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Criminalizing LGBTQ+ Jamaicans: Social, Legal, and Colonial Influences on Homophobic Policy

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Criminalizing LGBTQ+ Jamaicans: Social, Legal, and Colonial Influences on Homophobic
Policy

by

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A thesis submitted in partial fulfilment
of the requirements for the degree of
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Abstract

Based on colonial and neocolonial models of oppression, Jamaica has adopted many laws, policies, and systems mandated by the British monarchy. Many of these laws contain anti-LGBTQ+ policies which remain in effect today. To address the criminalization of LGBTQ+ identities, I used queer theory and queer criminology to analyse the ways Jamaica constructs LGBTQ+ people as criminals and how they are treated in the legal and criminal justice systems from a postcolonial standpoint. Using a qualitative text-based feminist and queer policy analysis, I investigated social, legal, and colonial influences on current anti-LGBTQ+ policy by looking at the *Offences Against the Person Act* (OAPA) and the *Sexual Offences Act* (SOA). Through unpacking the colonial and postcolonial meanings of these active anti-LGBTQ+ laws, I found that while the laws criminalize gay Jamaicans through heterosexual- and gender-specific language used in the acts, the primary purpose of these laws is to legalize and encourage violence and discrimination against LGBTQ+ people. These laws emphasize outdated notions of sex and sexuality where men receive little protection from sexual assault due to the government's refusal to overturn the anti-LGBTQ+ laws. In addition to discrimination and a lack of protection, the maintenance of these laws promotes several system outcomes for LGBTQ+ people in Jamaica's legal and criminal justice systems, such as adverse effects in politics, policing, and experiences of incarceration. I conclude that these anti-LGBTQ+ laws are the remnants of a colonial heteropatriarchal system that must be removed to promote sovereignty, equality, and to move away from colonial and neocolonial models of oppression.

Introduction

Homophobia¹ and transphobia² are institutionalized in Jamaica's criminal justice system through policy, policing, law-making, and violence. Throughout the system, the severity of homo/transphobia is evident in the form of violence towards and criminalization of LGBTQ+³ Jamaicans. The criminalization of LGBTQ+ identities and the institutionalized homophobia and transphobia in Jamaica's criminal justice system is an urgent human rights issue. To address it, I analyse the ways Jamaican policy constructs LGBTQ+ people as criminals using a postcolonial queer feminist lens and queer policy analysis. Then, using scavenger methods from queer criminology, I explore some of the impacts of these policies on LGBTQ+ Jamaicans.

There is a lack of prior research and analysis on LGBTQ+ people in Jamaica and the criminal justice system. Using a text-based and critical policy analysis I investigate social, legal, and colonial influences on current policy by looking at two currently active Jamaican laws that criminalize homosexuality by outlawing non-procreative sex: The *Offences Against the Person Act* (1864) and the *Sexual Offences Act* (2009). These policies are directly implicated in Jamaica's criminalization of LGBTQ+ identities through their continued reliance on colonized models of oppression and neocolonial⁴ influences. I further explore how these laws have

¹The United Nations Educational Scientific and Cultural Organization defines homophobia as "the fear, discomfort, intolerance or hatred of homosexuality and sexually diverse people" (UNESCO, 2016, p. 11).

²The United Nations definition of transphobia is "the fear, rejection or aversion – often in the form of stigmatizing attitudes or discriminatory behaviour – towards transgender people" (UNESCO, 2016, p. 12). It must be noted that although this research calls out transphobia in Jamaica, this policy analysis will focus on homophobia in Jamaica as little information is available about transphobia on the island.

³"LGBTQ+" is an acronym for lesbian, gay, bisexual, trans*, Queer, and many other spectrum gender identities and sexualities not limited to the acronym. Also cited in this paper and the acronym is "I" for intersex. Intersex people are born with sexual anatomy that does not definitively determine if the individual is male or female at birth.

⁴Neocolonialism, in the Jamaican context, is the indirect control of Jamaica through sustained political, economic, and cultural influence from Britain.

influenced system outcomes of LGBTQ+ Jamaicans where the legal system directly endorses homophobia and violence.

Positionality Statement

I hold a unique position within this research. I am a cisgender⁵ heterosexual⁶ white Jamaican who was born in the United Kingdom but raised in Jamaica. Holding dual citizenship for the UK and Jamaica while being a white woman, I understand the privilege I have in this world. I have had the ability to travel and live in three different nations in my lifetime: the UK, Jamaica, and the United States. However, living in Jamaica as a Jamaican citizen, I have constantly been told that I do not belong, as often Jamaicans do not recognize or accept me as Jamaican, only as British. Due to my constellation of identities, I recognize, address, and confront the colonial and neocolonial influences on Jamaican policy through challenging the design and function of specific laws. Furthermore, my research centres LGBTQ+ Jamaican perspectives and experiences by emphasizing Jamaican scholars and scholarship which is based on analysis of the lived accounts of Jamaicans.

I have witnessed homophobia in the form of bullying and harassment towards people close to me, where they eventually fled Jamaica to live in more accepting spaces. Due to this, I have focused my work on homophobia in Jamaica as a method to call for political and social change towards the acceptance of LGBTQ+ Jamaicans. Having witnessed and researched the severity of homophobia and transphobia in the nation, I hold beliefs and attitudes which go against mainstream Jamaican cultural attitudes (Smith, 2018). I understand that this research

⁵Cisgender means that one's gender correlates with their sex assigned at birth. Gender is an individual's "psychological, social, cultural, and behavioral" identification within the spectrum of masculinity and femininity (Wineclaw, 2013, para 1). As Judith Butler coined, gender is performative (Butler, 1988), meaning that people perform their gender how they wish, thus "gender becomes something that people do" (Golombisky, 2017, p. 186). It is important to understand that one's gender does not always correlate with their sex assigned at birth.

⁶ Different from gender, sexuality is concerned with an individual's sexual and romantic attraction to others, for example, same-sex attraction. For this thesis, the terms "gender" and "sexuality" will be primarily used to refer to one's gender or sexual/romantic attraction, respectively.

holds unpopular opinions to many Jamaicans as Jamaica has been branded the “most homophobic place on earth” since 2006 (Jackson, 2015). Using critical criminology, I proceed to call attention to the systemic violence and institutionalization of heterosexism in Jamaica’s laws. My identity as a Jamaican and my experiences from living in Jamaica allows me to understand systems of oppression within Jamaica; however, my identity as a white woman poses a difficult position due to the history of colonization. Hence, I position my work within decolonial writing and call out colonial and neocolonial influences.

Colonialism and Neocolonialism in Jamaica

Spanish Occupation

Jamaica, like many other colonized places, has a history of exploitation and devastation. Natives called Tainos peacefully inhabited the island until Columbus’ arrival in 1494 brought Spanish rule (Black, 1965). As a step to assist in conquering mainland America, due to Jamaica’s central location, the island became a critical location for the Spanish western expansion (Lemonius, 2017). The Spanish occupiers, assisted by the European diseases they brought with them, tortured, murdered, raped, and enslaved the Tainos to extinction (JIS, n.d.). However, the Spanish colony slowly weakened due to a lack of support from mainland Spain (JIS, n.d.). One hundred and sixty years after Spain’s arrival, as the settlers drained Jamaica’s natural resources, the British took advantage of the weakening occupation and invaded Jamaica (Black, 1965). After a successful attack by the British in 1655, Spanish settlers freed the imported African slaves and fled to Cuba (JIS, n.d.). This set of freed slaves and their decedents became known as the Maroons, a critical group in the future emancipation of those enslaved.

