons. Because they came to Jamaica under these circumstances, these persons, at the end of their indenture, may not have regarded themselves as compelled to contribute to the common weal by their labour. One Governor in fact tells us that although many white persons had arrived in the Island the previous year, "yet most of them are servants, who when their times are out, and having no fund to settle with runn arogueing."[234] Accordingly legislation was introduced in an effort to instil higher notions of communal welfare.

In November 1661, the Council of Jamaica provided the penalties of whipping and committal to the custody of the Provost Marshal for "the wanderings of servants and slaves."[235] Simultaneously they declared that no person was to remain at Point Cagua without giving a security to a J.P. that he would not be a charge on the inhabitants for more than one month.[236] When the Assembly came into being, one of their first statutes was 'An Act for Preventing Idle Livers'.[237] This statute was enacted because "there are severall dayly Enormities and Extravagancies committed and done by many idle lazy and vicious persons lurking about the several precincts and parishes of the Island, who can give no good and honest account of their living, contrary to the known and wholesome laws and statutes of England."[238] If a person

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234. CO 138/10/97: Beeston to Popple, 2 August 1700.
235. C.S.P. 1661-68 No. 182, 15 December 1661.
236. Ibid.
237. CO 139/1/37: Undated but appears to be one of the statutes passed by the Assembly in 1664.
238. Ibid.

when required by a justice of the peace to show by what lawful means he lived, failed to give a satisfactory account, then the justice of the peace was empowered to order him to labour on the public works for a certain period. After the end of the initial period of doubt as to the validity of Jamaican legislation,[239] the Assembly in 1683 passed 'An Act for punishing idle Persons and Vagabonds, and for the Relief of the Poor'.[240] This statute was enacted, because several idle persons and vagabonds, though able bodied, loitered and refused "to work for reasonable wages," in the parts of the Island where they lived; and since they were not able to maintain themselves, the charge of the parishes might be greatly increased.[241] All rogues and vagabonds, and other idle persons found "wandering from place to place" or "otherwise misordering" themselves, were to be apprehended and taken before a justice of the peace. If they appeared to him "fit and able to work", he was to order them to be whipped, and sent back to the parish where they resided. This Act had a very long life, remaining on the statute books until 1839.

It will be noted from the preceding pages that the vagrancy legislation of this period was not aimed at the black slaves — it arose primarily on account of, and was directly aimed at the free, though poor, white segment of the population. Since the slaves received no wages, only the whites who were free and the few free negroes could refuse to "work for reasonable wages." This point must be borne in mind as we trace the history of the legislation.

During the 18th century an attempt was made to extend the vagrancy laws to seamen. In October 1720, Governor Lawes told the Assembly that the war with Spain had caused such an increase in the number of seamen, that many of them wandered about for want of

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239. Chapter 1, supra.
240. 35 Charles 2, c. 11.
241. Ibid. Preamble.

employment.[242] One measure to help this situation was to prohibit negro seamen from manning the sloops and wherries. Another measure which could also be adopted, was to legislate for idle seamen who refused to work except for extravagant wages, which the merchants could not afford; such a law would empower the justices to imprison all "idle seamen who have no visible way of living." The Assembly did not accept the Governor's suggestion.[243] When in 1726, Admiral Hosier requested some men to man his ships, the Jamaica Council ordered that a search be made for "all idle and Vagabond Persons."[244] This search was not very successful and Hosier received few men by this method.[245]

As the 18th century progressed, laws were passed to establish workhouses in the Island. The main law was 'an Act for establishing public workhouses in the several parishes in this island,' passed in 1791.[246] This act was stated to be necessary because there was a "great number of white vagrants and other disorderly persons" in the Island, and therefore it was necessary to punish vice and compel those idle persons to maintain themselves by their own labour; it was also necessary to provide "proper receptacles" for all idle and run away slaves.[247] The main points of the act concerned definition of 'rogues and vagabonds' and how they should be dealt with. Rogues and vagabonds were described as all able-bodied white persons, free negroes and mulattoes, who loitered and refused to work for "the usual and common wages," and all other idle white persons, free negroes and mulattoes who were found "wandering abroad and begging." These idle persons could be committed to the workhouse where they could be set to work

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242. JAJ Vol. 2, p. 337, 8 October 1720.
243. Ibid., p. 340.
244. CO 140/19: Minutes of the Council, 6 November 1726.
245. Ibid. Minutes of the Council, 14 December 1726, Letter from Hosier to the Council.
246. 32 Geo. 3, c. 11. See also 18 Geo. 3, c. 21; 21 Geo. 3, c. 20.
247. Ibid. Preamble.

"either for punishment or to amend them of their idle vicious lives by inuring them to labour and exercise." In the workhouse, these persons could be punished, including being whipped. Runaway slaves, when apprehended, could also be brought to the workhouse, where they could be punished, and afterwards sold.[248] Thus in 1815, the Assembly could state that they had laws "which enable the magistrates to take up rogues and vagabonds, whether white or black;" and when the latter were apprehended, they are sent to the workhouse. "As ninety-nine in a hundred of those apprehended are fugitive slaves," notice is given of their "detention by public advertisements...It is very common for slaves in such a situation to say that they are free."[249] Up to 1833 therefore the two main acts aimed at idle persons were 35 Charles 2, c. 11 and 32 Geo. 3, c. 11.[250]

As the death knell sounded for legal slavery in 1833, we find the vagrancy laws assuming a new shape and a new importance. The vagrancy laws had been enacted to cover white persons and free negroes or mulattoes. It was never intended nor was it stated, that the slaves could be "rogues and vagabonds" as defined in the laws. Indeed that was not necessary -- some of the lengthy provisions of the Slave Codes, particularly those dealing with the apprehension of runaway slaves, were geared to prevent slaves idling and wandering about from place to place. When the Jamaican legislators, therefore, saw that their coercive system was about to

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248. In the workhouse white persons were to "be fed, lodged, and worked separate and apart" from the free negroes and mulattoes and slaves; felons were also to be separated from slaves: Ibid., secs. 6, 9. For other provisions relating to runaway slaves, see Chapters 4 and 5, supra.

249. JAJ Vol. 12, pp. 788-789, 20 December 1815.

250. In 1745, a bill was introduced into the Assembly for punishing vagrants and making them more serviceable. This bill did not become law. See JAJ Vol. 3, p. 695, 11 May 1745.

terminate, they sought means of ensuring that their supply of labour would be maintained and that work on the estates would continue on the former basis. One of the means they employed was legislation -- on this occasion, vagrancy legislation.

In 1833 one of Jamaica's delegates to the Colonial Office, Barrett, on his return to the Island, is said to have told the Assembly that the British Government were likely to accept any measure passed by the Jamaican legislature giving effect to the English Act abolishing slavery.[251] The Assembly should therefore use the opportunity of passing simultaneously the strongest vagrant laws, and other coercive enactments, which could then be safely introduced, but which would otherwise be rejected.[252] In December 1833, the Assembly passed an act against vagrancy,[253] using the English vagrancy Act as a model. Mulgrave did not object to the principle of the Act, but he felt that some of the provisions were not applicable to Jamaica.[254]

This Act[255] defined idle and disorderly persons, and rogues and vagabonds and enacted punishments for them. The description of idle and disorderly persons included persons who threatened to run away and leave their wives or children; persons who, being able to work, wilfully refused to do so; persons without any visible means of employment; common prostitutes or night walkers not giving a satisfactory account of themselves; persons who could not show any visible means of employment. Such persons being deemed idle and disorderly could be sentenced to up to one month hard labour. The following persons were included as rogues and vagabonds: those gathering alms under false pretences of loss by fire;

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251. 4 Wm. 4, c. 73.
252. CO 137/189: Mulgrave to Stanley, 13 December 1833.
253. 4 Wm. 4, c. 36.
254. P.P. Relative to the Abolition of Slavery in the British Colonies, Vol. 41: Mulgrave to Stanley, 13 December 1833.
255. 4 Wm. 4, c. 36.

those wandering in the woods without a home or settling themselves on lands without the owners' permission; those pretending to be dealers in obeah; those pretending to tell fortunes; those who run away and leave their wives or children as public charges; all petty chapmen and pedlars wandering abroad; those wandering abroad and lodging in taverns, negro houses, huts, tents or in waggons and not giving a good account of themselves; those having an indecent exhibition in the streets; those found in any dwelling house, or negro house and shall not be able to give a good account of themselves; those frequenting any harbours or bays with intent to commit any felony; those imposing on any private individual, any false and fraudulent representations, either verbally or in writing, with a view to obtaining money or some other advantage of benefit. Incorrigible rogues were also defined and they included persons who were committed for a second effence under this act. Offenders against this act could be apprehended by any person, without a warrant for that purpose and carried before a justice of the peace. Rogues and vagabonds could be given a sentence of six months' imprisonment and could also be whipped; incorrigible rogues could be sentenced to up to twelve months' imprisonment. A justice of the peace was empowered to issue warrants to enter any house and apprehend any of the persons described as rogues if it was suspected that they were being harboured or concealed there; if such persons could not give "a satisfactory account of themselves" they were to be committed to gaol and treated as rogues and vagabonds.

Halfway through the apprenticeship period, Sligo informed Glenelg that he had heard rumours, which he believed, that the Jamaican Assembly were contemplating laws of extreme severity for the repressing of "Vagabondage."[256] Glenelg assured him that if the Assembly really acted on their intention of establishing

256. CO 137/209: Sligo to Glenelg, 24 February 1836.

compulsory labour under the pretext of laws against vagrancy, he could rely on the British Government's support in resisting such an attempt.[257]

In 1836, the 1833 Vagrancy Law was disallowed. Glenelg gave several reasons for the disallowance of the statute:[258] in reference to the persons who threatened to run away and leave their wives and children chargeable, he remarked that such a threat may be "nothing more in many cases than idle and unmeaning words." Any idle and disorderly persons in the statute being those not having any 'visible means of employment' could, Glenelg said, include "many of the most wealthy and respectable members of society." Petty chapmen and pedlers wandering about were to be regarded as rogues and vagabonds, but their occupation "may be not merely innocent but highly useful in so extensive a country." With reference to certain provisions, he felt it unnecessary to comment on their "laxity", and the provisions for rogues and incorrigible rogues seemed "to be marked by extreme and needless rigour." Summing up, he affirmed that on comparing the Jamaican statute with the corresponding Acts of Parliament, he found many deviations "of which no explanation could be afforded by any real difference in local circumstances." It was therefore his "painful but indispensable duty" to recommend that the act be disallowed. He proceeded to warn Sligo that in

> "framing any new Act for the same purpose, it will be necessary to use the utmost circumspection, lest the restraints on vagrants should be such as to interfere unnecessarily with the enjoyment by the labouring population, either now or at the expiration of the apprenticeship, of the peaceful enjoyment of the freedom of action intended to be secured to them by Parliament."

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257. CO 138/59: Glenelg to Sligo, 11 April 1836.
258. P.P. Relative to the Abolition of Slavery in the British Colonies, Vol. 42: Glenelg to Sligo, 21 January 1836.

The Jamaican planters do not seem to have regretted the loss of this Act, for it was claimed[259] that the apprentices now came within the scope of the 1791 Vagrancy Law, 32 Geo. 3, c. 11. Even more important to the planters, was the fact that under the 1791 Act, the stipendiary magistrates, whom they loathed, had no jurisdiction — power was vested in the justices of the peace. Sligo was alarmed at the prospect of the ordinary magistrates acquiring such powers over the apprentices. "This law," he said,[260] "is very loosely worded, and was passed at a time when there was no necessity for such caution as is now requisite. It never contemplated any application to those who are now apprentices, but they clearly, at present, come under the provisions of the Act". Glenelg's opinion was that the Act had been enacted in reference to the whites and free coloureds, and although the apprentices could be included by a literal construction of the statute, such a construction would be contrary to the design of the authors. The opinion of the Attorney General of Jamaica should be sought; and should he advise that the apprentices were included, an attempt should be made to get the Assembly to exempt the apprentices from the operation of the statute, since it was "manifestly inapplicable to their condition."[261] The Attorney General felt that the apprentices were not included in the statute but added that the Chief Justice had often pronounced a different opinion from the Bench.[262]

In November 1837, Glenelg sent a circular to Smith inquiring about the state of certain laws in force in the Island. One of the heads of inquiry included the laws pertaining to Vagrancy. Both the

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259. CO 137/211: Sligo to Glenelg, 17 June 1836; See also 137/229: Smith to Glenelg (private, 10 September 1838.
260. Ibid.
261. Ibid. Glenelg to Sligo, 28 November 1836.
262. Ibid. Smith to Glenelg, 4 April 1837, Enclosed Report of the Attorney General.

Chief Justice and Attorney General stated that the relevant Vagrancy Laws were the 1681 and the 1791 Acts. On the basis of this information, Glenelg told Smith in September 1838 that those Acts differed "most essentially in their Cardinal Principles" from the Order in Council in force in British Guiana and Trinidad which dealt with vagrancy. He was therefore to press the Assembly to repeal the existing vagrant laws and adopt new laws "coinciding in general spirit" with the Order in Council. He warned that in the meantime it would be Smith's duty to "watch with utmost vigilance," the execution of the vagrancy statutes in force in the Island. "I cannot," he concluded, "but anticipate from their operation serious abuses and consequent discontents."[263]

During the apprenticeship period attempts were made to get new vagrancy laws on the statute book. None was successful.[264] At emancipation the old laws were still in force and Smith described the planters as being "delighted" with the powers of the old law, and remarked that "much oppression" might ensue.[265] Glenelg replied that it was impossible for the British Government to "acquiesce in the continuance of such Laws in the Statute Book of any Colony," and instructed Smith to apply to the Assembly to get them repealed.[266] With the Assembly refusing to execute its normal legislative functions, nothing was done that session.

In 1839, however, the Assembly did repeal the old Vagrancy laws and pass a new Act -- 'An Act for the Punishment of idle and disorderly Persons, Rogues and Vagabonds, and incorrigible Rogues.'[267]

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263. CO 137/228: Glenelg to Smith, 15 September 1838.
264. See VAJ 1836-37, p. 18; VAJ 1837, p. 228; VAJ 1838, p. 9.
265. CO 137/229: Smith to Glenelg (private), 10 September 1838.
266. CO 138/62: Glenelg to Smith, 10 September 1838.
267. 3 Vic., c. 18.

Metcalfe described this Act as being founded on, and containing most of, the Order in Council of 7 September 1838; he regarded the significant difference between them as being the entrusting of jurisdiction under the Act to the justices of the peace generally, and not exclusively to the stipendiary magistrates. But he strongly supported this alteration on the ground that there was a "sense of propriety and love of justice among the gentlemen of the island generally", so the Act would be equitably administered.[268]

The classification adopted in the 1833 Act was again followed in this statute and punishment was prescribed for idle and disorderly persons, rogues and vagabonds, and incorrigible rogues. An idle and disorderly person included a person who left his wife and children, a prostitute behaving in a riotous manner and a person begging or procuring a child to do so. Rogues and vagabonds included persons convicted twice of being idle and disorderly persons; persons pretending to deal in obeah; persons wandering about and lodging in outhouses; and persons who ran away and left their wife and children burdensome to any individual. Incorrigible rogues included persons escaping from a place of legal confinement and persons who after being arrested as rogues and vagabonds, violently resisted the constable apprehending them. The punishment for idle and disorderly persons was one month, for rogues and vagabonds sixty days, and incorrigible rogues, six months.

Russell differed from Metcalfe and he found some "important deviations" from the Order in Council:[269] the terms of imprisonment were considerably lengthened and the definition of vagrancy was greatly enlarged. Included in his objections were the provisions whereby an act of vagrancy was committed if a man ran away and left his wife and children burdensome to any individual; and where a

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268. P.P. Relating to the West Indies, Vol. 6 Part II: Jamaica Metcalfe to Russell, 12 January 1840.
269. Ibid. Russell to Metcalfe, 25 May 1840.

private individual in the absence of a police officer was authorized to arrest a vagrant. These deviations from the Order in Council all had the tendency to render the Act "more severe and stringent", and in these respects the Act had to be amended. He also had jurisdictional objections to the Act: the execution of this Act and several others passed during the session was confided to the local magistrates. Russell, mindful of the flagrant abuses committed by the judges in the pre-emancipation era, was unwilling to permit a return to that situation. He therefore instructed Metcalfe to prepare a revised list of the local justices with no person "left in the commission, for whom you are not ready to answer, as being worthy of that important office." Russell told him further that the decision as to the fate of the Acts would be suspended for the present, but if later it was found that the powers granted under the Acts were being oppressively exercised towards the labouring population, the Acts would be disallowed.

The 1839 Vagrancy Act was amended in the following year, but not in all the respects which Russell had indicated.[270] It merely repealed Section 2 of the 1839 Act and redefined rogues and vagabonds, omitting the sections which Russell had objected to. This Act was not objected to by the Secretary of State for the Colonies. In 1840 therefore the two statutes governing vagrancy were the 1839 and 1840 Acts.[271]

For many years these laws remained unaltered. But as the post-emancipation years rolled on, social problems were being created, and in 1858, Governor Darling regretted that there were no Industrial Schools in the Island, where "better habits" could be taught to a large portion of the juvenile population. This was felt particularly in Kingston, which "swarmed with vagrant and destitute children or children utterly abandoned or neglected" by their parents,

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270. 4 Vic., c. 42.
271. 3 Vic., c. 18 and 4 Vic., c. 42.

"practicing every species of vice to which idleness combined with the absence of all religious and moral training can possibly give."[272] In 1864, the Assembly attempted, by legislation, a partial redress of that situation and the definition of rogues and vagabonds in the Vagrancy Act, was extended to include persons who abandoned their wives and children and left them burdensome to any public fund and also to any private charity.[273]

We pass on to the 1880's and here we find an interesting development concerning vagrancy: it is the attempt to solve the problem of praedial larceny by stringent vagrancy legislation. When the number of praedial larceny offences increased significantly in 1881[274] vociferous demands were made for two remedies to meet this situation -- a stringent praedial larceny law, and an equally stringent vagrancy law. Musgrave was not in favour of more stringent legislation, and remarked that the class of persons known in other places as vagrants or tramps was not found in Jamaica. "Begging in the streets of highways," he said, "is so rare that it may be said to be almost unknown."[275] Additional vagrancy legislation was also discounted in the Colonial Office, Wingfield firmly pronouncing that a "Vagrant law is the favourite remedy of the planter class - I presume that it will not be countenanced."[276] This advice was followed.

Shortly after, it was again sought to use the Vagrancy laws for another purpose. When construction of the Panama Canal began in 1883, thousands of Jamaican labourers had gone to the Isthmus in search of employment. When work on the Canal was suspended a few years later, most of them lost their jobs and were left destitute on the Isthmus.[277]

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272. CO 137/336: Darling to Labouchere, 11 March 1858.
273. 28 Vic., c. 5.
274. See the Praedial Larceny section of this Chapter.
275. CO 137/500: Musgrave to Kimberley, 21 July 1881.
276. Ibid. Wingfield's Minute.
277. See especially CO 137/532: Norman to Holland, 25 October 1887, Enclosed Report to Dr. Gayleard; CO 137/538: Blake to Knutsford, 8 April 1889

Jamaica faced the prospect of thousands of its citizens returning home destitute, and with no immediate hope of employment in Jamaica. Such a situation created deep forebodings among the Jamaican legislators, who mainly represented the planter class. After a debate, conspicuous for the caustic references by the elected members to the labourers, the Legislative Council passed several resolutions aimed at coping with the 'problem'. One of the first resolutions was that:

> "an increase of local burdens and of crime will inevitably arise from those persons being unprovided with employment and is strongly of opinion therefore that an amended Vagrancy Law should at once be introduced to cope with the evil." 278

Blake sent the Council's resolution to the Island's Attorney General, Henry Hocking, for him to suggest amendments to the vagrancy laws then in force. He examined the vagrancy laws then in force, but replied that he was unable to offer any suggestions as to how the Vagrancy Laws could be improved. And in a most outspoken statement, he informed the Governor that he had reason to know that

> "what some members mean by an improved Vagrancy Act is an Act to compel people at any time to give an account of themselves and to empower Justices to send them to prison if they cannot establish that they are earning an honest livelihood; others think that any man found in possession of produce which he is known not to grow himself should be Bound to give an account of how he came by it. For my own part I cannot recommend any such heroic treatment even of an admitted evil." 279

The legislators were, as usual, attempting to solve social problems by penal legislation, and on this occasion, it appears that it was only the forthright statement by the Attorney General which prevented

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278. CO 137/539: Blake to Knutsford, 1 May 1889, Enclosed Resolutions of the Legislative Council.

279. Minutes of the Legislative Council, Vol. 27, 1888, Appendix K, Hocking's Letter, 20 May 1889.

the legislature from tampering with the Vagrancy Laws.

The attempt, however, to solve the problem of praedial larceny by use of the vagrancy laws still continued. When praedial larceny offences increased about 1896, we find an elected member of the Council asking the Island's Colonial Secretary if it was the Government's intention to introduce "s stringent Law this Session for the suppression of praedial larceny, and to deal with vagrancy at the same time."[280] The Colonial Secretary's reply was that the matter would be dealt with by the Select Committee considering a produce protection bill. No vagrancy law was introduced during that session.

