



GRASSROOTS GOVERNANCE? CHIEFS IN AFRICA AND THE AFRO-CARIBBEAN

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“WE RULE THE MOUNTAINS AND THEY RULE THE PLAINS”:
THE WEST AFRICAN BASIS OF TRADITIONAL AUTHORITY IN JAMAICA

CHAPTER 8

WERNER ZIPS

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INTRODUCTION

The condition of slavery left no way to the enslaved Africans for a meaningful social reorganization but one: *marronage*. It meant to try the vague chance to escape the slave-masters and their agents by flight to the interiors of the various plantation states in the so-called New World. For most individuals who attempted to travel this only path to freedom, it ended in torture or death. But throughout the African diaspora some managed to survive the persecution by slave-hunters, bloodhounds, and the militia. Wherever they were sufficient in numbers, new social groupings developed in parallel to slave society, which Patterson (1973, 9) correctly termed: “a monstrous distortion of human society.” In Jamaica, these groups of original Africans called Maroons were particularly successful.¹ Their resistance against the longest reigning colonial power in Jamaica started when the British occupied the island from the Spaniards in 1655. For a period of almost eighty-five years, Great Britain, the then superpower of the world, failed to defeat them although they tried at periods with great expenditure to eradicate the physical threat to their sovereignty.

Certainly the plantocracy and the colonialists considered it as a tremendous disgrace to conclude a peace treaty with the black rebels (as the Maroons were generally termed by the British) in 1738/39. It is in this light that the following colonial discourse on the Maroon political and legal organization should be seen. Most of the pejorative descriptions have their root in the intellectual and moral incapability of the white capturers of the African people as well as the American and Caribbean territories to accept an independent social entity which was forged out of individuals who were treated as things by law. But most of their members came from highly differentiated West African societies. They were cruelly stripped of everything material in the course of their capture, forceful transplantation, and later enslavement. But their knowledge, experiences, and incorporated ways to perceive, interpret, and act could not be wiped out so easily. Manifold cultural expressions of the African diaspora have their bases in this mental or cultural resistance against the totality of enslavement. This is not to say that the enslaved Africans and their newborn successors simply held fast to the old traditions whenever they could. Rather, the experiential habitus formations in the different African spheres of society lay at the heart of the culture building process in the dramatically new social environments beyond the Atlantic (cf. Zips 1999b, 115–218).

Compared to the majority of the enslaved peoples of African origins, Maroon societies of course had a much greater freedom to reshape their African experiences

into new organizational forms. Still even these relatively unrestrained social groups were by no means *New World replicas* of African societies or *tribes*, as some authors seem to suggest.² In contrast to this view, Maroon societies should be considered in tendency as dynamic organizations who link their management of the future in the presence by a strong sense of the ancestral ways in the past; a practical composure which was adequately characterized by Price (1992, 64):

The cultural uniqueness of ... maroon societies ... rests firmly on their fidelity to “African” cultural principles at these deeper levels – whether aesthetic, political, or domestic – rather than on the frequency of their isolated “retentions” of form. Maroon groups had a rare freedom to develop and transform African ideas from a variety of societies and to adapt them to changing circumstances. With their hard-earned freedom and resilient creativity they have built systems that are at once meaningfully African and among the most truly “alive” and culturally dynamic of African-American cultures.

COLONIAL TRIBES OR NEO-AFRICAN SOCIETIES?

Most of the colonial literature and administrative or military sources depict the Jamaican Maroons as semi-dependent villages inadequately governed by their headmen. Certainly the colonial agents had no interest to create an impression of existing quasi-African states within the state in Jamaica (nor elsewhere). But to read these colonial political interests of historical representation into the scientific analysis means to continue overlooking the deeper incorporated structures of Maroon authority and politics; i.e., the African habitus formation. It is true that Maroon decisions always had to include strategic planning and policy considerations in relation to the plantocracy and the state throughout the colonial history in Jamaica (until the 1962 independence declaration). Yet to reduce the Maroon policies to direct results of colonial policies loses sight of the structural African basis of their organizational achievements. The ethnohistorical description of Maroon political history by Kopytoff (1973: 347) gives an example of such a reductionist historical reading (even though she seems to acknowledge the limitations of such an interpretation):

It is noteworthy that while we are describing periods of Maroon political organization, the periods are bounded by acts of another government, that of the British in Jamaica. In part, this reflects our primary avenue of information into the Maroon societies, Jamaican Government records, but, more importantly, the Maroons were themselves what have been called “Colonial Tribes.” ... Culturally similar to other Negroes of Jamaica, they came to constitute separate societies only because of their special relation to the Jamaican Government, first as fugitive bands, then, after the treaties, as allies and corporate land holders in the eyes of the Government, and finally, after 1842, as ex-corporate land holders who could not be disbanded.

Such a conclusion is logical only in the sense that it directly results from sheer ignorance of the African experiential and cognitive backgrounds of the individual actors who formed and transformed the original Maroon societies. The majority of Africans forcefully shipped to Jamaica originated from the former Gold Coast (today’s Ghana). Named after the British Fort Kormantse on this stretch of the West African coastline, the so-called Coromantees preserved the common factor until today in their notion of Kromanti culture. Whereas the British used the ethnic misnomer as a brand name for all their human merchandise from the region, irrespective of their actual ethnic ties or port of embarkation,³ the first freedom fighters viewed Kromanti as a cultural basin for their genuine (national) traditions and the symbolic landmark or social origin of their new commonality as Maroons. Therefore, they succeeded in changing a colonial denotation to a denominator for a jural corporateness forged out of the various Akan and other ethnic origins of the particular individuals. The physical place of the Fante village Kormantine turned into the metaphysical space Kromanti for the creation of a neo-African identity as Maroons (Zips 1999a, 43–67).