British Occupation

British occupation brought a further history of exploitation of both people and nation. Like the Spanish, the British colonial model included complete control over the land, people, and resources, using divisive systems to govern the nation and influence violence (Black, 1965). With them, the British brought a heteropatriarchal colonial system where slavery became the centre of all profit on the island (Lemonius, 2017). The heteropatriarchal colonial system not only divided people by race but also encouraged the division of gender, class, and sexuality to solidify British rule (Lemonius, 2017). Colonization gave way to British morals where heterosexual masculinity was dominant (McFee & Galbraith, 2016). Any sexuality or gender which deviated from this unofficial rule of masculinity would receive strong opposition (McFee & Galbraith, 2016). This heteropatriarchal history has laid the groundwork for the institutionalization of heterosexism in Jamaica's systems. Engaging in human exploitation, the British brought more enslaved Africans to the island, trading sugar, rum, and molasses for people (JIS, n.d.). Using slavery as a tool in Britain's search for wealth and resources, the mainland government sent more white settlers to control the growing enslaved population (Lemonius, 2017). However, the government did not lack resistance. Uprisings by those who were enslaved became a frequent occurrence across the island, where those who successfully escaped joined the Maroons (JIS, n.d.). Filling the next two hundred years with a history of slavery and exploitation, the British ruled Jamaica with "privilege and terror to extract profits and maintain control" (Lemonius, 2017, p. 80).

Although the slave trade was abolished in 1807, the emancipation of those enslaved was not achieved for another twenty-six years (Abolition of the Slave Trade, 1836; Emancipation; 1970). With frequent resistance from those who were enslaved, in addition to revolts from the

Maroons, the colonizers in Jamaica faced the largest slave rebellion in the British West Indies in 1831 (Britannica, 2021). This rebellion escalated to a war that was pivotal in the fight for liberation, where tens of thousands of slaves looted and burned plantations (Britannica, 2021). After being defeated by the colonists in 1832, the British parliament abolished slavery in most of their colonies in 1833 (Emancipation, 1970). Yet, the scars from a long history of enslavement are ever-present in contemporary Jamaica.

Laws

The criminalization of LGBTQ+ Jamaicans stems from this history of colonization and enslavement. Rooted in Jamaican history before emancipation in 1833, homosexuality represented the “emasculatation of the African male during slavery” due to the sexual trauma of colonization (Lovell, 2016, p. 89); this trauma was a direct result of the sexual exploitation of enslaved people by colonizers. After emancipation in 1833, where those enslaved were granted full freedom, but before colonial independence in 1962, while still under British occupation Jamaica adopted the laws, policies, and systems mandated by the monarchy (Lovell, 2016). Included was *The Offences Against the Person Act (1864)* (OAPA) which includes three anti-homosexuality laws. This legislation was implemented by colonists as they did not think that native cultures punished perverse sex enough (Human Rights Watch, 2008). Additionally, further anti-LGBTQ+ policies have been adopted after independence in 1961, including the Jamaican *Sexual Offences Act (2009)* (SOA) which was adapted from the British *Sexual Offences Act (1956)*, demonstrating the power of the neocolonial relationship even after supposed emancipation. Therefore, the legal system in Jamaica and its laws stem from British colonizers.

In addressing neocolonial influences on current Jamaica, it must be noted that the Queen of England, Her Majesty Queen Elizabeth II, remains the Jamaican head of state, regardless that

Jamaica is an independent nation. Furthermore, the British Privy Council remains the highest court in the land. This means that if someone wants to appeal their case, they must appeal to the British privy council. There is no Jamaican court that will appeal a case. It is evident that Britain, decades past independence, maintains significant control of Jamaica's criminal justice system, influencing its laws, policies, courts, and conduct. OAPA and SOA are directly implicated in Jamaica's criminalization of LGBTQ+ identities through their continued reliance on colonized models of oppression.

The history of British colonial occupation, where sexual violence, including forced homosexual encounters, was used as a primary tool by enslavers has led to homophobia being considered an act of decolonization in contemporary Jamaica, where the construction of homosexuality is viewed as a foreign production and thus a colonial idea (Bajaha, 2015; Lovell, 2016). Emphasizing postcolonial and queer theory, addressing colonialism as a primary influence on current policy and the maintenance of homophobia within the criminal justice system, I challenge the Jamaican idea of homophobia as decolonization. Jamaican's view of homosexuality as a colonial construction allows for the maintenance of the anti-homosexuality laws that oppress LGBTQ+ people based on their identity, where the preservation of OAPA is seen as a rejection of both homosexuality and colonization. However, I argue from a postcolonial standpoint that imperial authority is enhanced through the continuation of such laws as people of colour are oppressed based on their sexuality. Contradictory laws, motives, and social factors are ongoing within the argument around homophobia in Jamaica's criminal justice system.

Literature Review

While exploring the literature on anti-LGBTQ+ opinions within the Jamaican legal and criminal justice systems, I aim to demonstrate how homophobia and transphobia became institutionalized on the island by analysing existing studies on this topic. I highlight the Jamaican Criminal Justice System (CJS) to analyse and challenge anti-LGBTQ+ opinions towards LGBTQ+ Jamaicans. However, little data is available on this topic due to broader anti-LGBTQ+ opinions by the Jamaican people and government. Therefore, this review of the literature will demonstrate that my research will help to fill this void in academic scholarship on homophobia in Jamaica.

Dolores E. Smith (2018) similarly recognizes the lack of academic literature on the topic of homophobia in Jamaica and turns to news media for information on homophobia and transphobia in Jamaica, yet notes that editorial bias still exists, thus rendering multiple sources unreliable. To this end, most literature on homophobia in Jamaica exists outside of Jamaica. To follow Smith, I also look to sources outside of Jamaica to understand homophobia in Jamaica. However, I will primarily analyse the limited sources that exist within the nation's borders. There is an evident need for literature to be produced inside Jamaica, through Jamaican eyes, and within a Jamaican context, to truly understand the institutionalization of homophobia in Jamaica's CJS. As a Jamaican, I aim to contribute to filling this need for scholarship.

Of the few studies present in Jamaica, the Jamaica Forum for Lesbians, All-Sexuals, and Gays (J-FLAG) is the only LGBTQ+ human rights and social justice organization in Jamaica that

researches homophobia in Jamaica. In attempting to foster a more accepting environment for LGBTQ+ people, J-FLAG hosts annual PRIDE parades in Jamaica, the first of which was in 2015 (J-FLAG, n.d.). Other than J-FLAG the only other organization that assists gay men is the J-FLAG mother organization, the Jamaica AIDS Support for Life (JAS). JAS provides support to all people living with AIDS/HIV and has programs designed for men in same-sex relationships (Bennett, 2010). However, JAS does not specifically include the rest of the community, including LGBTQ+ people or those who are incarcerated, even though the Jamaican CJS has emphasized curbing the spread of HIV within the past few decades (Lewis, 2003). Without the inclusion of these individuals, lesbian, bisexual, trans*, and Queer people in the CJS have limited resources for support. Thus, JAS studies are incomplete as they exclude significant groups of people relevant to this study. Other than J-FLAG, no other major LGBTQ+ organizations currently exist in Jamaica, except for small peer-organized groups.

J-FLAG, as the leading LGBTQ+ organization, has conducted multiple studies to demonstrate the extent to which homophobia is institutionalized in Jamaica; the most relevant of which is their study on how religion influences the acceptance of LGB individuals in Jamaican culture. The study found that:

“93% of Jamaicans agreed with the statement ‘homosexuality is a sin’; 89% regarded being gay or bisexual as wrong; 87% viewed female homosexuality as wrong, and 63% indicated that they rejected the LGBTI lifestyle on moral and religious grounds” (Smith, 2018, p. 252).

Religion is a major influence of homophobia and transphobia on the island based on the dominance of Christianity and the extent to which it spreads. Although Jamaica is a small nation, it is known to have more churches per capita than any other nation (Lovell, 2016), where over

70% of Jamaicans identify as Christian (Rezvani, 2016). This dominance of Christianity is one of the root causes of homophobia alongside colonization, the two being co-emergent and co-constitutive with the arrival of British settlers. The prime reason Christianity stands against homosexuality is based on its non-procreative nature as many religious institutions are founded on the notion that non-procreative sex is a sin, which is further reflected in the laws analysed in this paper (Lovell, 2016; Smith, 2018). The institutionalization of homophobia in Jamaica's religious organizations is one example of how homophobia becomes rooted in dominant systems; anti-LGBTQ+ religious beliefs are dangerous to the survival of the LGBTQ+ community in Jamaica (J-FLAG, 2015).

