

# ‘WE ARE LANDOWNERS’ TERRITORIAL AUTONOMY AND LAND TENURE IN THE JAMAICAN MAROON COMMUNITY OF ACCOMPONG

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## Introduction

Stripped of their freedom, enslaved Africans were deprived of all their rights. They were commodified into objects of trade. Consequently they lost all right to hold material property. For reasons of economic calculation they were allowed to keep small provision grounds for their own subsistence,<sup>1</sup> since this ‘freedom’ reduced the maintenance cost of the brutally dehumanized work force. But it also gave the deported Africans a sense of ownership. To achieve unrestricted freedom they had to take a decision themselves, either individually or in newly formed groups: *marronage*. Only those who escaped from the plantations had the chance to occupy land in a manner which enabled them to use their occupation as a means to gaining self-determination. Throughout the African Diaspora these groups were called Maroons (*Cimarrones* in Spanish, *Marrons* in French).<sup>2</sup> Freedom was certainly their primary aim. The occupation of land and its defence by armed struggle were the means to achieve it.

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<sup>1</sup> According to Patterson (1973: 216) Jamaica was the first of the Caribbean islands to utilise the provision-grounds system as the main means of ‘supplying’ the enslaved with their subsistence. The first Act regulating this new institution was passed in 1678 (Colonial Office Records 139/vol.5: Acts of the Council and Assembly of Jamaica). By the 1720s the provision grounds system was well established (Halcrow 1982: 83).

<sup>2</sup> For an overview of Maroon communities past and present see: Bilby and N’Diaye (1992); Price (1983a); Agorsah (1994).

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Among the most successful Maroon societies in the western hemisphere were the Windward and Leeward Maroons of Jamaica. They managed to survive the entire period of British colonial rule from 1655 to 1962 and they still endure as viable societies in the villages of Moore Town and Scott's Hall in eastern ('windward') Jamaica as well as in Accompong in western ('leeward') Jamaica. Land, or rather the communal ownership thereof, remains the backbone of their autonomy within the legal, social and economic confines of the modern national state. Legal pluralism, if that notion does not appear too cynical in the historical context of slavery, has defined their political existence since the formation of their societies. By building on experiences derived from various African cultural backgrounds the early Maroon communities created or recreated systems of social organisation and political leadership that were 'African' in character (Zips 1998), at least if we concentrate on the 'grammar' of these dynamic systems and not on their 'phonetics' alone. These Maroon innovations of African origin differ sharply from the legal traditions imported by the colonial occupant. Legal pluralism in Jamaica, as to varying degrees in other Caribbean countries, owes its modern tension to the historical unequal clash of African and European traditions. The attitudes of the post-colonial state reflect the colonial legacy in the field of law in relation to the issue of land. Like the Roman law concept of individual property, in the English common law exclusivity of titles prevails. This contrasts with the Maroon institution of communal land ownership derived from African origins.

Maroons in Jamaica are governed by their own authorities, continually claim sovereign rights, and stay faithful to their cultural traditions forged during the earliest days of African-American history (Price 1992: 62). Once they had gained their official independence through peace treaties with the colonial state the protection of their territorial rights became the main focus of their strategy. Today the Maroons still withstand the much more subtle challenges to their independent status in the post-colonial situation. These take the form of ideological urging to contribute to a national identity by severing their historical bonds to the Maroon lands and renouncing all claims to sovereignty, and this is supported by hegemonic legal and economic structures of the national state. 'Out of many people, one nation', the Jamaican national motto, is but one example of the rising pressure for assimilation into the general population.

Yet, contrary to the expectations of state agencies, Maroon societies in Jamaica, as in Suriname (Pakosie 1996), are unwilling to dissolve their corporate existence as sociocultural entities. They insist on self-governance, confident of their own leadership systems comparable to forms of traditional authority within the context of African chieftaincy. In both Suriname and Jamaica, Maroons enjoy a factual legal position close that of 'a state within a state' (Price 1983a: 293; Zips 1993b). As in the case of traditional systems on the African continent, their actual social,

economic and political situation depends largely on the diplomatic skills of their chiefs in negotiating favourable conditions for their autonomous existence. (Van Rouveroy van Nieuwaal (1997) makes analogous observations in the West African context.) However, the diplomatic frame is determined by the general attitude of the national political system towards the competing 'traditional' power. Autonomy without sufficient financial means, legal 'justice', and civil rights has little attraction even to people fiercely proud of their unique historical heritage. 'Modern' Jamaica takes an affirmative stance towards the historical achievements of the first Black freedom fighters. But their maintenance of political enclaves with sovereign claims on the territory which they won from the colonial power in the 18th century is regarded much less favourably.<sup>3</sup> State institutions and traditional authority compete over legitimacy in the field of power within Maroon communities.

I first attempt a historical reconstruction of the (re-)emergence of chieftaincy in Jamaica during the seventeenth century. This is intended to define a frame for a preliminary discussion of the different legal bases of the state and the Maroon authorities, especially in regard to land rights and tenure. Such a historical approach appears essential, not only for a better understanding of the ongoing competition between the two authorities with its tendency to be realised in conflicts over sovereign rights, but also to enable the formulation of possible solutions to the dilemma of the colonial heritage of legal pluralism.

### The Recreation of Leadership in 17th Century Jamaican Maroon Societies

For an accurate reconstruction of even the most basic aspects of Maroon

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<sup>3</sup> This ambivalence towards the Maroons might be attributable partly to a specific position of Black nationalism, which celebrates the military success against the plantocracy and cultural links to African traditions, but at the same time is reluctant to acknowledge a competitor in the field of nationalist sentiment. This view is manifested in a multitude of symbolic expressions on the Jamaican side. These can be read as elements in a trend towards 'folklorisation' or 'nationalisation' of the Maroon struggle while there is simultaneously silence concerning their present status in law. For example, the Maroon chieftainess Nanny was pictured on the largest Jamaican banknote (\$500), but the possibility of even mentioning the Maroons in the constitution was viewed with great reluctance by members of the Constitutional Law Reform Commission, according to my preliminary findings (interviews carried out in 1997 in Jamaica).

organisation and leadership in the formative days of their social history in the first decades of the seventeenth century there is little material. The oral history of the Maroons barely mentions the existence of the organised groups which in 1655 took the side of their former Spanish enslavers to resist the British (Harris 1992: 73). Oral testimonies generally begin with Nanny, Kojo, Kwako, Accompong and other leaders, "...who placed our community on the road of freedom" (interview documented on film with Melvin Currie on 6.1.1989, Zips 1991: 65-66). These leaders were in power before and during the conclusion of peace in the year 1738/39. Written sources generated by their colonial counterparts give scanty information on internal structures of authority among the first Maroons in Jamaica. The writing of history and culture served a legitimising function for the doctrine of racial superiority and colonial control. It is difficult to rewrite the early political history of the Black freedom struggle from the obvious distortions in the written 'primary' source material (Lewis 1983: 8-12). Little can be said with confidence about the first known chief of the Maroons, Juan de Bolas, whose name is possibly a Spanish pronunciation of the African names Gyani and Lubolo. His group was one of three or more Black communities with recognized leaders in the years following the British conquest of Jamaica. The fragmentary nature of the data does not indicate the ethnic-cultural background of these Africans, brought to Jamaica by the Spaniards.<sup>4</sup>

Sources recording the efforts of the British to win Lubolo to their side reveal the size and location of the fortified village, or *palenque* in Spanish.<sup>5</sup> At the *palenque* under his leadership, situated on the south side of the island in the Clarendon Mountains, resided around the year 1660 a group numbering about 150 people (Campbell 1990: 20). Originally an ally of the Spanish troops Lubolo showed political flexibility in accepting a British offer of partial independence after the Spaniards had been defeated. The 'Charter to the said Negroes', issued in a Council meeting of February 1, 1662/63, honoured Lubolo with the new title 'Colonel of the Black Regiment' and made him and others of his men magistrates with jurisdiction over his people in all ordinary matters except cases of great consequence and "cases of Life and Death" (Colonial Office [CO], 140/1,

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<sup>4</sup> Curtin (1969), to whom Campbell (1990: 16) refers to establish northern West African and Angolan origins of the 'Spanish Maroons', does not specifically mention the origin of Africans brought to Jamaica before the arrival of the British. Campbell's assumption is based on Curtin's general analysis of the Spanish slave trade.

