

# FREEDOM IN PROPERTY: FROM THE MAGNA CARTA TO LAND REFORM IN JAMAICA

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## INTRODUCTION

The Brigham-Kanner Property Rights Conference provides a unique opportunity for members of the practicing bar and academia to explore recent developments in the laws that affect property rights. In 2016, this opportunity was expanded to consider international themes with the joint sponsorship of William & Mary Law School and the Grotius Centre of International Legal Studies at the Thirteenth Annual Brigham-Kanner Property Rights Conference at the Peace Palace in The Hague. The recent law developments herein addressed concern the continuing evolution of land reforms in Jamaica and the lessons that they provide about the continuing importance of the work of this year's Brigham-Kanner Prize winner, Hernando de Soto. This essay attempts to place those land reform efforts in a historical context. A short essay can only skim the surface of a history of people who have faced untold challenges, but it is offered as a tribute to those who end their national pledge with an invocation of hope, asking that Jamaica may "increase in beauty, fellowship and prosperity, and play her part in advancing the welfare of the whole human race."<sup>1</sup>

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\* Deputy Counsel to State Highway Administration, Assistant Attorney General, Maryland Office of the Attorney General, Baltimore, Maryland. I am grateful to the Brigham-Kanner Property Rights Conference for the invitation to share reflections on the connection of property rights and freedom in the International City of Peace and Justice, The Hague. The continued strength of our property rights as Americans is dependent upon our commitment to the ideals that resulted in our Bill of Rights. Those ideals must be taught; thank you to those who have dedicated their careers to teaching our history. Those ideals must be protected; thank you to those who have dedicated their legal careers to upholding our Constitution. Those ideals must be lived; thank you to my husband, Robert A. Handy, Ed. D., and my children, Lynn Handy, Gregory Handy, and Beth Handy, who live their lives with dedication to the ideals of freedom, liberty, and justice for all.

1. The Jamaican National Pledge in its entirety:

Before God and all mankind, I pledge the love and loyalty of my heart, the wisdom and courage of my mind, the strength and vigour of my body in the service of my fellow citizens; I promise to stand up for Justice, Brotherhood and Peace, to work diligently and creatively, to think generously and honestly, so that

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In August 2016, a celebration was held on the lawns of Jamaica House, Saint Andrews in honor of two hundred Jamaicans being presented with titles to land under a program administered by the Land Administration and Management Programme and the Development Bank of Jamaica.<sup>2</sup> Except for the lack of formal title, the lands being conveyed were lands which “belonged” to these long-term residents of the land. Long before the titles were delivered, the homes and yards were distinguished by their individually selected combinations of fruit trees and other expressions of the families within. Even strangers walking in their neighborhoods would have been able to distinguish the boundaries of the different home parcels.

This ability to identify the boundaries of homesites in areas where those sites were not delineated in formal land registries is a worldwide phenomenon. The pioneering economist, Hernando de Soto, illustrates this reality by his much repeated story of how he was able to distinguish the property boundaries during a walk in Bali, because each time he “crossed from one farm to another, a different dog barked.”<sup>3</sup> If in July of 2016, de Soto had walked past the homes of these two hundred Jamaican citizens, he would have recognized that Jamaica, like Bali, was “one of the most beautiful places on earth” and that even without titles, the people of both islands had created spaces which were uniquely their own, which even the neighborhood dogs could differentiate.<sup>4</sup> Until the title celebration, these two hundred people of Jamaica had operated with only loose extralegal property arrangements. Under such loose controls, the

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Jamaica may, under God, increase in beauty, fellowship and prosperity, and play her part in advancing the welfare of the whole human race.

*National Pledge, Anthem & Pledge*, JAM. INFO. SERV., <http://jis.gov.jm/information/anthem-pledge/> (last visited July 10, 2017).

2. *Holness Tells Land Title Owners to Build ‘Bigger Houses,’* JAM. GLEANER (Aug. 24, 2016), <http://jamaica-gleaner.com/article/lead-stories/20160824/holness-tells-land-title-owners-build-bigger-houses> [hereinafter *Bigger Houses*].

