

LAWS IN COMPETITION TRADITIONAL MAROON AUTHORITIES WITHIN LEGAL PLURALISM IN JAMAICA

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In analysing the current legal pluralism in Jamaica one cannot escape the need to take into account the historical circumstances of its emergence. It is against this historical background that I shall attempt an interpretation of the endeavour of Maroon communities to maintain local political autonomy in the face of the claim to exclusive sovereignty by the Jamaican state. There are tensions between the traditional Maroon authorities and the official legal and political institutions of the state in the field of law, concerning contested authority as legitimate domination.¹ They appear as struggles over jurisdiction, or more precisely the right to jurisdiction. But it would be inaccurate to present them as mere institutional conflict over political sovereignty. Social actors on both sides interact on different levels of power relations in manifold and complex ways that reflect divisions of power and status within the post-colonial setting. This seems to be true of the internal relations within Maroon societies as much as it is of their interactions with state institutions.

In this paper I sketch some of the more prominent features of the actual situation of political and legal pluralism in Jamaica and the historically shaped position of the traditional (Maroon) authorities in that context. Whereas this Jamaican context may appear quite unique, discussion at the Ghana Conference where this paper and the others in this volume were first delivered showed striking similarities to various contexts in Surinam and West Africa. Again, this can be attributed to historical links.

¹ There are three viable Maroon communities in Jamaica today, namely, Moore Town, Scott's Hall and Accompong. My research from 1984 to the present has been carried out predominantly in Accompong, to which this contribution refers, where not otherwise indicated.

Historical Background

Historical perspectives are frequently referred to in the continual political claims to sovereignty by Maroons. They rely upon their earlier control of territory in Jamaica to assert their historical status as a 'selfgoverning' group. History thus serves a legitimating purpose for their claim to authority over their own people and to sovereignty over their lands in contradiction of the notion of unlimited state sovereignty expressed in the Jamaican Independence Constitution of 1962.

When the British invaded Jamaica and finally captured the island from the Spaniards in 1655 the Black population numbered about 1500. Some Africans enslaved by the Spaniards had apparently fought against the British on the side of their masters. Other persons of African descent, who had earlier been freed through manumissions opposed the British for fear of re-enslavement (Robinson 1969: 17-20; Hart 1985: 3-5). Whether there existed another body of Africans who had never been slaves on Jamaican land, either because they had escaped from slave ships immediately on arrival or because they had deliberately migrated to the Caribbean, as the oral traditions of Maroon historians have it, can hardly be answered by empirical ethnohistorical research. However, it is certain that a group of Africans confronted the British forces and continued to fight for their freedom and independence for over 80 years. They came to be known as Maroons, a term probably derived from the Spanish *Cimarron*.²

Jamaica established a rare record of rebellions against European slave-holders. These uprisings reinforced the ranks of the Maroons who endeavoured to form new societies based on African organisational traditions and principles. Among these Akan experiences probably prevailed. This is suggested by written historical records, linguistic research, and sources such as the diaries of white plantation owners. The last attribute most rebellions to the warlike spirit of the so-called Coromantees or Cromantees (Craton 1982: 77; Dalby 1971: 31-35; Schafer 1973: 45). However, their use of this term can be misleading as an indication of the ethnic composition or origin of Maroon societies in Jamaica. As Hart has pointed out:

The term Cromantee was probably taken originally from the

² The generally accepted etymological explanation of the term Maroons makes a connection to the Spanish word *Cimarron* (meaning "wild" or "unruly"), originally used for runaway domestic animals and later also for slaves; it is an explanation which sheds light on European attitudes to peoples of African descent (Robinson 1969: 17; also for alternative etymologies).

name of the Fanti coastal settlement, now a town called Kromantine, where the English built their first slave trading fort on the Gold Coast in 1631. For some 30 years thereafter this fort was the principal point from which the English traders shipped their human cargoes. On sale in the Caribbean colonies these slaves were presumably identified by their point of departure. Later, when the English transferred their slave trading headquarters to Cape Coast, captured from the Danes, and established other points of embarkation, they appear to have applied the description originally used for slaves shipped from Kromantine to all slaves shipped from the Gold Coast. (Hart 1985: 9)³

It might seem surprising that the Maroons, once established as viable societies in the island's interior, should have chosen to apply the colonial term *Coromantee* in its African pronunciation *Kromanti* to various aspects of their culture. But this may be interpreted, as Kopytoff (1976: 35) has convincingly argued, as an attempt to shape a new ethnicity previously non-existent on the African continent, rather than a manifestation of the psychological defeat suffered through their enslavement. Behind the use of the word *Kromanti* for the most important aspects of Maroon culture and history lies more than a simple revision of the colonial identification. The concept of *Kromanti* provided the early freedom fighters with a common denominator for their various African cultural experiences. It allowed for an ethnic identity that drew on different socio-legal African traditions as well as on the common experiences of the original enslavement, the transatlantic middle passage, and their commitment to resistance and the freedom struggle (Zips 1993: 56-61).

Where the notion is used today it always refers to the 'days of old', the early ancestors and their practices. *First-Time*, the time of the original formation of the Maroon nation as it is seen today, is recalled regularly. Communication with the

³ The ruins of the original Fort Kormantin (renamed Fort Amsterdam after its capture from the British by the Dutch) are now in the care of the Ghana Tourist Board and recently were partly reconstructed with financial help from the Netherlands. During my first visit in 1994 I sought to investigate whether there was any awareness of the Jamaican Maroons among the population of Kromantine. In a formal talk at the chief's palace with the chief and some of his elders, I asked various questions concerning Maroon history. The only reply I could elicit was that the place must have some significance in African-American history because there were fairly regular visitors from the United States and even from Jamaica.

ancestors seeks to involve the 'First-Time people' in daily affairs.⁴ Their voice - mediated to the wider community through individuals endowed with this capacity - speaks out to ensure continuity in legal, political and social matters. Continuity in this sense should not be equated with tradition in a static sense. Whereas the First-Time people's support for continuity usually backs the legitimacy of traditional authorities, based according to Max Weber (1968: 226) upon the belief in the sanctity of age-old rules and powers, this does not necessarily constitute an absolute impediment to social change. The emphasis on the First-Time Kromanti rules rather sets limits to possible change. Above all, any attempt to sacrifice any degree of their territorial sovereignty and political autonomy would be seen as incompatible with the continued corporate existence of the Maroon community and therefore a sharp breach with Kromanti rules.