West Africa, and in particular the Akan regions of today’s Ghana, is reflected in the symbolic landscape of meanings attached to landmarks such as the Kindah tree, just outside the Jamaican Maroon village of Accompong. Kindah, a large mango tree offering shade for the meeting of the dead ancestors and the living Maroons during the yearly festival on 6 January, points to the challenging process of political integration in the historical circumstances.⁴ Even though the majority of individuals came from cultural backgrounds that shared many common features, the unification between, for instance, former Asante and Fante had to overcome earlier experiences of tension, imperialist menace, and even war on the African continent. The physical appearance

of Kindah has the shape of a large umbrella (*kyinie*) with all the connotations of the overall symbol for kingship in the Akan context: the protection offered by the king or chief with its reasonable or *cooling* judicial solutions of heated disputes. This *kyinie* or great state umbrella (e.g.,) of the Asantehene, the king of kings of the Asante, is etymologically decoded by McCaskie (1995, 207) in the following analysis:

The Asantehene, as the embodiment of culture, afforded a protective “coolness” at once physical and metaphorical. The motion of his great umbrellas signified this in a literal and symbolic way (supported, as they were, by the lesser umbrellas of ever diminishing degrees of size and costliness that belonged to descending ranks of office holders), as did the metaphor that likened him to *gyadua* (a large tree offering shade: i.e., (o) *gye*: receiving, acceptance, with the idea of protection + (e) *dua*: a tree). Synonyms encapsulated the idea that the Asantehene “protected” culture by offering a cooling “shade”; thus, for example, (o) *tew gyadua ahaban* (“he tears the leaves of the shade tree”) intended the same meaning as, and could be used in euphemistic place of, *ohyira ohene* (“he curses the king’s life”).

Pacification and integration are as well the historical foundations of the importance of the Kindah tree in Jamaica. According to oral traditions in Accompong, its shade offered a “cool spot” for the strategic and later diplomatic consultations of Kojo’s council of elders. A signpost attached to the tree trunk gives a definition of its symbolic meaning for the continued jural corporateness of Maroon society, from the earliest days of armed freedom struggle to the contemporary legal fight for constitutional recognition. It reads: “Kindah – we all are family.”

With this deliberate and difficult unification of former members of Akan (Fante, Ahanta, Nzima, Wassaw, Akim, Akwapim, Sefwi, Brong, Kwahu, Denkyira, and Asante), Ewe, Ga-Adangme, and other African societies (especially a smaller group from the Congo region, which may have been successors of Africans brought already by the Spaniards) new dynamic traditions of authority were created.⁵ They were predominantly rooted in West African forms of kingship (or chieftaincy). As in the West African contexts, the colonial state in Jamaica tried to dismantle the sovereignty and legitimacy of these traditional authorities who were *traditional* in the strict dynamic sense of *tradio*, basing their political formations on ideas, incorporated understandings, and cognitive models of their African forefathers. Only such symbols and practices survived in very similar expressions, which fitted into the new social

and ecological environment. Whereas the umbrella of chiefs and queenmothers (*kyinie*) might have reappeared in its basic form of the large shade tree Kindah in the biggest Maroon community of Jamaica (Accompong), the sacred horn of the Akan (*Abentia*) which enables communication with the dead and among the living especially in times of war, took the almost identical shape of the *Abeng* among all Jamaican Maroon communities (Zips 1999b, 186–205; McCaskie 1995, 295ff.; Wilks 1975, 324ff., 667).

Within this neo-African system of chieftaincy, a potentially lifelong appointed chief controlled the jural corporateness of the community together with a council of elders. This principal structure was kept alive from the seventeenth century until the fundamental change to voting in the middle of the twentieth century in Accompong. Other Maroon communities in Jamaica, such as Moore Town, Scott's Hall, and Charles Town, appear to have stuck to hereditary procedures of selecting a chief until fairly recently (though not without internal conflicts over the adequacy of such a practice in modern times). However, the root of today's legal pluralism in Jamaica lies in the parallel development of a neo-African type of chieftaincy in the Maroon communities and the introduction of the Westminster model of parliamentarism by the British.

There is a long history of the existence of two legal traditions in this Caribbean island: a plantocratic distortion of a European – namely British – colonial state model “in which the legal system was quite deliberately a travesty of anything that could be called justice” (Patterson 1973, 9), and a new creation of a group of transplanted Africans with different languages and cultural experiences who had never before existed as a unified corporate entity. The latter obviously drew on various incorporated African structures. These differing though not altogether different traditions had to be negotiated between all the members who had decided to submit themselves to the jural corporateness as Maroons. If one bears in mind the necessary efforts to integrate new members, at least until the time when the peace treaty with the British closed the ranks of the Maroons for new runaways (in 1738/39), such policies can only be analyzed as active and not merely *reactive* to the colonial policies. The empirical reconstruction of continual communicative processes of integration and decision-making in the fields of politics and law seem to defeat the discourse of the *colonial tribes* created by successful attempts to indirect rule (Zips 1999b, 273ff.).⁶