3. HERNANDO DE SOTO, *THE MYSTERY OF CAPITAL: WHY CAPITALISM TRIUMPHS IN THE WEST AND FAILS EVERYWHERE ELSE* 163 (2000).

4. Hernando de Soto, *Listening to the Barking Dogs: Property Law Against Poverty in the Non-West*, CATO INST. (originally appearing in Hernando de Soto, *Listening to the Barking Dogs: Property Law Against Poverty in the Non-West*, 41 FOCAAL-EUROPEAN J. OF ANTHROPOLOGY (2002)), <https://www.cato.org/publications/commentary/listening-barking-dogs-property-law-against-poverty-nonwest1>.

land was an asset without “the fungibility, bureaucratic machinery and network required to produce capital.”<sup>5</sup>

During the celebration, Prime Minister Andrew Holness of Jamaica recognized the limitations of this loose extralegal system when he proclaimed:

Your title is an asset that can be used to secure your future, and that of your children . . . . In fact, it (land title) changes the whole profile of a family and provides a foundation on which to build dreams and goals of a better, more prosperous life. Your title can be used as collateral for a loan, it can be used in helping you to start a business . . . .

The Prime Minister then encouraged the participants, “build a house—build a bigger house.”<sup>6</sup>

This celebration of two hundred titles was a recognition that these two hundred properties were an achievement, but they were only a miniscule portion of Jamaica’s land ownership issues.

This has resulted at times, in the lack of security with respect to tenure, low productivity, inability to access credit, abandonment and illegal sale/mortgage of whole or part of the holdings in several instances. It is estimated that there are as many as 50,000 parcels of land in Housing Schemes and Land Settlements for which titles have not been issued.<sup>7</sup>

Jamaica’s current attempts at land reform began in 2000 with the creation of the National Land Agency through the Land Administration and Management Programme (“LAMP”). LAMP’s objective was to streamline the administration and management of land and to create a land-titling system. A key component of this program was the formation of adjudication committees created for the resolution

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5. DE SOTO, *supra* note 3, at 182.

6. *Bigger Houses*, *supra* note 2.

7. Jacqueline daCosta, Land Policy, Administration and Management: Case Study Jamaica, Conference Paper at the Learning Workshop on Land Policy, Administration and Management in the English Speaking Caribbean 21 (Mar. 19–21, 2003), [http://www.terrainstitute.org/carib\\_workshop/pdf/jamaicaces.pdf](http://www.terrainstitute.org/carib_workshop/pdf/jamaicaces.pdf) (supported in part by the Inter-American Development Bank (“IDB”); the U.S. Agency for International Development (“USAID”); the Department for International Development (“DFID”); and the Ministry of Agriculture, Land and Marine Resources, Government of Trinidad and Tobago).

of disputes. Despite the formation of these committees, for the next decade there were numerous disputes, and some even became violent. Most people were still reluctant to participate.<sup>8</sup>

In 2010, LAMP II was implemented to improve the time frame in which titles can be perfected from several years to six months, to reduce the cost, and to establish registries to prevent fraud by providing notification when someone is placing a claim on property that is possessed by someone else.<sup>9</sup> These changes reflect efforts to reform the existing law to better mirror the unique culture and relationship to the land.

The titles for Jamaica's beautiful resort areas and the best agricultural land can be traced from the colonial planters to today's landholders, including international corporations. Those titles can be traced through sales, inheritances, and other formal property transfers, which when challenged could be defended through litigation pursuant to traditional English concepts of land ownership. Apart from these large holdings, much of the land in Jamaica is without the protection of legal title, being held as "family land" or "Treaty Lands"—two distinct categories of land held in common.<sup>10</sup>

Even without titles, certain families have lived and farmed for generations on their family land or Treaty Lands. The Jamaican immigrants who now reside around the world have maintained their ties to this land, usually by sending remittances to ensure that the land is protected and maintained for their families.<sup>11</sup>

While the government sees the land title process as a way to improve life for Jamaican people, many whose lands were held collectively by their family consider the process to be a way to foster the

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8. Munsung Koh and Garfield Knight, *LAMP II: A Land Registration in Jamaica*, Paper at the Twenty-fifth FIG Congress: Engaging the Challenges—Enhancing the Relevance (June 17, 2014), [https://www.fig.net/resources/proceedings/fig\\_proceedings/fig2014/papers/ts01c/TS01C\\_koh\\_7075.pdf](https://www.fig.net/resources/proceedings/fig_proceedings/fig2014/papers/ts01c/TS01C_koh_7075.pdf).