In 1899, when praedial larceny was continuing to cause great agitation in Jamaica, cries arose once more for stringent vagrancy legislation to deal with the problem. According to one newspaper, the present vagrancy laws did not go far enough because they did not "impose on the idler or loafer the onus of showing how he makes a living."[281] Hemming, the Governor, said that such a law was in force in Scotland and if it was found to work well there, it might be desirable to introduce it in Jamaica. Further, if the Secretary of State for the Colonies approved of such a law, he could furnish him with a copy of it, and also copies of enactments for the suppression of vagrancy, which may have proved effectual in other colonies.[282] Chamberlain did not send the Scots Act, "which was passed as long ago as the year 1579," and which was still in force as amended by a 19th century statute. He added that it would be difficult to obtain copies of the 1579 Act and he hardly thought it would be of any use to Jamaica. However, he sent him vagrancy legislation of several colonies and requested that a draft copy of any vagrancy legislation

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280. Minutes of the Legislative Council Vol. 36, 1896, p. 82.
281. CO 137/604: Hemming to Chamberlain, 21 October 1899.
282. Ibid.

should be submitted to him prior to enactment.[283] In August 1901, Hemming sent a draft Vagrancy Bill to Chamberlain, who approved it. This draft, which eventually became Law 12 of 1902, is, with minor amendments, the current Vagrancy Law of Jamaica.[284]

Law 12 of 1902 repealed the 1839 and 1840 Acts although it said nothing of the 1864 statute amending the 1839 and 1840 Acts. Under this Law, four sets of persons were described and punished: vagrants, idle and disorderly persons, rogues and vagabonds and incorrigible rogues and vagabonds. Generally, this Law followed a similar pattern to the acts which it repealed. A vagrant was described as a person who had no visible lawful means of subsistence, and who, being able to work, habitually abstained from working. A person convicted as a vagrant could receive a maximum of two months' imprisonment, and if convicted as a vagrant within twelve months of a previous conviction, either as a vagrant or for any other offence under this Law, could be imprisoned for a maximum of six months. Idle and disorderly persons included any person found wandering abroad or placing himself in a public place to beg or causing any child to do so; every common prostitute found wandering in any public place and behaving in a riotous or indecent manner; any person "pretending to deal in obeah, myalism, duppy catching or witchcraft," and every person pretending or professing "to tell fortunes;" or using or pretending to use any subtle craft or device by palmistry or any such like superstitious means to deceive or impose on any person; any person found wandering abroad and lodging in any piazza, shed or unoccupied building, or any sugar works or thrash house, and not having any visible means of subsistence; any person wilfully exposing to view in a public place any obscene book, or wilfully exposing his person in

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283. Ibid. Chamberlain to Hemming (confidential), 23 January 1800. Legislation was sent from Ceylon, the Cape, Natal, Mauritius, Victoria, New South Wales, New Zealand, British Guiana.

284. Laws of Jamaica (Rev. Ed. 1953), Cap. 404.

any public place; any person deserting his wife and children so that they become a charge on the public. Idle and disorderly persons, could on conviction be sentenced to up to two months' imprisonment, and if convicted for any offence under this Law within twelve months could receive up to nine months' imprisonment. Included as rogues and vagabonds were any person possessing any pick-lock, key or housebreaking implement with the felonious intent of breaking into any house or shop; any person armed with gun, sword, cutlass or other offensive weapon to commit any criminal act; any person found by night without any lawful excuse in any dwelling house in an enclosed area; any suspected person, or reputed thief frequenting any wharf or warehouse, with intent to commit a felony; any person apprehended as an idle and disorderly person; and who violently resisted any constable so apprehending him. A convicted rogue and vagabond could receive a maximum of twelve months' imprisonment. An incorrigible rogue was: any person who escaped from his place of legal confinement before his term expired; any person committing any offence against this Law which would subject him to be dealt with as a rogue and vagabond, such person having been previously convicted within twelve months as a rogue and vagabond; any person apprehended as a rogue and vagabond and violently resisting his apprehension. Incorrigible rogues could receive two years' imprisonment. Provisions were made for the apprehension and trial of offenders under this Law.

But this 1902 Vagrancy Law was not without criticism. The Artizans' Union petitioned for its disallowance, on grounds of the poverty of "the labouring classes." And Rev. J. Macnee, the elected Council member for Hanover, strongly protested against the Law:[286]

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285. CO 137/628: Hemming to Chamberlain, 7 June 1902, Enclosed Memorial from the Artizans' Union.

286. CO 137/628: Hemming to Chamberlain, 6 June 1902, Enclosed Protest by Rev. J. Macnee.

> "As there is great scarcity of work throughout the country at present, the time is, in my opinion, most inopportune for passing such a drastic measure as the bill protested against.
>
> As the offence legislated against is that of habitually abstaining from working at any trade, profession or calling, the bill assumes that work can be found by all who wish it. It is well known to those acquainted with the present condition of the country that many persons who would work are unable to find employment. The definition of a Vagrant given in the bill does not, in my judgment, sufficiently protect this class."

Hemming, on the other hand, vigorously supported the legislation.[287] He stated that the "need for a stringent Vagrancy Law" had been impressed upon the Government for some time. His belief was that the law would "prove to be a great benefit to the whole Island and particularly to the parish of Kingston if wisely administered." In the Colonial Office[288] doubts were expressed as to the administration of the law and here we find another example of the intimate relationship between the content of a law and its administration. Cox, whose Minute formed the basis for the despatch to the Governor, felt that if the law was justly and reasonably administered, there was no objection to it, but he thought great caution should be impressed on the Governor and those who have to administer the law. In England the law would cause no trouble, but in Jamaica "vindictive sentences by the magistrates who are too fond of giving them might cause great injustice and trouble." He wished he had more confidence in the administration of the law and suggested that they should have reports on its operation. Hemming was told that the Law would not be disallowed but that he should furnish a report on its working after a year. He should also issue a circular to the Resident Magistrates

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287. CO 137/628: Hemming to Chamberlain, 7 June 1902.
288. Ibid. Hemming to Chamberlain, 6 June 1902. Minutes.

pointing out to them, the "necessity of administering the law with care."[289]

After a year, Hemming sent his report on the Law, enclosing at the same time, reports by the Resident Magistrate for Kingston and the Inspector General of Police on the Law,[290] The Resident Magistrate for Kingston felt that the statute was based on "principles which are incontestably sound," and the statute itself had proved most beneficial and effective in its operation; it was a most useful instrument in the hands of the police by facilitating their work in preserving peace, and "the outward decency and good order of the city" and enabling them to deal "promptly and more effectively with persons belonging to that dangerous class who infest our streets and wander abroad at night." The Inspector General of Police described the law as being "very satisfactory," by enabling the police to decrease begging and clearing the streets of loafers at night. Armed with these opinions, the Governor reported that the Law was serving a "useful purpose and that its provisions should be retained on the Statute Book of the Colony."[291]

In the Colonial Office it was remembered that the statute had been enacted to suppress praedial larceny offences, but nothing had been mentioned about that in the reports on the law. Hemming was therefore asked if the Law appeared to have had any effect on the number of praedial larceny offences.[292] In his reply, Hemming submitted the Inspector General of Police's opinion, that the Law had had no effect on the number of praedial larceny cases; it was more applicable to the towns than the rural areas, and praedial larceny was practically confined to the latter places.[293] Thus we

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289. Ibid. Chamberlain to Hemming, 4 July 1902.
290. CO 137/637: Hemming to Lyttelton, 24 December 1903, Enclosed Reports of the Resident Magistrates and the Inspector General of Police.
291. Ibid.
292. Ibid. Lyttelton to Hemming, 14 January 1904.
293. CO 137/639: Hemming to Lyttelton, 29 February 1904.

get the somewhat bizarre situation where the 1902 Vagrancy Law, enacted after strong demands, in an attempt to solve the praedial larceny problem, fails in its objective, but is immediately and enthusiastically welcomed and employed for much different and diverse purposes.

After the 1902 Vagrancy Law was in force for a year, the criminal statistics provide a useful guide as to its operation.[294] From August 1902 to November 1903, there were in Kingston 102 prosecutions under the statute: of the 102 prosecutions, 59 were for wandering abroad and lodging on piazzas and outbuildings. These figures tend to indicate unsatisfactory housing conditions in and around Kingston. In 1938, the Royal Commission inquiring into the disturbances, could hardly use stronger language to describe the atrocious housing conditions which they found in the Island, particularly around Kingston.[295] With some of these conditions in existence in 1902, the Vagrancy Law was being used to deal with the consequences of them -- the legislators having failed to deal with the conditions themselves.

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294. CO 137/637: Hemming to Lyttelton, 24 December 1903, Enclosed Report of Resident Magistrate Vickers.

295. See The West India Royal Commission Report, P.P. 1944-45 (Cmd. 6607) VI, p. 175: "In part of Smith's Village, on the outskirts of Kingston in Jamaica, we found large areas covered by ruinous shacks none of which could have escaped instant condemnation in this country even under standards long since abandoned. The conditions of squalor almost beyond imagination are accentuated by appalling overcrowding. Whole families - father, mother, and numerous children - have their meals and sleep in one small room; such is the pressure of poverty that when a second room is available, it will often be sub-let for the sake of the few shillings which are thus to be obtained each month."

In fact, throughout the history of this legislation which we have traced, it has always been used in an attempt to solve social problems of the society. This was true in 1681, when a statute was enacted to deal with labourers, and also true in the cautious years immediately after the abolition of slavery. In 1902, it was eagerly welcomed by the police who in some instances, prefer methods which enable them to deal with whom they regard as potential criminals. But these 'potential' criminals may merely be casualties of the social and economic system. The figures on the 1902 Act combined with the Report of the Royal Commission furnish strong evidence to support this view. If this view is correct, the Vagrancy legislation of Jamaica regrettably appears to have been another weapon in the attempt to solve social problems by the criminal law.

CHAPTER 10

Codification of the Criminal Law

Jamaica, like many other countries, attempted to have its criminal laws codified during the 19th century. After much trouble and expense a Criminal Code was prepared for Jamaica. It was passed by the Legislative Council of Jamaica but it never came into operation. In this Chapter it is intended to trace the genesis of the Code, its preparation, and the reasons why it did not become operative. This will, we hope, throw much light on one of the most important innovations in Jamaica's criminal jurisprudence.

On the 5th February 1870, the Governor of Jamaica, Sir John Peter Grant, complained yet again to Secretary of State Granville about the prevalence of praedial larceny in the Island.[1] In an effort to find a solution to "this evil" as he described it, he informed Granville that he was about to introduce into the Jamaica Council a bill similar to the 1869 English Habitual Criminals Act.[2] When this despatch reached Sir Henry Taylor, who had been at the Colonial Office since 1824, he reacted swiftly. To his amazement he saw that Jamaica was about to use as model the 1869 English Act which was open to several objections, and an Act which he himself had strongly criticized. In a verbose fourteen-page Minute Taylor, scarcely disguising his anger and frustration, gave vent to his feelings. He described the history of the 1869 Act and commented that none of the amendments he had proposed to the Act seemed likely to be included in the bill which Lord Kimberley had recently introduced in Parliament.[3] In reference

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1. CO 137/447: Grant to Granville, 5 February 1870. See also Chap.9, supra.
2. 32 and 33 Vic., c. 99.
3. CO 137/447: Grant to Granville, 5 February 1870. Taylor's Minute, 29 March 1870.

to the amendments he observed: "But to some which I regarded as the most essential of all, his (Kimberley's) objection was, not that they were not desirable, but that they wd. not pass." And he expanded his views:

> "There is a peculiarly English difficulty in the way. This legislation, like the rest of our penal legislation, is a sort of subject on which every imperfectly instructed person considers himself competent to form off hand opinions. At the same time it is a subject on which the most highly instructed persons have bestowed the labour of years, witness the 8 reports of the Criminal Law Commrs. issued between the years 1834 & 1845 - the reports of the Indian Criminal Law Commission & Ld. Macaulay's Code."

And continuing, he left his colleagues in no doubt that he was referring to something much more comprehensive than the mere amendment of the Habitual Criminals Act:

> "Now these English difficulties do not exist in Jamaica. There we are free to walk by authority & by the light of our great Luminaries unperplexed by those opaque bodies which come between us & the light in England. I see no reason therefore why Jamaica should be servile to an English model. I see no reason, indeed, unless it be for want of able & effective workmanship, why Jamaica shd. not present England with a model instead of adopting one from her.
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> The question is then whether the want of able & effective workmanship can be supplied. I do not mean for the construction of a model Habitual Criminals Act only, but for the construction of that first perhaps, & eventually of a Model Penal Code. This wd. be no doubt a work of great magnitude & labour, not the less perhaps, but the more, from the abundance of the materials existing to go to work upon."

Henry Taylor had thus sown the first seed for the construction of a penal code for Jamaica.

Opinion in the Colonial Office though divided was on the whole favourable to Taylor's proposal. Holland was "less sanguine as to the future of the proposed Criminal Code" and expressed a preference for

the English laws as they then stood.[4] But Rogers agreed with Taylor "from beginning to end"[5] and Granville authorized Taylor to make enquiries concerning a lawyer to construct the proposed Penal Code.[6] Grant was accordingly informed of the construction of the proposed Penal Code for Jamaica, "based upon that of England,[7] but not conforming to it in those particulars in which it may be found capable of improvement."[8] Later, he was told[8] that a Code of criminal procedure would also be prepared and it would accompany the Penal Code.[10] And Secretary of State Kimberley made it clear that these Codes were not constructed solely for Jamaica's use: "It is intended that the Codes should be afterwards adapted to the circes of the rest of the Crown Colonies and of other Colonies if required."[11] After an initial period of uncertainty as to who should be the author of the Code, the task of constructing it was entrusted to Robert S. Wright, "a jurist of acknowledged learning and ability."[12]

In January 1874, Wright submitted a draft of the Penal Code to the Colonial Office and it was decided to send the draft to Fitzjames Stephen for revision, as "no one would revise it better or more

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4. Ibid. Holland's Minute, 21 March 1870.
5. Ibid. Rogers' Minute (undated).
6. Ibid. Granville's Minute, 5 April 1870.
7. Since England had no Penal Code, this reference is presumably to the English Criminal Laws.
8. CO 138/81: Rogers to Grant, 25 April 1870.
9. CO 138/81: Kimberley to Grant, 1 March 1871.
10. Hereafter in this Chapter, "Code" or "Penal Code" means the Criminal Code; the "Procedure Code" means the Code of Criminal Procedure; "Codes" mean the Penal Code and the Code of Criminal Procedure.
11. CO 138/81: Kimberley to Grant, 1 March 1871. In one of his Minutes Holland also advised that "if this work is to be done it had better be well done so as to form a precedent for other colonies." CO 137/478 (Wright) Holland to Taylor, 16 January 1874.
12. CO 137/488: Hicks-Beach to Musgrave, 29 April 1878. Mr. Robert S. Wright who later became Sir Robert S. Wright, was called to the Bar in 1865. After an apparently successful career at the Bar, he was in 1883 appointed junior counsel to the Treasury. In 1890 he was appointed a Judge. He was author of Law of Conspiracies and Agreements and Outline of Local Government and Taxation in England.

efficiently."[13] Stephen and Wright disagreed on certain points, but eventually a revised draft Code was decided on. In 1875, the job of constructing the proposed Code of criminal procedure was also given to Robert S. Wright.

This Penal Code was not a radical document in the sense of making startling changes in the content of the existing criminal law. That had not been the intention. Some indication of the compass of the Code is given by the Colonial Office, when Stephen was asked to revise it: the design of the draft "is to reproduce by reconstruction from the materials" of the statutes and cases "the entire substance of English Criminal Law" in respect of all offences except mere police offences and some crimes triable by the superior courts under the common and statute law relating to treason and piracy, or under some imperial or colonial statutes of a "special character." [14] There were however a few provisions which were "designed to introduce improvements" in the existing law.[15] Stephen and Wright were unable to agree on some of these provisions which included the punishment of attempts, the scope of unnatural offences, the definition of provocation, and the extent of the offence of spreading disease.

The Code was divided into two sections: Part I - General Provisions; Part II - Particular Crimes. Under 'General Provisions' the Code specifically stated its relationship to other laws particularly the common law. Section 5 provided that after the commencement of the Code no person shall, except as the following section specified, be liable to punishment "by the common law or in any manner otherwise than according to the provisions of this Code" for any act done within the jurisdiction

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13. CO 137/478: (Wright) Holland to Taylor, 16 January 1874.
14. Ibid. (Wright) Herbert to Stephen, 19 January 1874.
15. Ibid.

of the courts.[16] The exceptions related to treason and piracy; offences against statutes other than the Code; the power of a court to punish for contempt of court; regulations pertaining to Her Majesty's naval or military forces. Also provided under Part I were explanations of certain general expressions including intent, negligence, and a claim of right; general rules for punishment of offences; rules relating to aiders and abetters; rules relating to exemption from criminal liability, and under this heading provision was made for infancy, insanity, intoxication and mistake.

Part II specified the particular crimes which were punishable under the Code. These crimes were divided into four categories — Crimes Against the Person, Crimes Against Reputation, Crimes Against Rights of Property, Crimes Against Public Order. Crimes Against the Person included criminal force to the person such as assault, rape, kidnapping, child stealing, and abduction; criminal harm to the person such as wounding, grievous harm, and administering noxious matter; criminal homicide which included murder, manslaughter and abortion. The main Crime Against Reputation was libel, and this was explained in detail. Crimes Against Rights of Property included criminal mischief to property such as arson and damage to buildings; criminal misappropriations such as stealing, robbery and falsification of accounts; burglary and housebreaking; forgery and counterfeiting. Crimes Against Public Order included crimes against the safety of the state such as seditious libel and unlawful oaths; crimes against the public peace such as riot and written threats; perjury and destruction of official documents; crimes relating to public offices such as corruption and bribery of officers; bigamy and unlawful marriage, and public nuisances.

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16. Although the common law was now to be excluded, the common law definition of many crimes had been incorporated in the Code. See also Wright's Memorandum on the Criminal Code: P.P. 1877, [illegible] (C. 1893) LXI

The draft Penal Code was sent to both the Chief Justice and Attorney General of Jamaica, and their comments on it solicited.[17] In the meantime the Procedure Code, based on the Indian Criminal Procedure Code was completed. It was not sent to Stephen for revision and it does not appear that comments on it were solicited in Jamaica. The draft Penal Code was further examined in England, after which both Codes were presented to Parliament in August 1877.[18] Finally in April 1878, the Codes were sent out to Jamaica to be enacted into law.

The Governor of Jamaica was instructed that the Codes should be enacted into law "without any material alterations, viewing them as a whole of which the several parts are so connected and harmonized" that the "remodelling of any part of them by hands other than those which originally constructed them is strongly to be deprecated."[19] Musgrave replied that unless the Codes "were to be passed mechanically by the Council, to which strong objections may be made," some of the voluminous discussion alluded to could be useful in justifying the introduction of the Codes. He further suggested that "some latitude should be allowed in dealing with these measures in order to apply local knowledge and experience". Otherwise the "Attorney General agrees with me in thinking that there will be some little strain in fitting them into our system."[20]

About this period, 1878, Stephen's Draft Penal Code for England was introduced into Parliament by the then Attorney General. Parliament did not have time to deal with it and it was referred to a

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17. See CO 137/479: Grey to Carnarvon (Confidential), 9 September 1875.
18. P.P. 1877 (C. 1893) LXI.
19. CO 137/488: Hicks-Beach to Musgrave, 29 April 1878.
20. CO 137/487: Musgrave to Hicks-Beach, 9 October 1878. This despatch was apparently not replied to.

four-man commission to report on.[21] Because of this, the Colonial Office was in less haste to push through the Jamaica Code Bills, Henry Taylor for example stating that "delay is less to be deprecated now in as much as the views of the Commission of Sir Fitzjames Stephen's bill when made known may have some bearing on Mr. Wright's Code."[22]

In Jamaica, the Governor had introduced the Criminal Code and the Criminal Procedure Code Bills into the Legislative Council. To his surprise, he encountered very little opposition to the measures and in a short while they were almost through the committee stage. Up to now, he had not received a reply to his despatch of October 9[23] and he telegraphed for instructions.[24] Hicks-Beach replied that if the Codes had not yet been passed, he was to proceed no further with them, during that session.[25] He gave three reasons for advocating a postponement of the Codes. Firstly, Stephen's Bill having been referred to a Royal Commission, it was desirable that "before the Jamaica Codes became law, there should be an opportunity of reconsidering them by the light which the Report of the Commission may be expected to throw upon the subject." Secondly, the progress of the Codes through the Council had been so rapid that many may have "considered themselves precluded from proposing amendments even on points of detail as to which local knowledge and experience might suggest useful or even necessary modifications." Thirdly, before the Codes assumed a "final shape", he wished to give further considerations to the suggestions of the Attorney General of Jamaica.[26] And refusing Musgrave's request to be furnished with some of the preliminary discussions on the Code, Hicks-Beach stated that to comply with such a request "would have tended

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21. See James Fitzjames Stephen, A History of the Criminal Law of England Vol. 1, Preface.
22. CO 137/487: Musgrave to Hicks-Beach, 9 October 1878. Taylor's Minute, 6 November 1878. But see CO 137/479: Grey to Carnarvon (Confidential), 9 September 1875. Taylor's Minute, 13 October 1875.
23. Note 20, supra.
24. CO 137/489: Musgrave to Secretary of State (telegram) 20 January 1879.
25. Ibid. Hicks-Beach to Musgrave (telegram) 24 January 1879.
26. Ibid. Hicks-Beach to Musgrave, 29 January 1879.

to re-open questions of principle upon which it is desirable that the well considered decisions of Lord Carnarvon should be accepted."[27] Musgrave replied that he would regret to postpone the adoption of the Codes for another year "after all the labor which has been bestowed upon them and the favorable manner in which they have been received by the Legislative Council."[28] In a later despatch, Musgrave explained that his remarks in his October 9 despatch referred to the Criminal Procedure Code and again pressed for permission to pass the Codes: "...the principles of the measures have been accepted: and such discussion and objections as they were likely to excite have been already met." The Council had received and dealt with the measures "in a most excellent spirit." He assured Hicks-Beach that there would be "no difficulty in passing them now as part of the great scheme of Judicial re-arrangement," but advised that he would not undertake "to promise that no change of feeling might take place in the course of a year." He pleaded that as "a safe and a middle course" he was to be given permission to "complete the passage of the Criminal Code with the very few modifications which we think necessary and with the addition of a suspending clause."[29] Musgrave was subsequently authorized to pass the Codes with a suspending clause, but he was instructed not to publish them. The Codes were not however passed by the end of that session.