<sup>5</sup> See Campbell (1990: 20) for a detailed discussion of these sources; see Cundall and Pietersz (1919) for the Spanish history of Jamaica.

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Council meeting, February 1, 1662/63). The British purported to grant lands to Lubolo and his followers and the British governor guaranteed them all the liberties and privileges of Englishmen. This appointment of Lubolo as Colonel of the Black militia and a magistrate altered radically his base of legitimacy, at least as far as others than his 'own' Maroon followers were concerned. He had been a charismatic or traditional authority, and he was now designated a legal sub-ruler or administrator within the colonial system. When on the orders of the governor he campaigned against another Maroon group, he did not act on his own behalf, but as a subsidiary of the colonial administration.

In this action he was set against a group of people which, like his, had been formed in pursuit of the same cause of freedom from slavery. However, these Maroons, known as the Los Vermahalles<sup>6</sup> and under the leadership of one Juan de Serras, had chosen a different path from that of Lubolo and his followers in their struggle for liberty. They refused the offer of freedom and lands in return for surrender. The reasons for their defiant decision are not known. It may have been distrust of the European offer - a distrust possibly well founded, given the fate of most Maroon groups who trusted the European powers in vain. It may have been unwillingness to exchange the control of vast areas of Jamaica's interior for the 20 acres of colonial lands which were offered, or a strategy aimed at improving their bargaining position. In any event, Lubolo's military enterprise against these fellow Maroons ended in total defeat and with his own death. To interpret this event as an act of Maroon vengeance against a Black traitor, as some authors have (Campbell 1990: 25; Robinson 1969: 29), seems to read late 20th century Black consciousness into the historical situation of the 1660s. It is more likely that Lubolo and his troops were seen simply as a serious threat to the state of liberty enjoyed by the Los Vermahalles Maroons and based on the factual control of land.

Even though Juan de Serras initially took a harder bargaining position than Lubolo towards the colonialists, the few documentary sources show him as a leader with a keen understanding of the whites, who strove with skilful diplomacy for his community's aim of peaceful independence. In 1668, some five years after Lubolo's defeat, the Vermahalles Maroons of de Serras were also the subject of a proclamation by the Governor and Council. This declared them to be free and equal to other British subjects. (See Campbell [1990] for an extract from the

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<sup>6</sup> The Los Vermahalles were named after the location where they had built their *palenque*: the Vermahollis Savanna in the Cave Valley between the parishes of Clarendon and St. Ann (Hart 1985: 6). There are different forms of spelling; see Hart (1985: 6); and Campbell (1990: 25).

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original text of the proclamation: Colonial Office, 140/1, March 28, 1668.) Their acceptance of peace - or 'submission', as the British called it - hardly turned them into traitors too. Just two years after their proclaimed submission, they resumed hostilities against the white slaveholders, most probably for the purpose of safeguarding their territorial integrity. Though all conceivable measures were taken by the plantocracy to suppress and eradicate the 'rebels' (as Maroons were mostly referred to in colonial sources), the Vermahalles and other groups continued to be a thorn in the flesh of the white planter-class.

Individual runaways increased the membership of the tiny Maroon entities. Occasional attacks on outlying plantations provided them with goods for their subsistence and with new recruits of both sexes. At a later date with uprisings of whole plantations the situation came close to a war of independence. The so-called Sutton's rebellion became especially famous because of the great number of rebels who escaped.<sup>7</sup> Carrying the arms they had seized, they reinforced the groups already existing in the Cockpit Country, who may or may not have been earlier followers of Juan de Serras. Reportedly the revolt was led by the father of Captain (or General) Kojo, who was to become the most famous Maroon chief as a result of being in command at the signing of the peace treaty in 1738/39 (Kopytoff 1973: 71; Schafer 1973: 64). It was the period following this revolt that consolidated chieftaincy structures in the Maroon communities and set the pace for later developments leading to territorial autonomy.

### The Consolidation of West African-Type Chieftaincy Among the Maroons

There is general agreement among scholars that Kojo and his father were of Akan origin. It is assumed that Kojo was born in Jamaica whilst his father came from the former Gold Coast. At the time in question, the end of the 17th century, powerful kingdoms existed in the area which today is Ghana. Around the time, soon after 1700, when Kojo must have taken over the leadership from his father, the kingdom of Denkyira was supplanted by Asante as the principal Akan power.<sup>8</sup> Maroons today refer to 'Ashanti' (Asante) in giving their ethnic origins (Harris 1994: 36). This claim should be read on a symbolic level as according with their

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<sup>7</sup> It was reported that about 500 slaves participated in the rebellion on the estate of one Mr. Sutton. Some 150 may have escaped into the mountains (Hart 1985: 18).

<sup>8</sup> See McCaskie (1995: 58-63) for historical examples of authority in the early Asante state. For the struggle with Denkyira see Tufuo and Donkor (1989: 25-40).

interest in a 'powerful genealogical narration'. However, in fact the structures of chieftaincy or African kingship form the experiential background of Maroon leadership. These were the African cultures the Maroons came from, and should therefore be considered in a structural comparative frame, as Brathwaite (1994: 120) has recently argued.

It is generally accepted that no Maroon culture was constituted as a directly transplanted African system, even if the original founders of a particular society were homogeneous in terms of their ethnic and cultural origins. Between them and the Motherland lay not only the dreadful experience of the so-called middle passage, but also entirely new conditions of survival that could never have allowed for a simple revival of any specific social, political, religious, or aesthetic system of African origin. The earlier search for African 'survivals' or retentions, which it was thought might enable specific ethnic origins to be traced, has therefore been replaced by an analytical approach. This approach is conscious of the African character of Maroon organisational principles but is also aware of the continuous inventions by Maroons in all social fields (Price 1992: 64).

This analytical perspective need not prevent us from making connections between Caribbean cultures and their African sources, especially if we consider the flexibility of African systems of leadership and chieftaincy, which may be said to be traditional in the most dynamic sense of *traditio* as a process of communicating custom, knowledge and social norms.<sup>9</sup> The significance of this notion of tradition is aptly summarised by Price:

(Maroons)... have built systems that are *at once* meaningfully African and among the most truly 'alive' *and* culturally dynamic of African-American cultures. (Price 1992: 64)

Various Maroon groups existed on the island in the decades preceding the peace treaties with the British. There were clear differences in their political organisational efforts. Hence it is not possible to define a single, uniform system of 'chieftaincy' in Maroon societies, even if the focus is on some very limited period. Furthermore these distinctions went unnoticed in the military reports on which the later historical accounts of the Maroons and the scanty descriptions of their leaders - foremost Nanny and Kojo - were based. For the colonial observers it was quite impossible to imagine, and much less possible to accept as existing in reality an elaborate political, social and religious system of authority among the

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<sup>9</sup> See Zips 1998 for a theoretical discussion of this process referring to the framework of the theory of practice of Pierre Bourdieu (1979).