MAROON SOVEREIGNTY AS A COUNTERTRADITION TO PLANTOCRACY

Historically, the causes for and actual development of legal pluralism in Jamaica (and other parts of the African diaspora) nevertheless stand in sharp contrast to West African contexts. In the case of the Maroons, their disputed sovereignty and legitimacy of self-governance was shaped by the so-called *First-Time people*, the founding ancestors of Maroon nationality and ethnicity.⁷ These original Maroons created the *tradition* of self-determination out of the incorporated African political legacies. Therefore, the particular *Maroon system* had never existed before and emerged as a distinct countertradition to the systematic injustice of enslavement and denigration of all rights as human beings. In some sense, Maroons were rather *anti-colonial tribes* for that reason. This aspect of initial resistance makes contemporary legal pluralism in Jamaica quite distinct from West African examples.

In these (African) contexts, as for instance in the comparative case of Ghana, the early European traders and later colonialists encountered sovereign states with strong legitimate authorities, like among the Asante with their elaborate system of kingship. At the same time, (in the eighteenth and nineteenth century) when the transplanted Akan and other African nationals fought their successful independence war in Jamaica and struggled to maintain their territorial claims and political freedom on the strange Caribbean islands, their brothers and sisters in the motherland sought to defend their political sovereignty against the increasing pressure of the European powers. As late as 1874, the British desire for sovereign rule in West Africa materialized with a British Order of Council that decreed the colonial state Gold Coast (Ray 1998, 49).⁸

But, seen from today's perspective on the factual coexistence of parallel institutions of the post-colonial Ghanaian state as the heir to the colonial foundations and the so-called traditional authorities with much older pre-colonial bases of legitimacy and a claim to partial sovereignty, the colonial attempts to undisputed legal centralism and overall political control appear to have ultimately failed. For times they may have come quite close to dismantle the earlier sovereignty of kingdoms and their legitimate representatives. But the sheer weight of military oppression proved insufficient to eradicate the symbolic and communicative basis of authority; a sharp reminder of the theoretical distinction between power and authority at the heart of legitimacy:

Authority is a government's legitimate use of power. Legitimacy means that those subject to a government's authority consent to it. Power is thus different from authority. When pro-democracy

demonstrations in China broke out and the government responded by imprisonment and killing the demonstrators, it was an exercise of power, but also an indication of the government's loss of authority. (Giddens 1997, 339)

Western assumptions of the sovereign state, with legitimate authority exclusively shared between state institutions, is no more than an ideal type of a specific conception of sovereignty; a sovereignty conceived as a centralized system of legal and political control (Ray 1998, 53). But it does not even take the controversial interests of a post-colonial condition to reveal the idealist contention of sovereignty as an exclusive prerogative of but one actor:

[T]he legal reality of the modern state is not at all that of the tidy, consistent organized ideal so nicely captured in the common identification of "law" and "legal system," but that legal reality is rather an unsystematic collage of inconsistent and overlapping parts, lending itself to no easy legal interpretation, morally and aesthetically offensive to the eye of the liberal idealist, and almost incomprehensible in its complexity to the would-be empirical student. (Griffiths 1986, 4)

In the case of post-colonial states such as Ghana where pre-colonial institutions survived (in certainly altered ways with new meanings and functions) into the colonial era, these actors even gained momentum in the transition period from the colonial to the post-colonial state. With the proclaimed (re-)Africanization of governance, the traditional authorities or chiefs entered the arena of active politics within the state context. As aspirants to political power based on the symbolic means of their claimed pre-colonial base of legitimate authority, they were therefore immediately conceived as contestants over sovereignty by early civil leaders such as Kwame Nkrumah in Ghana. Ghana's national liberation hero and first president continued the colonial policy of necessary state recognition in the process to determine the *legitimacy* of a chief (Ray 1998: 59f.).

This attitude of centralist control did not work well to attain political stability according to the ideal Western model of the unified sovereign state.⁹ Rather, the civil authorities of the First Republic of Ghana (which lasted from 1 July 1959 until 23 February 1966), with its one-party state (parliament), had to share aspects of sovereignty and legitimacy in practice with the older actors of the chieftaincy institution(s), although, in theory, they contained the idea of a *pure*, undisputed

political rule of the nation state over the territorial area *inherited* from the colonial predecessor:

The colonial and post-colonial states share a common heritage of legislative and constitutional instruments. It is argued that by contrast, there was a fundamental break between the pre-colonial states and other entities and that of the colonial state in terms of legislative and constitutional instruments. The colonial state stripped many aspects of sovereignty from the pre-colonial states, turning them into chieftaincies. “Chiefs,” however, retained certain aspects of sovereignty as well as their own source of legitimacy: thus sovereignty and legitimacy have been divided in the colonial and post-colonial states. (Ray 1998, 48ff.)

Thus, the colonial and post-colonial governments shared quite similar visions of undisputed state hegemony or supremacy of authority over the transformed institutions from pre-colonial times. Both historical actors conceptualized their overall authority somewhat counterfactually, not in coherence with the actual recognition of chiefs by large sectors of society which invested them with legitimacy independently of state acts of recognition. Seen from the perspective of (a praxeologically-oriented) legal anthropology on actual social practices, Ray’s analysis of “divided sovereignty and legitimacy” in the Ghanaian case deserves consent.