Early in the following session the Legislative Council passed the Criminal Code and the Criminal Procedure Code Bills -- both with suspending clauses. The Attorney General of Jamaica reported that the Criminal Code was enacted "almost precisely in the form in which it was submitted to the Legislative Council."[30] The main alterations

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27. Ibid.
28. CO 137/489: Musgrave to Hicks-Beach, 24 January 1879.
29. CO 137/489: Musgrave to Hicks-Beach, 27 February 1879.
30. CO 137/491: Newton to Hicks-Beach, Enclosed Report of the Attorney General.

related to the definition of jury, the withdrawal of certain powers from the courts of summary jurisdiction and an extended definition of cultivated trees. A Colonial Office official found that the terminology of the Criminal Code "had been varied in a great number of clauses."[31] Caution pervaded the Colonial Office: "If we are thoroughly satisfied that the Code, after further revision by Mr. Wright, contains no startling novelties for which this Dept will be likely to be called to account,"[32] then the Code could be brought into operation without waiting for the English Criminal Code. The Codes were sent to Wright for examination and he reported that the alterations in the Criminal Code were not numerous and were for the most part "introduced for the purpose of better adapting the Code to the local requirements of the Colony." He recommended that the Criminal Code "be allowed in its present form."[33] He felt that the alterations in the Procedure Code were more important, but subject to certain observations, the Law could be allowed.

But caution still prevailed in the Colonial Office and opinion there was divided as to whether the Codes should be now brought into operation or whether they should still await the outcome of the debate in Parliament on the English Code. During the debates in Parliament "points may be raised with respect to which it may be found desirable to reconsider parts of this legislation." And as there are "many novelties in these Laws for which the public are no doubt imperfectly prepared, it may perhaps be well on the whole to lay a further paper before Parliament containing the Codes & Laws as passed."[34] Hicks-Beach's opinion was conclusive: "I think the 'waiting policy' is the safest. We shall not lose many months."[35] He then proceeded to inform the Governor that he

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31. Ibid. Wingfield's Minute, 2 December 1879.
32. Ibid. Herbert's Minute, 10 December 1879.
33. CO 137/498: Wright to Under Secretary of State, Colonial Office, 8 January 1880.
34. Ibid. Herbert's Minute, 14 January 1880.
35. Ibid. Hicks-Beach's Minute, 19 January 1880.

had delayed recommending the confirmation of the Codes until he had had "the advantage of considering any discussions bearing upon their provisions which may arise in Parliament," when the English Criminal Code was being debated.[36]

For over a year decision on the Jamaican Codes remained suspended and no notice seems to have been taken of them. Almost accidentally it was discovered in June 1881, that neither Code had yet been confirmed.[37] After a perusal of the Criminal Code, Kimberley the new Secretary of State questioned its flogging provisions: "But the more I have thought over the Extensions of flogging, the more objections do I feel to them generally."[38] And he was unequivocal: "I am therefore not prepared to sanction the Jamaica Code as it stands."[39] He requested a list to be made of the new offences for which flogging was permitted in the Criminal Code. Following the receipt of this list, Kimberley informed Musgrave of his objections to the Codes and instructed him to introduce amending legislation to reduce the number of offences for which flogging was authorised by the Codes.[40] After these amendments had been effected, Kimberley thought that the Codes could be brought into operation.

Early in 1882, Acts amending both Codes were passed by the Legislative Council. The Chief Justice, Lucie-Smith, and the Attorney General, Hocking, now levelled additional criticisms at the Codes especially the Procedure Code. The Attorney General's criticisms were of a general nature, and were directed mainly at the principle of enacting a Procedure Code.[41] Some of Hocking's substantive objections were

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36. Ibid. Hicks-Beach to the O.A.G. of Jamaica, 6 February 1880.
37. CO 137/502: (Colonial Office) Wingfield to Herbert, 21 June 1881 and Minutes.
38. Ibid. Kimberley's Minute, 29 June 1881.
39. Ibid.
40. CO 137/502: Kimberley to Musgrave, 30 July 1881.
41. When the Chief Justice was in England the previous year, he had not expressed any dissatisfaction with the Codes: See also CO 137/504: Musgrave to Kimberley, 4 March 1882. Wingfield's Minute, 12 May 1882. Hocking was not in the Island when the Codes were originally enacted.

directed at the provisions for appeal in summary conviction cases; the distinction as to the mode of recovery of fines below and above £10; and the provision which required a prisoner to be asked whether he objected to each juror. Many of his criticisms could be regarded as minor; a few were important and could usefully supplement the Procedure Code. But his criticisms of the Procedure Code were much wider than his substantive objections. Having examined the Codes "more critically and carefully" he confessed his inability to see the necessity for the Procedure Code:[42]

> "Criminal Procedure as embodied in a variety of acts, is well understood, is free from necessary technicality and works well in practice. Why then disturb foundations and sweep away all preexisting laws in order to introduce this new measure. The Criminal Code Bill stands on a very different footing. It aims at a new and more precise definition and classification of criminal Offences and at bringing the doctrines of Criminal Law more into Harmony with modern ideas."

He felt that were the Procedure Code brought into operation as it stood, "a complete breakdown of the Criminal Procedure would be the result." He however described the Criminal Code as "a very valuable measure" and suggested that the Criminal Code be brought into operation without the Procedure Code. Reporting these views to Kimberley, Musgrave understandably commented that it appeared very strange that "after a lapse of more than four years since these Codes were submitted to the consideration and criticism of the Judges and of the legal profession that it is only at this late period that these objections should be urged."[43]

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42. CO 137/504: Musgrave to Kimberley, 4 March 1882, Enclosed letter from Attorney General Hocking.
43. CO 137/504: Musgrave to Kimberley, 4 March 1882. A protest against the Codes by a member of the Legislative Council was also enclosed in this despatch. In a later despatch, Musgrave enclosed the resolutions passed at a public meeting in Spanish Town in protest against the Codes. This meeting described the Codes as "complex specimens of Legislation, incomprehensible to the great bulk of Your Majesty's subjects, in this Colony, unnecessary, mischievous in their tendency, and designed to curtail that protection which the existing Criminal Law has wisely, and mercifully, provided for the benefit of the accused." See CO 137/504 Musgrave to Kimberley, 28 March 1882.

The 1879 Codes, together with the amending legislation of 1882 and the criticisms of the Attorney General and Chief Justice were sent to Wright, for his comment. He was particularly requested to inform the Secretary of State whether the suggested amendments were necessary or expedient and whether the Criminal Code could be brought into operation without the Procedure Code.[44] Wright though agreeing with some of the Chief Justice's and Attorney General's criticisms replied inter alia, that they were for the most part minor and unimportant additions to the Code. "Even assuming all these observations to be well founded", he wrote "they do not furnish any sufficient reason why the Codes should not be brought into operation."[45] He further stated that the relationship between the two Codes was such that it would be unsafe to bring one Code into operation without the other. On hearing Wright's opinion, it was decided that the Governor should be directed to enact further amending legislation before the Codes could be finally brought into operation.[46] It was now towards the end of 1882 -- three years after the Codes had been first passed.

In the meantime there had been three important developments, all having important consequences to the Jamaican Codes. Probably the most important concerned the English Penal Code. The four-man commission sitting on the draft Penal Code, had presented its report to Parliament in 1879, but it was too late for Parliament to consider the Report that session. In 1880 there was a change of Government and the Code was not introduced. Two years later the part of the Code relating to Procedure was announced in the Queen's Speech as a Government measure, but no time was found for it during that session.[47] The Government

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44. CO 137/504: Wingfield to Wright, 10 July 1882.
45. CO 137/507: Wright to the Under Secretary of State, 19 October 1882. Wright felt that none of Hocking's suggestions was of "capital importance" and few were "of even second-rate importance." Ibid. Enclosed comments on Hocking's proposals.
46. Ibid. Wingfield's Minute, 4 November 1882, and Kimberley's Minute, 6 November 1882.
47. See Stephen, op.cit., Vol. 1, Preface. Because of the inconclusive nature of the proceedings concerning the English Penal Code, a comparason of that Code and the Jamaica Penal Code will not be made. For the English Code see: P.P. 1878-9 Vol.XX; P.P.1878-9 Vol.LIX, 225, 235.

never returned to it and that appears to have been the end at attempted codification of the criminal law in England during the 19th century. Secondly, a Royal Commission had been appointed to investigate the Judicial system in Jamaica. It had not yet reported. Thirdly, a constitutional crisis caused by the resignation of the nominated members of the Council, had arisen and this was affecting the smooth running of the legislative machinery.

While on leave in England in June 1883, Attorney General Hocking had submitted a draft Criminal Procedure Bill to the Colonial Office.[48] This Bill was eventually intended to replace the 1879 Procedure Code, a measure to which he was strenuously opposed. Wingfield agreed with Hocking that the 1879 Procedure Code should be repealed and a new Code embodying the suggested amendments, enacted. This seems to have been the view of the Colonial Office. The Officer Administering the Government of Jamaica was therefore informed that in "view of the contingency of alterations in the system of District Courts" which might entail "material modification to the Criminal Procedure Code, and also having regard to the inexpediency of legislation on so important a matter by the Legislative Council" as at present constituted, Hocking's draft Criminal Procedure Bill should not be proceeded with for the time being.[49] For yet another time, the Codes were being postponed.

When the constitutional crisis passed and the Legislative Council was once more performing normal legislative functions, Secretary of State Derby instructed the Governor of Jamaica in June 1885 to introduce the amended Criminal Procedure Code Bill during the next session. But up to the time the session started, another commission which had been appointed to examine the Judicial system had not yet reported. The introduction of the Procedure Code had to be deferred again.[50]

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48. CO 137/512: Hocking to Derby, 12 June 1883.
49. Ibid. Derby to the O.A.G. of Jamaica, 12 September 1883.
50. CO 137/522: Norman to Stanley, 4 August 1885.

In November 1885 Attorney General Hocking submitted a memorandum on the Codes reiterating his views that the Criminal Code could be brought into operation without the Procedure Code. He still maintained that he saw "no special necessity for the latter."[51] Replying in January 1886, the Secretary of State rejected the suggestion that the Criminal Code should be brought into operation without waiting for the enactment of the amended Procedure Code and expressed the wish that the amended Procedure Code Bill should be introduced in the autumn session of the Council. When the autumn session was about to begin Norman informed Stanhope that, in the absence from the Island of Attorney General Hocking "who is intimately conversant with the matter" he did not propose to introduce the draft in the Council. "I have reason to believe that some opposition to the measure would be offered by two unofficial members who happen to be of the legal profession" and it would therefore "seem desirable that the carriage of the Bill through Council should be reserved for Mr. Hocking who has been so much engaged in its preparation."[52] Stanhope approved Norman's course of action.

While in England on another occasion, Hocking had had consultations with Wingfield, the Assistant Under Secretary of State in the Colonial Office, on the proposed Criminal Procedure Code. Following these discussions, the Governor of Jamaica was instructed to get the Criminal Procedure Bill and the Bill establishing the new Resident Magistrate Courts passed, if possible, at the same time. He was also to attempt to have the provisions relating to criminal procedure in the Resident Magistrate Courts embodied in the Criminal Procedure Bill.[53]

At the beginning of 1888 Norman informed Holland that the Resident Magistrate's Bill had been enacted into law. He had however

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51. CO 137/523: Norman to Stanley, 24 November 1885, Hocking's Memorandum enclosed.
52. CO 137/527: Norman to Stanhope, 3 September 1886.
53. CO 137/528: Stanhope to Norman, 11 January 1886.

refrained from introducing the Procedure Code Bill in the Council, because any attempt to do so "would have resulted in failure." He stated that the Attorney General had informed him, inter alia, that the Codes were disliked and if the Criminal Code was now brought into operation -- nine years after it was first enacted -- its unpopularity would be greatly intensified. The Attorney General had further advised that both Codes should be repealed. Norman confessed that it was "difficult to assign any intelligent reason" for the dislike of the Codes, but he recommended repeal of the Codes.[54]

Surprised at this turn of events, Secretary of State Knutsford directed Norman to reconsider the matter. He suggested that it may be better to amend the Procedure Code to adapt it to the changes introduced by the new Resident Magistrates Law and then place the responsibility of rejecting it on the Legislative Council. Asfar as the Criminal Code was concerned, he was not recommending its repeal. The objections to some of its provisions had been removed and he was not aware "that there is any general disapproval of the measure." In conclusion, he declared that as the Code "is one of great importance," efforts should be made to ascertain "the exact nature of the existing objections," and that amendments should be made to meet them.[55] Norman replied that before the next session of the Council began, he would publish the amended Procedure Code Bill and invite criticisms to both the Bill and the Criminal Code. Following this, he would then introduce the Procedure Code Bill in the Council, and if the Bill passed, he would bring both the Criminal Code and the Procedure Code into operation.[56]

The Procedure Code was introduced into the Legislative Council in October 1888. By November, in one of the most important despatches

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54. CO 137/534: Norman to Holland, 14 January 1888.
55. CO 137/534: Knutsford to Norman, 22 February 1888.
56. CO 137/535: Norman to Knutsford, 11 April 1888. In his Minute on this despatch, Wingfield hoped that "within 10 years from the time of its enactment the Criminal Code will be brought into operation." Ibid. Wright's Minute, 30 April 1888.

from Jamaica, Norman informed Knutsford that he had been obliged "to abandon the endeavour to pass the bill through the Council."[57] Norman related how he had at the opening of the Session, intimated that the Government proposed to introduce the Procedure Code Bill. And he continued:[58]

> "It became apparent, however, that the Bill would not pass. It was condemned by almost the whole Press, and the large majority of persons in the Island who take an interest in public affairs were resolutely opposed to it. This was not altogether unexpected, and I had already...explained the intense dislike to both Codes that was felt. I had trusted that time and the explanatory note of the Attorney General might have removed or mitigated that dislike, but this hope has been entirely disappointed, and there is no doubt that the dislike to the Codes on the part of the legal profession the press and the public, generally, continues unabated."

A later section contained the kernel of the despatch:

> "I think in the face of these opinions, and especially of those of the Judges of the Supreme Court, and with the certainty of a solid vote against the Bill from the whole of the elected members, it would be very inexpedient to proceed with the Bill, and I have therefore decided to drop it. The political disturbances that would be created by pressing it forward would produce injurious results that would hardly be compensated by any convenience that might arise from passing the code."

In conclusion Norman requested permission to repeal the Codes and the supplementary legislation.[59]

Disappointment descended on the Colonial Office on the receipt of this despatch. Wingfield, the Assistant Under Secretary of State, had been one of the main promoters of the Codes and his Minute seems to have summed up the feeling of the Office. He stated that Norman had had no option but to withdraw the Procedure Code, "in the face of hostile Criticisms" and continued:[60]

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57. CO 137/536: Norman to Knutsford, 1 November 1888.
58. Ibid.
59. Ibid.
60. Ibid. Wingfield's Minute, 5 December 1888.

> "It is to be regretted that as far as Jamaica is concerned the labour and expense incurred in the preparation of these Codes has been thrown away. The Criminal Code has been enacted in B. Honduras and St. Lucia and we may hope that some other W. Indian Colonies will adopt it. Jamaica must wait until the Criminal law of England is codified."

In his reply, Knutsford, though regretting that "local feeling is so strongly opposed" to the Codes approved Norman's action in withdrawing the Procedure Bill from the Council. He felt however, that some of the objections could have been answered and some of the objectionable clauses amended.[61] So, after eighteen years and an expenditure of £1,000, Jamaica was still without the Codes, on which such high hoped had been placed.

The Governor of Jamaica had stated that the Codes had been abandoned because of the agitation raised against them in the Island. Because this agitation had such fatal effects on one of the most important developments of the criminal law, it is well for us to have a brief look at the nature of the criticism against these Codes.

When the Codes were first introduced in 1879 little notice seems to have been taken of them by the local press. In fact, it was left to a London magazine to protest against the Codes and it declared that as "far as we are aware, not one of the home journals - political, literary or otherwise - have devoted a single article to this extraordinary affair."[62] After this, some comments were made in the Jamaica press.[63] But the press was not a wholly disinterested party for the main section of the Code against which it directed its attack, was the section making libel punishable by whipping. In 1879, it appears that in Jamaica there was no opposition to the principle of codification and little criticism or opposition to the Codes themselves. However, within a decade, and despite the amendments of the objectionable sections relating to whipping, the Codes were overwhelmingly condemned

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61. Ibid. Knutsford to Norman, 12 December 1888.
62. Quoted in Gall's News Letter, 9 April 1879. A later issue of Gall's News Letter declared that the "London newspapers have commenced an agitation against the contemplated 'Criminal Code for Jamaica': Gall's News Letter, 15 April 1879.
63. See Gall's News Letter, 19 April 1879; 30 April 1879; 15 May 1879.

by almost the entire press and by the articulate section of the community.

We turn now to the various sources to discover the grounds for this apparently widespread opposition to the Codes. One of the main grounds of opposition was the difference which would exist between the criminal law of the 'Mother Country' and that of Jamaica, were a Code to be operative in Jamaica and not in England. In reference to the Criminal Procedure Bill, the judges of the Supreme Court, all trained in the United Kingdom, maintained that it was not desirable that the legislature of Jamaica "should be invited to give a lead to Imperial Legislation on vexed questions of such vital importance."[64] Furthermore, they declared that were the Procedure Code to become law

> "...the decisions of the English Courts would cease to be of assistance to us in deciding the numerous questions which are in the administration of Criminal Justice. We need hardly point out what a very serious loss it would be, both to the profession and the Judges, to be deprived of the guidance which the English authorities afford us in discussing and deciding questions of delicacy and difficulty." 65

Lindo, an assistant of the Attorney General, felt that the Codes would unsettle the criminal law and he preferred the criminal law to remain as "the Law is in England" considering that the present system works satisfactorily, and "that such sudden and radical changes are uncalled for & unnecessary."[66] Bicknell, the Resident Magistrate for St. Catherine stated that in relation to criminal legislation, up to 1879, Jamaica had followed "in the footsteps of British legislation" and that under the present system the Judges were the authority from whom an exposition of the law was sought. Under the proposed Code, there would be no authoritative exposition of the law, and "we are to be sent adrift with the speculative theories of Sir Henry Taylor as our only guide."[67] According to Hendrick, a Solicitor, "Our 'Archbolds' give us

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64. CO 137/536: Norman to Knutsford, 1 November 1888, enclosed Memorandum of the Supreme Court.
65. Ibid.
66. Ibid. Lindo's Memorandum enclosed.
67. Ibid. Bicknell's Memorandum enclosed.

on one page say 'Burglary and Larceny' the Section of the Statute, the form of the indictment, the evidence and any important cases which may have been decided upon the subject, nothing can be plainer, nothing simpler."[68] The Attorney General saw no necessity for any radical change and as long as Jamaica adhered to the present system "we have the advantage of English Textbooks and decisions."[69] As the Codes were not really radical documents[70] and since they did not contain provisions which were apparently unworkable this reaction by the legal profession appears to be one of sheer conservatism.

Another popular belief and one which had a firmer base was that Jamaica, because of its Crown Colony status was being made the victim of an experiment -- an experiment which the Mother Country refused to perform on herself and one which she was not allowed to perform in colonies with representative governments. This point was excellently made by an editorial in Gall's Weekly News Letter:[71]

> "Jamaica is on the point of being made the victim of a great experiment and of being immolated on the altar of legal reform. M. Pasteur was in the habit of inoculating rabbits with rabies so that in the interest of humanity and science a cure might be discovered for Hydrophobia. In the present instance the Government occupies the pleasant position of M. Pasteur, while Jamaica is the unfortunate rabbit which is to be experimented upon in the cause of science. We have been recently favoured with a copy of the Criminal Procedure Code 1888 and after mature deliberation have come to the conclusion that it is one of the most unnecessary and pernicious measures that has ever been issued from the office of the Government Printing Press."

