AN ANALYSIS OF THE ROLE OF FIREARMS CONTROL LAWS IN SOUTH AFRICAN SOCIETY

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ABSTRACT

This study had as its purpose an attempt to establish on empirical grounds the role firearms control laws play in South African society. A holist methodological position was adopted from among the alternatives available for scientific social research, and the structural-functional theoretical framework of the mainline tradition was employed for the purposes of the analysis. Accordingly, legislation was defined as serving a primarily integrative function in society, (integration being functionally one of four system imperatives), by translating prevailing values and norms into a stable, attributive code.

A discussion of general historical and contemporary perspectives related to purpose(s), role, and efficacy of restrictive firearms legislation preceded a survey of the development of gun controls in the Republic of South Africa. Current legislative provisions in this context were then dealt with in some detail.

Research into the official documentary reports of the S.A.Department of Statistics (i.e., the Report on Deaths, and Statistics of Offences), and the Annual Report of the Commissioner of the South African Police, covering a period of years, was carried out and although some of the required statistical information was inadequate, or entirely non-existent, it was finally concluded on the basis of available evidence that such legislation is enacted in this society on the assumption that it serves the purposes of crime reduction and civil peace. This assumption was shown to be empirically unsupported, and an alternative approach was called for in terms of which legislators should place greater positive emphasis on the individual right to keep and bear arms. It was concluded that such a shift of emphasis would more effectively promote the defined role of legislation in South African society.

To My Parents

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PREFACE

As is the case with most projects of this kind, a number of people willingly assisted in many different ways. While the author accepts sole responsibility for the final product, including interpretations of perspectives, research techniques, statistical tables, and the ultimate findings of the study, the benefits of criticism, comment, references, and suggestions from colleagues and friends were always readily available, and they proved to be of invaluable assistance.

I am particularly indebted to my supervisor, Dr. F. Van Zyl Slabbert, Acting Head of the Department of Sociology, University of Cape Town, for the co-ordinating role he played throughout the investigation, and the many valuable insights and ideas generated during our regular discussions on the project.

I wish also to thank Professor Brunhilde Helm, Head of the Department of Applied Sociology in Social Work at the University of Cape Town for her helpful suggestions with regard to thesis-writing. These were of particular assistance during the long and laborious process of transforming hundreds of pages of notes and figures into a sufficiently coherent sequence, and were very much appreciated.

I am further greatly indebted to Mr. Gene B.Crum of the American Arms Co., Bloomington, Indiana, U.S.A., for the many topical references he so kindly sent me, his consistent encouragement, and constructive sharing of his immense experience with, and knowledge of firearms legislation, especially in the form of criticisms, comments, and approaches. It was indeed an honour to be assisted in this study by so accomplished an expert in this field.

Chief Inspector Colin Greenwood, of the West Yorkshire Constabulary, England, I would also like to thank for his encouragement and assistance in obtaining a copy of his pioneering research work, FIREARMS CONTROL, which resulted from his tenure as a Cropwood Fellow at the Institute of Criminology, University of Cambridge, in 1970-71.

I am grateful for the assistance, too, of Mr. Barry Berkowitz, Secretary of the Historical Firearms Society of South Africa for the useful hints, suggestions, and many references which he was kind enough to place at my disposal.

Sincere thanks are also due to Mrs. J. Mc.Culloch for her patience and typing skill, to Mr. Sydney Stoffberg and Mr. M.Fagin for reproducing the final draft with such dedication, to Warrant Officer W. Nel of the South African Police, Caledon Square, Cape Town, and Mr. Johan Russouw for their knowledgeable assistance, particularly with regard to South African firearms laws.

The multi-faceted experience of writing a thesis such as this inevitably called for many sacrifices from my wife and parents. They understood, and I thank them.

INTRODUCTION

The aim of this study is, as its title suggests, to analyse the role in South African society of laws which are specifically directed towards bringing the private possession of firearms under restrictive administrative control. We are therefore not here concerned with the relations between governments in terms of military weapons, arms embargos, the "arms race" and the fear of nuclear holocaust, together with the myriad problems faced by the international community at state level and dictated by economic and/or ideological considerations. In this analysis we are simply concerned with the relations between governments and the people they govern, with particular reference to the Republic of South Africa, on the question of the individual civilian ownership of firearms.

Approached from the point of view of a social scientist the problem thus formulated requires, prior to any empirical effort, that the concept of legislation be clarified and its general role in society defined before the role of any specific form can be identified and its efficacy measured. In adopting, therefore the framework provided by contemporary sociological theory of the mainline tradition, we are confronted with the notion of social legislation as fulfilling a primarily integrative function. In terms of this position the values of a particular society are publicly upheld and enforced through legislation, and this process thereby provides important behavioural references for the individual members of that society, and enhances solidarity. This process is considered to be functionally imperative for the system.

Some deviant behaviour is always, nevertheless, to be expected and must be catered for by the system. It is when such behaviour transgresses legislative limits, however, that it is construed as a threat to the system, and the legislature acts to curb it. Sometimes it reaches further, and acts to curb the possession of objects which may from time to time assist in the committal of a criminal act, on the assumption that such action is consistent

with the defined social role of legislation, and it is in this context that firearms in modern industrial societies are of immediate relevance.

While the problem of firearms control laws has been recognised and much publicised of late by the mass media in contemporary societies, particularly in the U.S.A. and Britain, it nevertheless remains little understood, and even less the subject of sound scientific inquiry. Academics appear to have all but ignored it. Lamentably few relevant references are available as a result of this neglect, and as far as the author is aware this project represents the first attempt to analyse the role of gun controls in South Africa in an objective manner.

The perspectives which are popularly operative on the subject may, for purposes of introduction, perhaps be summarised as follows: the proponents of strict gun control laws, and/or of total confiscation of all privately owned firearms point to rising homicide rates and crimes of violence committed with guns to justify their position. The opponents of gun controls, on the other hand, argue that where such laws have been enacted they have served to defeat the purposes for which they were designed rather than to promote them, and often use the alleged failure of the 1911 Sullivan Act of New York to demonstrate their point. Their argument is summarised in the oft-quoted claim that "when guns are outlawed, only the outlaws will have guns", and they accuse their opponents of gross oversimplification.

In South Africa guns have not been outlawed at the private citizen level, but they are nevertheless subject to relatively strict control by the polity. Any member of this society, regardless of racial considerations, may legally be possessed of firearms if he is prepared to accept the bureaucratic procedures which his licence applications inevitably involve. These procedures place a time-consuming burden not only on the applicant, but also on the police, and perhaps more so. Why? What is the purpose of such licensing requirements, and to what extent do they play their defined role?

We assume a theoretical position in this study in terms of which gun control laws are, in the final analysis, enacted to reduce deviant behaviour and enhance social solidarity. How does this assumption fit the empirical reality of the role of gun controls in South Africa? Can we say that the presence of such restrictions bears any significant relation to the factors which adversely affect the functional integration of our society?

With reference to the perspectives outlined above an affirmative response to the latter question would reveal a supportive orientation relative to firearms legislation, no doubt in the belief that criminals and others who threaten the good order of society are thereby denied access to guns. The opposing perspective, on the other hand, is often represented by those who argue that such legislation serves simply to disarm the law-abiding, while the lawless remain armed. Simultaneously, as with all artifacts of culture, guns mean different things to different people throughout the numerous subcultures which characterise contemporary industrial societies. We cannot assume that a gun means the same thing to a bank-robber and a competitive target-shooter alike, and therefore the polity should not legislate as if they do.

The role of firearms in crime in South African society remains a somewhat unchartered field of inquiry, and the fragmented reports of daily newspapers and other periodicals serve to little more than confuse their readers. For example, we read in an article on crime in the Cape Peninsula, headed "City Killers Worse Than N.Y." (The Argus; Cape Town; March 24, 1973; P.9) that "guns are used very rarely - a fact attributed to South Africa's strict laws on firearms". The Cape Times of March 10th, 1973, however reports that a Parliamentary call for action against crime had been made the previous day by Mr. J.Stephens, M.P. Mr Stephens is quoted as saying that the Cape of Good Hope had become the Cape of Fear. He said that youth gangs, growing in numbers, roamed the streets and terrorized residents in the townships. "In spite of the licensing laws, these gangs still managed to obtain firearms" he complained, and concluded by making a concerted call for a study

to be made in order that an indication could be obtained as to where the problem lay.

The Argus of March 24, 1973, mentioned above, also quotes the Commissioner of the South African Police, General Gideon Joubert, as stating that the police took a serious view of the high crime rate (particularly as it is relatively higher than New York's), and had special plans to combat it. "The ideal situation", the General is reported to have said, " would be for everyone to be housed in properly planned townships with effective facilities for recreation and relaxation. In such townships the youth would be able to make good use of their energy, instead of wandering aimlessly in the streets. The public should also become more crime-conscious and inform the police immediately of any crime in their vicinity".

A number of intriguing points spring immediately to mind on looking at these extracts. Firstly, South Africa, and especially Cape Town and surrounding areas, very clearly has a crime problem. Secondly, firearms do not feature significantly in the crime statistics, and it is therefore assumed that the strict firearms control laws in operation in our society are doing a fine job. Thirdly, that in spite of these laws gangs of lawless youths obtain guns, thereby demonstrating that the gun controls are ineffective. Fourthly, the ideal situation described by General Joubert apparently does not include provision for strict firearms control. If we disregard assumptions on the grounds that they are of a lower level of scientific acceptability, we are confronted by two reported facts. One is that firearms enjoy limited criminal involvement, and the other is that the laws which should restrict ownership of guns to only approved individuals are quite unsuccessful. If this is the case, then what role,we may ask, does restrictive firearms legislation play in South Africa?

In the attempt to answer this question, no claim to have exhausted the topic is made. On the contrary, it is accepted from the outset that this study is superficial and inadequate in terms of providing "final" answers, and that at best it can merely scratch the top of an enormous iceberg. In any case, answers in science are seldom final in the literal meaning of the word, and if this investigation is productive of no more than new questions, rather

than answers to old ones, much will still have been achieved.

Treatment of the problem has for convenience been divided into four Parts. In Part I the theoretical and methodological frameworks to be employed, (thereby if only by implication stating the accompanying presuppositions) are discussed on a relatively high level of generality, before focusing on the specific concept of legislation and defining its role in society. In Part II the historical, contemporary, and South African legislative provisions with regard to firearms, and diverse popular perspectives already briefly introduced above are discussed in some detail in order to build a foundation upon which our analysis of the problem may be more informed and correspondingly meaningful. In Part III the problem is tackled in terms of available empirical evidence, and the implications of the results are dealt with together with alternatives, the findings, general conclusions and suggestions in Part IV.

The reader is encouraged to approach this research in the spirit in which it is offered, and on the accompanying level, and if the results are found to be controversial, challenging, reactionary, enlightened, or simply right or wrong, or whatever, it is nevertheless hoped that it will serve in some small way to stimulate serious thought and public debate on the issue investigated.

PART 1

CHAPTER 1

STATEMENT OF AN APPROACH

The social scientist faces an immediate problem in his attempt to study a particular issue in a "sociological" way, for the body of literature referred to as sociological is vast indeed, and the alternatives of orientation which it offers both numerous and diverse. It is important, therefore, if not essential, that the researcher have some knowledge of these alternatives and their diversity to enable him to identify his own position based on criteria which he considers appropriate. Acquaintance with the content of these diverse offerings permits him to decide for himself what are the most suitable uses to which each may be put, so that he may make a useful selection when it comes to focusing on specific and concrete issues for the purposes of empirical research.

It will be the aim of this opening Chapter to make explicit the methodological and theoretical assumptions underlying this investigation together with the resulting approach to be employed. No attempt will be made to argue the validity of this approach, for three reasons: firstly, there exists no standard universally accepted set of criteria in terms of which theoretical and methodological orientations may be measured against one another for the purposes of selection; secondly, any attempt to deal adequately with such a topic would require a treatise of encyclopaedic proportions far beyond the scope of this thesis; and thirdly, it would raise problems for which there are no ready solutions and arguments about alternatives have little or no direct relevance to the problem under investigation.

This is not to say that such problems may be justifiably ignored, nor that the selection of an appropriate orientation is necessarily arbitrary. The development of one's own theoretical and methodological position in the social sciences may be quite predictably an extremely difficult task, but it is nevertheless a critical one.

One's personal ideas on the requirements of sociological knowledge, research methods and theory-building are (or at least should be) open to so many conflicting ideas and influences, trends and intellectual fashions, that it is not easy to organise them all into a coherent set of interrelated propositions that one could call a theory, or even an approach. Being almost daily exposed to new insights forces one to continually shift allegiance, so to speak, or at least to critically examine one's own ideas, assumptions, convictions etc., to the extent that a lot of hard thinking and intellectual soul-searching is required.

What can make the exercise at first a little unsettling is, after being conditioned to treating the ideas of others very critically, to suddenly find one's own efforts subjected to similarly unfriendly treatment. This is a problem which concerns particularly those of us who are still learning what others have had to say about the nature and purposes of sociology and social research, and have not (perhaps yet) become flag-waving members of any particular sect along the discipline's theoretical continuum.

The resulting hesitance to take a firm stand ought not to be altogether unsatisfactory, even to radical sociologists who demand commitment. One can hardly test the diverse orientations we have completely fairly unless we are prepared to allow each of them our open, earnest and objective attention. They have the right, each of them, to state their case in free scientific competition with others.

In making some remarks on the teaching of sociology, Archibald (1971) (1) said, " We should attempt, firstly to induce insecurity by pulling the cognitive carpet from beneath the individual - to drive deep the furrows on undergraduate brows and to agree heartily

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1. Archibald, Drew — Two Aspects of Change
2nd Congress of Sociology in S.A., 1971

with the complaint that this seems to be a field where nothing is cut and dried. To inculcate the habit of mentally placing quotation marks over every assertion."

It is difficult to understand how therefore, anyone who confronts the massive body of writings sociological with an "open" mind can possibly be a dogmatic loyalist of any particular school of thought. He may have his reasoned preferences, but somehow dogmatism seems inconsistent with the spirit of scientific enquiry.

However much far-left "sociologists" may get behind and push the Marxist notion that it is preferable to change the world than to know it, there are those of us who, whether as a result of our middle-class conservative backgrounds and accompanying domain assumptions or not, would prefer to have some knowledge of what it is we are helping to change and what consequences our actions will have for the system as a whole.

To take such a position does not necessarily define one as a reactionary, nor in any way resistant to change, but it assists rather in helping one to view social change as serving a reasonably predictable end, rather than as an end in itself.

Accepting, then, that on logical grounds it is impossible to begin any discussion without at least some presuppositions, it would be well for us to follow C.W. Mills (2) in agreeing that they ought at least to be made explicit. To the extent to which we are aware of them they should be stated so as to encourage criticism on as many levels as deemed useful, for if we cannot invite criticism we are unlikely to contribute anything of value to the advancement of knowledge.

SOME METHODOLOGICAL CONSIDERATIONS

We assume from the outset that it is valid to talk of sociology as a scientific disciple if by science we mean or lay emphasis upon the method used to collect and arrange date, empirical or

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2. Mills, C.W. The Sociological Imagination
Pelican, G.B., 1970

abstract, rather than the subject matter of the inquiry. This in itself does not necessarily mean that we have to model ourselves on the detailed experimental procedures of natural scientists and go about observing and mixing properties of social variables in test tubes, nor do we by definition become extreme empiricists or operationists, but rather we confine ourselves to within the boundaries allowed by the philosophy of science in broad terms when conducting our investigations and expounding our theories, i.e., the processes of observation, analysis, and verification.

Most of the popular approaches in sociological theory claim the use of the scientific method, although this method can be, and is used in different ways. Some, such as Parsonian structural - functionalism and Marxist historical materialism are clearly best suited to the study of the universals of social behaviour. Their high level of generality may create problems when attempting to explain particular socio-historical events in detail. The fact that each has what McLeish (3) has called "its own particular escape clauses" which offer special explanations of why particular events do not seem to conform to the general model is a popular criticism offered by empiricists, among others. Empiricists, as opposed to Marxists for example, elect to proceed from the specific to the general, rather than vice versa, yet scientific status as claimed for both procedures.

The claim for scientific status, however, forces us to face squarely what is one of the most fundamental questions in social science, and which is at the same time perhaps one of the most overworked problems researchers are called upon to face. Given that the subject matter of all the social sciences is not inanimate things, but people who are in some control of their own behaviour, is it possible to talk about a science at all in the sense in which the term is normally used?

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3. McLeish, J. The Theory of Social Change
Routledge and Kegan Paul, London; 1969

The confounding factor is that whereas natural scientists present us with a series of events (e.g. as Darwin did), society presents social researchers with a series of acts. These acts are not only events, but they include Weber's famous notion of "verstehen" (4): i.e., the act has some symbolic meaning to its author both of which(actor and meaning) may change through the simple exercise of volition.

Such a complex problem as this, having exercised the minds of philosophers for centuries and involving, as it does, basic logical and epistemological problems of methodology in social science predictably has almost as many variations of responses to it as it has thinkers confronting it. Runciman (5) while he recognises this, nevertheless feels justified in simplifying the issue by grouping all these various responses under two headings, i.e., individualists on the one hand, and holists on the other. Those who subscribe to variations of the former position maintain that any statement about a collectivity must be in principle reducible to a set of statements about the individuals which comprise that collectivity. They point to what they call the "fallacy of reification" by accusing holists of treating groups of people as if they were tangible objects with irreducible properties.

Without becoming involved in a protracted argument with regard to the pro's and cons of both these positions we opt here for the holist stance. The accusations of the individualists we circumvent (it would be pretentious to claim to defeat them to the satisfaction of all interested parties) by following the cyberneticists and treating all collectivities as systems which are operationally defined not as things or individuals, but as sets of variables, (in our case, acts and roles). While we agree that it is a mistake to talk of groups of people having

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4. "The Theory of Social and Economic Organization" P.88
   In. Weber, M. Wirtschaft und Gesellschaft

5. Runciman, W.G. "Social Science and Political Theory"
   Cambridge University Press; 1969; P.6

ideas and other such things that can only be properly predicated of individuals, we nevertheless argue that the social system consists of something more than the sum of its parts.

The propositions about collectivities which follow from this position we treat as meaningful if they can be tested and either validated or falsified with reference to objective scientific criteria. This is eventually the most important issue in the argument between individualists and holists, and it applies equally to both. No proposition can be accepted or rejected simply on the grounds of the camp to which it belongs in the argument. It has to be tested and shown to be falsifiable, using a common unit of measurement.

Although this approach falls within the holist tradition it is methodologically committed to logical empiricism because we accept that the objective criteria used as units of measurement for testing propositions about collectivities are scientific, i.e., the same as those used for testing propositions about things. Even where specific techniques may differ the underlying rationale and points of departure agree in principle, and we are required to treat the social sciences as methodologically equivalent to the natural sciences, and consider possible differences to be of a purely technical kind. (see for eg.Naegele, Hempel etc.)

In searching for general explanations about social processes we might not be prepared to attribute the same degree of probability to them as natural scientists would with reference to their explanations about natural processes, but we nevertheless adopt the general aims of science together with these methodological approaches. In other words, having general explanations as the fundamental aim, we are led to the further aims of prediction and control (the moral implications of which we are well aware).

We are aware also of, and prepared to credit, the objections of intuitionists that social behaviour takes place not in vacuo,

but in a particular situation in time and space, and that it is all very well to talk glibly of general explanatory propositions about social processes which are so carefully formulated as to ensure potential empirical falsifiability, when in order for this to be valid it must always be possible for others to replicate the experimental situation, and how does one do this with a particular segment of history? Historical events are unique in a way that precludes any serious possibility of replication. For the purposes of analysis, however, we accept that although every historical event is unique, we are not thereby denied the validity of general explanations of the cause-and-effect kind in terms of system variables.