The extent of the anti-LGB rhetoric spread by one of the eldest and most foundational institutions in Jamaica, the church, demonstrates the challenge posed against LGB Jamaicans. The finding by J-FLAG (2015) is similarly recorded in a 2016 study by McFee and Galbraith where 68% of LGBTQ+ Jamaicans refused to be open about their sexuality with faith-based organizations due to the idea that their identity or sexuality is considered a sin (McFee & Galbraith, 2016). Unlike J-FLAG (2015), McFee and Galbraith's study on homophobia and transphobia in Jamaica was one such study conducted by individuals outside Jamaica. Unlike the J-FLAG (2015) study which only analysed homophobia, McFee and Galbraith also discussed transphobia in Jamaica. McFee and Galbraith (2016) found that LGBTQ+ youth who thought their identity or sexual orientation was a sin sought help in the form of conversion therapy, psychological help, spiritual health, and medical help. It is evident that LGBTQ+ individuals on the island have a significantly difficult experience as McFee and Galbraith (2016) also noted that LGBTQ+ people in Jamaica are subject to violence and discrimination which prevent these individuals from participating in Jamaica's economy and in-turn hold back Jamaica's economy.

More specifically, their “data suggested that those who tend to be more open about their LGBT status were more likely to have been denied a job, denied access to public places such as restaurants, and denied the opportunities to rent a house or apartment” (McFee & Galbraith, 2016, p. 68). They note 83.1% of participants reported being denied housing and 86.1% had been denied access to public spaces such as shops and restaurants (McFee & Galbraith, 2016). These two studies (J-FLAG, 2015; McFee & Galbraith, 2016) demonstrate the extent to which homophobia and transphobia are institutionalized in a few of the island's systems: religion and economy.

In addition to analysing how LGBTQ+ Jamaicans participate in the economy, McFee and Galbraith (2016) also studied the institutionalization of homophobia and transphobia within Jamaica's legal system and police force. Primarily, McFee and Galbraith (2016) studied why violence against LGBTQ+ individuals is largely unreported. In their study, victims of homophobic and transphobic violence did not report violence because they felt the incident was too minor, they knew the police would not be helpful, they feared a negative response from the police, or they felt ashamed or embarrassed about their own identity (McFee & Galbraith, 2016). The authors noted that LGBTQ+ individuals experience violence from the police themselves and the police frequently refuse to investigate acts of homophobic violence due to internalized homophobia (McFee & Galbraith, 2016). Unfortunately, these data suggest homophobia and transphobia are deeply rooted within Jamaica's legal institutions, causing significant harm to LGBTQ+ Jamaicans. Similarly, a study on J-FLAG (Lovell, 2016) further noted the history of LGB Jamaicans mistrust of police, dating back to the 1970's where individuals formed the Gay Freedom Movement (GFM) to workshop solutions for being safe within Jamaica's gay community without involving the police (Lovell, 2016). Since its founding, the GFM was

absorbed into JAS after branching out to provide a Gay Community Health Clinic for the testing of sexually transmitted infections (Lovell, 2016). Unfortunately, LGBTQ+ individuals do not have much hope in legal protection or fair prosecution due to their identities (Lovell, 2016).

Further analysing the extent to which homophobia is institutionalized in Jamaica's legal system, J-FLAG (2015) surveyed Jamaicans' opinions on anti-buggery laws. These laws criminalize non-heterosexual relationships by criminalizing anal intercourse, using gendered language to discriminate against same-sex male relationships. J-FLAG noted that 74% of respondents "opposed changing the buggery [male homosexuality] law...to protect the LGBTI community and only 15% indicated at least some support to an amendment to the law allowing for consensual sex between adults in private" (Smith, 2018, p. 252). The motives behind the respondents' answers are unclear as the 15% might have been indicating their support for heterosexual non-procreative sex rather than LGBTQ+ individuals. Thus, the extent to which homophobia is institutionalized in the law is further reflected in the opinions of people it does or does not protect.

Other than the previously discussed studies, research on the LGB community in Jamaica is less concerned with the extent of the institutionalization of homophobia but discusses it as an influencing factor of their results. An example of this is in an earlier study by White and Carr (2005) on "Homosexuality and HIV/AIDS stigma in Jamaica." Their study used individual and focus group interviews to analyse how Jamaicans perceive the experience of gay Jamaicans living with HIV/AIDS (White & Carr, 2005). The study found a significant correlation between homophobia and HIV/ AIDS-related stigma (White & Carr, 2005). However, White and Carr did not include an analysis of HIV/AIDS stigma within the criminal justice system, where HIV stigma is a leading cause of anti-LGBTQ+ violence in prisons (Hamilton, et al., 2020). Although

this study was conducted in 2003 and published in 2005, their results called for the de-stigmatization of people living with HIV/AIDS (White & Carr, 2005). Unfortunately, homophobic HIV/AIDS-related stigma is still present in Jamaica, especially within the criminal justice system (Lovell, 2016).

Other than these studies, little research has been conducted on homophobia within Jamaica's legal and criminal justice systems or the extent of the institutionalization of homophobia in Jamaica. This thesis will help fill the gap in the lack of information on homophobia and transphobia in Jamaica's criminal justice system by looking at the laws which facilitate homo/transphobia. It is necessary to discuss the issue of homophobia in Jamaica's legal system to call attention to heterosexist laws in addition to violence and discrimination against LGBTQ+ Jamaicans. Therefore, this thesis also addresses the systemic problem of heterosexism within Jamaica's legislative system to understand why anti-LGBTQ+ laws persist on systemic and individual levels.

Theoretical Frameworks

Here, I examine the theoretical frameworks that inform my analysis of homophobia in Jamaica's legal system. In what follows I discuss LGBT Studies, queer theory, queer criminology, and postcolonial studies to examine how they will benefit and be applied to my policy analysis.

LGBT Studies and Queer Theory

LGBT Studies, more commonly called lesbian and gay studies, focuses on the advancement of the interests of LGBT people concerning lesbian and gay social movements. LGBT studies emerged from the liberation movements in the 1950's and 1960's (Carlson, 2014). From LGBT studies, women's studies, and feminist theory, queer theory arose. Queer theory "employs a postmodernist critique of biological determinism, or essentialism, and emphasizes a self-reflexive understanding of gender and sexuality" (Lovaas et al., 2006, p. 5). In other words, queer theory is a postmodern and post-structural approach to sexuality and gender. Both LGBT studies and queer theory focus on gender and sexuality and are linked to influential social movements. Queer theory further attempts to deconstruct the idea of binary gender identities and sexual orientations through challenging heteronormativity.

It is important to note that terminology such as lesbian, gay, bisexual, transgender, and queer have only been used by Jamaicans to refer to their gender identity or sexual orientation for the last thirty years (Bennett, 2010, p. 156). Thus, the terminology "LGBTQ+" is relatively new within the Jamaican context. Furthermore, the terms "homophobia" and "transphobia" have

mainly existed outside the context of Jamaica, and thus might not apply to the experience of LGBTQ+ Jamaicans (Bennett, 2010, p. 156). However, I will apply both LGBT Studies and queer theory to this analysis as “neither queer theory nor LGBT studies on their own can adequately address the needs of the LGBT community” (Carlson, 2014, p. 100). Both LGBT studies and queer theory will be applied to my analysis as it allows a framework for the advancement of LGBTQ+ people that challenges binary notions of sexuality and gender. Thus, for this analysis, LGBT studies and queer theory will be used to create a mode of advancement and transformation for LGBTQ+ Jamaicans and call for justice for the community.

