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Heritage, landscape and spatial justice: new legal perspectives on heritage protection in the Lesser Antilles

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Chapter 2 Landscape: A Caribbean Perspective

This chapter delves into the major historical events that shaped the Caribbean landscape, with the aim of understanding how these factors influenced the development of Caribbean heritage law in the Lesser Antilles. An overview of the landscape foundational concept is first provided, employing Kenneth Olwig's work on legal geography, before addressing the Lesser Antillean context and finally the relevance to spatial justice and sustainable heritage protection.¹⁰⁸

2.1 The Origins and Demise of Landscape: Enclosure, alienation and empire

2.1.1 Landscape as place: A nexus of land, law and people

The word 'landscape' is often associated with a view or scenery, a passive visual representation such as a landscape painting or a landscaped garden. 'It is well known', Denis Cosgrove tells us, 'that in Europe the concept of landscape and the words for it in both Romance and Germanic languages emerged around the turn of the sixteenth century to denote a painting whose primary subject matter was natural scenery.'¹⁰⁹

While it is certainly true that the concept of landscape as scenery emerged at this time, the older political meaning of landscape pre-dated the pictorial version.¹¹⁰ Geographer Kenneth Olwig has shown that landscape as scenery is landscape in its reductionist form, and masks the true meaning of the relationship between land, law and people. The following section borrows from Olwig substantially for the purposes of outlining the origins of landscape. Landscape was originally a historically constituted place with particular cultural practices, customs and legal traditions and forms of political representation,¹¹¹ a historical document containing evidence of a long process of interaction between society and its material environs.¹¹² At the heart of landscape and country as polity and place is custom and customary law.¹¹³ Customary law

¹⁰⁸ Olwig, *Landscape, Nature and the Body Politic* (n 88).

¹⁰⁹ Denis Cosgrove, *Social formation and symbolic landscape* (Croom Helm 1984) 9.

¹¹⁰ Kenneth Olwig, 'Representation and alienation in the political landscape'. (2005) *Cultural Geographies* 12: 19-40, 23.

¹¹¹ Olwig, *Landscape, Nature and the Body Politic* 62.

¹¹² *Ibid.*, 226.

¹¹³ *Ibid.*, 223.

serves as an important role in the enactment of place,¹¹⁴ by defining place in terms of a community of overlapping, inherited qualitatively different rights of use.¹¹⁵ As communities were displaced, landscape lost its original meaning. Landscape ceased to be a historical outcome of custom, and its extinguished form became subject to artistic genres such as painting and painting of stage scenery, and began to merge with scene - a real or imagined prospect suggesting a stage setting.¹¹⁶

Landscape's etymology sheds light on its origins, particularly its history, formation, and function. The word landscape originated from the Germanic family of languages: Dutch *landschap*, Danish *landskab*, Swedish *landskap*, German *landschaft*¹¹⁷ and *landscape* in the Old English spelling.¹¹⁸ It refers to the land, its character, traditions or customs.¹¹⁹ 'Landscape' is distinguished from land by the suffix -scape, which is equivalent in function to the more common English suffix -ship, and this suffix generates an abstraction.¹²⁰ Thus, as Olwig explains, there might be two friends, comrades or fellows in a room, both concrete beings, but between them they share something abstract and difficult to define: friendship, comradeship or fellowship; it is the suffix -ship which designates this abstract quality, the nature, state, or constitution of being a friend, and these qualities in turn are linked together by Olwig to draw attention to their concretised and institutionalised counterparts (nature, the state and a constitution).¹²¹

'Scape' also means shape, or character, constitution, as in giving character, constituting the land which is being shaped by people and vice versa.¹²² The power of this sense of shape lies in the dynamic relation between the meaning of shape as, on the one hand, an expression of -ship as an underlying nature, state or constitution which manifests itself through an active, creative, shaping

¹¹⁴ Don Mitchell, 'Go slow: An afterword on landscape and justice' (2006) *Norwegian Journal of Geography* 60(1): 123-127, 125.

¹¹⁵ Olwig, *Landscape, Nature and the Body Politic* 118.

¹¹⁶ *Ibid.*, 62.

¹¹⁷ *Ibid.*, 232.

¹¹⁸ Olwig, 'Representation and alienation' 22.

¹¹⁹ Olwig, *Landscape, Nature and the Body Politic* 18.

¹²⁰ Olwig, 'Representation and alienation' 20.

¹²¹ *Ibid.*

¹²² Kenneth Olwig, 'Landscape', in *International Encyclopedia of the Social & Behavioral Sciences* (2nd edn) 2015, 224-230, 225.

process and, on the other, the material form which that process generates – its shape.¹²³ Because such abstractions can be abstruse, knowledge of what constitutes the abstract nature, state or constitution of being friends, citizens or landsmen belonging to a land and how this relationship functions was often institutionalised, represented in a more defined objective form such as a representative body, concretising the relationship and facilitating the process ‘by which the land is shaped as a social and material phenomenon’.¹²⁴

As Olwig writes, the ancient Germanic name for the representative legal and political body of a land was the thing or moot – the root of the modern words ‘thing’ and ‘meeting’.¹²⁵ It is the deliberation of the thing that builds the land as a polity or *res publica* (transliterated ‘public thing’), or landscape. This interplay between land, community practice and its institutionalised relationship thus renders the landscape a political one, and situates the power of the representative body in custom.¹²⁶

Custom is an expression of community practice, from which the common law of the land emanates.¹²⁷ The seventeenth-century English jurist Edward Coke stated that custom is ‘defined as a law or right not written; which, being established by long use and the consent of our ancestors, hath been and is daily practised’.¹²⁸ It is because custom is rooted in this ‘common usage’ for ‘time out of mind’ that ‘custom lies upon the land’.¹²⁹ As Olwig has explained, the word law derives from the Old Norse *liggja*, meaning to lie, and is akin to the plural of *lag*, meaning ‘due place, order’.¹³⁰ The law, this suggests, was ‘laid down, layer-like, through practice, thereby establishing a sense of emplaced order – the lay (out) of the land’.¹³¹ In this way customary rights in the land, such as rights in the commons, created a sense of belonging to, and having a place in, the land.¹³²

¹²³ Olwig, ‘Representation and alienation’ 21.

¹²⁴ *Ibid.*

¹²⁵ Olwig, ‘Representation and alienation’ 22.

¹²⁶ *Ibid.*

¹²⁷ *Ibid.*

¹²⁸ Cited in Olwig, ‘Representation and alienation’ 22.

¹²⁹ Olwig, ‘Representation and alienation’ 22.

¹³⁰ *Ibid.*

¹³¹ *Ibid.*

¹³² Olwig, ‘Representation and alienation’ 23.

Olwig indicates that these emplaced rights were typically part of a complex structure in which the rights of the differing estates (the nobility, the clergy, the burgers, the farmers and the prince or king) worked together, or opposed each other, in a creative (or destructive) tension that often involved representative legal and political bodies.¹³³ Even under oppressive conditions, customary rights, particularly in the commons, could form the basis for a moral economy that acted to protect the poor.¹³⁴ Though the commoners were individually weak, numerically they were a majority, and in exercising and defending their rights, they could ensure their voices were heard, challenge threats to their way of life, and generally appeal to balance, democracy and equality.¹³⁵ Customary rights were therefore inherently tied to notions of social justice.

Representative bodies both influence and are influenced by the features of the landscape, and this relationship is formalised in the law they enact. The law, Olwig observes, does not just lie upon the land; it shapes the land, and that shape will in turn have an effect upon the law, creating the nature, state, or constitution of the land as the embodiment of a *res publica* or commonwealth.¹³⁶ Olwig cites the example of the creation of dykes under the customary law of a Friesland *Landschaft* polity.¹³⁷ The dependency of the *Landschaft* commonwealth upon those dykes shaped that community, its customs and laws, and led to the writing down of its by-laws and the institutionalisation of the power of the bodies that manage the dykes and use the water.¹³⁸ The corpus of law generated by those bodies will continue to impact the landscape over time, and it is this dynamic process that is responsible for the formation of place. It is not simply the physical natural resources in the land, or the community inhabiting the environs, but the relationship between community and land as they continue to influence each other over time, reflected in the institutionalisation of that relationship through their laws, practices and structures.

The historical concept of landscape in the primary substantive sense of place and polity, referring to lands ‘scaped’ or shaped according to customary law as adjudicated by representative legal assemblies especially influenced English common law.¹³⁹ In such a polity, common customary

¹³³ *Ibid.*

¹³⁴ *Ibid.*

¹³⁵ Olwig, ‘Representation and alienation’ 23.

¹³⁶ *Ibid.*

¹³⁷ *Ibid.*

¹³⁸ Olwig, ‘Representation and alienation’ 23.

¹³⁹ Olwig, ‘Virtual enclosure’ 256.

law is primarily enforced through moral pressure and community control (the word ‘moral’ deriving from the Latin word for mores or customs), and a customary prescriptive use-right that is neglected or abused automatically extinguishes any moral right to it, and will be lost.¹⁴⁰ This principle ensured the functioning of a working community, and prevented the erosion of a shared-resource system by reinforcing rights held in common for the public good.¹⁴¹ Sustainability in resource management, representation and social justice characterised the working landscape.

This complex and indivisible relationship between land, law and people is a far cry from landscape as visual scenery, which originated in the Renaissance and Enlightenment with the rediscovery of Ptolemy’s cartography.¹⁴² Cartographical and surveying techniques were used to enclose land, and to create perspectival scenic representations of the spaces so enclosed.¹⁴³ This spatial and pictorial mode of representation would in turn influence related fields such as architecture, design, planning and engineering, which transformed the land.¹⁴⁴ A key figure in this process was the Italian architect Andreas Palladio, whose English protégé Inigo Jones nurtured and popularised this perception of landscape as an architectural style.¹⁴⁵ Inigo Jones took the Palladian ideal one step further in creating landscapes inspired by theatrical illusion, because he crafted ‘natural’ scenes out of countryside, which would eventually embody the natural landscape architectural ideal.¹⁴⁶

This theatrical metaphor re-envisioned how the irregular visible surface upon which we live might be structured by regular behind-the-scene laws of perspective, paralleling how places represented on a globe are geometrically structured by invisible lines of latitude and longitude.¹⁴⁷ These behind-the-scene laws emulated God, the framer of the universe, whose vision was made manifest in nature.¹⁴⁸ As a result, Olwig writes that core concepts retained only the visual aspect

¹⁴⁰ Ibid.

¹⁴¹ Ibid.