We should by now have learned that the history of science gives adequate testimony to the futility of warring factions defining each other out of the field in terms of pre-selected and often undeclared a priori assumptions. As Runciman (6) says, " the only safe prediction to make about a branch of knowledge is that it is bound to change one way or the other, and probably in a direction that few of its practitioners at any given time would suspect". He cites as an example that when Boyle of Boyle's Law fame was working on gases, plenty of people were ready to tell him (on good a priori grounds) that he was wasting his time. How, after all, could anybody weigh air?

The history of science demonstrates vividly that yesterday's "scientific laws" are refuted today, and it would be defeating the spirit of scientific inquiry to hold that today's "scientific laws" will not be refuted tomorrow. Philisophers and scientists before Copernicus, for instance, could show quite conclusively on the basis empirically observable evidence that the sun was in orbit around the earth. Today the converse is accepted, also on the basis of empirically observable evidence. Techniques of inquiry have become more sophisticated and refined through the centuries, and the continued methodological self-critism that scientists and especially social scientists engage in is

itself encouraging, if only because it sets the stage for the further refinement of these techniques. The results we believe, will be the accumulation of more knowledge, hitherto hidden from us, or misinterpreted by us.

We adopt an analytical approach in this study in the belief that it is likely to be more productive in terms of the problem to be investigated. We start out with a conceptual scheme which is duly stated and invite criticism on this level, and then attempt to operationalize the constructs thus isolated and identified. We prefer to operationally define these constructs first before choosing suitable data producing techniques.

In our attempt to determine the role played by firearms control laws in South Africa we have little choice other than to employ documentary research techniques in order to gather the data required. The information needed includes that relevant to the historical development of these laws in terms of actual content as well as effect before the contemporary situation can be adequately understood. This task requires that we restrict ourselves to official records, such as Statutes, continuous reports of the Department of Statistics, and annual reports of the Commissioner of the South African Police. Careful selection, classification, and tabulation of this data will, we believe, give us grounds upon which we may deduce objectively the role of the various laws restricting the possession and use of firearms in our society.

The value of such official documentary research is that its reliability is far greater than if personal documents were used. Autobiographies, diaries, letters and inventories, for example, may provide excellent data for certain types of research studies (7), but are clearly not as well suited to the investigation as the impersonal, official records provided, for instance, by the Government Printer. Besides this, also is the further point that the problems of sample size and selection do not arise because

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7. Burton, T.L. & Cherry, G.E. Social Research Techniques for Planners George Allen & Unwin Ltd. London 1970;p.p.123-126

the statistical information contained in records of the Department of Statistics are for the whole society, and not just a micro-section of it. This, we believe, will provide the most effective means of meeting the objective requirements we have set for the basis of the observation and analysis of the problem we intend to study.

A GENERAL THEORETICAL ORIENTATION

Implicitly running through the preceding discussion of methodological considerations has been the definition of sociology and sociological knowledge as being an attempt to provide general explanations in terms of scientific causality. In order to satisfy this definition we therefore require, at the theoretical level, a framework consisting of a set of general testable, explanatory propositions applicable to the total area of collective human behaviour, or social action. By definition, then, we have at this level to deny the sharp disciplinary distinctions sometimes drawn between economics, criminology, sociology, and demography, etc., and while accepting that the increasing academic division of labour has provided more and more differentiated foci of study, we consider the names attached to them as applying to certain categories of action, all of which is in the final analysis social.

The general theoretical framework is required because it is the critical factor in terms of the analytical approach which eventually gives significance to the meaning of empirical results. Facts cannot speak for themselves; they need to be situated within the provisions of a general theory before they can claim any degree of universal applicability. Research evidence is by nature fragmented, and therefore in order to be of real scientific value it requires generalization.

As with our methodological procedures, however, the theoretical orientation adopted must satisfy the requirements of science. While we require generality we also require empirical falsifiability

as one of its essential distinguishing characteristics. It cannot be so general and so flexible that it can never be shown to be invalid, and in this context we do not need a verbose description, nor merely an abstract general discussion of the possible connections between variables, for neither can make adequate provision for the demonstration of scientific causality.

As has already been stressed, there exists a wide variety of theoretical orientations in the literature of sociology of which we are aware and which may serve as frameworks for empirical research. It is not intended here to lay bare the characteristics and popular criticisms of them all. Suffice it to say that structural-functionalism, as one mode of Parsonian analysis, is to be employed as the general theoretical position for this study. We are not denying that a strong case may be made for some or all such orientations as empiricism, ethnomethology, symbolic interactionism, "far-leftism", radical sociology, middle-range theorizing, and particularly for Marxist historical materialism in that it conforms to what C.W. Mills (8) has called "Grand Theory". Such a discussion may well serve as the subject-matter for numerous theses on sociological theory without shedding light on the problem to be dealt with here.

The structural-functional mode of analysis has been pioneered largely by Talcott Parsons (9) and provides the basis for contemporary "establishment sociology". A more detailed discussion of this position together with its application to the field of legislation is presented in the following chapter.

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8. C.W. Mills — The Sociological Imagination
Pelican, G.B. 1970

9. T.Parsons — The Structure of Social Action
Free Press; N.Y. 1937

CHAPTER 2

SOCIOLOGY, CRIMINOLOGY AND SOCIAL LEGISLATION

Our task requires that we now move on to a discussion and application of the selected theoretical orientation and methodological principles to the more specific area of interest with which this study is concerned, i.e., social legislation. From the point of view of general sociology, this field falls into that branch of sociology referred to as the sociology of law; one of the many analytical distinctions which abound in contemporary social science and, as we have mentioned, called for by the increasing academic division of labour.

What distinguishes the sociology of law from other branches, particularly the closely related field of criminology within the discipline is simply its subject matter. As we have mentioned before, these distinctions and divisions into branches are not real, but merely analytical, and therefore any attempt to draw dogmatic or even clear boundaries around these sub-divisions would be a perfectly fruitless exercise. It is far more important for the sociologist of law, for instance, to be able to compare and contrast his role with that of the jurist, or student of doctrinal law, for perhaps the most critical function of the sociology of law is to assist in enhancing the legal profession's awareness of its own function in society, as well as helping legislators, and even the courts in making decisions.

The dramatic rise in both the volume and quality of sociological knowledge since the turn of the twentieth century has led to radical changes in legal thinking and practice. The popularisation of the concept of rehabilitation of criminals and the planning and implementation of policies designed to actualise this concept is but one example. The fact that most of the optimism accompanying

rehabilitative policies has had good reason to whither away has not, it appears, in the least affected the influential role played by sociological knowledge in the legal sphere, perhaps because it is sociologists themselves who are keeping legislators and legal practitioners informed that these policies are still in a somewhat primitive stage and leave much to be desired. Sociologists are apparently maintaining their influence.

The sociology of law enjoys one significant advantage over the study of doctrinal law, and that is that the former can stand aside from the legal process and its relation to social norms and observe with an objectivity which can hardly be expected from the latter, which is more concerned with providing judges and lawyers with the necessary tools they need in order to make far-reaching decisions on a wide variety of problems, often required within a very limited period of time. This basic difference is, of course, rooted in the different social functions of law and sociology.

What strikes the sociologist almost immediately he chooses to study law is the similarity of concepts and terminology employed to convey them. Many central concepts which are popularly used in the theoretical literature of sociology have obvious reference to the field of law; such as authority, legitimation, norms, conformity, deviance, sanction, etc. Nevertheless, however closely related, the concept of social legislation is not synonomous with any of these. In its own way it involves them all, but yet has other distinct properties.

With reference once again to our general theoretical framework, we assume that the values of society are pursued through the establishment of patterns of behaviour regarded as normative. The members of society learn via the process of socialization (amongst others) the rules which state what human beings should say, think or do in any given situation. These rules also imply

the notion of sanction in the sense that failure to conform to the norms, or to display explicitly proscribed behaviour, is likely to lead to some form of punishment meted out by the group.

The system of values which characterises any one society is taken as the essential starting point because it is necessarily formulated at a very high level of generality (10) necessarily because we can only identify and classify our problem areas with reference to a general categorisation of the structural components of social systems.

At the most general level, then, we are concerned with the ways in which values are shared by the actors in the system internalised so as to make behaviour reasonably predictable, and institutionalised in the social structure. Proceeding from here to a more differentiated level of analysis we look at the ways in which these values are involved with the more specific structures through the institutions, which act as regulating mechanisms. The third level to which the analysis leads us concerns the organization for implementation of action towards collective goals, i.e., the political aspects of social organization.

The values define for the individual actor (and hence the institutions and collectivities in the system) the broad directions of orientation regardless of content or situation. Institutions, on the other hand, are normative patterns which define categories of expected behaviour. Collectivities, here the most highly differentiated level of analysis, involve existing groups (of actors in roles) engaged in functionally significant activities for the system.

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10. Parsons, T. Structure and Process in Modern Societies Free Press, Illinois, 1960 P.171

Analysis along these lines leads Parsons to define law as "that aspect of the machinery for the definition and implementation of institutional norms which links legitimation through authoritative interpretation with application and enforcement by political agency" (11).

Laws, like the value systems which are their source, do not actualise themselves automatically, but succeed (to a greater or lesser extent) in influencing the behaviour of actors through an array of mechanisms, such as institutionalization, socialization, peer-group influence, informal pressures, etc.

It is critical for the development of our concept of social legislation that we carefully consider Parsons' distinction between political and legal processes in the system, for it is all too easy to confuse them. The latter, i.e., the legal process, defines the scope of jurisdiction and authorises and implements sanctions, and although these obviously involve political references, it is the acts of actually making laws and enforcing them that are especially political. What is important to note here is that legislators and law enforcement agencies are not,strictly speaking, a part of the legal system, but are a part of the function of the policy.

This distinction drives deeper for us the wedge between the sociology of law and the study of doctrinal law. The latter must by definition remain within the bounds of the legal system, whereas the former has a broader, more inclusive sphere of inquiry.

In contemporary societies functional differentation has progressed to relatively high levels, and hence some kind of legal (or constitutional) limit on political authority has become imperative. Ever since Jeremy Bentham there has been a strong movement towards a very clear separation of the legal system from the executive. Habeas corpus is today considered a fundamental right of the individual - being deemed a necessary mechanism for limiting governmental oppression of the individual by unjust manipulation and application of the laws.

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11. Ibid, P.190

This increasing functional differentation has led to the development of new and more specialised structures, each with its own terms of reference and sphere of authority (legitimized by the general values), fitting the rational-legal bureaucratic model ever more pleasingly. The emergence, growth and further differentiation of such structures is essential for the continued development of the social systems in which actors in modern industrialized states operate.

Returning to the above definition of law we need to note that between the institutional and collectivity levels a further process of differentation occurs which is of central importance to our developing concept of social legislation. The implication of this is that while institutionalised categories of behaviour are actively promoted by specific collectivities in the system, not all norms can be defined as laws.

Following Sorokin (12) for instance, we may distinguish between different types or categories of norms in order to determine which are of relevance to our purpose. Sorokin categorises norms into the following: law, moral, technical, etiquette and fashion, religion, mores, folkways and customs. This tells us more than simply that all norms are not laws. It tells us that they can be exclusively defined. Law-norms, for example, are quite distinct from others in the sense that they are attributive. They lay down the rights of one person, and at the same time lay down the duties of another, including sanctions. Law norms are, therefore, two-sided or Janus-headed. Without this attributive function of law-norms social organization would supposedly break down into some sort of Hobbesion "state of nature". Another characteristic is that they require some authority which is a direct manifestation of these law-norms and is capable of enforcing them (in other words, Parsons' "political agency"), with reasonably equal intensity and success on all members of a group, irrespective of rank.

Moral norms, on the other hand, are not two-sided. They are

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12. Sorokin, P.A. Society, Culture & Personality
Harper; N.Y. ; 1947

imperative but not attributive. For example, sometimes the law norms will allow a third party to settle a debt, but this is impossible with respect to moral norms. No punishment is necessarily specified, nor is any limit laid down.

Technical norms tell the actor the "correct way" for him to behave towards inanimate objects, such as how to build a molotov cocktail, or how to fry mushrooms. They are not usually imperative. Norms of etiquette and fashion, however, carry their own sanction, but no-one can demand that the individual subscribe to these norms because there is no governing or ruling body to enforce them. This is true even of societies such as that of present-day Malawi, where it is an offence for young ladies to wear mini-skirts. What has happened here is that this particular norm of fashion has been translated into a law-norm, leaving other norms of fashion to continue in the role of informal pressure mechanisms applying their own sanctions in cases of deviance.

Norms of religion, mores, and folkways are also not enforced in most societies. They mean different things to different sub-groups and sub-cultures in the society. Some are partly moral, but they still usually refer to those values which are of lower status, or to which the group grants secondary priority.

It is the law-norms, then, that are of more direct relevance to this exercise than the other categories. But law-norms themselves do not constitute social legislation. The central concepts which link the two are those of power and communication. The former refers to the capacity of a society's rulers to force individual members to conform to the law-norms according to a stabilised code. The latter refers to the capacity of the rulers to inform members of the group of the content of the law norms and of the concomitant sanctions. This is essential for the system to be at all viable, because the polity is then justified in trying to apply the laws universally and consistently on the grounds that ignorance thereof is no excuse.

Legislation consists therefore of those law norms which have been

stabilized into an attributive code and are communicated to the members of society by the polity and are enforced by it.

The study of criminology, we may then conclude, as far as it is relevant to the investigation, is simply an arbitrary sub-division of sociology which has as its subject matter the behaviour related to deviance from the legislative code. The general framework and variables studied do not differ from those of sociology at all, but are merely focused onto a smaller, more selective field.

All human societies have some form of social legislation in the same way that the five institutions (the family, the economy, education, religion, and the polity) are common to all human societies, regardless of historical or geographical considerations. These effect only the form which the institutions may take, not their existence.

It requires little searching in the theoretical literative to find a model to demonstrate how social legislation differs in both purpose and form in different social groupings through space and time. Using Weber's famous model, for example, it is quite clear that legislation affecting societies ruled by a traditional leader can differ very markedly from that affecting societies ruled by charismatic and rational-legal bureaucratic leaders. Different priority is attached to the variables which are used as reference points in political decision-making.

The latter, the rational-legal bureaucratic form of government is the most popular by far in modern industrialised societies simply because it is found to be the most efficient, consistent, and reliable (i.e., it best serves the values of these societies). Its essential characteristics are those of achievement rather than ascription, subordination of all ranks to an independent (i.e., of the executive), impersonal rule of law and procedural regulations rather than to the erratic wishes and whims of a traditional despot, power and authority diffused through roles located in scaled ranks in the system (in other words a somewhat sophisticated division of labour) and decentralized authority

as opposed to being centralised in the hands of one person, and the existence of laws - in theory at least - designed to protect the poor and the weak from exploitation rather than to protect the interests of the already powerful. This ensures that the rewards and facilities of society are distributed amongst its members more justly (or so we believe).

Such a system has its roots in the philosophical tradition of the West. Although, as Parsons (13) notes, the legal element was central in the Chinese development it took a form which did not readily become differentiated from either the political or the religious - on the contrary, it formed the focus of a special kind of codification of the religio-political fusion. There was therefore essentially no pattern of institutionalization of legal rights against the State or religion.

The Greek legal system (from which ours is derived) was similar, except that the essential democratic element institutionalized individual rights to participate in decision making within the State. In Rome, whose political power grew while internally the democratic element declined in importance relations with the populations of the Empire became constructed in dual form: the priviliges of Roman citizenship were extended to more and more people throughout the Empire, and at the same time the jus gentium developed as a legal system applicable to all under Roman administration. Roman law became completely independent from political authority in a unique sense, despite the fact that the polity administered and enforced the law and was supported in this by religious sanctions. Parsons therefore, quite justifiably sees Roman law together with classical culture, as constituting one of the most important legacies from antiquity to the modern Western world. In fact if anything, Parsons has understated his case. Perhaps this was the most important legacy.

This was a legacy, however, which lay for centuries, forgotten unnoticed, during the so-called Dark Ages, to be revived when Bentham (14) pioneered political democracy. Bentham re-introduced

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13. Parsons, T. Structure and Process in Modern Societies
Free Press; Illinois; 1960

14. Bentham, J. The Theory of Legislation
Kegan Paul; London; 1931

the idea of a legal system completely independent of political authority, and held that each individual should be considered equal to every other before the law. This is of central importance to us today because it is largely with democratic (as opposed to despotic in Toby's sense (15))legal systems that we deal in contemporary societies.

The politically democratic and capitalistic characters of many contemporary bureaucratic systems are, however, no guarantee of democracy (the Soviet Union is administratively highly bureaucratic, but could hardly be called democratic!) Of particular interest, for instance, is the contrast which Weber (16) makes between khadi and empirical administration.

The former is non-formalistic and is guided in accordance with concrete ethical or otherwise "practical" value-judgments, without any rational basis. As an example, contemporary England still exhibits a substantial section of its legal system as being essentially khadi, to an extent which would be difficult to visualise in other Western European countries. Democratic principles of adjudication, therefore, cannot be assumed to be identical with rational principles.

Empirical administration, on the other hand, while being highly formalistic, is carried out with reference to and with the interpretation of precedents. Now, while this form of administration can be sublimated and rationalized into a highly refined technique, it does not have a rational basis in the strict sense of the word. Fortunately, however, the democratic concept of justice stands a better chance of successful implementation because in most "civilised" societies (including England) there exist strong

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15. Toby, J. Contemporary Society
John Wiley & Sons, N.Y. 1964 P.483-485

16. Weber, M. Rational and Irrational Administration of Justice
In Aubert, V Sociology of Law
Penguin; England; 1969; 153

elements of both khadi and empirical approaches to law enforcement. Unlike most of the other areas of administration, legal systems have successfully combatted the threat of total bureaucratization. The idea, as Weber (17) expresses it, of the modern judge "as a vending machine into which the pleadings are inserted together with the fee and which then disgorges the judgment together with its reasons mechanically derived from the code" has served to horrify administrators and legislators sufficiently enough to retard the complete rationalisation of legal systems. Legislators today tend to make a habit of keeping mandatory sentences to a minimum, and assisting judges to individualise each case and to exercise reasoned discretion. Upper and lower limits are set on the sanctions which a judge may apply once a verdict has been reached so that not so much compassion as situational circumstances may be taken into account.

We have perhaps now reached an appropriate stage in this discussion at which it may be of use to look a little closer at the implications of the point that legislation takes different forms and fulfills different functions in different societies through space and time.

Mankind has towards the last quarter of the twentieth century divided himself up into a number of social groupings, called states; and these states have the following general characteristics: they are groups of people who enjoy territorial integrity (and usually sovereignity), a degree of permanence, and a central hierarchy of authority, or a unified politico-legislative system to which all members of the group are subject. To this short list of broad criteria political scientists, and sometimes sociologists, add the concept of "voluntary association". However, as contemporary history unfolds itself it becomes clear that many modern states do not consider the "voluntary association" of their members to be critical to their statehood. Witness, for example, the technically ingenious methods employed by the East German authorities to keep their "citizens" from escaping over the Berlin wall. Miles and miles of minefields and self-triggering machine

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17. Ibid, P.159

guns pay a somewhat sorry tribute to the concept of "voluntary association". Notwithstanding this, West Germany has very recently officially recognised the existence of the State of East Germany. Likewise citizens of the Soviet Union who happen to adhere to the Jewish faith and who would prefer to voluntarily associate with Israel share problems similar to those of the unwilling on the wrong side of the Berlin wall. As in the case of East Germany, the U.S.S.R. is considered no less a state as a result of this.