Queer Criminology

LGBTQ+ people, solely due to their sexuality or gender, encounter criminalization and negative effects from the criminal justice system in Jamaica and many other nations (Smith, 2018). Their identities are viewed as unnatural and illegal, resulting in their entrance into the criminal justice system or, sometimes, their deaths. Using a criminological approach to ask why LGBTQ+ people are criminalized, queer criminology attempts to analyse the ways LGBTQ+ people are constructed, viewed, and treated as criminals. Buist and Lenning (2016) discuss queer criminology as “a theoretical and practical approach that seeks to highlight and draw attention to the stigmatization, the criminalization, and in many ways the rejection of the Queer community ... as both victims and offenders, by academe and the criminal legal system” (p. 1). Thus, in a later article on queer criminology, Buist, Ball, and Lenning (2018) discuss that it is imperative to include LGBTQ+ people in criminological research and focus on their experiences of criminalization and victimization. Queer criminology will be applied to my research by centring my analysis on how LGBTQ+ Jamaicans are constructed as criminals through looking at the anti-LGBTQ+ laws which define them as such.

Postcolonial Studies

Postcolonial theory is an approach to research that attempts to disrupt colonial ways of thinking and the production of colonial discourse. Postcolonial theory argues that systems of knowledge have been dominated by colonial powers, where the voices of the colonized have been ignored. Originating the term “postcolonial” in their foundational text, Ashcroft et al. (1989) cite Edward Said and Michel Foucault to emphasize the definition of postcolonial discourse. They argue that to use postcolonial discourse is to “invoke certain ways of thinking about language, about truth, about power, and about the interrelationships between all three” (Ashcroft et al., 1989, p. 167). Postcolonial theory further explores the effects of colonization on now independent societies, individuals, and disciplines of knowledge (Christiansen, 2019). Applying postcolonial theory thus analyses the effects of colonization on colonized people by considering their experiences and including their voices in the production of knowledge. This research employs postcolonial theory to show the prevalence of colonial systems of power in contemporary Jamaican law, politics, and society. Additionally, using postcolonial theory, this research critiques the existing colonial and neocolonial systems of oppression as a negative influence on the experiences of LGBTQ+ Jamaicans.

My thesis applies LGBT Studies, queer theory, queer criminology, and postcolonial studies to analyse heterosexism and neocolonialism in Jamaica’s criminal justice system. These theoretical frameworks will be used as a methodological perspective that will inform my policy analysis. These frameworks will enhance and guide my analysis of Jamaican laws and how they influence the criminalization of LGBTQ+ Jamaicans. Applying these theoretical frameworks, Jamaican LGBTQ+ identities will be centred to emphasize the issue of institutionalized

homophobia in Jamaica's laws and criminal justice system and to recommend modes of change and advancement for the Jamaican LGBTQ+ community.

Methods and Methodology

Using a qualitative text-based feminist and queer policy analysis from Kananberg (2019) concerning system outcomes for LGBTQ+ Jamaicans, I investigate social, legal, and colonial influences on current policy by looking at OAPA and SOA. Through a detailed discussion of sections of the acts which criminalize LGBTQ+ Jamaicans and using queer scavenger methods, this policy analysis will (a) identify the issues associated with maintaining the criminalization of LGBTQ+ Jamaicans, (b) explore some of the impacts of these policies on LGBTQ+⁷ Jamaicans, and (c) develop recommendations to amend these policies to allow equal rights to all Jamaicans, regardless of gender or sexuality

To answer (a), I used an interpretive policy analysis in addition to common methodologies of text-based and critical policy analysis. I first read two primary colonial- and neocolonial- implemented laws and identified the sections that directly criminalize sexual- and sexuality-related crimes. Based on this, I analysed three sections from OAPA due to this policy being the only currently existing Jamaican act to set out offences and sentencing regulations for most major crimes such as homicide, assault, rape, bigamy, abortion, and unnatural offences, which is where this analysis focuses. Two sections of SOA were also chosen for my analysis as this act primarily clarifies laws on sex-related crimes that were originally cited in OAPA, including major crimes such as sexual assault, consent, incest, and prostitution. To analyse (b) I used queer scavenger methods, a methodology where researchers use different methods of research to collect and produce information on individuals who have traditionally been excluded

⁷It must be noted that although this research calls out transphobia in Jamaica, this policy analysis will focus on homophobia in Jamaica as little information is available about transphobia on the island.

from prior research, such as LGBTQ+ people (Halberstam, 1998). I apply this methodology because some data do not exist, such as criminal justice reports in Jamaica. I use the results of these two analyses to address (c).

Reviewing the five chosen sections of these acts and the context in which these sections were implemented and located, I analysed the terms used by unpacking the colonial and postcolonial meanings of these active laws. In analysing the colonial intents of these laws, I turned to 1800's dictionaries of the English language by Samuel Johnson and Noah Webster. Furthermore, I looked at the Oxford Dictionary of Law Enforcement (2015) as it analyses the historical and current definitions of British laws. I then considered the laws' import and latent meanings by using Kananberg's questions, critical criminology, and a postcolonial queer feminist lens. I applied questions posed by Kananberg, et al. (2019) and modified them to guide my contemporary analysis: (1) how are systems of power and inequality used to control or oppress those who occupy different social locations? (2) does the policy consider the legal, social, cultural, and political contexts of LGBTQ+ lives and lived experiences? And (3) Are gendered expectations and language encoded in the policy and are those expectations cisnormative?

I emphasize both queer and feminist policy analysis frameworks as they acknowledge the way intersections of gender and sexuality have been excluded from traditional policy analyses (Kananberg, et al., 2019). Without an understanding of how policy impacts gender and sexuality, in addition to other often omitted factors of intersectional⁸ identities, traditional policy analysis cannot effectively analyse or evaluate societal structures (Kananberg, et al., 2019). Thus, this intersectional queer and feminist policy analysis cannot ignore the colonial and neocolonial

⁸Developed by Kimberle Crenshaw (1989), intersectionality is a theoretical framework that describes how overlapping systems of oppression shape our lived experiences. Intersectionality looks to how one's race, class, gender, sexuality, nation, ethnicity, body, age, and ability influence t experiences and identity within society as overlapping variables, not independent of each other.

white cis-hetero male construction of the heterosexist Jamaican laws. Dissecting OAPA and SOA through intersectional textual analysis and using Queer scavenger methods to analyse the outcomes of these laws, I present a detailed discussion of the institutionalization of homophobia within Jamaica's laws and CJS.

Analysis

In this analysis, I first examine the *Offences Against the Person Act* (1864) by looking at three sections that criminalize non-procreative sex. Here, I interpret these laws by looking at the language and the heteronormative and colonial implementation of these sections. Moving onto the *Sexual Offences Act* (2009), I interpret two sections related to sexual assault which use specific exclusionary gendered language, where I consider LGBT studies and neocolonial influences of this policy. To further look at these policies, I then consider the implications, implementation, and system outcomes of these laws through a discussion of the results of my queer scavenger analysis.

The Offences Against the Person Act

The *Offences Against the Person Act* (OAPA) was adopted into Jamaica's legal system through colonial occupation in 1864. Despite independence in 1961, these 1864 laws are still the governing criminal justice laws in Jamaica, outlining regulations and sentencing minimums for a variety of laws from homicide to homosexuality. Not only does this set of laws emphasize issues of colonialism, but it also displays the extent to which the UK still regulates Jamaica through a neocolonial relationship. Additionally, Jamaica's membership in the Commonwealth of Nations which is a modern political association of former British colonies demonstrates further neocolonial power from the United Kingdom.

In analysing the impact of the OAPA on LGBTQ+ Jamaicans and applying queer criminology, the law contains three predominantly homophobic sections which directly criminalize same-sex interactions. These three sections emphasize heteronormative beliefs by

outlawing non-procreative sex, confirming the need for LGBT studies and queer theory in this research to challenge institutionalized heteronormativity. Sections 76 and 77 named “Unnatural Offences” and section 79 named “Outrages on Decency” all contain language to criminalize non-heterosexual sexual activity. The naming of these sections of the act displays homophobic assumptions where same-sex encounters are called “unnatural offences,” “outrages on decency,” and labelled “the abominable crime.” Unpacking the language used in the titles of these sections displays assumptions of the “unnaturalness” of non-heterosexual relationships by placing a focus on relationships that centre on reproduction. Furthermore, labelling non-procreative sex as “abominable” has several religious connotations and inherently identifies non-heterosexual people as “evil and sinful” as per the biblical and commonly used historical definition of abomination (Webster, 1828). Conviction of these laws results in incarceration for a minimum of two years to a maximum of ten years with hard labour, presenting further difficulties for LGBTQ+ Jamaicans, who are already subjected to homophobic social and physical violence once they enter the CJS (Lewis, 2003).