The normative principles of Kromanti rules are indissolubly connected with the time of fighting. It lasted for more than 80 years, and the conclusion of peace in 1738/39⁵ transformed the claim to independence into the status of recognition. The closeness, in the view of contemporary Maroons, of the association of the Peace Treaty with the First-Time people can be seen from the double function of the annual celebrations. This main cultural event in Accompong is said to commemorate the signing of the Peace Treaty *and* the birthday of Kojo, the head of Maroon society and leader of their guerilla forces. His achievement in forcing the then 'superpower' Great Britain into a peace agreement with a group of a few hundred people of African descent made him an immortal cultural hero for the Maroon society of Accompong. Kojo is seen as having brought official recognition to an everlasting independence. The Maroon representation of their

⁴ On the importance of *First-Time* for the political organisation and quasi-legal processes within the Saramaka Maroons society of Surinam, see Price (1983, 1990). One noticeable parallel with the Jamaican Maroons is the communication of spirit media with 'the dead', especially in times of personal or social crisis. Their active participation through their temporary visiting of the bodies of living Maroons at so-called Kromanti dances in Moore Town, or at the annual celebrations of the Accompong Maroons to commemorate the Peace Treaty, shows that 'the dead' can come to life again if their participation is sought (Bilby 1981, 1983; Zips 1992). (The term 'possession' is commonly used of this phenomenon, but 'visiting' better expresses the interactive process between the living and the dead.)

⁵ In the Julian calendar New Year's day fell on 25th March. Until the Calendar Act of 1751 all dates before 25th March were counted as being in the 'old' year. Hence the early literary sources (e.g. Dallas 1803; Edwards 1796) gave 1st March 1738 as the date of the Peace Treaty; this would be 1739 according to the Gregorian Calendar.

status is exemplified in an interview with Ex-Colonel Cawley (on film, Zips 1991a: 72):

Accompong is a state within Jamaica. This is the Maroon land on which they lived before the British came. When the British came they found the Maroons here already. And these were the people the British tried to enslave. But they were not successful. They [the Maroons] were independent before the British came. Because they had to be living on their own. And during that time of the warfare they had to find everything for their subsistence. But when the Peace Treaty was signed that was what made the independence official. Self-government means that the Maroons were on their own, they were not provided for by the British and they had to find their own way out. But the Peace Treaty has stipulated certain things that the British would assist the Maroons with - like certain means of trade and other benefits that they would help the Maroons to have. But this does not nullify the fact that they were not independent in that sense. When the British made the Peace Treaty with the Maroons in 1738, the lands on which the Maroons fought were demarcated for their own use and purposes.

For the Maroons the Peace Treaty was and still is a sacred agreement that guarantees their eternal freedom, their right to self-government, legal self-regulation and jurisdiction within their community. It is still cited as the very basis of their (however restricted) sovereignty and therefore the source of legitimacy for their legal authority. In other words, the Peace Treaty provided a second leg to the base of legitimacy for their ('traditional') authority. Kopytoff (1979: 46) pointed out that the treaty brought about so many changes in the Maroons' existence that they radically transformed their societies. A major theme of this paper is that the tension between these two, very different bases of legitimacy gives a key to the understanding of politics within the Maroon communities and in relation to the Jamaican national state.⁶ Therefore the Peace Treaty deserves at least a short discussion to establish the context of 'traditional' (Maroon) authority.

⁶ The distinction between traditional and legal authority is drawn by Weber (1968: 231) in his formulation of ideal types of legitimacy. This seems useful in analysing the shift from an exclusively traditional type of legitimacy to an additional legal base. In the case of Kojo charismatic aspects of authority may also have played an important role, but the extent of these must be a matter of speculation.

The Blood Treaty of 1738/39

The Maroons of Accompong celebrated the 250th anniversary of the Peace Treaty in 1989, while the Jamaican state had experienced its 25th anniversary of independence in 1987.⁷ But there is another factor apart from historical depth that is highlighted by Maroons in the political discourse on legitimacy. This relates to the divergent legal status of independence. Of course, the views of the Maroon administration and the Jamaican state issue from highly different perspectives, but both should be taken into consideration if peaceful relations are the overall aim; and even more so if traditional authority is to play the active role in political and legal affairs which is desirable. The Maroon perspective has not been seriously examined and has been constantly overlooked in legal and constitutional matters. There are some signs of changes in this attitude on the part of the national state and its institutions.⁸ If this observation proves correct, the interpretation of the treaty and the other legal notions developed by the Maroons in over 250 years of self-government could be of basic significance in negotiating future administrative competencies and political relations.

From the perspective of the Maroons the Peace Treaty became a binding obligation through the exchange of blood between the representatives of the two parties. The signatures of the negotiators, John Guthrie and Francis Saddler for the British and Captain Kojo for the Maroons, are still not seen as the central symbolic act. The mark 'X' in the place for the signature of Kojo on the document indicates his probable inability to write English. Furthermore, his name is spelt in the document according to the English orthography. Most important, the ritual mixing and drinking of blood seems to have been the only appropriate interaction for terminating a war according to the political practices with which the Maroons were familiar through their West African experience.⁹ Countless oral traditions

⁷ A full-length documentation of the 250th Peace Treaty celebrations in Accompong has been published on film (Zips 1991b). The highlights of these celebrations were also included in a television documentary on the social history of the Maroons, entitled "Accompong - Black Freedom Fighters of Jamaica" (Zips 1991c).

⁸ This observation is mainly based on information provided personally by some lawyers on the procedures of the Constitutional Law Reform Commission and on the interest shown by Resident Magistrates in the local jurisdiction of the Maroon court as stipulated in the Peace Treaty (interview with Noel B. Irving, judge at the Resident Magistrate's Court of St. Elizabeth, Black River).