'wild negroes' (the etymological meaning of the colonial term Maroon). But it was still even more unthinkable to these literary foes of the Maroons to conceive of a Black woman such as Nanny occupying the complex position of a female chief or queenmother comparable to her African counterparts. Thus Nanny was branded with the typical mark for nonsubmissive women of the time: that of a witch (Thicknesse 1790: 69-74; Dallas 1803: 34, 74). Kojo's status on the other hand was reduced to its military aspects. I have argued elsewhere that the picture changes drastically if the situation is recontextualized by viewing it in comparison with West African systems of complementary male and female leadership (Zips 1997a). Thus, if it is assumed that African structures were the predominant source for socio-political reorganisation, the reemergence of female leadership within a dual model of authority needs less explanatory effort than its absence would require. The available written, colonial sources allow at least for a reading of Nanny as representing a possible female leadership role analogous to some of those in the historical West African context.

In that contemporary West African context complementarity and differentiation of political functions were defining features of states such as Asante. The Asante government knew of various institutions constituting a deliberative system, such as a privy Council, cabinet, Council of state, Council of Kumase, House of Commons, high Council, senate, Grand Assembly, Kotoko Council, Supreme Council of the Empire.<sup>10</sup> Its highest deliberative body was the *Asantemanhyiamu* (Assembly of the Asante Nation: McCaskie 1995: 146; Wilks 1975: 146). Membership in this Assembly was on a territorial basis. Its origins may be assumed to date from the very beginning of the Asante kingdom at the turn of the 17th century (Wilks 1975: 387-388). This coincides exactly with the pre-treaty period of Maroon history in Jamaica. It is the political system of the Asante with which Maroon oral tradition strongly identifies. Following the structural comparison with that system, the reported existence of territorial units under their own headmen or chiefs in the Windward Maroon society of eastern Jamaica does not necessarily suggest a loose federation of independent units, as some authors have argued (e.g. Kopytoff 1973: 77). On the most general level we can rather conclude that the Windward Maroons may have had a system of leadership with a divisional territorial organisation and an acting chief, whether or not the chief acted on behalf of yet another superior in the person of Nanny. (The arguments leading to this conclusion are put in more detail in Zips 1998.)

In the case of the Leeward Maroons the position of Kojo is less disputed. But

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<sup>10</sup> The capitalisation follows Wilks (1975: 146) who refers to the literature on these institutions.

even for this social group the picture of one autocratic ruler given by the written (colonial) sources, on which modern accounts are generally based (Kopytoff 1973: 89), seems of doubtful reliability. There were at least two large settlements in the west, namely Kojo's Town and Accompong Town.<sup>11</sup> The latter was named after yet another Maroon leader, known as the brother of Kojo. Oral traditions in Accompong today speak of a deliberative body, called the Council of Elders, which existed prior to the peace treaty. Kojo is also said to have had at least two brothers in leading positions as well as several sub-chiefs (interview with Captain Melvin Currie on 6.1.1989). This is also supported by the last article (No. 15) of the Peace Treaty 1738/39 which sought to alter the rules of succession among the Maroons. It declared the legitimacy of Captain Cudjoe (English spelling for Kojo) as lifelong leader and purported to determine a line of succession.

The text of the treaties reveals clearly the degree of consolidation Maroon leadership had achieved during 85 years of a continual state of war.<sup>12</sup> Yet the two sides had sharply conflicting interpretations of the treaties. These documents present very complex problems of interpretation that reflect the opposed legal and political perspectives of Maroons and colonialists. I shall only sketch certain aspects of these issues in order to shed light on the dynamics of change in Maroon leadership following the transition from military conflict to peaceful, although ambivalent diplomacy. (A more detailed discussion of the peace treaties is given in Zips 1996: 284-290.) With these provisions the factual control of the island's interior received a legal status, since the treaty was ratified by an Act of 1 March 1738/39, and the role of the leaders changed to trusteeship of communal landowning 'for the born and the unborn'.

### The Peace Treaties of 1738/39 and Their Effects on Maroon Chieftaincy and Sovereignty

Generations of Jamaican Maroons lived on the verge of extinction. They were continually close to being overrun by the then superpower Great Britain. In the event of detection of their villages and hiding places, this would have been their inescapable fate, which in fact was suffered by Maroon groups in most parts of the African Diaspora. On the other hand, the colonialists lived in constant fear of

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<sup>11</sup> Kojo's Town was renamed Trelawney Town after the peace treaty. It was most probably where Maroon Town is located today.

<sup>12</sup> There were of course periods of relative military tranquillity, but even then regular military skirmishes occurred (Hart 1985: 1-60).

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a general Black uprising. Greatly outnumbered by the enslaved, they were terrified by the myth of invincibility spun around the supernatural practices and actual military devices of such commanders as Kojo and Nanny. The racial order of the planter class and colonial administration with their master/slave mentality must have been severely shaken when they sued for peace these dreaded 'animalized' rebels whom they had depicted as barbarians for well over 80 years (e.g. Edwards 1796). It is in terms of this symbolism that most 'modern' authors concede that the peace treaties are to be seen as an unparalleled historic achievement in the struggle against slavery.<sup>13</sup>

For the Maroons, as all oral traditions vigorously insist, it was the exchange of blood between the Whites and themselves (as described in the account of Mann O. Rowe quoted below) that 'made peace'. Hence these treaties are still called 'blood treaties'. From a legal doctrinal point of view, the exchange of blood was apparently seen as constitutive by the Maroons, whereas the signature on the written document was considered to have a purely declarative character. With this ritual interaction between the Maroon leader Captain Kojo and the British negotiators Captain John Guthrie and Captain Francis Saddle, signifying the final conclusion of the peace treaty, the contract received a ritually protected status for the Maroons. A statement of equality was entailed by it, for only equal nations and sovereigns would conclude peace in such a way, in the view of the African societies from which the Maroons came. For them the blood pacts were therefore sacred agreements (Kopytoff 1979: 45). Any attempt to tamper with the treaties or to revoke them would have called the Maroons back to arms (Zips 1993a: 117; Martin 1973: 176). The 'sacred charters of peace' could only be broken through a new exchange of blood - a clear metaphor for the renewal of war (Kopytoff 1979).

The peace treaty marks the differentiation of the Jamaican Maroons from other Jamaicans today. This is referred to by Mann O. Rowe, the Secretary of State and historian of Accompong:

Jamaica get independent by political strain, but we shed our  
bloods and we retaliate it back to the English and gain victory.  
When it was coming to a peace term they injected their veins  
and caught the bloods, both white and black bloods of we, the

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<sup>13</sup> There were several peace treaties concluded with different Maroon groups in Jamaica in short succession; the most important were those of 1738/39 with the Leeward and Windward Maroons. For a more detailed discussion of differences in the treaties and their specific histories see Zips 1997a.

Maroons and the whites, the Englishmen, into a calabash basin and mix it with rum and weed.... Kojo says that he would never tolerate the English ruling, because it's too tricky. So he and his people want to live together. That's why he say, after the signing of the peace treaty: you must set us a boundary and you keep on the other side, while we keep on our sides. In the peace treaty is written that Kojo and his people is to live together. And if there is any war breaking out in this country, if this island should be invaded by foreign enemies and we are called upon to assist them, then we must voluntarily come out and assist them. But they could not demand us as Maroons to go to any other part of the globe or to another country to fight a war. If anyone feel so, well, we would not. They cannot demand us; they can only demand landholders in Jamaica here. But we are not landholders. We are landowners. (Mann O. Rowe, interview, January 1989, published on film in 1990: Zips 1991.)