9. Garfield Myers, *LAMP Faster, Cheaper Means of Getting Titles*, *JAM. OBSERVER*, July 25, 2010, <http://www.jamaicaobserver.com/news/LAMP-faster,-cheaper-means-of-getting-titles>.

10. Jean Besson, *History, Land and Culture in the English-Speaking Caribbean*, Keynote Paper, Conference on Land Policy, Administration and Management for the English-Speaking Caribbean, held by the Land Tenure Ctr., Univ. of London & Dev. Alternatives, Inc. 15–16 (April 24, 2003), [http://pdf.usaid.gov/pdf\\_docs/Pnadc122.pdf](http://pdf.usaid.gov/pdf_docs/Pnadc122.pdf).

11. Jean Besson, *Maroons, Free Villagers and 'Squatters' in the Development of Independent Jamaica*, Conference Paper at Fifty Years of Jamaican Independence: Developments and Impacts, held by the Inst. for the Study of the Americas, Univ. of London (Feb. 10, 2012), <http://sas-space.sas.ac.uk/6506/1/Jamaica%2050th%20FINAL%20VERSION%20for%20ISA%20Besson.pdf>.

breaking of family ties to the land and to each other. In undertaking the current adjustments to the initial efforts of land reform, the Jamaican people are attempting to find ways to allow a new system of titles to recognize these collective forms of ownership. A first step in this process is to recognize the history of how these collective ownerships developed. While the history of each form of title is vital to the current process, the history of the Treaty Lands provides important insights into how the concepts of freedom and property ownership reflected in the Magna Carta and the Charter of the Forest have developed into a framework unique to Jamaica.

The Spanish were the first European culture to exert dominion over the island of Jamaica. The Spanish initially attempted to utilize indigenous people as forced laborers. When Christopher Columbus visited the island in 1494, native peoples, with both Arawak and Tainos heritage, populated the island. It is estimated that there may have been as many as five hundred thousand to six hundred thousand living on the island.<sup>12</sup> Over the next one hundred and fifty years, the Arawaks were decimated; many died as a result of the Spanish efforts to enslave the native peoples, and survivors were killed by European diseases.<sup>13</sup>

As the numbers of Arawaks diminished, the Spanish began to enslave people in West Africa to be imported for slave labor on Jamaica. It is important to acknowledge “that no African slaves were removed from Africa, only African people were removed. They were blacksmiths, farmers, fishers, priests, members of royal families, musicians, soldiers, and traders. They were captured against their wills and then enslaved in the Caribbean and Americas.”<sup>14</sup> Some of these people were able to escape the brutal life of slavery by fleeing to the remote mountains and establishing communities. The Spanish referred to these people as *cimarrones*.<sup>15</sup>

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12. TAINO: PRE-COLUMBIAN ART AND CULTURE FROM THE CARIBBEAN (Fatima Bercht et al. eds., 1997).

13. *History of Jamaica*, EMBASSY OF JAM.: WASH, D.C., <http://embassyofjamaica.org/ABOUT/history.htm> (last visited July 10, 2017).

14. Molefi Kete Asante, *The Ideology of Racial Hierarchy [sic] and the Construction of the European Slave Trade* (May 14, 2009), <http://www.asante.net/articles/14/the-ideology-of-racial-hierarchy-and-the-construction-of-the-european-slave-trade/> (first delivered in Lisbon, Portugal on December, 1998 at an international conference sponsored by UNESCO).

15. ALVIN O. THOMPSON, FLIGHT TO FREEDOM: AFRICAN RUNAWAYS AND MAROONS IN THE AMERICAS 47–48 (2006) (“The Spanish word *cimarrón*, from which the English term Maroon

In 1655, an English force led by Admiral William Penn and General Robert Venables began a conquest of Jamaica. “[F]ollowing the British invasion of the island, Jamaica witnessed a combination of Spanish and African guerrilla forces fighting to expel the invaders. However, the Blacks were not fighting for the Spanish cause; rather, they were fighting to assert and maintain their independence from the British.”<sup>16</sup> As the Spaniards realized that their defeat was imminent, they escaped to Cuba, abandoning their property and leaving behind most of the enslaved people. Many of these remaining people joined the previously established *cimarrone* communities as they fled the victorious English taking control of the coastal settlements and towns. Ultimately, the name of these people who had escaped their bondage to live in the mountains of Jamaica evolved from *cimarrone* to Maroons.<sup>17</sup>

After the Spanish were vanquished, English people began to arrive as settlers. In accordance with English law, the settlers considered all of Jamaica to be English land and as such was owned by the Crown. In order to promote the settlement of the remote island, the Crown soon began to identify portions of land which were sold. “The transplantation of such English land law to the British West Indies not only served as an instrument of domination and control but also defined the identity of the colonists as ‘English’ and, after 1707, as ‘British.’”<sup>18</sup> As each area was apportioned and sold, the English title system was imposed, allowing the tracking of titles through sales and other legal exchanges. The Maroons ignored this process and lived in remote areas of the island practicing sustenance farming and hunting.