Evaluating the first anti-homosexuality law through postcolonial theory and LGBTQ+ studies, under the title “unnatural offences” and labelled in the margin as “unnatural crimes” section 76 not only criminalizes non-procreative sex but also presents colonialist and religious notions of sexuality.

“Whosoever shall be convicted of the abominable crime of buggery, committed either with' mankind or with any animal, shall be liable to be imprisoned and kept to hard labour for a term not exceeding ten years” (Section 76, The Offences Against the Person Act, 1864).

Interpreting the OAPA requires an understanding of the language as per the dictionary used when implementing these laws. Recalling that “abominable” means evil or sinful, historically, “buggery,” also called sodomy, was defined as the “unnatural and detestable crime of carnal intercourse” (Webster, 1828, n.p.). When this statute was written the definition of “buggery” did not necessarily refer to homosexuality specifically, only “unnatural” penetrative intercourse regardless of sex or gender. In conjunction with the definition of buggery being “unnatural” and “abominable,” buggery is commonly defined as the act of “anal intercourse by a man with another man or a woman or bestiality by a man or a woman” (Gooch and Williams, 2015), both of which are outlined as illegal within section 76.

The act equates non-procreative sex with the abuse of animals, thus equating people who engage in non-procreative sex to animals. Applying LGBT studies and queer theory, the prevalent issue of this act is outlawing all forms of consensual non-procreative sex, calling it “abominable,” which directly implicates sex among and discriminates against non-heterosexual people. Excluding the mention of sexuality, this law also outlaws’ anal sex between heterosexual people, which presents a modern unused notion of sex as heterosexual people do participate in anal sex. Buggery laws enforce norms of sex being penal-vaginal reproductive heterosexual sex only. While this section of OAPA does not directly criminalize LGBTQ+ people, the outlawing of non-procreative sex specifically criminalizes consensual non-heterosexual sexual relationships and calls them evil.

Unlike section 76 which outlaws’ non-procreative sex, section 77 of OAPA includes language to specifically criminalize gay men. Emphasizing the illegality of penetrative sex between two men, this law furthers the idea of the “abominable crime” by criminalizing attempts of sodomy between men.

Whosoever shall attempt to commit the said abominable crime or shall be guilty of any assault with intent to commit the same, or of any indecent assault upon any male person, shall be guilty of a misdemeanour, and being convicted thereof, shall be liable to be imprisoned for a term not exceeding seven years, with or without hard labour. (Section 77, the Offences Against the Person Act, 1864).

Understanding that the “abominable crime” refers to buggery, this law criminalizes attempted same-sex intimacy between men due to a focus on penetration. Returning to the definition of buggery being penetrative anal sex, with this law referring to people and not objects, this law can be interpreted to criminalize any male who attempts or intends to anally penetrate another male. However, we cannot ignore the use of the phrase “indecent assault” which has historically been defined as “touching or attempting to touch the genitals of another person without their consent” (Gooch and Williams, 2015). In criminalizing indecent assault, this law only refers to non-consensual genital touching of another person, but contemporarily, scholars would equate indecent assault with sexual assault which encompasses a broader range of sexual crimes (Gooch and Williams, 2015). Simply put, this law criminalizes attempted same-sex anal sex and the act of non-consensual genital touching of a man by another man. The law criminalizes indecent assault and attempted buggery, but the distinction between the historical understanding of these terms and our modern understanding of sexual assault is critical. Purposely maintaining the language of “indecent assault” instead of “sexual assault” shows that men receive little protection from “sexual assault” in these laws. This analysis of sexual assault will be detailed later when discussing SOA.

Furthermore, the focus on the language of “attempt” and “intent” is also essential to the analysis of the implementation of this law in conjunction with recent court rulings. While this

law criminalizes *attempted* same-sex intimacy between men, it is significant to note that the reference to the “abominable crime” of buggery primarily criminalizes *attempted consensual* sex between two men.

In addressing how this law incriminates those who commit acts of *non-consensual penetrative sex between two men*, it must be noted that in 2019 a Joint Select Committee of Parliament decided not to include the criminalization of non-consensual anal sex as rape “for fear that it could be interpreted as an attempt to overturn the buggery law” (Reynolds, 2019). Using queer criminology to highlight the stigmatization of the LGBTQ+ community, the decision to exclude anally penetrative sexual violence when reviewing the law demonstrates the extent to which the Jamaican government and lawmakers centre anti-gay opinions and colonial models. It also proves that the first part of section 77 is intended to criminalize gay men based on their sexuality and consensual relationships, while the interpretation and application of the law do not protect survivors or incriminate perpetrators of non-consensual same-sex anal penetration. Yet, non-consensual genital touching by a man on another man is a criminalizable offense under this section of OAPA. Understanding that only *attempts* of buggery are criminalized, the actual act of consensual penetrative anal sex is not criminalized by this section of OAPA but is criminalized in section 76.

Finally, section 79 criminalizes “gross indecency” between men:

Any male person who, in public or private, commits... or attempts to procure the commission by any male person of, any act of gross indecency with another male person, shall be guilty of a misdemeanour, and being convicted thereof shall be liable at the discretion of the court to be imprisoned for a term not exceeding two years, with or without hard labour. (Section 79, Offences Against the Person Act, 1864).

In interpreting this law, “gross indecency” is defined as “a sexual act considered to be more than ordinary indecency but not involving actual intercourse” (Gooch and Williams, 2015). Section 79 of this act criminalizes men who have non-penetrative sex with other men. Critically, this law does not distinguish if it is criminalizing consensual or non-consensual non-penetrative sex between two men. Therefore, it can be assumed that section 79 criminalizes both consensual and non-consensual non-penetrative sex between two men, repeating the criminalization of “indecent assault” as defined in section 77 of OAPA. However, the punishment for section 79 is less severe than 77 for the same crime. Therefore, same-sex consensual anal sex, committed or attempted, can be considered a higher offense than non-penetrative sex between men, consensual or non-consensual.

In summary, these three sections of OAPA primarily criminalize different acts of same-sex intimacy, including consensual anal sex and non-penetrative sex, and non-consensual non-penetrative sex. Under both sections 77 and 79 male survivors of non-consensual non-penetrative sex by another male, such as in the form of genital touching, are protected; meaning that perpetrators can be prosecuted for these crimes. However, same-sex non-consensual anal sex is not criminalized under any of the sections, so survivors will not receive protection from the legal system because of contemporary understandings of the importance of retaining “buggery” as a crime within Jamaican law. Demonstrating the emphasis on the criminalization of consensual same-sex relationships, these three sections of OAPA have remained untouched since the implementation of the law in 1864.

In supporting my interpretation of these laws, the Inter-American Commission of Human Rights (IACHR) displays a similar understanding and has called for Jamaica to change this legislation. In 2019, Jamaicans Gareth Henry and Simone Edwards argued that sections 76, 77,

and 79 of OAPA “violate[s] their rights and legitimize violence towards the entire LGBT community in Jamaica” (Human Dignity Trust, 2021). The IACHR published the results of the case in February 2021 and found that “Jamaica is responsible for the violation of multiple rights of the claimants enshrined in the American Convention on Human Rights, including the rights to humane treatment, equal protection before the law, privacy and freedom of movement and residence” (Human Dignity Trust, 2021). The IACHR published four recommendations for Jamaica to follow including the repeal of sections of OAPA which criminalize consensual same-sex activity between adults. This decision from the IACHR is a remarkable step forward to ensure the protection of LGBTQ+ Jamaicans. Jamaica is yet to follow the guidance set by the IACHR. While this is a step in the right direction, Jamaica must do more than just change the laws to ensure the equal protection of all Jamaicans.