An 'everlasting guarantee' for their territorial sovereignty derives, in the Maroon perspective, from the third clause of the peace treaty which reads:

That they shall enjoy and possess, and their posterity for ever, all the lands situate and lying between Trelawney Town and the Cockpits, to the amount of fifteen hundred acres, bearing north-west from the said Trelawney Town (Clause Three of the peace treaty, 1st of March 1738).<sup>14</sup>

Ownership of these so-called treaty lands is the most valued good of Maroon societies. Every threat to the territorial independence of Maroons is interpreted as a threat to their corporate existence as Maroons. Their modern self-understanding as a state within a state and as an independent self-governed nation is vested in

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<sup>14</sup> The peace treaty or at least the closest copy to the original from which this transcription is taken, is kept by Mann O. Rowe, a fact that has important implications. Its possession can be, and in fact is interpreted by many members of society as a tacit and consecrating delegation of the group's authority. In the prevailing view of the Accompong Maroons, such delegation cannot be based on the authority of the living alone, but has to be positively sanctioned by the very people who won the peace, the most powerful ancestors. Thus the 'control' (as another notion for possession used among the Maroons for the individual holding of communal property) of the treaty is evidence of the relationship with the First-Time people and therefore constitutes a powerful social capital.

their land rights.

For the British the treaties were, quite to the contrary, political instruments to 'pacify' a dangerous enemy. It was not intended to turn the 'rebels' into a sovereign nation. Rather, they were to become a special class of free subjects of the Crown, serving the colony in the maintenance of slavery and as a military force in case of foreign invasion. To achieve this it would have been necessary to undermine the traditional authority of the chief and to substitute for it the legal authority of the colonial administration. But, as I have argued elsewhere, the colonial policy proved futile (Zips 1998). A strategy of using the chiefs as 'indirect rulers' under the supervision of white superintendents, as provided by article 14 of the Peace Treaty, failed mainly because of the role of the chiefs as institutional guarantors for the integral link between self-determination and territorial sovereignty based on the autonomous control of land. In this respect the parallels between the Jamaican Maroon leaders and their Akan counterparts become most striking.

### Some Comparative Remarks on Akan Land Tenure Systems

For a Caribbean researcher, and particularly a 'Maroon scholar', the social actors' conflicting views actors on legal issues concerning land are the order of the day. This is barely surprising in view of the historical contest over land, the divergent traditions from which these social actors originated, and the variety of interests in land which may exist in a plural society. There is a temptation to attribute apparent confusion over land law to the 'Caribbean condition'. This appears quite often as the very opposite to the proverbial 'melting pot', and as rather a battlefield where generally accepted views and rules are shaped in contest against one another. Subconsciously for many 'Caribbeanists' Africa provides the pure, sometimes the 'ideal' tradition with which the 'Caribbean mess' can be contrasted. In relation to land tenure a presumed situation of communal land ownership in Asante, as the nation most Maroons point to in asserting claims about their origin, offers a comparative framework for the 'same' institution in Maroon society.<sup>15</sup>

I have put the argument thus:

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<sup>15</sup> Communal landownership is still undisputed in Accompong but the recent tendency to bring land disputes in front of the Jamaican magistrates' courts leads to erosion of the institution, a trend which I discuss in the following sections.

Comparable to the system of landownership in Akan societies of West Africa, individual property of land is not known. Ownership of land in Ashanti is for example solely vested in the Golden Stool. All land belongs to the King, the Asantehene. Even the status of divisional chiefs in relation to the land they presided over was rather that of a caretaker for the King than that of an owner. The sale of land was historically unknown; where such sales occur today, it is purely a sale of the agricultural rights which does not affect the Stool ownership of the land. This was restated by the present Asantehene Otumfuo Opoku Ware II at his accession to the Golden Stool in 1971, when he proclaimed his rejection to the sale of Ashanti land, if the sale gave freehold title to the purchaser. (Zips 1995: 164-165)<sup>16</sup>

After a more complete in-depth consultation of the literature on Asante customary land law I should emphasise that this representation sketches only one side of the coin, that of the Golden Stool.<sup>17</sup> The two propositions of customary land law mentioned above - that no land in Asante may be sold, and that all land is vested in the Golden Stool - are the subjects of legal debate and political argument, just as is the proposition that the Maroon Colonel (chief) in conjunction with his Council in Accompong are trustees of Maroon land. It is from this comparative thought that I attempt a few remarks on Akan, and especially Asante customary land tenure.

In his discussion of the widely publicised claim of the newly enstooled Asantehene Otumfuo Opoku Ware II to the absolute title of the Golden Stool to all lands in Asante,<sup>18</sup> Woodman draws an important distinction between two different forms of title:

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<sup>16</sup> This passage appeared in the original paper (Zips 1995) for the Conference of the Commission of Folk Law and Legal Pluralism held in Legon, Ghana in 1995, on which this contribution is based.

<sup>17</sup> I am indebted to the comments of Gordon Woodman and Kasim Kasanga, both participants of the 1995 Conference in Accra, for some new insights into the ongoing debate.

<sup>18</sup> The statement was made in an address to the traditional council of Kumasi on 26 April 1971, in the first year of his reign (see also Obeng 1986: 55).

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Firstly, there is the entire interest of a stool, called variously the 'absolute', 'ultimate' or 'allodial' interest or title. It is probable that traditionally this could not be sold to an individual, since this would have resulted in the stool depriving itself for ever of all rights to land: an act both suicidal and sacrilegious... Secondly, it is arguable that a stool may be able to sell to a stranger the title or interest known as the determinable estate, usufruct or proprietary occupancy. This is the interest which a subject of the stool acquires when he makes a farm on stool land. It carries the right to use the land for ordinary purposes, such as farming or building. The right exists in perpetuity, subject only to an obligation to render customary services to the stool. (Woodman 1971: 5-6)

Reviewing decisions of the Court of Appeal, Woodman arrives at the conclusion that the courts are likely to hold that interests other than the allodial titles can be sold in Asante. The legal reasoning behind the courts' position, in clear conflict with the Asantehene's, stresses the impact of western ideas of landholding upon a formerly rigid system of native customary laws, and their resultant 'relaxation'. Notwithstanding the obligation of the Divisional stools to render allegiance to the Golden Stool, it remained unclear whether the courts would hold the Golden Stool to have title to all land in Asante (Woodman 1971: 6). It would appear in summary that this is not an issue as to the existing law but a matter of conflicting political wills. Statements of the different parties, such as the state, the Asantehene, and the Divisional chiefs, are positions taken in an ongoing political struggle rather than 'analytical descriptions' of the land law in relation to ownership and interest.

On a more general level Kasanga (1988, 1994) examines the essential features of the land tenure systems in Ghana. His main subjects are the extent to which customary ('communal') tenurial systems may be a possible constraint on specific aspects of development, and the impact of state legislation on Ghanaian customary land laws. Within the modernisation discourse, as it is conducted in most development agencies, traditional (communal) land tenure functions as a 'convenient scapegoat', claims Kasanga, for failure to achieve economic growth and development (Kasanga 1988: 1). A critical attitude to such assumptions and their weakly justified call for the nationalisation of all land provides the background for Kasanga's empirical study. According to this author and the sources he cites, the traditional system of land tenure guarantees each member of a community the right of access to land for farming and housing.<sup>19</sup>

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<sup>19</sup> Land is also made available for community projects to fulfil the needs of the

There are varying tenurial systems in different parts of Ghana. Generally four types of landholders exist: (1) individuals and families, (2) stools, sub-stools and skins, the chiefs representing the stools or skins which symbolize the community, (3) 'tendamba' (representing the first settlers of villages or towns) or clans, and (4) government. Ninety percent of the total land area in Ghana (92,100 square miles) fall under traditional customary land holding.<sup>20</sup> In each district one of the groups just mentioned holds the allodial title to land. The position of the chief or other leader is that of a titular holder, holding the land in trust for the whole community. In a nutshell the predominant holding of allodial titles in the Ghanaian regions under scrutiny is as follows:

[T]he 'allodial' title, beyond which there is no superior interest in land, is held by 'tendamba'... in the Upper West and Upper East regions, by skins in the Northern regions, and by stools and sub-stools in the Akan and some Ga communities in the South (Kasanga 1988: 30).