⁹ Similar practices are of course also known among 'Indian' First Nations in the Americas.

recall the consecration of the peace agreement through the exchange of blood:

When it was coming to a peace term, then they injected the veins and caught the bloods, both the white and black bloods of we the Maroons and the Whites, the Englishmen, and caught it into a calabash basin and mix it with rum and weed. (Interview with Mann O. Rowe, Zips 1991a: 71).

The emphasis on the symbolic exchange of blood has significance for two legal claims: as to the reciprocity and equality of the two partners to the treaty; and as to the transcendental legal status of the agreement. Both claims were of great importance in the maintenance of self-government and autonomy throughout the colonial period have been equally so in the post-independence era. Various attempts by the colonial power to tamper with the treaties or certain of its clauses were warded off politically by the Maroons with reference to the reciprocal nature of the 'Blood Treaties'. It was not the ratification of the treaty by state law, a few months after its conclusion, that was seen as binding the two parties, but the blood ritual.

Subsequent unilateral legal acts, like the *Maroons Land Allotment Act* of 1842 that sought to repeal the Act ratifying the Peace Treaty and all other laws concerning the Maroons, were therefore simply ignored. They can hardly be seen as having become effective in a legal sense (Kopytoff 1979: 47-59). They might be read rather as evidence of the untrustworthiness of the European colonial states in their dealings with other nations than as valid statutes effecting changes in the political status of the Maroons. As Genovese (1981: 55) has noted, for the colonial powers the degree of respect accorded their contractual obligations towards non-European nations was usually just a matter of political calculation. The assumed right to change the content of reciprocal agreements by unilateral legal action contrasts sharply with the status given to the 'Blood Treaty' by the Maroons. As a document based on the will of two equals, now two sovereign nations, it was assumed that it could be varied only by agreement between the two sides.

But not even such a bilateral agreement, which in any case did not occur in historical reality, could have changed the treaty according to the Maroon perspective, since the exchange of blood rendered its status transcendental.¹⁰ Only

¹⁰ The only possible exception might be the treaty which concluded the so-called second Maroon War in 1795/96. But this treaty never took effect. It was used as a sort of bait to persuade the group of Maroons in rebellion to hand over their arms. In breach of this agreement, they were then forcibly exiled to Nova Scotia and a few years later to Sierra Leone by the British colonial regime (Campbell 1990: 209-250;

the original partners to the treaty could have varied it. On the Maroon side this person was Captain Kojo, who is still referred to as 'townmaster' by the spirit mediums (interview with Gladdys Foster, 10.1.1988). The treaty is therefore interpreted as being binding upon all subsequent generations of Maroons. It acquired the character of a sacred charter (Kopytoff:1979: 46). A simple declaration of nullification by state law, or even the physical destruction of the document, could not extinguish its transcendental legal force. Its continued validity could be affected only by renewed bloodshed, that is, a resumption of war (Martin 1973: 176).

There is still a great deal of uncertainty about the status in international law of treaties with indigenous populations. In the case of Maroons (including Maroon societies of Surinam, Columbia and other countries), the problem is further complicated by the restricted definition of indigenous peoples. Maroons are presently recognized neither as indigenous peoples, nor as ethnic minorities nor as (state) nations. The last of these is the status striven for through political action and a variety of symbolic acts (e.g. the recently commenced stamping of foreign passports) by the Maroon administration. Their official complaint to the International Court of Justice some ten years ago has received no answer to date (interview with Ex-Colonel Cawley, 11.1.1994).

During the last few years international pressure for formal legal recognition of treaties with non-state populations has been constantly on the rise. The only possible arena for this drive is thought to be that of international law. There the various and rapidly growing initiatives find the support of Non-Governmental Organisations like the Committee on Human Rights in Geneva and the interest of international organisations like the Center for Human Rights of the UN. Increasingly the study of the status of these treaties in the 'Law of Nations', as international law is also called, involves also the perspectives of non-state populations (Schulte-Tenckhoff 1993: 355).¹¹ But so far there is no general principle in international law, even in theory, defining the standing of treaties between former colonial powers and people who achieved some sort of political recognition, territorial autonomy, privileges or even quasi-state independence without becoming the successor to the colonial power. It is therefore largely within the power of the same colonial or imperial body which was a party to the

Hart 1985: 157-190).

¹¹ One of the first publications of the UN Center for Human Rights in Geneva was published as a UN Document under the title "Outline on the Study of treaties, agreements and other constructive arrangements between states and indigenous populations" (UN 1988).

treaty or, as in Jamaica, its political successor to define the position of such agreements by its constitutional law or by any other means seen fit. Thus a onesided legal classification determines the status of these initially reciprocal acts. The base of this international practice rests solely on political power, depending on arguments of purposive rationality or economic 'necessities' and can hardly be justified by any standards of communicative rationality (Schulte-Tenckhoff 1994: 22; Krupat 1992: 129-172, especially in relation to treaties between 'Indian' First Nations and the USA).

In Jamaica the Maroons are symbolically acknowledged as the first successful Black freedom fighters in the African Diaspora. Many actions by institutions and individual officials might be interpreted as conclusively recognizing them as a distinct political entity. But neither the Peace Treaty as a whole nor any of its clauses have been legally validated by the post-colonial state. One might argue that such confirmation is unnecessary, since the treaty has been ratified by law which is binding upon the successor to the colonial power. This follows if one holds that the attempted unilateral legal revocation was ineffective for lack of the proper procedures of proclamation and enforcement. But the constitution and other laws contradict in substance the rules proclaimed by the Peace Treaty. The stance taken by the Jamaican constitution to the rights and (restricted) sovereignty of the Maroons, as stated by the Peace Treaty, can be characterised as based upon ignorance. Maroon officials like former Colonel Harris N. Cawley complain about this bitterly:

When independence came in 1962 - what we are saying as Maroons is that the British with whom we had made the Peace Treaty should have come to the Maroons and explained to the Maroons that the treaty that was made between them will be shifted over to the Jamaican government, the responsibilities rather, which was not done up to that time. So the Maroons did not get the treaty into the Constitution of Jamaica; because, since we have lands on the same country, it could not be a constitution that was made by one side. It should be a constitution that is made by both parties, the Maroons and the government. (Interview on film, Zips 1991: 72).