On the theoretical level as well there is a very fundamental lack of agreement between the structural-functionalist and historical-materialist notions with respect to the role of legislation. The former position sees legislation as an essentially cohesive force in society, whereas the latter view, true to the Marxist tradition, sees it as a bourgeois instrument which maintains, confirms, and legitimizes basic cleavages in society. (Cohesion and legitimation are not in terms of this formulation being posited as necessarily contradictory, for both can enjoy different types of empirical relationship). There is no Platonic form of justice to serve as a guiding principle and to which all ranks are subject; on the contrary, it is a tool which is enforced in order to maintain the status quo, and which is subject to arbitrary change.

The former view, that of legislation as a cohesive force, has enjoyed widespread popularity among sociologists of the mainstream tradition. Durkheim (18), for example, felt that since law reproduces the principle forms of social solidarity, one would only have to classify the different types of law in order to deduce the different types of social solidarity which correspond to them.

Durkheim proceeded to divide law into repressive (i.e., penal) on the one hand, and restitutive (i.e., civil, commercial, procedural, administrative and constitutional law) on the other, and it is his treatment of restitutive law which is of particular interest to the student of contemporary sociological theory in

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18. Durkheim, E. The Division of Labour in Society
Free Press N.Y. 1893

the sense that he considers it analytically analagous to the nervous system in the organism because it has as its task, in effect, the regulation of the different functions of the body in such a way as to make them harmonize. This is, of course, remarkably similar to Parson's employment of Canon's theory of homeostasis to illustrate a similar point. Durkheim sees the nervous system as the expression of the state of concentration at which the organism has arrived in accordance with the divisions of physiological labour. In other words, we can measure the degree of concentration at which a society has arrived in accordance with its divisions of social labour according to the development of co-operative law with restitutive sanctions.

Parson's treatment of this theme is both more elaborate and sophisticated. He suggests that the system is subject to four functional imperatives, which can be seen as crises which have to be successfully overcome if the system is to maintain itself. These are adaptation, goal pursuance, pattern maintenance, and integration. The responsibility for the resolution of these crises however, rests with the individuals who wield real power in society, and the extent which they are resolved, or otherwise, remains an empirical question.

The adaptive imperative is normally identified with economic processes at the societal level (although Bredemeier (19) prefers to "broaden" the scope of adaptation to include science and technology, it is nevertheless felt that Parsons was using "economic" in its most general sense in this context - so general, that is, as to include science and technology in any case). In this sense the development of facilities for coping with the obstacles in the path of the achievement of system goals is economic.

The actual pursuance of system goals is of course related to political processes. Legislators are faced with the task of interpreting the "general will" of the people, formulating collective

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19. Bredemeier, H.C. "Law as an Integrative Mechanism" in Sociology of Law, Aubert, V.(ed) Penguin, 1968, Pp. 52-70

goals, and placing these interpretations and formulations on the statute books, In other words, the polity's primary input into the legal system is a description of the ideal state of affairs for which social resources are to be mobilised through the actual use of power. The result of this is the corresponding output of the legal system by applying general policy statements to the solution of specific conflicts at hand - i.e., creative interpretation of what the legislature means by the abstract language it uses to describe the ideal state of affairs.

At the political level there exists two contrasting views on the relationship between the law and the polity. According to the one, law is determined by the sense of justice and the moral sentiments of the population, and legislation can only achieve the results for which it is designed by staying relatively close to the prevailing social norms. According to the other, however, legislation is a vehicle through which a programmed social evolution can be brought about. The latter view was adopted, for instance, by Mao-Tse-Tung with respect to the Chinese Cultural Revolution. The massive programmes of social engineering being applied by the present government in South Africa in its attempt to develop ethnic homelands is another good example. The rationale underlying this approach would appear to be that if you force a change in behaviour a corresponding change in values will follow once this change has become accepted as inevitable.

The third functional imperative mentioned above, that of pattern maintenance, is served primarily through the socialization process. Through this process individual actors come to attach shared meanings to cultural symbols, and in this way the pattern of the system is generally maintained. To illustrate; if this imperative is applied to the legal system it becomes clear that in order to be effective as a venue for the resolution of conflicts, the courts have to sell "justice" - a commodity about the definition of which there is general agreement. Justice is always culturally defined and therefore this highlights the important role of socialization.

If the courts are not predictable, or if they do not sell justice as it is conceived then conflicts will be resolved in other ways.

The final functional imperative, the problem of integretation, is served essentially by the legal system itself. As mentioned above it puts a particularistic interpretation on universalistic policy statements that come down from the legislature and gives its own meaning to them. The most important integrative processes of the legal system are the resolution of conflicts in the courts in accordance with precedent and the stabilised code which enhances predictability, and this reinforces social values by publicly upholding them. These provide important behavioural references for individuals, most particularly in heterogenous societies.

It is this latter point, however, that of the rapidly increasing complexity and heterogenity of modern industrial societies that brings to the fore the critical importance of the legal system as an integrative mechanism. In such a confusing context the legal system walks a tight-rope in attempting to serve an integrative function, particularly when numerous cultural groups are subject to the same political authority.

Multi-cultural societies, however, are not the only form of social heterogenity. Even within the same culture there exists in developed societies such a diversity of value orientations (which is itself becoming increasingly valued) among the members that it is often no longer possible to guarantee conformity and equilibrium through traditional techniques. With the spreading of the democratic ideal and the widespread acceptance at the political level of individual freedom there has been such an increase in the scope of what is permitted behaviour, and norms have been subjected to such rapid change that there appears to have developed a trend towards using the written law as the only remaining general standard of what is prescribed or proscribed behaviour.

This of course goes very much further than simply stating that there exists always a dynamic tension between actual behaviour and expected behaviour. To an increasing degree it would appear that the scope of the former has blossomed at the expense of the latter and expectations would appear now to stop at the written law only. This would indicate that there is a shifting away from the use of personal moral or religious norms in evaluating behaviour. Instead "anything goes" as long as it does not transgress in explicitly laid down and enforced rule of law.

What distinguishes social legislation is the fact that no matter how democratic the system is in which he operates, the individual is forced to conform, or else face formal (and often serious) sanction. He may hate a particular law, or set of laws, he may curse them and campaign against them even on "moral" or constitutional grounds, but he must obey them if he wishes to remain an active member of that society. Unfortunately it is but a short step from hating and cursing certain laws to hating and cursing the people whom society has charged with the task of enforcing them. The important point here for a sociologist to remember is that this does not necessarily amount to a confrontation with the legal system as an integrative process, but rather with the goal pursuance policies of the legislature. This is borne out by the fact that the polity can be and sometimes is sued by individuals in a court of law. For as long as the possibility exists that a polity can lose such a case in a court of law the distinction between the polity and the legal system remains valid.

With reference to the Parsonian framework it is clear that some system of enforced legislation is functionally imperative for the continued existence of a society in the modern industrial and technological age. The actual content of the legislation (or part of it) may threaten to tear the society apart (as legislation concerning the draft and the Vietnam War is reported to have threatened in the U.S.A.), and such content usually requires change

from time to time as structural strains occur resulting from a rapidly changing value system, but nevertheless no society can exist without some form of legislation. What often happens is that the legal system itself makes adjustments to social change without formal reference to the polity simply by allowing some laws to fall into disuse.

The problem faced by legislators in attempting to gauge the collective will of their electorate is far more complex and their success more dubious than the classic democratic theorists would have us believe. There is a lot more to it than simply implementing a party political policy on the grounds that it represents a mandate from the people. In fact much has been made (i.e., from Ostrogorski onwards (20)) of the charge that democrats tend to greatly overemphasize the intellectuality of mankind. Paul F. Lazarsfeld's work (21) has shown very clearly that to assume that the mass of voters make their choices as a result of rational preferences from among the available alternatives is naive to say the least. To take the issue further and to base one's behaviour on the assumption that all the "important issues" in any one election are before the voters to roughly the same extent, and that the choice will depend upon the voter's considered opinion of what is best for the society as a whole, is very wishful thinking indeed. As mankind experiences the continuing trend towards greater urbanization and socio-cultural heterogeneity, so this problem will increase in complexity and the more difficult it will become for legislators to determine the "general will" on even quite fundamental issues (assuming that they really want to).

These democratic assumptions, however, irrespective of their lack of good fit with empirical reality, are critical for the continuation of the system which we value so highly. In terms of our values the system is the best available from among the possible alternatives and the most likely to defend particularly human values.

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20. Runciman, W.G. Social Science and Political Theory Cambridge; 1969

21. Lazarsfeld, Paul F. The American Soldier 1949
The People's Choice 1944

As mentioned above contemporary societies have been, and are being subjected to rapid changes, and this is an essential area of focus for the sociologist of law, for social changes are never without their costs. The rigidity of the village society has disappeared and has made way for a more flexible social structure at the cost of social integration. Yet if social integration is the primary purpose of legislation, and if the system we live in has any value for social researchers and they wish to see its survival and development in terms of our commitment to human values they will have to increasingly address themselves to the problems of declining integration and the role of sociology of law.

Rising crime rates are one measure of declining social integration and as sociologists we hardly need to be told that this has been a feature of the post World War 11 era. The criminologist who today cannot report sharp rises in the crime statistics is perhaps regarded with some suspicion, so commonplace has the trend become. The mechanisms of social integration need to be kept firmly under the spotlight, and the sociology of legislation, as one important aspect, deserves careful consideration in terms of changing roles and functions.

In the Republic of South Africa, as one empirical example of the above theoretical discussion, one confronts a situation in which legislation is the product of a minority of the society in a unique sense. The white population group, comprising hardly one-fifth of the total population enjoys universal adult suffrage and a reasonably democratic political existence. This system, however, is maintained by its simultaneous superimposed totalitarian rule of the black peoples within the country's borders.

One would therefore expect to find, on theoretical grounds, that the legislation produced and enforced in this society, together with the ways in which official attempts are made to resolve the other functional imperatives, would be quite clearly

designed to suit the white group at the expense of the others. Laws, and in this context firearms control laws, which affect people of all races and colours, are suggested, debated, lobbied, and finally passed by white legislators who are in the final analysis responsible only to a white electorate. The alleged offender of the laws thus formulated is apprehended by a law-enforcement officer who may be white or black and brought before a judge who will most likely be white, and is then tried without reference to his colour. The fact that most law-breakers happen to be black is not itself, however, sufficient to demonstrate the proposition that the etiology of such crime lies in the absence of blacks from the law-making machinery, for this is an empirical question. And so it is with regard to gun control; it is the purpose of this study to try to determine empirically what role these laws play, in relation to our theoretical expectations.

PART II

PART 2

If any de jure political administration is to be successful in its goal-pursuance function then it requires that the necessary preconditions of government obtain in the society for which it legislates. Amongst these necessary preconditions are those which are often referred to as "law and order". In other words, whether a particular political hiararchy governs on the authority of its subjects or not, it cannot satisfactorily pursue its goals unless it enjoys de facto power with respect to the behaviour of its citizens, together with communication of that power, and some form of recognition of and co-operation with it.

To have the capacity to exercise power in society a government must have at its disposal the use of force, and factors relating to it. No government can justifiably call itself by that name unless it has ultimate control of violence together with the facilities which make such violence possible. It is therefore clear that the possession of instruments of violence, firearms in this context, by private citizens in the society, for whatever purpose, is of great interest to those whose task it is to formulate public policy, and cannot but have some significant influence on it. As we would expect, different governments finding themselves in different social situations in space and time, and guided by various diverse ideological references, view the private ownership of weapons, particularly guns, with feelings ranging from abhorence at the one extreme to enthusiasm at the other.

In this part we shall look briefly at general historical and contemporary approaches of political administrations to the private possession of firearms, and then move on to discuss current South African legislative provisions in this regard. It is felt that it would be a fair theoretical assumption to make at the outset in this discussion that the closer a government maintains the legislation it adopts to that which is legitimized by the general

values of society, the more likely it is to support in principle the private possession of firearms by its citizens (all other things, such as crime rates for example, being equal) for law-abiding purposes.

The implications of this assumption are that the higher the degree of authority enjoyed by a particular administration, the less likely is that administration going to view such possession as threatening to the solidarity of society or the continued existence of the polity itself. On the contrary, citizens are more likely to identify with its goal-pursuance policies and it is perhaps desireable, as a result, that they be armed. On the other hand, if force alone is the emphasis of a government and constitutes its fundamental thrust, then the possession of arms must be viewed with suspicion, if not total opposition.

History provides us as spectators with numerous examples of both extremes, together with a large number of other technically different legal structures, symptomatic of one or other less extreme interpretation of these respective rationales, and which may be located at different points on the continuum. Governments have for centuries made many kinds of legislative attempts at either limiting or expanding the private availability of weapons for a broad range of reasons, and therefore, in the hope that it may perhaps serve the purposes of perspective, we now look at the background development of some of these approaches and the situations in which they are found, as empirical examples.

CHAPTER 3

SOCIAL LEGISLATION AND FIREARMS CONTROL: GENERAL HISTORICAL PERSPECTIVE

We are told by Greenwood (22) (on whom we shall have to rely heavily for some of the following because of the unfortunate lack of other comparable references) that in England, for instance, the possession of arms by civilians has been the subject of both Statute and Common Law for many centuries, although these have differed in purpose, form and efficacy as administrative and constitutional changes came about with the passage of time.

Back in Saxon times long before the introduction of the modern firearm, the society which existed could be classified as traditional in Weber's terminology in the sense that functional differentation was still relatively low. There was no standing army, nor any professional police force as is commonly understood in the twentieth century. The defence of the society and the maintenance of law and order was highly localised, and dependent on a system under which individuals were encouraged to enrol in groups of about ten families, known at the time as tythings. These tythings were responsible for the behaviour of each of their members and if any individual broke the law the group was required to produce him for trial, or if the offender escaped, the group was liable to a collective fine. If any fugitive from justice was suspected of being in the area all able-bodied freemen were required to take part in the "Hue and Cry".

In order to satisfactorily fulfill his function under the system, every freeman had not only a right, but an absolute duty to keep and bear arms. The type of arms to be held varied according to the status and economic position of the holder, but even the poorest were included. (They were usually ordered to keep bows and arrows). To ensure conformity with the 1285 Statute of Winchester the Constable was to inspect all arms twice a year, for it commanded inter alia; ".....that every man have in his house Harness for to keep the Peace after the antient Assize; that is to say

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22. Greenwood, C. Firearms Control
Routledge & Kegan Paul; London; 1972; P.7

that every man between fifteen years of age and sixty years shall be assessed and sworn to armour according to the quality of their lands and goods".

It would appear that in these times no clear differentiation was considered necessary between military and criminal threats to the continuing functional integration of the system. They were obviously identified as being distinct, but were nevertheless responded to by the same structural units, i.e., the tythings. The possession of arms by individuals, all of whom were members of tythings, was therefore considered critical for the maintenance of the system from the points of view of dealing with both internal deviance and external military threats.

Newton and Zimring (23) quote the 1328 Statute of Northampton as an example of early legislation attempting to control the carrying of arms. However, its purpose had absolutely nothing to do with the ownership of arms and the carrying of them by citizens in observance of their duty to be properly equipped for the "Hue and Cry". The specific command to keep and bear arms remained, but what did constitute an offence under this Statute was behaviour tantamount to an abuse of weapons by terrifying innocent people. This was evidently an attempt to reinforce social solidarity by not only ensuring that the populace was properly armed and ready to defend itself, but also that the bearing of arms would be accompanied by behaviour appropriate to the pursuit of group cohesiveness and mutual identification rather than disintegration and internal conflict. What was seen as a threat was not the individual ownership of weapons per se, but the abuse of them in terms of the goal pursuance policies of the polity.

As firearms developed they began to enjoy the attention of soldiers and robbers alike, and this became a cause for concern especially for the Tudors. The central problem as regards gun ownership was

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23. Newton G, & Zimring F. Firearms and Violence in American Life Report No. 7. To the National Commission on Causes and Prevention of Violence. Washington D.C. U.S. Government Printing Office ; 1969

not so much the apparent increase in armed crime because robbers were apt to use any weapon that was concealable and at this time firearms were not yet sophisticated enough to be relied upon for regular criminal use, nor was it the employment of guns by military opponents, but the fact that interest in and experiments with them were undermining the position of the longbow as the principal military weapon.

Guns were all very well as toys for the gentry to fiddle with for fun and sport, but they were crude, noisy, messy and highly inefficient in comparison with the longbow. As a result, in 1533 Henry VIII legislated against guns and crossbows because of his concern for both armed crime and the neglect of archery among his subjects. People who had an income of less than one hundred pounds per year were forbidden to use or possess "crossbows, handguns (i.e., just about any firearm which could be carried by a single man) hagbutts, and demy-Hawkes" (Greenwood (24), and even this class could own guns as long as they were more than three-quarters of a yard in length, (presumably to obviate their potential concealability.)

This legislation was, therefore, not in any sense far-reaching. It did not affect the duty of all men to keep arms both for the maintenance of order and the defence of the monarchy. It merely restricted the then novel and relatively inefficient firearms largely to the upper socio-economic status groups whilst maintaining longbows as the arms of the vast majority of the people because of their greater suitability, reliability and efficiency.

The turn of the seventeenth century in England heralded an era of great constitutional development, with its concomitant social and political implications. Increasing sophistication had necessitated further divisions of labour, and the existing military structures were among the first to be affected. By then firearms had replaced the longbow as the official military weapons, and at the same time more highly refined techniques of fighting had emerged

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24. Greenwood, C. Firearms Control
Routledge & Kegan Paul; London, 1972, P.8

during the Civil War, requiring a better drilled, trained and specialized military force. The so-called "Trained Bands" (25) system developed to meet this requirement. These consisted of men chosen on a largely voluntary basis, also trained by volunteers, but according to a system which generally restricted selection to the freeman classes, skilled workers, tradesmen and property owners. The duty to provide the finance for these more expensive weapons also shifted from the shoulders of individuals of all ranks to those of the wealthier classes, and as the expense increased it eventually became the corporate burden of the community.

The development of a more specialized part-time system of Trained Bands, as well as their ultimate outgrowth into a full-time professional militia did not, however, affect the right and duty of all classes to remain armed for personal and group defence. Charles II, notwithstanding, added in 1671 to the Statute of Henry VIII by prohibiting persons having an income of one hundred pounds or less from not only owning a gun or crossbow, but also from owning any greyhound, setting dog or long dog. (Persons earning below the required annual income, but of the rank of esquire, or owner or keeper of forests were exempt from this law.) The sole intention of this legislation by Charles II was to ensure that game was reserved for the wealthier classes (26). Guns had by now become efficient hunting tools, far more so than longbows, and so no attempt was made to legislate against these weapons of the lower socio-economic classes. (This also explains why esquires and owners or keepers of forests were exempt from this law, i.e., so that they could effectively combat the threat of poaching by the lower classes on the game of the landed gentry.) This law had little to do with general considerations of social solidarity, although it does in a sense express the extent of the polarisation between the nobility and the commoners which had developed in seventeenth century England.

This polarisation went further under the Catholic King, James II who introduced the religious element into the discrimination between those who could own firearms and those who could not, but for totally different reasons than those of Charles II quoted above.

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25. Ibid P.9

26. Ibid P.10

James II's obvious purpose in introducing further firearms controls was to attempt to stabilize his rather shaky hold on the throne. He raised the numerical strength of the standing army to unheard-of levels, and methodically dismissed and disarmed Protestants of any importance so as to maintain the loyalties of the military.

However, James II's term was a short one, and he was soon replaced by William of Orange, who was immediately presented with a Bill of Rights by Parliament.

Parliament complained bitterly that King James had "caused several good subjects, being Protestants, to be disarmed at the same time when papists were both armed and employed, contrary to law," and declared that henceforth "the subjects which are Protestants may have arms for their defence, suitable to their condition and as allowed by law" (27) Of central importance here is the assumption of Parliament that it was in no way claiming new rights, but merely recording those which had been understood to have existed under Common Law for centuries, but had been unjustifiably withdrawn by James II.