Other important features of customary landholding in Ghana are analysed by Kasanga (1988: 31-69). Strangers who wish to acquire land must first seek the permission of a chief to settle in his area and then contact the actual landholder. The stranger's interest is potentially secure as long as the individual recognises the 'allodial' title or 'customary freehold' of the land donor (Kasanga 1988: 31-32). For locals the formalities for acquiring land are minimal. In Asante for instance a native only pays a 'testimony fee' (*dasebo*) which witnesses his right to occupation and his acquisition of usufruct of the land for his life and the inheritance of similar rights by his family. Whereas the absolute alienation of farmland through purchase was not encountered in the survey centres, it was in respect of houses and building plots. In the case of housing land, communal lands are therefore tradeable. Proofs of landholding include boundary indicators and social recognition. In the absence of survey maps, recorded titles, and registration certificates, social recognition of an individual's occupancy and use of land is sufficient evidence of legitimate landholding. One of the few possible grounds for

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general public (Kasanga 1988: 6).

<sup>20</sup> According to Ghana's Presidential Adviser for Chieftaincy Affairs, Nana Akuoko Sarpong, approximately 70% of Ghana's total land area consists of stool lands (interview in the course of the Commonwealth Local Government Forum Symposium on Traditional Leadership and Local Government in Gaborone/Botswana, 25.9.1997).

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loss of rights in communal land, including land in rural areas, is failure to pay levies imposed on an individual by the traditional authorities. Government legislation affecting agricultural land proved totally ineffective in the study areas, since it was simply not known to most people. As for housing legislation, almost all the respondents either did not know of its existence or felt no need to obey the legal provisions. Native authorities are supposed to function in the interest of their subjects on the basis of the 'trusteeship idea', which incorporates an obligation to promote the well being of the community. Both social and religious sanctions protect the institution of landholding, since inherited farmland is regarded as a sacred trust from the ancestors. Thus communal landholding ensures a high degree of transparency, the accountability of all title holders, and security for present and future generations. That systems of customary landholding seem to be satisfactory to the distributive needs of rural communities in Ghana is given as a reason by the study for the almost complete ignorance of government legislation in matters of land law:

Despite the clear demands of legislation, in practice, land holders freely transact business with land users.... If the government were to charge people for defying its legislation affecting land, almost the whole country would be on trial. (Kasanga 1988: 52-53)

Traditional authorities, i.e. chiefs, play the main role as allodial title holders in Akan societies. They occupy titular positions, exercising the functions of general trustees on behalf of the whole community. As a consequence land is primarily in the hands of the whole community, not the individual. A Council of elders usually provides a check on the powers of the chief in his allocation of land and jurisdiction over it. All disputes are settled by traditional authorities at very small or no cost. Even though land is communally held, families and individuals are in effective control of all decisions in regard to land use and possible investments. This is what Kasanga terms "individual risk farming superimposed on a communal superstructure". It implies the economic responsibility of the individual actors for their agricultural planning and practices. Summarising his empirical findings on land tenure and its impact on development Kasanga writes:

From this analysis, the only logical conclusion is that Ghanaian tenurial systems are a source of social security and continuity; the full enjoyment of the fruits of one's labour and efforts are guaranteed, and in regard to land, no man is big or small in his own village or town.... Tenure assures full employment on the land to all locals and most strangers if they are willing and able to farm or build. Poverty exists, particularly in the Wa district.

But the fault is not with the tenurial system... The main conclusion from this study is that there is no apparent significant problem (for a majority of people) in regard to the existing tenurial systems of Ghana. Land is equally distributed and most people are fairly treated.... There is no need and no apparent benefit to be gained at this stage, from the wholesale nationalization of land. (Kasanga 1988: 68, 88-90)

The socio-legal framework of land tenure in Ghana, especially in the various Akan societies as revealed in the recent empirical studies of the Ghanaian scholar Kasanga, bears a strong resemblance to my preliminary empirical findings on land tenure in Accompong.<sup>21</sup> Discrepancies with the Akan and other Ghanaian tenurial systems do exist. These are to a large degree attributable to two peculiarities in the historical circumstances. These are, firstly, the long freedom struggle and its rewards in the form of charter-like treaties, and secondly, the subsequent need to defend the obtained rights continually through the whole colonial and post-colonial period up to the present. In the following I shall concentrate on the actual situation today and its grounding in these historical structures.

### Communal Land Ownership and Oral Tradition in Accompong

In the Jamaican Maroon community of Accompong individual land holders enjoy no more than agricultural rights, which they can dispose of by will, lease, sell or dispose of in any legal form which is consistent with the institution of communal land ownership. In other words, it is correct to say that an individual Maroon may control a plot of land, or even that a plot of land may belong to the individual, but formally speaking the individual does not own land. Ownership is in the community at large, which is obliged to ensure that the integrity of the treaty lands is kept intact for succeeding generations. This is expressed in the standard saying: "Kojo said that the land is for the born and the unborn. Therefore we cannot have any individual land title" (Wayne Rowe, interview on 3.2.1994).

The Colonel as the elected chief has to represent the community, consisting of

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<sup>21</sup> Not all of the interviews and data from three recent research periods (in 1994 and 1997) in Accompong and in Jamaican archives have been analyzed to date. This work is in progress and will contribute to a planned monograph on the legal system of the Jamaican Maroons as compared with aspects of Akan law.

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'the born and the unborn', in all issues of communal landholding.<sup>22</sup> In this sense his position resembles that of a chief as 'trustee' or caretaker of communal rights in the Akan context as described by Kasanga (1988: 30). But he is not seen as the allodial title holder, even during the period of his command. It is the Maroon nation at large, including the ancestors, the living and future generations, that owns the absolute title. A system of checks and balances therefore controls the Colonel's management of communal land. Its allocation is part of the Colonel's responsibilities, as is the settlement of internal disputes over land rights, and the protection of these rights against the state. In all these activities he is supported and 'checked' by the Council and eminent elders who are regarded as experts as to the existing distribution of land.

One of these individuals occupies the singular, lifelong position of Secretary of State in the political system of Accompong. He is Mann O. Rowe, who until recently was informally the 'ultimate' authority on the actual distribution of the Accompong Maroon lands. Because of old age Mann O. Rowe does not attend Council meetings any more, but he can still be consulted as an expert on the proprietary occupancy or usufruct of land held by individuals or families. He was, and to a certain degree is still at the time of writing considered to have expert knowledge of the particular 'history' of land tenure in the Accompong community. Through his knowledge of boundary lines, which are indicated by natural landmarks, Mann O. Rowe helped to solve many disputes over the borders between allocated lands.<sup>23</sup> As Secretary of State he participated in all Councils under successive Colonels over the past five decades.

During this period Mann O. Rowe also played a specific role in the ongoing conflict between the Jamaican state (which gained independence in 1962) and the Maroons over the claims of the latter to partial or total sovereignty. This was carried out predominantly by symbolic expressions, but always had the potential to involve violence.<sup>24</sup> When I first met Mann O. Rowe in 1984, he was introduced

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<sup>22</sup> The Colonel is elected by public vote for a period of five years in Accompong. He selects the members of the council, and preferably he should declare whom he intends to select before the elections, but he is not obliged to do this. Zips (1998) gives a detailed historical outline of chieftaincy among the Maroons.

<sup>23</sup> This view is supported by numerous interviews in Accompong (e.g. with Wayne Rowe, 11.1.1994).