Very few Maroons are aware that their case was raised in the British House of Commons on the eve of Jamaican independence by Labour MP Tom Driberg. The historical perspective given in his speech, with all its political implications concerning the tendency of the former colonial power to interfere in the internal affairs of its successor, makes it seem worthwhile to cite it at some length:

... I am sorry to trouble the House with what some hon.

Members may think a very trivial matter, but I do not think it is. It concerns a small minority of people in a Colonial Territory and the reason I have to raise it now is that it is a small community of people in the territory of Jamaica, which becomes independent in a few days' time, as the Leader of the House will know. After Jamaica becomes independent it will presumably be out of order and quite impossible to raise in this House any matter concerning the internal policy or administration of Jamaica.

I am concerned about the future welfare and the fate and freedom of the people known as the Maroons of Jamaica - the Maroons of Accompong and of Trelawney Town. To remind hon. Members who may not recall their West Indian history, I should say that these Maroons have an extraordinarily romantic and interesting history. As far back as the eighteenth century they won their freedom: they won a treaty of independence from the British Government. They were runaway slaves, and descendants of runaway slaves, who escaped to the mountains and fought a number of harassing guerilla wars against the British. Eventually, in 1739, 'articles of pacification' were concluded which guaranteed them - this is the point - their freedom and the possession 'for themselves and posterity for ever all the lands situate and lying between Trelawney Town and the Cockpits, to the amount of 1,500 acres.'

Whatever has happened since then, the Maroons have always cherished and tried to safeguard some degree of independence. Obviously we all welcome the independence of Jamaica as a whole, and wish the Jamaican people well in the future; but I hope, first, that the Jamaican Government will deal tenderly with these interesting people, living as they do in a few remote mountain villages. Secondly, I hope that the Minister - although I know this is a lot to ask - will be able to say something today about them, because this is the last occasion on which it will be possible to discuss them in this House, in view of the impending independence of Jamaica.¹²

In his reply the Leader of the House, Mr. Iain Macleod, refrained from an

¹² *House of Commons Debates*, Series 5, Vol. 664: cols. 620-621 (August 1, 1962).

impromptu answer and promised a written statement on the matter.¹³ As anticipated by Driberg, the discussion concerning the Maroons stopped at this point, and I am not aware that they were ever again mentioned in any British political body. This throws some light on the political delicateness of treaty responsibilities transmitted from the colonial power to the post-colonial state. An already complex case, full of possibilities of political friction, suffers even further radicalisation if it raises questions of authority and territorial sovereignty.

Any formal legal acknowledgment of the Peace Treaty would have the consequence of creating (or rather declaring) 'political islands' of autonomy within Jamaican territory. It would officially accept the existence of 'traditional' authorities based on another historical source of legitimacy. Among the fifteen clauses of the Peace Treaty 1738/39, three in particular provide the legal foundation for territorial sovereignty, self-government and jurisdiction. These are articles 3 (partly cited in the speech of Tom Driberg), 12 and 15 (Peace Treaty, kept by the Maroon Secretary of State, Mr. Mann O. Rowe):

Third. That they shall enjoy and possess, for themselves and 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.

Twelfth. That captain Cudjoe, with his people, and the captains succeeding him, shall have full power to inflict any punishment they think proper for crimes committed by their men among themselves, death only excepted; in which case, if the captain thinks they deserve death, he shall be obliged to bring them before any justice of peace, who shall order proceedings on their trial equal to those of other free negroes.

Fifteenth. That captain Cudjoe shall, during his life, be chief commander in Trelawney-Town, after his decease, the command to devolve on his brother captain Accompong; and, in case of his decease, on his next brother captain Johnny; and failing him, Captain Cuffee shall succeed: who is to be succeeded by Captain Quaco and, after all their demises, the governor, or commander in chief for the time being shall appoint, from time to time, whom he thinks fit for the command.

¹³ *Id.*, col. 635.

On the basis of these articles the Maroons tried to fashion their political relations to the colonial and the post-colonial state, develop their political organisation, and shape their juridical system and practices.

Internal political structures of the Accompong Maroons

According to article 15 of the Peace Treaty quoted above, the post of the chief commander was for life. From the relatively little known about the internal political structures of Maroon Societies in Jamaica through historical sources (both written sources and oral traditions), the chief commanders following Captain Kojo (Cudjoe in the English texts) were apparently nominated by their predecessors. To what extent the choice had to be approved by the elders and the larger community is not quite clear. Some interviewees spoke of the process of designation as being vested in the traditional authority - or, as Bourdieu (1979: 345) might put it, in the symbolic and social capital - of a ruling chief commander (interview with Cora Rowe, 3.2.1994). Any person seen fit for the office could be designated as chief commander: neither divine right nor claims to succession based exclusively on kinship give access to leadership (Clarke 1974: 3). But some family names such as Rowe, Cawley and Wright occur often in the list of Colonels following Kojo, a clear sign of the predominance of certain families in political affairs (Wright 1994: 70). Most chieftaincy systems in West Africa depend strongly on kinship relations within the 'royal family'. Apart from these historically explicable differences in the succession to leadership, the political structures of Jamaican Maroon societies show similarities and parallels with West African systems of traditional authority that deserve further comparative research. One of these features can be seen in the gerontocratic aspects of traditional domination.

Up to today the annual celebrations in Accompong are held under a large mango tree where the council of elders is said to have assembled under the chief (commander) (interview with Melvin Currie, 6.1.1989, on film, Zips 1991b). Compared to the structures of chieftaincy among, for example, the Akan (to whom the Maroons themselves make ethnic and historical connections) the absence of the important position of Queenmother is conspicuous.¹⁴ Other aspects

¹⁴ But there is a need for a re-evaluation of the obscure historical position of Nanny, the 'Queen of the Mountains', who was made a Jamaican National Hero in recognition of her leading role in the Maroon freedom struggle prior to the signing of the Peace Treaty. The title 'Chieftainess' is for example accorded to Nanny in the inscription on a monument in the Maroon village of Moore Town. Admittedly when titles like 'Queenmother' are applied today to historical figures such as Nanny, this might merely express the aim of African (re-)identification. But historical

of chieftaincy like the general system of 'checks and balances' for the control of chiefs, much emphasized by some African chiefs at the Ghana Conference of 1994, are also observable in comparable form in the 'traditional' political organisation in Accompong. The descriptive formula 'primus inter pares', so often stressed to describe the relationship of West African chiefs to their 'subjects', could as well be applied to the situation in Jamaica - but with the same danger of idealizing what are no more than structures of domination.