Parliament jealously protected the rights of all citizens to arm themselves even during the great social upheavals experienced during the industrial Revolution in England. It is true that these rights were suspended in some of the industrial areas, but the Commons intended this suspension to last only for two years and to apply to specific trouble spots alone, for it feared (regardless of the lack of validity of such fears) that a wholesale bloody revolution would follow in the wake of the Peterloo Massacre in 1819. Suspected smuggling of arms and secret meetings of seditious intent caused Parliament to take steps to control the situation by adopting the famous Seizure of Arms Act of 1820, which authorised Justices of the Peace to issue warrants and confiscate arms which might be used by revolutionaries.

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27. Ibid, P.15

The onus lay on the owner to show that arms were not possessed for a purpose which was dangerous to the peace, but no Justice of the Peace could detain arms unless he had a prima facie reason for believing that a defendant before him had evil designs on the good order of society.

This Act had a lengthy and stormy passage through Parliament, and because of the contention of numerous members that it infringed fundamental constitutional rights was probably ultimately accepted only because it was felt that a strong and assertive reaction to the threat of revolution was essential. Revolutions, it was agreed, are seldom followed by anything other than dictatorship in some form or other, and so the slight tinkering with one constitutional right was preferable to the loss of the constitution itself.

During the remainder of the nineteenth century a number of other parliamentary attempts were made to introduce controls over the ownership of guns, particularly with the growing public awareness of armed crime. There was no evidence that there was even a gradual increase in the number of armed crimes, and therefore it is likely that this increased public awareness was due more to improved communications, the growth of the newspaper industry, the establishment of a progressively efficient police force and more satisfactory methods of reporting crime, rather than a wave of violent lawlessness. Without acceptable empirical evidence for the need for legislative firearms controls these attempts were doomed to failure, and fail they indeed did. The 1820 Seizure of Arms Act remained the only measure which effectively placed some power in the hands of the polity to limit the public presence of firearms. As we have seen, however, it was by no means generally applicable, and in no way superceded the right of law-abiding citizens to defend themselves with weapons.

It was only in 1903, with the adoption of the Pistols Act that further real restrictions became law, and even these were of little consequence. The primary purpose of this Act was to prevent

firearms accidents by ensuring that children and drunkards could not legally be possessed of guns. No mention was made of convicted criminals or certified lunatics, and so it seems unlikely in the extreme that any motive to limit crime was included. In order to qualify for permission to buy a gun from a retailer (the Act did not affect private sales), the prospective client had to satisfy three requirements. He had to produce a current gun licence (available without question from any Post Office on payment of ten shillings), to give reasonable assurances that the proposed use of his pistol was limited to the immediate confines of his property, or produce a statement to the effect that he was about to travel abroad for six months or more.

This Act was of little more than nuisance value as it did not stand in the way of any person reasonably determined to own a gun. It did not take Parliament very long to recognise this, and so in 1920 the Firearms Bill was passed, thus tightening up some of the loopholes in the 1903 Act and constituting the most thorough attempt at firearms control that England had ever experienced.

Drunkards, certified lunatics, criminals, children, aliens, were amongst others all disqualified from potential ownership at the discretion of a police officer. All firearms owners had to be in possession of licences granted by their local constabulary, regardless of whether the gun was bought privately or from a retailer.

Further, more comprehensive legislation followed under the name of the Firearms Act of 1937. This was both more detailed and more sophisticated than the 1920 Bill and followed up the recommendations of the Bodkin Committee Report. Curiously enough an examination of the efficacy of existing legislation at the time was not included in the terms of reference of this committee. Greenwood (28) says that statistics relating to the criminal use of firearms during the period immediately prior to the Second World War do not appear even to have been gathered - a fact

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28. Ibid P.70

which in itself indicates a satisfactory state of affairs in terms of crime rates. One wonders therefore, on what grounds the Bodkin Committee recommended a thorough tightening up of existing legislation, other than its "self-evident inadequacy", for there are no observable empirical bases for these recommendations.

The question of private ownership of firearms had by this stage, it would appear, shifted out of the realm of absolute right and dropped to a status somewhere between right and privilege. The police were granted executive power to determine the fitness of individuals to be armed, and the result was that applicants had to persuade what constituted perhaps the most unsympathetic division of the polity of their good intentions. This must have been, on reflection, particularly true of cases involving handguns (which had by now become distinguished from rifles or long guns, and referred to automatic pistols and revolvers only), for target shooting and hunting with handguns were not yet fully developed as sports each in its own right, and therefore most applications for handgun licences must have claimed self-defence purposes. The police, the people whose duty it was to face violence daily in the execution of their duties, had by now built up an envied reputation for being unarmed, and could for particularly this reason not be expected to sympathize with a self-defence plea unless they felt that there really was some substance to it.

What had been an absolute duty some centuries before was now little more than a privelege. From attempting to maintain interest in and practice with longbows for military purposes to ensuring that game was shot by the nobles only, and to attempting to uphold the status quo in the face of the mounting threat of revolution to eventually legislating to curtail firearms accidents, political restrictions on firearms ownership grew. Increasing social differentation led to the growth of new structures specialised in dealing with threats to social solidarity (in this case the army and the police force) and was accompanied by a decrease in social solidarity itself. Heterogeneity and urbanization led to decreasing conformity, with the result that it was eventually considered both desireable and necessary by the polity to

disqualify certain categories of deviants, as well as certain categories of likely, or potential deviants from firearms ownership.

In the United States of America the trend has been similar, although much slower for a variety of reasons. When the conclusion was reached that the original U.S. Constitution drawn up by the Founding Fathers did not guard the security of the people nor of the states to the extent that had been intended, ten amendments were added in the name of the Bill of Rights, and became law in 1791. The Second Amendment read as follows;
"A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear arms shall not be infringed," and this statement has served as the basis of the fight of American gun owners for the legal survival of their sporting and self-defence activities for many years. It is, in fact, probably the most important single reason for the slow progress (for progress they have) of those Americans who have advocated the confiscation of all privately owned firearms in that society. The latter, Daniel Glaser (29) for one, concentrate their attacks on the concept of "Militia", emphasizing their interpretation of that concept as referring to the specialised standing army and police force, and not to all citizens regardless of occupation.

Defenders of the right to keep and bear arms on the other hand have argued that, in the first place, the individual is in the final analysis, his own ultimate means of defence, and secondly, as has been argued by Fielding L.Greaves (30) there is an important distinction between the provisions of the Second Amendment, and Article I Section 8 of the U.S.Constitution, which states that among the powers allotted to Congress was the power, "..... to provide for organizing, arming and disciplining the Militia....." (31). What this indicates, according to Greaves, is that the Second Amendment could not therefore have been written in order to see to the arming of the Militia. This was already seen to. At

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29. Daniel Glaser — Adult Crime and Social Policy Prentice-Hall; N.Y.; 1972; P.36

30. Fielding L.Greaves — "U.S.Gun Rights are Guaranteed" In Guns & Ammo Petersen; L.A.

31. Ibid, P.32

the same time the ten amendments which constituted the Bill of Rights nowhere included the power of Congress or any other body to amend, repeal or change any of the Amendments. The powers of Congress were clearly laid down in the Constitution, and while it could organize, arm and discipline the militia, it could not disarm the people under any circumstances, or on any pretext. The intention of the Second Amendments was to secure the rights of all citizens.

The further development of this argument is of more relevance to the following Chapter and will be dealt with more fully there. Of importance to us in this context is that historically speaking the U.S. has for the most part enjoyed a well known tradition of unrestricted firearms ownership. There has, however, been one notable exception, and this refers to the notorious 1911 Sullivan Law of New York. It is notorious for the simple reason that despite its vigourously applied restrictions on gun ownership in the name of crime control it has been, and still is ineffective at best. New York has for a long time enjoyed the unenviable reputation of being one of the most concentrated areas of violent crime in the world, and even the most superficial glance at the official statistics shows that the Sullivan Law has not, to say the least, even begun to look as if it might serve the purposes for which it was adopted (32).

Under the provisions of this law it became an offence for anybody to own, purchase or carry a concealable firearm, including "other firearms" (which were not defined in the Act), without a permit. While this law might have been, as its supporters claim, an attempt to disarm the criminal in order to protect the constitutents, its detractors have held, with statistical support (33) that criminals have remained armed whereas the Act has served to disarm the constituents. With the alleged easy availability of guns on the "black market" it is unlikely in the extreme, say

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32. Mason Williams — Gun Law Hoax of All Time
Guns & Ammo Magazine: Petersen; L.A. May 1972

33. Gun World
Gallant, California; October 1972 P.68

the detractors, that criminals, and especially members of New York's Organized Crime would apply to the police for a permit and risk even the faintest possibility of being traced. The law has nevertheless remained in force, and it represents one of the most restrictive pieces of legislation in the U.S. prior to the Second World War.

Notwithstanding, the American gun owners have been subjected to relatively little legislative limitation on their freedom to buy, use and bear weapons. Although gun laws differ from state to state in the U.S.,and are most restrictive, generally speaking, in the densely populated and industrial North-East, the situation is still a reasonably free one in comparison with some European countries.

Up until 1889 at least there were no restrictions on the carrying of arms, even concealed, in Norway, Sweden, Denmark and Switzerland, while in Hungary only convicted criminals and the insane were excluded. Restrictions also existed in Germany, and the Netherlands whereas in Belgium, Greece, Italy, Spain, Portugal, Austria, Turkey and Russia a permit was required to carry any kind of firearm (34).

The situation in the Soviet Union after the October Revolution in 1917, is of course, of important and lasting interest to this discussion. The political philosophy of the new ruling elite, true to the Marxist approach to legislation as a device for the maintenance, confirmation and legitimation of existing cleavages in society, is well illustrated in the following quotations from Lenin (who was himself nearly assasinated by a disillusioned woman radical with a pistol in 1918): ".....one of the basic conditions for the victory of socialism - the arming of the workers, and the disarming of the bourgeosie" (35);

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34. Greenwood C. Firearms Control
Routledge and Kegan Paul; London, 1972 P.20

35. Lenin Collected works; the Basic Tasks of the Dictatorship of the Proletariat in Russia
Progress Publishers Moscow; 1965
Quoted in Gun Digest 1972 (ed. J.T. Amber)

"Make mass searches and hold executions for found arms" (36) "Only the Soviets can effectively arm the proleteriat and disarm the bourgeosie. Unless this is done, the victory of socialism is impossible" (37). Trotsky, who was assasinated with an axe in 1940, had this to say: " To ensure quick Communist victory in civil warfare, there arises the necessity of disarming the bourgeosie and arming the workers, of creating a Communist army" (38).

These quotations, taken from the 1972 edition of Gun Digest (ed.John T.Amber; Follett Co; Chicago) show very clearly that the possession of arms by all subjects under a Communist regime such as existed then and now in the Soviet Union was and is unthinkable for the reason that the fundamental pre-occupation of these rulers appears to have been with the exercise of power, regardless of authority variables and existing values.

One is reminded, therefore of the words of Thomas Carlyle in his story of the French Revolution; "But see Camille Desmoulin, from the Café de Foy, rushing out, sibylline in face; his hair streaming, in each hand a pistol! He springs to a table: the Police satellites are eyeing him alive they shall not take him; not they alive, him alive.

This time he speaks without stammering:
"Friends, shall we die like hunted hares? Like sheep hounded into their penfold; bleating for mercy, where is no mercy, only a whetted knife? The hour is come; the supreme hour of Frenchmen and Man; when Oppressors are to try conclusions with Oppressed; and the word is, swift Death, or Deliverance forever. Let such hour be well-come! Us,.....one cry only befits: To Arms! Let universal Paris, universal France, as with the throat of the whirlwind sound only: To Arms! " (39). Such extreme examples of the polarisation of society into two opposing forces are not uncommon in the twentieth century (the present situation in Northern Ireland may serve as one example), and they reinforce our theoretical proposition that the more a government administers

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36. Lenin — Collected Works: Vol.35; P.286
Congressional Record, April 28,1970
Quoted in Gun Digest, 1972 (ed.J.T.Amber)

37. Lenin — Collected Works P.466
Quoted in Gun Digest, 1972 (ed. J.T.Amber)

38. Daniels,Robert V. A Documentary History of Communism
Random House, N.Y. 1960 P.90

39. Carlyle, T. The French Revolution Miles & Miles:London: P.130

in terms of force (as opposed to authority) the less likely it is to agree in principle to the lawful possession of firearms by its subjects. It is now a popular saying that the armed man is the citizen and the disarmed man the subject.

The increasing differentiation brought about by the division of labour, as mentioned, meant that new structures specialised in the use of firearms came into being, thus, at least theoretically, removing some of the needs of individuals for remaining armed. The trend towards greater centralization of political authority is clear, and it has obviously also extended into the realm of firearms control. That the theoretical expectation of decreasing needs for firearms lacks empirical support is a phenomenon which will be discussed in the following Chapter.

It appears, in conclusion of this brief historical survey, that the freedom enjoyed by the individual to possess arms differs as radically between the U.S.A., Britain and Western Europe on the one hand, and the U.S.S.R., on the other, as their respective political ideologies differ. In the latter situation society is governed on the basis of coercion, and therefore only the "right" people are armed, i.e., agents of the polity. In the former situation citizenship seems to be a sufficient qualifying factor, provided that one can satisfy agents of the polity that there is no criminal intent. As illustrated, permission to keep and bear arms in both situations is granted by the same institutional role players, but the criteria employed differs markedly.

CHAPTER 4

SOCIAL LEGISLATION AND FIREARMS CONTROL: CONTEMPORARY PERSPECTIVES

The post World War 11 era has seen a tremendous increase in the complexity of the relationship between firearms control laws and the factors they are designed to influence; and this constitutes the primary reason for selecting the Second World War as the point of departure for our discussion of contemporary perspectives.

In dealing with political democracies, in which societies are governed on the authority of a system of universal franchise, we assume that legislation enacted by such a government necessarily follows the dictates of the general value system as interpreted and manipulated by those who wield power in these respective societies, and that they therefore do not regard the ownership of arms by their citizens as in any way constituting a threat to their goal pursuance policies.

Nevertheless controls and restrictions on the private possession of guns do in fact exist in these societies, by far the most popular reason for which is crime control: the assumption being that the elimination or at least severe restriction of the availability of firearms in society has a marked effect in reducing their prevalence in violent crime. Whether or not this is the case is a remarkably contentious issue, and at the same time represents a field of inquiry which appears to have been largely neglected by academics.

As we have suggested before, the relationship between the actual content of legislation and the "collective morality" is not as simple as the classic democratic theorists so ardently believed, and amongst the reasons for this is the fact that societies remain highly stratified and are increasing in heterogeneity. Values differ both for the hierarchical socio-economic strata and for the numerous sub-cultural segments which cut across these strata.

Actors playing the roles of legislators and judges who make and interpret the law inevitably bring the conceptual frameworks of their milieu in to play in their decision-making activities. Being almost exclusively well-educated, high-status persons who are perhaps also middle-aged, male, white, Protestants they employ behavioural references which are not uniform for the whole society, and so their conception of right and wrong, just and unjust, cannot be expected to agree, or even approximate with the conceptions of all classes.

The result unavoidably is that such behaviour as drunken driving, homosexuality, tax-evasion and theft are neither condemned nor encouraged to the same extent by the different sub-cultural pockets in society, but they remain illegal and punishable by the State nevertheless. This sort of differential evaluation of formally illegal acts may be the result of inadequate, inappropriate, or simply counter-socialization. But whatever, it is rooted in the fact that human beings learn values, and do not inherit them. Even in the modern state where the polity has so much control over education there is still a failure to reach all levels of society with the same intensity and success.

The implications are that while acts are differentially evaluated in terms of cultural variables, so are the artifacts of our culture. Motor-cars, airplanes, space-rockets and firearms mean different things to different people located throughout the sub-cultural segments in society as different values are attached to them. Hand-guns are used for self-protection, hold-ups, competitive target-shooting, hunting, collecting, ballistics research, informal plinking, and many other reasons. The trend in the West, however,appears to have been of late for middle-class, middle-aged legislators to look upon them as the tools of criminals, and to act against their availability in the hope that criminals would be prevented or deterred from using guns to achieve their illegal ends. This is indeed a fascinating trend, for the reasons for this approach have been, and still are, by and large unclear.

It would appear to have been simply assumed that the stricter the gun laws the less likely are firearms to be used in crime. (The recommendations of the Bodkin Committee serve as an excellent example) (40).

In Britain, although the constitutional right of citizens of all ranks to keep and bear arms for the abovementioned diversifying number of reasons has remained in principle operative, they have since World War 11 become subject to more and more policy restrictions in the attempt to contain violent crime. The mere presence of many thousands of firearms in Britain, belonging to former members of the Home Guard, and now lying about unnecessarily in the peace that followed, would appear to have been considered a grave threat to all law-abiding citizens, for they could so easily fall into the hands of criminals.

For the first decade and more after the war the rigouriously applied gun control laws in England were to be envied, for in that country criminals hardly ever carried a gun, nor was it necessary for either the police or citizens to bear arms for self-protection. The streets of London and other major cities were safe in comparison with major U.S. urban areas and the general impression appeared to be that after more than thirty years of strict controls (i.e., since 1920) these restrictions had proved their ability to limit armed crime. Sportsmen who aimed their firearms at clay-pigeons or paper targets rather than bank-tellers could still buy firearms provided that they were prepared to subject themselves to the bureaucratic acrobatics which their licence applications involved. This system, felt its supporters, ensured that people whose motives were suspect would not be able to lay their hands on firearms, and social solidarity would therefore be enhanced.

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40. Greenwood, C. Firearms Control
Routledge & Kegan Paul; London; 1972

TABLE 1

YEAR	TOTAL ROBBERIES	ARMED ROBBERIES	FIREARMS ROBBERIES
1946	299	Not available	25
1947	354	132	46
1948	373	110	28
1949	280	83	13
1950	256	80	18
1951	214	63	10
1952	298	99	18
1953	295	105	17
1954	241	76	4
1955	237	84	13
1956	314	133	19
1957	398	136	20
1958	558	224	35
1959	671	312	51
1960	763	307	39
1961	963	407	53
1962	1017	407	62
1963	973	380	43
1964	1266	535	92
1965	1609	702	115
1966	1982	852	142
1967	2012	791	165
1968	1910	838	225
1969	2236	950	272
1970	2369	997	274
1971	2727	1191	310

TABLE 11

YEAR	Percentage Firearm Robberies of Total Robberies	Percentage Firearm Robberies of Armed Robberies.
1951	4,67	15,8
1956	6,5	14,3
1961	5,5	13
1966	7,12	16,7
1971	11,4	26

What differences exist between figures for 1951 up to 1966 we would perhaps ignore as statistically insignificant fluctuations. Greenwood suggests (43) that there may well be a connection between the abolition in Britain of the death penalty in 1965, and the dramatic increase in the use of firearms in robberies since then, as both Tables 1 and 11 demonstrate.

In an age in which the death penalty is seeing less and less frequent use in contemporary democracies, if not complete abolition on the grounds that it is barbaric and outmoded (i.e., it is not legitimized by the general value system), and that it is ineffective as a deterrent factor because murders most often occur within immediate family structures (this is itself a highly questionable assumption at best) and represent the exercise of emotion rather than reason, the justification for Greenwood's suggestion may lie in the fact that in terms of armed robberies we are dealing with calculating and often career criminals to whom a gun is a tool of the trade in the sense that it represents a dramatic increase in the possibility of escape, if caught in the act of breaking the law.

43. Greenwood, C. Firearms Control
Routledge & Kegan Paul; London; 1972; P.255

In cases such as these the threat to life and limb which has to be faced by unarmed policemen is greatly increased in what would appear to be an intentional way on the part of the armed robber, for by using a gun he is placing his escape above the life of a policeman acting on the course of his duties. In the U.S. law enforcement agents are for the most part armed and in a better position to defend themselves, but there have nevertheless been strong indications that a return to capital punishment may occur for certain categories of crimes (including the murder of a policeman). During the 1972 Presidential Election the State of California voted overwhelmingly for a return of the death sentence, and in March 1973 President Nixon was quoted (44) as arguing "that the only way to attack crime in America is the way crime attacks our people - without pity" in justifying his call for a return to capital punishment.

