

FOLK LAW AND LEGAL PLURALISM IN JAMAICA

A VIEW FROM THE PLANTATION-PEASANT INTERFACE

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This article examines the appropriation and overturning of aspects of the colonially-derived legal system by folk law in Jamaica, and the implications of this process for the analysis of legal pluralism in plantation societies. The plural society thesis is highly developed for the Caribbean region, the oldest colonial sphere with the most pronounced plantation systems (Mintz 1971, 1989, 1996), where social and cultural pluralism has been described as including legal institutions. The land-tenure systems of the peasantries or folk, and of the planters and other elites, have been analysed within this context (e.g. M.G. Smith 1956, 1965; Davenport 1961; Lowenthal 1972; Barker and Spence 1988; Campbell 1990). I address this controversial theme.

The Caribbean island of Jamaica has the longest continuous plantation history. I focus on eight peasant communities surrounded by plantations, which are now reinforced by new forms of land monopoly in the bauxite and tourist industries. These eight communities are in the parishes of St. Elizabeth and Trelawny, in west-central Jamaica, at the heart of the island's plantation-peasant interface.¹ They

¹ My fieldwork in the eight communities in the parishes of Trelawny and St. Elizabeth over the period 1968-99 was funded by the Ministry of Education, Jamaica; the Social Science Research Council (U.K.); the Carnegie Trust for the Universities of Scotland; the University of Aberdeen; and the Nuffield Foundation. My research in the Eastern Caribbean (during the period 1992-94), referred to in the concluding discussion of this article, was funded by the British Council; the St. Augustine Campus of the University of the West Indies, Trinidad and Tobago; and Goldsmiths College, University of London. The comparative ethnography in this article draws on my earlier essay, 'The Appropriation of Lands of Law by Lands of Myth in the Caribbean Region', presented at the workshop Mythical Lands, Legal

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include Accompong Town, in St. Elizabeth, the oldest persisting corporate maroon society in the Americas, consolidated by a treaty in 1739; Accompong's neighbouring non-maroon village of Aberdeen, which evolved from a plantation-slave community; five 'free villages' in Trelawny, established at the vanguard of the flight from the British Caribbean plantations after emancipation in 1838; and a Trelawny squatter settlement, consolidated on 'captured' plantation land during the period of my long-term fieldwork in Jamaica from 1968 to 1999.

In Accompong Town, rebel slaves and their descendants wrested land from the colonial plantation-military regime through squatting and transformed a marginal mountainous reservation, imposed by a colonial legal treaty, into a sacred landscape rooted in common land (compare Kopytoff 1979; Besson 1997). In neighbouring Aberdeen, which evolved from a 'proto-peasant'² community on Aberdeen slave estate, freed slaves squatted around 1845 on plantation backlands, which were later retrieved by the plantocracy and sold for registration and taxation in the official legal system. Descending generations of the ex-slaves who purchased these legal freeholds have transformed them, through customary tenure and transmission, into 'family lands' which provide a foothold in the face of the persisting plantations and the bauxite industry.

In four of the Trelawny free villages that I studied (The Alps/New Birmingham,

Boundaries: Rites and Rights in Historical and Cultural Context organised by Allen Abramson and Dimitris Theodossopoulos at University College London, 25th October 1997 and forthcoming in a book based on the workshop (Besson n.d.a). An earlier draft of the present article was presented at the session 'Conceptual Approaches to Legal Pluralism' for the Commission on Folk Law and Legal Pluralism at the 14th International Congress of Anthropological and Ethnological Sciences, Williamsburg, Virginia, USA, July 26 – August 1, 1998. I am grateful to all those participants who commented on that draft. My analysis of the interplay between folk law and the official legal system in Jamaica has been enriched by discussions with my late father, Kenneth M. McFarlane, who at his death in 1986 was the longest-serving Attorney-at-Law on Jamaica's North Coast. All responsibility for the analysis is however mine. My usage of the concept of 'peasantry' draws on Mintz (1989: 132-33, 141).

² The concept of 'proto-peasant' derives from Mintz who, in his definition of the Caribbean 'proto-peasantry', refers to "a peasant style of life ... worked out by people while they were still enslaved" (1989: 151).

Refuge/Wilberforce, Kettering and Granville),³ emancipated slaves and their descendants overturned the legal-freehold land settlements imposed by the colonial Baptist church, and (as in Aberdeen) have created 'family lands' or customary freeholds whose ethos has changed aspects of Jamaica's official legal system. In the fifth free village, Martha Brae, freed slaves and later generations transformed a colonial Georgian planter town,⁴ based on legal freeholds, into a peasant community with a continuing core of customary freeholds. In Martha Brae's satellite squatter settlement of Zion, Rastafarians and Revivalists are appropriating government plantation land and reversing legal sanctions against squatting through their confrontation and negotiation with the state.

These data question the 'plural society' thesis of Caribbean societies with static and entirely separate legal and customary land-tenure systems, suggesting instead a dynamic interplay between folk law and official legal codes. This analysis also revises Beckford's (1983) classic model of 'plantation societies' as plural societies, with unchanging and unrelated cultures; and advances an alternative perspective on 'legal pluralism' in societies impacted by plantations and by other forms of capitalist land monopoly.

In the first section of the article, I briefly review and assess the plural society thesis in relation to Caribbean land-tenure systems. In the next section, I outline the themes of land monopoly and the land-hungry peasantry in Jamaica. The following section explores the dynamic relationship, in the context of land tenure, between folk law and the official legal system in the Accompong maroon society in St. Elizabeth. I then look at similar themes in the neighbouring Aberdeen community; and thereafter I focus on the Trelawny free villages and squatter settlement. The concluding section explores the implications of the Jamaican data for the analysis of folk law and legal

³ For a discussion of the dual naming system in some Jamaican free villages see Besson 1984b.