However, the system of authority among the Jamaican Maroons has undergone important changes since its regulation in the Peace Treaty. The official title of the political head of the society has changed from Captain to Colonel and in recent years to Chief, the last of which gives the impression of a conscious 're-africanisation'. There have been other, contrasting changes. Following a crisis of leadership after the removal of Colonel H. A. Rowe in the 1940s, a new system of leadership appointment came into force. Avoiding a split in political leadership, when two persons claimed to be entitled to the Colonelship, the Maroons turned to a process of legitimation by general elections (interview with Cora Rowe, 3.2.1994). All adult Maroons are entitled to vote. The electoral procedure was later changed from voting 'viva voce' in a general public meeting to the ballot. The large emigration from Accompong to neighbouring villages, small towns, and especially the commercial and industrial centers of Montego Bay and Kingston necessitated this reform to ensure that a satisfactory percentage of the electorate voted. Interestingly enough, the Maroons are assisted in conducting their elections today by Jamaican state agencies.

It is only the post of Colonel for which a writ for an election is issued. He selects the members of the Council. He himself occupies a position of authority in all legislative, administrative and judicial matters, described by former Colonel Harris N. Cawley (interview on film, Zips 1991a) in the following manner:

The Colonel is the head of state. He assumes this position because of his popularity in the community or because of his awareness of matters related to the Maroons. He is elected into office for five years by the popular vote in a democratic system. The Colonel office is managed by a Council with its Major, its Captains and then you have the other members on the Council numbering sometimes more than thirty men and women. In the Council he supervises and acts as the chairman for the Council

descriptions of the functions and actions of Nanny during the war and in the process of concluding peace lend at least some support to a comparison of her political position with that of an ideal type of an Akan Queenmother.

whenever the Council meetings are held, and he makes suggestions and takes ideas from the people and makes the plans for the running of the total community.

Nevertheless, the success of a particular candidate for the post of Colonel depends largely on the governmental team he is able to present. He is more likely to win the election if he can demonstrate the support of acknowledged leaders of society. The amount of symbolic capital held by the government (including Colonel and Council) is the product of the peaceful implementation of rules, administrative actions and juridical decisions. In general, a Colonel has a good deal of freedom in reorganising institutional structures. He can create new agencies like the office for tourism that was recently introduced into the Maroon Council by Colonel Meredie Rowe. The way in which he proceeds in all measures of political reorganisation provides a test for his abilities and trustworthiness. The broader the base for a plurality of political views and individual interests, the more he is able to keep centrifugal political forces under control.

In the 1980s Colonel Harris N. Cawley sought to gather the most highly respected members of the community into his Council. According to his organisational outline of the *Accompong Military Sovereign State*, there were two differently composed Councils, one the Council of Elders and one the Privy Council, appointed in addition to the 'full Council' of all political officers at the time, called the *Accompong Maroon Regiment Government*.¹⁵ The competencies of the Council of Elders comprised the following tasks: constructive suggestions to the Colonel, approval of individual appointments, request for a Colonel's resignation, denunciation of any action detrimental to peace and progress, and planning the election of a new Colonel. The functions designed for the Privy Council included making primary decisions regarding the state of Accompong and counselling the Colonel as an advisory body. It was composed of the following officials, besides two members 'without portfolio' appointed personally by the Colonel: the Colonel as chairman, the Deputy Colonel, the Commissioner of Lands, the Officer for Internal Affairs, and the Minister of Culture.

Under Colonel Cawley the division of offices resembled the division of ministries in many European states, thus making by itself a strong claim to state-like sovereignty. Fifteen offices were set up: the offices of the Colonel and Ministry of Finance; of the First Deputy Colonel, of the Second Deputy Colonel; of Education and Industry; of the Advisor to the Colonel in personal union with the Commissioner of Lands; of Internal Affairs; of Foreign Affairs; of Agriculture;

¹⁵ The outline presented here is taken from a written document prepared by Harris N. Cawley.

of Culture; of Health and Community Development; of the Secretary of State (the sole position for life in Accompong, held by Mann O. Rowe); of the Commissioner of Lands; of the Electoral Commissioner; of the Speaker of the House; and of the Auditor General. A Recording Secretary was additionally required to be present to record all discussions and decisions made by the Council. All these various duties were to be performed under the supervision of the Colonel, characterized by Ex-Colonel Cawley (interview, 13.1.1988) thus:

And all these [offices] have to be monitored by the Colonel to see that they are run properly, to get in and to investigate, to find out how this is going and so forth. Everything is not left to them alone, but the Colonel has the responsibility to see to it that they are done well.

A strong sense of political diplomacy is needed to choose members of the Council who will not be viewed by public opinion as too submissive to the Colonel, in order to give the administration credibility. On the other hand, the inclusion of 'oppositional spirits' could prove detrimental to effective government by creating frictions within the administrative body and transferring these tensions into the wider community. A delicate borderline between constructive opposition and loyalty is seen as the ideal location of 'good' (i.e. widely accepted) government (interview with Wayne Rowe, 16.2.1994).

In an attempt to provide by statute for the constitutional basis for (self-) government, a Maroon Constitution was drafted on 3rd August 1942. It contains, in its four articles with different subsections, provisions on the composition of the Government and which meetings should be called 'Council' meetings (article one), a catalogue of duties for the officers as Council members (article two), a short description of the posts of Administrator, Colonel, Assistant Colonel and Town Clerk (article three), and some general instructions for the conduct, duties and rights of the Police Department (article four).¹⁶

¹⁶ I have not yet been able to get access to the original handwritten document dated 3rd August 1942. The typewritten transcript that I was allowed to copy was prepared by Harris N. Cawley at the beginning of his term of Colonelship on 6th August 1981. He cites the original handwritten draft as done by his father, Jim Cawley, himself Colonel at the time. In his contribution to the Conference on Maroons (Agorsah 1994) in Kingston, Jamaica, the former Colonel Martin Luther Wright (1994: 70) gives the complete list of names of Colonels in Accompong following Kojo in order: Accompong, Austin, White, T. Crosse, R.J. McLeod, H.E. Wright, H.R. Rowe, W.I. Robertson, Isaac Myles, M.L. Wright, J. Cawley, W.I. Robertson, Charles Reid, H. Cawley, M.L. Wright, Meredie Rowe.