The Sexual Offences Act

Like OAPA the *Sexual Offences Act* (2009) was adopted from a British version of the same act. This act was primarily created due to inconsistencies in language and sentencing in the OAPA. The original British version involved 143 items, while Jamaica's adaptation included 40 articles, several of which use anti-LGBTQ+ language. While the British version of the *Sexual Offences Act* (2003) repealed the sections of “gross indecency” and “buggery,” the Jamaican version did not. SOA, in addition to OAPA, prevents members of the LGBTQ+ community from seeking justice for crimes committed against them due to heterosexual- and gender-specific language used in the act. Yet, no act directly criminalizes or punishes same-sex relationships within SOA. Using theoretical frameworks of LGBT studies, queer criminology, and postcolonial studies, I address the neocolonial and homophobic influences of these laws to emphasize the need to depart from colonial and heteronormative systems of oppression.

The primary focuses of SOA are to define sexual assault and rape and to provide guidelines for sentencing and prosecuting these crimes. The careful language used in the definition of rape shows that the Jamaican government ignored non-heterosexual encounters from the meaning:

A man commits the offence of rape if he has sexual intercourse with a woman--

(a) without the woman's consent; and (b) knowing that the woman does not consent to sexual intercourse or recklessly not caring whether the woman consents or not. (Section 3, Sexual Offences Act, 2009)

It must be noted that this definition of rape does not include non-consensual oral or anal sex as “sexual intercourse” is defined as “the penetration of the *vagina* of one person by the *penis* of another person” (emphasis mine) within section 2 of the act (Section 2, Sexual Offences Act, 2009). Simply put, section 3 of SOA strictly defines rape as a man committing an act of vaginal penetration on a woman without her consent. Applying queer theory and LGBT studies, this use of gender-specific language not only removes the ability for men to seek justice for sexual victimization but also completely ignores the possibility that other genders are also capable of sexual assault. Using queer criminology as a criminological approach to offending, the rejection of the idea that LGBTQ+ people can be offenders and victims ignores their presence in the criminal justice system. This then leads to a lack of protection for LGBTQ+ people within the CJS and by extension ignores their existence in Jamaican culture and society. On the island, LGBTQ+ individuals are frequently sexually assaulted by the act of "corrective rape:" the idea that sexually assaulting an individual will turn them heterosexual (Smith, 2018). However, based on section 3 of SOA, not all crimes of “corrective rape” are prosecuted as rape due to the

gendered language used in the act. Furthermore, LGBTQ+ survivors are unlikely to report sexual assault due to fear and mistrust from the police (Smith, 2018).

Section 4 of SOA criminalizes and defines acts of sexual assault:

A person (hereinafter called "the offender") commits the offence of grievous sexual assault upon another (hereinafter called the "victim") where...the offender- (a) penetrates the vagina or anus of the victim with- (i) a body part other than the penis of the offender; or (ii) an object manipulated by the offender;...(c) places his penis into the mouth of the victim; ...(e) places his or her mouth onto the vagina, vulva, penis or anus of the victim; ... (Section 4, Sexual Offences Act, 2009). Modified for length and relevance.

Section 4 includes non-consensual oral sex, regardless of gender or sexuality, and non-consensual anal sex without the use of a penis on men and women. While this act does not protect male survivors of penis-anus sexual assault, it does protect male survivors of non-consensual anal sex with other body parts and foreign objects. The exclusion of penis-anal sexual assault directly correlates to the government's refusal to overturn the buggery law. Primarily, they are refusing to amend the law to protect male survivors as SOA does protect women survivors of anal and oral sexual assault. Furthermore, this section of the act does not fully protect sexual assault survivors, as it does not include genital touching within this definition of grievous sexual assault. However, looking back at sections 77 and 79 of OAPA, male survivors of non-consensual genital touching by another male are protected. Thus, neither OAPA nor SOA criminalizes heterosexual or lesbian non-consensual genital touching. This exclusion further emphasizes the lack of understanding that other genders can be sexual offenders too and does not protect all survivors.

It is significant to note that since the creation of this act in 2009, prosecution has correlated with the sex offenders' registry. Sexual crimes that are listed in SOA and under sections 76, 77, and 79 of OAPA require the person to be registered as a sex offender (Department of Correctional Services, n.d.). These individuals stay on the registry for 10 years. Thus, everyone incarcerated for their sexuality under sections 76, 77, and 79 of OAPA has been required to register as a sex offender.

Latent Content Analysis: Power and Inequality

Using critical criminology and a postcolonial queer feminist lens, I consider the meanings of these laws using questions posed by Kananberg which I have modified to guide my analysis:

(1) how are systems of power and inequality used to control or oppress those who occupy different social locations? (2) does the policy consider the legal, social, cultural, and political contexts of LGBTQ+ lives and lived experiences? And (3) Are gendered expectations and language encoded in the policy and are those expectations cisnormative?

Oppressive systems of power and inequality are ever-present within these laws to control those who occupy different social locations. The implementation and creation of these policies, the language used, and the maintenance of these sections-- that is, the refusal to overturn the sections of OAPA and SOA to legalize non-procreative sex along with homosexuality-- all emphasize colonial and neocolonial oppression. These five sections represent forms of colonialism and neocolonialism based on their adoption from British laws. Not only are these homophobic colonial laws preserved within Jamaica's legal system, but they demonstrate neocolonial relationships due to the SOA's adoption forty-eight years after Jamaica's independence from Britain.

It is critical to address the origins of these laws and invoke postcolonial studies when discussing the fact that these laws were created by white oppressors during their colonial occupation when Britain also believed homosexuality was a sin (Dryden, n.p.). These laws did not and do not address race relations in either Britain or Jamaica, signifying that these policies emphasize the British norm of white-, cis-, hetero-normativity, etching racism, and patriarchal ideas into the existing Jamaican policy. This emphasizes the goal of controlling colonized nations by implementing colonial and Christian standards of behaviour through laws (Human Rights Watch, 2008). The embedding of racism, heterosexism, and patriarchy in these policies is especially true considering that Britain not only created and implemented these policies but also did not decriminalize homosexuality in the UK until 1967 (Dryden, n.p.). Considering that Jamaica gained independence in 1962, OAPA is a product of colonization and works to produce and spread neocolonialism on the island. To reject these white cis-hetero norms embedded in the laws, Jamaica must reform these laws and policies from a queer theory and postcolonial standpoint through considering past trauma and rejecting neocolonial models of oppression, including heteronormativity.

In analysing the importance of language, gendered and sexual expectations are encoded in these policies. Not only are these expectations cis- and hetero-normative, but they emphasize a Christian culture due to the focus on outlawing non-procreative sex (Lovell, 2016; Smith, 2018). Each law uses sex and gender-specific language to emphasize normative gender roles within sexual relations, such as rape only being classified as a “man” violating a “woman’s” consent. Curiously, this act uses the language of “man” and “woman,” which is gender identity, not “male” and “female,” which is sex. Applying LGBT studies and queer theory, this gender-specific language could extend to include trans* people if they identify within the binary and are

recognized as their gender identity. However, this is unlikely in a cisnormative society, but the language would still apply.

It is evident that based on colonial and neocolonial origins, in addition to hetero- and cis-normative expectations within these laws, these five sections of policy purposely ignore the historical, social, cultural, and community contexts of LGBTQ+ lives and lived experiences. Furthermore, Jamaican society, reflecting homophobia due to a history of colonization, maintains legal social, and physical discrimination against LGBTQ+ people through the application of OAPA (Lovell, 2016; Smith, 2018). These laws extend beyond the reach of criminalizing gay men and permit discrimination and violence against LGBTQ+ Jamaicans. Unfortunately, LGBTQ+ people, especially gay Jamaicans, do not receive the protection they deserve.

Discussion

Application of the Offences Against the Person Act and Sexual Offences Act

It has been reported that since 2017 the three anti-gay OAPA laws are no longer used to criminalize people based on their sexuality (Human Dignity Trust, 2021; U.S. Department of State, 2017, 2018; 2019 (note: the 2020 reports have not yet been released)). Instead, these laws have been used to criminalize and sentence “cases of sexual assault and child molestation” (U.S. Department of State, 2018, p. 14). However, as previously mentioned, the definition of sexual assault does not extend to protect certain people from certain acts, as parliament decided not to protect male survivors of non-consensual anal sex for fear it would repeal the buggery laws (Reynolds, 2019). Additionally, while SOA does criminalize non-consensual heterosexual anal sex, the language used in the act carefully avoids including non-consensual penetrative penis-anus sex on a man. If the language in the original laws directly implicate and incriminate LGBTQ+ people, but the government claims to no longer enforce these laws yet also refuses to protect male survivors of anal sexual assault, how can these laws criminalize “cases of sexual assault”? The symbolic and current interpretation and application of these laws are questionable.