⁴ The colonial Georgian planter town of Martha Brae had parallels with eighteenth-century Williamsburg, which was Virginia's capital for eighty years (1699-1780) established on the site of Middle Plantation before the capital moved to Richmond. Martha Brae was established in 1762, on part of Holland Plantation, as the first town in the eastern part of the parish of old St. James. When the new parish of Trelawny was created in 1771, at the heart of Jamaica's colonial plantation economy, Martha Brae became Trelawny's first capital. By 1790 there were some thirty Georgian town houses in Martha Brae. Around 1800, however, the parochial capital was removed to the new seaport of Falmouth which remains Trelawny's capital.

pluralism in plantation societies, especially in the core Caribbean region.

The Plural Society Thesis and Caribbean Land-Tenure Systems

In his still-influential work, M.G. Smith (1965) drew on Furnivall's (1945, 1948) analysis of South-East Asian colonial societies to develop his plural society theory on the anglophone Caribbean. Describing Burma and Java in Indonesia, Furnivall had written:

[P]robably the first thing that strikes the visitor is the medley of peoples - European, Chinese, Indian, and native. It is in the strictest sense a medley, for they mix but do not combine. Each group holds by its own religion, its own culture and language, its own ideas and ways. As individuals they meet, but only in the market-place, in buying and selling. There is a *plural society*, with different *sections* of the community living side by side, but separately, within the same political unit. Even in the economic sphere, there is a division of labour along racial lines. (Furnivall 1948: 304 in M. G. Smith 1965: 75; my emphases.)

Furnivall argued that these different 'sections' were held together only through the power of European colonial elites.

In his challenge to the functionalists, who saw Caribbean societies as characterised by colour-classes integrated through Eurocentric values (Braithwaite 1975; Henriques 1968; R. T. Smith 1956), M.G. Smith contended that such societies comprised different racial groups with entirely unrelated social and cultural institutions, rooted in colonial slave-plantation systems. He focused especially on the contrasting cultures of the folk of African descent and the Euro-American elites (whom he saw as separated by a 'brown' intermediate group). These 'social and cultural sections' were seen as typified by cultural conflict and as held together only through the dominance of minority elites.

In the context of his plural society thesis, M. G. Smith (1965) argued that English-speaking Caribbean societies had plural legal and property institutions, which were entirely separate and in conflict; this being especially so in the case of land-tenure systems. In his classic analysis of the plural framework of Jamaica, he stated:

Among the economically dominant section, property takes the typical form of productive enterprise, such as commercial

businesses, firms, factories, estates, or the like.... Among the lowest section, the dominant property form is 'family land,' that is, land held without proper legal title, and without precise personal distribution of rights, by the members of a family and their dependants. (M.G. Smith 1965: 169)

He generalised this observation to British Caribbean societies, positing "[t]wo highly distinct systems of land tenure", one "defined by statute and common law", the other being "of a customary and traditional character which neither observes the forms nor directly invites the sanctions of law" (M. G. Smith 1965: 221). His analysis drew on Edith Clarke's (1953, 1957) pioneering study of Jamaican family land and on his own research in the Grenadine island of Carriacou (1956). While M. G. Smith analysed the customary system in Carriacou as a functional adaptation to the island's social structure, Edith Clarke argued that family land reflected the Ashanti heritage of Jamaican slaves (compare Carnegie 1987), namely, the principles of joint inheritance, equal rights of all the family, and the inalienability of land. However, like M. G. Smith, Clarke interpreted all interaction between folk law and state law in terms of conflict. In similar vein, Davenport (1961) and Comitas (1962) interpreted family land and the official legal system in Jamaica as being entirely opposed; while Greenfield (1960) argued likewise for Barbados.⁵

Drawing on M.G. Smith's plural society theory, David Lowenthal has likewise identified legal pluralism in West Indian societies, arguing that "[l]egal institutions illustrate how the gulf between ideal and reality divides West Indian classes", and that "[t]he masses see formal law as an elite weapon" (Lowenthal 1972: 101-102). His analysis of legal pluralism included land-tenure systems:

⁵ However, in contrast to Clarke's Ashanti thesis, Greenfield argued that Barbadian family land derived from the English upper-class legal tradition of the 'settlement' and 'seed-to-seed' inheritance brought to the island by the planter class. Pursuing the thesis of colonial cultural survivals, Horowitz (1992) contended that family land in Martinique was a retention from the French Napoleonic code of equal inheritance; while Raymond T. Smith (1971, 1990) asserted that the parallel institution of 'children's property' in Guyana was rooted in the Roman-Dutch property code of joint rights in undivided land. As I have argued elsewhere, these cultural-survival explanations are inconsistent at a regional level and overlook the Caribbean context. In contrast to the arguments of ancestral or colonial survivals, I have interpreted family land as a cultural creation by Caribbean peasantries themselves in response and resistance to colonially-derived agrarian legal codes (Besson 1979, 1984a, 1987a, 1987b); that argument is extended in this article.

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Widespread adherence to uncodified family rights makes many legal sanctions hazardous, if not impossible, to enforce. Local authorities condemn 'family land' tenure as uneconomic, wasteful, a prime cause of soil exhaustion and erosion, an obstacle to agricultural modernization; but to outlaw it would disrupt kinship ties, multiply litigation beyond court capacities, and jeopardize untold smallholdings. (Lowenthal 1972: 103-104)

Lowenthal's plural society perspective has been reinforced by Hoetink's (1985) discussion of non-Hispanic Caribbean societies, in his comparative analysis of the Hispanic and non-Hispanic Caribbean variants.

However, in this article I suggest a more dynamic approach, than the static plural society thesis, to folk law and legal pluralism in Caribbean societies;⁶ and show how

⁶ Charles Carnegie (1987) and Michaeline Crichlow (1994) have contended that, in my earlier work on Martha Brae in its Caribbean context (e.g. Besson 1979, 1984a), I adopted M. G. Smith's and Edith Clarke's static pluralist perspective, arguing themselves for a dynamic intersystem approach. Crichlow (1994: 79, 94 n3) additionally asserted that I upheld Clarke's African-retention thesis; while Carnegie critiqued me for dismissing the Africanist theory, which he himself upheld. I have responded elsewhere to these arguments (Besson 1987b, 1992, 1995f), showing that I left room for African influences on family land (but within a wider context of Caribbean culture-building) and that I advanced an intersystem analysis of customary and legal tenures well before Carnegie and twenty years before Crichlow; that claim is reinforced by Trouillot (1989: 324-25).