After the Governor had stated that the Procedure Codes would not be proceeded with, another newspaper, the Colonial Standard, waxed eloquent:[72]

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68. Ibid. Hendrick's Memorandum enclosed.
69. Ibid. Hocking's Memorandum enclosed.
70. See the Codes and Wright's Memorandum on the Penal Code: P.P. 1877 [illegible], (C. 1893) LXI.
71. Editorial in Gall's Weekly News Letter, 29 September 1888.
72. Editorial of the Colonial Standard, 20 October 1888.

> "The determination of the Government not to proceed with the Criminal Procedure Code is a wise, statesmanlike proceeding. It is not only a gracious concession to the public opinion or 'feeling that had been manifested against it' but a graceful tribute to the newspaper Press as the exponent of that feeling or opinion."

Having taken time off to pay tribute to itself, it proceeded:[73]

> "It has, we think, been conclusively shown that the Criminal Code which has for nine years been hanging over the heads of the people of this Colony is a most revolutionary, arbitrary, and dangerous measure. Apart, however, from the intrinsic character of the Code, its unpopularity has been aggravated by the circumstances attendant upon its original inception and subsequent introduction into the Legislature of this Colony. The measure was not introduced to satisfy any urgent local requirement or to fulfil any pressing colonial purpose,[74] but to make Jamaica - which was at the time, in the fullest and most obnoxious sense of the term, a Crown Colony - the scene and subject or the illustration of the law-reforming hobbies of a few dogmatic sciolists who did not dare to propose such sweeping, revolutionary legislation to any representative Legislature."

The two preceding paragraphs have outlined the main reasons for the opposition to the Codes and after examination of the criticisms of the Codes, it is difficult to disagree with the Governor that the dislike of the Procedure Code was one for "which it is difficult to assign any intelligent reason."[75] However, these views were the ones which eventually prevailed, thus depriving Jamaica of the benefits of a Criminal Code which would have added a new dimension to Jamaican criminal law.

From this exercise in codification, we may gather various threads concerning legislation on penal matters in 19th century Jamaica. The first is that success in penal reform depended to a very great extent on the administrators of Jamaica and on the staff of the Colonial Office.

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73. Ibid.
74. Italics supplied.
75. CO 137/534: Norman to Holland, 14 January 1888.

When Henry Taylor first proposed a Code for Jamaica, the idea was only allowed to become airborne because Granville who was Secretary of State at the time was in favour of it. But obtaining the sanction of the Secretary of State was only one of the hurdles. The proposal still had to be implemented in Jamaica, and as events showed this was the point at which codification failed. When the preliminary moves were being made in 1870 to construct a Code, the Colonial Office was careful to 'sell' the idea to both the Governor and Attorney General of the Island. Grant, the Governor, had been exposed to codification previously, as he had been Secretary of the Indian Law Commission at Calcutta, which was responsible for Macaulay's Indian Penal Code. He would therefore tend to be favourably disposed to the principle of codification. The Colonial Office also made sure to have discussions with him concerning the construction of the Code when he was on leave in England. Steps were also taken to ensure that the Law Officer of the Government, the Attorney General, would be favourably inclined to codification. At the time when the Code was mooted, a new Attorney General was being appointed for Jamaica. In one of his Minutes, Henry Taylor stated that when the Attorney General was selected, he would like to be placed in communication with him as to "penal Code matters."[76] E.A. Schalch, a barrister of the Temple, was selected and he appears to have been in favour of codification. At the beginning, therefore, the chances of success were quite favourable. As the years passed, new Governors and Attorneys General were appointed and they were not as committed to codification. One of the later Attorneys General, Hocking, repeatedly maintained that he saw no necessity for a Procedure Code. At the crucial point when the amended Procedure Code Bill came under attack in 1888, Hocking went out of his way to disclaim responsibility for the measure: "The code as a whole is not my work and I feel myself quite at liberty to say that I join in deprecating its introduction."[77]

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76. CO 137/451: Grant to Kimberley, 23 November 1870. Taylor's Minute.
77. CO 137/536: Norman to Knutsford, 1 November 1888. Hocking's Memorandum enclosed.

With the Press in full cry against the proposal; with some members of the Council protesting vigorously against it; and with the Law Officer of the Government who was supposed to defend the measure holding such views, the Bill was doomed to failure.

This attempt at codification illustrates a prevalent attitude towards penal reform in the 19th century. This attitude is summed up by the editorial of the Colonial Standard quoted above: "The measure was not introduced to satisfy any urgent local requirement or to fulfil any pressing colonial purpose."[78] Jamaica has a tradition of panic legislation -- legislation which was hastily enacted after the numerous slave revolts or conspiracies. This was legislation designed to meet an "urgent local requirement." Criminal law reform was locally acceptable only where the reason for it was outstandingly obvious and necessary. But as far as the legislators were concerned, the rational consideration of the whole body of criminal law against local circumstances was unthinkable.

Failure in codification may have been due paradoxically to the success of the Colonial Office in moulding attitudes to penal legislation in Jamaica. In the later years of slavery and in the years after the abolition of slavery, the Colonial Office consistently used English laws as the standard to which Jamaican legislation should aspire. Any Jamaican legislation which differed widely from corresponding English legislation was carefully scrutinized and sometimes disallowed. The consequence was that gradually a belief in English rights and standards grew up -- a belief which as the Colonial Office found, was very difficult to dispel. Thus the United Kingdom-trained Judges of the Supreme Court objected to the provision in the Procedure Code Bill which allowed accused persons to give evidence on oath. To do this would have upset "what has been the law in England for centuries."[79] Hendrick's opinion was that the Codes

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78. Note 73, supra.
79. CO 137/536: Norman to Knutsford, 1 November 1888, enclosed Memorandum of the Supreme Court Judges.

"completely change existing English law," and their proposals "dig up the very foundation stones, or first principles of British Criminal Law."[80] When the Jamaica Codes were passed in 1879, there was a conspicuous absence of opposition to them in Jamaica. At that time discussions were also going on in England about an English Penal Code. When attempts to enact an English Penal Code failed, the reaction against codification in Jamaica was not merely coincidental. And Wingfield's view that Jamaica would have to wait until the English criminal law is codified, is not altogether unfounded in the light of the surrounding circumstances. The position might well have been different had the process of codification been started locally. It is arguable at least, that the very method of colonial administration emphasized this close connection with England and this produced the reaction against imposed solutions which were not acceptable in England.

The episode of the Codes also illustrates one of the weaknesses inherent in colonial administration. This was the protracted discussion which surrounded any important innovation — even in regard to a Crown Colony. There were numerous despatches between the Secretaries of State and the Governors concerning the Codes, and they showed the various views which had to be considered. One important view was that of the Secretary of State. Kimberley's direction that the Codes should be amended even after they had been enacted, leaves this in no doubt. Then, there was Parliament and British public opinion which had to be taken into account. For this reason the Codes were laid before Parliament in 1877; and it was also for this reason that Hicks-Beach was wary of bringing them into operation before the proposed English Criminal Code had been discussed in Parliament. There were also the views of the Jamaican legislature and judiciary to be considered. And as the history of the Codes showed these views were extremely important.

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80. Ibid. Hendrick's Memorandum enclosed.

CHAPTER 11

Developments in the Criminal Law during the 20th Century

In this work, our examination of the development of the criminal law has extended only as far as the beginning of the 20th century. In the next Chapter, we intend to draw certain conclusions based upon that data. Before we do so however, we will in this the penultimate Chapter, take a brief look at the manner in which certain controversial 20th century statutes were enacted. This will, we hope, give us an indication of the lines along which the criminal law has developed during this century and help us to discover whether any features of the 19th century have continued in the 20th. The statutes which we will look at are: The Emergency Powers Law, 1938;[1] The Undesirable Publications (Prohibition of Importation) Law, 1940;[2] The Prevention of Crime (Special Provisions) Act, 1963;[3] The Dangerous Drugs (Amendment) Act, 1964.[4] We will also examine very briefly a matter of paramount importance to the criminal law and one intimately connected with its development - the administration of justice in Jamaica.

In 1938, after years of crass neglect of Jamaica by the Government of Great Britain,[5] the labouring population of the Island rose in protest against the iniquitous social and economic conditions

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1. Now Cap. 111: Laws of Jamaica (Rev. Ed. 1953).
2. Now Cap. 397: Laws of Jamaica (Rev. Ed. 1953)
3. Law 42 of 1963.
4. Law 10 of 1964.
5. On this point the English newspapers and journals were in remarkable agreement. See The Spectator, 27 May 1938; The New Statesman and Nation, 28 May 1938; The Daily Express, 25 May 1938; The Manchester Guardian, 4 June 1938; The Daily Telegraph, 3 June 1938; The Times, 25 May 1938.

under which they existed.[6] Social unrest, accompanied by a wave of demonstrations, culminated in a mass protest on Monday, 24 May 1938 -- then Empire Day. In the morning a well-attended meeting was kept at the corner of Duke and Harbour Streets in Kingston. From there the crowds moved from point to point in the city. The Daily Gleaner takes up the story:[7]

> "Growing to proportions never witnessed before in the City, the demonstrators moved through commercial Kingston ordering all shop premises to close down. A few merchants hesitated but eventually yielded as the mob, by sheer force of numbers, pressed their way into their premises. They were then obliged to pull down shutters. Before 11 o'clock there was not a dry goods or grocery establishment open anywhere in Kingston, excepting a few groceries run by native Jamaicans ....The crowd split up and went to various sections of the City, found adherents everywhere, took charge of the tramway Service, started directing traffic, and in Western Kingston, created a grave situation.
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> As the day wore on, the mobs massed. Thousands jammed the Parade Block, stopping motor-cars, tram cars, everything except persons on foot who looked like one of the mob."

But one of the most important events of the day did not take place until later that day. Then the demonstrators turned towards the areas of affluence. The Daily Gleaner continued:[8]

> "In the evening the crowd journeyed north. At Torrington Bridge they halted passing cars, demanding money. Higher up as far north as Hermitage Road in rural St. Andrew, truckloads of labourers entered private premises and intimidated employers....
>
> At night it was worse. Very few gas lamps were lighted. Most of them were turned off. Several were smashed by disorderly elements. Armed patrols were often obliged to dismount and clear the way for lorries conveying them from different points of the city. Often while so engaged they would be stoned from dark corners or behind walls by 'snipers'."

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6. See the West India Royal Commission Report (The Moyne Commission) P.P 1944-45, (Cmd. 6607) VI.
7. The Daily Gleaner, 25 May 1938, p. 7.
8. Ibid.

This night the Gleaner not inaccurately described as "one that will be Long Remembered."[9] Business had been interrupted and the wealthy had witnessed the invasion of their citadels -- an event which could easily recur. Terrified, the Government decided on immediate legislation, and at 11 a.m. the following day, the Legislative Council was called into session.

In the Legislative Council, the Acting Attorney General Stafford William Foster Sutton moved the suspension of standing orders and introduced the Emergency Powers Bill. This Bill authorized the Governor to declare by Proclamation that a state of emergency existed in the Island. Under this Proclamation, he was empowered to make regulations which conferred on him the power to act as he thought necessary for the "preservation of peace," and to take measures "essential to the Public Safety and the life of the community." Persons found guilty of offences against these regulations could be fined £100 and sent to prison for three months.

The Acting Attorney General outlined the reasons for the introduction of the Bill:[10]

> "Under our present laws the government has very limited powers vested in it for dealing with cases of national emergency, and this bill...gives the government certain powers which at present it has not got and these powers, it is felt, are very necessary for dealing with public emergency such as has arisen here in this country recently."

The Acting Attorney General further informed the House that he wished the Bill carried through all its stages that day.[11]

Some elected members not unnaturally protested at the speed with which the measure was being pushed through the Council.

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9. Ibid.
10. Proceedings of the Legislative Council 1938, p. 351, 25 May 1938.
11. Ibid., p. 351.

Little stated:[12]

> "...this is a far reaching measure which should not be debated and passed through so hurriedly in this Council. I for one as a representative of the people and those of my Parish would not feel satisfied that a measure of such far reaching importance should be enacted without very due, definite and intelligent consideration and its relationship with other laws in the Statute Book of this Colony that can put down disorders of all kinds."

Veitch, another elected member, echoed similar views:[13] "There is a feeling of undecision in my mind because we have not got sufficient time to consider this Bill. I would wish that we had even an hour or two to think it over." J.A.G. Smith, probably Jamaica's most brilliant barrister of the day declared:[14]

> "I really do not know what has brought it (the Bill) forward. I was looking to see whether it was a measure that dealt with riot or behaviour of any particular man and I have not been able to see it. Perhaps it exists."

It appears that the Acting Attorney General had merely picked up the English Emergency Powers Act of 1920,[15] and without even bothering to examine its provisions, or reminding himself of the purpose for which it was enacted, had hastily transcribed them into the Jamaican Bill. It was left to J.A.G. Smith who, in his cogent criticism of the Bill, extracted from the Acting Attorney General, the source of the Bill's terminology.

In his speech examining the Bill Smith declared:[16]

> "I myself as a lawyer cannot understand what Clause 2 means. What are the acts to be done? How do you get your interference? What is interference? What is the action? The Bill says that 'the Governor may by proclamation declare that a state of emergency exists'. What is the state of emergency? As regards foodstuffs? Because of a shortage, by interference, or what? Laws must be made simple and clear so that people may understand them, and I do not think

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12. Ibid., p. 351
13. Ibid., p. 352.
14. Ibid., p. 356.
15. 10 & 11 Geo. 5, cap. 55.
16. Proceedings of the Legislative Council 1938, p. 356, 25 May 1938.

> that through any form of panic we should just hurriedly pass something into law. It is not plain or correctly stated, what is the real intention, except that a sole power is to be given to the Governor to declare this emergency."
> (Later) "Perhaps the Hon. Mover of the Bill may think it worth his while to tell us exactly what is the meaning of the Bill."

But the Acting Attorney General was not of very much assistance and contented himself by saying: "Well I cannot claim for myself the credit or discredit for the wording of that particular section, because except for two or three words, it is exactly the same as the English Act."[17] The Acting Attorney General having mentioned the English Act, Smith pressed him further and asked, "In what circumstances were that Act passed?"[18] The Acting Attorney General's most profound and learned reply was, "It was passed in the year 1920..."[19] The debate was concluded with the greatest possible speed, and the Bill passed. In these circumstances and without the mover of the Bill even understanding its terminology, The Emergency Powers Law, 1938, was added to the statute books.[20]

The pattern of legislating in this instance was very similar to the pattern in the 18th and 19th centuries. Then, almost every rebellion was followed by the hasty enactment of stringent and repressive legislation. Little attempt was made to analyze the cause of the rebellion before legislation was quickly enacted. When, one hundred years after emancipation, the masses of Jamaica protested, rightly, if the Moyne Commission is to be accepted, against their conditions, the reaction was almost identical. Hastily, and before any attempt was made to analyze the disturbances, the Colonial Government enacted legislation giving the Governor very wide powers not only to declare an emergency but also to act in that emergency.

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17. Ibid.
18. Ibid.
19. Ibid.
20. When this law was originally enacted, it only had a duration of six months but it was made a permanent Act in November 1938. See Law 9 of 1938

It should also be noted that the English statute which was used as a model, was enacted to deal with a completely different situation, namely, to ensure that the essential services of the community were maintained during an industrial dispute.[21] It was not designed to deal with public disorder -- the purpose for which it was passed in Jamaica. When the English Bill was being debated in the House of Commons its terminology, among other things, was strongly criticised.[22] Yet with all its criticisms, this English Act was adopted almost verbatim into Jamaica. The century had changed, but certainly not the pattern of legislating in the Island.

The year 1940 found Britain fighting for its very survival, and Jamaica as a 'good Colony' decided that all efforts should be directed at helping Britain win the war. The Jamaican Government could not brook the dissemination of views opposed to that end, and decided to introduce legislation prohibiting the importation of undesirable literature in the Island. With this in mind, a Bill with severe penalties was introduced in May 1940.

The Bill provided that "any publication" could be prohibited, and went on to punish two main offenders -- persons importing, and persons possessing prohibited literature. Any person who imported, published, sold or distributed any publication, the importation of which was prohibited could be fined £100 and imprisoned for twelve months. Any person who "without lawful excuse", had in his possession, any prohibited publication, could be fined £50 and imprisoned for six months. In both instances the prohibited publication was to be forfeited. Any person who was sent, without his knowledge, any prohibited publication was directed to deliver the publication to the police as soon as its contents became known to him;

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21. See Commons Debates 5th Series Vol. 133, cols. 1399-1462; 1591-1708; 1779-1859.
22. See especially the speech of former Prime Minister Asquith, Ibid., cols. 1417-1418.

Otherwise he could be fined £50 and imprisoned for six months.

According to the Attorney General in introducing the Bill, it is only designed to:[23]

> "interfere with the publications which the ordinary and the loyal and the law-abiding citizen does not read and would never wish to read....Nor is it proposed that these powers should be used to interfere with the introduction into this country of political, economic or historical textbooks or works - even though they may be put forward theories which cannot (I use the expression for lack of a better one) or may not, be popular."

The Attorney General went on to explain what categories of literature the Bill was intended to include, but regardless of how well he couched his language, the debate showed what type of literature was uppermost in the mind of the Government. The Attorney General described the four classes of literature which the Bill was primarily aimed at: obscene publications, quack medicine catalogues and sex literature; literature aimed at imposing on the credulity and superstition of the less well educated , for example, magical devices; and subversive literature. The Attorney General hoped that he had made it plain "that what is sought is not an offensive or arbitrary power so much as a power to give effect to what we well know ought to be regarded as prohibited literature."[24] In his capacity as custos mores, the Attorney General did not bother to describe the type of literature "we well know ought to be regarded as prohibited literature," but in concluding he emphasized the point that we do not want in Jamaica "any Fifth Column propaganda or any Fifth Column literature."[25]

The Colonial Secretary was even more explicit and he conjured up images of bloody destruction. Referring to those who criticized the Bill as an unwarranted interference with liberty he declared:[26]

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23. Proceedings of the Legislative Council of Jamaica, 6 February 1940 - 12 June 1940, p. 373, 22 May 1940.
24. Ibid., p. 374.
25. Ibid.
26. Ibid.

> "They want to get in their propaganda from Moscow, and other parts of the world, and it is the duty of Government - not merely the right - it is the duty of Government that that should be prohibited....In Russia you had your Kerenskys but they were swept aside and you had the bloody terror of Lenin and Stalin. That is not the sort of thing we want to have in Jamaica."

As usual, in this period of Jamaica's legislative history, it was left to J.A.G. Smith to subject the Bill to its deserved criticism. He began by remarking that after reading the Bill, he could not help coming to the conclusion that the "drafting of the Bill was a mistake, and was erroneous."[27] And in reply to the Attorney General who had referred to English laws of a similar nature, Smith declared that he has not heard the Attorney General or the Colonial Secretary state that in England "there is a law drawn up in this vague way and continue to be vague with such penalties as exist there except it be under the Defence of the Realm."[28] Then, having declared that he was against foreign publications whether they came from "Moscow or Berlin", Smith proceeded to level his criticisms at the Bill:[29]

> "But my first objection is that you have drawn a Bill where you have not given a definition for the publications that you mean to prohibit. When we go further down the law you see no intention at all of that. There is no indication of the publications that you mean to include mentioned in the Bill, not even by intentment. There is no definition or anything about it being of a mischievous character or one that is intended to undermine the correct feeling and leading in a line in which the people of this country should not go. It is a bare Bill giving a Governor the absolute discretion to prohibit any possible bit of publication that may come into this country....The average man may read the Attorney General's speech and say it is to prevent so and so. But nothing of the kind is stated here. Not one of these things that he said it is intended to do is even hinted in the bill....How can you bring in a Measure, not a war-time Measure and leave it in the absolute discretion of the Governor to say that any publication whatever may be prohibited."

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27. Ibid.
28. Ibid., p. 375.
29. Ibid.

Smith went on to criticise the word 'publication' also on grounds of vagueness and to suggest that were the Bill amended and made less vague it would have his support.

Other elected members voiced their objections to the Bill. Campbell described it as one which "tends to enslave the mind and fetter the civil liberties of the population."[30] At another point he stated: "The Bill is entirely too vague."[31] Dr. Anderson said: "There should be a clear defining of what is excluded[32].... why make the sky your limit and the Governor's conscience his guide?"[33] "If you look at the bills passed recently —within the past four years - you will see they are all punitive measures - the majority of them."[34]

The Bill however, had its supporters, who turned out to be in the majority. Sir William Morrison was of the opinion that were the definition not left general, literature "will come in under various guises and our effort to win the war will be affected by Nazi propaganda."[35] Vernon also felt that "Government has brought in this measure to putify a good lot of evil introduced in this country."[36]

Despite the speeches of some members, the Government remained adamant in their refusal to make the Bill less vague. On being pressed in committee for a definition of 'publication', the Attorney General declined because the Government were trying to cover "various kinds of objectionable publications which do not necessarily fall within any specific legal definition, but although they do not fall within the definition are nevertheless calculated to do harm."[37] The most the Attorney General would concede was an amendment that the prohibited orders should be published.[38] On the 28th May 1940, the Bill passed by a 22 to 2 majority and became The Undesirable Publications (Prohibition of Importation) Law, 1940.