Claiming to no longer incriminate gay men, but also not protecting survivors of sexual assault, the only currently claimed purpose of the buggery laws, then, is to outlaw child molestation (U.S. Department of State, 2018). Yet, SOA contains several laws criminalizing child molestation and sexual assault on a minor. Truthfully, if these laws no longer have an application or purpose, why does the Jamaican government refuse to overturn them?

The refusal to remove the anti-homosexuality laws relates to the social interpretation of the laws, thus creating the social control of LGBTQ+ people. Although no longer imposed by officials, society has taken on the role of enforcing homophobia (Human Rights Watch, 2014). Even without enforcement of the laws, their “criminalizing [of] sexual intimacy between men offers legal sanction to discriminate against sexual and gender minorities, and in a context of widespread homophobia, gives social sanction to prejudice and helps to create a context in which hostility and violence are directed against LGBT people” (Human Rights Watch, 2014). It is significant to address that violence against gay men is tied to dominating masculinity where perpetrators feel that they have “the moral authority to ‘rid the community’ of LGBT people and have no fear of arrest from the authorities” (Human Rights Watch, 2004). Criminalizing LGBTQ+ Jamaicans serves the primary purpose of permitting social and physical violence against LGBTQ+ Jamaicans with little to no repercussions.

Although they are no longer being incarcerated based on their sexuality, LGBTQ+ Jamaicans still receive little to no protection within Jamaica’s laws and policies which extends to society's interpretation of the lack of protection as a permit to commit acts of violence and discrimination against LGBTQ+ Jamaicans. Furthermore, police inaction and refusal to protect LGBTQ+ people reinforce the legality of discrimination against LGBTQ+ people and social control, as the Jamaican Constabulary Force (JCF) will not investigate acts of violence against LGBTQ+ Jamaicans, essentially offering immunity to people who commit homophobic violence (Smith, 2018). Through the laws, society, and police all working together, LGBTQ+ Jamaicans face significant challenges due to the lack of protection from those who are sworn to protect them, regardless of their sexuality and gender identity. While there are no active arrests, parliament still refuses to overturn the buggery laws and criminalize non-consensual anal sex as

homophobia is deeply institutionalized within Jamaica's legal and criminal justice systems.

Understanding that the three OAPA sections are mainly symbolic, Jamaica's government directly permits violence and discrimination against LGBTQ+ people due to its failure and lack of want to amend the homophobic OAPA and the gender-specific SOA.

System Outcomes for LGBTQ+ Jamaicans

Using Queer scavenger methods, I discuss below data, reports, scholarly research, and other sources that are available on system outcomes for LGBTQ+ people in Jamaica's legal and criminal justice systems. Applying postcolonial theory to explore the effects of colonization on now independent societies and individuals, I first discuss OAPA and SOA's influence on current politics through the institutionalization of homophobia by looking at political trends. Then I address the normalization of homophobic violence and discrimination by studying reports on violence, multiple of which were published outside of Jamaica. Considering the lack of action from Jamaica's police I look at Jamaican and non-Jamaican sources which call out police failure to protect LGBTQ+ Jamaicans. Finally, I discuss experiences of incarceration within Jamaica's CJS, focusing on homophobia and HIV-related stigma for gay inmates.

Politics and Violence

The criminalization of LGBTQ+ identities, through the illegality of non-procreative sex, has encouraged the development of institutionalized homophobia and transphobia. Politicians on the island have ensured a lack of protection for LGBTQ+ individuals (Bennett, 2010). Political representatives have made their dislike of the LGBTQ+ community clear through their refusal to overturn the homophobic laws and their decision to not include the criminalization of non-consensual penis-anal sex as rape. Thus, the Jamaican law and order system not only prevents

LGBTQ+ individuals from seeking justice for crimes committed against them but anti-LGBTQ+ opinions are also held by decision-makers.

Jamaica's legal system permits homophobic discrimination through the refusal to overturn Sections 76, 77, and 79 of OAPA. In addition, Jamaica's reputation of being one of the most violent nations in the world demonstrates the challenge positioned against LGBTQ+ Jamaicans (InSight, 2021; Human Rights Watch, 2014; Smith, 2018). Not only are they victims of violent homophobic attacks but LGBTQ+ individuals also experience discrimination daily due to a lack of everyday human rights protections and targeted discrimination within health care and social access (Logie, 2017). Homophobia is pervasive in Jamaican society, so much so that Jamaica has been branded one of the most homophobic and transphobic countries on earth because of its lack of acceptance for the LGBTQ+ community (Smith, 2018). Furthermore, Jamaica's reputation of being one of the world's most violent nations (Lewis, 2003; West, 2018) and the merging of systemic violence and homophobia has created intense violence against the LGBTQ+ community (Smith, 2018). This violence is embedded in Jamaican society and maintained by the social and legal criminalization of these identities.

Violence against LGBTQ+ Jamaicans takes many forms, from social alienation to physical violence. Most commonly, homophobic violence occurs through bullying and social or sexual harassment (Smith, 2018). Less commonly yet still frequently, homophobic violence occurs through physical and sexual assault and occasionally results in death (Smith, 2018). LGBTQ+ individuals "are taunted; threatened; fired from their jobs, thrown out of their homes; beaten, stoned, raped, and even killed" (Smith, 2018, p. 251). Unsurprisingly, violence against LGBTQ+ people is widely unreported. This lack of action is primarily due to a widespread fear of police retaliation and mistrust of the criminal justice system due to the existing criminalization

of LGBTQ+ identities (Human Rights Watch, 2004; J-FLAG, 2015, 2016). Even people who are incarcerated are not safe from homophobic violence. In the case of sixteen inmates who were murdered in one Jamaican prison as they were accused of being gay, the guards instigated the rampage (Lewis, 2003). As demonstrated in the police force and prison guards, the embedding of homophobia in society further institutionalizes homophobia in all of Jamaica's systems.

Policing

When discussing policing, the Jamaican Constabulary Force (JCF) often encourages mob attacks and violence against LGBTQ+ individuals (Lovell, 2016). The Montego Bay police frequently physically and verbally assault LGBTQ+ Jamaicans where they encouraged a group to stab and stone a gay man to death in 2004 (Human Rights Watch, 2004). Furthermore, police often fail to investigate reported incidents of homophobia and violence against LGBTQ+ people (U.S. Department of State, 2012). Thus, the flaws within the Jamaican CJS not only prevent LGBTQ+ individuals from seeking justice for crimes committed against them but often leads to their death.

Despite international and local attention towards LGBTQ+ acceptance, the Jamaican police continue to ignore and neglect LGBTQ+ Jamaicans causing a lack of justice for LGBTQ+ people and a continuation of multiple human rights violations. The 2012 Jamaican Country Report on Human Rights Practices brought attention to the lack of action by the police force when responding to homophobic social and physical violence:

The Jamaica Forum for Lesbians, All-Sexuals, and Gays (J-FLAG) continued to report serious human rights abuses, including assault with deadly weapons, "corrective rape" of women accused of being lesbians, arbitrary detention, mob attacks, stabbings, harassment of gay and lesbian patients by hospital and prison staff, and targeted shootings of such

persons. Police often did not investigate such incidents. (U.S. Department of State, 2012, p. 20).