In my earlier work on Martha Brae, I argued that family land and the official legal system of land tenure in Jamaica could only be regarded as totally distinct at a cultural or social structural level; for at the social or social organizational level the two systems interact in various ways (Besson 1974: chapter 7, 1984a: 76 ns 7 and 9, 1987a: 38 n3, 1987b, 1988; see also Firth 1971: 35-40; Mintz 1973: 96-97; Besson 1992, 1995f). At least five such variants of interplay exist: the imposition by the Jamaican state of legal elements on family land; 'crab antics' or the selection, by individuals, of aspects of the legal code to challenge the family-land system; individual selection of legal elements to reinforce, adjust or create family land; the indirect reinforcement of family land by aspects of the official legal code; and the transformation of areas of state law by customary family-land principles. I therefore concluded that the ethnography of Martha Brae does not support the static 'plural society' model of Caribbean land-tenure systems. This article develops that

folk law is shaping state law and Caribbean identities. My analysis of eight peasant communities in Jamaica (at the heart of the Caribbean region), in a Caribbean context, draws on and develops the institution-building approach of Sidney Mintz and Richard Price. In their classic essay, *The Birth of African-American Culture*, which focuses on the Caribbean core, Mintz and Price argue that “the organizational task of enslaved Africans in the New World was that of *creating* institutions” (my emphasis), which were forged “*within* the parameters of the masters’ monopoly of power, but *separate from* the masters’ institutions” (Mintz and Price 1992: 19, 39). In this essay I develop this perspective to show that sometimes the slaves and their descendants created institutions by *appropriating and overturning* the masters’ styles of life. This included the reversal of the British West Indian official legal system of primogeniture on which the colonial plantations were based, through the creation of land-tenure systems - such as family land and common land - transmitted through unrestricted cognatic (nonunilineal) descent, traced through both women and men and including absent as well as resident kin.⁷ While primogeniture restricted land

perspective through the comparative study of eight Jamaican peasant communities, including Martha Brae, within a Caribbean regional perspective. For a fuller analysis of the Accompong maroon case, with its common land, see Besson 1997.

⁷ Bill Maurer (1997) has made a scholarly attempt to shift ground in the family-land debate beyond Carnegie and myself (see note 6 above). Maurer stresses the centrality of law in the construction of Caribbean identities. He also argues that my analysis of unrestricted cognatic descent groups is based “on a weak notion of ‘family’”; while Carnegie’s focus on the ‘ambiguity’ of genealogy is likewise insufficient for explaining “how Caribbean peoples talk and think about Caribbean family land”. In addition, Maurer contends that “[t]he family/genealogy distinction maps almost too neatly onto the so-called plural society debate” (Maurer 1997: 203-204). He further asserts that Barbadian and British Virgin Island landholding kin groups are “potentially restricted” (Maurer 1997: 198).

However, as I have shown elsewhere (Besson 1984b, 1987b, 1988, 1995d, 1997, n.d.b), the unrestricted landholding kin groups - rooted in folk law - do not reflect a weak sense of family, for they maximise overlapping genealogies and scarce land rights; while Maurer’s BVI data on landholding (Maurer 1996, 1997) themselves demonstrate unrestricted cognatic descent. His perspective also supports my earlier conclusion that folk law is shaping state law itself (Besson 1987b, 1988, 1992, 1995f). Maurer might also have considered more fully the dynamic interplay between ‘custom’ (folk law) and ‘law’ (the official legal system) by exploring the process of institution-building rooted in the slave and maroon past, and its contribution to the ‘explanation’ of how Caribbean people regard contemporary Caribbean family land and also common land; a perspective which I develop further

transmission to legitimate children, especially sons, with the eldest son taking precedence, the slaves' unrestricted system included all children and descendants regardless of 'legitimacy', gender, birth order, and residence; thereby maximizing scarce land rights and forbidden family lines among the chattel slaves, who were legally denied kinship and land and were property themselves. On the eve of the millennium, this culture-building process (which also transformed the restricted unilineal systems derived from West and Central Africa) is impacting upon official legal systems and Caribbean nation-building.

Before turning to the eight Jamaican peasant communities, I describe in outline colonial and post-colonial land monopoly in the island and the predicament of the land-hungry peasantry in Jamaica.

Plantations and Peasants in Jamaica

The former British West Indian colony of Jamaica, with its pronounced plantation system and peasantry formations, reflects in microcosm the dynamic interplay between folk law and official legal systems in the Caribbean region. The island was encountered by Columbus in 1494, two years after his Caribbean landfall; colonised by the Spanish in 1509, during the early stages of European expansion; and conquered by the British in 1655. By 1700 Jamaica was the world's leading sugar producer (Walvin 1983: 35). In the eighteenth century the island became "the very centre of Negro slavery", "the most important colony in the British Empire" and, with neighbouring French Saint-Domingue, one of the two most profitable dependencies based on the colonial slave plantation system the world has ever known (Williams 1970: 152, 154). Plantations persisted after the abolition of slavery (1834-38) and remain entrenched in several areas of the island today, despite political independence in 1962. Jamaica has therefore been described as the New World society in which "the plantation system was developed to the most extreme degree and over the longest continuous period of time" (Robotham 1977: 46). Complementing this long history of plantation hegemony, which is now reinforced by land monopoly in the bauxite-mining and tourist industries, has been a pronounced process of Jamaican slave resistance and peasantization.

Within these contexts the parishes of Trelawny and St. Elizabeth, in west-central

in this article.