In concurrence to the sketched division of sovereignty and legitimacy in the Ghanaian case, the Jamaican Maroons struggled (from an entirely different historical experience) to maintain the countertradition of sovereign rule over themselves laid down in the peace treaties of 1738/39. Without any doubt, the British wanted to gain hegemony over the successors of the very first freedom fighters who had awaited them on the side of the Spaniards and kept on fighting long after the Spaniards were defeated and driven to neighbouring Cuba. Against the backdrop of the myriad of written sources, legal statements, and speeches from the comfortable distance of the London parliamentary chambers, a praxeological structural history of the interactions between the colonialists and the Maroons after the treaties, clearly demonstrates the futility of all discursive means in attaining colonial hegemony over the forced, negotiated, and agreed self-determination and territorial independence of the Maroon communities. (Zips 1999b, 274–314, 549–98.)

All attempts to assert some sort of *indirect rule* failed on the practical insistence of succeeding Maroon generations to be governed by their own authorities (colonels, captains, and councils) as decreed by ART. 15 of the peace treaty.¹⁰ Even more

importantly, article three of the same treaty was read as an everlasting guarantee of territorial rights (now termed *sovereignty* by contemporary political representatives of the Maroons): “for the born and the unborn.”¹¹

Until the very present, Maroons argue that the *everlasting* validity of the treaty is founded on the exchange of blood between the British representatives of the Crown and the Maroon leaders. The connotation of the living, being controlled by the *dead* in their management of the resources left to them in order to enjoy future posterity, are coherent with the Akan ethic of the bond between the dead, the living, and the unborn: “The *odekuro* and the lineage heads were thus *nhwesofa* or *caretakers* of the land for the ancestors and on behalf of the unborn” (Wilks 1975, 666). It might be inferred that the formulation “for themselves and posterity forever” in ART. 3 of the agreement had been fostered by the insistence of the Maroons to protect all future generations against a renewed colonial challenge to Maroon land rights. Its full text reads:

ART. 3: 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 northwest from the said Trelawney Town.

The land to maintain the growing communities and to foster the economic autonomy was also the backbone for their political self-determination. What the former deputy colonel of Accompong, Melvin Currie, has to say on the historical division of territorial sovereignty, as at least implicitly laid down by ART. 3 of the treaty, applies not merely to the colonial times. It seeks to oblige the successor of the British colony in the very present, namely the Commonwealth member of the Jamaican national state which still has a *foreign* queen as its formal head:

As Kojo said: we rule the mountains and they rule the plains. You have to respect another man’s right to live; and if you are democratic then be democratic. There would be no strife between you and us, cause you have left us with our mountains and we have given you your plains which you have chosen. Now it is for us to live in peace and unity, cause you want the things from the mountains and we want the things from the plains; so let us trade as people. I protect my sections, you protect yours. (Melvin Currie, in an interview on 1.8.1990).

Part of the evolving countertradition of governance linked to African ideas of the rule of law and justice is the concept of jural corporateness (cf. Hagan 1980; McCaskie 1995). Until recently, Maroons practiced their procedures of dispute resolution linked

historically to African ideas of reasoning, discursive conviction, and pacification. It is in this respect that the Maroon law ways contradict the arbitrary legal and judicial processes encountered by Black people in Jamaica during the colonial period. Legal pluralism in Jamaica reflected the divided sovereignty and legitimacy between the two ruling actors: the British on the plains and the Maroons in the mountains. Accordingly, it took the form of a radical pluralism where the colonial law system was viewed by the majority as an alien means of minority control. As a law conceived as contingent from the perspective of the ruled, it was in practice contrasted by Maroon law. Yet, the relative isolation of the Maroon communities from the majority of the Jamaican population offered only a vague idea of the existence of a neo-African law backed by traditional authorities for most outsiders.

Of course, these aspects of actual *sovereignty* or *statehood* (in much later developed terminology) were part of the living experience for those living in the Maroon communities. The First-Time freedom song “Law hold ohh, law hold already ohh,” still known and sung by even the youngest members of society today, reveals and commemorates the *rule of law*, indigenous law that is, in the mountain enclaves of the Jamaican interior. It is indissolubly linked to the corporate existence of a group of people who endured the whole period of slavery and colonialism and see little reason to bring their history of self-determination to an end, just because other people of (mostly) African descent (their *fellow Jamaicans*) accepted a constitution formed by the British House of Commons in London (in 1962). Seen in more theoretical terms, the ideological structuring of their community (*jural corporateness*) can be interpreted as an accumulated history – a living past which remained in the ear (characterized with the Twi saying *tete ka asum*) – renewed, reproduced, and transformed by the work of following generations (Zips 1999b, 315–509; 639–58).

Kromanti, as a notion for the core aspects of Maroon culture in the African diaspora, is still alive today among a people whose independence dates back into a period predating the independence war of the Asante against the Denkyira, around 1700, in the African motherland. The *legitimacy* of *Kromanti* – understood as a corporate identity or rather *jural corporateness* protected by *traditional* authorities – became definite by a so-called *blood treaty* in 1738/39. Jamaica’s conception of a unified *centralized nation state* conflicts with the pluralist historical experiences of the Maroon freedom struggle which led to a divided sovereignty in actual practice. State strategies to overcome these divisions are quite reasonable even for most Maroons who vote not only in elections of their own authorities, but as *Jamaican Maroons* also in the state general elections. However, the forceful dismantling of the Maroon

jural coporateness seems to lead to more tensions and therefore divisions, judging from my empirical research in Accompong. I will therefore ask in the next section, if a transition from a factual, yet constitutionally denied *divided sovereignty* to a legally recognized complementary form of sovereignty does not hold the *better* options for both actors, the national state and the Maroon (quasi-)states.