¹⁴² Kenneth Olwig, Chris Dalglish, Graham Fairclough and Pete Herring, ‘Introduction to a special issue: the future of landscape characterisation, and the future character of landscape – between space, time, history, place and nature’ (2016) *Landscape Research* 41(2): 169-174, 170.

¹⁴³ Olwig et al, ‘Introduction to a special issue: the future of landscape characterization’ 170.

¹⁴⁴ Ibid.

¹⁴⁵ Ibid.

¹⁴⁶ Olwig, *Landscape, Nature and the Body Politic* 116.

¹⁴⁷ Olwig, ‘Virtual Enclosure’ 257.

¹⁴⁸ Ibid.

of their meaning: landscape merged with the idea of nature, so that by the mid-eighteenth century nature lost its original meaning of ‘inherent character’ and became ‘natural scenery’, while landscape came to mean ‘natural inland scenery’.¹⁴⁹

2.1.2 Enclosure

The popularity of the natural landscape ideal was no accident; it facilitated the enclosure movement in Britain, which created private property,¹⁵⁰ and ushered in the agricultural/industrial revolution, transforming the country into rural and urban spaces, wilderness and culture, and country and city.¹⁵¹ Scenic perspectival representation transformed perception not just in the literal sense, in terms of the way the world was perceived, but also in the more figurative sociocultural sense of perception.¹⁵² It thus created a new way of conceptualising and thinking about landscape that was based on an individual’s point of view, rather than on the experience of a local community sharing the land.¹⁵³ ‘Landscape is both site and sight’,¹⁵⁴ and ‘such scopic reframings are complicit with forms of domination. Landscape can distance us from the world in critical ways. Western ways of seeing ‘enframe’ the world and conceals this process as an ordering device.’¹⁵⁵

This point of view culminated in the iconic English landscape garden, itself born of the increasingly sophisticated methods of representing landscape character for use in landscape planning, and representing the point of view of the owner of the privatised land who commissioned that garden.¹⁵⁶ These methods reframed the countryside as a bucolic paradise, inspired by a nostalgic notion of a fading rural Britain as heritage which would inform the

¹⁴⁹ Ibid.

¹⁵⁰ Nicole Graham dates the conceptual origins of modern property law to the enclosure of the commons. Customs or law of the commons were locally specific and responsive to geographic capacities and limits as defined by forests, marshes, wetlands and so on. These local limits were regarded as irrelevant to the development of an abstract law of private property. Enclosed land is privately owned land, excluding the interest of all but the owner. The land and its fruits were alienable, transferable and tradeable by the owner at their discretion. See Graham, *Landscape* 51.

¹⁵¹ Olwig et al 170.

¹⁵² Ibid.

¹⁵³ Ibid.

¹⁵⁴ Blomley, ‘Landscapes of Property’ (1998) *Law & Society Review* 32: 567-612, 574.

¹⁵⁵ Ibid., 575.

¹⁵⁶ Ibid.

protection efforts of a highly urbanised Britain in the early twentieth century.¹⁵⁷ The process of concealing enclosure was complete.

The paradoxical view of nature that had arisen by the mid-nineteenth century was characteristic of the underlying philosophy of enclosure: nature is both a realm of natural resources available for man's use, and an environment that determined man's character.¹⁵⁸ Landscape is altered through economic exploitation as well as re-designed to be more aesthetically pleasing, the latter representing the true hallmark of civilisation. Nature hereafter is visual space, albeit amenable to improvement.¹⁵⁹

The cartographic techniques of perspective landscape representation were compatible with and facilitated the demarcation of land of the Renaissance state in terms of its physical property, as well as the subdivision of that land into smaller properties under the control of a propertied class or estate.¹⁶⁰ Landscape as scenery thus informed the ideology of enclosure, or the desire to enclose and transform land as property.¹⁶¹ New laws emerged to buttress the ambitions of this propertied class. The Enclosure Acts of 1760-1830 extinguished rights of common passage and usage.¹⁶² The transformation of landscapes formerly associated with traditional patterns of rural life was instigated by historical events, and associated economic concerns raised by the so called improvement of fencing of common fields and pastures.¹⁶³

With the Glorious Revolution, England overthrew James II, and installed a new monarch who would accept parliamentary rule, enabling an alliance between the court and bourgeois members

¹⁵⁷ Ibid.

¹⁵⁸ William Taylor (ed), *The Geography of Law: Landscape, Identity and Regulation* (Hart, 2006) 7.

¹⁵⁹ Ibid.

¹⁶⁰ The art historian Samuel Edgerton argues that the use of surveying and maps to demarcate geometrically measurable parcels of private property fitted in well with the growing mercantile economy of the age, as did the use of the same techniques to visualise and objectify the land as scenery. In such an economy, the abstraction of money reduced the exchange value of goods to the measure of a monetary-economic common denominator, measured according to the physical common denominator of an abstract unit of weight or space (as in the case of land) which was quite different from the equivalency of use values that characterised barter. The continuing erosion of medieval strictures against the alienation and sale of land made it possible, in practice, to transform land into property, even if this violated mores sanctioned by ancient custom. Quoted in Olwig, 'Representation and alienation' 27 and 28.

¹⁶¹ Olwig, 'Representation and alienation' 28.

¹⁶² Taylor (ed), *The Geography of Law* at 9.

¹⁶³ Napoleon's blockades and the American Revolution, which led to loss of overseas food sources. Food security now relied on local production. See Taylor (ed), *The Geography of Law* at 9.

of the Whig parliament.¹⁶⁴ The Old Whig ideology, in which the country was both source and seat of the customary rights and obligations from which the ancient constitution had sprung, now receded.¹⁶⁵ Left in place as figurehead was the mere image of the English countryside, preserved in the form of the country seat or estate, while the ancient country way of life that had been regulated by custom was dismantled to accommodate agricultural improvement and commerce.¹⁶⁶ Lost in this class conflict were the rural lower classes.

The legerdemain of enclosure is responsible for the rupturing of the biogeography of Britain, forever changing the relationship between people and their environment. Enclosure transformed landscape into property, eliminated the scaffolding of community and erased the local character. The original land laws of peasant economy, the customs that were locally developed, were relevant because they were sensitive to various local geographic conditions.¹⁶⁷ Providing highly specific limits or conditions to those rights in providing rights of access, use and enjoyment of land and other local resources had been an early form of natural resource management, observed over centuries.¹⁶⁸ The pre-enclosure local representative councils, and the corpus of customary law they established, shaped the land, thereby forming a ‘substantive landscape’ or polity, in which ‘substantive’ means ‘real rather than apparent’ and ‘belonging to the substance of a thing’, in the legal sense of ‘creating and defining rights and duties’.¹⁶⁹

Customary law was thus the formalisation and ritualisation of habits and practices, reinterpreted as required over time, and forming a bank of cultural memory and common identity.¹⁷⁰ The suppression of these customary rights of common people was not the result of an intrinsic failure, or collapse, but effected through legal seizure of lands through enclosure.¹⁷¹ Custom ossified into tradition, and was interpreted as heritage because people, driven from the land, resurrected the memory of that extinguished community no longer powered by living custom.¹⁷² Landscape was polity rooted in local community and custom, but ‘landscaping’ the countryside was used as

¹⁶⁴ Olwig, *Landscape, Nature and the Body Politic* 102.

¹⁶⁵ *Ibid.*

¹⁶⁶ *Ibid.*

¹⁶⁷ Graham 53.

¹⁶⁸ *Ibid.*

¹⁶⁹ Olwig, ‘Virtual enclosure, ecosystem services’ 256.

¹⁷⁰ Olwig, *Landscape, Nature and the Body Politic* 58 and at 60.

¹⁷¹ Graham 54.

¹⁷² Olwig, *Landscape, Nature and the Body Politic* 60 and 223. See also D Lowenthal, *The Heritage Crusade and the spoils of history* (Cambridge University Press 1998).

a way to erase memory of the actual community and its relationship with the land.¹⁷³ Now solely existing in law, landscapes had one imposed spatial definition as private property. The transition to a spatial definition of land as property had distorted the substantive conceptualisation of landscape.¹⁷⁴

2.1.3 Alienation

The consequences of enclosure were devastating for local communities. This may be best explained by alienation, which, as with many of the aforementioned concepts, is multi-faceted. In its original sense, alienation means the transferal, and hence loss, of rights in the land, and as Olwig explains, where one has a sense of belonging to the land, as the place of one's family, community and heritage, such loss is also psychologically alienating.¹⁷⁵ 'One becomes estranged from the land to which one belongs – an alien is a foreigner or a stranger, and alienation literally means to be made foreign, to be estranged.'¹⁷⁶ The loss of rights to the land effectively makes one an alien, or foreigner, in the land.¹⁷⁷

Olwig notes that when the land is commodified as property and visual scenery, it is reduced to a physical thing, material land, and is estranged from its substantive social meaning, the land of a people as *res publica*.¹⁷⁸ 'Substantive' is used once more to mean real rather than apparent, belonging to the substance of a thing as used in the legal sense of creating and defining rights and duties.¹⁷⁹ Real is defined in terms of the things in law, *realis*, which determine what is real in a social and political context; alienation is the loss of the real through the reification of the rights in land that are the foundation of the *res publica*.¹⁸⁰ This means that power is now derived from the statutory right of property as a thing, rather than the customary right of use that defines things in law, and thus the real.¹⁸¹ 'The social reality defined by shared rights in land is here transformed into private realty and its accompanying scenic landscape backdrop.'¹⁸² Olwig explains that whereas the term 'estate' had once referred to one's place in the polity, landed

¹⁷³ Olwig, *Landscape, Nature and the Body Politic* 114.

¹⁷⁴ Olwig, 'Virtual enclosure, ecosystem services' 256.

¹⁷⁵ Olwig, 'Representation and alienation' 20.

¹⁷⁶ *Ibid.*

¹⁷⁷ *Ibid.*, 30-31.

¹⁷⁸ *Ibid.*, 34.

¹⁷⁹ *Ibid.*

¹⁸⁰ *Ibid.*

¹⁸¹ Olwig, 'Representation and alienation' 35.