I interpret the political meaning of the Maroon Constitution of 1942 as directed primarily at a demonstration of sovereignty and far more than at the internal legal regulation of self-government. This constitutional effort came just at a time when Jamaica was slowly getting under way for independence. Its motivation was the vision of a future independent national state that was unlikely to feel bound by a treaty concluded by the colonial power. This post-colonial successor was to be met with statutes and other legal evidence of prior independence. I suggest that the Maroon Constitution was formulated largely to provide symbolic support in the predicted competition for sovereignty over Maroon territory. This thesis is based on the observation of the limited status which the Constitution acquired in the regulation of internal politics. Today it seems to be forgotten or ignored altogether. It is the Peace Treaty which all claims of sovereignty refer to and not the Constitution.

Consequently the decisive source for 'traditional' authority within Maroon society is still seen as being in the Peace Treaty. Through the exchange of blood the legitimacy of authority remained linked to its original 'traditional' base. Its official quasi-legal recognition added, as mentioned before, a second legal basis for Maroon authority, and allowed for its further legal development within the confines defined by the 'Blood Treaty'. But other 'purely traditional' authorities not 'legalised' by a treaty or statutory provisions have always effected a balance of power in the narrower, institutionalised sense. These are (among others): the spirit media or any other religious specialists, who are able to read signs and perform the necessary rituals to secure the wellbeing of the community with the assistance of the 'dead', the old ancestors; the (oral) historians who possess knowledge of historical rights (e.g. to land); and the traditional healers, also believed to give advice on the 'healing' of social problems and conflicts.¹⁷

These are all part of the system of 'checks and balances'. These 'unofficial' traditional authorities are familiar with traditional law, or more precisely are qualified through their communication with the First-Time people to communicate the legitimate interpretation of what was traditionally law. They are thus able to counterbalance the domination of the Colonel and other officials. On occasion they may even use their symbolic capital to counteract the political actions of the Colonel and the Council. By preserving the recognition of the old, First-Time

¹⁷ For a further discussion of power divisions within the Maroon society of Accompong, taking these holders of symbolic capital into account, see Zips (1995a). In my paper for the 1995 Conference of the Commission on Folk Law and Legal Pluralism in Legon, Ghana, I also elaborated on the role of these traditional authorities (especially of the historian of Accompong) in the mediation of land disputes (Zips 1995b).

Kromanti rules, they promote political and legal continuity. The same source of authority also plays a significant role in all matters of social control and dispute settlement.

Social Control and Dispute Settlement

The right to exercise the judicial power is recognized in article 12 of the Peace Treaty quoted above. It exempted only the death penalty from the jurisdiction of the Maroon authorities. Until recently most disputes and violations of the accepted social order were brought to the attention of the Colonel and dealt with in a session of the Maroon Court. This was composed of the Five members of the Cabinet or Komiti (the Commissioner of Lands, the Electoral Commissioner, the Speaker of the House, the Auditor General and the Commissioner of Police), the Secretary of State and the Colonel, who presided. This Court met regularly or on demand in public sessions. It employed a legal technique that might be characterized as 'contextual justice'. In the process of reaching a dispute settlement, often called *justification* or (especially in the case of land disputes) *pacification*, the whole historical context of personal and social relations was taken into consideration. The voices of knowledgeable persons in the community were heard and public comment was allowed during trials (Clarke 1974: 8). Ex-Colonel Cawley (interview on film, Zips 1991a: 71) described the search for 'contextual justice' in the following manner:

The Colonel knows his people. The Maroons are related in some respect. If a case is being called, the Maroons would get all the parties involved, look at the situation very closely, know something on the individual character, know him, his personality too, know that the offence he has committed may be, that he had not wished to having done, and then there would be some leniency meted out to that individual. The Colonel and the Councillors may ask him to repay the individual for the damage that is done or to do some work to balance over. In another case the person would be whipped; that would be a few years ago.

During the periods of my empirical research in Accompong, I very rarely had the opportunity to witness the settlement of a dispute. What might be considered quasi-criminal cases, or violations of the accepted order, never came to my notice during my stay in Accompong. Since the abandonment of corporal punishment, such trials of misdemeanors seem quite ineffective in the absence of prisons and a

police force to recover fines.¹⁸ The ambivalence surrounding the question of independent Maroon jurisdiction can be read from another statement by Ex-Colonel Cawley (interview on film, Zips 1991a: 71):

The law is within their own hands. In days gone by, the Maroons used to try their own cases. Today you find that many cases become very technical and need a lot of technical expertise to thrash out legal issues. So you find sometimes an interim decision is taken by the Council and then it is referred to the Jamaican Government who are kind enough to help us and assist us in getting justice in that case, like a murder case, and that was stipulated in the treaty too.

Not too long ago, the Jamaican Lawyer Michael B. Clarke (1974: 8) presented a rather different picture of what he called the 'customary legal code' of the Maroons of Accompong:

Great faith is shown by Maroons in their legal system.... [T]heir leaders, in whom they repose a great deal of faith, seem indeed to be considered capable and sufficiently skillful to render an effective restoration of the balance in the social order by their decisions...There are certain cases which the Maroons regard as triable in the ordinary Jamaican courts. But, on a whole, the Maroons do in fact exercise most jurisdiction over their own affairs.