FROM DIVIDED SOVEREIGNTY TO COMPLEMENTARY SOVEREIGNTY?

After the independence declaration of 1962, the pressure on the Maroon authorities to integrate into the national state within the post-colonial framework of nationbuilding continued and even increased. This reflects a common post-independence tendency in many African situations where an *integral state* sought to achieve a perfected hegemony with unrestricted domination over civil society. Referring to the so-called “Jamaica Independence Bill,” decided on 31 May 1962 by the House of Commons in London, Young’s (1994, 283–85) generalizing observations on the *integral state* in a considerable number of post-colonial conditions in Africa appear also quite applicable in relation to the *Jamaican Constitution of 1962*:

A genetic code for the new states of Africa was already imprinted on its embryo within the womb of the African colonial state.... The metaphor of the embryo did not suggest itself at the moment of independence. Rather, the common imagery perceived a triumphant nationalism storming the citadels of colonialism, erecting from its rubble an entirely new political order.... The African constitutions imported from London, Paris, or Washington became inverted versions of those after which they were modelled.

Certainly, the British colonialists in Jamaica never stopped to undo the disgrace experienced by the need to treat with the *Black rebels* of the seventeenth and eighteenth century. They promulgated laws to make it appear as if the recognized sovereignty of the Maroons could be unilaterally removed. But they never ventured to inform the Maroon officials in proper cause about such acts. Furthermore, they followed a policy of deceitful and unlawful sale of Maroon lands and tried everything to shift the border lines to the disadvantage of the autonomous Black communities. Still, the Maroon

threat with an outbreak of violence and occasional demonstrations of their readiness for physical resistance sufficed to convince the colonial land departments to keep their “creeping in on Maroon lands” – as it is called by Maroons today – to a very limited extent. *Cum grano salis*, the colonial offices followed a course of disturbance but stopped short to enforce their claim to undivided sovereignty in practice. That cannot be said equally of the post-colonial state which attitudes parallel African developments of the *integral state* model at the same time:

Soon after independence, reaching its zenith in the 1970s, a new vision of state began to emerge, what we might term, borrowing from Coulon and Copans, the “integral state.” The state, with enlarged ambitions of transforming society according to its blueprint, sought an enhanced hegemony, to render it more capable of acting directly on civil society. (Young 1994, 287)

There can be little doubt that the Jamaican state suffered a deep crisis with political violence and loss of control over many sectors of society by attempting to use the institutions inherited of the colonial state to enforce the proclaimed idea(s) of nationalism. One might draw another parallel to the state of crisis in many African states during the period of the 1980s. With the possible distinction that in parts of Africa (e.g., in Ghana) there is more than just a ray of hope on the horizon for new attempts of a more democratic renaissance, a process that seeks to draw on pre-colonial structures of discourse or consensual democracy including, in varying degrees, all sectors of civil society:

Stripped to its essentials, the heart of the African state crisis of the 1980s lies in the lethal combination of the colonial state heritage, the failed vision of the integral state, and the prebendal realities of political management. The remarkable surge of self-assertion by civil society up and down the continent in the swelling demand for democratization in the early 1990s, can be best understood not as a mimetic response to global trends or melodramatic developments in Eastern Europe – although these had their impact – but rather as a cathartic reaction to an alienating state. (Young 1994, 292)

Jamaica had similar experiences with large sectors of civil society that resisted state institutions in myriad ways of daily practices and countertraditions to dominant (post-colonial) culture. The latter is no more identical with the former colonial dominant culture; in fact it developed against its grain. Nevertheless, its defining structures of irrational party alliances, nepotism and favourism – what the great

Jamaican sociologist Carl Stone (1994, 136) had adequately termed “garrison politics” – owed most of its features to the ideal of multi-party factions prescribed by the former colonial ruler. Its authoritarian prescription depended on a Eurocentric notion of democracy, which generally defines its core meaning in dualistic terms as governance of a ruling party (or coalition of parties) checked by an opposition (party or parties). Other (indigenous) forms of checks and balances were often overlooked, misrepresented or ignored. Against such biased conceptions of African traditions of governance, the hidden discursive institutionalized procedures inscribed in the traditional political system should be argued by African historical studies and political anthropology. Institutions such as the *Asafo* in Akan and in other societies of this West African region, or in particular the *Nkwankwaa* of the Asante reveal that criticism and opposition were well developed features of the original African political process. These aspects can therefore be ascribed to the traditional system of government where they have been omitted by European observers:

A good example of this jaundiced perception of aspects of our culture on which modern authoritarianism feeds is the claim that there is not a word in any African or Ghanaian language for the English word “opposition.” ... There was in the Akan political system an institution which was very similar to an “opposition” in a modern-liberal-democratic political system. This was the institution of *Nkwankwaa* among the Asante.... Essentially the *Nkwankwaa* comprised the free citizens who were neither members of the chief’s council nor “elders.” ... In essence, the position of the *Nkwankwaa* was that of the opposition in a modern liberal-democratic system. It stood outside the chief’s government and had the right to criticize it. Indeed it is significant that whereas an elder ran the danger of being suspected of disloyalty or even treason if he criticized the chief, the *Nkwankwaa* (i.e., the *Nkwankwaa* chief) faced no such danger for discharging this function.... The political parties thus face no cultural barrier in developing the habits of responsible opposition and of acceptance of criticism. (Folson 1993, 18ff.)