¹⁸² *Ibid.*, 28.

property itself now became known as an estate, the seat of one's status in the countryside and nation; one's place in the country was thus effectively defined in terms of the possession of a country place.¹⁸³

Those who were landless, not propertied, were therefore voiceless. They were disenfranchised as citizens, as they no longer could participate in representative legal bodies.¹⁸⁴ Land previously held in common was alienated from the commoners, as it now belonged to individuals as property over which the owner had exclusive rights.¹⁸⁵ As Olwig notes, this alienation also had psychological and social effects, because for the poor, enclosure not only eliminated their rights in common land, but reduced their resource base, leaving them much more dependent upon the property owners, and also estranged them from their sense of having a place in the land as a polity.¹⁸⁶ Rights of passage were now associated with vagrancy and mendicancy, and commoners were now outliers, at odds with lifestyles that promoted individual, physical and financial security.¹⁸⁷

Alienation is the response to the severance of people from the landscape, the material aspects as well as the cultural aspects of landscape, 'thereby breaking the living bonds of custom that motivate sustainable use'.¹⁸⁸ The source of this alienation is the shared loss of common rights via the conversion of common land to private property during enclosure, and reification of the commons as the 'scenic backdrop, and ideological mask', for the purpose of the propertied class.¹⁸⁹ The role of landscape representation in objectifying and distancing people from their environment is alienating, via the repressive social conditions alienation creates.¹⁹⁰ Having been expelled from the landscape, commoners lose their way of life, their rights, their community, and their identity, which were all based on place attachment. They are 'displaced' in the truest sense of the word.¹⁹¹

¹⁸³ Olwig, 'Representation and alienation' 29.

¹⁸⁴ Ibid.

¹⁸⁵ Olwig, 'Representation and alienation' 28.

¹⁸⁶ Ibid.

¹⁸⁷ Taylor, *Geography of Law* 10.

¹⁸⁸ Kenneth Olwig, 'Globalism and the enclosure of the landscape commons.' In ID Rotherham (ed), *Cultural severance and the environment—The ending of traditional and customary practice on commons and landscapes managed in common* (Springer 2013) 31–46, 31.

¹⁸⁹ Olwig, 'Representation and alienation' 35.

¹⁹⁰ Olwig, 'Representation and alienation' 33.

¹⁹¹ Graham 52.

However, the idea of common land never truly disappeared. The British labour movement of the early twentieth century drew upon these earlier notions of shared resources and regulatory regimes embodying participatory forms of governance rooted in custom, when it agitated for access to the countryside.¹⁹² As Olwig has noted, they emphasised the working class's unjust loss of rural rights in the land, likely influenced by members of their audience who may well have been descendants of commoners.¹⁹³ This movement also included organisations such as Lord Eversley's Commons, Forests and Footpaths Society (now known as the Open Spaces Society), and would effectively use English common law to argue for the preservation of common land as parks, particularly in urban areas, across Britain.¹⁹⁴ The idea that cities and nations ought to have shared landscapes, to which the larger citizenry has rights of access, had descended from these ancient practices concerning shared rights to common land.¹⁹⁵

Pressure from various interest groups culminated in the enactment of legislation following World War II. The National Parks and Access to the Countryside Act was passed in 1949 to placate rambling associations, conservation groups, and those similarly concerned by granting rights of public access to the countryside.¹⁹⁶ It required the mapping of all local rights of way, the establishment of national parks, and the delegation of power to local authorities to secure access to open country areas.¹⁹⁷ The movement did not restore landscape. However, some aspects of customary law in the form of public rights of access were given statutory basis.¹⁹⁸ National parks were therefore not exclusive in the manner of private landscape parks created by estate owners, on typically enclosed common land.¹⁹⁹

Landscape as scenic space was defined by cartographers and other experts and promoted the idea of world as space, divided into bounded, privately or publicly owned properties.²⁰⁰ Nevertheless this masks the tension between property and community and place-centred landscape values

¹⁹² Olwig, 'Representation and alienation' 29.

¹⁹³ Ibid.

¹⁹⁴ Olwig, 'Representation and alienation' 30.

¹⁹⁵ Ibid.

¹⁹⁶ Annika Dahlberg, Rick Rohde and Klas Sandell, 'National parks and environmental justice: Comparing access rights and ideological legacies in three countries' (2010) *Conservation and society* 8(3): 209-224, 217.

¹⁹⁷ Ibid.

¹⁹⁸ Olwig, 'Representation and alienation' 35.

¹⁹⁹ Ibid., 30.

²⁰⁰ Olwig et al, 'Introduction to a special issue: the future of landscape characterization' 172.

identified with the common lands of the unenclosed landscape that preceded enclosure.²⁰¹ Such values can be seen in the form of social and legal practices of community governance, identity and even as working commons today.²⁰²

Alienation, as the loss of customary rights in land that comprise the foundation of the *res publica*, displaces people and renders them homeless, alien and foreign.²⁰³ The substantive landscape, to which people become attached through working practice, is presented in diminished form, a visual scene artistically represented, ‘legitimizing the surveyed and planned space of the propertied’.²⁰⁴ Olwig describes imperial landscape as a creature of the enclosure process, wherein alienation is the driving force of a particular notion of progress that justifies displacement by making social and material loss the source of economic and spiritual liberation.²⁰⁵ It was therefore necessary ‘to reduce the living and changing social and legal force of custom to picturesque tradition and costume, and thereafter obliterate it, often with disastrous social and ecological consequences.’²⁰⁶ Human beings become collateral damage in the imperial landscape. Thus enclosure was accompanied by ‘the construction of parks which transformed working commons (shaped by practice and custom) into ideal pastoral landscape scenes, while literally alienating the commoners from the land.’²⁰⁷

2.1.4 Empire: Virtual enclosure and alienation writ large

Following enclosure, the country of England was no longer defined via historical custom but in terms of scenery, of its geographical body.²⁰⁸ Landscape became a visualising technique, a way to render the country in particular scenic, spatial terms,²⁰⁹ which was by no means a neutral activity. This scenic illusion of landscape facilitated the belief that differently constituted polities and places could be collapsed within the unitary space of a body politic as embodied by a geographic body or land mass.²¹⁰ Surveying and mapping the techniques of design and painting landscape scenery could be used to define territory as a quantity of geometric space, and such

²⁰¹ Ibid.

²⁰² Ibid.

²⁰³ Olwig, ‘Representation and alienation’ 34.

²⁰⁴ Ibid., 35.

²⁰⁵ Ibid.

²⁰⁶ Ibid.

²⁰⁷ Ibid.

²⁰⁸ Olwig, *Landscape, Nature and the Body Politic* 62.

²⁰⁹ Ibid., xxxi.

²¹⁰ Olwig, *Landscape, Nature and the Body Politic* 218.

techniques need not be limited to Britain.²¹¹ Gardeners, legislators and colonisers preferred the preordained cartographic structure of abstract space to the physicality and particularity of place, because it could be controlled.²¹² Graham explains that when standardised universal and measurable space could be grafted over place, the physicality and particularity of places became irrelevant.²¹³

Acts of enclosure in Great Britain carried the implicit assumption that unbounded lands were under-utilised and therefore largely unoccupied.²¹⁴ The underlying philosophy was simple: those who best used land and labour had the right to control both.²¹⁵ Improvement therefore depended upon the knowledge of plants and soils, and so science as the pursuit of environmental knowledge was joined to private property.²¹⁶ British imperialism over the long term was a campaign to extend this ecological regime, premised on the virtues of sedentary agriculture, husbandry, private property, production for exchange and ultimately manufacture.²¹⁷

Such thinking was inevitable given that the wealth of the new powerful Whig oligarchy was derived from the expanding global agricultural, industrial and trading interests of imperial Britain, not the country of little England.²¹⁸ In order to retain legitimacy, this new class aligned itself with the with the English country ideal, even while it was transcending the country way of life that was regulated by custom, because it hindered agricultural improvement and commerce.²¹⁹ As Olwig notes, the country was ‘‘English’ in aspect but British in its ability to manage a world imperium from a country seat in a united Britain.’²²⁰ Hence the ‘aura of country legitimacy transferred from England of custom to Britain of Empire’²²¹ and landscape as private property kept the commoners at bay through eviction, urban migration and transportation to the New World.²²²

²¹¹ Ibid., 118.

²¹² Graham 66.

²¹³ Ibid.

²¹⁴ Taylor, *Geography of Law* 11.

²¹⁵ Drayton, *Nature’s Government* 229.

²¹⁶ Ibid., 52.

²¹⁷ Ibid., 229.

²¹⁸ Olwig, *Landscape, Nature and the Body Politic* 102.

²¹⁹ Ibid.

²²⁰ Ibid.

²²¹ Ibid.

²²² Graham 52.

Newly discovered territory thus became wilderness as *tabula rasa*. ‘Wilderness was a space bereft of all but natural resources, awaiting transformation under the improving hand of mankind’.²²³ However, Graham points out that British colonists never believed the lands to which they travelled were unpopulated, just uncultured - *terra nullius* signified the absence of agricultural use of those lands, not the absence of indigenous peoples.²²⁴ British sovereignty was thus asserted on the basis that Indigenous peoples had not demonstrated the capacity for proprietorship, justifying the grant of land to non-indigenous individuals on the condition that it was ‘improved’.²²⁵ This narrative thus ‘mythologized conquest and imperialism as improvement and progress’.²²⁶ Improvement was carried out via enclosure, landscape gardening and colonisation.²²⁷ This form of land use secured the foundation for colonial property rights.²²⁸

Spatialising place reframed the appropriation of land as a rational and constructive process of discovery and exploration rather than a political and destructive process of dispossession and exploitation.²²⁹ The concept of space and spatial technologies such as cartography were instrumental to enclosure and the ordering of place both conceptually and actually.²³⁰ The ‘irrelevance and absence of place thus underwrote the legitimacy of enclosure and colonialism because constructing a monolithic space allowed the British Empire to hierarchise the use of space to its own advantage’.²³¹

Enclosure facilitated the transition from community to nation and from nation to empire.²³² The rationale of enclosure (and colonisation) is that cultural progress can only be measured by the improvement of nature.²³³ Improvement, from a French word for profit, is associated with a particular form of land use for monetary gain.²³⁴ But the improvement of nature is not a neutral activity, as it is achieved via the eviction, transportation and dispossession of native peoples,

²²³ Taylor, *Geography of Law* 11.

²²⁴ Graham 95.

²²⁵ *Ibid.*, 90.

²²⁶ *Ibid.*, 95.

²²⁷ *Ibid.*, 65.

²²⁸ *Ibid.*, 90.

²²⁹ *Ibid.*, 66.

²³⁰ *Ibid.*

²³¹ *Ibid.*

²³² Graham 60.

²³³ *Ibid.*, 52.