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is derived, is translated in the Collins Spanish Dictionary as ‘wild’, ‘rough’, ‘uncouth’, and its historical origin is given (wrongly) as ‘negro—(Hist) runaway slave, fugitive slave’. Likewise, *The Shorter Oxford English Dictionary* (third edition) defines *Maroon* as ‘wild, untamed runaway slave.’). See also Kathleen Wilson, *The Performance of Freedom: Maroons and the Colonial Order in Eighteenth-Century Jamaica and the Atlantic Sound*, 66 WM. & MARY Q. 45, 50 (2009).

16. THOMPSON, *supra* note 15, at 82 (citation omitted).

17. The term “Maroon” is used in this article to refer specifically to the people of the specific Jamaican communities, herein discussed, even though “[m]aroonage (escaping slavery and establishing autonomous maroon communities, sometimes in association with slave revolts) typified the entire span of New World slavery and was widespread throughout African America.” Besson, *supra* note 10, at 6.

18. *Id.*

The English renewed the importation of slaves for work on the newly acquired land. By the late 1600s the economy was transitioning from the original small farms to rapidly expanding plantations. These plantations were dependent on the work of a continually growing number of enslaved workers. These workers were the survivors of the Middle Passage, who arrived in Jamaica after being captured in Africa and “packed aboard the slave ships, in spaces not much bigger than coffins, chained together in the dark, wet slime of the ship’s bottom, choking in the stench of their own excrement.”<sup>19</sup>

The enslaved workers were a key component in the colonial Englishmen’s development of the lands of Jamaica. During that process of development, the English colonial people maintained their connections to England and their allegiance to their king. In the laws passed by the legislature of Jamaica and their entreaties to the Crown, these English colonial people recognized the importance of their control of the land and objected to the Crown’s strengthening of its rights to the lands of the intestate as a “manifest violation of their rights as Englishmen, depriving them of so essential a part of their liberties.”<sup>20</sup> Although they were in Jamaica, they could not “forget that we are Englishmen, and the subjects of our good and gracious prince,” thereby claiming the liberties granted by the Magna Carta.<sup>21</sup>

These loyal subjects used the same arguments made in defending their ownership of land in making their claims to “ownership” of the enslaved laborers so vital to the plantation economy. Most of the commonwealth countries used the property rights of the Magna Carta to justify the enslavement of human beings. “One of the fundamental principles of British colonial slave laws was that slaves were regarded as chattels. They could be bought, sold, mortgaged, bequeathed, or liable to be impounded in satisfaction of a debt. This was provided in the laws of the West Indies and in English statutory law.”<sup>22</sup>

The characterization of enslaved people as chattel proved problematic in Jamaica, as chattel could be easily separated from the

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19. HOWARD ZINN, *A PEOPLE’S HISTORY OF THE UNITED STATES* 26 (2003).

20. Lee B. Wilson, *A “Manifest Violation” of the Rights of Englishmen: Rights Talk and the Law of Property in Early Eighteenth-Century Jamaica*, 33 *L. & Hist. Rev.* 543 (2015).

21. *Id.* at 565.