On the contrary, one might argue that political parties in post-colonial states could have recourse to habitualized forms of traditional rational discourse over the validity of particular political programs and changes. Such discursive resources of democratic governance are suspected to have suffered a certain curtailment with petrified partisan

partialism in many European systems and its exports into the former colonies. It is not easy to detect (communicative) reason in the historical exchange of the two leading parties (JLP and PNP) in Jamaica. A decade after independence, the oppositional structure developed from constant political strife and occasional outburst into something close to civil war. In this regard the question asked by Young (1994, 292) in the final summary and outlook on the “afterlife of the African colonial state” might as well be asked in connection to the afterlife of the African diaspora colonial state Jamaica:

Can a new state be invented that sheds the debilitating traditions of the past? ... History tells us that the patterns of the past remain embedded in the present. Can they be rewoven to permit the emergence of a new kind of polity, one that employs the discourse of democracy but connects itself to the deeper African heritage?

Since the early 1990s there is a growing concern for decolonization or, in more positive terms, for a *Jamaicanization* of the British Constitution for Jamaica (and consequently the whole state). Led by the intellectuals of the University of the West Indies, and fuelled by the constant critique of pro-African agents, such as the symbolically strong Rastafari movement with the powerful medium of reggae music, politicians seem to follow the cry for a Jamaicanization; meaning in true fact an *Africanization*. Therefore, the answer given by Young (1994) to his own (above quoted) question on a necessary recourse to African heritage would be indeed used by a great number of Jamaicans too:

In the longer run an affirmative response to this momentous question is indispensable to designing, to claiming, to seizing a future beyond crisis and decline. (292)

Ghana with its at least partial reconciliation of the state with traditional authorities (see, e.g., Ray 1996; van Rouveroy van Nieuwaal and van Dijk 1999), provides an example for attempts to Jamaicanize the constitution. Over the past years, contacts at the highest political level as well as in the field of cultural exchange have increased tremendously.¹² It remains to be seen if the Ghanaian experience to accept the complementarity of state and traditional authorities – as it is expressed by the presidential staffer for Chieftaincy Affairs, Nana Akuoko Sarpong (in an interview on 29 January 1998 in Accra) – will appear as a feasible option to the Jamaican state which indeed lacks legitimacy since its constitutional creation by the former colonial power:

You see the mistake that people make is that democracy can only come from the ballot polls. But democracy has different shades of

colour. The important thing is the participation of the people in the political process. That is what democracy is all about. It does not have to take the form of election, because you get a dictatorship of the majority. But in the African concept of democracy it is all inclusive. It has internal arrangements. The people meet at the palace to decide on matters affecting their welfare. When you come to the palace it is the linguist who speaks. But when the linguist has spoken and the majority of the elders has spoken, they throw the matter open to the public and each can make a contribution and we agree on matters to be done on a consensual basis. If democracy should have any meaning, consensual democracy is the best form of democracy. Because when it becomes too competitive, people are pulling into different directions.

Until the time of writing, the proposed constitutional reforms started in the early 1990s by the introduction of various constitutional committees have not gone through because of the persistence of the *garrison politics mentality*. In Jamaica, the first Black freedom fighters are the only groups to claim historical legal and political independence backed by procedures of African origins reformulated in the new environment. A possible *Jamaicanization* of the constitution would allow considering the option of *complementary sovereignty* with a highly symbolic recognition to the African history on the Caribbean island.

JAMAICANIZING THE CONSTITUTION: A CONCLUSION

After a thorough and lengthy examination (dating back to 1991) by high profile committees nominated by Parliament, alongside numerous public discussions and media analyses of the possibilities and advantages of the proposed decolonization process, a final report summarized the findings as a necessary development to Jamaicanization (Joint Select Committee of the Houses of Parliament on Constitutional and Electoral Reform, Sec. F; 1995, 13):

52. The Constitutional Commission reported a strong feeling that the Jamaican Constitution should be “Jamaicanized.”

In this regard, the Commission felt that it was inappropriate that a new Jamaican Constitution should remain a schedule to a United Kingdom Order in Council under a United Kingdom Act of Parliament.

53. The Joint Select Committee agreed with the Commission that the Jamaica (Constitution) Order in Council, 1962, should be revoked to:

- show that our new constitution is the product of the Jamaican people, and
- rid our basic law of its present colonial form.