²³⁴ R Williams, *Keywords* (Fortuna 1976) 160-161 as cited in Graham 56.

which physically displaces and ‘deplaces’ people.²³⁵ The tabula rasa view of wilderness and beliefs in terra nullius enabled the assessment of the ‘otherness’ of foreign territories and their indigenous inhabitants, ‘who were confronted and more often than not, disregarded’.²³⁶

This process of enclosing new territory outside of Britain may be described as a form of ‘virtual’ enclosure. According to Olwig, virtual enclosure transcends the strict definition of physical enclosure as associated with the specific historical context of Britain and the Enclosure Acts.²³⁷ As Olwig explains, virtual enclosure occurs whenever the character of landscape is ‘pre-defined according to an assumed spatial logic that comprehends nature as a bounded scenic property, reinforcing ideas about privatization, private property and management control’.²³⁸ What is relevant is that enclosure reduces environmental diversity through spatial consolidation and spatial enclosure.²³⁹ This shifted landscape from a system that reflected the diversity of the land’s environmental topography, to one of agricultural specialisation, in which common resources are no longer relied upon.²⁴⁰

Subjugating landscape to imperial ambitions was accomplished by obliterating ways of life, masked as rhetoric and the practice of ‘improvement’.²⁴¹ The landscape installed was a new expression of the relationship between land, law and people, and was exported throughout the British Empire, mimicking the earlier physical and legal enclosure in England. This representation of the landscape objectifies and distances people from the land; it is alienating because of the oppressive social conditions in which legal rights are taken away.²⁴² Place ceases to exist and becomes geometric space to be surveyed and mapped. People are erased, either from existence or by dehumanising their existence based on their status as uncultured savages or human chattel. Landscape reaches its ultimate form of reification with the dehumanisation required for the establishment of Caribbean slave colonies, to which we now turn.

²³⁵ Graham 52.

²³⁶ Taylor, *Geography of Law* 13.

²³⁷ Olwig, ‘Virtual enclosure’ 253.

²³⁸ Ibid.

²³⁹ Ibid., 254.

²⁴⁰ Ibid.

²⁴¹ Mitchell, ‘Just Landscapes or Landscapes of Justice’ 788.

²⁴² Olwig, ‘Representation and alienation’ 32 and at 36.

2.2 The Caribbean as imperial landscape

2.2.1 The Amerindian Landscape and the environmental consequences of 1492

The year 1492, in which Christopher Columbus made landfall in the Caribbean, is taken as the watershed event precipitating European colonial expansion in the region. It is important to note that Columbus did not ‘discover’ primitive isolated tribes but rather socially complex and ethnically heterogeneous Indigenous societies.²⁴³ Between the fourth and first millennia BC a new wave of immigrants from the South American mainland established large and relatively permanent settlements on the islands between Trinidad and Puerto Rico, and in the space of a few centuries the entire Lesser Antillean archipelago became a dynamic landscape with peoples moving between the islands and the mainland shores. The diversity of ecosystems and the complex social relationships informed a dynamic, highly interconnected island world, ranging from local groups to hierarchical societies which both consolidated and shifted over time.²⁴⁴ Nevertheless, this dissertation is concerned with the impact of the law on the Caribbean heritage. The common law is a key instrument of the empire project, responsible for reordering and reframing the landscape in what would become the British Caribbean. Columbus’ arrival (and Spain’s entry into the New World as a European coloniser) therefore symbolically presages the destruction of the Amerindian landscape and the emergence of the imperial landscape.²⁴⁵

It is difficult to understand colonialism without reference to environmental factors that illustrate the physical transition of landscape to space.²⁴⁶ Europeans transformed the New World, what

²⁴³ Reid, *Myths and Realities of Caribbean History*) 100. See also Lennox Honychurch, *Carib to Creole: A History of Contact and Culture Exchange* (The Dominica Institute 2000).

²⁴⁴ CL Hofman, ‘Indigenous Caribbean Networks in a Globalizing World’ 58. In C De Corse (ed), *Power, Political Economy, and Historical Landscapes of the Modern World* (SUNY Press 2019).

²⁴⁵ See Dillman, *Colonizing Paradise: Landscape and Empire in the British West Indies* 174-5 and at 179. Dillman’s thesis is that the Caribbean landscape has undergone successive iterations, first as viewed through European eyes as paradise (beginning with Christopher Columbus, the first explorer to record his visual impressions), a pastoral idyll for settlement, a reordered natural canvas to restore paradise, and finally a mask to hide the reality of the brutal conditions surrounding slavery and plantation agriculture. He notes that colonial landscape tropes remain salient today as the British Caribbean became reimagined as a paradise to attract tourists.

²⁴⁶ William Beinart and Lotte Hughes, *Environment and Empire* (Oxford University 2007) 8. See also Alfred Crosby, *Ecological Imperialism: the Biological Expansion of Europe* (Cambridge University Press 1986); H Hooghiemstra, T Olijhoek, MLP Hoogland, M Prins, B van Geel, T Donders, W Gosling and CL Hofman, ‘Columbus’ environmental impact in the New World: Land use change in the Yaque River valley, Dominican Republic’ (2018) *Holocene* 28(11): 1818-1835; A Castilla-Beltrán, H Hooghiemstra, MLP Hoogland, JR Pagan Jimenez, B van Geel, MH Field, M Prins, T Donders, EN Herrera Malatesta, and J Ulloa Hung, CH McMichael, WD Gosling and CL Hofman, ‘Columbus’ Footprint in Hispaniola: A paleoenvironmental record of Indigenous and Colonial impacts on the landscape of the central Cibao Valley, northern Dominican Republic’ (2018) *Anthropocene* 22: 66-80.

Alfred Crosby has termed the greatest biological revolution since the Pleistocene area, shaping the land and histories of extensive areas by raising plants on extensive plantations.²⁴⁷ This was carried to an extreme on the Caribbean islands, where the entire land mass became devoted to plantation agriculture. This distinguishes these islands Caribbean islands from the settler states and conquered territories in other parts of the British Empire and explains the spatial and demographic dimensions of the Atlantic slave trade and Caribbean plantations.²⁴⁸

This is not to say that the Caribbean islands were in an untouched state prior to colonialism. Amerindian populations certainly modified their environment. The data suggest that earlier foraging/fishing Archaic groups who used a stone tool and shell technology and transported few, if any non-indigenous plants or animals, still impacted island landscapes as evidenced by bird and sloth extinctions. They were followed by more advanced ceramic making horticulturalists who engaged in forest clearance, overexploitation of both terrestrial and marine resources, and growing populations, but it was not until Europeans arrived and population centres grew that intensive and widespread degradation of island landscapes and resources occurred.²⁴⁹ Indigenous agriculture made use of high earth mounds that produced agricultural staples.²⁵⁰ There was small-scale logging for construction and introduction of plant species.²⁵¹ House gardens were cultivated with various crops grown in small quantities, while more intensive farming was practiced in the conucos or fields some distance from the village.²⁵² There was deforestation, and intensive agricultural practices such as slash and burn and slope agriculture altered the environment.²⁵³

²⁴⁷ Alfred Crosby, *The Columbian Exchange: biological and cultural consequences of 1492* (Greenwood Press 1972) 66.

²⁴⁸ Beinart and Hughes 9.

²⁴⁹ Scott M. Fitzpatrick and William F. Keegan, 'Human impacts and adaptations in the Caribbean Islands: an historical ecology approach' 2007 *Earth and Environmental Science Transactions of the Royal Society of Edinburgh*, 98, 29–45, 29.

²⁵⁰ CL Hofman, J Ulloa Hung, EN Herrera Malatesta, JS Jean, TF Sonnemann and MLP Hoogland, 'Indigenous Caribbean perspectives: archaeologies and legacies of the first colonised region in the New World' 2018 *Antiquity* 92(361): 200-216..

²⁵¹ David Watts, *The West Indies: patterns of development culture and environmental change since 1492* (Cambridge University Press 1990) 75.

²⁵² Keegan and Hofman 250.

²⁵³ *Ibid.*, 198.

In the Lesser Antilles, arable land was used for horticulture, and marine resources exploited, and there was land clearance resulting in significant environmental change.²⁵⁴ But no Amerindian communities in 1492 had developed the concept of private ownership of land; land was a communal resource which was to be utilised fully within the limits of their technology and with an eye to sustainability, for the long term conservation of food security. With the advent of colonialism, and the acquisition of land, the relationship between Amerindian communities and their environment was drastically altered. The diversity of agricultural practices was also suppressed as more and more land was absorbed by the colonisers. Their productive conuco agricultural systems were to be dismantled and replaced by Spanish settlements, and most of their populations eliminated, at least in the Lesser Antilles.²⁵⁵

After some early efforts to enslave indigenous peoples in the Americas, which were later condemned by Spain and the papacy, the Spaniards relied on the *encomienda*, a semi-feudal system of tributary labour initially applied to the conquered Moors in Spain. Theoretically, the main justification for ruling the Amerindians was to convert them to Christianity and a Christian way of life, so the system required a Spanish master, or *encomendero*, to protect and slowly Christianise a small community of Amerindians in exchange for tribute. The tribute could be in the form of crops, personal service, or work in underground mines. In actuality, not only did the Spaniards continue to enslave some Amerindians, but *encomenderos* made large fortunes by exploiting Amerindian workers.²⁵⁶ The imposition of the *encomienda* system marked the consolidation of domination, and was the springboard for destruction of Indigenous societies. Because of its economic importance, the *encomienda* structured the existence of indigenous and European individuals, as well as their social and economic positions in the colonial environment. Domination transformed the individuals into colonial subjects, with specific roles in the social and productive spheres. For indigenous individuals it meant being Indian, changing their language, appearance, creed, and identity, and being assigned a lower place in the social echelon.²⁵⁷ The *encomienda* system helped to destroy native populations in the Caribbean.

²⁵⁴ Ibid., 210-211.

²⁵⁵ Watts 77.

²⁵⁶ David Brion Davis, *Inhuman Bondage: the rise and fall of slavery in the New World* (Oxford University Press 2008) 97.