30. Ibid., p. 380.
31. Ibid., p. 381.
32. Ibid., p. 381.
33. Ibid., p. 382.
34. Ibid., p. 382.
35. Ibid., p. 377.
36. Ibid., p. 382.
37. Ibid., p. 385.
38. Ibid., p. 386.

This vague and general law, conceived amidst the clashes of battle on distant shores and enacted almost entirely with the war effort in mind, became not merely a war-time measure, but a permanent Act on the Jamaican statute books. Under this Act the Government of Jamaica, even in peace-time possess the widest powers in banning the importation of any publication into the Island.[39] These are extremely wide powers which can be easily abused, and it is questionable whether powers granted in the throes of war, are in fact necessary or desirable in peace-time. A re-examination of this law by the legislature is long overdue.

In 1963, after persistent reports had been received about a 'phantom rapist', that is, a man who is alleged to have raped several women and to have remained undetected, the Government of the day decided to introduce legislation aimed at combating rape offences. This they hoped to do by increasing the penalties for rape and certain other offences. Accordingly, in 1963, the Government introduced and Parliament passed The Prevention of Crime (Special Provisions) Act, 1963.[40]

This statute made both procedural and substantive amendments to the existing law. The main procedural amendment was the provision for the proceedings relative to some offences, particularly rape, carnal abuse and indecent assault, to be held in camera. The substantive amendments considerably increased the punishment for various offences. In cases of armed robbery the previous punishment of not more than fifteen years, was altered to one of not less than five nor more than twenty-one years. If rape was committed in the course of a burglary, the punishment was altered from a maximum sentence of fifteen years, to imprisonment for life or for a term of not less than ten years. If rape accompanied housebreaking, instead of the maximum sentence of ten years' imprisonment, a minimum sentence of ten years was provided. In rape cases, where at the time of

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39. For two recent cases on this law, see R. v. Willoughby [1966] 4 Cleaner Law Reports 62; R. v. Green [1966] 4 Cleaner Law Reports 145.
40. Law 42 of 1963.

committing the offence the accused was armed with a dangerous weapon, imprisonment for life or for a term of not less than ten years was substituted for the previous maximum of two years' imprisonment. The punishment for carnally abusing any girl under twelve was altered from a maximum two year term of imprisonment to life imprisonment or a minimum of ten years. The two year term of imprisonment for carnally abusing girls over twelve but under fourteen was replaced by a maximum term of five years. With the exception of the last-named offence, flogging was provided as an additional punishment in all these cases.

Several substantive criticisms have been levelled at this Act, but here we are solely concerned with the legislative aspect — the method by which one of the most controversial bills of the decade became law. Because of the crucial importance of these proceedings in the development of the criminal law and lest paraphrasing dilute these proceedings, the speeches of Members will be as far as possible quoted.

It was Thursday, October 24, 1963 and the House of Representative was in session:[41]

> Mr. Sangster: "Mr. Speaker, I beg that we proceed to the next Item on the Order Paper - Item No. 6 - standing in the name of the Minister of Home Affairs.
>
> I should mention that the Minister advised me yesterday that he did not wish to take the Bill today and I so informed the Opposition; but he has now intimated that he is ready to take it and further expressed the desire that as it is so important to the country - it has to do with certain types of crimes - that it be taken now. I hope we will get through in time so as to take Private Members' Motions tonight."
>
> Mr. Glasspole: "Mr. Speaker, this Order Paper was laid on the Table of the House on Tuesday of this week. I have been in close touch with the Leader of the House and I have to advise the Leader of the Opposition and members of the Opposition as to what is anticipated to be done.

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41. Proceedings of the House of Representatives, 16 October, 1963 - 18 March 1964 p. 73, 24 October 1963.

Last night - late - the Leader and myself were discussing the Programme, and he gave me an assurance that this Bill would not be taken.

When I got home, near 11 o'clock, I telephoned the Leader of the Opposition and said 'Don't look at the Bill, because it is not going to be considered'. And it would be unfair to ask us to continue with it.

It would be unfair to ask us to come here and consider a Bill of this sort without having stuied it - a bill which has some very controversial features to it. And I must appeal to the Prime Minister not to push through this Bill. And I want to appeal to the Prime Minister and to inform him that the Leader of the House had assured us last night that the Bill would not be taken, and on that understanding, Members of the Opposition have not even looked at the Bill."

Sir Alexander Bustamante (the Prime Minister): "In my time in this House, I have never yet tried to force through a Bill, but this is one Bill I am going to force through."

Mr. Manley (Leader of the Opposition): "It cannot be told to us near midnight last night that the Bill is not going to be taken and then now we are told that this Bill is going to be put through, without the Opposition having been given sufficient time to consider it.

The country has been going on for a long time and will continue to go on. There is no particular urgency about it why it can't be deferred."

(Members of the Opposition then left the House)

Sir Alexander Bustamante: "I intend to force it through."

The Minister of Home Affairs, Mr. Roy McNeill, outlined the provisions of the Bill and continued:[42]

"I regret the fact that the Opposition has seen fit to walk out of the House but, Mr. Speaker, I am not at all worried about any opposition in a matter of this importance.

I am sanguine that if the Opposition was sitting there, they would have supported every clause of this Bill as being an excellent Measure for the times and I am sanguine that the whole of Jamaica and particularly the womanhood of Jamaica, will thank the Government for its wisdom to seek to protect them with this Measure, as is now being sought to be done."
(Government Members applauded)

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42. Ibid., p. 75.

Sir Alexander Bustamante, the next speaker, stated:[43] "I beg to second, Sir. If, for forcing through this Bill, I am considered a dictator, then I am a dictator and have no apology to make....

This Bill has been laid on this Table from Tuesday, the 22nd, almost three days now. Anyone who has any interest in the prevention of crimes and the tearing to pieces of women's flesh, would have had a long time to read the Bill, to study it and absorb its contents.

(later) "Rape has been very prevalent here. You rape a girl and you get twelve months or two years. The brutes should be sent to prison forever. If this law is not sufficient to reduce that crime then I will have it amended to increase the sentence."

On another occasion during the debate, Sir Alexander Bustamante declared:

"I tremble with emotion when I think that those in here believe or think that rape is not so serious, it can continue even for another minute. I don't suffer from hysteria but my body trembles with temper that people could believe that rape can continue for another minute."

Without further debate the Bill was passed. These proceedings need little additional comment.

In the Senate speed was also characteristic of the proceedings. On the day the Bill was presented, the Government stated that they wished it passed the same day. Opposition Senator, Fletcher, commented that,[44]

"...in spite of the normal functions of the Senate being carried out, that the Bill is presented one Friday and discussed on another, the Leader of Government Business and the Attorney General rushed through the Bill today. Of course, with regard to the latter he bulldozing it....There is no doubt about it that the vehemence and passion with which this Bill was moved is indicative of the fright and the alarm which generated it."

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43. Ibid., pp. 75-76.
44. Proceedings of the Senate 8 August, 1963 - 20 March 1964, pp. 67-68, 1 November 1963.

Another Opposition Senator, Thompson, declared:[45]

> "We are not opposed to the Bill but to the principle of bringing it to this House and rushing it through. We are opposed to the fact that a far-reaching Bill as this which imposes a penalty of life imprisonment should be rushed through this parliament in this way, should be treated so lightly because there is some mad man who says that before the day passes, this Bill must be passed into law."

Before the day ended, the Bill had been carried through all its stages in the Senate.

There are several features of these debates which call for attention -- one being a conspicuous absence of statistics concerning the incidence of rape.[46] But probably the most important and most frightening feature of the debate, was the injection of emotionalism in the proceedings, and the attitude which certain members adopted towards it. We are once more indebted to the verbatim speeches of the Senators.

In the course of the debate, the Attorney General had been accused of being more emotional rather than rational over the measure. Senator Esme Grant of the Government Benches jumped to his defence:[47]

> "I heard them speak about emotions. God help us if as Senators we are people without emotion. They seem to forget Mr. President that the very soul and love of man and woman are linked up with emotions. I don't see what the argument about the Attorney General using more emotion than reason in this Bill. It is incumbent on the Attorney General to do so with all emphasis...."

Another Government Senator, Mr. Duhaney, astoundingly declared:[48] "Rape is an emotional business and emotionally it will have to be handled." And the Attorney General also adverted to emotionalism in

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45. Ibid., p. 66.
46. This point was adverted to in the Senate. See the Speeches of Senators Thompson and McNeill: Ibid., pp. 65 and 71.
47. Ibid., p. 70.
48. Ibid., p. 67. It takes no seer to see what the results to the administration of justice would be, if juries followed the Senator's example and treated rape cases as emotionally as he treated the formation of the law.

his reply:[49]

> "...there has been a lot of crying from the Opposition Benches that this matter is being approached with some emotion. They have pretended to associate some of them with certain principles of jurisprudence. Perhaps if they read jurisprudence far enough, in the history of crime and the enforcement of the Law, emotion is one of the well recognized methods for the enforcement of the Law. And as Senator Esme Grant said, it is well so because human beings are not devoid of emotion. It is well recognized that emotion can help bring a Law into force; and that is part of the history of jurisprudence....."

This approval, indeed championing, of irrational emotionalism in the formation of the law, is to say the least, most regrettable. Without adverting to the jurisprudential aspects, we need only say here that the lessons of the history of the criminal law in Jamaica are clear: once emotion plays a prominent part in either the formation or administration of the law, we are rapidly proceeding along the dangerous path back into the gruesome days of the 17th, 18th and 19th centuries. Then, irrational emotionalism rather than reason, took precedence in the formation of many of the penal statutes, with unfortunate consequences to the Island. It can only be hoped that this mistake will not be repeated.

The statistics concerning the incidence of rape and carnal abuse, provide useful information as to the effectiveness of this statute. In 1962-63 the number of reported cases was 230; in 1963-64 (after the Law was passed) the number was 318; in 1964-65 the number was 312; and in 1965-66 the number was 331.[50] These figures indicate that the number of offences has actually increased since the enactment of the legislation! It therefore appears that the remedies for this problem lie outside the bounds of the criminal law.

We next turn to legislation dealing with drugs. From as early as 1913, legislation had been enacted in Jamaica to deal with dangerous drugs. And curiously enough, the provision concerning the much-discussed

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49. Ibid., p. 76.
50. See Appendix C.

drug, ganja,[51] reached the statute book through the back-door. In January 1912, the International Opium Convention was signed at the Hague. Shortly after, the Colonial Office sent a draft Bill to the Governor of Jamaica and urged the Jamaican legislators to pass similar legislation to give effect to the Convention.[52] This draft Bill contained no provision dealing with ganja.

In the following session the Legislative Council passed a Law which was "practically a transcript" of the draft Bill.[53] However the Law contained one important addition -- provision for ganja was inserted. This happened when the Bill was in Committee, and the Attorney General informs us that it was done "on the strongly expressed wish of the Elected Members." He added that ganja "is grown by the Coolies and its use both by the Coolies and natives undoubtedly leads to acts of violence."[54] He went on to state that it might be found necessary to deal with ganja by special legislation and in that case, the words inserted in Committee would be repealed since they "really form no proper part of the Bill under report."[55] In the Colonial Office, one Minute declared that the insertion of the ganja provision appeared to be "rather a clumsy expedient."[56] Another stated: "Ganja is a preparation of hemp and is quite out of place in an Opium Law."[57] The Law was sanctioned, possibly because ganja had been prohibited in the Free Malay States. Since then several statutes have been passed in Jamaica to deal with ganja.[58] Almost all have increased the penalties for either possessing the drug or trafficking in it. It is with one of the most recent statutes on the subject that

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51. Cannabis Sativa.
52. See CO 137/692: Olivier to Harcourt, 24 August 1912. See also CO 137/692: Cork to Harcourt, 12 June 1912.
53. Law 15 of 1913.
54. Italics supplied.
55. CO 137/698: Manning to Harcourt, 18 August 1913, Enclosed Report of Attorney General E. St. John Branch.
56. Ibid., Minute.
57. Ibid., Minute.
58. See Law 4 of 1924; Laws of Jamaica (Rev. Ed. 1953) Cap. 90; Law 28 of 1954; Law 1 of 1961; Law 31 of 1961.

we are concerned here — The Dangerous Drugs (Amendment) Act, 1964.[59]

This Act had four objectives in mind: it was made an offence for owners or occupiers of premises to use or permit their premises to be used for the cultivation of ganja; it increased the penalties for possession of ganja, for cultivation of ganja, for selling ganja or otherwise dealing in ganja; it introduced provision for the seizure and forfeiture of vehicles used in the ganja traffic; it made provisions for assisting the police in searching premises. And since the penalties it contained were mandatory, persons convicted for possessing ganja were to be sentenced to a minimum of eighteen months imprisonment; persons cultivating, selling or otherwise dealing in the drug were to be imprisoned for not less than five years or more than seven. We are not here examining the narcotic nature of ganja; we are concerned with the question whether, on the available evidence, the problem has been sufficiently analyzed and investigated by the legislators, to warrant the stringent punishments which the Act contained.

This Bill was debated in the House of Representative on January 21, 1964. In introducing the Bill, the Minister of Health, Dr. Eldemire gave its origin:[60]

> "...it was brought to our notice last year when certain things happened that brought the use of ganja into the forefront....(L)ast year some time we set up a Committee[61] consisting of technical people, experts in the field of pharmacology, and officials from various Ministries, and it is from that Committee that we have thought it fit and proper to bring this Act to amend the Dangerous Drugs Law."

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59. Law 10 of 1964.
60. Proceedings of the House of Representatives 16 October, 1963 - 18 March 1964, pp. 187-188, 21 January 1964.
61. This was not a public committee.

During the debate, Government and Opposition members put forward opposite views: The Government members maintained that ganja was a dangerous drug which should be exterminated, while the Opposition maintained that the case for ganja being a dangerous drug had not been made out. Mr. Tavares speaking in support of the Government declared:[62] "Let the criminal element see that the P.N.P. wants ganja and the J.L.P. is opposed to it. We are here to put forward things which are good for the country." Another Government member, Mr. Jackson, said:[63] We know in this country the kind of wrongs that are committed by our people; most of them only through the influence of ganja.... I am only sorry to know that the Minister really don't see his wisdom to attach catting[64] onto it."

At the same time the Leader of the Opposition, Mr. Manley, was stating:[65]

> "The public will necessarily be confused in one breath; says the Government this thing is so dangerous that drastic and cruel laws must be passed in the interest of the public and almost in the same breath the Chief Government expert says it is not true to say that ganja is dangerous, for it does you no harm at all....
>
> At least in this state of confusion on the facts the public is interested to have an explanation, a scientific report so that we will know why it is that we are justified in passing a Law with drastic penalties of this sort."

He asked for a public commission of enquiry to be established to investigate the ganja problem.

Mr. Arnett, another Opposition member, said:[66]

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62. Proceedings of the House of Representatives 16 October, 1963 - 18 March 1964, p. 190.
63. Ibid., p. 194.
64. Whipping.
65. Proceedings of the House of Representatives op.cit., p. 189.
66. Ibid., p. 193.

> "This problem should be given expert study and investigation. If ganja is a bad thing, let the scientist and medical people say so. Let us deal with it on that basis. If it can be used medicinally for the benefit of humanity but certain other uses may be injurious, let us understand that, and let us legislate and act accordingly. But we are merely acting in ignorance now. We are merely seeking to use repressive Measures to try to stifle something about which we know nothing.

But after the Prime Minister, Sir Alexander Bustamante, had spoken, there was no doubt as to what would be the fate of the Bill:[67]

> "Mr. Speaker, I do not believe in a long debate nor multiplicity of words. The Government will use every authority at its command to have ganja smoking, growing, trading stamped out. (Government applause)
>
> (Later) I heard over the radio that the Leader of the Opposition has asked for an Enquiry, I presume into the effects of ganja. There will be no enquiry, none whatever. All of us know the effect of ganja. Just ask the pokice wives that have lost their husbands about the effect of ganja recently in another parish. (Government applause)
>
> (Later) "Before this Bill was discussed this morning, I told the Leader of this House and the Deputy Leader there would be opposition to ganja. They can talk all they want; the Bill is going through as it is".

The Bill went through as it was.

In the Senate, the medical men assumed less rigid positions as to the effect of the drug. Opposition Senator, Dr. McNeill said:[68]

> "There is not the slightest evidence in literature to suggest that there is any association of ganja smoking with criminology. On the contrary, the incidence of ganja smoking has increased at a rate far more rapidly than the incidence of the crime, and the evidence of any particular crime of violence being associated with ganja has been nebulous and, to my mind, never been before the courts of this country or any forensicologist".

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67. Ibid., p. 196.
68. Proceedings of the Senate 8 August 1963 - 20 March 1964, p. 116, 7 February 1964.

He suggested that the Government should first set up a Committee of Investigation into the drug, making use of all the scientific experts they had. And he continued:[69]

> "Having done that, if at that time you are convinced on all the available evidence that you are dealing with a drug that possesses these qualities, then I would be the first to stand in this House and support the Bill or any other Bill which increases the penalties against it. Until that time, Mr. President, I cannot find it in my heart to support this Bill."

Another medical man, this time Government Senator, Dr. Irvine began:[70]

> "Mr. President, this is a very complex question .... One of the reasons why this matter is so complex is that much of the available scientific literature that we have on this subject is scanty and very conflicting.... (T)here is no satisfactory means of identifying the drug in the human body; not in a way that would satisfy a court of law.... Reports on this drug have come from the Far East, from Africa, and the U.S.A. And these reports are conflicting....
>
> I agree with Senator McNeill that the way to approach this problem is that it needs a lot of investigating. It needs a lot of planning along the lines of social and economic rehabilitation and I hope that out of this Bill such a move may come in the future."

The Bill was passed by the Senate.

There are two aspects of the problem of ganja legislation which should be referred to. One is the deep sociological significance of the drug in the lives of thousands of Jamaicans. Part of this significance was stated by a J.L.P. Opposition Senator in the Legislative Council when the then P.N.P. Government was introducing legislation increasing the penalties for trafficking in ganja in 1960:[71]

> "I know the fact that ganja is sold in rural areas to make tea which is used for treatment of malaria. I know for certain too that it is effective as such a remedy whether it is the result of the chemical nature of the drug, or, as a result of the faith the individual has put in the effectiveness of the drug." [72]

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69. Ibid., p. 117
70. Ibid., pp. 118-119.
71. Proceedings of the Legislative Council 26 October, 1960 - 17 February, 1961, p. 50, 30 December 1960. Mr. Seaga's Speech. Mr. Seaga is now the Minister of Finance.
72. Italics supplied.

In the 1964 debate, P.N.P. Opposition members also referred to the medicinal and sociological uses of the drug in thousands of Jamaican homes.[73]

The other aspect of the problem is the conflicting statements made by the same person in different debates. For example, in 1960, one Opposition Member of the House said:[74]

> "But I also believe, Sir, I am very certain that the extent of damage that ganja inflicts on people is quite frankly little known.... I have no knowledge of the subject myself, Sir, except I have heard people under the influence have committed bad crimes. But I would suggest an effort be made to see whether, Sir, a study can be made of this thing. A study which any results and report would be made public.... I am not questioning the Minister's sincerity, when he rises and speaks of the damage, but I wonder if I asked the Minister to name the damage in precise form if he could get up and do so. I wish to see as complete a finding as possible."

Three years later without reference to any report, but with the speaker now a Minister of the Government introducing the Act amending the Dangerous Drugs Act, he declared:[75]

> "No sensible man in this world could possibly oppose or be against a Bill to prevent the trafficking and growing of a drug which has been proven as dangerous as ganja has been.... (Later) But as far as the Government is concerned we are a bold lot, Sir and we have brought in this Bill here in our efforts to seek to do something good for our nation."

During the 1960 debate on the Act amending the Drugs Law, the Minister of Home Affairs in the P.N.P. Government had stated

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73. Proceedings of the Senate 8 August 1963 - 20 March 1964: See Mr. Hill's Speech p. 124 and Mr. Allen's Speech p. 129. Also Proceedings of the House of Representatives 16 October 1963 - 18 March 1964: See Mr. Manley's Speech p. 188 and Mr. Arnett's Speech p. 191.
74. Proceedings of the House of Representatives, 13 December 1960 - 7 February 1961, pp. 875-876: Mr. Lightbourne's Speech.
75. Proceedings of the House of Representatives, 16 October 1963 - 18 March 1964, p. 193: Mr. Lightbourne's Speech.

"that after conferences with the Police, they are convinced that between 50 to 75 per cent of crimes of a violent nature are the direct results of ganja smoking. Now, Sir, you can well understand the concern that the Government has in relation to the peddling and use of this drug."[76] In the Senate, the then Leader of Government Business firmly declared: "Government is determined to stamp out ganja."[77] Despite these firm statements by P.N.P. Government spokesmen in 1960, by 1964 when the P.N.P. was in Opposition, their spokesmen were asking for an enquiry to investigate the effects of ganja[78] -- an enquiry which the J.L.P. Opposition had requested of them in 1960, and had been refused.