Jamaica, became the heart of the island's plantation system: Trelawny had more plantations and slaves than any other parish and St. Elizabeth was an area of intense colonial exploitation. In 1999 the lowlands and intermontane valleys of both parishes remain engrossed by sugar-cane estates producing rum and sugar for the world economy. This land monopoly is reinforced by bauxite mining in St. Elizabeth and by tourism in Trelawny, where there are now also several papaya plantations. These large-scale landholdings are based on clear-cut rights and boundaries, originating in the island's colonially-derived agrarian legal code. Paralleling this extreme manifestation of land monopoly in the west-central area of Jamaica have been significant examples of slave opposition and peasant adaptation in this part of the island. Runaway slaves found early refuge by squatting in the precipitous Cockpit Country Mountains of the interior, where the Leeward Maroon polity became established through the treaty of March 1739. In addition, a 'proto-peasant' economy evolved among plantation slaves who cultivated food for sale and subsistence on estate backlands and mountains; a development, based on both adaptation and cultural resistance, that was particularly well-established in Trelawny. Slave revolts likewise characterised this area of Jamaica, including the 1831 rebellion that led to the abolition of slavery throughout the British Empire.

After slavery the Leeward Maroon polity persisted in the face of recurrent attempts by colonial and post-colonial governments to undermine their treaty and common land. Meanwhile, free villages were being established by emancipated slaves in the face of draconian planter policies and legislation designed to keep the ex-slaves as a cheap labour supply on the plantations. These developments were especially marked in Trelawny, which was typified by the bitterest plantation-peasant conflicts in the island. An overseas migration tradition likewise was consolidated, including a process of circulatory migration which articulates with the diaspora in Europe and North America today. A symbolic migration to Africa also developed through the Rastafarian movement, simultaneously with the rooting of Rastafari in Caribbean land as in the peasant communities of the west-central area of Jamaica (Besson 1995a, 1995b). These peasant formations persist today surrounded by plantations, bauxite mines, and luxury hotels. The wresting of small-holdings from the plantocracy and other elites has been central to the peasantization process, and these small-scale landholdings have been reinforced through sacred cosmologies and rituals. This process of appropriation is still evolving through folk law. It was in these contexts that I undertook comparative fieldwork during the period 1968-99 in eight peasant communities in Trelawny and St. Elizabeth.

I turn first to the Accompong maroon society. There rebel slaves and their descendants appropriated a colonial reservation and transformed it into a sacred landscape. I argue that they achieved this through Caribbean culture-building (see

also Besson 1997; Kopytoff 1979), rather than by retaining African land tenure in contrast to the European legal system, as Barker and Spence (1988) and Campbell (1990: 190) argued, consistently with the static 'plural society' approach (e.g. M.G. Smith 1965; Lowenthal 1972; compare Zips 1996, 1998).

The Accompong Maroon Peasantry

Accompong Town is situated in northern St. Elizabeth, in the deep-forested southern area of the precipitous karst Cockpit Country Mountains that straddle the adjoining parishes of St. Elizabeth, Trelawny, and St. James. The village, which has a voting population of around 3,000 persons (many of whom are dispersed in Bradford and London, England), is the only surviving community of the Jamaican Leeward Maroon polity. The Leeward polity was consolidated over two hundred and fifty years ago, after Jamaica's First Maroon War (1725-39), by the treaty in 1739 between the maroon leader Colonel Cudjoe and the British colonial government which was forced to sue for peace.

The Leeward treaty granted the maroons their freedom and 1,500 acres of common land, which they had already appropriated through squatting and guerilla warfare. By the time of the treaty, two maroon villages had been established in the Cockpits: Cudjoe's Town in St. James and Accompong Town in St. Elizabeth. The maroons of Cudjoe's Town were subsequently betrayed, disbanded, and deported to Nova Scotia by the colonial regime after Jamaica's Second Maroon War (1795-96). Subsequent external attempts to nullify the treaty and individualise the Leeward Maroon commons have persisted to the present time. The Accompong maroons have firmly resisted these attempts to undermine their maroon society and common land. This resistance has been reflected in the land disputes with the colonial and post-colonial state, documented by Kopytoff (1979) up to the 1970s; and in the contentions over legal boundaries and taxation throughout the period of my fieldwork in this community, from 1979 to 1999. In the 1990s there have also been attempts by the Jamaican state to impose individual alienable titles to Accompong's bauxite-rich inalienable common land.

From the colonial viewpoint, the treaty ceded land rights to a marginal wilderness reservation designed to confine the rebel slaves. However, from the maroon perspective this legal document became a sacred charter of corporate identity reflected in the commons (Kopytoff 1979). My fieldwork has uncovered a still-evolving process of folk law transforming this marginal reservation into a symbolic landscape, which is preserving the maroon polity in the face of threat and change (see also Besson 1997).

Modern maroons classify the commons into three concentric zones (Besson 1997; compare Barker and Spence 1988), deriving from their ethnohistory. The deep forest was traditionally the scene of warfare with the colonial plantation-military regime. There too the warrior-maroons hunted wild hogs and gathered cocoon-beans. The forest now forms an outer boundary zone segregating the maroon society from the surrounding plantations and bauxite mines, and from the Jamaican state. Contemporary maroons collect sacred medicines and fell timber here. The cultivation of provision-grounds, carved out of the forest, was combined with hunting and gathering in the rebel-slave economy and was a focus of destruction by the colonial regime. The warrior maroons also raised livestock, raided from plantations. Today provision-grounds, land cash-cropped in bananas, and pasture form an intermediate zone. At the heart of the commons is the inner residential area, with its village yards and cross-roads. House-yards are not only residential sites, but are also the nuclei of the maroon economy. Here food-forests are cultivated, small livestock raised, and fruit trees grown. This inner residential zone most fully incorporates the Leeward Maroon polity, which has an elected Colonel, a Maroon Council, an Abeng-Blower (who blows the sacred cow-horn that was used to communicate in guerilla warfare) and a Secretary-of-State.