²⁵⁷ Roberto Valcárcel Rojas, *Archaeology of Early Colonial Interaction at El Chorro de Maíta, Cuba* (University Press of Florida, 2016) 332; see also KF Anderson-Córdova, *Surviving Spanish Conquest: Indian Fight, Flight, and*

Demographic devastation explains the rapid clearance of land in the Americas and the limits of the local labour force.²⁵⁸

As early as 1516, two witnesses to the horrors of the New World, Licenciado Zuazo and Bartolomé de Las Casas, ‘protectors of the Indians,’ called for the sparing of Amerindian lives, especially in the mines, by importing Africans to serve as slave labour. For twenty-five years Las Casas saw the importation of Africans as the ‘solution’ for the Spaniards’ oppression of Amerindians. This substitution of Africans for Amerindians became a common pattern.²⁵⁹ Unlike the indigenous inhabitants, most West Africans were familiar with large-scale agriculture, organised labour, and making iron/steel tools. Indigenous peoples, now restricted on small islands, had been decimated by enslavement and disease, and were no longer a viable labour source.²⁶⁰ Racial slavery thus became an intrinsic and indispensable part of New World settlement.²⁶¹ As the British and then French Caribbean began producing sugar, molasses, rum, and coffee for an international mass market, the West Indies became the true economic centre of the New World, a point confirmed by the fact that imperial powers immediately sent their navies to protect or capture Caribbean colonies upon the outbreak of a war.²⁶²

2.2.2 Landscape as plantation I: The environmental consequences of plantation agriculture

Colonialism’s philosophical underpinnings are imperialist, and so concern the acquisition of land, whether by conquest, settlement or exploitation. The colonies of Africa, India and Spanish America were conquered, often retaining their peoples and cultures, while the United States, Australia were colonised for settlement.²⁶³ The Caribbean colonies were colonised ultimately for

Cultural Transformation in Hispaniola and Puerto Rico (University of Alabama Press 2017).. L Arranz Márquez, *Repartimientos y encomiendas en la Isla Española* (Fundación García Arévalo, 1991); C Esteban Deive, *La Española y la esclavitud del Indio* (Fundación García Arévalo, 1995) and J Ulloa Hung and R Rojas Valcárcel (eds) *Indígenas e indios en el Caribe: presencia, legado y estudio* (Instituto Tecnológico de Santo Domingo, 2016).

²⁵⁸ Beinart and Hughes 33.

²⁵⁹ Brion Davis 98.

²⁶⁰ Hofman, ‘Indigenous Caribbean Networks in a Globalizing World’ 55. In C De Corse (ed) *Power, Political Economy, and Historical Landscapes of the Modern World*.

²⁶¹ Brion Davis 102.

²⁶² *Ibid.*, 112.

²⁶³ George Beckford, ‘Institutional Foundations of Resource Underdevelopment in the Caribbean’ (Spring 1972) *The Review of Black Political Economy* 2, 3: 81-101, as cited in George Beckford, *Persistent Poverty: Underdevelopment of Plantation Economies in the Third World* (Oxford University Press 1972) 8.

exploitation, relying on a new form of slavery, the chattel slavery of West Africans, to develop plantation monoculture.²⁶⁴

The ecosystems of the Caribbean were central to the region's transformation into slave colonies. Sugar and many other key plantation crops could not be grown in Europe, so demand for these commodities coupled with unique environmental factors shaped the evolution of the Atlantic plantation system, accelerated the growth of the slave trade, and sustained empire, especially in Britain.²⁶⁵ Since sugar gradually became one of the first luxuries consumed by the masses in Western societies (along with slave-produced coffee, tobacco, and eventually chocolate), it also became the principal incentive for transporting millions of Africans to the New World.²⁶⁶ The consequences of these events were imprinted upon the Caribbean landscape.²⁶⁷

Sugar is not native to the Caribbean and it was not until the Crusades that Europeans came into contact with the crop itself.²⁶⁸ A cultivar from New Guinea, sugar cane spread along migration routes to India, where it hybridised, and was first processed to develop crystals which could provide an intense concentrated sweetener that could be stored.²⁶⁹ Sugar swiftly replaced honey as an effective preserver of fruit and as it was also quickly soluble, its consumption became linked to newly appreciated sweetened beverages, coffee and tea.²⁷⁰ As sugar's popularity skyrocketed, attempts were made to cultivate sugarcane. Initial experiments in the Mediterranean during the medieval period failed, as sugar requires abundant water, and production was plagued by widely fluctuating temperatures.²⁷¹ In the fourteenth century, Spain grew sugar in the Canary Islands, yet while the crop thrived, available land was limited in such mountainous terrain.²⁷² Portuguese colonisers experienced similar success when they grew sugar

²⁶⁴ Kenneth G Kelly and Meredith D Hardy (eds) *French Colonial Archaeology in the Southeast and Caribbean* (University of Florida Press 2011) 3; Kenneth G Kelly, 'Archaeology, Plantations, and Slavery in the French West Indies' 19 in Kenneth G Kelly and Benoit Bérard (eds) *Lesser Antilles Plantation Archaeology* (Sidestone Press 2014).

²⁶⁵ Beinart and Hughes 26 and 22.

²⁶⁶ Brion Davis 107.

²⁶⁷ Such settlement patterns reflect the power dynamics of the plantation. See James Delle, 'The Habitus of Jamaican Landscapes' 130 in JA Delle, MW Hauser, DV Armstrong, and A Henriques, *Out of Many, One People: The Historical Archaeology of Colonial Jamaica* (1st edn, The University of Alabama Press, 2011).

²⁶⁸ Carrie Gibson, *Empire's Crossroads: A New History of the Caribbean* (Macmillan 2014) 83.

²⁶⁹ Beinart and Hughes 24.

²⁷⁰ Ibid., 25.

²⁷¹ Ibid., 26-27 and Gibson 84.

²⁷² Dan Hicks 'The Garden of the World': *An Historical Archaeology of Sugar Landscapes in the Eastern Caribbean* (Archaeopress 2007) 8.

in the previously uninhabited Atlantic islands, but once again, the quantity of suitable soil inhibited production.²⁷³

The exploratory forays to cultivate crops in these islands also revealed that sugar production demanded much more skill and labour than originally envisaged.²⁷⁴ Effective sugar production requires on site processing, as cane, once cut, loses its sucrose content rapidly.²⁷⁵ Mills were therefore established on or close to canefields, which necessitated permanent labour, not only for the seasonal harvesting, but for a wide range of agricultural tasks and work in the mills.²⁷⁶ Initially, European indentured labour had been used, but they were susceptible to disease and the supply diminished rapidly after the English Civil War ended in 1660.²⁷⁷ African slaves, though expensive, were purchased for life, had no rights, were immune to European diseases and were exploitable as proved elsewhere.²⁷⁸ The Portuguese introduced sugar cultivation to Brazil which was advantageously located near the West coast of Africa, and until the French and British appeared in the 1600s, Brazil was a titan in the sugar market, the Portuguese having finally perfected the formula for land, access to slave labour, and climate.²⁷⁹ Sugar's particular requirement of agriculture and manufacture had led to plantation production.²⁸⁰

Plantations had been attempted in West Africa, the preferred location, as the region was suitable for growing tropical commodities. However, European settlement and supervision was greatly hampered by high rates of death due to mosquito-borne diseases such as yellow fever and malaria.²⁸¹ But it was not only the problem of disease. Local populations could not be displaced and local political authorities prevented the alienation of land.²⁸² African political systems were entrenched and difficult to overwhelm militarily, and it also proved challenging to transform internal social relations, thus requiring negotiations acquire slave labour.²⁸³ These enslaved Africans acquired for local African plantations were an improvement on European labour, but

²⁷³ Beinart and Hughes 26-27.

²⁷⁴ Gibson 91.

²⁷⁵ Beinart and Hughes 24.

²⁷⁶ Ibid.

²⁷⁷ Ibid., 35.

²⁷⁸ Ibid.

²⁷⁹ Gibson 85.

²⁸⁰ Ibid., 24.

²⁸¹ Ibid., 28.

²⁸² Ibid., 19.

²⁸³ Ibid., 30.

they could easily escape; this was much more difficult on tiny Caribbean islands completely reduced to plantation agriculture, where slaves were essentially trapped, and full colonial political control had been established.²⁸⁴ African labour was therefore ideal, just not in Africa.

While African rulers themselves never developed plantation agriculture, they did supply the great bulk of slaves for the external trade as their capacity for resisting colonial intrusion gave them the ability to regulate the market.²⁸⁵ With the potential for sugar plantations in the Americas amply demonstrated by the Portuguese in Brazil in the sixteenth century along with this ready supply of slaves from Africa, the two poles of the triangular Atlantic trade²⁸⁶ became established, in no way hampered by an alternative geographic location for plantations.²⁸⁷

The Caribbean was an attractive alternate location because climatic, geographical and environmental conditions were ideal for sugar cultivation.²⁸⁸ The Caribbean colonies, as islands, were surrounded by sea, and also had surface water such as rivers, so plantations could be sited very near water, which was the cheapest way of moving goods.²⁸⁹ The environmental factors necessary for establishing a sugar plantation, such as soil not prone to flooding, and a hot climate with plenty strong sunlight, but not too dry an atmosphere, were present.²⁹⁰ Plantations require extensive land, and the sparsely inhabited coastal tropical lowlands where Amerindians practiced shifting cultivation were not permanently settled in the sense that Europeans were accustomed to.²⁹¹ By absorbing as much land as possible, the plantation soon transformed the open resource situation of the Caribbean islands.²⁹²

The plantation system in the New World initially was established by grants of land from the imperial crowns to European citizens.²⁹³ This was bestowed directly to individuals or indirectly

²⁸⁴ Ibid.

²⁸⁵ Beinart and Hughes 32.

²⁸⁶ European goods –firearms, textiles, iron and copper bars – were taken to Africa and traded for slaves, who were shipped on the southerly routes to the Americas. Plantation commodities were then loaded for the return northerly voyage to Europe. See Beinart and Hughes 32.

²⁸⁷ Beinart and Hughes 32.

²⁸⁸ Mark W Hauser, 'A Political Ecology of Water and Enslavement' (2017) *Current Anthropology* (58)2: 227-256, 229, 233-34.

²⁸⁹ Beinart and Hughes 23.

²⁹⁰ Gibson 89.

²⁹¹ Beckford 34.

²⁹² Hicks 42.

²⁹³ Beckford 88.

through charter companies.²⁹⁴ As noted earlier, this facilitated the overpowering of the Amerindian population, who could not withstand the onslaught of European colonisers given their numbers and style of semi-nomadic shifting cultivation.²⁹⁵ ‘Sugar crushed an earlier landscape as well as hundreds of thousands of lives,’²⁹⁶ enabled by the process of virtual enclosure, which transformed the local ecology, upended a communal resource system and entrenched a system of law that relied upon private property and slave labour.²⁹⁷ The philosophy that cultivating land improves it, underpinned England’s hierarchical land use system, and so provided justification for taking untitled fields in the New World from native peoples.²⁹⁸ Europeans had little understanding of the Amerindians’ sophisticated agricultural systems, perceiving them as slothful and incompetent for not using these tracts of land.²⁹⁹

Private property is thus introduced with colonisation of the Caribbean, as the entrenched land laws and succession in African countries stymied attempts to establish plantations on that continent.³⁰⁰ European elites exercised power over the European masses by means of private, revenue-producing land—exemplified by the landlord-tenant relationship by contrast, in West Africa, land was ‘owned by the state as a corporation,’ and thus the main symbols of private wealth and success were large numbers of slaves.³⁰¹ However, the nature of slavery in these islands was unique with regard to its relationship with the land and the law and diverged substantially from African practices.