22. Colin Bobb-Semple, *English Common Law, Slavery, and Human Rights*, 13 *TEX. WESLEYAN L. REV.* 659, 662 (2007).

land, and plantations without the enslaved workforces were worthless. To promote the connection of the plantation with those who were forced to work there, the early planters of Jamaica characterized the enslaved people not as chattel but as “real property.” By law in 1696, they created a legal construct to define these men, women, and children as subject to the same rules of ownership as land, including escheat.<sup>23</sup>

By 1722, the plantation economy was entrenched, and the population consisted of eleven slaves for each white colonist.<sup>24</sup> The Maroons lived separately from this system, but their interaction with the enslaved population terrified the English living on Jamaica. The English reported that Maroons were infesting the roads to the east and cutting off communications, enticing slaves to give them food and shelter, and infiltrating the Sunday markets to buy provisions and gunpowder. By the 1730s,

as the winds of slave revolt blew elsewhere in the Caribbean and desertions, military defeat, and rumors of Cuban aid to the rebels punctuated British efforts to stamp out their “Dangerous Spirit of Liberty,” local governors resorted to sending frantic requests for troops to the king, claiming that the “Negroes’ rebellion” had proved impossible to quell: “wee [sic] are not in a condition to defend ourselves, the terror [sic] of them [the Maroons] spreads itself everywhere and the ravages and barbarities they commit, have determin’d [sic] several planters to abandon their settlements.” . . . Maroons engaged the British “in continuall [sic] and open war . . . . Confident in their great Number and elated their not only resisting but even worsting us they kept no bounds.”<sup>25</sup>

Despite increasing numbers of troops sent from England, the situation escalated and the English waged war against the Maroons for five years. The Maroons utilized the mountainous areas of Jamaica to fight from unseen locations, perfecting the art of the ambush (before the word was even known). “After such assaults, Maroon men and women carried off slaves, moveable livestock, ammunition, and people and left behind the carcasses of cattle and pigs,

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23. Lee B. Wilson, *supra* note 20, at 568.

24. *Id.* at 568.

25. Kathleen Wilson, *supra* note 15, at 56.

fired sugar mills, and fields.”<sup>26</sup> Finally, the English realized that they could not defeat the Maroons, who had perfected the ambush technique to such an extent that survivors complained they never saw their attackers.

In the end the Maroons proved impossible to quell militarily. Philip Thicknesse’s opinion was widely shared: “all the regular troops in Europe, could not have conquered the wild Negroes, by force of arms; and if . . . not wisely given . . . what they contended for, Liberty, they would, in all probability have been, at this day, masters of the whole country.”<sup>27</sup>

Recognizing the difficulties of continued warfare, negotiations commenced and the representatives of the Crown met with the representatives of two sets of Maroons. Like the barons at Runnymede,<sup>28</sup> the Maroons met the Crown’s representatives in a forest and demanded that their rights be recognized. The Maroons did not have the written heritage that the barons brought to their field. Still they were able to negotiate treaties that recognized the same concepts of freedoms that were fundamental to the Magna Carta. These negotiations were compelled as a result of the military success of the two Maroon Groups, the Leeward Maroons led by Cudjoe and the Winward Maroons led by Grandy Nanny.<sup>29</sup>

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26. *Id.* at 57.

27. *Id.*

28. “The terms of the Magna Carta were negotiated on or near the battlefield during a cessation in an English civil war between King John and rebellious barons. The barons had been driven to the breaking point by John’s abusive practices and similar actions by his predecessors.” Vincent R. Johnson, *The Ancient Magna Carta and the Modern Rule of Law, 1215–2015*, 47 ST. MARY’S L.J. 1, 4 (2015).

As one Maroon captain politely explained to planter J. B. Moreton in the 1780s, “king Cudjo . . . very candidly told me, that when the island was taken by the Spaniards, his ancestors would not surrender themselves, but resolved to be free, or perish; and held out so long in the woods, that having killed several of the English, and tired the rest, a treaty of peace was concluded upon; since which time they have been loyal subjects.”

Kathleen Wilson, *supra* note 15, at 57.

29. On March 31, 1982 the Right Excellent Nanny of the Maroons was conferred the Order of the National Hero as per Government Notice 23 Jamaica Gazette . . .” *Nanny of the Maroons*, JAM. INFO. SERV., <http://jis.gov.jm/heroes/nanny-of-the-maroons/> (last visited July 10, 2017). Her picture is part of the Jamaican five-hundred-dollar note.