The programmatic statement makes the search for an increase to state legitimacy easily detectable. Yet the final report, in its further proposals, also reveals a pending insecurity as to whereabouts other than colonial forms of law might be traced. At various occasions the report suggests “more democracy” in the form of a greater means for civil society to participate. It almost conjures a system of checks and balances (cf. Zips 1999b, 660–67) totally absent from the foundations of plantation society. But only in the more symbolic chapters of a proposed preamble for the true Jamaican Constitution, is the African ancestors’ heritage explicitly mentioned, although without reference to the Maroons: “the recognition that for three centuries it was their black ancestors and not the European rulers, who preserved the passion for freedom and justice” (Sherlock in final report 1995, 46).¹³

Sir Philip Sherlock, O.J., highlighted in his blueprint of the preamble (1995, 46) the African heritage denied, veiled, and belittled by the valid constitutional set up of the Jamaican state:

Whereas Jamaica is the second black country in the hemisphere to achieve independence, and by reason of its history is closely and indissolubly linked with the West African people, and with the Afro-American people whose origins lie in the African diaspora, and ... whereas European domination was rooted in the doctrine of African inferiority, the denigration of Africa and the inculcation of self-contempt in people of African origin, it therefore becomes necessary to set forth certain principles enshrined therein, these being:

1. the affirmation that Jamaica is predominantly a black nation, that the great majority of its people are of African origin,

and that their history dictates that national consciousness also means racial consciousness;

2. the claiming likewise of a European heritage.

Public statements in relation to the future project of state reform circumscribed programmatically as the “Jamaicanization of the constitution” use very similar phrases of democratization in their overtones. In Jamaica, that means to promote participation and respect for the masses of Black people of African descent. Their perplexity to put such ideas into practice derives, in my view, on the one hand: from an inherited disrespect for the achievements of the only free Black communities before the abolition of slavery (in 1838), namely the Maroons, who look back exclusively on a history of self-governance backed by their experiences of West African structures; on the other hand: from the lacking ideas to reconcile the African and the European heritage of democracy. I will therefore conclude my consideration of the complementary option in a realization of a pluralist basis of sovereignty with a quote from the Ghanaian (Asante) paramount chief in the rank equivalent of a state senior minister, Nana Akuoko Sarpong (in an interview on 29 January 1998 in Accra). It links this successful West African experience of a reformed democratic process with the idea of complementarity, including the communicative tradition of reasonable discussion in the context of chieftaincy:

The mistake people make, is to assume that democracy can only come from the ballot polls. Democracy has different shades of colours. The important thing is the participation of the people in the political process. That is what democracy is all about. It does not have to take the form of election because you can get a dictatorship of the majority. So both of us (state and traditional authorities) have our status from the people and if you see the way the paramount chief and the traditional councils are structured, the paramount chief can not take a decision alone without reference to the representatives of the various lineages at the traditional council. So that is also democratic in content and in nature.

REFERENCES

- Bastide, Roger. 1979. The Other Quilombos. In Richard Price, ed., *Maroon Societies: Rebel Slave Communities in the Americas*. Baltimore, Md., and London: Johns Hopkins University Press, 191–201.
- Dantzig, Albert van. 1980. *Forts and Castles of Ghana*. Accra: Sedco.
- Folson, Kwaku G. 1993. Political Parties and the Machinery of Democratic Government. In Kwame A. Ninsin and F. K. Drah, eds. *Political Parties and Democracy in Ghana's Fourth Republic*. Proceedings of a Seminar Organized by the Department of Political Science, University of Ghana, Legon on 2nd and 3rd July, 1992. Accra: Woeli Publishing Services.
- Giddens, Anthony. 1997. *Sociology*. Cambridge: Polity Press.
- Griffiths, John. 1986. What is Legal Pluralism? *Journal of Legal Pluralism and Unofficial Law* 24: 1–56.
- Hagan, George P. 1980. The Rule of Law in Asante, A Traditional Akan State. In *Presence Africaine* (University of Ghana), No. 113: 194–208.
- Kopytoff, Barbara. 1973. *The Maroons of Jamaica: An Ethnohistorical Study of Incomplete Politics, 1655–1905*. PhD dissertation, Univ. of Pennsylvania.
- McCaskie, Tom C. 1995. *State and Society in Pre-colonial Asante*. New York: Cambridge University Press.
- Patterson, Orlando. 1973. *The Sociology of Slavery. An Analysis of the Origins, Development and Structure of Negro Slave Society in Jamaica*. Kingston, Jamaica: Sangster's Book Stores [1st ed. 1967].
- Price, Richard. 1992. Maroons: Rebel Slaves in the Americas. In Smithsonian Institution, ed., *Festival of American Folklife*. Washington D.C.: Smithsonian Institution: 62–64.
- Ray, Donald I. 1996. Divided Sovereignty: Traditional Authority and the State in Ghana, *Journal of Legal Pluralism and Unofficial Law* 37/38: 181–202.
- . 1998. Chief-State Relations in Ghana – Divided Sovereignty and Legitimacy. In E. Adriaan B. van Rouveroy van Nieuwaal and Werner Zips, eds. *Sovereignty, Legitimacy, and Power in West African Societies. Perspectives from Legal Anthropology*. Hamburg: LIT: 48–69.
- Rouveroy van Nieuwaal van, E. Adriaan B., and Rijk van Dijk, eds. 1999. *African Chieftaincy in a New Socio-Political Landscape*. Hamburg: LIT.
- Sherlock, Philip, O.J. 1995. Preamble Submitted by Philip Sherlock. In *Final Report of the Joint Select Committee of the Houses of Parliament on Constitutional and Electoral Reform* 45–46 (Appendix 1) Kingston, Jamaica.
- Stone, Carl. 1994. The Jamaican Party System and Political Culture. In the Planning Institute of Jamaica, ed., *Preparing for the Twenty-first Century*. Kingston, Jamaica: Ian Randle: 132–47.
- Wilks, Ivor. 1975. *Asante in the Nineteenth Century. The Structure and Evolution of a Political Order*. London: Cambridge University Press.
- Young, Crawford. 1994. *The African Colonial State in Comparative Perspective*. New Haven and London: Yale University Press.
- Zips, Werner. 1998. We are Landowners. Territorial autonomy and land tenure in the Jamaican Maroon community of Accompong, *Journal of Legal Pluralism and Unofficial Law* 40: 89–121.
- . 1999a. *Black Rebels. African Caribbean Freedom Fighters in Jamaica*. Princeton: Markus Wiener; and Kingston, Jamaica: Ian Randle.
- . 1999b. Gleiche Rechte und Gerechtigkeit. Eine ethnohistorische und rechtsanthropologische Rekonstruktion des Maroon-Rechtes in Jamaica im Kontext der afrikanischen Diaspora unter besonderer Berücksichtigung politischer Strukturen in Akan-Gesellschaften Ghanas. (Unpubl. Habilitationsschrift an der Grund- und Integrativwiss. Fakultät der Univ. Wien).
- . 1999c. One Route to the Roots. Das Panafest in Ghana als Wegbereiter der afrikanischen Wiedervereinigung – Ein Essay. In Karl R. Wernhart, ed., *Afrika und seine Diaspora*. Hamburg: LIT.
- . 1999d. Africa is Beautiful. Ghana als Fokus der transatlantischen Repatriierung. *Mitteilungen der Anthropologischen Gesellschaft in Wien (MAGW)* 129: 215–26.