All Leeward Maroons have the inalienable right to use the commons. These usufructuary rights are allocated by the Colonel and his Council, who also address internal disputes. However, within this wider context of common land, unrestricted cognatic descent groups are today being consolidated in relation to the customary transmission of house-yards and provision-grounds. These overlapping landholding kin groups claim descent from the 'First-Time' Maroon heroes and heroines, especially Colonel Cudjoe and his reputed sister Nanny, who fought the War and won the Peace.

Maroon land rites reflect these themes and focus on interment in the commons. Six burial patterns can be identified, charting the landscape as sacred space (Besson 1997). The first pattern typifies the Kindah Grove at the edge of the residential zone. Oral history states that ancestral Congo and Coromantee burial grounds are situated here. This oral tradition is reinforced by a written history of African ethnicities among the early rebel slaves (Kopytoff 1976), and by the ancient cairns and boulders engrossed in bush and encompassing the grove. Within the Kindah Grove itself is a small area of grassland and jutting limestone rocks surrounding the sacred 'Kindah Tree', representing in microcosm the karst topography of the Cockpit Country. The Kindah Tree, a fruitful mango tree, is rooted in myth and ethnohistory. It is said to be the place where the two rebel 'tribes' of Congos and Coromantees met to forge alliance through inter-marriage, in opposition to the plantation-military regime. Here, each year on or around the 6th of January, is held

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the 'Myal Dance' and feast, a ritual reaching back to Africa, slavery, and marronage. Myalism was the first creole spirit-possession cult forged by the Jamaican slaves from African cosmologies; and the Myal Dance, with its death and resurrection theme, was initially performed to protect the plantation-slave communities (Patterson 1973: 185-95; Schuler 1980; Besson 1995c).

In Accompong today, the Myal Dance is said to commemorate both Cudjoe's birthday and the ending of the War. It is also believed to protect and re-create the contemporary community, through the possession of living females by the spirits of the male warrior-maroons. This spirit possession is enacted by maroon women directly beneath the Kindah Tree, accompanied by drummers and by the Abeng-Blower, who are male. This ritual symbolizes the central role of scarce, but precious, women in reproducing the historic maroon polity. The fruitful Kindah Tree itself, with its sign proclaiming "We are Family", symbolizes the common kinship of the corporate creole community on its common land. This shared kinship is based on overlapping cognatic descent groups, interlocking bilateral kinship networks, and tendencies towards endogamy and cousin-conjugality.⁸ In the 1990s the Myal Dance has become a tourist attraction and a symbol of Jamaican nationhood, forged through a history of conflict and alliance. This, too, is now ritually enacted at the Kindah Grove, which is visited by tourists and by invited ministers of the Jamaican state with their armed body-guards.

Beyond the Kindah Grove is the reputed resting place of Colonel Cudjoe's 'brothers' and lieutenants: Quaco, Cuffee, Johnny and Accompong; the latter being the founder of the Accompong Town community. This second burial ground is, like the graves at Kindah, marked by cairns and boulders. However unlike the Kindah graves, which are overgrown by bush and absorbed into the wilderness, the lieutenants' graves (which are surrounded by provision-grounds and pasture) are weeded for the Myal Dance. At this time the maroons make a ritual journey from Kindah through this second grove. Non-maroons are not allowed to make this pilgrimage.

Some distance on, in the intermediate zone, is 'Old Town': the third and most sacred burial place. Old Town is located where a cockpit-valley adjoins a jutting cockpit-mountain covered profusely with cocoon-vines, which oral history states

⁸ In contrast to the cognatic descent groups, which are ancestor/ancestress-oriented, the bilateral kinship networks are ego-focused - surrounding each individual on both parental sides. The maroon family system, based on descent, kinship, marriage and affinity reinforces the maroon polity, which is an autonomous corporate landholding community within the wider Jamaican state.

provided both camouflage and food during the First Maroon War. Modern maroons say that Old Town was Colonel Cudjoe's military camp, the mountain being his look-out to miles around, and that Cudjoe himself is buried in the valley here in a stone-marked grave. Nanny, the ritual heroine of the Windward Maroon polity in the eastern mountains of Jamaica,⁹ who is claimed by Leeward Maroons to have been Cudjoe's sister, is likewise said to be buried here. These reputed graves are weeded for the pilgrimage and an altar is erected for a sacrificial meal.

Even further on, into the forest, is the Peace Cave, which is said to be the scene of the successful maroon ambush of British soldiers that won the War, and the site of the signing of the treaty between Colonel Cudjoe and the colonial regime. The ritual transit from Kindah to the Peace Cave is marked by intercessions and libations to the warrior-heroes; and a rum-bottle, annually replenished, is placed for Cudjoe's spirit inside the cave. The graves of defeated British soldiers, and maroons who fell in war, are said to be scattered all around at this fourth sacred burial ground. On their return from the Peace Cave, through Old Town and the lieutenants' graves, the maroons reconvene at Kindah to greet their non-maroon guests armed with sticks and battle-camouflaged in cocoon-vines.

This symbolic journey through sacred space and back in time is continued by a fifth burial ground within Accompong Town itself. This is the cemetery of the Presbyterian (now United) church, which was established in the maroon society in the late nineteenth century (Kopytoff 1987: 473; Besson 1997). More recent ancestresses and ancestors are interred in this burial place, which symbolizes the transformation from marronage and African ethnic groups to a creole maroon community. The village cemetery is a symbol of this corporate community and its common land. This mode of burial is still on-going, reinforced by both Christian and Myal mortuary ritual.

However, during the period of my fieldwork, a sixth interment pattern has been emerging. This is burial in house-yards in modern concrete tombs. This represents the nascent concretization of the evolving cognatic descent groups, and is reinforced by Afro-Christian mortuary ritual and migrant remittances. This emerging yard-burial pattern is long-established in the Jamaican non-maroon communities that originated in the proto-peasant adaptation and the post-emancipation flight from the estates, such as Trelawny's free villages. Yard burial, rooted in folk law, also

⁹ The Windward Maroon polity was consolidated by a treaty with the British colonial government in June 1739. See Kopytoff 1978 for a comparative analysis of the early development of the Leeward and Windward Maroon polities. Leeward and Windward Maroons disagree regarding Nanny's burial place.

typifies Accompong's neighbouring Aberdeen community, which originated in both the maroon and proto-peasant pasts.