National heroine, Nanny, stands out in history as the only female among Jamaica’s national heroes. She was a leader of the Maroons at the beginning of

At the conclusion of negotiations, a treaty with the Leeward Maroons in 1738 and a treaty with the Windward Maroons in 1739 were consummated by blood oaths. The officer who signed one of the treaties explained he was:

“obliged to tye myself up, by a Solemn Oath . . .” According to later Maroons, this consisted of the White officer and the Maroon chief mixing their blood with rum in a calabash, from which they both then drank. The treaty thus became for Maroons a “blood treaty” that could not be broken.<sup>30</sup>

Echoing the Magna Carta, the treaties included the following language:

That the said Captain Cudjoe, the rest of his captains, adherents, and men shall for ever hereafter [live] in a perfect state of freedom and liberty . . . .  
 . . . That they shall enjoy and possess, for themselves and posterity for ever, all the lands situate and lying between Trelawney Town and the Cockpits . . . .  
 . . . That they shall have liberty to plant the said lands with coffee, cocoa, ginger, tobacco, and cotton, and to breed cattle, hogs, goats, or any other flock, and dispose of the produce or increase of the said commodities to the inhabitants of this island.<sup>31</sup>

And echoing the terms of the Charter of the Forest, which history has diminished by frequently overlooking its fundamental relationship to the Magna Carta, the treaty provided “that they have liberty to hunt where they shall think fit,” and when groups of hunters meet “then the hogs [were] to be equally divided between both parties.”<sup>32</sup>

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the 18th century and was known by both her people and the British settlers as an outstanding military leader. She became a symbol of unity and strength for her people during times of crisis and was particularly important to them in the fierce fight with the British during the First Maroon War from 1720 to 1739.

*The Rt. Excellent Nanny of the Maroons, Bank Notes*, BANK OF JAM. [http://www.boj.org.jm/currency/currency\\_banknotes.php](http://www.boj.org.jm/currency/currency_banknotes.php).

30. Barbara Klamon Kopytoff, *Colonial Treaty as Sacred Charter of the Jamaican Maroons*, 26 *ETHNOHISTORY* 45, 49 (1979).

31. *Articles of Pacification with the Maroons of Trelawney Town, Concluded March the first, 1738*, HARV. BUS. SCH., <https://cyber.harvard.edu/eon/maroon/treaty.html> (last visited Feb. 26, 2016) [hereinafter *Articles of Pacification*].

32. *Id.*

The treaty acknowledged the authority of the king over Jamaica, and the Maroons agreed to join in the defense of Jamaica under British leadership when needed.

The Magna Carta was revoked by the Pope within a year and needed to be reestablished additional times,<sup>33</sup> but despite the efforts of the British to negate the treaties, the Maroons' invocation of the treaties has been continuous.

For the next one hundred years the treaties continued in force. The treaties "enhanced the Maroons' distinctive place for them in the island society, thus emphasizing their uniqueness."<sup>34</sup> During these years, the Jamaican plantation economy continued to be reliant upon the horrors of slavery. Always fearful of a slave revolt, the English developed economic incentives for the armed Maroon community to remain separated from the much larger number of enslaved peoples. The English provided the Maroons with "a source of income in tracking runaway slaves."<sup>35</sup> The treaties "transformed rebels into subjects, allies of the plantation system, and turned former allies—the enslaved—into enemies."<sup>36</sup> Even though a small group of free former enslaved people lived away from plantations, the only people of African descent whose ownership in land on Jamaica was legally recognized were the Maroons. That legal recognition was through the treaties. The land was held collectively by the Maroon community and became known as the Treaty Lands.

When the emancipation process began in 1832, the planters searched for ways to keep the formerly enslaved workers economically dependent on the plantations for work. The Jamaican Maroons continued the collective ownership of their Treaty Lands, providing a model for former slaves who began to assert claims to land, through continued occupation of the lands adjacent to the plantations formerly used by the slaves for sustenance.<sup>37</sup>

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33. Paul Babie, *Magna Carta and the Forest Charter: Two Stories of Property What Will You Be Doing in 2017?*, 94 N.C. L. REV. 1431, 1455 (2016).

34. Kopytoff, *supra* note 30, at 52.

35. *Id.* at 51.

36. Kathleen Wilson, *supra* note 15, at 61.

37. Eleanor Marie Lawrence Brown, *The Blacks Who "Got Their Forty Acres": A Theory of Black West Indian Migrant Asset Acquisition*, 89 N.Y.U. L. REV. 27, 66 (2014) ("In 1672, only seventeen years after the English takeover of Jamaica, an early English governor issued a decree with the force of formal law: Any plantation owner who acquired a new plantation was obligated to allocate individual plots of land to slaves so that the slaves could feed themselves and their families.").