Caribbean slavery was uniquely place-based; restricted to the plantation for the duration of their lives, and hemmed in on all sides by the ocean, slaves were physically, legally and socially limited in their mobility and in their access to space. This demonstrates that colonialism in the Caribbean is a form of spatial injustice, because it aimed to prevent the establishment of

²⁹⁴ Ibid., 89.

²⁹⁵ Ibid., 90.

²⁹⁶ Beinart and Hughes 38.

²⁹⁷ See Mark W Hauser and Dan Hicks, ‘Colonialism and Landscape: Power, Materiality and Scales of Analysis in Caribbean Historical Archaeology’ 253 in Dan Hicks, Laura McAtackney and Graham Fairclough (eds) *Envisioning Landscape: Situations and Standpoints in Archaeology and Heritage* (Routledge 2007).

²⁹⁸ Hicks discusses improvement in the Lesser Antillean plantation context at 48.

²⁹⁹ On the theory of land use, see John Locke, *Two Treatises of Government* (1821) 213, as cited in Gibson 122.

³⁰⁰ Beinart and Hughes, and see Gibson 99.

³⁰¹ Brion Davis 89.

communities, access to community resources and denied people a sense of belonging, which is spatially located.³⁰²

2.2.3 Landscape as plantation II: Racial chattel slavery, natal alienation and Caribbean slave societies

Plantations are deeply rooted in the natural environment.³⁰³ They create relationships between people and the land and determine how people live on the land and interact with one another.³⁰⁴ The racial demography of the Caribbean was thus transformed, as Africans displaced Amerindians and European indentured servants as plantation labour. Disease patterns, driven by ecological upheavals, helped to shape the conquest and peopling of the Americas.³⁰⁵ Colonialism was also driven by conceptions and misconceptions of land, property and slavery, which transformed Caribbean islands into chattel slave societies.

Europeans did not understand that land in Africa was not held privately, but in common, and slaves, not land, were the source of wealth. Europeans also failed to understand the distinctions and traditions of African slavery, which could involve various dimensions, such as being captured as prisoners of war, serving in slave armies, or being treated as members of the family.³⁰⁶ There were enormous cultural differences between African and European enslavement. In Africa, many slaves were treated much like peasant farmers, and some served as administrators, soldiers, and even royal advisers, while others provided a labour supply for mines or were ritually used for human sacrifice.³⁰⁷ Chattel slavery predated Atlantic slavery, and slave societies certainly predated Caribbean slave societies. Indeed, Greece was probably the first genuine ‘slave society’—that is, an assemblage of states totally dependent on slave labour, as distinct from the many societies that simply possessed slaves.³⁰⁸ But slavery in the ancient world can be distinguished from the racial slavery that came to pervade the New World. For instance, Romans imported slaves from countless countries and all directions, including blond, blue-eyed

³⁰² Herzfeld 129.

³⁰³ Beckford 5.

³⁰⁴ Ibid., 8.

³⁰⁵ Beinart and Hughes 36.

³⁰⁶ Gibson 99.

³⁰⁷ Brion Davis 89.

³⁰⁸ Ibid., 40.

slaves from northern Europe, highly educated and professional slaves from Greece and northern Africa, as well as sub-Saharan Africa.³⁰⁹

Chattel slavery is the most extreme example not only of domination and oppression but of human attempts to dehumanise other people.³¹⁰ David Brion Davis sees this inhuman bondage as an attempt to bestialise human beings, and believes chattel slavery takes on a unique brutality in the New World.³¹¹ From its inception, New World slavery was focused on Native Americans, and then transitioned to black Africans—in both cases to people who were strikingly different in physical appearance as well as in cultural background from the white colonists.³¹² The racial element is thus a significant distinction.

Traditional definitions of slavery have stressed that the slave person is the chattel property of another man or woman and subject to sale and other forms of transfer; that the slave's will is subject to the owner's authority, and that the slave's labour or services is obtained through coercion.³¹³ The concept of chattel property is very relevant to landscape analysis of heritage law in the Caribbean, as it provides evidence of the imperial landscape. Both the terms 'chattel' and 'property' have legal meanings of abstraction, wherein humanity is abstracted out of these people, who are divested of their culture, traditions, land, just as landscape was turned into property. Chattel as in chattel slaves, do not belong to the land; they are chattels personal, items of tangible movable personal property (such as livestock) not permanently connected with real estate.³¹⁴ Chattel property is a legal term tying slavery to a system of law: slaves are denied their humanity, as they are reified as things, paralleling the denuding of landscape of its substantive cultural, natural and community qualities.³¹⁵ Slaves have no heritage when they belong to the law rather than the land, which confirms their dehumanisation, displacement and powerlessness. 'The reality of slavery demanded an abrogation of the past.'³¹⁶

³⁰⁹ *Ibid.*, 46.

³¹⁰ *Ibid.*, 2.

³¹¹ *Ibid.*, 3.

³¹² *Ibid.*, 3.

³¹³ *Ibid.*, 30.

³¹⁴ 'Chattel' *Oxford English Dictionary* (11th edn, Oxford, 2006) 240.

³¹⁵ Cf Olwig 'Representation and alienation' 34.

³¹⁶ Gibson 105.

Planters drew slave supplies from African people of different linguistic, cultural and social backgrounds which aided cultural assimilation and erasure in the New World.³¹⁷ Because enslaved Africans were so far removed from their places of origin, they were truly ‘nationally alienated,’ to use Orlando Patterson’s term;³¹⁸ people who are nationally alienated have no identity, and enslaved Africans had no connection to the Caribbean islands or the plantations in which they laboured. They were alienated from their ‘homeland’, and as strangers in a new land, with which they have no natural relationship, truly foreign as noted in Olwig’s discussion of the alienation of legal rights. Natal alienation is therefore best understood as alienation from land.³¹⁹ This is the ‘double injustice inherent in the slave-based plantation system: the denial of ownership of the land and the resulting denial of an identity, of a self, of an existence in the world.’³²⁰

The particular confluence of slavery, chattel status and dehumanisation based on perceived racial differences, has never occurred elsewhere contemporaneously. Slavery in the Caribbean is also place-based as well as race-based; slaves are imported and brought to small islands where they cannot escape. Planters and whites dominate and move freely within the same space that Amerindians and Africans cannot – they possess spatial privilege. Space is constructed when legal actors designate boundaries between public and private spaces, or consider questions of personal mobility or spatial equality. Space, like law, is not an empty or objective category, but has a direct bearing on the way power is deployed and social life constituted, which may follow problematic and oppressive patterns.³²¹

This is why it is important to distinguish between colonies, such as those located in Africa and Asia, where colonised populations retained their land, and settler societies where British and other European immigrants became demographically dominant.³²² Caribbean slave colonies are the only countries in which the entire land mass was dedicated to plantation agriculture driven by

³¹⁷ Beckford 38.

³¹⁸ Orlando Patterson, *Slavery and Social Death: A Comparative Study* (Harvard University Press 1982) 21–27; Brion Davis 94.

³¹⁹ Olwig, *Representation and alienation* 20.

³²⁰ Malcolm Ferdinand, ‘Ecology, identity, and colonialism in Martinique: The discourse of an ecological NGO (1980–2011)’ in C Campbell and M Niblett (eds.), *The Caribbean: Aesthetics, World-Ecology, Politics* (Liverpool University Press, 2016) 174–188, 180.

³²¹ Blomley and Bakan 669–70.

³²² Beinart and Hughes 20.

African slave labour.³²³ This was not the case in Brazil or the American South. As Davis explains, although British Caribbean planters initially borrowed their sugar-making technology from Dutch and Portuguese Brazilians, the political culture of their slave plantations was wholly different from that in Brazil, where the wealthiest mill owners at least maintained the appearance of being patriarchs and community leaders, though they too were capitalists.³²⁴ There were no such illusions with British planters, who made plain the fact that they were entrepreneurs whose primary goal in life was to make money, not ‘resident seigneurs’.³²⁵ The British sugar plantation had evolved into its own creature, ‘a purely capitalistic enterprise, not a quasi-seigneurial community with religious and social services that stimulated a surrounding economy’.³²⁶ Agriculture and commerce characterised slavery, not community and custom.

Where colonisation is a process of bringing territory and people under new and more stringent forms of control, the plantation can be a central instrument of colonisation.³²⁷ In a plantation society or economy, several plantations monopolise most of the arable land in a country that is predominantly agricultural.³²⁸ Plantations are established for external trade, hence their location on or near coastal land.³²⁹ The plantation is designed for pure exploitation, which distinguishes it from other agricultural settlement institutions such as manors or haciendas that adopt a pastoral and patriarchal image. Religion, family, social status are irrelevant for the enslaved.³³⁰ Davis observes that when the proportion of slaves in a given colony exceed ninety percent or more, this can blur the usual boundaries of human society, as the society becomes oriented to the twin goals of lowering production costs and increasing output. In most of the Caribbean, there were no sectors of society that were truly independent from sugar production.³³¹ The plantation and the island merged into one, and the landscape was now a ‘plantationscape’.

Barbados illustrates this very well, as it was the premier sugar colony in the British Empire by 1680. From a broad base of nearly 40,000 enslaved Africans, the hierarchical pyramid society

³²³ Beckford 12.

³²⁴ Brion Davis 115.

³²⁵ *Ibid.*, 116.

³²⁶ *Ibid.*

³²⁷ Beckford 30.

³²⁸ *Ibid.*, 12.

³²⁹ *Ibid.*, 32

³³⁰ *Ibid.*, 33.