Aberdeen in St. Elizabeth

Adjoining the Leeward Maroon commons, in the parish of St. Elizabeth, is the Aberdeen community with a population of some 16,000 adults on about 1,200 acres of mainly mountain land. Aberdeen has a more dispersed settlement pattern, on parcelled lands, than the corporate Accompong maroon village. However, as in the maroon society, legal freehold tenure has also been transformed.

The Afro-Aberdonians are descended from proto-peasant slaves, who appropriated the mountain backlands of Aberdeen plantation (bordering the maroon commons) established by Alexander Forbes of Aberdeen, Scotland, in addition to cultivating the house-yards of the Aberdeen slave village. Oral traditions in both Accompong and Aberdeen recount military and conjugal alliances between the First-Time Maroons and the slaves on Aberdeen estate, established by communicating through the plantation-backlands bordering the commons. This theme is underwritten by historical accounts of such alliances forged by rebel slaves. Today, many Afro-Aberdonians have ties of kinship, marriage and descent with maroons in Accompong. In addition, Aberdonians of maroon descent retain usufructuary rights and voting status in the Leeward polity. However, the Accompong maroons contrast their tax-free common land, deriving from the treaty, with Aberdeen's taxed and parcelled lands. These comprise a core of 'family lands' co-existing with other small-scale tenures, such as purchased and rented land. On these lands Aberdonians practice mixed cultivation for subsistence and sale in public market-places, and cash-crop bananas and sugar-cane for the world economy.

The core of family lands in Aberdeen are rooted in the customary land-transmission system of Jamaican proto-peasant slaves. In order to avoid the high cost of imported food, plantation owners allocated mountainous and hilly land (unsuited to sugar-cane production) to their slaves for provision-cultivation, in addition to the house-yards that were kept as kitchen gardens. The slaves developed their own economy well beyond the planter rationale, producing surpluses for sale in public market-places. By 1774, at the zenith of plantation slavery in Jamaica, slaves controlled one-fifth of the island's currency through such marketing activities (Mintz 1989: 180-213).

In addition, by the late eighteenth century the planter-historian Bryan Edwards noted a system of customary transmission in relation to these house-yards and provision-

grounds, and in the early nineteenth century John Stewart observed that each slave had such rights to land (Edwards 1793, 2: 133, and Stewart 1823: 267, quoted in Mintz 1989: 187, 207). This gender equality among male and female slaves provided the foundation for their customary system of unrestricted cognatic descent and land transmission, especially given the significance of women as field slaves and the matrilineal emphasis in slave yards and communities. The Jamaican slave religion, Myalism, with its elaborate mortuary ritual reflecting a belief in an active spirit world including ancestral kin, reinforced this land-transmission system with its descent-based burial grounds in the house-yards of slave villages (Besson and Chevannes 1996). In the later slavery period, Myal would control Nonconformist mission Christianity: such as the Moravian church, which missionised the Aberdonian slaves and consolidated the Aberdeen community in the late nineteenth century - though many Aberdonians are Pentecostals today (compare Austin-Broos 1997).

Oral tradition combined with written history indicates that, in the case of Aberdeen, the former proto-peasants extended the appropriation of plantation lands around 1845, seven years after emancipation, by squatting on Crown Land and plantation backlands south of Aberdeen estate. The planters and colonial state retrieved the land in law, registered it, and sold it in parcels (with taxation) back to the Aberdonian ex-slaves. These emancipated slaves formed the core of the Aberdeen post-slavery peasant community, which was augmented by some maroons who migrated from Accompong to live nearer to the plains. Such 'bought lands' have been transformed into 'family lands' by their descendants, with landholdings validated by oral history rather than by legal documents. These ancestral lands, which are transmitted through unrestricted cognation and are characterized by burial grounds as in the proto-peasant past, provide a foothold in the face of the surrounding bauxite mines and corporate plantations. The process of creating customary family land from purchased land continues, reinforced by burial rooted in Afro-Christian mortuary ritual.

This appropriation and overturning of legal freehold by folk law is exemplified by the oral tradition of the Aberdonian ancestor-hero, the African-Prince Maroon. Aberdeen's central 'Old Family' or unrestricted cognatic descent group (which overlaps with an Afro-Scots non-maroon family line) traces its ancestry and family land eight generations, through males and females, to an ancestor who is said to have been an African Prince who was brought on a slave ship to Jamaica and escaped to Accompong from a plantation on the plains. One of his descendants is said to have 'come out' from Accompong and to have acquired, through squatting and purchase, some sixteen acres of mountain land in Aberdeen around 1845. This land has been orally transmitted to all of his descendants. Some members of this unrestricted landholding corporation have migrated to New York and to Bradford,

England; while others remain on the family land in Aberdeen. Any absent member of this dispersed kin group may return to live there or be buried on the land, which in 1999 had at least 23 old tombs and cairns in its burial ground.

Free Villagers and Squatter-Peasants in Trelawny

Ancestral family lands, rooted in folk law, are also at the core of the post-emancipation villages in the neighbouring parish of Trelawny, which was the heart of the plantation-slave economy and the vanguard of the post-slavery flight from the estates. In the first few years after emancipation, at least 23 post-slavery villages were established in Trelawny through an alliance between the freed slaves and the Baptist church - which was prominent in the anti-slavery struggle and had been the most successful Nonconformist sect to missionise the slaves. This 'free village' movement, which was widespread throughout the island, drew on traditions of slave resistance including the proto-peasant adaptation (which was pronounced in Trelawny) with its customary cognatic land-transmission system. In the five free villages studied, oral traditions elaborate the theme of emancipated slaves appropriating small-holdings from the plantation system in the context of acute planter opposition to peasantization.