While the communities recognized these lands as belonging to individual families, there were no titles or legally enforceable ownership rights. The first Jamaican people of African descent with individual and legally enforceable titles were those who were able to purchase land in defiance of the law, through the assistance of church groups. In that way, “the missionaries (especially the Baptists) acted as covert intermediaries on the land market between planters and ex-slaves, establishing church-founded village communities.”<sup>38</sup>

The Jamaican planters saw any ownership of land by people of African descent as a threat to their ability to continue the plantation economy. Efforts to continue the forced work after emancipation, through a system of forced “apprenticeship,” failed and was ended early in 1838.<sup>39</sup> While fighting with the former slaves over squatting and avoidance of title law, they no longer needed the Maroons to play their previous role as slave catchers. The separation of the Maroons from the population of the newly freed slaves no longer served the planters’ economic interests. After emancipation, the primary focus was on a separation of classes based primarily on race. The enforcement of this racial separation was undermined by the continuation of a separate Maroon society, free from control of the British, with a proud historic legacy revolving around the continued joint ownership of the Maroon Treaty Lands.

Using the logic that would be repeated throughout the world, the white establishment decided it was time to force the Jamaican Maroons to integrate into the Jamaican society.

In 1842, “[t]he Maroons Land Allotment Act, as it was called, declared all prior Maroon legislation, including the acts ratifying the treaties, to be null and void . . . and revested the Maroon common lands in the Crown, to be reallocated to individual Maroons.”<sup>40</sup>

The Act in 1842 attempted to negate the Maroons’ identification of themselves as a people defined by the rights granted in the treaties finalized in the woods of Jamaica. It was this definition as a free people that made the treaties so unacceptable to the establishment that was struggling to establish a post-slavery society based upon the supremacy of a white English class, which was far outnumbered by the people of African descent. Officials justified the unilateral

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38. Besson, *supra* note 10, at 9.

39. *Id.*

40. Kopytoff, *supra* note 30, at 53 (citation omitted).

cancellation of the treaties explaining: “[A]n arrangement between a Sovereign and one of his subjects in the shape of a treaty or arrangement (like the celebrated Magna Carta between King John and his Barons) is always liable to such changes as the Sovereign Authority may hereafter from time to time enact . . . .”<sup>41</sup>

The planters failed to recognize that the revocation of the treaties and the revesting of the Treaty Land to the king was no different than an order divesting the English land owners of all of their Jamaican land and revesting it to the king. It is unlikely than any British subject would have presented a similarly cavalier response to such an outrageous rejection of longstanding rights. Responding to such an attack on the rights to their land, white Englishmen would have set forth their grievances in writing.<sup>42</sup>

The lives of the Maroons did not afford the luxury necessary for such learned missives. Instead their response to being advised of the attempted revocation of what they had come to see as their sacred charter was to refuse to believe that such an outrageous act could have taken place. Hearing of the 1842 Act, Maroons protested, viewing the Act “with suspicion and dread, an attempt to injure them, by breaking up their establishment, and taking from them the lands which they hold by the pledge of a treaty, lands on which they were born, and which contain the bones of their ancestors.”<sup>43</sup> Instead of following the typical colonial response of continuously pleading for recognition of their rights as Englishman from Parliament or the Crown, the Maroons took another approach to this Allotment Act; they simply refused to comply.

The new law did not force the Maroons to go along with the division of their lands; rather, it tried to elicit their cooperation. Individual Maroons were themselves to arrange and pay for surveys marking out their small plots. The division was begun, but not completed, in three of the Maroon villages, Charlestown, Moore Town, and Scotts Hill; in the fourth, Accompong Town, it was not even begun. When the Accompong Maroons showed themselves reluctant, and others had not completed the division, the only action the Government took was repeatedly to extend

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41. *Id.* at 54.