³³¹ Brion Davis 121.

moved upward to 2,300 white servants, 1,000 small planters, and 175 big planters at the top.³³² The small planter elite, in the words of the historian Richard S. Dunn, ‘held the best land, sold the most sugar, and monopolised the best offices. In only one generation these planters had turned their small island into an amazingly effective sugar-production machine and had built a social structure to rival the tradition-encrusted hierarchy of old England.’³³³

However, the population disparities concerned the white elite, who were surrounded by captive black labour. These underlying fears were responsible for the most successful planters practicing absenteeism in the eighteenth and early nineteenth centuries.³³⁴ In their place they hired ambitious and upwardly mobile men as professional ‘book-keepers’ (managers) and overseers to manage their estates, who were determined to maximise plantation profits in order to escape the region and retire back in Britain. This reinforced the perception that the region was considered ‘uninhabitable’, as there were no ‘reassuring social and psychological boundaries of traditional societies’.³³⁵

Public authorities entrenched the power of the plantocracy, because they existed solely for the perpetuation of the plantation system, which included regulation of life and work on the estates for continued functioning, and to ensure above all else that the enslaved population never challenged the status quo.³³⁶ Legislation could not maximise profitability of plantation production and ensure the welfare of plantation labour at the same time.³³⁷ It was thus antithetical to the survival of the slave colonies for legislation to recognise the humanity of the slaves. ‘The common law of England is the common law of the plantations,’ wrote the Admiralty’s legal counsel, Richard West, in 1720.³³⁸

Political scientist George Beckford has examined the power dynamics of Caribbean plantations, noting that in all societies, the distribution of real political power echoes the patterns of

³³² The population of Barbados still included some 20,000 whites, more than any British-American colony except Virginia and Massachusetts. See Brion Davis 115.

³³³ Brion Davis 115.

³³⁴ Hicks 43-44.

³³⁵ Brion Davis 115.

³³⁶ Beckford 40.

³³⁷ Ibid.

³³⁸ Richard West, ‘On English Common and Statute Law in Settled Colonies,’ June 1720, in Madden and Fieldhouse(eds), *Select Documents on the Constitutional History of the British Empire and Commonwealth*, 4 vols. (Westport, Conn, 1985), 2:192, as cited in Eliga Gould, ‘Zones of Law, Zones of Violence: The Legal Geography of the British Atlantic, circa 1772’ (July 2003) *The William and Mary Quarterly* 60(3): 471-510, 497.

distribution of economic and social power.³³⁹ Popular participation was limited when political power was monopolised by the planter, because his authority was the only unifying element on the plantation.³⁴⁰ The planter class was based on white supremacy, which was characterised by extreme individualism and a lack of social responsibility, resulting in an undemocratic social structure.³⁴¹ Plantation economies are stunted because these societies were strictly for exploitation.³⁴² It was in the plantocracy's interest to keep the slave population from forming any semblance of a civilised society.³⁴³ Rigid control of the labour supply was essential and involved control over movement of slaves in space and status – illiteracy was thus strictly enforced because it was believed that education would encourage insurrection.³⁴⁴ It was easier to control people who are brought into a strange environment than a resident population. Child labour was used when slave labour became too expensive, and only then were large families encouraged.³⁴⁵ As a source of labour supply for plantations, enslaved and indentured labour created new societies descended from these trafficked and transplanted peoples, influenced by the plantation's requirements that determined the racial and sex composition of the population, the social structure and social organisation.³⁴⁶

Slavery demanded violence, and colonial societies were shaped by rebellions and the impact of runaway slaves.³⁴⁷ This was due to the increased supply of enslaved Africans, which outnumbered Europeans on the islands, making them rely on increasingly inhumane means to maintain control of their plantations and slave societies.³⁴⁸ Slaves were herded together as an undifferentiated mass in compounds of a village character. As slaves came from different cultures, a lingua franca was necessary to facilitate chain of command, and creoles were born as African language speakers adopted the English language.³⁴⁹ Plantation culture was built around production of the crop, and this is the chief bond governing interaction between the enslaved

³³⁹ Beckford 79.

³⁴⁰ Ibid., 76.

³⁴¹ Ibid., 208-209.

³⁴² Ibid., 210.

³⁴³ Ibid., 77.

³⁴⁴ Ibid., 64.

³⁴⁵ Ibid., 59.

³⁴⁶ Ibid., 37.

³⁴⁷ Gibson 120.

³⁴⁸ Ibid.

³⁴⁹ Beckford 63.

labourers.³⁵⁰ The only skills acquired and disseminated were generally related to the requirements of plantation production, and so considerable technical knowledge was amassed but in relation to one crop only.³⁵¹ Common cultural features in the Caribbean related to similar peasant crops, production techniques and marketing arrangements, cuisine, music and dance, folklore, religious cults and a series of traditions, attitudes and beliefs derived from the common experiences of enslaved ancestors and the pervasive influence of the plantation at the centre of their existence.³⁵²

While it is important to note that varying degrees of agency can be ascribed to the enslaved population, who challenged the plantation power dynamic throughout the period of slavery, there were near insurmountable obstacles to the development of a strong and well-defined local community in the Caribbean as the result of colonialism and the plantation system.³⁵³ The decimation of Amerindians in the region (socially and politically) precluded any possible aboriginal basis for local community life, and the transferred population of enslaved Africans from diverse tribes and nations were unable under conditions of slavery to form sustainable communities.³⁵⁴ Plantations monopolised land, which was not efficiently utilised yet the general labour force was prevented from accessing fertile land.³⁵⁵ The enslaved Africans were allowed to practice subsistence cultivation on unwanted backlands only during periods when their labour was not required for the plantation crop.³⁵⁶ This ‘proto-peasantry’ developed on islands with mountainous interiors, such as Jamaica, and the Windward islands such as St Vincent and the Grenadines, Saint Lucia, Dominica and Grenada.³⁵⁷ The low productivity of the peasantry following abolition and emancipation was due to limited access to fertile land and capital.³⁵⁸ A sharecropper system was developed following emancipation to secure the labour of ex-slaves.

³⁵⁰ Ibid.

³⁵¹ Ibid., 207.

³⁵² Beckford 18. On the environmental legacy of plantations and foodways, see also Sarah E Oas and Mark W Hauser, ‘The Political Ecology of Plantations from the Ground Up’ in (2018) *Environmental Archaeology* 23(1): 4–12.

³⁵³ Hauser and Hicks 258 and Charles Wagley, ‘Recent Studies of Caribbean Local Societies’ in Curtis Wilgus (ed), *The Caribbean: Natural Resources* (Gainesville 1961) 199 as cited in Beckford *Persistent Poverty* 77.

³⁵⁴ Beckford 77.

³⁵⁵ Ibid., 177.

³⁵⁶ Ibid., 90.

³⁵⁷ Jean Besson, ‘History, Culture and Land in the English-speaking Caribbean’ in A.N. Williams (ed), *Proceedings of the conference on Land in the Caribbean: policy, administration and management in the English-speaking Caribbean* (Land Tenure Centre, University of Wisconsin-Madison 2003) 31-60.

³⁵⁸ Beckford 180.

However, as noted by Beckford, it did not provide any firm guarantee to the sharecropper of his rights of possession, security of tenure, or a clear claim to a share of the crop.³⁵⁹

The Royal Commission noted that the labour intensive practices of sugar monoculture rendered a large number of people unfit for any other form of agriculture, since there were no transferable skills, knowledge and habits for sustainable land management.³⁶⁰ This can be traced directly to the effect of environmental change on the insular Caribbean, which has been overwhelmingly negative and is unique.³⁶¹ Tropical habitats were misunderstood and poorly managed, and had little chance to recover from the intensity of plantation agriculture, such was the scale and speed of colonisation that encouraged both ecological dislocation and general environmental instability in the quest for profit.³⁶²

The societies that were created to support plantation economies were also unique. Beckford observes that within plantation society, tradition, values, beliefs and attitudes are shaped by paternalism and indifference to development.³⁶³ Studies on plantation agriculture in the Caribbean and Latin America have observed that people reject nature as a viable partner, reject innovation, co-operation and long-range planning.³⁶⁴ Indeed, Olwig has observed that when the natural heritage is shaped by brutal subjugation of both man and nature, it is very difficult to mobilise as a common source of identity, especially where there is no ancient class of farmers, rooted in the land, upon which to build that national identity.³⁶⁵ This is the legacy of colonial exploitation, which severs people from landscape.

³⁵⁹ Ibid., 91.

³⁶⁰ Watts 516.

³⁶¹ Ibid., 533.

³⁶² Ibid., 536.

³⁶³ Beckford 206. Recent scholarship does suggest however, that the plantation space was decidedly more complex. When enslaved populations contested in both subtle and express ways prescribed uses of the landscape, which was in effect challenging planter control of plantation space, the plantationscape would respond to local circumstances as well as global influences. See Mark W Hauser, 'The Infrastructure of Nature's Island: Settlements, Networks and Economy of Two Plantations in Colonial Dominica.' 2015 *International Journal of Historical Archaeology* 19 (3): 601–22; Hauser and Armstrong, 'The Archaeology of not being governed'; L Marshall (ed), *Archaeology of slavery: toward a comparative global framework*.

³⁶⁴ HW Hutchinson, 'Value Orientations and Northeast Brazilian Agro-Industrial Modernization', *Inter-American Economic Affairs* (Spring 1968) 88, as cited in Beckford 207.

³⁶⁵ Kenneth Olwig, 'Introduction: the nature of cultural heritage and the culture of natural heritage – Northern perspectives on a contested patrimony' (2005) *International Journal of Heritage Studies* 11(1): 3-7, 6.

2.2.4 Early legal intervention in the protection of Caribbean heritage

The cultural dimensions of ecological change have implications for the content and effectiveness of heritage law.³⁶⁶ The British Empire, as an ecological regime radiating into domestic and colonial nature, sought to annihilate the local, and to include all people and territory in a single total system.³⁶⁷ Thus the earliest legal interventions relevant to protecting heritage concern property law and environmental law, through the creation of reserves for the purposes of imperial ecology and botany.³⁶⁸

These practices reflect a ‘dephysicalised’³⁶⁹ concept of property.³⁷⁰ Property law creates unsustainable people–place relations in such a way as to obscure its own effects, blind to the environmental and social chaos it instigated.³⁷¹ Because property law emphasises a right over a thing, it bases its legitimacy in power rather than place. The individual landowner has possession, power over the land. This may be contrasted with a custodian of the land, who belongs to the communal landscape. This custodial relationship is reversed when landscape becomes enclosed as private property.³⁷² If place is irrelevant to property, then property law can be seen as responsible for promoting a lack of care for place,³⁷³ since it can erase land’s

³⁶⁶ James Beattie, Edward Melillo, and Emily O’Gorman, ‘Introduction: Eco-Cultural Networks and the British Empire, 1837-1945’ in James Beattie, Edward Melillo, and Emily O’Gorman (eds), *Eco-Cultural Networks and the British Empire: New Views on Environmental History* 8.

³⁶⁷ Richard Drayton, ‘Imperial Science and a Scientific Empire: Kew Gardens and the Uses of Nature, 1772-1903’. PhD diss., Yale University, 1993, at 442.