In Britain there does not yet appear to have been much support for such a return, although the House of Commons is reported (45) to have voted on the 9th April,1973, against an attempt by Mr. Edward Taylor (Conservative) to have capital punishment re-introduced specifically for murder involving firearms and explosives, and for the murder of a policeman or prison officer. The House voted against Mr. Taylor's motion by 320 - 178, a clear majority of 142 in favour of the continued abolition of the hangman's rope as a form of punishment, which Mr. Roy Jenkins described as "ineffective, impracticable, damaging, and wrong. The penalty is too final to be controlled by the frailty of human judgment". The rapid increase in the use of guns in crime has not yet resulted in an escalating call for violence in return, but it certainly has called into question the efficacy of existing controls.

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44. Time Magazine, March 25,1973; P.50

45. The Cape Times, Cape Town 10.4.'73

Quite clearly, says Greenwood (46), British gun control laws do not work. They were designed to keep guns out of the hands of criminals and thereby to limit their use in armed robberies, but they cannot be considered to have been successful. One could, of course argue that were it not for these controls at present exercised the annual number of firearms robberies would be much higher. Greenwood, (47) however, rejects this argument on the grounds that armed robbers are hardly ever in legal possession of the guns they use at the time of their crimes in the first place, and secondly, that there is no case on record of a criminal applying to the police for a licence to possess a gun for the purpose of shooting a policeman or night-watchman who might disturb him.

Firearms are quite freely available on the "black market" for a sum of money, with no questions asked, and these cannot be traced, for even if the serial numbers are not filed down there are no records of the criminal's ownership of a particular gun anywhere. Armed robbers, in fact, would appear to make a point of ensuring that their guns are not licensed in their own names, and this, together with the figures presented in Tables 1 and 11 must seriously call into question the purpose and role of firearms controls in Britain. If they do not serve the purposes for which they were designed, then, indeed, what purposes do they serve? If any commission is to be appointed in the future, such as the Bodkin Committee already referred to, it is to be hoped that before any recommendations are made to Parliament, a study be made of the efficacy of gun control laws. It is not, as has been shown, adequate to simply assume the need for stricter and stricter laws without any observable empirical support for such an assumption.

In the United States of America there is also evidence of the widespread existence of this assumption, which appears to go hand in hand with the conception of firearms primarily as tools for the unlawful perpetration of civil violence.

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46. Greenwood, C. British Gun Controls Don't Work
Guns & Arms; Petersen L.A.;December 1972, P.33

47. Ibid P.102

The Kerner Report (48) for instance, provides an example, for it contends that "Federal Legislation, if enacted, should be precisely drafted, with a clear definition of all operative terms, so as to preserve scrupulously the constitutional rights of all Americans. Such legislation should be combined, as the President (Lyndon B. Johnson) recommended, with the Federal Firearms Bill. Both are important means of restricting the interstate movement of forces of destruction".

Federal Legislation was indeed enacted in the name of the Gun Control Act of 1968, and among its provisions were a ban on the interstate sale of firearms, together with a ban on the importation of cheaply made, unsafe and short-barrelled handguns, usually of Continental origin, and referred to in the U.S.A. as "Saturday Night Specials", because of their alleged lack of sporting or any other lawful usefullness.

This legislation came at a time when public debate on the issue of firearms control had grown in volume and intensity, especially since the assasination in 1963 of President John Kennedy as he drove through the streets of Dallas, Texas, at the hands of a gunman. A shocked nation had not fully recovered when the news of the assasination, also by a gun, of Senator Robert Kennedy came as he campaigned for the Presidency in California. However, what immediately intrigues the student of such legislation is the fact that none of the abovementioned murders was carried out with a "Saturday Night Special", nor is it clear how a ban on the interstate sale of firearms could have prevented them, or thousands of other firearms crimes.

In 1972, also in the process of campaigning for the Presidency, Governor George Wallace of Alabama was shot and crippled at a shopping centre in Maryland.

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48. Kerner,Otto (Chairman) Report of the National Advisory Commission On Civil Disorders
Bantamy, N.Y; 1968; P.524

He was shot at almost point-blank range with a handgun which could not be classified as a "Saturday Night Special". Nevertheless the Governor was quoted as saying in hospital later that his attitude to handgun controls had not changed (49) "Federal laws will keep guns out of the hands of law-abiding citizens, but those who break the law will have them anyway". It would seem, say the opponents of gun control, that a man who is intent on committing as serious a crime as murder is as likely to be concerned about the fact that he is not in legal possession of the gun he is going to use (and is thus liable to a fine) as he is likely to be concerned about exceeding the speed limit in his bid to escape a pursuing police car. Any attempt to restrict the possession of firearms in an existing situation in which millions are in circulation is more likely to simply penalise the legitimate gun-owner and have no effect whatsoever on the criminal gun-owner. However, the supporters of strict gun laws have argued that firearms, particularly handguns, are of suspect sporting value to begin with, and any real attempt to limit their availability must itself affect their prevalence in armed crime. Senator Edward Kennedy, brother of the two assassinated Kennedys has, for one, adopted a position strongly in favour of strict gun control laws. He argues (50) that during the years 1960 to 1970 the number of murders in the United States, from all causes, increased by 56% from 9000 to 15810. By 1970 65% of these murders were committed with guns. Of the 10,000 crimes, at least 52% were committed with pistols and revolvers. Senator Kennedy is therefore convinced that if the U.S. is to develop "meaningful action" to halt crime and violence in that country, all guns have to be registered and all gun-owners licensed. This, he feels, is the way to stem the flow of weapons to those who are intent on firearms abuse.

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49. Constantine, J.R. Shooting Times
Peoria Journal Star; III; September 1972; P.16

50. Senator Edward M. Kennedy Shooting Times
Peoria Journal Star; III; November 1972

The proliferation of nearly 200 million guns in American households (Kennedy's estimate) demands effective controls in order to stop the daily killing and violence their presence generates, he concludes.

Senator Kennedy, in terms of his belief that in order to control lawlessness with firearms a ban should be placed on the flow of pistols and revolvers to criminals, introduced a measure in the Senate authorizing a ban on all non-sporting, hand-held firearms, and in addition making it unlawful for any person to own a gun that is not registered or to possess a gun without being licensed. The two underlying assumptions which deserve attention here are firstly the notion that the mere presence of firearms, regardless of their cultural or sub-cultural definitions, is itself a factor which generates civil violence, and secondly, that those who own firearms for unlawful purposes acquire them through the same lawful channels as do sportsmen. Glaser (51) has also reported that there is a direct relation between the presence of guns and the homicide rates in society. In the United States, he argues, the children of poverty-stricken immigrants have usually been responsible for the higher rate of assaultive crime, (with the exception of those in several ethnic groups such as the Chinese and Jews, where the family and ethnic community display strong ties and appear able to inculcate anti-violence values).

Thus in the 1920's and 1930's the highest rates of violent crime in northern cities were found among young adults of Polish and Italian descent. In recent years the murder rate of Blacks has been over twice that of Whites, but the rates for each group, says Glaser, have the same corelates, which suggests that they have the same causes. Within both racial groups murder rates have been highest in the South and amongst the poorest and least educated. The Blacks, however, are more concentrated in the South and generally poor and less educated than Whites, and in 95% of cases the murderer and victim are of the same race.

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51. Glaser, D. Adult Crime and Social Policy
Prentice Hall; N.Y; 1972; P.34

Glaser feels that the increase in homicide rates since 1958 may be the result of three factors. Firstly, the large-scale population migration from areas which previously had the most intense sub-culture of violence. Secondly, the population trend in the sense that it reflects the post World War 11 baby boom, because there exists today an increased number of U.S. citizens in the twenty to thirty year age bracket, which is the peak age for murder. And thirdly, the possession of firearms by more people following the urban riots of the 1960's. The sale of handguns quadrupled from 1962 to 1968 and the sale of long guns doubled, (this is verified by Newton and Zimring 1969) (52). The percentage of homicides caused by firearms has increased steadily each year from 53% in 1961 to 65% in 1968, with half of them due to handguns. Knives and other cutting instruments accounted for 19%, blows or strangulation without weapons 8%, and other methods (clubs, poisons. drownings etc) 8%.

Glaser does not tell us, however, on what grounds we can accept his statement that increased legal firearms ownership is reflected in the increasing use of firearms in crime. All his statistics show is that a greater percentage of murderers nowadays use guns rather than knives, clubs, etc. How, for example, does he know that other factors, for example the sub-cultural definition of guns, have remained constant? Nor does he demonstrate how firearms control laws which he advocates would serve to limit the overall murder-rate.

In the North-Eastern states, continues Glaser (53) where laws have long been the most strict, 46% of murders result from the use of firearms: in the South, where they are least strict, guns account for 73%. In the North-Central states 70% of murders are caused by firearms, and in the West they are responsible for 61%. In Detroit, where handgun owners are registered under state law but licences are not greatly restricted, the number of homicides by gun increased year-by-year in 1965-8, almost in direct proportion to the four-fold increase in gun owners during this period.

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52. Newton G.and Zimring F. Firearms and Violence in American Life Report No. 7 To the National Commission on Causes and Prevention of Violence. Washington, D.C. U.S.Government Printing Office; 1969

53. Ibid P.36

The source of Glaser's figures quoted above is not known, but even if they be granted validity, they certainly do not amount to a clarifying statement of the relationship between firearm murders and the number of firearm owners and strength of gun control laws. Other statistics are available and quotable which are highly damaging to Glaser's argument. For example, the F.B.I. Uniform Crime Report of 1971 (54) quotes Milwaukee, Wisconsin as having the lowest per capita crime rate in the nation. With regard to the seven major criminal offenses in the U.S. the Report lists twenty-seven cities of populations of 400,000 and over. Milwaukee is number twelve in size with a population of 717,099, and New York (North-East in Glaser's analysis) is the largest with 7,900,000. New York, with eleven times the population has twenty-five times the incidence of major crimes. In New York gun control laws are very strict indeed, as a result of the 1911 Sullivan Act, whereas in Milwaukee they are non-existent. How then does the legal availability of firearms or the enactment of strict laws affect their use in crime?

As a result of its enviable reputation as the most non-violent of all major U.S.cities, the Milwaukee Police Department is quoted (55) as having issued the following statement: "The Department does not favour gun registration and feels that strict gun control would never control the availability of guns to criminals. We do not favour registration because it is cumbersome, time consuming, and ineffective. To have any value it should keep guns from criminals. The law abiding citizen should not be deprived of the right and privilege to own guns which deter attacks on a citizen in his home. The right to hunt and the right to engage in target practice should prevail for citizens".

In New York City, on the other hand, enjoying as it does the strictist gun control laws in the country, the Sullivan Act is enforced by the Police Department.

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54. Miller, B. Your Police: Milwaukee, Wisc
Guns & Ammo; Petersen; L.A.January,1973; P.70

55. Ibid P.71

According to Col.Edward Becker, (56) the number of pistol permits granted has been gradually reduced over the years, particularly the type issued to store owners. In 1930, 6,363 firearm permits were issued, and the number was reduced to 282 by 1966. But in New York City the crime rate has steadily increased during these same years. Between 1940 and 1966, the murder rate increased by 237%, while Police Department expenditures rose by 232% and the population increased by only 4%. Judged by the seizure record, there are now more illegal guns actually in circulation than ever before. "Clearly", says Col.Becker, "the causes of crime lie elsewhere than in the legal ownership of firearms by the citizens of New York"(57). He rejects the Newton and Zimring call for a ban or the sale of handguns on the grounds that in terms of their own estimates only ,018% of all handguns are used in homicides, whereas 99,98% are not. There is more to the definition, then, of firearms than simply their killing potential, and this, he feels, ought to be taken account of by legislators.

With the situation as it is in New York it is perhaps small wonder that when in early 1972 Life Magazine published a questionaire for readers to fill in with their own opinions about the prevalence of crime and what should be done about it, it was able to report that among the 43,000 replies received, "Gun control laws found no sympathy" (58).

Nevertheless the problem of how to deal with armed crime remains highly contentious and little understood. As we have attempted to show, those who do not support strict registering or licensing laws, or total confiscation for that matter, hold that the cultural and sub-cultural definitions of firearms are critical because of the many uses to which they can be put. They often point to what is perhaps the best illustration of this point. In Switzerland where target-shooting is something of a national sport,

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56. Becker, Col.Edward — Guns — Publisher's Development Corp; III, Nov. 1972, P.5

57. Ibid P.5

58. E.B.Mann — Gun World — Gallant; California; May 1972; P.17

and where there is hardly a family which does not have one or more guns in the home, the use of firearms in crime is almost unheard-of.

One cannot, they argue, conclude that the possession of guns is itself a major cause of violence, nor that the attempted elimination of such private possession will itself be a major crime-reducing factor.

Both sides in the argument as to the validity of gun control laws, however, would appear to be concerned about the same problem, i.e., armed crime, for regardless of what position one adopts vis-a-vis firearms control it nevertheless remains a serious problem in contemporary societies. Both see the problem as threatening the good order of society, but they differ in their ideas as to how legislation is to be applied to solve it.

In contemporary Soviet society, however, there appears to be very little publicly expressed difference of opinion. Stalin is quoted as having said that "If the opposition disarms well and good. If it refuses to disarm, we shall disarm it ourselves," in his Reply to the Discussion on the Political Reports of the Central Committee, December 7th, 1927; This reflects a somewhat simpler attitude to the challenge of opposition than is characteristic, say, of the U.S.A., and together with the quotations from Lenin and Trotsky referred to in the previous chapter, provide us with the contrasts displayed in contemporary perspectives on firearms control.

Both the historical and present-day perspectives we have covered in this discussion lead it seems to the conclusion that there is no direct relationship between firearms control laws and the prevalence of guns in crime. It is not sufficient to simply produce figures showing that a greater number of crimes are committed with guns today than was the case thirty years ago,

for this question is a complex empirical one. It is a question deserving of more than simplistic cause-and-effect analyses. Those who argue in favour of strict control laws have still to offer us more than just this. The South African situation presents, if anything, an even more complex set of variables, and an attempt to come to terms with them will be made in the following chapter.

CHAPTER 5

SOCIAL LEGISLATION AND FIREARMS CONTROL: SOUTH AFRICA

The area which today constitutes the Republic of South Africa has for a long time been subject to varying degrees of strict firearms control laws. The rationale underlying these laws cannot, of course, be understood in isolation, but must be viewed against the background of the historical situations in which they operated. However, any in-depth attempt to analyse the historical development of the relationship between these two variables would be far beyond the scope of this chapter. We will aim therefore in these few short pages, simply at a superficial introduction to the question so far as it is relevant before moving on to a discussion of present-day legislation.

Long before the declaration of Union in 1910, as the following discussion will show, the four provinces each required that the owners of firearms register or licence their weapons, failing which there existed the possibility of the imposition of severe (for those days) fines. Besides these restrictions, however, a new element, that of race, was introduced into the structure of firearms legislation, and this element remains with us today, although it is not as strictly discriminatory.

The Natal Almanac and Register of 1883 (P.84), for example, contains the following two paragraphs, with reference to firearms ownership:

" 5. The possession of unregistered Firearms constitutes a contravention of the law, for which the person offending is liable to punishment.

6.The sale or barter of Firearms or Ammunition to Natives resident in Natal or the adjacent countries is strictly prohibited by law".

In 1886 the legislative situation in the Orange Free State was as follows: "No one can sell guns or other weapons, gun powder or cartridges without a permit from the Landdrost of his district, and at no time more than ten pounds of gunpowder to one person.

No one may sell or deliver to a coloured person any gun, pistol, or other weapon, or gunpowder or other munitions of war without the special authority of the State President under a penalty of twenty-five to a hundred pounds sterling. Every dealer in gunpowder etc., must take out a licence".(59) What is of particular interest is the inclusion of the phrase "or other weapons" which are nowhere defined, in the law. This would mean that, strictly speaking, it was illegal to own any object, be it an empty bottle or a nail-file, which may conceivably be used as a weapon, nor could one sell any such object to a Native. This provision gave the authorities almost the proverbial "blank cheque" in dealing with alleged criminal or politically undesireable elements within their borders.

In the Transvaal in 1897 we are told that "similar provisions to those existing in other parts of South Africa to control and restrict the sale of gunpowder, firearms and explosives generally, are in force (in the Transvaal). Permits are required for their purchase by all except burghers of the State. These are by law allowed to purchase, practically without permit, gunpowder and requisites for shooting game; while, to assure every able-bodied burgher being in possession of arms of precision, they are supplied at cost, and gratis if they cannot afford to pay for them, with breech-loading rifles and ammunition. Attempts have been made to manufacture gunpowder, the ingredients of which are found in some parts of the State, but the factory erected is unused and large sums are spent annually by the Executive in keeping up the stock of firearms and ammunition.." (60). Evidently, then, burghers were encouraged to arm themselves both for the shooting of game, and the defense of the State, whereas non-burghers, Natives and Coloureds included, were required to apply for permits in order to satisfy the Executive of their good intentions.

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59. "Legal Information"
Orange Free State Directory and Almanac for 1885
J.N.Eagle; Caxton Printing Works; Philippolis; O.F.S.

60. "Gunpowder and Firearms"
Argus Annual for 1897 Cape Town, 1897, P.265

Legislative provisions were somewhat more restrictive in the Cape Colony. Sir George Cathcart's Ordinance, 2 of 1853 made it known that "the penalty for delivery of firearms or ammunition to any person not producing and depositing the certificate of a Resident Magistrate (or Justice of the Peace, if there be no Resident Magistrate within twelve miles) is a fine not exceeding five hundred pounds sterling, or imprisonment for any term not exceeding seven years"(61) With reference to the sale of firearms to Natives the Ordinance commanded that permits, certificates, and licences for possession were not to be granted without permission in writing from the Colonial Secretary or Secretary for Native Affairs. It hardly needs much imagination to realise that this sort of permission was hard to come by indeed. Failure to comply, however, could lead to a fine not exceeding five hundred pounds sterling, or imprisonment for any term not exceeding five years.

The penalties applicable in cases of deviance from Cathcart's Ordinance were extremely harsh in comparison with those in operation in the neighbouring territories, but none so much as that provided for High Treason. The Ordinance was quite emphatic that "delivery of firearms and ammunition to any person whomsoever with the purpose, design or knowledge that the same should or would be conveyed to and made use of by the Queen's enemies, or by any of her subjects in rebellion, is..... declared to be an overt act of high treason, and any person convicted of it is assured that he shall suffer death as a traitor". (62)

The so-called Peace Preservation Act, No. 13 of 1878 tightened up existing legislation and gave the Governor wider powers than he had previously enjoyed. Sir Alfred Milner, particularly, called these powers into operation in 1901 when, in a situation of war, he issued Government Notice No. 69 (63) in terms of which

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61. Ibid P.266

62. Ibid P.266

63. The Cape of Good Hope Government Gazette
Cape Town, Tuesday, January 22, 1901.

it became illegal for any person not belonging to one of the exempted classes (i.e., Magistrates, Justices of the Peace, Field-cornets, members of Her Majesty's Naval or Military Forces, or any armed Police Force or Colonial Corps), to have in his possession any arms, weapons or ammunition. All owners of firearms were required to apply for licences to retain them, but Milner's Notice spelt bad news for some." With regard to rifles, and ammunition for rifles, no licence should be granted for these, unless on a special order from the Prime Minister. It is not desireable that any person not belonging to one of the exempted classes should under present circumstances be allowed to retain a rifle. As to revolvers, licences to keep these may be granted to all persons in regard to whom there is no reasonable ground for suspecting that they will put them to an improper use". (64) This was not an attempt by Milner to deprive individuals of weapons for their own self-defense in that he made it clear that revolvers could be freely granted. What he sought to limit was those firearms, particularly breech-loading rifles, which could be put to effective military use. Considering the background against which this order was issued, it would seem to have been a reasonably lenient measure, for it displays no evidence of any intention to completely disarm the population.