<sup>24</sup> This was demonstrated by the armed struggle between certain factions of Saramaka Maroons in Suriname and the military state which began in 1987 and lasted for five years. Although the reason for the undeclared war was said to be a

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to me by the then Colonel Harris N. Cawley as “the official historian of Accompong”. This initially unofficial title gained official status through the ‘objectification’ of his cultural capital by general, public recognition. Mann O. Rowe’s historical knowledge has become accepted as fact and therefore now stands beyond contestability.<sup>25</sup> This symbolic capital enabled him to achieve his formal position as Secretary of State.<sup>26</sup> He is respected as a guardian of Maroon territorial rights for his open resistance to the state authorities when they tried to move the borders between Maroon lands and state lands by planting boundary-stones inside Maroon territory. Mann O. Rowe reportedly tore these heavy stones down with his bare hands, relying according to public opinion on the supernatural assistance of the early Maroon warriors such as Kojo.<sup>27</sup> This relationship is continually and publicly reproduced through symbolic exchange, which can be observed in Mann O. Rowe’s regular libations to the ancestors. The offerings of white rum secure the continuity provided by having “the Old-Time People and

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personal dispute between the military leader and head of state, Desi Bouterse, and his former bodyguard Ronnie Brunswijk, a Maroon serving in the Surinam army, the underlying causes and structures of the conflict were related to the struggle over territorial sovereignty (Price 1983b: 11).

<sup>25</sup> The social recognition of his exceptional knowledge made consultation with him by the Council indispensable in all issues linked to history. As a result Mann O. Rowe appeared practically to be an *ex officio* member of the Council and in the 1940s established himself in the lifelong administrative position of Secretary of State. (Interviews with Gladdys Foster, 5.3.1989; Mann O. Rowe, 14.2.1994)

<sup>26</sup> According to Bourdieu’s outline of various forms of capital, social recognition of the ownership of a particular capital accounts for its transformation into symbolic capital (e.g. Bourdieu 1986). For a discussion of Bourdieu’s (1979) praxeological theory as applied to the empirical data on politics in the Maroon society of Accompong, see Zips (1998).

<sup>27</sup> As one Maroon informant respectfully recalled:

The Jamaican government does not regard the borders to Maroon lands. Every now and then they cut off a piece of our land. They creep in on us. From their independence in 1962 they started to set landmarks arbitrarily. One time they set one stone close to our school; but as soon as Mann O. Rowe heard of it, he went there and pulled it straight down all by himself. Until today they never came back. (Bill Peddy; interview on 10.1.1994)

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their enormous powers standing by one's side".<sup>28</sup> Libations and other communications involving the ancestors are supported by references to 'First-Time' (the time of the war) and to the peace agreements and thus stress the valuable currency of historical knowledge as opposed to abstract notions of a romanticised past. All social practices in connection with land rights and legal relations of land tenure are guided to a certain degree by reference to relationships grounded in the past.

History in Maroon society is of practical importance, because it determines internal and external politics, both generally and specifically as regards to land tenure and rights. In external relations with the Jamaican state Mann O. Rowe's claims are highly political, centring on the question of Maroon territorial sovereignty. The present Colonel, Meredie Rowe, a son of Mann O. Rowe, continually refers to his father's historical perspective in his official statements and in his policies in relation to the Jamaican government.<sup>29</sup> Questions of territorial integrity and sovereignty are the most delicate issues in the relations between the Jamaican state and the state of Accompong which share one and the same territory.<sup>30</sup> But the same applies to internal disputes over land tenure which are usually taken to the Maroon Council.

Land cases if not solved informally are settled in the Council through negotiations between the parties with one or more of the experts on proprietary occupancy acting as mediators. The Council is responsible for all judicial and administrative

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<sup>28</sup> Mann O. Rowe's relations to the most powerful ancestors are 'put on display' regularly, for example through the annual wreath laying ceremony at Kojo's memorial on 6th January (Kojo's birthday), when his signing of the peace treaty in 1738/39 is celebrated. This is usually done by Mann O. Rowe and accompanied by a speech on First-Time and its meaning for the present. For a detailed discussion of the annual celebrations see Zips (1992).

<sup>29</sup> The fact that Meredie Rowe was elected to the Colonelship, even though he did not reside in Accompong at the time, may be partly attributable to his social capital of 'being a Rowe'.

<sup>30</sup> During my latest research in Accompong I witnessed a struggle over two particular areas, in the districts of Elderslie and Cook's Bottom, between the Maroons and the state, which has continued since colonial times. Documentation in the Jamaican Archives in Spanish Town from the 1890s on this same conflict with the colonial state clearly indicates the dubious legitimacy of the modern infringement on Maroon lands. See Zips 1997b for more information on this conflict.

matters under the supervision of the Colonel (Zips 1993a: 129). When disputes over tenurial rights, conflicts over land boundaries, or other issues involving land law arise, the Commissioner of Land as the Council member responsible for land issues has to investigate the matter. He draws on consultations with historical experts such as Mann O. Rowe and reports back to the Council. Thus in the Council Mann O. Rowe as Secretary of State provides a check on the impartiality of the investigations made by the Commissioner of Land. Social recognition of a justified claim to a usufruct or proprietary occupancy is the main means of pacification or rectification of the dispute.<sup>31</sup> This notion of pacification can be interpreted as an expression of the society's interest in the institution of communal land ownership. Even though the land belongs to the whole community, families or individuals 'control', or possess their allocated parcels. The use of this land is at their discretion as long as it does not affect the community as such.<sup>32</sup> Many Maroons I talked to during my research in Accompong felt that there were no limitations on their landholding rights in regard to internal relations with the community. Economic interests are involved in such transactions, but the notions used do not derive from the capitalist terminology of individual absolute property, but refer to the communal basis of all individual land holding. As former Colonel Harris N. Cawley points out:

If somebody comes to me and wants land that I control, I will tell him: alright, you can have it or use it but you have to compensate me. We don't use *buy* or *sell* but rather compensate. So if somebody wants lands from another person, he will be

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<sup>31</sup> Pacification generally refers to the consensual settlement of conflicts over title claims, whereas 'rectification' generally means a top-down clarification of boundaries by the Maroon authorities. Natural landmarks such as trees and stones are the predominant indicators of boundaries. Since they are easily removed or sometimes disappear through natural incidents, precise knowledge of ecological and topographic changes is part of the relevant body of knowledge (interview with Harris N. Cawley, 18.1.1994).

<sup>32</sup> Maroons are not liable to pay Jamaican land or income tax on businesses in Accompong. A hotel or any other large scale business such as the recently proposed casino urged by outside investors would affect not only the living community but also future generations, and will face strong opposition from history-conscious community members (interview with Colonel Meredie Rowe, 3.2.1997).

asked a compensation. (Harris N. Cawley, interview, 18.1.1994)

What was looked at as a satisfactory tenurial system until fairly recently when Accompong was predominantly a subsistence farming community, is viewed more critically today, especially by younger members of the community. Drawn increasingly into the market economy, the younger generation and the more entrepreneurial Maroons are in greater need of investment funds for large-scale agriculture, shops and other enterprises, for instance in the tourist industry. The lack of individual absolute land titles is a serious disadvantage. Without a sufficient security in real estate it is extremely difficult to obtain bank loans for agricultural investments. For an agricultural society the legal impracticability of mortgages of land constitutes a constraint on further development.<sup>33</sup> Herein lies perhaps the most important reason why the institution of communal land ownership is under increasing internal pressure in Maroon society.<sup>34</sup>

Even if the institution of communal tenure still satisfies the internal needs for land distribution and allocation, as most Maroons agree it does, the differences between the land law of the Maroon communities and that of the surrounding Jamaican state cause a condition of uncertainty in land disputes. In the past the institution has saved the Maroon communities from dissolution and integration into the larger population. The nationalisation of treaty lands, amounting to about 1500 acres around Accompong, would have meant the complete erosion of their independence and the gradual loss of all privileges accorded to them in the peace treaty. An attempt at nationalisation was made by the colonial government a few years after the final abolition of slavery in 1838. A law of 1842 formally abrogated all previous laws respecting the Maroons, including the peace treaties. This *Maroons Land Allotment Act* stated that all Maroon lands as guaranteed by the treaties were revested in the Crown, to be resurveyed and patented to

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<sup>33</sup> Some Maroons own so-called 'buy-land' outside the core area of the Maroon territory. This refers to lands which were bought from individual non-Maroon land holders or the Jamaican government. Mortgages can of course be raised on such lands.