These conflicting and contradictory statements did not go unnoticed and Senator Vivian Blake, in an excellent summary, put possibly the most charitable interpretation on these statements:[79]

> "...if over a space of two or three years the same person having the same political persuasion can make conflicting diametrically opposed statements on the same facts then that is the clearest evidence that we are groping in the dark when we try to say this is the score and that is not the score and it is the clearest evidence since I am not assuming, Mr. President, that when people say one thing dependent on what side they are at that time, I am not assuming that people in these circumstances are being dishonest but the only conclusion I can come to is that nobody seems to be quite clear in his mind or her mind whether ganja has the deleterious effects claimed for it today or at any time in the past."

Ever since ganja was first legislated against in 1913,[80] successive Governments of Jamaica appear to have acted without scientific evidence as to the real effects of ganja. In fact, in the latest case of

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76. Proceedings of the House of Representatives, 13 December 1960 - 7 February 1961 p. 875: Mr. Seivright's Speech.
77. Proceedings of the Legislative Council, 26 October 1960 - 17 February 1961 p. 55: Mr. Burke's Speech. One Government Councillor, Mr. Thossy Kelly, declared that although he was a "loyal supporter of the Government", on "this occasion, I cannot see my way to support the Bill". Ibid., p. 55.
78. Proceedings of the House of Representatives, 16 October 1963,- 18 March 1964: See Mr. Manley's Speech p. 189; Mr. Allan Isaacs' Speech p. 196.
79. Proceedings of the Senate 8 August 1963 - 20 March 1964, p. 126, 7 February 1964.
80. As early as 1871, a relationship between ganja smoking and insanity was canvassed: See CO 137/459: Grant to Kimberley, 14 December 1871.

legislation, the Government appear to have legislated contrary to the opinion of the Government Psychiatrist, who in giving evidence at a murder trial in August 1963 declared:[81]

> "The sociological, psychiatric and criminological aspects of ganja were studied and reviewed by Brumberg in 1939 and Shonefield in 1944 and no positive relation could be found between violent crimes and the use of the drug (ganja)."

Four months later, the Government were introducing legislation because of the alleged relationship between violent crimes and ganja.

On reading the debates, one gets the unhappy feeling that the Jamaican statutes on ganja have not been based on firm scientific evidence, and opinion rather than fact has tended to prevail in the legislature. It seems quite clear that the whole problem of ganja and its effects needs further and detailed investigation. The present situation is totally unsatisfactory, especially when we recall that the minimum period of incarceration for the possession of ganja is eighteen months. It does no credit to the law-makers, the judiciary, or the country as a whole, to have any statute, in this instance a severe penal statute, based on such scanty and conflicting evidence. That may have been good enough for the 19th century, but certainly not for the 20th.

Finally, we look briefly at certain aspects of the administration of criminal justice in Jamaica today. One aspect concerns the arrangements for bringing cases to trial. In 1964 the President of the Bar Association, Mr. Dudley Thompson, Q.C., found it necessary to warn that Jamaica faced the possibility of getting "just one-dollar justice", unless it were prepared to spend more money to relieve the shortage of Judges in the High Court and other subordinate sections of the judiciary.[82] Over a year later he was compelled to issue another warning that there were

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81. The Daily Gleaner, 13 August 1963, p. 4.
82. The Jamaica Weekly Gleaner, 14 October 1964.

"several important features needing immediate adjustment in the courts if they are not to grind slowly to a halt or break down completely under the administration of justice."[83] He listed as matters of complaint the shortage of judges in the Supreme Court, and the Court of Appeal, and the backlog of cases as a result of the shortage as well as the under staffing in the Supreme Court Registry waiting to be dealt with. He pointed out that up to November of that year there were 247 criminal cases waiting to be heard in the Court of Appeal. Even more important, there were cases in which appellants have waited in prison for almost a year before being told by the Court of Appeal whether they were to be freed or not.[84]

Recently strong criticisms have again been levelled at this aspect of the administration of criminal justice in Jamaica. In January 1968 Mr. Justice Fox listed three factors affecting the trial of criminal cases:[85] the number of criminal cases for trial in relation to the existing facilities and the personnel for effecting trial; the slow pace at which some trials proceeded; and the indifferent standard of efficiency achieved in making arrangements for bringing cases on to trial. He said that of 282 criminal cases for trial at the commencement of the last Michaelmas term only one half had been disposed of, at the end of the term. And he continued:[86]

> "It is clear that the arrangements for bringing on cases for trial are working in a most unsatisfactory manner. Obvious also to any perceptive person of experience who is conversant with the state of affairs resulting from the three circumstances mentioned above, is the threat that, if the situation is allowed to continue, what is now a mere crisis will shortly assume the proportions of disaster as the work of the Court flounders towards chaos in morass compounded of deficiencies, procrastination, and ineptitude."

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83. The Jamaica Weekly Gleaner, 22 December 1965.
84. Ibid.
85. The Daily Gleaner, 15 January 1968
86. Ibid.

Another aspect of the administration of justice in Jamaica is currently under debate. This concerns the office of the Director of Public Prosecutions. In May 1967, the Bar Council of Jamaica found it necessary to issue a statement criticising the Government's attitude to the Director of Public Prosecutions, and their discriminating treatment of that Officer. The statement in part declared that an impression may be created in the minds of many citizens that although the Constitution provides otherwise[87] the Government can always make things difficult for those who are expected to perform their duties without fear or favour, should they in the course of those duties happen to tread on the corns of the wrong persons.[88] In an editorial a few days later, the Daily Gleaner commented that the Bar Council's statement "concerning pressures real or imagined upon the Director of Public Prosecutions suggests that all is not well in the judiciary." It added that it "needs to be quickly realized that the vital fabric of the judiciary can be impaired, by the methods currently in use to settle emoluments, duties and terms of service."[89] On announcing his retirement, the Director of Public Prosecutions hinted at the corrosive force of political pressure on the administration of justice and declared that by leaving the office, he was "registering an apprehension that one day the administration of justice may be exposed to the type of scandal that he could not possibly tolerate." He further warned those left in his department, "never bow to political pressure." "Never bow to pressure", he continued, "Never bow to anything like, if I do this, I will advance, advancing and sacrificing your integrity, your concept of decency. Then you categorize yourself as professional cads."[90] In commenting on this statement, one of

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87. The Jamaica Constitution. S.I. 1962 No. 1550 Sec. 94.
88. The Daily Gleaner, 25 May 1967.
89. The Daily Gleaner, 3 June 1967.
90. The Daily Gleaner, 16 September 1967.

Jamaica's eminent Q.Cs., Vivian Blake, said:[91]

> "When I see that the Director of Public Prosecutions can resign because there is no proper respect for the functions that he perform I know - and I hope all Jamaica knows - that the basic tenet of the rule of law, which is that all men are equal before the law irrespective of which party they belong to, is also threatened."

The cumulative effect of these criticisms is that the present administration of criminal justice in Jamaica leaves very much to be desired.

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91. The Daily Gleaner, 18 September 1967.

CHAPTER 12

Conclusion

This work has been an attempt to excavate the foundations of Jamaican criminal law and outline its development up to 1900. In this Chapter, we shall endeavour to draw certain conclusions based upon data unearthed by the excavation. As we have seen however, many of the statutes which came into existence in the 19th century are still in existence today and are still subject to the same criticisms made of them in the 19th century. In addition, certain features of the 18th and 19th centuries have continued into the 20th century. Our conclusions, therefore, though based largely on data of the 18th and 19th centuries, will not be unmindful of developments in the 20th century, and, where appropriate, reference will be made to them. Our remarks will be divided into five sections: A. Content of the Criminal Law, B. Formation of the Criminal Law, C. Use of the Criminal Law, D. The Administration of the Criminal Law, E. Recommendations concerning the Criminal Law.

A. Content of the Criminal Law

One of the first comments which must be made about the content of the present criminal law of Jamaica concerns the great uncertainty surrounding its origins. The criminal law, in a sense, does not know who its father is. By the retention of the unsatisfactory and ambiguous terminology contained in the 1728 Revenue Act which confirmed

the laws and statutes of England which had been "esteemed, introduced, used, accepted or received" as laws in Jamaica prior to 1728, no one can speak with certainty as to the content of the present criminal law. Simpson's Case in 1823[1] where one of the main issues was whether an Elizabethan statute relating to rape was in force in the Island, and Greenwood v. Livingstone in 1833[2] where it was disputed that the Toleration Acts were in force in Jamaica, help to portray the difficulties caused by the Revenue Act, 1 Geo. 2, c. 1. It has been suggested in Chapter 6 that the English Treason Act of 1351 is still in force in Jamaica today and it is not inconceivable that legal questions might arise today concerning other English statutes which might have been in operation in Jamaica prior to 1728. An inquiry relating to these statutes would have to be undertaken.

But any inquiry to determine the English statutes which were in force in Jamaica in the 17th and early 18th centuries is faced with at least two grave difficulties. The first, and one which is almost insurmountable, is the non-existence at the present time of all the legal records of that period. As a result, such an investigation must of necessity be based on incomplete and inconclusive evidence. The second difficulty concerns the legislators and judiciary of the early 18th century. They were generally not legally qualified, and the real possibility exists that some English statutes were incorrectly referred to. So for example in Greenwood v. Livingstone, the Chief Justice resorted to the Council Minutes in the 1690's to help him determine the issue. But the Council Minutes are not altogether convincing and they still leave room for doubt about the statutes in question. The words of untrained 18th century planters are far from being the best material on which to found important judicial decisions.

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1. See Chapter 4, supra.
2. CO 137/189: Musgrave to Stanley, 7 July 1833.

It is submitted that this clause concerning English statutes in force in Jamaica prior to 1728 should be repealed, and one of two courses followed. An inquiry should be undertaken into all the English statutes which might have been in force in Jamaica prior to 1728. All the English statutes which can be stated with certainty to have been in operation, should be clearly enumerated, and given effect to by law. An alternative and much more satisfactory procedure would be for Jamaica to make a complete break with its colonial heritage. After a careful examination the Island's legislature should enact whatever statutes are relevant and necessary today. Such an action would have at least three distinct advantages: there would be no need to scour the English statute books, possibly as far back as 1351, to find the laws in force in an independent Jamaica; the problems of terminology, interpretation, and amendment of the pre-1728 English statutes would be overcome; and above all, the laws so enacted, instead of being slavishly transcribed from other jurisdictions, would be founded on the needs of the society in which they are to operate. This method seems the most suitable to settle this vexed issue once and for all, and save much judicial time and labour.

By the end of the 19th century, Jamaica's criminal law was in many instances similar to the criminal law of England. This adoption of English law has continued, and today much of Jamaica's criminal law is still very similar to that in England. The result has been that in some cases Jamaican criminal law suffers from the same defects for which English criminal law has been severely censured. Two examples may be given - one at common law and one from the statute law. Since 1843, the McNaghten Rules dealing with insanity have been an important part of the common law of England and also of Jamaica. But almost from their inception these rules, with the 'right and wrong' test of insanity, have been subject to great criticism and both the medical

and legal profession have not been sparing in their indictment. In 1865, Dr. Harrington Tuke said that the definition of insanity in the McNaghten Rules had led to great error in administration of the law. "Except in cases of absolute idiocy or dementia", he continued, "the knowledge of right or wrong is intact".[3] According to Weihofen the "Law's conception of how the human personality functions is as defective as was the 1843 conception of the structure of the atom".[4] Mr. Justice Cardozo felt that the McNaghten Rules have "little relation to the truths of mental life",[5] and Mr. Justice Frankfurter's verdict was that they are in "large measure shams".[6] In Israel, Mr. Justice Silberg has forcefully pronounced:[7]

> "...we the men of this generation are not prepared to regard the M'Naghten Rules as the ultimate revelation and our moral feeling rebels at the idea that those two tests - the tests of intellectual lunacy - should alone determine the sanity or insanity of the offender".

The Rules have also been discredited by perhaps the most distinguished body in England that has ever examined their operation - the 1953 Royal Commission on Capital Punishment. Their opinion was that the Rules were "so defective that the law on the subject ought to be changed".[8] Jamaica has, following the English legislation, provided for diminished responsibility in relation to murder, so in that offence the rigid tests of insanity have to some extent been mitigated.

Jamaica has also adopted the English statutes and decisions relating to theft and the cognate offences. The result has been that,

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3. Evidence given to the Royal Commission on Capital Punishment 1865: P.P. 1866, Vol. XXI, p. 330.
4. Henry Weihofen, The Urge to Punish, p. 31.
5. Ibid., p. 17.
6. Evidence to the Royal Commission on Capital Punishment 1953: P.P. 1952-53, Vol. VII, p. 788.
7. Zalman Mandelbrot v. the Attorney General, in Selected Judgments of the Supreme Court of Israel, Vol. 2, p. 188.
8. Report of the Royal Commission on Capital Punishment 1954: P.P. 1952-53, Vol. VII, p. 802.

in the words of the present Director of Public Prosecutions of Jamaica, Mr. James Ker,

> "Prosecuting counsel in Jamaica, as in England, have experienced the sweet confusion of Moynes v. Coopper on the one hand and R. v. Middleton on the other with Russell v. Smith somewhere in between and the insurmountable difficulty, occasioned by D.P.P. v. Neiser, of proving the person charged with receiving goods unlawfully obtained by a misdemeanour knew at the time the property had been obtained by a misdemeanour and not by a felony."[9]

But few branches of English law have been more severely and persistently criticized than that of theft - which Jamaica has largely adopted. In the 19th century, Stephen's view was that no "branch of the law is more intricate and few are more technical" than that of theft.[10] In 1958, Lord Goddard C.J. expressed the opinion that English law of larceny should be "somewhat simplified and cleared up".[11] In 1964, Professor Elliot likened the English law relating to dishonest acquisition of property to

> "an enormous, lumbering, ramshackle machine. Fashioned by generations of long-dead craftsmen out of materials and with tools no longer found outside a science museum, by now it sports a variety of attachments of whimsical aspect and mysterious purpose added at various times by maladroit journeymen. Grinding and wheezing, hissing steam at every joint and belching forth black smoke which frequently blinds the eyes of those nominally in charge of it, this mechanical Behemoth lumbers forward, on cast-iron, tyreless wheels....."[12]

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9. Law in the West Indies, Some Recent Trends, p. 102.
10. James Fitzjames Stephen, A History of the Criminal Law of England, Vol. 3, p. 122.
11. Russell v. Smith [1957] 2 A.E.R. 796 at p. 797.
12. [1964] Criminal Law Review, p. 182.

In 1966, the English Criminal Law Revision Committee expressed themselves to be "strongly of the opinion that the time has come for a new law of theft and related offences, based on a fundamental reconsideration of the principles underlying this branch of the law and embodied in a modern statute".[13] Because Jamaica has adopted the English provisions and decisions, these criticisms apply equally well to Jamaican law. The Jamaican law is in dire need of reform, and it should here be pointed out that a great proportion of blame for this state of affairs must be placed at the feet of the Jamaican judiciary. The Jamaican judges have exhibited an unwarranted reverence for, and an unimaginative dependence on, English decisions which are in some instances excessively technical, contradictory and confusing. The Jamaican courts are as a result imprisoned in an English framework, and this largely of their own making.[14] In the 19th century the Criminal Code, could have broken Jamaica away from this self-imposed dependence on English decisions, but it was resisted for that very reason.

B. Formation of the Criminal Law

The history of penal legislation in Jamaica shows that in many instances fear and panic have been the motivating factors in the enactment of legislation. Throughout slavery, some or all of these factors dominated the enactment of legislation. Again, after the 1865 rebellion, the Assembly were in such panic that they legislated for the non-existent evil of unlawful drilling. In 1938 after the labouring classes had made their protest, the Colonial Government

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13. Criminal Law Revision Committee - Eight Report P.P. 1966, Cmd. 2977. See also 21 Modern Law Review 43.
14. Recently the Court of Appeal of Jamaica sitting en banc spent days labouring over the much debated question of consent and taking in larceny. See R. v. Neville McLean reported in The Daily Gleaner, 13 January 1968, p. 4.

were so eager to enact legislation that they swiftly made use of an English statute designed to deal with a totally different situation. On that occasion too, the legal adviser of the Government did not even understand the terminology of the Bill which he was introducing!

Irrational emotionalism has also played a very significant part in the formation and administration of the criminal law in Jamaica. During slavery, this factor was always present, and after emancipation, it was not entirely absent. But as recently as 1963, this undesirable brand of emotionalism was fully utilised and articulately defended in the formation of the law. Parts of the debates on the Rape Act of 1963 which were described in Chapter 11, can only be viewed with regret and dismay. The effect of irrational emotionalism on the law of Jamaica is not merely theoretical or academic; and it is not necessary to refer to the jurisprudential objections against it. We need only advert to the history of Jamaica and the development of the criminal law. In the 17th, 18th and 19th centuries emotionalism played a prominent part in both the formation and administration of the criminal law; and we have seen the consequences which resulted to the law and society as a whole. It takes no seer to see, and in regard to the 19th century it has in fact been adequately documented what the results would be, when judges and juries follow the legislators' example, and treat the administration of the criminal law as irrationally as they treated its formation. The lessons of the past are clear and unforgettable and once irrational emotionalism is involved in either the formation or administration of the criminal law, Jamaica is proceeding down a dangerous path. It is to be hoped that the legislators of Jamaica will pause and remind themselves of the lessons of the past before legislating for the present. Otherwise as far as criminal justice and the entire society is concerned, Jamaica faces a very, very bleak future.

In some cases, though not enacted in panic, the penal legislation gives the appearance of being insufficiently considered and analyzed. The vagrancy, praedial larceny, obeah and ganja legislation, all seem to fall within this category. The ganja legislation particularly, with its stringent mandatory provisions, gives rise to great concern. Although many in Jamaica believe that there is a positive relationship between ganja and violent crimes, medical science has so far failed to establish any such relationship. The debates in the Jamaica legislature provide ample proof that the doubts and uncertainties which have surrounded the subject of ganja have not been resolved. But it is a matter of great unease to think that a drug, for which such heavy penalties are provided, is used by thousands of Jamaicans for medicinal purposes. One such purpose has been referred to by Jamaica's Minister of Finance who stated that ganja is known to be effective as a remedy for malaria. In the light of all these circumstances, the current ganja legislation can hardly be described as being other than unjust and iniquitous.

One aspect of the inadequate consideration of penal legislation concerns the adoption of English laws in Jamaica. For example, Jamaica, following the provisions in the English Offences Against the Person Act, has specifically protected heiresses from violation![15] This concept of an heiress who needs special protection, may reflect or may have adequately reflected the social attitudes and economic values of England, but it is questionable whether such a concept is either necessary or desirable in Jamaica. Again, in relation to the law of theft, the concept of a bird shot at 'bird bush', belonging to the owner of the land on which the bird is shot, scarcely seems to accord with the views of the Jamaican layman. The subject of chattel houses is also one on which insufficient account has been taken of local conditions.[16]

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15. 27 Vic., c. 32, and Laws of Jamaica (Rev. Ed. 1953) Cap. 268.
16. See Law in the West Indies, Some Recent Trends, p. 103.

In addition to being insufficiently considered, many of the 19th century penal measures have been strongly influenced by the legislators' prevailing attitudes to the objects of the legislation. In the period under review, the Jamaican legislators were either Europeans or descendants of Europeans, and the objects of the legislation were predominantly Africans or descendants of Africans. This, and the additional experience of slavery, imbued the law with distinct racial characteristics. The reasons given for at first denying the slaves the right to trial by jury was that they were a 'brutish' kind of people. Throughout slavery, the slaves were regarded as 'savages', and after emancipation, this opinion was still extant among the legislators. In 1897, about 60 years after emancipation, a former Attorney General of Jamaica, was able to describe the black population as only "very few generations removed from wild cannibal savages".[17] Such attitudes led to the enactment of harsh, sometimes brutal legislation, which was considered necessary to regulate the harsh and brutal mass of the population. Some of these measures are still in existence today.

C. The Use of the Criminal Law

Throughout the period under review in this work, a firm belief has existed among the legislators that the efficacy of penal legislation lies in its stringency. Simplified, this theory means that the more harsh the criminal law is, the greater is its deterrent effect. This belief is still found among some 20th century legislators. In the debate on the Rape Act of 1963, it was said that if the punishment then provided did not reduce the incidence of crimes, the punishment provided by the Act would be further increased.

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17. CO 137/580: Blake to Chamberlain, 12 March 1897, Enclosed Memorandum by Sir Henry Hocking.

When a Bill amending the Offences Against the Person Act was being debated in the Senate in December 1967, it was stated that only "by making the punitive measures harsh will we deter those who seek to commit" certain offences against the person.[18]

It is submitted, with the greatest respect, that this commonly held belief about the deterrent effect of harsh measures is not only unproven but is indeed a fallacy - a dangerous fallacy. In Jamaica, the history of penal legislation has run counter to this belief and amply refutes this theory. From the beginning to the end of slavery, the slaves rebelled against the regime of forced labour. Although almost every rebellion was followed by more stringent legislation, this did not deter the slaves from rebelling. And this happened despite the fact that death was the ultimate sanction for involvement in rebellion. The history of praedial larceny shows that although the legislature kept increasing the punishment for the offence, the number of offences was not decreased as a result. In fact, in the areas where whipping was most frequently resorted to, the number of offences was higher than in other areas. The history of obeah legislation also appears to be similar to that of praedial larceny. The legislature kept increasing the punishment for obeah practices, but this failed to eradicate the superstition, and obeah is still widely practised in Jamaica today. In 1963, the punishment for rape and carnal abuse was drastically increased. From the statistics since the enactment of that legislation, the tentative conclusion appears to be that the incidence of those offences has not decreased.[19] In discussing the deterrent effect of penal legislation, it must also be noted that in 1840-41, when Jamaica had the most lenient set of penal measures for nearly two hundred

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18. Speech of Senator Elsie Bailey, reported in The Daily Gleaner, 4 December 1967.
19. See Appendix C.

years, crime in the Island was almost non-existent. Bearing all these factors in mind, it therefore cannot be convincingly asserted that the reduction of crime in Jamaica depends upon the harshness and stringency of the criminal laws.