This observation, based on empirical research in the 1970s, provides, in my view, also a key for understanding the crisis in the judicial system of the Maroons. If the social faith in the capability and impartiality of the authorities to 'restore the balance' is declining or lost, an outside but impartial judge seems preferable to most. Hansley Charles Reid highlights this by contrasting the present situation with the time when he was growing up (interview, 28.1.1994):

In my grandfather's days the Maroons were one set of people.... There wasn't much quarrel and dispute around. Unity was very strong these days...There was hardly any dispute. Because the big men in the community, that was my

¹⁸ Information on the practical abandonment of whipping put the date variously between the early 1960s and the mid-1970s. Handwritten case books in private possession that I was allowed to copy show the regular practice of corporal punishment even in minor offences until the 1960s.

grandfather, Nana Rowe's father, Colonel H. A. Rowe, Mr. Cawley were well respected. They kept the system tight. If they get up and say something, everybody would obey. And you would know, if you curse or use indecent language, they would get you and cat you.¹⁹

There is a high price to be paid for this deliberate subordination to the jurisdiction of an outside (Jamaican) judge. This does not just consist of the material costs of the 'lawyer money' which is, more often than not, out of reach of the incomes of smallscale farmers. Very few Maroons are familiar with the 'outside' law, which consists of the English common law and Jamaican legislation. There is a high degree of unpredictability in the outcomes of trials. Not only is the judgment incalculable. In many cases it is incompatible with the value system of the Maroons, which in important aspects diverges from British concepts of justice and is linked to African legal conceptions and their own experiences during slavery and independence (interviews with Wayne Rowe, 20.1.1994 and Melvin Currie, 3.2.1994).

A decision by a Jamaican Magistrate does not necessarily provide a solution to a dispute. In many instances the decision, given in ignorance of the social context in which the dispute arose and the values involved, is not considered to be a convincing means to restore social peace. If the standards of reasonableness applied by the judge are inadequate from the Maroons' legal point of view, any action by the successful contestant to enforce the judgement will tend to escalate the dispute into a conflict involving wider sectors of the society, who either owe allegiance to one of the parties or who interfere in order to protect the integrity of the social order.

This is most strongly the case in the special legal field of land disputes. In such cases the two legal conceptions of individual property rights (in Jamaican law) and collective or communal landownership (in Maroon law) come into direct competition. The recent increase in land cases brought in the Jamaican courts touches the central nerve of Maroon territorial sovereignty. Once the collective landownership, guaranteed to the Maroons by the Peace Treaty, is divided into individual property rights - and the judgments in land suits could substitute such land titles - the status of Maroons will be assimilated to that of all other Jamaican landholders. Consequently the insistence of the Maroons on being landowners instead of landholders will be sensibly weakened. The legal argument that they hold communal landownership has so far protected them from being taxed for

¹⁹ 'Cat' refers to the whip called the cat-o'-nine-tails. The case books are full of sentences of 5 to 15 lashes for the public use of indecent language.

landholding by the Jamaican state, as well as making a strong point for claiming de facto sovereignty.²⁰

Finally I attempt to assess the position taken by 'the Jamaican side', the representatives of the Jamaican judiciary, in the 'competition' between the two legal systems. A Court of Appeal ruling in 1956 denied the continued validity of article 12 of the Peace Treaty confirming the Maroon right to jurisdiction with a quite cynical reasoning (discussed at some length by Clarke 1974: 9-11). In contrast, Jamaican judges engaged today in 'Maroon cases' are aware of the problems and quite favourably disposed to dispute settlement procedures on the local level. The basis of their attitude is indeed a practical consideration than an analysis of the political questions of sovereignty or the theoretical legal issues: like many of their colleagues in other countries around the world, they suffer from a continuous increase in law suits and a parallel decrease in personnel resources. For many minor cases the reintroduction or strengthening of local institutions and procedures of dispute settlement could bring some relief to the capacities of the courts. The established legal traditions of the Maroons might also become a model for other developments in local dispute settlement processes, a possibility pointed out by Noel B. Irving, a Resident Magistrate in Black River (interview, 20.1.1994):

I cannot see this country in the present situation making arrangements between the Maroons and the larger community seizing jurisdiction to the Maroons to try cases like murder and serious offences... But to settle disputes, and I think there is a tendency now, there is a new development in terms of our justice administration system, where there is going to be a new strategy in terms of settlements and dispute resolutions in these communities, who will become greater involved in the settlement of disputes... Well, we are moving in that direction now. And in that event, I expect that we could rely a great deal more on the community, Maroon community and Jamaican community to make a greater input into the settlement of their disputes. And that would help us, because it would take away a lot of cases, ordinary simple cases, and much cheaper for the people.²¹

²⁰ Lack of space does not allow me to elaborate this complex matter in sufficient depth. I attempted to analyse the issue at some length in Zips (1995b).

²¹ The same tendency was observed some twenty years ago by Clarke (1974: 8) at the Resident Magistrate's Courts of Port Antonio where certain cases involving

Whether these attitudes are also held by political agencies in Jamaica needs further investigation. In the cited interview Judge Irving mentioned discussion by the Constitutional Law Reform Commission of the possible inclusion of the Maroons in the Jamaican Constitution and thereby a recognition of the legal position of their 'traditional' authorities in self-government and jurisdiction processes. Similar developments have already taken place in some West African countries like Ghana and show evident signs of a tendency to seek reconciliation between the national state and traditional authorities.²² These traditional authorities generally found their legitimacy on the 'sanctity of age-old rules and powers' and therefore sometimes claim a legitimacy superior to that of the state. In so doing representatives of so-called traditional authorities overlook the transformation of their legitimacy at the hands of the colonial power. This neglect of history is in turn often used as a welcome excuse by the state and its institutions to deny legitimacy to traditional authorities. More or less open attempts to dismantle the different institutions are then presented as 'necessary political' solutions. This in turn tends to convert the competition between two political and legal systems into an open conflict over sovereign power. This can be observed in many African countries and to a lesser extent in Surinam.

Summary and Conclusion

There are no ready-made 'scientific' solutions for the complexities arising from the existence of divergent sources of legitimate authority within a state territory. I have outlined a situation of legal (and political) pluralism in a Caribbean country where European and African institutions and cultural attitudes have been in constant interaction over the past 500 years. To be sure, this interaction has been far from peaceful or nonviolent. Until independence the dominant side tried very hard, with changing methods, to suppress and extinguish the other. The Maroon story is nevertheless one of partial success. It could be characterized as cultural, social, political and legal survival against all the odds.