These pre-Union Statutes, Proclamations,and Notices were finally repealed by Act No. 28 of 1937, which sought to "consolidate and amend the laws in force in the various provinces of the Union relating to arms and ammunition".(65) The Act called for the complete re-licensing of all privately owned firearms in the Union, and provided for an amnesty period of six months, during which time all owners of guns could submit their licence applications to their local magistrates whose duty it was to determine whether or not the possessor was a "fit and proper person" to retain possession of his firearm(s). Failure to comply rendered the offender liable to imprisonment, without the option of a fine, for a period not exceeding ten years.

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64. Ibid.

65. Statutes of the Republic of South Africa. Arms and Ammunition P.5 S.A. Government Printer; Cape Town.

A similar penalty awaited any individual who was convicted of supplying a firearm to a non-European. The Act was quite explicit in laying down that "no licence to possess an arm shall be issued.... to any person other than a European without the approval of the Minister"; However, being non-European did not in terms of the Act itself amount to a declaration of unfitness to possess an arm, but simply that different channels had to be employed when submitting licence applications. That this provision meant that the granting of licences to the different race groups could thereby be subject to different policy decisions is obviously accepted, but this could just as easily have been achieved by employing uniform application procedures.

In 1968 the Dangerous Weapons Act (No. 71) was adopted by the Republican Parliament and amongst its provisions were further restrictions in respect of the possession, manufacture sale or supply of dangerous weapons. The unlicensed possession by any person of what the Act defined as a dangerous weapon became an offence unless that person could prove that he at no time had any intention of using it for an unlawful purpose. What is of particular relevance to this discussion, however, was the introduction in the Act of the imposition of prescribed sentences where dangerous weapons or firearms had been used in the commission of crimes involving violence. This displayed a differentiation, and a corresponding insight on the part of the legislators responsible, not evidenced in contemporary firearms control legislation enacted in Britain, Europe, and at Federal level in the U.S.A. It showed quite clearly that Parliament accepted in principle that there existed a fundamental distinction between the private possession of firearms on the one hand, and their prevalence in violent crime on the other, and that the two did not necessarily co-vary. Parliament appeared to recognise that there existed a valid reason, or reasons, for the continued legal possession of firearms at the private citizen level, and that in order to restrict the use of guns in violent crime one had to communicate to the criminal that it was not worth his while to carry a gun in the commission of his illegal deeds, rather than confiscate legally owned firearms or otherwise penalise law-abiding citizens.

Legislation was then passed which provided for punishment for the illegal use of firearms while at the same time carefully preserving the right of citizens to keep and bear arms for legal purposes. As mentioned above, this is a distinction which is not evidenced in the legislative attempts of Western governments known to the author in their attempt to control and restrict crimes of violence committed with guns.

An extract from the preamble to this Act reads as follows; " To provide for certain prohibitions and restrictions in respect of the possession, manufacture, sale or supply of certain objects; to provide for the imposition of prescribed sentences where dangerous weapons or firearms have been used in the commission of offences involving violence,....."(66). Henceforth any person above the age of eighteen years, convicted of an offence involving violence to any other person together with proof that a dangerous weapon or a firearm (the Act makes this distinction) (67) had been used in the killing or injury, would receive a mandatory sentence ranging from two to eight years, except in cases where the death sentence was imposed or the convicted person was declared an habitual criminal.

The provisions of the Act were among the few that were not amended or repealed at the commencement of Act No. 75 of 1969, referred to as the Arms and Ammunition Act of 1969 (68), which involved the complete administrative overhaul of firearms control in South Africa. Essentially this Act was aimed at providing a uniform set of procedures for licence applications, and their processing by the officials whose task it would be to decide on their merits or otherwise. Decision-making in this respect became the task of the Commissioner of Police, and not the magistrates as had been the case under the 1937 Act. Previously magistrates had been faced with the burden of deciding whether ot not an individual applicant was a "fit and proper person" more or less,

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66. Statutes of the Republic of South Africa -Arms and Ammunition S.A. Government Printer; Cape Town P.171
67. Ibid P.173
68. Government Gazette, 18th.June, 1969 S.A. Government Printer, Cape Town

it appears, according to his own set of criteria, and records of such applications remained in the magisterial districts in which they were made. After 1969 a central firearms register was to be established in Pretoria and all applications were to be dealt with there and recorded by computer.

While magistrates retained the right, under this new Act, to declare persons unfit to possess arms for periods they felt were appropriate if they had convicted them of offences relating to the abuse of dangerous weapons, the Commissioner of Police was delegated the authority to turn down licence applications as well as to declare persons unfit to own guns. Where this occurred the law provided that the individual concerned had the right to make personal representations to the Commissioner and to be accompanied by Counsel of his own choice. The Commissioner was also compelled to give reasons for his decisions, and if the individual concerned remained dissatisfied he could lodge an appeal with the Minister of Police, who could order the Commissioner to change his decision.

The Arms and Ammunition Act of 1969 is worthy of close study for, whereas it clearly represents an attempt by the polity to achieve a greater degree of centralised control over the possession of firearms in South African society and to streamline the administration of legislative provisions in this regard, there is no evidence in the new law, nor in any parliamentary policy statements to suggest that private ownership of firearms is to be thereby further restricted. On the contrary, if the recent actions (69) (see footnote) of the South African Government in encouraging the growth of the sporting firearms manufacturing

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69.. Ibid P.5 (a) Footnote: The Munitions Production Act, No.87 of 1964 as amended. This act provides for the control of the manufacture and supply of munitions and establishes a body known as the Munitions Production Board.

(b) The armaments Development and Production Act, No. 57 of 1968. This Act establishes a corporation for the development and production of armaments. It sets out the objects of this corporation and provides for its management and control. The corporation cannot be wound up except by or under the authority of an Act of Parliament.

industry in this country with the subsidised establishment of factories for this purpose, and the twenty-five percent reduction in price of sporting ammunition are to be taken into account it would appear that attempts are being made to encourage the shooting sports rather than curtail them. (This development has, of course, a far wider reference because South Africa, facing as it does an official "Arms Ban" by member states of the United Nations Organization which affects both military and sporting firearms imports, has felt the need for self-sufficiency, and the establishment of factories for the manufacture of sporting arms would obviously pay tactical dividends in the sense that in an emergency they could very swiftly be converted for the manufacture of automatic military weapons. This is mentioned to illustrate that the wider context of the South African Government's actions vis-a-vis firearms control laws is not being completely ignored. Whatever the motives may be, however, the evidence at hand suggests that the private ownership of firearms is not under official attack, nor does it face further restrictions.)

The 1969 Act retains the clause (Part I; Section 3; Para.4) requiring non-white applicants to receive Ministerial approval before licences can be granted (i.e., from the Ministers of Coloured Affairs, Indian Affairs, and Bantu Administration for applicants of these respective population group categories), whereas whites do not require such permission. While this is clearly a discriminatory legal provision on the grounds of colour, its actual affect for the different population groups in terms of the granting of licences is, for reasons we shall confront below, somewhat obscure. Applications from whites are processed by the gathering of official information about each individual applicant, some of which is obtained from the Department of the Interior. Similar information regarding non-white applicants is, however, obtainable from the State departments relevant to their population groups (as above), and this perhaps accounts for the differential channelling procedures for each group.

However, Ministerial approval is required only for members of the non-white groups (whites do not need the approval of the Minister of the Interior), and this raises the question: Why? We can speculate about interesting possibilities ad infinitum with respect to this question without arriving at a satisfactory answering conclusion for at this stage we have no acceptable empirical evidence on which to base such a discussion. For instance, it is highly unlikely that each and every licence application is brought to the attention of the Minister himself. It would seem more likely that it is simply processed through the Minister's department or office, but the impression remains that the Act provides for more political control over the legal distribution of firearms among non-whites than whites.

There is no evidence, in law, (as opposed to policy) to indicate that different criteria are applied to the different groups in deciding on the suitability of individuals to possess firearms. One might perhaps be forgiven for assuming that, on theoretical grounds, the South African Government would be expected to encourage the arming of whites but not that of blacks because it rules on the authority of a majority of the former, but does not enjoy the formal sanction of the latter. In fact, one would expect that in a white minority democracy superimposed upon the totalitarian rule of blacks who comprise the numerical majority in the total population, the former would be armed and militarised almost to a man, and the latter completely disarmed and precluded by legislation or decree from possession of dangerous weapons. In terms of what the law provides however, we cannot state that this is in fact the case. Non-whites can, and do legally own firearms.

Any attempt, on the other hand, to establish empirically whether or not our four official population groups are, and have been subject to differential policy criteria of suitability to own firearms would require that the statistical records of all licence applications over a period of years and their eventual

fates be carefully scrutinised. This procedure would enable the researcher to determine if a greater percentage of applications from one or more population groups are either granted or refused. However, such statistical records are not available in South Africa as a result of the structure of firearms legislation prior to 1969. No provision was made in previous gun control legislation for the recording of such data. As mentioned above applications for firearms licences were directed to local magistrates who, with the recommendations of police officials if called for, had to make the final decision, and these were only locally recorded. The establishment by the 1969 Arms and Ammunitions Act of a central firearms register however, is a distinctly progressive step in this respect because it will make such vital information generally available in future.

This shifting of decision-making responsibility from individual magistrates to the office of the Commissioner of Police involves no real change in principle. Magistrates are not strictly part of the legal system as such, but are administrative officials for the law-enforcement function of the polity, as are the police. Appeals by citizens against decisions of both magistrates and the Commissioner are not in this context dealt with by the Supreme or Appeal Courts of South Africa but with the relevant Minister and therefore the decision as to whether or not persons may be granted firearms licences is as before administrative, and not legal.

The extent to which the system has been centralised, however, is not as complete as a reading of this Act may at first suggest. Previously magistrates who felt unqualified to give an immediate decision often referred licence applications to the local police stations for investigation, comment, and recommendation, and could then have something upon which to base their decisions. The difference introduced in the new Act is that the police involvement mentioned above is now a statutory requirement.

What has become centralised, therefore, is not the investigation, comment, and recommendation with respect to licence applications, but the final decision, and recording thereof.

At the same time the actual nature of the police investigation has not changed in any noticeable way. As before the emphasis is on the personal particulars of the applicant, such as name, age, sex, occupation, address, identification number, population group, marital status, purpose for which firearm is required, previous record of firearms ownership, method to be employed in securing firearm from possible theft or abuse, and whether or not the applicant is the owner of the property on which he intends to keep the arm, (in cases where he is not the applicant is required to produce written permission from the legal owner.) No attempt at this local level at least, is made to determine such information as the religion to which the applicant belongs, the sorts of cultural and political organizations he supports, his level of educational achievement, record of mental health, drinking habits etc. If such information is sought then it is not from the applicant himself, nor his neighbours and employers, and it is therefore unlikely that it is required at all.

If the recommendations of the local police stations are to have the same influence under the new Act as in the past, then it is indeed difficult to see why the final decision whether or not a firearms licence is to be granted should lie with the Commissioner who operates from the administrative capital of the country. Why, for instance, should the local police not grant the licence (as local magistrates did in the past) and then simply forward the particulars to Pretoria for recording in the central firearms register? This procedure could be adopted for all applications, whether granted or refused, so as to reduce the bureaucratic load and simultaneously ensure adequate record-keeping so that future research may be more revealing and productive.

It may perhaps be that those whose task it is to decide on these procedures felt that, since particulars provided by the central firearms register are necessary in deciding whether or not a new licence should be granted (eg. previous record of firearms ownership), the final decision should rest with those closest to this register. On the other hand it may simply be a device for ensuring that one or more extra criteria are applied unknown to local police or anybody else except the staff of the Commissioner's office, thereby bringing the system under more direct political control. However, in the absence of even the slightest shred of empirical evidence for this latter proposition we have perhaps to be satisfied with the former, i.e., that the centralization of the administration of firearms control laws has been motivated by bureaucratic rather than political, or other sectional interests.

The evidence available, as outlined above, suggests that while the South African Government intends streamlining and centralising legislative provisions with regard to guns, particularly with reference to record-keeping (which as we shall see in the following chapter, has in the past left much to be desired), there is no accompanying attempt to further limit the (licensed) possession of firearms by citizens of all races beyond the restrictions that have been in force since 1937 and before. Whereas in Britain and the U.S.A., legislative attempts to curtail crime have involved difficulties and even loss to legal gun owners, because such attempts were based upon the apparent assumption that the mere presence of firearms in society, for whatever purpose, is an important contributory factor in the spiralling rate of violent crime. The result was the adoption of all- embracing restrictive gun laws (often against the advice of police-officers) which have shown themselves to be completely ineffective. The South African Government, on the other hand, would appear to have

distinguished between the criminal and the legal use of firearms by calling for the imposition of mandatory sentences for the former, and at the same time encouraging the latter. How successful this system is likely to be, it is too early to judge, but in terms of the more sophisticated premises upon which it is based, seems at least to hold more promise than would the all-round restriction of arms possession in this country.

The trend seems to indicate that there has since the early nineteenth century been a gradual relaxation in gun control legislation (excluding, obviously, the war years). As this short historical survey has attempted to show, the laws restricting firearms ownership were somewhat strict a century ago, particularly in the light of the fact that the country was still largely undeveloped in modern terms and firearms were regarded as handy tools. Punishment for deviance from these laws was potentially harsh, while being black all but defined an individual out of the field of legal firearms ownership. The increasing sophistication of firearms laws, however, has been accompanied by a widening scope for potential legal gun ownership, particularly for the non-white groups, but has at the same time created problems for observers and researchers, for the actual policy applied has become more obscure. Previous legislation was so worded as to make it difficult to distinguish it from policy, but such is not the case today. By opening up conditional possibilities in law the actual policy applied has become more important as a determining factor, thus making it more difficult for researchers to gather their required data, for it is easier to have access to the law than to the way in which it is implemented. As mentioned above, however, the 1969 Arms and Ammunition Act has made provision for the recording of such critical data, and this should enable future researchers to draw more definite conclusions.

PART 3

CHAPTER 6

FIREARMS IN CRIMES; ACCIDENTS AND SUICIDES : SOUTH AFRICA

The documentary research techniques which are to be employed in measuring the problem of the role of firearms in crime, accidents and suicides in South Africa, as introduced in our first chapter and with the accompanying methodological conditions we have set, restrict us to essentially three sources of information. The official documents of relevance in this respect are the Report on Deaths, Statistics of Offences (both published from time to time by the Department of Statistics, Pretoria), and the Annual Report of the Commissioner of the South African Police, published in Pretoria and Cape Town, and printed by the Government Printer.

The figures supplied in these sources are, while being perhaps the most comprehensive and reliable among those available, are nevertheless far from ideal. This is particularly true of the earlier reports consulted (i.e., from 1935 - 50) because in many cases they lack sufficient differentiation to be meaningful to this exercise. For instance, we are told (70) that in 1936 a total of 974 people were convicted (i.e., 4 Whites, 13 Coloureds and 957 Bantu) for the possession of dangerous weapons, but no mention is made of the type of weapons involved: they could have been knives, pangas, guns or any other object capable of causing bodily harm.

However, the format of these reports has evolved sufficiently to make recent records of more specific value. Nevertheless one serious problem remains with respect to the Report on Deaths, for no figures are supplied for the Bantu group, and, as can be seen from the above statistics, convictions for the possession of dangerous weapons have in the past involved the Bantu almost to the exclusion of the other groups. The 1967 report (71) explains this problem as follows, "The statistical information contained in this report was extracted from the'Form of Information of a Death' B.M.D.2, filed in the office of the

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70. Statistics of Offences
Dept. of Statistics; Government Printer; 1948

71. Report on Deaths
No. 07-03-02
Dept. of Statistics;Government Printer, 1968 P.IX

Registrar-General of Births, Marriages, and Deaths, Pretoria. The registration of Bantu vital events was introduced on a compulsory basis many years ago. However, despite serious efforts on the part of the registering authorities, the Bantu are still largely reluctant to have their deaths registered and consequently the Department has no complete death statistics for this race group on a current basis". In the majority of cases one ought perhaps in the circumstances to react sympathetically to this explanation, but one wonders just how valid it can be in terms of deaths resulting from assaults and suicides with firearms. In such circumstances the onus for the official knowledge and recording of such information should not rest with the deceased individual's relatives alone, but should surely be recorded at least by the police, for it would seem highly unlikely that the police are not aware of such cases.

One among the other shortcomings has already been mentioned, i.e., the lack of any official recording of the number and result of firearms licence applications since the introduction of the system. Provision has only recently been made for the collection of this data, and it will therefore be some time before information regarding the distribution of firearms licences in South African society will be available. Knowledge of such information is critical for a proper understanding of the role of firearms control laws in this society because it would reveal the actual policy (as opposed to the law) that is applied in the granting and refusing of licences. In other words, with prior knowledge of the legal aspects, the added knowledge of how these laws are applied would reveal what the legislators intend their laws to do for them, for as we have said, firearms are subject to administrative and not legal control.

On the other hand, knowledge of how many firearms are

in private possession in South Africa would hardly suffice as an indication of the actual distribution of guns in this society, regardless of legal considerations. This is a much more complex problem and will obviously not be reflected in official reports. Statistics showing the number of convictions for thefts of firearms, illegal possession of firearms, and possession of home-made guns provide, as we shall see below, a solemn warning that there are large numbers of firearms in our society which are not legally registered, and that we have no way of knowing how many there really are, for even educated guesses are of little assistance in this respect.

In-depth analysis of the role of firearms in crime is further confounded by the fact that, where guns are used in the promotion of illegal activities, there is no record of whether or not the convicted criminal was in legal possession of the firearm at the time of the crime. Opponents of gun control legislation (viz. Ch.4) are likely to argue that this sort of information is of little more than passing interest in any case, for whether the criminal has a licence or not for the gun he uses the fact still remains that the laws have not stopped him from using it. The fact that there are large numbers of illegally held firearms circulating in our society, (eg. in 1971 4,406 firearms were reported stolen (72), and in the same year 46 home-made guns were confiscated in the Port Natal Division alone (73)) is perhaps sufficient to justify the conclusion that many guns used in crime are unlicensed, and this poses the question of the efficacy of gun control laws in South Africa, on the same level as the question is posed elsewhere in the world.

While recognising such shortcomings, however, we have nevertheless to proceed with the analysis of evidence which is available, and

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72. The Cape Times
Cape Town; March 10th, 1973

73. Annual Report of the Commissioner of South African Police
Government Printer; Cape Town; 1971

base our acceptance or otherwise on the understanding that this evidence is incomplete for the Bantu group. For the White, Coloured, and Asiatic groups, however, where the stastical tables are sufficiently differentiated enough to make the figures meaningful in this context, they are as comprehensive as could possibly be extracted from any source available.

CRIME: Assaults with firearms in South Africa, for example, have been recorded for little more than a decade. Table III provides figures for the incidence of such assaults for all but the Bantu, for the years 1962 and 1967. Figures for the latter year are the most recent obtainable: (74)

TABLE III

Deaths as a Result of Assaults by Firearms

Year	Whites	Coloureds	Asiatics	Bantu	Total
1962	24	7	3		34
1967	33	8	2		43

For comparative purposes Table IV is presented below, laying out the total murder rates for these same population groups:(75)

TABLE IV

Deaths as a result of Homicide and Injury Purposedly inflicted by Other Persons .(Not in war).