<sup>34</sup> Interview on 8.1.1994 with then Deputy Colonel Glendon Williams, who spoke out in favour of the introduction of individual land titles. The lack of security was confirmed by Wayne Rowe, who still maintained strongly the need for communal landownership (in an interview on 2.2.1994). The latter proposed to look into other possible means of giving security for borrowing, as for example communal guarantees for individual loans in the form of communal funds.

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individual Maroons (Act No. 3465, PRO: CO 137/39, reprinted in Kopytoff 1973: 384-391). None of its provisions ever became effective and the territorial autonomy of the Maroon communities remained untouched (Zips 1998).

Yet to conclude that the collective land ownership guarantees social peace in the present and prevents internal competition over land would be far-fetched. Conflict over tenurial land rights and other disputes, such as those over boundaries, seem quite abundant in Accompong. In recent years several trouble cases have emerged, some of which the Maroon administration failed to resolve over an extended period of time.<sup>35</sup> One factor contributing to persistent factionalism between contending parties is often said to be the decline in authority of the Maroon administration, especially in the field of judicial expertise. Social confidence in Council decisions depended heavily on the reliability of the evidence provided by historical experts and specialists in the actual distribution of proprietary occupancy. Many of these highly respected individuals have either 'joined the ancestors' (died) or become fairly old and less reliable at this stage.<sup>36</sup> Consequently the present situation is deteriorating, as Harris N. Cawley complains:

A few years ago, we had a person living in the community, who knew very well which lands belonged to whom. But he died now. He could tell exactly that your grandfather used to work on this portion of land; so it belongs to his son and not the person who claims it. It happens today often that somebody dies and his relatives live in the foreign. Then other Maroons claim the land their own. So a dispute might arise in the future. Then it is the duty of the Colonel and his men to pacify such a dispute. But

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<sup>35</sup> This was partly attributed by Harris N. Cawley (interview, 4.1.1997) to the return home of emigrant Maroons after some decades of residence in foreign countries. They then realised that the land which they had expected to have remained with their relatives had been transferred, or was claimed to have been transferred, sometimes without sufficient evidence, to other community members. Some of these 'home-comers' have little faith in the impartiality of the traditional authorities and prefer to address the Jamaican courts, where moreover they enjoy the advantage of having been exposed to legal systems based on English common law during their time in foreign countries.

<sup>36</sup> There are a few young apprentices who gather portions of historical knowledge. But they lack the symbolic capital accorded by social recognition to 'older heads' like Mann O. Rowe.

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sometimes the dispute arises again. For example, I rectified a land dispute when I was Colonel and drew a line between two lands. But years later the same dispute started again, because one of them started to go over this line. And I understand, this dispute went to the court in Balaclava now.<sup>37</sup> Which should not be so. Because it is Maroon land and we have no individual land titles. (Harris N. Cawley, interview, 18.1.1994)

Litigants have taken cases to the Jamaican courts, where some Maroon land cases are presently pending, very much to the unrest of the present Maroon government and of individuals who foresee a serious threat to the Maroon political integrity, territorial autonomy, and judicial self-determination. Outside, Jamaican judges exercising jurisdiction over individual land rights have to apply Jamaican law which, derived from English common law, does not know the institution of communal land ownership. Their legal decisions will produce individual land titles for the litigants, and this will necessarily lead to an erosion of the communal status. From the practical destruction of communal land ownership to the disintegration of the territorial sovereignty of Maroons is not a long step, since the institution is the main obstacle to the taxation and sale of land. (For a further discussion of the problem see Zips 1996). Problems of land tenure in relation to the institution of communal land ownership therefore correlate with the ongoing struggle between the Maroons and the state over the dual basis of sovereignty in a competitive situation of legal pluralism.

### Summary and Conclusion

Traditionally in land cases the expertise of one or more knowledgeable members of the community was necessary if accepted, consensual decisions over individual rights to land were to be reached. Where a case had already been the subject of a decision by the Maroon Council, and a renewal of the dispute was expected, a protocol of pacification by the Colonel and Council might have been especially written (Harris N. Cawley, interview, 11.1.1994). In the absence of written records in the great majority of cases other than these, and of a land register, the solution of land disputes was vested almost entirely in the experts who preserved historical knowledge, in conjunction with the responsible functionaries in the Council. They had an advisory role towards the chief based on the social

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<sup>37</sup> Balaclava is the seat of one of the magistrates' courts in the parish of St. Elizabeth. According to state laws Accompong falls under its jurisdiction.

recognition of their knowledge. Without their counselling most disputes would have been extended to become conflicts between larger family units, thus leading to dangerous friction in the community as a whole.

Oral tradition, as valuable cultural capital, functions as the definitive source of evidence on the distribution of lands within Maroon territory, provided that the proper 'acquisition' of the orally transmitted knowledge is sufficiently provable. When this is the case the memorised 'possession' of oral tradition is recognized by society at large and therefore becomes symbolic capital.<sup>38</sup> The same applies to other historical knowledge, which not only provides the means for control of the individual's access to land, but also enables agents possessing it to influence political decisions and actions affecting the community as a whole. This power is acquired by individuals with First-Time knowledge through reference to the 'ways of the ancestors', who are held responsible for creating the socio-cultural basis of Maroon society by winning the war against the colonialists and gaining their independence. The same powerful ancestors are believed to safeguard the continued corporate existence in the present time. But to exercise their power, they need the mediation of living persons, who themselves gain enormous power by 'knowing things from the past' through their spiritual relationship with the ancestors.

To learn about the old ancestors, the First-Time people, is seen as also to learn from them. They alone can give access to the power of historical knowledge. In other words, knowledge of the past functions as practical knowledge because it enables those who possess it to decide contemporary issues such as land disputes, or at least to pave the way for decisions on these issues (Price 1983b: 6). Generally speaking it is through recognition by society at large that historical knowledge of landholding becomes symbolic capital, or symbolic power, that can then be converted into other forms of economic and political capital.<sup>39</sup> All this is

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<sup>38</sup> See Bourdieu 1986 for an overview of the different forms of capital and their convertibility.

<sup>39</sup> The field of law occupies a special position in relation to the political field in as much as it is the place of exchange between the symbolic capital of expertise in tenurial rights and the 'materialization' of this capital as economic or political capital. Whether a particular acquired symbolic capital can be converted into economic capital depends largely upon the specific interests of the field and the agents involved. In every field certain interests are at stake, and investments are made, even if they are not recognized as such. These interests can be analysed in terms of an economic logic without reducing them to economics (Bourdieu and Wacquant 1992: 100).