After independence the Jamaican state took an unofficial stance on the history of the Maroons that tacitly accepted their achievements for the Black freedom

Maroons were reported to be sent back for trial to the Cabinet in Moore Town, the other large Maroon community in Jamaica besides Accompong.

²² See the Constitution of the Republic of Ghana, 1992, articles 270-277, dealing exclusively with the institution of Chieftaincy. Article 270 (1) states: "The institution of chieftaincy, together with its traditional councils as established by customary law and usage, is hereby guaranteed."

struggle. If this symbolic attitude could be consolidated in stable political relations founded on reciprocal respect, both parties might well profit from a situation of legal (and political) pluralism. Any such attempt to restructure internal political relations is subject to a precondition: the re-evaluation of the 'juridical qualities' inherent in 'traditional' institutions. Empirical research informed by the methods and theories of legal anthropology could shed new light on 'traditional' institutions and procedures that are so often judged anachronistic from the perspective of their 'modern' counterparts. 'Indigenous' institutions are not necessarily inferior to state courts in their capacity to settle disputes. As Van Rouveroy van Nieuwaal (n.d.) has observed of Africa, "[t]he opposite may be true in view of the capacity of the traditional institutions not just to 'decide' disputes, but actually to 'solve' them and thus contribute to social cohesion."

This capacity for conflict solution or 'pacification', noted by many authors writing about legal institutions and procedures in African societies, appears to me to be based on a specific form of rationality. This might be termed after Habermas (1992) *communicative rationality*. According to its standards, all decisions have to be supported by a social (discursive) substantiation of reasons. Rational discourse to evaluate the adequacy of norms and judgements has been somewhat constrained in the legal field of 'modern' societies by a strict adherence to prescribed legal procedures (Habermas 1992: 18). Legal Anthropology, in my view, disposes of the methodological means to assess legal practices, by analysing them from the conceptual perspective of *communicative rationality*. Furthermore, such empirical research could help to develop comparative standards for assessing rationality in the legal field. For situations where such standards have to be applied to a social context radicalised by internal competition over legitimacy, legal (anthropological) research holds a critical position, and could possibly be of practical significance in the making of policy.²³

In the case of the Jamaican Maroons these critical results of empirical research can be summarized as follows. The Jamaican state is far from using all possible means to impose its legal system on the Maroons. It is still largely for individual Maroons to decide whether to subordinate themselves to the jurisdiction of their own ('traditional') authorities or to submit the decision of internal disputes and conflicts to external legal institutions, i.e., those of the national state. They will certainly do the latter if there is any doubt about the impartiality of their own 'traditional' courts. When asked for the reasons for bringing cases to the Jamaican courts, most Maroons accused their authorities of giving biased decisions.

²³ These theoretical implications can only be briefly indicated here, not elaborated in depth. They are the subject of my current research into Legal Pluralism in Jamaica and Ghana.

Another reason cited for the current decline of their popular legitimacy is the failure of the authorities to convey legal decisions to the general public. This offers a critical explanation for the diminution of trust in the traditional system of 'law-making', dispute settlement and conflict resolution. 'Law' and justice are linked by discursive practices, so that a disturbance in the processes which produce rational social agreement on what is right has consequences for the acceptance or legitimacy of authority. In political systems in or derived from Africa the legitimacy of traditional authorities is generally based on the force of reasonable discourse. Therefore the analytical notion of communicative rationality, referring to such discursive practices in reaching consensual decisions, seems useful for an understanding of the structures and practices within a given legal field.

There is an observable tendency in Maroon society to 'run to court', that is, to the Jamaican court. This shows first a failure of the 'traditional' authorities to keep alive or to revive their 'traditional' feature of basing legal and political decisions on rational social consensus. The tendency just mentioned may become a dominant causal factor in the progressive dissolution of social relationships.²⁴ Such a causal explanation may have some practical value for the policy making of traditional authorities without requiring any reference to normative discourse - which, according to an old warning of Max Weber (1949: 21-22), has no place in empirical disciplines. Rather, traditional authorities could engage in a (self-) critical process involving a positive reevaluation of the meaning of rational discourse, so often misrepresented as lengthy, ineffective and meaningless *palaver* by outside observers. It offers data which the traditional authorities may employ in the critical reassessment of 'traditional' qualities within 'their' legal system, which qualities are in my view inherent in discursive practices reflective of communicative rationality. In this sense, any possible achievement of good, or at least better government depends on the willingness of 'traditional' authorities to examine the very basis of their authority and to seek to regain its legitimacy where it has been lost. This may prove decisive for the future position of 'traditional' authorities within various systems of legal pluralism, and a prerequisite for them to contribute to development, democracy, human rights and ecological protection.

But studies of legal pluralism should also motivate the state to take the colonial

²⁴ This observation does not imply a teleological argument. In many instances 'traditional' authorities, institutions and practices declared dead by 'modern' agencies have had amazing 'comebacks'. Where historical development takes such a 'contrary course' (from a modernist point of view), the possibility emerges of reaccumulation of symbolic capital by the 'traditional' authorities. These processes are highly relevant to the study of any situation of legal pluralism.

legacy of its internal divisions of power into full account. It is not 'the laws' which are competing for recognition, but the authorities with divergent bases of authority: the Maroons basing their legitimacy on the anti-slavery freedom struggle ending with a Peace Treaty which they interpret (quite justifiably, given the distribution of military strength) as a veritable historical victory; and the Jamaican state referring to the successful independence struggle ending with the proclamation of an independent national state. Empirical research provides no ground for rational judgement between the two sides. But the structural *and* historical study of such a pluralistic situation can achieve a causal perspective for policy-making. If peaceful development is an accepted aim, it is much more likely to be reached by reciprocal negotiations (in the sense of negotiations between parties on the same level, or 'sovereign to sovereign' negotiations) than by one sided legislation which asserts, for example, the exclusive legitimacy of one jurisdiction. Traditional authorities and the state thus depend on each other's contributions in striving towards the goals they both desire to achieve in the fields of development, democracy, human rights and environmental protection.

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