The criminal law has also been used for political and economic purposes. One of the main political uses has been to silence critics of the government or to prevent the dissemination of opinions which might tend to be critical of the government. In the early 18th century, religious beliefs tended to be equated with loyalty to the government of the Island. For this reason legislation was directed against the Roman Catholics. When in the 19th century, controversy raged in Jamaica on the question of emancipation, the pro-slavery legislature did not hesitate to legislate against the non-conformist missionaries, whom they regarded as disseminating doctrines inconsistent with slavery. Nor were they tardy in enacting legislation against "seditious meetings" and "seditious writings". These were both euphemistic terms to prevent a full and free discussion of the important issues involved in the continued existence of slavery. In this respect it is regrettable that the provisions dealing with seditious meetings which first reached the statute book in 1823, and which have been so strongly criticized, should still, without amendment, be in existence today. It was also to prevent the dissemination of views critical of the administration that the Colonial Government hastily enacted in 1940 vague legislation to prohibit the importation of certain literature. It may also be for that reason why successive Jamaican governments have allowed the legislation to remain in existence, and have even added to the list of banned publications.

Another very striking use of the criminal law has been its employment in efforts to solve the social and economic problems thrown

up by the society. Most, if not all, of the penal legislation of slavery was used for this purpose. But even after emancipation, this use of the criminal law continued: the vagrancy and praedial larceny legislation are excellent examples. Praedial larceny especially, minutely reflected the economic barometer of the Island and although the problem was an economic one, and recognized as such, persistent attempts were nevertheless made to solve it by increasing the stringency of the praedial larceny legislation. Problems which are rooted in economic conditions have never been solved by use of the criminal law. Yet particularly in the period after 1860, the Jamaican legislators made repeated attempts to solve what were essentially economic problems by use of the criminal law. It is not surprising that all these attempts proved futile.

In reviewing the uses to which the criminal law has been put, it seems difficult, if not impossible, to avoid the conclusion that the criminal law has been severely abused. It has been employed as a weapon - at times a brutal and vicious weapon - in what can only be described as an unceasing class struggle in Jamaica. The legislators were drawn exclusively from a different class - from the planters, merchants and professional people - while the mass of the population were landless labourers. Possessing different attitudes and different interests, the legislators did not hesitate to use the criminal law in protecting their interests, buttressing their power and maintaining the status quo. This happened in the political area, in the social sector and also in the economic field. And insofar as class in Jamaica has coincided with colour, the criminal law has at times been used as a vicious instrument of colour oppression. Jamaica today is still divided into classes; and the ethnic composition of the Island is not fundamentally different to what it was in 1900. The history of the penal legislation has shown that it

is not difficult for the criminal law to be abused and to become a tool of oppression by one class in the community. Mindful of the past and conscious of the present, too great a caution cannot be exercised by the present legislators of Jamaica in the enactment of penal legislation.

D. The Administration of the Criminal Law

Chapters 2 and 3 have illustrated the very intimate relationship between the administrators of criminal justice and the legislators, and the development of the criminal law.

For the efficient administration of criminal justice it is imperative that the judiciary be qualified and impartial. The judiciary must not be, and even more important, must not appear to be, the tool of any one class or party. The complaint of every citizen in the land must be carefully and fairly dealt with. By its integrity and independence, the judiciary must inspire confidence in the administration of justice, and doubt must not exist that justice will be rendered to all, regardless of political affiliation, financial consideration, or racial distinction.

Equally important in the administration of justice, is an efficient legal system. The courts must be regularly held, and they must be easily accessible to the mass of the population. Also, no effort should be spared to ensure that instead of being "imbued with violent passions",[20] jurors bring to their tasks, fresh and unbiassed minds. The qualfications and impartiality of the functionaries - at all levels - must be considered and scrutinized. And the actions of the police must not render the Force suspect as a law enforcing body.

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20. P.P. Relating to the West Indies, Part III - Jamaica: Russell to Metcalfe, 29 January 1840.

In the formation of the law, the bona fides of the legislators must be questioned. But that is not sufficient. Even if the legislators act in good faith and with the sincerest of intentions in enacting penal legislation, other pertinent questions demand firm answers: Are the legislators selected from a narrowly defined group or are they representative of the population as a whole? What is their attitude to the mass of the population? What is their knowledge of the history of the people? Have they examined in detail every aspect of the subject on which they are legislating, or have they based their legislation on insufficient and superficial data? In sum, how extensive and unprejudiced is their knowledge of the society for which they are enacting penal legislation.

In Chapter 11 we saw that criticisms have been levelled at some aspects of the current administration of justice in Jamaica. If the position is, as a former Director of Public Prosecutions suggested, that the administration of justice is in danger of being tampered with, then this is a cause for very serious concern. But it is with as much concern that we read of justice being denied to citizens because of inefficient arrangements in bringing their cases to trial. If an already bad situation is allowed to deteriorate, then Jamaica faces a very difficult, if not violent, future. Throughout Jamaica's history, the administration of criminal justice has played a most important part in the life of the people. During slavery, denial of justice was one of the major factors in many, if not all, of the slave rebellions. In 1865, rebellion was also triggered off by the injustices meted out to the poorer inhabitants of the Island. Almost all these rebellions were swiftly followed by additional penal legislation. The lessons of the past are therefore self-evident: corruption, neglect or incompetence leads to maladministration of the criminal law; maladministration leads to

rebellion or extensive public disorder; and this in turn leads to additional penal legislation. With this chain of events in mind, it is hoped that action will be taken to remedy this situation before another group of penal measures is added to the statute books.

E. Recommendations

From the preceding Chapters of this work, it is obvious that the criminal jurisprudence of Jamaica is in need of radical revision. Jamaica is largely operating a 19th century penal system inasmuch as many of the current criminal laws of Jamaica are mere re-enactments of 19th century legislation. Most of these 19th century statutes however, were enacted for different purposes, in different circumstances, and by legislators who were as ill-informed and unrepresentative as they were panic stricken and prejudiced. Some of the 20th century statutes are subject to similar criticisms as those of the 19th century. Various doses of panic, emotionalism, expediency, convenience, ignorance and superstition, have been compounded to give Jamaica the system of penal laws it now possesses. The result is that much of the content of Jamaica's current criminal law requires fundamental amendment. Much is totally indefensible. At no time in Jamaica's tortuous history has the relevance of the entire body of penal laws been rationally and carefully examined. It is therefore submitted that what is required is an immediate and comprehensive review of the penal legislation of Jamaica, against the background of the present Jamaican society.

One of the first subjects for revision should be the definition and terminology of certain legal concepts. Theft, an offence which affects substantial numbers of the population, may again be used as an example. In the law of theft, various attempts have been made

to obtain a less technical set of rules. The American Law Institute's Model Penal Code, the Indian Penal Code, the Uganda Penal Code, the English Criminal Code (Indictable Offences) Bill, 1878, The 1879 Criminal Code of Jamaica, and the 1967 Theft Bill of England,[21] are only a few examples. No judgment is being made as to the applicability of any of these formulations to Jamaica - they are merely illustrative of the ferment which has been going on in other jurisdictions to make the law more just and workable.

In this suggested review of the criminal law, the desirability of a Penal Code for Jamaica should also be explored. In the 19th century, codification in Jamaica failed for a variety of reasons, and it would be prudent to use the lessons of that experience in any future attempt. One of the most important lessons is that the law must be formulated against the Jamaican background and not merely derivative of another jurisdiction. Today, arguments concerning codification have been revived in England, and there is a possibility that the English criminal law may be codified. In July 1967, the then Home Secretary of England, Mr. Roy Jenkins, stated that the time "has come to have a complete criminal code".[22] He also gave an indication of what he thought the code should contain: a statement of general principles and their application; the law relating to specific offences; a code of criminal procedure; a code of criminal evidence, and a section on punishment. A strong belief exists that if England codifies her laws, Jamaica is likely to follow. But is there sufficient reason for codification of Jamaican law to be dependent on codification of English law? In 1888, after the codification attempt in Jamaica

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21. At the time of writing, May 1968, this Bill is well advanced in Parliament. It should also be noted that the principles embodied in the Bill have not gone unchallenged and there has been controversy for example about dishonest borrowing. See The Times, 22 February 1968, p. 11, for an article by Professor Fitzgerald and others.

22. Quoted in The Observer, 2 July 1967. See also the Law Commission, Second Programme, Item XVIII, Working Paper No.17 on the Codification of the Criminal Law, 14 May 1968.

failed, it was stated that for Jamaica to have a code it "must wait until the Criminal Law of England is codified".[23] Need that be true in 1968, provided that there are advantages in codifying the Jamaican law and competent workmen are available for constructing a code? It cannot be denied that factors similar to the ones which motivated Henry Taylor in 1870 are present in Jamaica today. If evidence were required to support this proposition, the disappointing and, in some instances, startling statements on penal legislation in the Jamaican Parliament are more than sufficient. Can it be seriously contended that penal legislation in Jamaica is not "a sort of subject on which every imperfectly instructed person considers himself competent to form off-hand opinions?" For these and other reasons, it is submitted that the codification of the criminal law of Jamaica is a subject to which serious consideration should be given.

But in any review of penal legislation in Jamaica, much more is needed than an examination of the terminology of penal offences. The development of the criminal law up to 1900 has shown that on several occasions the criminal law has been used in attempts to solve problems which were essentially social and economic ones. Some of the 20th century criminal statutes also seem to have been similarly used. Any comprehensive revision of penal legislation in Jamaica should, therefore, not be undertaken without a simultaneous examination into the social and economic conditions of the Island. The Jamaican society cannot be separated into watertight compartments; it must be treated as an organic whole. Although it may be difficult to calibrate the extent of the interrelationship and interaction, each segment of the society is related to and reacts on the other. The criminal law is only one part, albeit an important part,

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23. CO 137/536: Norman to Knutsford, 1 November 1888, Wingfield's Minute.

of the whole. In 1865, maladministration of the criminal law combined with economic depression to produce the spark for rebellion. This rebellion led to a new constitutional structure, which enabled worthwhile reforms to be introduced, including that of a more efficient legal system. In 1896 onwards, when the sugar industry was in the grip of a depression, employment opportunities decreased. Consequently, praedial larceny offences increased. This increase was in turn accompanied by clamant demands for additional praedial larceny and vagrancy legislation, which was eventually enacted. In 1938, the economic conditions of the Island forced the labouring population into strident protest. This protest affected the immediate content of the criminal law. It also helped to determine the subsequent constitutional framework of the Island, which has been largely responsible for charting Jamaica's course since that time.

With this information in mind, what is to be questioned is not only the terminology or severity of the present penal legislation of Jamaica, but also the relevance of every penal statute to the Island. The penal legislation of a country should have its root in, and be directly related to, the society which it serves. In addition to the question of relevance, discussion must also revolve around the purpose of penal legislation, and its use in, and by, society. When, as happened in this century, so influential a person as a Governor could admit that the increase in praedial larceny was "in a large measure attributable to the scarcity and depression, and especially to the lack of demand for labour", while simultaneously advocating more severe flogging as a solution, the raison d'etre of the criminal law must inevitably and of necessity be queried.[24]

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24. CO 137/621: Hemming to Chamberlain, 21 August 1901.

For too long has Jamaica enacted legislation in panic and haste; for too long has Jamaica enacted legislation without due consideration of all the relevant factors; for too long has Jamaica imported penal statutes without questioning their relevance to the Jamaica society and people. In fact what is necessary is a philosophy concerning the criminal law in the Jamaican body politic. And it would be futile, if not irresponsible and dangerous, to see such an issue merely in terms of legal maxims or concepts. In the 19th century, economic conditions, educational opportunities, and social attitudes were very influential in the development of the law. These factors should also be discussed today and it is absolutely imperative for a dialogue to be based on a comprehensive examination of Jamaican society - its historical development, its present state, and its future objectives. Information produced by such discussion would go a long way in defining the purpose of the criminal law and determining its role.

Of equal importance as the content of the criminal law is the process by which the criminal law may be reformed. In Jamaica, there is in existence both a Law Revision Committee and a Law Reform Committee. The former is responsible for the revision of the laws and subsidiary legislation, including a review of monetary penalties prescribed by law; the latter, the "intellectual Committee"[25] examines the reform of the law in greater depth. But neither of these Committees is undertaking what is required in Jamaica today - the examination of the entire body of criminal law against the background of the society. In addition, both Committees are subject to criticism on the ground of being mainly composed of members of the legal profession. Any body which is to make this comprehensive examination of the criminal law as suggested must be broadly-based; it must not only be composed of lawyers, but also of those whose

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25. Speech of the Hon. Attorney General in the House of Representatives, 30 January 1968.

disciplines involve an inquiry into various aspects of society.

It is suggested that two bodies should be hereafter brought into existence for the purpose of reforming the criminal law. The first is a temporary, independent and non-political body[26] composed of lawyers, historians, sociologists, economists, criminologists and laymen, familiar with Jamaica. To this body should be given the task of comprehensively reviewing the criminal laws of Jamaica and preparing a new set of penal legislation. The widest terms of reference should be given to this body and no area of society relevant to their inquiry should be regarded as sacrocanct. The legislative proposals made by this body should, after full discussion, be enacted into law, preferably in the form of a Penal Code. The difficulties involved in such an endeavour should not be minimised or slurred over. But the attempt must be made; for the establishment of this body as suggested, seems to be the best method of giving Jamaica an authochtonous body of criminal laws, which for the first time in the Island's history, accords with the mood, hopes and aspirations of the mass of the population.

The second body is a permanent one, and could possibly be made a Department of government. This body could come into existence after the body as proposed above has reported. Like the Director of Public Prosecutions, its head should be non-political, secure in tenure, and independent. This Department should be given the direct task of superintending the operation of the criminal law in Jamaica. All proposals for reforming the criminal law should be submitted to this Department. Working with a small but qualified and competent staff, it would have the responsibility of collecting information from both government and non-governmental sources, and receiving memoranda on any subject of reform in the criminal law. After a

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26. Non-political in the sense of not being aligned to any existing political party.

full and careful consideration of all aspects of the question, the Department could then submit proposals to be enacted into legislation. The public would thus be kept duly informed of the basis for enactment of criminal laws. Improper administration of the criminal law has played no mean part in the development of the substantive criminal law. This Department should also receive complaints about the arrangements for the administration of criminal justice.[27] Too often these complaints disappear into the bureaucratic labyrinth and it is hoped that this Department could ensure that the wheels of criminal administration are properly oiled and that criminal justice is efficiently administered.

The proposals contained in this Chapter are intended to help in ensuring that the criminal law becomes a living force within the society, and that no citizen of the land is denied justice in criminal matters. In 1840 it was said of Jamaica:

> " The Negroes have looked to law, because law, as thus administered, gave them a feeling of security. Had there been no magistrates in whom they trusted, they would have had the same spirit of freedom, the same impatience of oppression, but would have resorted to combination - to passive resistance - perhaps to active violence - as the means of maintaining their freedom and independence."28

In 1865, the Negroes were forced to resort to 'active violence'. There is no reason to believe that their descendants would refrain from doing so, should the occasion arise today. The present penal system is defective, and in parts indefensible. The question is, therefore, not whether Jamaica can afford the comprehensive penal reform which is required, but whether Jamaica can afford not to carry out that reform. Criminal justice is important and fundamental. No effort should be spared to make the criminal jurisprudence of Jamaica just, respectable, and dynamic.

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27. It is not being suggested that this Department should review substantive decisions of the Courts and undermine the independence of the judiciary.
28. P.P. Relating to the West Indies, Vol. 8 Part III - Jamaica: Russell to Metcalfe, 29 January 1840.

Appendix A

Administrators of Jamaica

COMMISSIONERS

1655	General Robert Venables
	Admiral William Penn
	Captain Gregory Butler
	General Richard Fortescue
	Vice-Adm. William Goodson
	Fortescue, Goodson
	Major-Gen. Robert Sedgwicke
	Goodson, Sedgwicke
	Colonel Edward D'Oyley
1656	Goodson, D'Oyley
	General William Brayne
	Goodson
1656/7	Brayne
1657	D'Oyley

GOVERNORS

1661-62	General Edward D'Oyley	First Civil Governor
1662	Thomas, Lord Windsor	Governor
1662-64	Sir Charles Lyttelton	Deputy-Governor
1664	Colonel Thomas Lynch	President
1664	Colonel Edward Morgan	Deputy-Governor
1664-71	Sir Thomas Modyford, Bt.	Governor
1671-74	Sir Thomas Lynch	Lieut.-Governor
1674	Sir Henry Morgan	Lieut.-Governor
1675-78	John, Lord Vaughan	Governor
1678	Sir Henry Morgan	Lieut.-Governor
1678-80	Charles, Earl of Carlisle	Governor
1680-82	Sir Henry Morgan	Lieut.-Governor
1682-84	Sir Thomas Lynch	Governor
1684-87	Col. Hender Molesworth	Lieut.-Governor
1687-88	Christopher, Duke of Albermarle	Governor
1688-90	Sir Francis Watson	President

1690-92	William, Earl of Inchiquin	Governor
1691-92	John White	President
1692-93	John Burden	President
1693-1700	Sir William Beeston	Lieut.-Governor
1700-02	Sir William Beeston	Governor
1702	Maj.-Gen. William Selwyn	Governor
1702	Peter Beckford	Lieut.-Governor
1702-04	Col. Thomas Handasyd	Lieut.-Governor
1704-11	Sir Thomas Handasyd	Governor
1711-16	Lord Archibald Hamilton	Governor
1716-18	Peter Heywood	Governor
1718-22	Sir Nicholas Lawes	Governor
1722-26	Henry, Duke of Portland	Governor
1726-28	John Ayscough	President
1728-34	Maj.-Gen. Robert Hunter	Governor
1734-35	John Ayscough	President
1735	John Gregory	President
1735-36	Henry Cunningham	Governor
1736-38	John Gregory	President
1738-52	Edward Trelawny	Governor
1741-42	John Stewart	Lieut.-Governor
1747-48	John Gregory	President
1752-56	Admiral Charles Knowles	Governor
1756-59	Henry Moore	Lieut.-Governor
1759	General George Haldane	Governor
1760-62	Henry Moore	Lieut.-Governor
1762-66	William Henry Lyttelton	Governor
1766-67	Roger Hope Elletson	Lieut.-Governor
1767-72	Sir William Trelawny	Governor
1772-74	Lieut.-Col. John Dalling	Lieut.-Governor
1774-77	Sir Basil Keith	Governor
1777-81	Colonel John Dalling	Governor
1781-83	Maj.-Gen. Archibald Campbell	Lieut.-Governor
1783-84	Maj.-Gen. Archibald Campbell	Governor
1784-90	Brig.-Gen. Alured Clarke	Lieut.-Governor
1790-91	Thomas, Earl of Effingham	Governor
1791-95	Maj.-Gen. Adam Williamson	Lieut.-Governor
1795-1801	Alexander, Earl of Balcarres	Lieut.-Governor
1801-05	Lieut.-Gen. George Nugent	Lieut.-Governor
1806-08	Sir Eyre Coote	Lieut.-Governor
1808-11	William, Duke of Manchester	Governor
1811-13	Lieut.-Gen. Edward Morrison	Lieut.-Governor
1813-21	William, Duke of Manchester	Governor

1821-22	Maj.-Gen.Henry Conran	Lieut.-Governor
1822-27	William,Duke of Manchester	Governor
1827-29	Maj.-Gen.Sir John Keane	Lieut.-Governor
1829-32	Somerset,Earl of Belmore	Governor
1832	George Cuthbert	President
1832-34	Constantine,Earl of Mulgrave	Governor
1834	George Cuthbert	President
1834	Maj.-Gen.Sir Amos Norcot	Lieut.-Governor
1834-36	Peter,Marquis of Sligo	Governor
1836-39	Sir Lionel Smith	Governor
1839-42	Sir Charles Metcalfe	Governor
1842-46	James,Earl of Elgin	Governor
1846-47	Maj.-Gen.Sackville Berkeley	Lieut.-Governor
1847-53	Sir Charles Edward Grey	Governor
1853-56	Sir Henry Barkly	Governor
1856-57	Maj.-Gen. E. Wells Bell	Lieut.-Governor
1857-62	Captain Charles Darling	Governor
1862-64	Edward John Eyre	Lieut.-Governor
1864-66	Edward John Eyre	Governor
1866	Sir Henry Storks	Governor
1866-74	Sir John Peter Grant	Governor
1874	W.A. Young	Administrator
1874-77	Sir William Grey	Governor
1877	Edward Rushworth	Lieut.-Governor
1877	Maj.-Gen. Mann	Administrator
1877-80	Sir Anthony Musgrave	Governor
1879-80	Edward Newton	Lieut.-Governor
1880-83	Sir Anthony Musgrave	Governor
1883	Col. Somerset M. Wiseman Clarke	Administrator
1883	Maj.-Gen. Gamble	Administrator
1883-89	Sir Henry Norman	Governor
1889	Col. William Clive Justice	Administrator
1889-98	Sir Henry Arthur Blake	Governor
1898	Maj.-Gen. Black	Administrator
1898	Maj.-Gen. Hallowes	Administrator
1898-1904	Sir Augustus Hemming	Governor
1904	Sir Sydney Olivier	Administrator
1904	Hugh Clarence Bourne	Administrator
1904-7	Sir James Swettenham	Governor
1907	Hugh Clarence Bourne	Administrator
1907-13	Sir Sydney Olivier	Governor

Appendix B

Enclosure in CO 137/647: Swettenham to Secretary of State for the Colonies, 8 November 1905.
Return showing the number of prosecutions for Praedial Larceny with the number of convictions and acquittals from 1872 - 1905.