CITED INTERVIEWS

Currie, Melvin. Morning of 1.8.1990 in Accompong Sarpong, Nana Akuoko (Presidential Staffer for Chieftaincy Affairs und Omanhene von Agogo, Asante) am 29.1.1998 in Accra, Ghana.

CITED FILMS

Puskas, Barbara, and Werner Zips. 1998. "Panafrican Festival. Ghana: Land der Hoffnung" (20 min.). Vienna: Lotus Film (Treffpunkt Kultur, ORF 2, 9.3.1998).

———. 1999. "Die Macht ist wie ein Ei. Ghana – Land der Könige" (50 min.). Vienna: Lotus Film.

REPORTS

Final Report of the Joint Select Committee of the Houses of Parliament on Constitutional and Electoral Reform," 31 May 1995, Kingston, Jamaica [Copy in private archive of the author].

NOTES

1. The notion *Maroon* is derived from the Spanish word *cimarrón*, which was first applied to runaway animals. Its meaning is wild, untamed, free (cf. Zips 1999a, 3).
2. Compare, e.g., Bastide (1979, 195) who treats such Brazilian Quilombos like Palmares as "tribal regressions" – "... a kind of return to Africa."
3. Interestingly enough, the notion *Coromantees* survived the early loss of Fort Kromantse to the Netherlands in 1655, who renamed it Fort Amsterdam. In the context of world history the gain of Fort Amsterdam might be seen as revenge for the later loss of New Amsterdam on the Hudson River to the British. At the time, the two locations might have appeared quite equivalent to the European contestors: a clear strategic miscalculation on the side of the Netherlands, if one compares the ruins of the recently half-renovated Fort Amsterdam in the vicinity of Cape Coast to the later history of New Amsterdam which became the very centre of the Western world: New York (van Dantzig 1980, 3–22; Zips 1999b, 4ff.).
4. This feast said to commemorate the signing of the peace treaty, and at the same time to celebrate Kojo's birthday, allows for comparisons with the Odwira and other Akan yam festivals, such as the Fante Fetu Afahye, in the theoretical framework of a (praxeological) structural history (see Zips 1999b, 200–19).
5. See in more detail Zips (1999a, 55ff.).
6. See also my extensive discussion (based on empirical research in Jamaica between 1984 and 1998) on the formation of the *Maroon states*, their defence against all endeavours to destroy or, at least, belittle their independence granted by the peace treaty of 1738/39, and their internal political organization and legal system in historical perspective (Zips 1999b, 273–584).
7. It remained disputed in times of peace against the negotiated agreements by the unilateral acts of the colonialists.
8. Only in 1901 did Asante lose its sovereignty *legally* and become unwillingly included in the Gold Coast Colony.

9. In more general terms, Griffiths (1986, 6) observed categorically: “Legal pluralism in this sense has been a fixture of the colonial experience. Furthermore, it has generally persisted beyond the moment of formal ‘independence,’ proving one of the most enduring legacies of European expansion and characterizing at the present day the larger part of all of the world’s national legal systems.”
10. The full article reads: “That captain Cudjoe shall, during his life, be chief commander in Trelawney Town, after his decease, the command to devolve on his brother 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.” It is important to note that the last mentioned provision of a presumably British right to recognition, was continually interpreted by the Maroons as referring to their own commander in chief. However, the British never succeeded in gaining the hegemonic control of recognition of the Maroon authorities (Kopytoff 1973, 112, 338; Zips 1999b, 460).
11. The essential implications of this very phrase attributed to the cultural hero of independence, Captain (or *Generalissimo*) Kojó, are analyzed elsewhere (cf. Zips 1998).
12. The large and prominent delegation of Jamaicans to the Panafest 1997 in Cape Coast is but one sign in this direction (cf. Zips 1999c,d; see also the films, “Panafest” and “Power is Like an Egg”: Puskas and Zips 1998, 1999).
13. Five proposals for a preamble were drafted by highly recognized members of society and can be found in Appendix 1 of the “Final Report” (1995, 41–46).