Year	Whites	Coloureds	Asiatics	Bantu	Total
1939	41	55	10		106
1944	47	75	14		136
1949	79	113	54		246
1954	71	159	22		252
1958	91	204	29		324
1962	108	236	15		369
1967	111	505	32		648

74. Report on Deaths
Dept. of Statistics; Government Printer;
Pretoria; 1962 and 1967

75. Ibid, 1939, 1944, 1949, 1954, 1958, 1962, 1967.

As these tables show, of the total of 369 homicides in 1962, only 34 were committed with firearms, i.e., 9,2%. By 1967, whereas the overall murder rate had increased by 78,6%, the murder rate by firearms had increased only by 37,8% to a total of 43. Thus by 1967 deaths resulting from firearms assaults had dropped from 9,2% of the total homicides as in 1962 to 6,64% of the total. Of the 648 homicidal deaths in 1967, on the other hand, 388 were the result of stabbing with knives and other cutting instruments (39 Whites, 330 Coloureds, and 19 Asiatics), i.e., 59,9%, as apposed to 6,64% with firearms. Knives are classified as dangerous weapons, as are firearms, but would appear in terms of these figures to constitute a far greater threat to public safety.

The greater prevalence of knives and associated cutting instruments in murder cannot be simply attributed to the fact that firearms are subject to stricter administrative control, for as the following table (Table V) demonstrates large numbers of firearms are held in the society in defiance of the licensing laws. This particular table presents figures for convictions for the illegal possession of firearms, which by their very nature are offences that are always less observable than murders, for instance, and therefore present a much less reliable index of the actual rate of such offences. These figures are extracted from Statistics of Offences (76) which, unlike the Report on Deaths, includes information of Bantu involvement.

TABLE V

Convictions for the illegal possession of Firearms

Year	Whites	Coloureds	Asiatics	Bantu	Total
1936	136	7	10	176	329
1949	679	90	100	603	1,472
1954	567	118	77	729	1,491
1958	565	112	42	875	1,591
1962	500	85	54	970	1,609

76. Statistics of Offences
Dept. of Statistics; Government Printer; Pretoria; 1936; 1949; 1954; 1958; 1962.

In 1965/66 (i.e., from the beginning of July 1965 to the end of June 1966) there were a total of 232 convictions for the theft of firearms (25 Whites and 207 non-Whites) (77). In the same year there were a total of 4,905 robbery convictions, 63 of which involved robbery by force of arms and during which 23 firearms were looted (78). In 1967/8 the convictions for the theft of firearms had dropped to 176 (i.e., 21 Whites, 18 Coloureds, 2 Asiatics and 135 Bantu). Convictions for such offences, however, as noted above, do not represent a reliable index for firearms thefts as a whole. For example in 1970/71, of the 4,405 firearms reported lost or stolen to the police, a total of 588 were recovered, meaning that in all likelihood the majority of the remaining 3818 are in unlicensed and therefore illegal hands. (79)

Among the operative possibilities, for instance, it is quite plausible that many people from whom firearms are stolen or who otherwise lose them, are not sure of exactly how they come to be missing. For example, it is not uncommon for individuals to keep pistols in the glove-compartments of their motor-cars and not to keep regular checks on their presence. The car may often spend time in garages undergoing servicing etc., and the result is that when the car-owner finally discovers that his gun is not where it should be he is at a loss as to how and why. There are many such possibilities, together with the probability that many such gun-owners do not report the loss of their firearms to the police in the hope that they may sometime suddenly appear, or in the fear that they would either be prosecuted for negligence, or that such a loss would prejudice future licence applications.

There is little doubt, therefore, that in South Africa there are large numbers of firearms in the hands of people who do not enjoy official sanction, and the possibility of these firearms being used in the commission of crimes is greatly increased if, as alleged the majority of missing guns are stolen, for they are then by definition already in the hands of criminals.

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77. Ibid, 1967

78. The Annual Report of the Commissioner of the South African Police Government Printer; Pretoria; 1966.

79. Ibid, 1971.

Disturbing as the above figures may be though, it is perhaps well to compare them with the fact that in 1969/70 the reported number of convictions for the possession of dangerous weapons, specifically excluding firearms, was 20, 961, and in 1970/71 the figure rose to 21, 841, constituting an 880 rise (80). (These figures being subject to the same conditions as those for firearms listed above).

In terms of the total number of convictions for the possession of all types of dangerous weapons we may then quite satisfactorily conclude that firearms play a minimal role. That firearms are available illegally and for criminal purposes the above figures should not leave us in doubt, and in addition, we have good reason to believe that illegally held firearms stand a better chance of being involved in criminal activities than licensed arms, and as a result we have no grounds on which to assume that the enactment of laws restricting the ownership of firearms as one type of dangerous weapon, whether as presently constituted or not, has any significant effect on their prevalance in crime. The figures available seem to support the same conclusions as those drawn in Chapter 4 with respect to Britain and the U.S.A., i.e., that there is no direct and measurable relationship between the presence of firearms in society and their use in crime on the one hand, and the adoption of restrictive firearms legislation and crime statistics on the other.

ACCIDENTS

With respect to accidents with firearms resulting in death or injury, however, the link between the two variables (i.e., the operation of firearms control laws and accidental firearms deaths) would appear to be even more obscure. If gun legislation does not stop people from possessing unlicensed firearms then it is hardly likely to effect accident rates caused by guns.

Deaths (not injuries) resulting from accidents caused by firearms are presented in figure-form in Table VI. Again, these figures are extracted from the Report on Deaths (81), and therefore none for the Bantu group are available.

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80. Ibid; 1971

81. Report on Deaths
Department of Statistics, Government Printer, Pretoria
1949, 1954, 1958, 1959, 1962, 1967.

TABLE VI

Deaths resulting from Accidents caused by Firearms

Year	Whites	Coloured	Asiatica	Bantu	Total
1949	50	3			53
1954	32	0			32
1958	27	0			27
1959	18	4			22
1962	45	5			50
1967	35	5			40

No interpretation of these figures could possibly lead to the suggestion that the ownership of firearms constitutes a major exposure to the risk of accidental death in our society. Moreover, one suspects that these figures may in fact not be presenting the true picture in the sense that in cases where suicide is strongly suspected, but not proved to legal satisfaction, accidental deaths may be recorded. This means that short of conducting a thorough investigation into the circumstances surrounding each "accident" (more thorough, that is, than the Coroner's inquiry) we have no way of knowing exactly how many firearms deaths are directly attributable to error.

In spite of this, figures for deaths resulting from firearms accidents are low. Compare them, for example, with the fact that in 1967 there were a total (excluding Bantu) of 2,450 deaths as a result of motor accidents (i.e., 1,417 Whites, 861 Coloureds, 172 Asiatics) (82). There are two important aspects to this comparison which deserve attention: firstly it is accepted that because of our peculiar socio-historical and cultural situation individuals in our society are exposed to the possibility of motor accidents far more than firearms accidents, and secondly that in many cases the probability exists that the cause of such accidents lay in the negligence in some form or other of a licensed driver of a motor vehicle. The first point should serve as sufficient justification for treating the consideration of this problem with

82. Ibid; 1967

the urgency it requires, and the second point should cause us to focus a little more critically on the licencing procedures undergone by the drivers of motor vehicles.

We are aware that in most parts of South Africa all applicants for driver's licences are required by law to successfully complete a test for a learner's licence by indicating an acceptable acquaintance with the rules and road signs by which motorized traffic is regulated. They then have to be taught and accompanied by a licensed driver, before finally undergoing a test of proficiency with a vehicle and having their performance examined by a representative of the relevant traffic department. No attempt is made, unlike firearms licence applications, to determine whether or not the prospective driver is likely to display a responsible attitude in his relationship with his vehicle, nor is there any legal difference (such as ministerial approval) for the separate ethnic groups written into the law governing motor vehicle licences.

Without suggesting that the State should introduce licensing procedures for firearms involving tests of proficiency, safety habits, and handling ethics , (the above figures would hardly justify such a suggestion), it is nevertheless noteworthy that, on an official level, absolutely no attempt is made to establish whether or not a firearms applicant is acquainted with general safety techniques, let alone the peculiar mechanical features of the gun he wishes to possess. Nor is it sufficient to assume that any young man who has undergone military training or who has served in the police force is thereby suitably equipped, for these forces use only limited types of firearms. Safety requirements differ so extensively within and between such categories as bolt-action, pump-action, lever-action, semi-automatic and single-shot rifles, for instance, that knowledge of how to handle one gun safely is no guarantee whatsoever that he can handle all with impunity. For example, a policeman who is used to toting a double-action revolver on duty, and who is therefore accustomed to loading all six chambers may well find if he buys a single-action revolver that this procedure can be fatal. Instructions are seldom included with the purchase (particularly if second-hand),

and he may not find out until it is too late. Guns and motor vehicles can both be lethal instruments and both require that the owner and user be licensed, but curiously enough there exist fundamental differences in the licensing procedures for reasons which are extremely difficult to determine.

While figures for deaths caused by firearms accidents may not justify the status of a social problem, they nevertheless remain a problem in the sense that they involve unnecessary loss of life, and therefore any attempt to develop an educative policy with regard to firearms use would be much more purposeful than current licensing procedures. As mentioned above the suggestion is not here being made that these procedures should be changed to those similar for motor-car licences because so many people evidently possess unlicensed guns that it is not likely to significantly affect accident statistics. It would be far more productive in this respect for officialdom to encourage members of society to respect potentially dangerous objects like cars and guns, regardless of whether these individuals actually legally own such objects. (One thinks immediately, in this context, of the possibility of teaching school-children undergoing cadet training- as the vast majority appear to do - of the basic "golden rules" relative to the handling of firearms). The same is true of other comparative examples of accidental loss of life. Electrocution, for instance, accounted for 53 accidental deaths in 1967 (40 Whites, 12 Coloureds, 1 Asiatic) (83), which is somewhat higher than the annual average of shooting accidents and which also represents a problem that could well benefit from an educative approach, rather than requiring people to apply for licences to use electricity.

A more serious problem than either of the above (i.e., firearms accidents and electrocution) is that of accidental drowning. In the year under review, 1967, there were a total of 473 such deaths

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83. Ibid, 1967

(137 Whites, 302 Coloureds, and 34 Asiatics) (84). Swimmers are not required by law to be licensed, and to suggest that they should be would obviously be absurd, for unless a highly elaborate training programme is included it is highly unlikely that there would be a significant drop in these figures. Clearly, licensing procedures similar in principle to those required under the Arms and Ammunition Act would have no affect whatsoever.

We are led by this analysis to the same conclusion as that reached with reference to crime and firearms control. As with crime, we can establish no direct relationship between the enactment of firearms laws in our society and the figures for accidental deaths as a result of the possession of guns. The very structure of firearms control legislation in South Africa does not display any evidence of direction against firearms accidents, in comparison with motor vehicle licencing, which requires the successful completion of a test of proficiency by the applicant. Accidental firearms deaths, therefore, cannot be said to enjoy the attention of legislators, perhaps because, as we have seen above, the incidence is low, and as a result cannot be included in the role of gun control laws in this country.

SUICIDES

Deaths as a result of self-inflicted injury with firearms are presented below (Table VII) (85). As with Table III, records have not been kept long enough to enable the presentation of a more comprehensive table.

TABLE VII

Deaths as a result of Firearms Suicides

Year	White	Coloureds	Asiatics	Bantu	Total
1962	216	5	2		223
1967	217	3	1		221

Records of suicides from all causes have been kept for considerably longer, and for purposes of comparison some of these figures are presented in Table VIII (86)

84. Ibid; 1967.
85. Ibib; 1962, 1967.
86. Ibid; 1939, 1944, 1949, 1954, 1958, 1962, 1967.

TABLE VIII

Deaths as a result of Suicides from all Causes

Year	Whites	Coloureds	Asiatics	Bantu	Total
1939	240	17	25		282
1944	163	23	25		211
1949	291	26	37		354
1954	310	32	44		386
1958	374	42	37		453
1962	536	71	44		651
1967	497	83	56		636

Firearms quite evidently play a far more significant role in suicides for these three population groups than either crime or accidents. In each of the above recorded cases firearms accounted for roughly a third of the total, but this can hardly suffice as an argument in favour of restrictive gun legislation. A suicide is by definition a deliberate act which can be achieved through a great many means, some of which may be significantly more effective than many firearms currently in circulation. The presence or absence of a firearm is therefore clearly inconsequential, for it is unlikely in the extreme that anybody has even been deterred from taking his own life simply because he did not have a gun available. That firearms control laws are not designed to combat suicides seems quite obvious.

CONCLUSIONS

Our analysis of the available statistics would appear to indicate that many thousands of unlicensed firearms are held in South Africa regardless of laws to the contrary, a great proportion of which have been stolen (and are thereby already criminally involved), some home-made, and many others no doubt purchased on a flourishing black-market.

In spite of this, as the official figures show, firearms do not play a major role in homicides for the White, Coloured, and Asiatic groups, but what is even more important is the fact that the absence of firearms in the majority of cases has not prevented the committal of murders. Knives and other cutting instruments account for more than half the annual number of homicides, and

while they are classified also as dangerous weapons they are subject to little more than nominal administrative control, in comparison with the elaborate bureaucratic measures established for gun control.

Our discussion of the involvement of guns in accidental deaths and suicides has also indicated that the presence or absence of firearms control laws cannot be expected to influence annual statistical returns under these headings, and we are therefore led by this analysis to place a prominent question mark behind the whole concept of restrictive firearms control laws in this country.

If we were to argue that the reason for the fact that firearms are still involved in many cases of violent crime (albeit a minor involvement) because the private ownership of guns has not been completely banned, and in order to solve the problem programmes of total confiscation by the State should be developed, how much closer would this bring us to a solution? In terms of the empirical evidence our answer to this question would have to be unequivocally negative. In fact, such a total banning policy would, if anything, lead further away from any solution simply because we cannot accept that the members of our society who presently hold unlicensed firearms are likely to surrender them at the nearest police-station if this policy became law. Mr. J.J.M. Stephens (U.P.Florida) was aware of precisely this point when in March 1973 (87) he introduced a private members motion in the House of Assembley requesting the Government to act against the alarming increase in gang activities. He argued that the Cape of Good Hope had become the Cape of Fear, particularly in the non-white townships, where the problem had reached crisis proportions. Youth gangs, growing in numbers, roamed the streets and terrorized the residents, and in spite of the licensing laws, these gangs managed to obtain firearms. He called for an immediate study in order to ascertain where the problem lay.

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87. The Cape Times
Cape Town; March 10th, 1973.

We have to accept that firearms will continue to be held by those individuals who do not feel the need to conform to society's laws as much as others, and therefore the legislative attempt to confiscate all firearms would clearly lead to a situation in which only the lawless would be armed with guns, whereas those who respect and abide by the law would be necessarily disarmed and thus defenseless, let alone deprived of the right to use guns for the numerous sporting purposes to which they are popularly put. Legislation aimed at the total confiscation of all privately owned firearms would therefore defeat rather than serve the ends for which it (as we have defined it) is designed.

However, without the present system of gun control legislation, we may ask, accepting its shortcomings, would the crime rate not be higher? This is an empirical question requiring statistical information on the prevalence of licensed and unlicensed firearms in crime. This information is presently not available in South Africa, but as we have noted earlier in this chapter, the indications are that the vast number of firearms annually reported missing are actually stolen, and therefore are at least as likely as any to become involved in further criminal acts. In any case, as the figures show, by far the majority of homicides are carried out with dangerous weapons other than firearms, more than half of which are knives and other cutting instruments. Johan Beyers, the Argus Crime Reporter claims (88) that according to police officers in the Cape Town area guns are very rarely used in crime and that "popular weapons include pangas, knives, bottles, bricks, sticks, garden implements (such as spades, forks and picks), empty buckets and buckets of boiling water, stones, hammers and axes", and that very often the murderer and his victim are both under the influence of liquor or dagga. We cannot say that the presence or absence of firearms control laws (as much as dagga control laws) has any affect whatsoever on the murder rate.

If the high rate of violent crime deserves treatment as a social problem in South Africa, its treatment will not be met with

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88. The Argus
Cape Town; 24th March 1973; P.9

success by looking for short-term solutions and what must amount to criminologically naive oversimplifications. Crime, and particularly violent crime, involves very much more than the private possession of firearms, and the restriction on their possession to only "fit and proper persons" neither lessens the crime rate, nor does it make the attacks on innocent people less deadly. As sociologists we should know that the etiology of crime lies in a whole array of interrelated social factors, and if legislation is to play its integrative role in society then it should be aimed at restricting these factors, rather than acting against the possession of the weapons which may sometimes be used. By adopting this latter course of action one adversely affects law-abiding citizens for whom guns may mean many different things. We cannot justify gun control legislation with the assertion that guns are the tools of criminals, for so are "getaway cars", gloves, and oxy-acetylene torches. They are also the tools of law-enforcement officers, military people, sportsmen, and private individuals who have the right to defend their lives and property as effectively as possible when these are under unlawful attack.

To further illustrate this point we may note that the U.S.A's F.B.I. has compiled a list (89) of major crime variables, and the eleven factors considered to be the most important are:

(I) "Density and size of the community population and the major metropolitan area of which it is a part".
(II) "Composition of the population with reference particularly to age, sex, and race".
(III) "Economic status and mores of the population".
(IV) "Relative stability of the population, including commuters, seasonal, and other transient types".
(V) "Climate, including seasonal and weather conditions".
(VI) "Educational, recreational, and religious characteristics".

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89. Guns
Publisher's Development Corp: Illinois: June 1972, P.5

(VII) "Effective strength of the police force".

(VIII) "Standards governing appointments to the police force".

(IX) " Policies of the prosecuting officials and of the courts".

(X) " Attitude of the public toward law enforcement problems".

(XI) " The administrative and investigative efficiency of the local law enforcement agency, including the degree of adherence to crime reporting standards".

Clearly, the private possession of firearms is not considered by the Federal Bureau of Investigation to be of significant relevance to the crime rate. There exists a wide range of contingencies threatening harmonious social relationships, which deserve our urgent attention if the problems of increasing social disintegration are to be successfully dealt with.

CHAPTER 7

IMPLICATIONS AND ALTERNATIVES

If this research study has led to the acceptable conclusion that there is no relationship between crime, accident, and suicide rates on the one hand, and the presence or absence of firearms control legislation on the other, then we are inevitably confronted with the problem of explaining why the private possession of guns is subject to legislative control at all in this country.

It would appear that essentially two possibilities present themselves for speculation in this context. The first lies in the fact that, unlike the U.S.A., South Africa has not experienced a tradition of constitutionally guaranteed free gun ownership. In America (with the notable exception of the 1911 Sullivan Act of New York) laws which have been introduced to restrict firearms possession, such as the Gun Control Act of 1968, have only really gained significant support during the last decade, particularly those motivated (on the surface, at least) in the name of crime control. The issue has been, and remains a highly contentious one that is subject to a continued public debate, the battle lines are drawn, and the popular perspectives well publicised.

In South Africa, on the other hand, it would probably be fair to say that firearms control laws in some form or other have existed for so long now that nobody really knows what purpose they are designed to serve. The "necessity" for such laws would simply seem to be assumed in terms of such variables as public safety and civil peace, etc., and while they are tinkered with from time to time, streamlined, overhauled or whatever, there is nowhere any noticeable attempt to justify their presence in principle on the Statute Books, let alone to critically examine their efficacy.

The second possibility may lie in the allegation that the zealous attempts of successive South African governments to maintain what is functionally harmonious in the system have led to the deliberate restriction on the private possession of firearms in an attempt to ensure that political change is channelled only through the constitutionally approved ballot-box or lobby, rather than democratically less orthodox means.

At its most extreme such a policy would imply that a Leninist approach (see Chapter 3) of arming only the "right" people is applied, and that important qualifying criteria for the status of a "fit and proper person" would include Party membership, racial origin, religious beliefs, trustworthy loyalty, and family connections, etc. Taken to its logical conclusion such an extreme position is symptomatic of a Marxist interpretation of legislation as being one method for the maintenance of existing power relations in society.