In four of the villages (The Alps/New Birmingham, Refuge/Wilberforce, Kettering, and Granville) the Baptist church mediated between planters and freed slaves, creating legal-freehold land settlements with colonial Christian nuclear families through the subdivision and sale of land from purchased plantations. In the fifth free village, Martha Brae, Baptist ex-slaves from the surrounding estates of Holland and Irving Tower squatted on the site of a declining Georgian planter town that had been the colonial capital of Trelawny in the late eighteenth century. As in St. Elizabeth's Aberdeen, the colonial state retrieved this 'captured land' for sale, registration and taxation; and, as in Aberdeen, the ex-slaves and their descendants created family lands from purchased lands in the process of transforming the planter town into a peasant village. A similar transformation from legal to customary freeholds has occurred in the context of imposed land settlements in the other Trelawny villages; and in all five free villages unrestricted cognatic descent lines, which transformed the European nuclear family, are anchored in these family lands (Besson 1984b). As in Aberdeen, these family lands (which co-exist with other small-scale tenures) are transmitted through oral history from ancestresses and ancestors; and are typified, in varying degrees, by ancestral burial grounds. Interment in all five villages is characterized by a combination of Baptist and Revival-Zion mortuary ritual (forged through the appropriation of Baptist Christianity by Myalism), Trelawny having been at the centre of both Baptist missionising and the Myal movement in Jamaica.

These family lands perpetuate the peasant communities, which are today surrounded by vast corporate plantations and by the escalating tourist industry. New Birmingham (now called The Alps), which was Trelawny's first free village founded in 1838 on a former coffee estate named The Alps in the northern foothills of the Cockpit Country, resembles St. Elizabeth's Aberdeen in its dispersed mountainous land base. Its family burial grounds are likewise very pronounced, one such family cemetery containing 34 identifiable cairns and tombs of the descendants of an emancipated slave.

The other four free villages are more nucleated on marginal land bordering plantations on the coastal plains, in an area directly inland from Jamaica's world-famous tourist coast. These villages are typified by intense land scarcity, and landholdings are measured in square feet or chains.¹⁰ Today Wilberforce (subsequently named Refuge), which was founded in 1838 on approximately 90 acres of hilly land now embroidered with ancestral cairns and tombs, has a population of about 400 persons in 80 households hemmed in by the 20,000 acres of the National Sugar (Long Pond) corporate sugar-estate. Granville, which was established in 1845 also on some 90 acres, has a population of around 600 persons in 120 households on a landscape covered in ancestral graves of varying style and age, and also surrounded by estates.

Kettering was founded in 1841 on rocky land (a former pimento estate subdivided into four hundred 'lots' measured in square feet) adjoining the town of Duncans. Contemporary Kettering has about 800 persons in 160 households, and parts of the free village now have to bury in the Duncans cemetery because of the Towns' Limits burial regulations of the state; though yard interment continues undisturbed in the more remote areas of the village. In Martha Brae, which was appropriated by ex-slaves in the 1840s, around 800 persons in 170 households are now enclosed (as one villager put it) "like pigs in a kraal" on a ridge of approximately 30 acres by sugar and papaya estates. There yard-burial was discontinued in the early twentieth century, as a result of acute land scarcity and Trelawny Parish Council burial legislation, and has been replaced by interment in the village cemetery. However, customary family lands persist at the heart of the community and are still created through folk law wherever possible from tiny plots of purchased land.

In all of these free villages today, the unrestricted cognatic descent system at the heart of family land maximizes scarce land rights and kinship lines as bases of identity and security among descendants of chattel slaves. This nonexclusive land-transmission system also enables return and circulatory migration; and in the

¹⁰ A square chain is one-tenth of an acre.

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diaspora (for example, in London, England) small sacks of soil from family lands symbolize customary rights which are regarded as inalienable.

The unrestricted descent system also links these free villages to Zion, a squatter settlement established during the period of my long-term recurrent fieldwork in Trelawny by landless tenants from Martha Brae who 'captured' land on a part of Holland plantation owned by the Parish Council. This satellite squatter-peasantry, some of whom migrated to Martha Brae from other Trelawny villages where they are members of Old Families experiencing land scarcity, has a history of land dispute and negotiation with the state. When I began my fieldwork in 1968 there were no houses on Holland estate. By the end of 1968 one chattel cottage had been moved from Martha Brae to the Parish Council land and the household was threatened with eviction. After a court case and a compromise relocation, two more households squatted there in 1971. By 1979 there were around 30 households and the settlement had been named. By 1995-96 there was a vibrant squatter settlement, with some 70 households on approximately 30 acres of captured land, and the government was surveying and subdividing (in square metres) this land for retrieval, sales, registration and taxation through the official legal system. In 1999, while no land sales have yet been made, these are still anticipated and Zion is being referred to as 'a town'.

The first settlers of Zion who appropriated the plantation-land, creating house-yards immediately behind a "No Squatting" sign, are ancestor-heroes and ancestress-heroines in the making; and it is likely that their house-yards, as well as those of other settlers, will be transmitted through folk law as family lands. Meanwhile, the squatter settlement provides a foothold for Revival-Zion ritual and a 'Zion' for Rastafarians in 'Babylon'.

Conclusion

The articulation of folk law with the official legal system of the Jamaican state is complex and questions the plural society thesis of Caribbean land-tenure systems (e.g. M. G. Smith 1965; Lowenthal 1972). For example, legal elements such as burial regulations and taxation are imposed on family lands;¹¹ while free-villagers sometimes draw on the legal code to reinforce, adjust, or challenge customary family-land principles. In addition, some aspects of state law indirectly reinforce the customary system. Thus the rule that the picking of fruit from economic trees is

¹¹ The burial legislation derives from The Burial Within Towns' Limits Act, Cap. 49, *Laws of Jamaica* (enacted 1875).

evidence of land occupancy reinforces the retention of rights to family land by non-resident co-heirs who 'pick' from family land (Besson 1988, 1995f). However, the dominant theme in all communities is the appropriation and transformation of legal freehold by the customary land-tenure systems of Jamaican folk.¹²

As seen in the preceding sections, this process is historically rooted in colonial plantation slavery when proto-peasant slaves established customary cognatic land-transmission systems which became consolidated in the maroon polity and the post-emancipation villages. This cultural creativity reversed and overturned the colonial legal institution of primogeniture on which the plantation system was based. The ethos of these customary tenures has also since transformed state law itself, which put an end to primogeniture in 1953 and abolished the Eurocentric status of 'illegitimacy' with the Status of Children Act in 1976 (Besson 1988). As seen above, this process of appropriating the official legal system reaches back to the Leeward Maroon treaty of 1739 and is still on-going among the squatter-peasantry of Zion in 1999.