42. See, e.g., John Dickenson, *Letters from a Farmer in Pennsylvania*, in A FARMER (1767).

43. Kopytoff, *supra* note 30, at 56.

the deadline for complying and eventually to drop the matter entirely. The land not allotted to individuals was then technically revested in the Crown, but the government did not provoke the Maroons by attempting to interfere with their use of it; the Maroons continued to live on the land undisturbed.<sup>44</sup>

Deadlines for the division of the Treaty Land into the forced individual parcels passed without the Maroons taking any steps to comply. Surveyors were chased away by people with machetes. Resistance prevented attempts in 1862 and 1868 to force the creation of individual titles and the payment of taxes. In 1870 mules were confiscated to cover unpaid taxes. Instead of a confrontation, the Maroons allowed the mules to be confiscated. Within days, the Maroons located the livestock and were met with no resistance when they took the mules back to their Treaty Land.<sup>45</sup>

The refusal of the Maroons to acknowledge the validity of the Allotment Act in 1842 and the continuation of that refusal through the twentieth century is understandable as they have continued to believe that “[t]he treaty is not just any treaty . . . It was signed in human blood. To break that treaty they could not just tear up a paper; they would have to tear up human bodies. It just could not happen that the treaty could be broken.”<sup>46</sup> Just as the Maroons have resisted the efforts of the Allotment Act, today they resist any effort of the land reform to divide the Treaty Lands.<sup>47</sup>

The 2012 celebration of the Fiftieth Anniversary of Jamaica’s independence began with a commemoration of the signing of the 1738 treaty in the Maroon area of Accompong Town, Saint Elizabeth. Speaking on behalf of the government of Jamaica, Governor General Sir Patrick Allen explained,

Cultural identity is essential for the peaceful cooperation of civilisations [sic]. When people have a strong sense of self-identity through culture, they are more likely to interact peacefully with other cultures, with respect for the diversity of value systems and religious beliefs as well as the tangible aspects of culture.<sup>48</sup>

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44. *Id.* at 55.

45. *Id.* at 57.

46. *Id.* at 59 (citation omitted).

47. See *supra* notes 2–3, 5–7, 11 and accompanying text.

48. Horace Hines, *Maroon celebrations kick starts ‘Jamaica 50’*, JAM. OBSERVER, (Jan. 19,

The English history of Jamaica began almost a century before the 1738 treaty, but to begin the 2012 celebration with the recognition of the Maroon treaty was to acknowledge the unique importance of the demand of a people to be recognized as free. It was also an acknowledgement that the treaties retain their relevance in a free Jamaica.

The treaties would be historical relics if it were not for the continued recognition of the Treaty Lands. The land reform of 2000 did not recognize that the treaties continued to define a free people and their relationship to their communal property. Even though the Treaty Lands are a small percentage of all of the land in Jamaica, their importance to all of the people of Jamaica is greater than that percentage. These lands are considered “sacred space and a cultural site in the global networks of modern migrant maroons who return to visit and participate in the annual Myal ritual.”<sup>49</sup>

Increasing the number of people of Jamaica having title to their own land and reducing the number of squatters throughout the country are goals which can coexist with the continued communal ownership of the Treaty Lands. The 2010 LAMP II land reform amendments will strengthen the efforts to reach these goals while recognizing the freedom inherent in the continued existence of the Treaty Lands. The improvements reflected in these amendments seek to achieve the results from land ownership that Hernando de Soto has recognized. That impact can be measured by indicia of economic vitality.

The continued importance of the recognition of freedom inherent in the Treaty Lands, however, cannot—and should not—be defined in economic terms alone. The value of that freedom as being greater than economic parameters was recognized by Governor General Sir Patrick Allen’s commencement of the independence celebrations with the recognition of the importance of the treaties. Just as the celebration of fifty years of Jamaican independence included recognition of the fundamental freedoms reflected in the treaties, the eight hundredth anniversary of the Magna Carta should have included respect for the fact that 278 years ago (thirty-eight years before a group of affluent white Englishmen gathered in Philadelphia to assert “certain unalienable Rights, that among these are Life, Liberty

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2012), [http://www.jamaicaobserver.com/westernnews/Maroon-celebrations-kick-starts--Jamaica-50-\\_10588223](http://www.jamaicaobserver.com/westernnews/Maroon-celebrations-kick-starts--Jamaica-50-_10588223).

49. Besson, *supra* note 10, at 19 (citation omitted).

and the pursuit of Happiness”<sup>50</sup>—freedoms which Americans continue to trace to the Magna Carta) a group of Jamaicans of African descent who had previously escaped the bonds of slavery asserted their freedom to “live in a perfect state of freedom and liberty and That they shall enjoy and possess, for themselves and posterity for ever, all the lands situate and lying between Trelawney Town and the Cockpits.”<sup>51</sup>

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50. THE DECLARATION OF INDEPENDENCE para. 2 (U.S. 1776).

51. *Articles of Pacification*, *supra* note 31.