Even though physical violence and homicide are outlined within OAPA (1864) as punishable for a minimum of fifteen years' incarceration, due to the inadequate response of the police, anti-LGBTQ+ violence is often without due process. Additionally, LGBTQ+ Jamaicans rarely report homophobic violence due to a "fear of retaliation and mistrust of security forces, and the criminal justice system" (Smith, 2018, p. 252). This fear is prevalent due to not only the lack of assistance provided by the JCF but also due to their roles in instigating and participating in anti-LGBTQ+ violence. Even though a 2011 Jamaican diversity law written and signed by the JCF itself requires the police to investigate all crimes regardless of one's sexuality or gender identity (Jamaica Constabulary Force Policy on Diversity, 2011), LGBTQ+ Jamaicans rarely seek police assistance.

Experiences of Incarceration

Incarcerated LGBTQ+ Jamaicans also experience significant rates of homophobic social and physical violence inside prisons. Sociologist and Caribbean Studies scholar, Dr. Linden Lewis argues that this anti-gay violence is often retaliation influenced by insults to the other inmate's masculinity (Lewis, 2003). In efforts to assert their masculinity against other primarily gay inmates, homophobic violence within prisons frequently results in severe harm or death for gay Jamaicans. Furthermore, stigmatization and stereotypes of HIV/AIDS in prisons create significant challenges for LGBTQ+ inmates.

Jamaican prisons violate the availability of basic human rights to those incarcerated. Without running water or electricity in cells, where inmates spend up to twenty hours a day, in addition to inadequate access to food and water, and using a plastic bucket as a toilet, individuals

incarcerated in Jamaica face significant challenges (Rodríguez-Díaz & Andrinopoulos, 2012). Additionally, two of the largest prisons on the island used to be holding blocks to sell slaves, before emancipation (Rodríguez-Díaz & Andrinopoulos, 2012). This, in addition to inadequate human rights provisions, is compatible with and an ever-present demonstration of neocolonialism in addition to the correlations between incarceration and modern-day slavery.

Jamaica has the fourth-largest number of people held in prisons regionally, where an estimated 3.3% of the incarcerated population is HIV positive (Rodríguez-Díaz & Andrinopoulos, 2012). Due to high rates of HIV in prisons, early efforts to promote safe sex and reduce the spread of sexually transmitted infections (STIs) in prisons have had detrimental effects for incarcerated LGBTQ+ Jamaicans. To address prevalent health concerns, 1997 Corrections Commissioner John Prescod suggested the distribution of condoms to inmates and guards in Jamaican prisons. Both guards and inmates took Prescod's suggestion as a challenge to their masculinity (Lewis, 2003), emphasizing the common thought that HIV is perceived solely as a 'gay disease.' Guards responded to Prescod's suggestion with a four-day strike, during which sixteen gay and allied inmates were murdered (Lewis, 2003). Soon after the murders, the commissioner resigned and a separate housing unit was created for gay inmates (Andrinopoulos, et al., 2011). The creation of a separate unit for gay inmates demonstrates the extent of the homophobic violence in prison; however, it does little to confront homophobia and end HIV stigma and associated violence. Even stigma associated with inmates obtaining HIV testing can lead to higher rates of homophobic violence, regardless of whether the inmate is LGBTQ+ or not (Hamilton, et al., 2020). There is a clear correlation between HIV stigmatization and homophobic violence in Jamaican prisons. Yet, this does not mean that sex does not occur in Jamaican prisons, regardless of what the guards' strike represented.

Limitations and Conclusion

While this policy analysis contributes to the literature on homo/transphobia in Jamaica, there are some limitations. First, I had limited access to data because some data do not exist, such as criminal justice reports in Jamaica. Therefore, I had to apply queer scavenger methods, where I looked at scholarly articles and other available sources on system outcomes for LGBTQ+ Jamaicans. Future work should aim to investigate why criminal justice data and other information such as police reports are unavailable. Second, this analysis was limited as I did not analyse race along with sexuality. I included an analysis of how systems of oppression such as racism, heterosexism, and patriarchy are embedded in the laws due to white-cis-hetero norms implemented by colonizers. However, more analysis is required on racialized sexuality concerning the colonial origins of these laws, and their effects on queer Jamaicans of colour.

Despite these limitations, this study offers analysis on social, legal, and colonial influences on homophobic policy. Jamaican laws maintain colonial-era policies and systems which criminalize LGBTQ+ Jamaicans through the illegality of non-procreative sex. These policies continue colonial and religious assumptions of sex and sexuality which I challenged by applying queer theory and LGBTQ+ studies. Using queer criminology to draw attention to LGBTQ+ people's criminalization and victimization, I analysed three sections of OAPA, a colonial implemented law that criminalizes different acts of same-sex intimacy, by outlawing non-procreative sex. These sections outlaw consensual anal sex, consensual non-penetrative sex, and non-consensual non-penetrative sex, such as genital touching. These laws, in addition to

recent rulings from parliament, do not criminalize non-consensual penetrative anal sex between men as politicians fear it will overturn the buggery laws. Furthermore, using queer theory and LGBT studies I critiqued two sections of SOA that use gender-specific language to remove the ability for men to seek justice for sexual victimization. This use of gendered language additionally prevents gay men from receiving protection from sexual assault in the law. Although individuals have not been prosecuted for their sexuality since 2017, these sections of OAPA and SOA permit discrimination and violence against LGBTQ+ Jamaicans. Directly refusing to protect survivors of rape and homophobic violence and discrimination, these colonial-era laws remain in effect today.

Using postcolonial theory to explore the effects of colonization on now independent societies and individuals, these laws promote hostility and violence towards LGBTQ+ Jamaicans (Human Rights Watch, 2014), where the lack of action from the police lets these violations occur without justice. While these laws may not be used to prosecute LGBTQ+ Jamaicans anymore, anti-LGBTQ+ discrimination and violence are still prevalent. Furthermore, the specific language within both OAPA and SOA provides little space for LGBTQ+ survivors of sexual assault to seek justice for the crimes committed against them. Not only does this further discriminate against LGBTQ+ Jamaicans, but it also negates the humanity and autonomy of survivors, especially men. Jamaica must amend and update its laws to protect LGBTQ+ Jamaicans, ensure their survival, and depart from colonial and neocolonial systems.

Recommendations

Homophobia in Jamaica's legal and criminal justice systems through the buggery laws and discrimination must be addressed and changed. I propose three recommendations for Jamaica to foster acceptance towards LGBTQ+ people.

1. Jamaica must repeal sections 76, 77, and 79 of OAPA and decriminalize consensual anal sex to ensure the protection of LGBTQ+ Jamaicans from discrimination due to their sexuality or gender. This policy analysis shows that sections 76, 77, and 79 of OAPA serve no purpose except for legalizing social discrimination and physical violence against LGBTQ+ Jamaicans. Thus, these laws must be removed to allow for everyone to engage in consensual sex, regardless of sexuality. Furthermore, Jamaica must challenge the colonial white cis heteronormative origins of these laws. Exploring the effects of colonization and resisting these colonial and neocolonial laws and systems of power, Jamaica must strive to protect LGBTQ+ Jamaicans.
2. The government must enact legislation that protects all survivors of sexual assault and outlaws' discrimination based on gender and sexuality. Jamaica must follow guidance that "the state has an obligation to promote universal respect for, and observance of, human rights and freedoms," which must include sexuality and gender (Jamaican Charter of Fundamental Rights and Freedoms, 2011). Through new laws, Jamaica can challenge discrimination against LGBTQ+ people to foster more accepting attitudes towards LGBTQ+ Jamaicans.
3. Jamaica must train and educate citizens and public officials on sexual and gender diversity to limit discrimination and harassment. Education is a critical method to encourage acceptance from a young age. Educating citizens and public officials will reduce rates of violence and harassment from law enforcement and others as it will assist in deconstructing harmful stereotypes and opinions towards LGBTQ+ people.

Jamaica must adopt these recommendations to decriminalize LGBTQ+ identities by removing the buggery laws. The buggery laws are the remnants of a colonial heteropatriarchal system that must be removed to promote sovereignty and move away from colonial and neocolonial models of oppression. It is primarily through the removal of the buggery laws and the promotion of equal rights that LGBTQ+ Jamaicans will experience lower rates of violence and discrimination based on their gender and sexuality. Jamaica must strive to protect and accept all citizens so the nation can proudly identify with its motto “out of many, one people”.

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