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of course nothing more than a manifestation of the general principle 'knowledge is power'; but its specific manifestation in which historical knowledge is a highly effective form of symbolic power seems to be peculiar to Maroon societies.<sup>40</sup>

Since it is based on relations with the old ancestors, historical knowledge functions equally as an expression of social capital when judged from the perspective of other community members. Like social relations among the living, these relations with the 'dead' are 'naturally' passed on in the family. This in my opinion provides an explanation for the predominance of certain families of Accompong in political leadership during the past century, in contrast to the official democratic structures which supposedly give every Maroon the possibility of becoming Colonel (Wright 1994).<sup>41</sup>

The symbolic power of historical knowledge is closely intertwined with political power and to a lesser degree also with economic power, thus serving a legitimating function for authority. It further enables its possessor to influence Council decisions over access to land, the most important means of production in the agricultural community of Accompong. The holder of knowledge of tenurial rights and of competence to pacify land disputes receives prestige, reputation and honour through recognition by society. This symbolic capital linked to knowledge of land tenure is therefore valuable as a possible stake in the political field. It is fully convertible to other forms of capital, such as the highly prized post of land officer, or of Commissioner of Land in the Council. This position must be held by someone with the appropriate qualifications. It is very influential in the Accompong administration since expertise over legitimate access to land is the sole accepted source for judicial decisions in trouble cases. The institutionalised social position of the historical expert in relation to land tenure and the related practices of consultation and of historical legal reasoning contrast sharply with state law. Consequently, the situation of legal pluralism produces highly charged struggles in the field of land law. These account for social tensions within Maroon society, as well as for continuous political disputes between the autonomous

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<sup>40</sup> See Price (1983b: 14) for an analogous observation in the Suriname (Saramaka Maroon) context.

<sup>41</sup> Holders of specialized cultural capital are widely known and renowned in the society of Accompong. Knowledge of the medicinal value of plants and their application for healing, the old war songs known as Kromanti songs, the religious meaning of signs and their corresponding rituals, the art of story-telling or Abeng-blowing, to name but a few examples, are among the historically grounded forms of cultural capital among the Maroons.

Maroon community and the Jamaican state. I interpret the political processes revolving around this actual situation of legal pluralism as an expression of the tacit competition for sovereignty over Maroon treaty lands between these two parties.

Since there is no guarantee of a special status for Maroons in Jamaican constitutional law, individual Maroons are subject to the same laws and regulations as other Jamaicans: they are classed as Jamaican subjects and are treated no differently from other Jamaican subjects. But differences prevail, especially in the field of law, shaped by centuries of self-government. African principles relating to justice, dispute settlement, religious sanctions, communal land ownership and the development of law through discursive practices involving the community, are also in stark contrast to English common law. The availability of two diverse legal systems hardly promotes social peace, but rather erodes the position of traditional authorities and with it the basis for political independence and socio-cultural self-reliance.

The defence of independence and territorial sovereignty by individuals like the Secretary of State, Mann O. Rowe, aims predominantly at the protection of Maroon social integrity against the growing interference of the state in matters that have been regarded as internal affairs ever since the peace treaties.<sup>42</sup> The disputed status of communal land ownership, the increasing amount of adjudication in land tenure cases by Jamaican courts, and the ongoing conflict over the demarcation of Maroon land radicalise a situation of legal pluralism that has long defined the existence of Maroon societies. On the other hand, the issues are not exclusively external, but rather involve relationships determined by dynamic internal structures. It is an established fact that Maroons can still settle their land disputes among themselves without involving the Jamaican legal system. The Jamaican court takes the initiative only in criminal cases when an individual is accused of an offence.<sup>43</sup> If land cases are brought to the Jamaican

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<sup>42</sup> This is not to deny that defiant practices such as those described above are at the same time part of the symbolic struggle for more personal power in the internal political sphere.

<sup>43</sup> Even in criminal law Maroons can still decide cases among themselves if all the parties involved are satisfied with conflict resolution through reparations or sanctions in consequence of misbehaviour or crime. Handwritten casebooks from the 1920s to the mid 1950s, in the private possession of a son of a former Colonel, who allowed me to copy them for juridical and historical analysis, give a clear indication of the efficiency of the system. Practically everything, from civil disputes to crime was settled by the Maroon jurisdiction.

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courts by individual Maroons, their solution can hardly be expected to accord with the traditional guidelines of Maroon law. As a consequence internal competition develops in a society which is becoming more stratified as a result of the growing mobility of its members.

Legal pluralism in the field of land law offers a choice that is not a choice for all. Not all Maroons have the possibility of choosing between the alternatives of seeking the decisions of their own authorities and subordinating themselves to the state courts like regular Jamaican citizens. A person needs economic, social or cultural capital (such as the right social relations, school education, a good job or material wealth) to gain access to state authorities in favourable conditions. Viewed from this background the availability of two alternative legal systems must be interpreted not as offering alternatives to all, but rather as affording an opportunity to the wealthy to cash in their economic or symbolic power in the field of law. Conflicts over land are therefore often not solved by court decisions, but are complicated, prolonged and extended to other individuals who owe solidarity to one of the parties. Such disputes are by no means new to Maroon societies. Traditionally they provided a legal forum for the internal competition to produce, reproduce and enforce a certain, authorised interpretation of unwritten norms and rights through a struggle over the terms of 'the' law. Today's tendency to 'run to court' - that is, to the outside court - for minor matters appears to be a power game played by some individuals without concern for the 'traditional' value of an independent legal system.

Land disputes are brought under the jurisdiction of the Jamaican courts with quite alarming consequences. Very few Maroons actually know the English common law and Jamaican legislation related to property rights in land, as generally applied by the Jamaican courts. The outcome of a trial is therefore highly incalculable for the parties. 'Lawyer money' eats up most of the generally small income of the two contestants. Many decisions taken by the judge are inappropriate to the financial and social conditions in Accompong. Furthermore they generally diverge markedly from the orally transmitted, West African legal understanding of relations between an individual or family unit and the larger community when access to land is at stake. If the winner of an adjudicated land case tries to enforce the state law, for instance by calling in the Jamaican police, who are seen by most Maroons as akin to a foreign armed force, the dispute more often than not escalates.

Individual rights to landholding and agricultural use, comparable to the institution of the usufruct, and the exact borders between plots are only known by a handful of 'older heads'. They would be called as witnesses by the Maroon Council. The Jamaican judge on the other hand is not even aware of the implications of

communal land ownership, and cannot accept the institution as legitimate. Moreover, the decision of the judge can be interpreted as equivalent to a land title. The two legal systems therefore stand in direct conflict with each other. The validity of Maroon law is no longer tested internally alone for consistency and adequacy, but also tested against the external system of Jamaican law. This is seen in the light of Maroon historical experience as a foreign law, or, more precisely, as the heir to British colonial law. The possible resulting dissolution of communal land ownership touches the central nerve of Maroon territorial sovereignty. Once individual land titles exist, it will be at the discretion of the Jamaican state whether or not former Maroon land is taxed. Until now this has not been openly attempted; instead there has been a tacit acceptance of the rules of the peace treaty of 1738/39.

Many Maroons are aware of the dangers presented by legal pluralism to the backbone of their independence: the territorial sovereignty over their lands. To a large extent it lies within their own hands to preserve their control over their land. But even the near future seems uncertain in view of the growing mobility of Maroons within Jamaica and their emigration to other countries. Furthermore, the growth of tourism and the resultant investment interests of strangers bring additional pressure on the institution of communal land ownership by generating a need for freehold land titles. Whether Maroon public opinion will yield to temptation and accept state and bank loans secured on mortgages of individualised land will depend on the accountability of their traditional authorities as trustees of the land. Part of this accountability rests traditionally in the system of checks on the power of the chief by the Council and knowledgeable elders who possess the symbolic capital of oral tradition. Individuals such as the historian and Secretary of State Mann O. Rowe have spent a lifetime watching over the communal tenurial system. They have left a warning to posterity that a 'modernising reform' of land tenure will eventually turn the Maroons from landowners to landholders.

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