Year	Total Prosecutions	Total Convictions	Acquittals
1872 - 1873	1243	712	536
1873 - 1874	1402	671	731
1874 - 1875	1819	968	851
1875 - 1876	1998	1102	896
1876 - 1877	1465	840	625
1877 - 1878	1819	998	821
1878 - 1879	1377	634	743
1879 - 1880	1516	633	883
1880 - 1881	3460	1873	1587
1881 - 1882	1137	520	617
1882 - 1883	837	438	382
1883 - 1884	561	282	272
1884 - 1885	579	253	305
1885 - 1886	1114	583	508
1886 - 1887	838	435	382
1887 - 1888	697	333	353
1888 - 1889	1289	746	537
1889 - 1890	380	238	146
1890 - 1891	1312	791	510
1891 - 1892	1468	849	619
1892 - 1893	1357	821	538
1893 - 1894	1168	617	546
1894 - 1895	1019	512	505
1895 - 1896	1560	889	671
1896 - 1897	2171	1277	875
1897 - 1898	2147	1309	829
1898 - 1899	1493	920	559
1899 - 1900	1360	825	523
1900 - 1901	1808	1085	719
1901 - 1902	1846	1137	704
1902 - 1903	1186	651	533
1903 - 1904	2136	1359	776
1904 - 1905	4044	2672	1362

Appendix C

Criminal Statistics for Certain Offences[1]

Year	Offences								
	Rape and Carnal Abuse			Obeah			Breach Dangerous Drugs Law[2]		
	No Reported	No cleared up	% age	No Reported.	No cleared up	% age	No reported	No cleared up	% age
1958-59	230	164	71	4	4	100	308	308	100
1959-60	133	81	68	4	4	100	501	496	99
1960-61	229	145	63	5	5	100	773	750	97
1961-62	217	136	62	6	6	100	763	752	98
1962-63	230	137	59	10	10	100	912	893	97
1963-64	318	182	57	17	17	100	1037	1025	98
1964-65	312	151	48	3	3	100	485	472	97
1965-66	331	196	59	4	4	100	563	453	80

1. Taken from the Handbooks of Jamaica for 1961,1965,1966.

2. The vast majority of these cases concern ganja.

TABLE OF CASES

TABLE OF STATUTES

A. UNITED KINGDOM STATUTES TO WHICH REFERENCE IS MADE

1275	3 Edw. 1, c. 34	Slanderous reports
1285	13 Edw.,1. St. 1, c. 34	Forfeiture of dower
1351	25 Edw. 3, c. 2	Treason
1403	5 Hen. 4, c. 5	Maiming
1529	21 Hen. 8, c. 7	Embezzlement
1533	25 Hen. 8, c. 6	Sodomy
1536	28 Hen. 8, c. 15	Offences at sea
1545	37 Hen. 8, c. 6	Burning of frames
1552	5 & 6 Edw. 6, c. 4	Brawling
1553	1 Mary Sess. 2, c. 12	Riot
1554	1 & 2 Phil. & Mary.c. 10	Treason
1558	1 Eliz. c. 5	Treason
1562	5 Eliz. c. 10	Embezzlement
1562	5 Eliz. c. 17	Sodomy
1571	13Eliz. c. 1	Treason
1575	18 Eliz. c. 7	Benefit of clergy
1581	23 Eliz. c. 1	Religion
1581	23 Eliz. c. 2	Seditious words
1588	31 Eliz. c. 4	Embezzlement
1562	5 Eliz. c. 14	Forgery
1605	3 Jas. 1, c. 4	Popish recusants
1661	13 Charles 2, c. 1	Sedition
1662	13 & 14 Charles 2, c. 33	Licensing of the Press
1670	22 & 23 Charles 2, c. 1	Maiming
1673	25 Charles 2, c. 2	Popish recusants
1677	29 Charles 2, c. 3	Statute of Frauds
1679	31 Charles 2, c. 2	Habeas Corpus

1691	3 Wm. & Mary, c. 9	Benefit of clergy
1697	9 Wm. 3, c. 1	Correspondence with the Pretender
1697	9 & 10 Wm. 3, c. 27	Hawkers
1697	9 & 10 Wm. 3, c. 41	Embezzlement of public stores
1698	11 & 12 Wm. 3, c. 4	Popery
1698	11 & 12 Wm. 3, c. 7	Piracy
1700	12 & 13 Wm. 3, c. 3	Privilege of Parliament
1702	1 Anne, c. 17	Militia
1704	3 & 4 Anne, c. 14	Annuities
1705	4 Anne, c. 8	Treason
1705	5 Anne, c. 31	Receiving
1708	7 Anne, c. 4	Mutiny
1710	9 Anne, c. 10	Larceny
1710	9 Anne, c. 16	Assault
1714	1 Geo. 1 St. 2, c. 5	Riot
1714	11 Geo.1, c. 25	Embezzlement of public stores
1722	9 Geo. 1, c. 8	Continuation of Acts
1722	9 Geo. 1, c. 22	Offences Against property
1728	2 Geo. 2, c. 21	Murder
1728	2 Geo. 2, c. 25	Perjury
1757	30 Geo. 2, c. 24	Obtaining money by false pretences
1782	22 Geo. 3, c. 58	Receiving stolen goods
1797	37 Geo. 3, c. 123	Unlawful oaths
1799	39 Geo. 3, c. 85	Embezzlement
1803	43 Geo. 3, c. 58	Malicious shooting
1806	46 Geo. 3, c. 54	Offences at sea
1810	50 Geo. 3, c. 59	Embezzlement of collections
1812	52 Geo. 3, c. 104	Unlawful oaths

1819	60 Geo. 3 & 1 Geo. 4	Unlawful drilling
1822	3 Geo. 4, c. 38	Punishment for manslaughter
1824	5 Geo. 4, c. 95	Combination of workmen
1827	7 & 8 Geo. 4, c. 29	Larceny
1827	7 & 8 Geo. 4, c. 30	Malicious injuries to property
1828	9 Geo. 4, c. 31	Offences against the person
1830	11 Geo. 4 & 1 Wm. 4, c. 66	Forgery
1832	2 & 3 Wm. 4, c. 4	Embezzlement
1837	7 Wm. 4 & 1 Vic., c. 85	Offences against the person
1841	4 & 5 Vic., c. 56	Punishments
1845	8 & 9 Vic., c. 47	Dog stealing
1848	11 & 12 Vic., c. 12	Treason felony
1849	12 & 13 Vic., c. 76	Offences against women
1853	16 & 17 Vic., c. 30	Criminal procedure
1853	16 & 17 Vic., c. 107	Customs Consolidation
1857	20 & 21 Vic., c. 54	Punishmentsof frauds
1861	24 & 25 Vic., c. 96	Larceny
1861	24 & 25 Vic., c. 97	Malicious damage
1861	24 & 25 Vic., c. 98	Forgery
1861	24 & 25 Vic., c. 99	Coinage
1861	24 & 25 Vic., c. 100	Offences against the person
1869	32 & 33 Vic., c. 62	Debtors
1875	38 & 39 Vic., c. 24	Falsification of accounts
1876	39 & 40 Vic., c. 76	Customs consolidation
1885	48 & 49 Vic., c. 69	Sexual offences
1920	10 & 11 Geo. 5, c. 55	Emergency Powers

B. JAMAICAN STATUTES TO WHICH REFERENCE IS MADE

1664	CO 139/1/33	Judicature
1664	CO 139/1/37	Tipling and Cursing
1664	CO 139/1/37	Preventing idle livers
1664	CO 139/1/42	Slaves
1664	CO 139/1/49	Militia
1664	CO 139/1/55	Slaves
1664	CO 139/1/65	Laws of England in force
1664	CO 139/1/81	Damage by cattle
1674	CO 139/1/109	Slaves
1681	33 Charles 2, c. 2	Servants
1681	33 Charles 2, c. 5	Blastphemy
1681	33 Charles 2, c. 8	Pirates
1681	33 Charles 2, c. 10	Damages in plantations
1681	33 Charles 2, c. 11	Servants
1681	33 Charles 2, c. 16	Counterfeiting broad seal
1681	33 Charles 2, c. 19	Value of foreign coins
1681	33 Charles 2, c. 21	Militia
1681	33 Charles 2, c. 23	Courts
1683	35 Charles 2, c. 7	Supplemental Act
1683	35 Charles 2, c. 11	Vagabonds
1683	35 Charles 2, c. 13	Laws of England in force
1693	5 Wm. & Mary, c. 6	Meat
1696	8 Wm. 3, c. 2	Slaves
1709	8 Anne, c. 8	Waywardens
1711	10 Anne, c. 16	Fowling and fishing
1715	2 Geo. 1, c. 1	Constables
1715	2 Geo. 1, c. 3	Disaffected persons

1717	4 Geo. 1, c. 4	Slaves
1718	5 Geo. 1, c. 2	Voluntary parties
1719	6 Geo. 1, c. 5	Inveigling of slaves
1725	12 Geo. 1, c. 6	Inveigling of slaves
1728	1 Geo. 2, c. 1	Revenue
1729	2 Geo. 2, c. 2	Papists
1730	3 Geo. 2, c. 12	Papists
1730	3 Geo. 2, c. 13	Gunpowder
1731	4 Geo. 2, c. 8	Concealing soldiers and slaves
1731	4 Geo. 2, c. 9	Duty on convicts
1732	5 Geo. 2, c. 2	Nightly watch in Kingston
1733	6 Geo. 2, c. 2	Elections
1733	6 Geo. 2, c. 13	Making of squibs
1736	9 Geo. 2, c. 5	Burning of houses
1736	9 Geo. 2, c. 9	Concealing servants and slaves
1739	12 Geo. 2, c. 5	Treaty with Cudjoe
1740	13 Geo. 2, c. 6	Slaves
1740	13 Geo. 2, c. 8	Treaty with Quao
1740	13 Geo. 2, c. 9	Breach of trust
1742	15 Geo. 2, c. 3	Forgery
1744	17 Geo. 2, c. 7	Lotteries
1744	17 Geo. 2, c. 17	Gunpowder
1745	18 Geo. 2, c. 10	Concealing soldiers and slaves
1747	20 Geo. 2, c. 9	Lotteries
1748	21 Geo. 2, c. 7	Evidence
1749	22 Geo. 2, c. 12	Slaves
1749	22 Geo. 2, c. 18	Slaves
1749	22 Geo. 2, c. 22	Cattle
1750	23 Geo. 2, c. 13	Evidence
1751	24 Geo. 2, c. 10	Judiciary
1751	24 Geo. 2, c. 17	Slaves
1751	24 Geo. 2, c. 19	Supplemental

1751	24 Geo. 2, c. 20	Judicature
1753	26 Geo. 2, c. 6	Slaves
1756	29 Geo. 2, c. 14	Elections
1756	29 Geo. 2, c. 19	Thomas Kello
1758	31 Geo. 2, c. 4	Assize
1758	31 Geo. 2, c. 16	Spanish money
1759	32 Geo. 2, c. 11	Inveigling
1760	1 Geo. 3, c. 18	Elections
1760	1 Geo. 3, c. 22	Slaves
1760	1 Geo. 3, c. 23	Slaves
1761	2 Geo. 3, c. 6	Inveigling
1761	2 Geo. 3, c. 8	Grants to mulattoes
1761	2 Geo. 3, c. 10	Slaves
1761	2 Geo. 3, c. 12	Act to emancipate Jack
1764	5 Geo. 3, c. 8	Concealing of servants and slaves
1766	6 Geo. 3, c. 3	Receiving stolen goods
1766	6 Geo. 3, c. 11	Inveigling
1767	8 Geo. 3, c. 1	Judicature
1768	9 Geo. 3, c. 12	Slaves
1768	9 Geo. 3, c. 14	Receiving stolen goods
1770	11 Geo. 3, c. 8	Counterfeiting
1770	11 Geo. 3, c. 15	Coroners
1771	11 Geo. 3, c. 8	Receiving stolen goods
1771	12 Geo. 3, c. 15	Slaves
1772	13 Geo. 3, c. 19	Lottery
1773	14 Geo. 3, c. 3	Solicitors
1773	14 Geo. 3, c. 9	Smuggling
1773	14 Geo. 3, c. 15	Inveigling
1773	14 Geo. 3, c. 18	Counterfeiting
1773	14 Geo. 3, c. 19	Slaves
1773	14 Geo. 3, c. 22	Richard Wade
1773	14 Geo. 3, c. 24	Spanish money

1774	15 Geo. 3, c. 10	Receiving stolen goods
1774	15 Geo. 3, c. 18	Emancipating Attea
1774	15 Geo. 3, c. 6	Judicature
1774	15 Geo. 3, c. 19	Smuggling
1776	17 Geo. 3, c. 29	Slaves
1777	18 Geo. 3, c. 13	Smuggling
1777	18 Geo. 3, c. 20	Slaves
1777	18 Geo. 3, c. 21	Workhouse
1778	19 Geo. 3, c. 12	Slaves
1778	19 Geo. 3, c. 18	Slaves
1778	19 Geo. 3, c. 20	Horse-stealing
1779	20 Geo. 3, c. 3	Assemblies
1780	21 Geo. 3, c. 4	Inveigling Act
1780	21 Geo, 3, c. 8	Smuggling
1780	21 Geo. 3, c. 15	Elections
1780	21 Geo. 3, c. 20	Workhouses
1780	21 Geo. 3, c. 25	Judiciary
1781	22 Geo. 3, c. 10	Horse-stealing
1781	22 Geo. 3, c. 17	Slaves
1783	24 Geo. 3, c. 8	Smuggling
1783	24 Geo. 3, c. 9	Workhouses
1784	25 Geo. 3, c. 17	Slaves
1784	25 Geo. 3, c. 22	Horse-stealing
1787	28 Geo. 3, c. 6	Slaves
1787	28 Geo. 3, c. 15	Smuggling
1787	28 Geo. 3, c. 23	Inveigling
1788	29 Geo. 3, c. 2	Slaves
1788	29 Geo. 3, c. 3	Inveigling
1788	29 Geo. 3, c. 15	Smuggling
1790	31 Geo. 3, c. 19	Horse-stealing
1791	32 Geo. 3, c. 11	Workhouses
1791	32 Geo. 3, c. 22	Slaves
1792	32 Geo. 3, c. 23	Slaves
1792	32 Geo. 3, c. 27	Embezzlement

1792	32 Geo. 3, c. 34	Foreign slaves
1792	33 Geo. 3, c. 21	Breach of trust
1794	35 Geo. 3, c. 21	Alien regulations
1794	35 Geo. 3, c. 35	Police in Montego Bay
1794	35 Geo. 3, c. 36	Police in Falmouth
1794	35 Geo. 3, c. 37	Emancipating Harry
1795	36 Geo. 3, c. 10	Inveigling
1795	36 Geo. 3, c. 11	Gunpowder
1796	36 Geo. 3, c. 34	Transportation of Maroons
1798	39 Geo. 3, c. 7	Lotteries
1799	39 Geo. 3, c. 29	Foreign slaves
1799	40 Geo. 3, c. 14	Lotteries
1801	41 Geo. 3, c. 17	Alein regulations
1801	41 Geo. 3, c. 26	Slaves
1801	42 Geo. 3, c. 12	Robbery
1801	42 Geo. 3, c. 18	Manslaughter
1802	43 Geo. 3, c. 30	Preaching
1804	45 Geo. 3, c. 17	Judiciary
1806	47 Geo. 3, c. 13	Judiciary
1806	47 Geo. 3, c. 22	Horse-stealing
1806	47 Geo. 3, c. 29	Stealing of copper
1807	48 Geo. 3, c. 3	Slaves
1807	48 Geo. 3, c. 17	Slaves
1809	50 Geo. 3, c. 14	Pirates
1809	50 Geo. 3, c. 16	Slaves
1809	50 Geo. 3, c. 20	Stealing of coffee
1810	51 Geo. 3, c. 1	Preaching
1810	51 Geo. 3, c. 27	Administration of justice
1812	53 Geo. 3, c. 18	Murder
1812	53 Geo. 3, c. 25	Stealing from wrecks
1813	54 Geo. 3, c. 19	Free coloureds
1816	57 Geo. 3, c. 15	Slaves

1816	57 Geo. 3, c. 17	Judiciary
1816	57 Geo. 3, c. 25	Slaves
1816	57 Geo. 3, c. 20	Aliens
1817	57 Geo. 3, c. 18	Judiciary
1818	59 Geo. 3, c. 19	Malicious shooting
1818	59 Geo. 3, c. 23	Aliens
1821	2 Geo. 4, c. 15	Emancipation of three slaves
1821	2 Geo. 4, c. 16	Slaves
1821	2 Geo. 4, c. 22	Stealing of coffee
1822	3 Geo. 4, c. 9	Deficiency
1822	3 Geo. 4, c. 21	Slaves
1822	3 Geo. 4, c. 22	Stealing of coffee
1823	4 Geo. 4, c. 13	Treason
1823	4 Geo. 4, c. 15	Slaves
1823	4 Geo. 4, c. 16	Free coloureds
1824	5 Geo. 4. c. 15	Treason
1824	5 Geo. 4, c. 19	Emancipation of three slaves
1826	7 Geo. 4, c. 23	Slaves
1827	8 Geo. 4, c. 14	Fowling and fishing
1829	10 Geo. 4, c. 8	Slaves
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1830	1 Wm. 4, c. 18	Manslaughter
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1831	1 Wm. 4, c. 25	Slaves
1831	2 Wm. 4, c. 12	Criminal procedure
1832	2 Wm. 4, c. 29	Rebellion
1832	2 Wm. 4, c. 43	Newspapers
1833	4 Wm. 4, c. 6	Concealment of birth of a child

1833	4 Wm. 4, c. 25	Embezzlement
1833	4 Wm. 4, c. 28	Riot
1833	4 Wm. 4, c. 34	Malicious damage
1833	4 Wm. 4, c. 35	Embezzlement
1833	4 Wm. 4, c. 36	Vagrancy
1833	4 Wm. 4, c. 41	Abolition of slavery
1834	5 Wm. 4, c. 9	Registration of fire-arms
1836	7 Wm. 4, c. 10	Elections
1836	7 Wm. 4, c. 12	Seditious meetings
1837	7 Wm. 4, c. 28	Riot
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1837	7 Wm. 4, c. 37	Militia
1837	7 Wm. 4, c. 40	Larceny
1837	7 Wm. 4, c. 41	Offences against the person
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1839	3 Vic. c. 20	Combinations
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1840	3 Vic. c. 65	Administration of justice
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1840	4 Vic. c. 50	Judiciary
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1842	6 Vic. c. 35	Repealing statute
1843	7 Vic. c. 14	Towns and committees
1844	8 Vic. c. 16	Revenue
1844	8 Vic. c. 18	Trespasses on property
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1851	14 Vic. c. 45	Praedial larceny
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1851	14 Vic. c. 48	Embezzlement
1851	15 Vic. c. 6	Protection of women
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1862	25 Vic. c. 24	Punishment
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1864	27 Vic. c. 33	Larceny
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1868	Law 15	Treason felony
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1870	Law 23	Gunpowder
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1872	Law 4	District courts
1872	Law 21	Coinage
1872	Law 22	Forgery
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1879	Law 36	Criminal Code
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1892	Law 28	Obeah
1893	Law 21	Offences against the person
1894	Law 21	Offences against the pefson
1895	Law 7	Trespass
1896	Law 37	Produce protection
1896	Law 38	Praedial larceny
1896	Law 39	Bar regulation
1897	Law 29	Praedial larceny
1897	Law 32	Law Officers
1898	Law 5	Obeah
1898	Law 13	Jury
1898	Law 24	Offences against the person
1898	Law 25	Gambling
1899	Law 18	Obeah
1901	Law 15	Produce protection
1901	Law 21	Praedial larceny
1902	Law 12	Vagrancy
1903	Law 8	Obeah
1906	Law 7	Law Officers
1909	Law 4	Praedial larceny
1913	Law 15	Opium
1938	Law 9	Emergency powers
1938	Law 33	Emergency powers
1940	Law 33	Undesirable publications

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	240	Masters and servants
	264	Oaths
	266	Obeah
	268	Offences against the person
	311	Military training
	344	Riot
	354	Seditious meetings
	384	Towns and comunities
	390	Treason felony
	392	Trespass
	397	Undesirable publications
	404	Vagrancy
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