While the Parsonian definition of law (90) as "that aspect of the machinery for the definition and implementation of institutional norms which links legitimation through authoritative interpretation with application and enforcement by political agency" may create the potential for a political interpretation (for whatever motives) of law as a method for ensuring that political change which is normatively institutionalised through the ballot-box or lobby is legally enforced through the same means, it does not authorize the arming of loyalists only, for one of the fundamental provisions of this definition is that the content of legislation must be dictated by prevailing institutionalised norms, and not vice versa (we are not here denying that under exceptional circumstances, such as times of great social crises and civil wars,etc., governments may legitimately suspend the democratic process and impose martial law, but such action is taken on the understanding that martial law, while it greatly increases the administrative power of key politicians, is not the ideal state of affairs and a return to "normal" democratic life must be made as soon as possible.)

Our discussion in Chapter 5 of the procedures for firearms licence applications in S.A. rules out the possibility of a Marxist legislative framework in this respect, for as we saw, the abovementioned qualifying criteria are not relevant in any way. The Government has in the majority of cases no way of knowing the voting preferences of licence applicants, nor does it seek such information.

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90. Parsons, T. Structure and Process in Modern Societies Free Press; Illinois; 1960; P.190

On the other hand, the peculiar political divisions which characterise South African society, (i.e., a white democracy with the simultaneous totalitarian rule of blacks) allows for the theoretical proposition in terms of the analytical framework that only the whites are armed, but the blacks not. Applying this proposition to the empirical test, however, we note that while statistical information on the official responses to licence applications of the different races is not yet available, and that in terms of the operative Act non-whites require Ministerial approval for firearms licences and whites do not, the fact remains that citizens of all races can and do legally possess firearms irrespective of political or religious considerations. This emphasises the fact that although the non-white population groups have no direct political power in the sense in which the concept is democratically understood, the assumption that they therefore represent an opposing political force is a theoretical one and one which as a result of the structural situation in which it is found, is lacking in significant empirical content. Blacks have not yet had the opportunity to representatively demonstrate in a quantitative way (i.e.,voting) just how they respond to the present methods by which they are ruled. Perhaps, we may speculate, the Administration believes that the majority of people ruled in this way do in fact support the system, or in the absence of consensus, at least do not represent a violent threat to it, and therefore does not object to their ownership of firearms, but at the same time requires them to seek Ministerial approval as a "just in case" measure.

We are therefore faced with alternative theoretical propositions and scanty empirical input for comparative purposes. The facts, however, that prior to 1969 no central recording machinery for firearms licences existed, and that citizens of all races continue to be granted these licences without reference to political or religious convictions should serve to discount the former, and as a result we are led to the conclusion that it is more likely that the reason for the persistence of such laws in our society lies firstly in the lack of empirical evidence either in support of

or opposition to them, secondly in the failure of the Executive to (i.e., prior to 1969) set about methodically collecting relevant data, and thirdly in the accompanying assumption that the existence of gun control laws, being an historical fact, (i.e., part of our traditional way of life) is therefore justified as an integrating mechanism in our society.

Our failure to empirically relate crime, accident and suicide variables to firearms legislation presents us with these two possibilities. If neither of them are in fact operative, then we have been led into a logical cul-de-sac and are completely at a loss to explain the existence of such legislation. Nor can we accept at this level that it is a combination of the two because they are in principle highly unlikely bedfellows - involving as they do fundamental incompatibilities.

In terms of the evidence we have to accept that the laws are maintained because they are believed to be useful conformance techniques in pursuit of social equilibrium, a belief based on assumption and acclaim, rather than sound scientific grounds. This finding is consistent with that of Greenwood's (91) in relation to the same problem in Britain.

If legislation is to be built on empirical foundations, a necessity indicated by the foregoing analysis, then in terms of firearms we have clearly to seek alternative policies to enable the laws to play their defined role. In other words, a policy is required which guarantees law-abiding citizens the right to keep and bear arms for sporting and defence purposes, and which at the same time deters deviants from using dangerous weapons for criminal purposes.

The role of legislation generally in terms of deterrent effect would seem to be popularly discredited in current theoretical approaches, (92) at least with reference to emphasis, and without

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91. Greenwood, C. Firearms Control
Routledge & Kegan Paul; London; 1972

92. Toby, J. Contemporary Society
John Wiley; N.Y. 1964 P.485

indulging in a protracted abstract analytical discussion of the issues involved in this position we submit that there is sufficient evidence presented in this study to justify the conclusion that the presence of restrictive gun laws in this country has not deterred many thousands of people from keeping and bearing unlicensed firearms. The implication here is clear that legislators should lay greater stress on the right of private individuals to own guns for lawful purposes, rather than enact laws which result in the disarming of peaceful citizens, while the lawless remain armed.

Firearms may no longer have the essential quality, in contemporary society, of being an absolute need for the gathering of sustenance and for self and home defense as they did in the days of the pioneers, but we cannot accept that they are therefore no longer needed at all for protective and legitimate sporting purposes. It is not sufficient, as we have noted, to point out that increasing social differentiation characteristic of modernization has led to the emergence of specialist structures such as police forces (which are themselves subject to further differentiation into even more specialist categories, eg. Drug Squad, Murder and Robbery Squad, Vice Squad, Commercial Branch etc.) and that anyone who feels threatened may simply apply for police protection. Such an analysis, while it may have sound theoretical and empirical support, is hardly of significant comfort to the unfortunate bank-teller staring down the business-end of a "sawed-off" shotgun; and even less comfort to the man whose family and property may be threatened by a well-armed nocturnal intruder. The analysis is clearly not accompanied by any rationale to justify the disarming of the citizenry, any more than the establishment of an impersonal rule of law in modern societies precludes the right of individuals, in the absence of alternatives, to return violence with violence in the defence of their own lives.

While the South African legislature shows at this stage no signs of changing or even questioning the licensing requirements of firearms owners, some of the legislation adopted within the last

decade has been distinctly encouraging in terms of the call for an increased emphasis on the right to keep and bear arms. In 1964, 1968 and 1969 Acts were passed which among other things respectively established local facilities for the production of sporting arms and ammunition (thereby indicating that the legitimate use of firearms was to be promoted rather than threatened), provided for severe mandatory sentences for the unlawful use of firearms (thereby simultaneously attempting to deter deviant elements within society from criminally abusing guns), and established the Central Firearms Register (thereby ensuring that any future firearms legislation could be empirically prompted through the availability of organized and up-to-date statistical information). As mentioned above, this cannot be taken to indicate that the principle of restrictive firearms control laws is in question at the political level in South Africa. On the contrary, it would appear that the belief in the "necessity" for gun control, especially of the "you can't have every Tom, Dick and Harry running around with a gun" kind remains very strong indeed, and may well be the initiating force behind particularly the Central Firearms Register. What it does serve to indicate, however, is that there is a questioning of current methods together with an approach which is apparently becoming increasingly receptive to empirical evidence.

Legislators should be urged - if they wish their laws to play their defined integrative role as a functional imperative of the system - to base their legislation on empirical needs rather than on khadi-type value judgments and untested pre-suppositions. The need for empirically motivated legislation is ever increasing in view of the rapidly developing technological characteristics of our society, and all the concomitants of modernization, particularly those of urbanization and social heterogeneity.

The ramifications of this position point to the needed emphasis on the gathering in the Central Firearms Register of as much evidence as could conceivably be of relevance in providing

objective information of use to scholars, researchers and legislators attempting to critically evaluate presently accepted firearms laws. If the results of this new commitment to objectivity include the awakening to the empirical non sequiturs of prevailing beliefs and assumptions together with their jettisoning in the face of sound evidence, so much the better, for in terms of our methodological position outlined at the beginning of this study this is an experience which is not only an occupational hazard, but also a scientifically encouraging one.

We have noted on previous occasions that the 1969 Arms and Ammunition Act provides for the collection of data critical to the analysis of the role of firearms control laws in South African society, and that as a result future research into the problem may be expected to be both more revealing and productive. If future research confirms and strengthens the findings of this study then, in calling for an increased emphasis on the individual right to keep and bear arms as an empirically determined alternative to the more simplistic legislative measures at present assumed to be necessary for keeping the peace, we have to confront the problem of establishing what the practical implications of such a policy may be expected to be. What are the advantages and disadvantages, for example, of a system of completely free gun ownership? Is a society of gun-toting individuals desireable? Looked at in isolation and measured only against our abstract value system the answer is obviously negative. But we do not live in isolation. We live in a complex social situation in which guns are carried not only in defiance of the law but also in defiance of our value system itself, and therefore a policy of completely free gun ownership would at this level be preferable to a restrictive one in the sense that it would permit the constituents to defend themselves, the law, and the value system with potentially equal efficacy. The fact that such a policy represents little more than the potential for the above is because the question of whether or not it will result in every citizen suddenly going out and buying a gun is an empirical one, but if nothing else it would obviate the fruitless administrative difficulties encountered under the prevailing

legislative provisions which serve to discourage applicants to such an extent that only reasonably determined individuals are prepared to suffer them.

On the other hand it would be disadvantageous to advocate the removal of the present gun control system if such action would simultaneously lead to the loss of the recently established data gathering provisions, thereby subverting the possibility of future research into the problem. This issue can be resolved, however, if future research confirms these findings to the satisfaction of law-makers and the right to keep and bear arms becomes the focus of positive legislation, for the data gathering energies could then be harnessed for more useful research aimed at the reduction and eventual disappearance of the social factors related to the situations in which violent crime is found.

Further research featuring information provided by the Central Firearms Register (when it becomes available) is clearly necessary before any specific call for legislative action by Parliament can be fully justified. Nevertheless a number of conclusions emerge from the study, some of which have already been discussed, and which we feel justified in accepting on the evidence presented. On the general level it would appear to have been satisfactorily demonstrated that legislators need to acknowledge that laws should be based on empirically derived requirements rather than untested assumptions, and that on these grounds firearms control laws in particular are questionable in principle.

We would consider these findings as sufficient foundation for arguing in favour of a shift of emphasis from restriction to freedom with respect to the right to own firearms for legitimate purposes,particularly with respect to lifting the heavy bureaucratic

load caused by the present system off the shoulders of police officers and the public. Further than that it is perhaps unwise for a sociologist to attempt to venture, for the problem of actually designing legislation requires learned specialists.

The sociologist may assist in advising the law-maker on where to aim his laws and what role they should be designed to play (which we feel we have done in regard to firearms control laws), but to go further than that would be to tread on more qualified toes.

PART 4

CHAPTER 8

SUMMARY AND GENERAL CONCLUSIONS

In attempting to establish the role played by firearms control legislation in South African society a methodological position was adopted in terms of which social research of this nature is considered equivalent to natural research - i.e., subject to scientific theoretical frameworks, data producing and gathering techniques, and analytical procedures.

It was felt from the outset that only by employing the objective methods of observation, analysis, and verification can empirical work in the social sciences serve its fundamental purpose - that of providing general explanations of social processes in terms of scientific causality - by adding to mankind's store of knowledge in as many fields as possible.

At the theoretical level the social system to be studied was defined in Parsonian terms, involving therefore the structural-functional aspects of the concepts thus defined. Such a general theoretical scheme was considered necessary because it provides for general explanations of a meaningful kind to be extracted from fragmented empirical research projects, thereby rendering such projects more useful in terms of the advancement of knowledge. The focus of the study was then telescoped to the more specific areas with which this exercise was to deal, i.e., the sociology of law, criminology, and social legislation. In terms of the analytical framework, legislation was then defined as serving the integrative imperative of the system.

Some general historical perspectives relating to the relationship between polity and individual citizen with respect to the private possession of arms were discussed with particular reference to administrative attempts on the part of the polity to restrict the individual availability of weapons. Firearms were developed as efficient tools soon after the dawn of the technological age, and with the accompanying urban problems of modernization they became

subject to increasingly severe restrictions with regard to lawful ownership.

The following discussion of contemporary perspectives revealed that although such restrictions remain in force today in most societies, and in most cases are assumed to serve the integrative imperative by limiting the availability of guns to criminals, this assumption is not empirically supported. Greenwood (93) has shown convincingly that in Britain the gun control laws in operation have not provided the slightest evidence that they are even remotely connected with violent crime rates. Other authors cited in Chapter 4 have argued with similar conviction that firearms legislation (such as the notorious Sullivan Law of New York) serves more to defeat the purposes for which it is designed than to promote them, because they simply do not keep guns out of the hands of criminals, and therefore their only effective achievement is to hinder law-abiding people who wish to possess firearms for numerous purposes.

A brief historical survey of gun control in South Africa preceded on analysis of the role of firearms in crime, accidents and suicides in this society. Documentary evidence was extracted from the official reports of the Department of Statistics (i.e., the Report on Deaths, and Statistics of Offences) and the Annual Report of the Commissioner of the South African Police in order to establish the role of current firearms legislation in relation to these variables.

The results of this study may be brought together and summarised as follows;

> South African firearms legislation has existed for many years on the assumption that it plays a useful integrative role in society. No empirical evidence is available to support this assumption. On the contrary, what evidence is available points to the irrelevance of these laws when measured against their purpose.

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93. Greenwood, C. Firearms Control
Routledge and Kegan Paul; London; 1972

As a result of these findings the following points are suggested;

(i) Legislation which is aimed at influencing variables such as crime and social disintegration (the etiology of which are not yet fully understood) should not be based on unfounded assumptions alone. Where empirical evidence is not available it should be sought. At the same time legislative efforts in this context should be continually subject to objective tests of efficacy, in order that they may serve changing demands.

(ii) Legislators should lay positive stress on the right of individuals to keep and bear arms for legitimate sporting and defense purposes, and support mandatory sentences for the illegal use of dangerous weapons. (In relation to the latter call it is here conceded that the South African Government has already instituted such mandatory prison sentences in terms of the 1968 Dangerous Weapons Act).

(iii) The administrative burden on police and citizens caused by the present provisions for firearms licence applications should be significantly eased; and if future research of a more comprehensive nature confirms these findings, these procedures should be completely removed from operation.

(iv) To enable future research to be more productive the following should be included with the information recorded in the Central Firearms Register (i.e., besides the data already gathered) :

(a) the number of licence applications granted and refused for each population group category annually, together with reasons for refusals;

(b) the number of firearms in legal (and illegal) possession of convicted criminals at the time of the offences by virtue of which they were convicted, together with a description of each gun involved (i.e., type, make calibre, etc).

(c) the number of crimes of violence committed annually in which convictions result from the use of what are legally defined as "dangerous weapons".

(d) the number of firearms among these "dangerous weapons"

(e) the number of illegally possessed firearms which are traced back to their legal owners (type, make, calibre etc)

(f) Analysis of the types of firearms (i.e., divided into categories, eg; 2" snub-nose revolver or double-barrelled shotgun etc.,) and ammunition (i.e.,calibre, factory or home loaded etc.,) involved in crime.

Perhaps there are other variables than the above which are worthy of recording but which do not readily spring to mind. However, the fact that figures for the above six major areas of concern are not presently kept, emphasises the inadequacy of current record-keeping methods.

It is hoped that the findings of this study, together with the suggestions which follow may assist in some small way not only in furthering our knowledge of the issue investigated, but also in furthering the cause of rational administration in our society.

BIBLIOGRAPHICAL REFERENCES

1. Annual Report of the Commissioner of the South African Police
Government Printer; Cape Town; 1935-71

2. Archibald,Drew. Two Aspects of Change
2nd Congress of Sociology in Southern Africa; L.M;1971

3. Argus, The
Cape Town 24th March, 1973

4. Becker,Col.Edward Guns
Publisher's Development Corp; III. November,1972

5. Bentham, Jeremy The Theory of Legislation
Kegan Paul; London; 1931. (ed.C.K.Ogden)

6. Black, Max The Social Theories of Talcott Parsons
Free Press; III; 1955

7. Bredemeier,H.C. "Law as an Integrative Mechanism"
In Aubert, v.(ed) Sociology of Law
Penguin; G.B.; 1969

8. Burton, T.C.
Cherry, G.E. Social Research Techniques for Planners
George Allen & Unwin, Ltd; London; 1970

9. Cape of Good Hope Government Gazette (The)
Cape Town; Tuesday; January 22nd, 1901

10. Cape Times (The)
Cape Town; April 10th, 1973

11. Cargyle,T. The French Revolution
Miles and Miles; London (No public ation date provided)

12. Constantine, J.R. Shooting Times
Peoria Journal Star; III; September,1972

13. Daniels Robert V. A Documentary History of Communism
Random House; N.Y. 1960

14. Durkheim, E. — The Division of Labour in Society
Free Press; N.Y; 1964

15. Glaser, D. — Adult Crime and Social Policy
Prentice-Hall; N.J; 1972

16. — Government Gazette
S.A.Government Printer; Cape Town; 18 June,1969

17. Greaves,Fielding L; — "U.S. Gun Rights are Guaranteed
In Guns & Ammo, Petersen; L.A. December,1972

18. Greenwood, C. — Firearms Control
Routledge and Kegan Paul; London; 1972

19. Greenwood, C. — "British Gun Controls Don't Work"
In Guns & Ammo; Petersen; L.A. December,1972

20. — Gun World
Gallant; California; October 1972

21. Kennedy,Senator Edward, M. — Shooting Times
Peoria Journal Star; III; November,1972

22. Kerner, O. — Report of the National Advisory Commission on Civil Disorders
Bantam; N.Y; 1968

23. Lenin — Collected Works. The Basic Tasks of the Dictatorship of the Proletariat in Russia
Progress Publishers; Moscow; 1965
Quoted in Gun Digest,(ed.J.T.Amber)
Follet Co; Chicago; 1972

24. Lenin — Collected Works, Vol.35
Congressional Record, April 28, 1970
Quoted in Gun Digest, (ed.J.T.Amber)
Follet Co; Chicago; 1972

25. Mann, E.B. — Gun World
Gallant; California; May, 1972

26. Mc Leish, J. — The Theory of Social Change
Routledge and Kegan Paul; London; 1969

27. Miller, B. "Your Police: Milwaukee, Wisc." In Guns & Ammo;Petersen; L.A. January,1973

28. Mills, C.W. The Sociological Imagination Pelican; G.B.; 1970

29. Newton, G. and Zimring, F. Firearms and Violence in American Life Report No. 7 to the National Commission on Causes and Prevention of Violence. Washington D.C. U.S.Government Printing office; 1969

30. Parsons, T. The Structure of Social Action Free Press; N.Y; 1937

31. Parsons, T. Structive and Process in Modern Societies Free Press; III; 1960

32. Parsons, T. Sociological Theory and Modern Society Free Press; N.Y. 1967

33. Parsons, T. "Political Systems and Bureaucracy" In Political Sociology (ed. A.Pizzorno) Penguin; 1971

34. Report on Deaths S.A. Department of Statistics. Government Printer; Cape Town; 1935-68

35. Runciman, W.G. Social Science and Political Theory Cambridge University Press; 1969

36. Statistics of Offences S.A. Department of Statistics Government Printer; Cape Town; 1935-68

37. Statutes of the Republic of South Africa. Arms and Ammunition. Government Printer; Cape Town

38. Times Magazine
Davidson, N.Y.
March 25th, 1973

39. Toby, J. Contemporary Society
Wiley; N.Y; 1971

40. Weber, M. "Rational and Irrational Administration of Justice"
In Aubert, v.(ed). Sociology of Law
Penguin; G.B; 1969

41. Weber, M. "The Theory of Social and Economic Organization"
In Wirtschaft und Gesellschaft
In Aubert, v.(ed) Sociology of Law
Penguin; G.B; 1969

42. Williams, M. "Gun Law Hoax of All Time"
In Guns & Ammo, Petersen; L.A.
December, 1972