Similar appropriations of official land-tenure systems by folk law can be widely identified in Caribbean peasant communities, where common lands and family lands articulate with unrestricted cognatic descent systems originating in proto-peasant and maroon adaptations (Besson 1987a, 1992, 1995d). In the Greater Antilles, an unrestricted descent system persists at the heart of the Haitian *lakou* or landholding kin group; as well as being widespread in family land throughout Jamaica. In the Lesser Antilles, family land, rooted in unrestricted descent lines, is likewise found in the Virgin Islands of Tortola, Virgin Gorda, and St. John; the Leeward Islands of Antigua, Nevis, and now-erupting Montserrat; Dutch St. Eustatius; French Martinique; the Windward Islands of Dominica, St. Lucia, St. Vincent and Grenada; Carriacou and Bequia, in the Grenadines; Trinidad and Tobago; and in Barbados, where the family-land ethos has shaped the Family Law Act of 1981 which recognises "the rights of illegitimate children" (Carnegie 1987: 97 n3; compare Greenfield 1960). Family land is also found in Providencia in the western Caribbean.¹³

In the more northern Bahamas chain customary family lands, known as 'generation property' and transmitted through cognation, articulate with common land. On the coastlands of Guyana and Suriname, which form the southern frontier of the Caribbean region (socio-culturally defined), cognatic land transmission likewise co-

¹² See note 6 above.

¹³ For full documentation of these cases see Besson 1984a, 1987a, 1995d.

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exists with common land. Among the 'Black Caribs' of the Caribbean Coast of Central America, a cognatic system also co-exists with common land, as on the Carib reservations of Dominica and St. Vincent.¹⁴ As outlined earlier, a similar situation typifies the wilderness reservation of the Jamaican Leeward Maroon polity. A parallel pattern can likewise be identified among the Windward Maroons in the eastern mountains of Jamaica (Besson 1997; Bilby 1996).

In the isolated Leeward Island of Barbuda cognatic land transmission interweaves with common land in the context of house-yards and provision-grounds, as in Jamaica's Accompong maroon society (Besson 1987a: 38-40 n5, 1995d, 1997; see also Berleant-Schiller 1977, 1987, 1991). The Barbudan commons, which oral history states were willed to the descendants of the Barbudan proto-peasant slaves (who bordered on marronage) by the Codrington planter family, are in fact an appropriation of Crown Land. This land was only leased by the British colonial government to the Codringtons, who had plantations in Barbados and Antigua, to serve as backlands to their Antiguan sugar-estates. The commons have since devolved to the Antiguan-Barbudan state and are claimed by dominant Antigua, which wishes to develop Barbuda's land and pink-sand beaches for tourism. In the 1990s this legal claim is being contested in the courts, as Barbudan folk assert their customary rights to this common land and seek to shape their independent statehood.

This article has addressed the Caribbean controversy on folk law and legal pluralism through a focus on land-tenure systems at the plantation-peasant interface in Jamaica, at the heart of the Caribbean region. The Jamaican data, which have parallels throughout the Caribbean, suggest a more dynamic perspective on customary and official tenurial systems than M. G. Smith's static plural society theory contended. Rather than 'social and cultural sections' with entirely unrelated legal and property institutions, my analysis reveals a creative process of institution-building - set in motion by the slaves - within the context of capitalist class relations (cf. Mintz and Price 1992), which is shaping state law and Caribbean identities. In Jamaica and Barbados the family-land ethos, with its unrestricted cognatic descent system, has resulted in the abolition of plantation primogeniture and the recognition of so-called 'illegitimate' identities; while the Jamaican maroon commons and Barbudan common land have become symbols of Caribbean statehood. Paradoxically, M. G. Smith's (1956) own data on Carriacou reinforces my conclusion; for he highlighted the transformation of legal freehold through customary transmission. Moreover, in contrast to his portrayal of patrilineal descent groups, the Carriacou case clearly reflects the creation through folk law of an

¹⁴ See Besson 1995c, 1995d, 1997 for full documentation.

unrestricted cognatic landholding system (M. G. Smith 1956, 1962; Besson 1995c).

The Caribbean data, in turn, question Beckford's (1983) influential plantation society thesis. Beckford drew on Furnivall (1945, 1948) and M. G. Smith (1965) to characterize all societies impacted by plantations as 'plural societies', with separate racial groups and unrelated cultural institutions. He referred not only to Wagley's (1960) 'Plantation-America', with its Caribbean core, but also to 'Plantation-Asia', certain islands of the Pacific and Indian Oceans, and parts of Africa. However, a closer look at 'legal pluralism' in the Caribbean plantation heartlands reveals a dynamic process of domination, contention, re-creation and empowerment through the articulation of folk law with the official legal system (compare Mintz 1989; Besson 1988, 1995e, 1995f; Burton 1997). This is especially so in the island of Jamaica, which has the world's longest history of peasants and plantations.

This conclusion, in turn, has wider relevance for the cross-cultural analysis of folk law and legal pluralism. It highlights the dynamic articulation that may occur at the interface of plural legal systems; the variations of this interaction; and the cultural creativity of indigenous and creole populations in colonised and post-colonial societies, where folk law may affect the shaping of state law and the official legal process of nation-building.

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