³⁶⁸ Grove, *Green imperialism*, and Richard Drayton, *Nature’s Government* address this topic.

³⁶⁹ Bartel and Graham, ‘Property and place attachment’ 272-3:

Legal discourse refers to property as dephysicalised because it succinctly describes and explains the oxymoron at the heart of modern property law – that it is not about land. Previously known as ‘land law’, modern property law no longer regulates the relationship between people and land; rather, it prescribes legal relationships between ‘persons’ with regard to their competing and relative ‘interests’ in various ‘objects’ using the language of ‘rights’...Accordingly, land law became referred to increasingly as ‘property law’ because property can be, and is, about rights over any object, real things like land, or abstract things like shares – it does not matter. The point is that property law is not about any specific thing; rather, it is about legal rights in and of themselves.

³⁷⁰ Graham 133 and at 24: property originally linked people and place. What was proper to a person were the physical qualities so closely associated with that person that he could be identified with them. Today the secondary meaning is significant only in the scientific world e.g. what are the properties of hydrogen. The primary meaning pertains to abstract relations between people, rather than with or over physical things. Today the dominant feature of property is alienability not identity.

³⁷¹ *Ibid.*, xi.

³⁷² *Ibid.*, 205.

³⁷³ *Ibid.*

specificities, the essence of landscape,³⁷⁴ and, as noted earlier, the basis for a people's common identity or heritage.

Plantation agriculture in the Caribbean slave colonies resulted in a complete restructuring of the land and removal of native peoples, the importation of West Africans as slave labour, and the manipulation of natural resources in such a manner as to maintain the planter/slave power dynamic.³⁷⁵ All land suitable for sugar cane was deforested, and in some cases this meant that the entire island was reduced to sugar cultivation.³⁷⁶ Capital-intensive plantation agriculture that was based on slave labour promoted very rapid environmental change in terms of deforestation, soil erosion, flooding, gullying, local aridification and drying up of streams and rivers.³⁷⁷ Empirical observations of the catastrophic effects of colonial plantation agriculture made it clear that plantation policies were causing environmental damage.³⁷⁸

Watts summarises that at the end of the plantation agriculture period (1665-1833) in the English-speaking Caribbean, the lowland environment had been deforested, depleted in nutrients and invaded by alien species.³⁷⁹ This has profound effects on cultural evolution, which was guided by these alterations imposed on the environment, and by external economic and social pressure.³⁸⁰ Sugarcane estates brought immense wealth to England and France, but this was only achieved at overwhelming cost to the Caribbean landscape.³⁸¹ The industry required new technology and structures in the form of mills and transport such as rail and shipping and associated port infrastructure. Deforestation, soil loss and decline in soil quality changed animal and plant communities forever.³⁸² The extreme land use and patterns of timber clearance made species recovery all but impossible, since their native habitats were being transformed into sugar plantations.³⁸³ Watts notes that while a Caribbean-wide trend, these consequences dominated the

³⁷⁴ Ibid., 67.

³⁷⁵ Beinart and Hughes 37.

³⁷⁶ See also Watts.

³⁷⁷ Richard Grove, 'The island and the history of environmentalism' in Mikuláš Teich, Roy Porter, and Bo Gustafsson (eds), *Nature and society in historical context* (Cambridge University Press, 1997) 150.

³⁷⁸ Grove, *Nature and Society* 153-4.

³⁷⁹ Watts 443.

³⁸⁰ Ibid.

³⁸¹ Ibid., 447.

³⁸² Ibid., 438.

³⁸³ Ibid.

ecosystems in the Lesser Antilles, where space for species survival was restricted, and cane agriculture at its most intense.³⁸⁴

Under the Peace of Paris, the constituent territories of the Grenada Governorate (Grenada, Dominica, St Vincent and the Grenadines, and Tobago), later to become the Windward Islands, were ceded to Britain by France at the end of the Seven Years' War. The strategy for the Grenada Governorate involved rapid development of sugar plantations, which required deforestation and major allocation of land and transfer of ownership.³⁸⁵ In Tobago, woodlands were to be preserved for the repair of fortifications and buildings, and to prevent drought from deforestation.³⁸⁶ Soame Jenyns, writer and political commenter, believed that the forests on the ceded islands should be protected to enhance economic yields. Climate change was seen as a major threat to colonial economic projects.³⁸⁷ Therefore the idea of improving the colonial landscape as he had done on his estate near Cambridge was very appealing.³⁸⁸ One of the reasons deforestation was such a priority was the ecological and resource crisis experienced in nearby Barbados at the time of the signing of the Peace of Paris.³⁸⁹

By the mid-eighteenth century, over fishing and major reductions in catches were occurring around these increasingly populated islands. New conservation legislation was developed as a key instrument of colonial landscape control.³⁹⁰ Before the 1760s, the effects of colonial economic globalisation were addressed on a piecemeal basis in order to protect local food, fuel, timber supplies, and what were already recognised as rare island species. However, in the mid-1760s, legal responses to deforestation in particular suddenly changed due to the rapid spread of a theory first enunciated in France by Pierre Poivre, linking deforestation to rainfall and regional climate change.³⁹¹ By the next century, new forest-reserve legislation responding to fears of

³⁸⁴ Ibid., 447.

³⁸⁵ Grove, *Green Imperialism* 269.

³⁸⁶ Ibid., 271.

³⁸⁷ Ibid., 276.

³⁸⁸ Ibid.

³⁸⁹ Ibid.

³⁹⁰ See Vinita Damodaran, 'Environment and Empire: A Major Theme in Environmental History' in Mary N Harris and Csaba Lévai (eds), *Europe and its Empires* (Plus-Pisa University Press, 2008) 129-39 at 134.

³⁹¹ Ibid.

deforestation-induced climate change could be found throughout the French, British, and Dutch empires.³⁹²

As early as 1764, a system of forest reserves and environmental legislation was set up in the ceded islands of St Vincent and Tobago: the relevant legislation addressing local climate change included the Grenada Governorate Ordinance of March 1764, the Barbados Land Ordinance of 1765 and the St. Vincent King's Hill Forest Act of 1791.³⁹³ This led to resistance by the Kalinago³⁹⁴ in certain islands, as the links between colonial forest control and control of indigenous peoples were firmly established. This was sanctioned by international law, which justified this oppression as a side effect of sovereignty.³⁹⁵

In the English-speaking Caribbean, The King's Hill Act constituted one of the earliest attempts at forest protection legislation in the English-speaking world based on climatic theory.³⁹⁶ King's Hill bridged the gap between French physiocratic conservationism as developed on Mauritius by Pierre Poivre and evolution of a British colonial environmentalism.³⁹⁷ The Act is an example of desiccation-based forest legislation, desiccationism being the prevailing theory that was developed in 1790, following observations that forest destruction could be connected to rainfall change, which led to an interest in tree-planting and afforestation.³⁹⁸ Nevertheless, Richard Grove points out that the choice of St Vincent was expert-driven: the colony did not receive legislation because of its local conditions but because its island geography was deemed suitable for the imported technological assumptions of the available experts.³⁹⁹ Desiccation-based forest legislation was attractive to Vincentian colonists because of concerns about supplies of ship timber, a problem prevailing throughout the empire at the time.⁴⁰⁰

Grove highlights that colonial conservation in the Eastern Caribbean was more about constructing a new landscape, since uncultivated forests represented wildness and lawlessness,

³⁹² Ibid.

³⁹³ Grove, *Green Imperialism* 266.

³⁹⁴ Historically referred to as the Caribs, which is sometimes considered derogatory. See also John Angus Martin, *Island Caribs and French Settlers in Grenada 1498-1763* (Grenada National Museum Press, 2013).

³⁹⁵ Grove, *Green Imperialism* 266.

³⁹⁶ Grove, *Nature and Society* 160.

³⁹⁷ Ibid., 161.

³⁹⁸ Ibid., 149.

³⁹⁹ Ibid., 157.

⁴⁰⁰ Ibid., 155.

and less about preservation of the primeval forests.⁴⁰¹ It was about claiming and consolidating territory, organising economic space, and subduing unruly peoples, and the creation of forest reservations was often followed by the forced resettlement of peoples, starvation and famine.⁴⁰² Conservation therefore involved the biological reconstruction of the forest environment to serve the interests of the Empire.⁴⁰³ Law effected the transition from the Amerindian landscape to the imperial one, the creation of parks and reserves a typical feature identified by Kenneth Olwig following virtual enclosure and alienation.⁴⁰⁴ ‘A cultural confrontation between a land hungry colonial state and an indigenous culture’ was inevitable once the state had developed a legal system which conferred annexation rights on those who cleared forests and cultivated land.⁴⁰⁵

Initially, the Kalinago of St Vincent did not accept the concept of private property implicit in the proposals laid out by the British,⁴⁰⁶ as only those practicing settled agriculture could be considered legally entitled to claim sovereign rights over land. This land use ideology justified the expropriation and colonisation of native lands, since the Kalinago were semi-nomadic,⁴⁰⁷ and believed in a common or clan perception of landscape.⁴⁰⁸ In the parceling of land to planters, town dwellers, poor whites and slaves, no provision was therefore made for the indigenous Kalinago. Large tracts of land were designated forest reserves. As Grove notes, mapmaking took on an oppressive quality, for what was omitted was as important and what was represented: cartographically the Kalinago were excluded, and within twenty years ceased to exist as a separate population.⁴⁰⁹

Law’s conservationist interventions were profoundly influenced by the eco-imperialist ambitions it served.⁴¹⁰ It is an exclusionary sort of conservation that preserves some threatened species, not the relationship between the natural resources and the needs of the local population.⁴¹¹ The

⁴⁰¹ Grove, *Green imperialism* 280.

⁴⁰² *Ibid.*

⁴⁰³ *Ibid.*

⁴⁰⁴ Olwig, ‘Representation and alienation’ 35. See also Karen Fog Olwig and Kenneth Olwig, ‘Underdevelopment and the Development of “Natural” Park Ideology’ (1979) *Antipode: A Radical Journal of Geography*, Vol. II, no. 2: 16-25.

⁴⁰⁵ Grove, *Green imperialism* 265.

⁴⁰⁶ *Ibid.*, 285.

⁴⁰⁷ *Ibid.*, 286.

⁴⁰⁸ *Ibid.*, 291.

⁴⁰⁹ *Ibid.*, 283.

⁴¹⁰ Beinart and Hughes 289.

⁴¹¹ *Ibid.*

earliest environmental legislation in the English-speaking developed forest and botanical reserves to support priorities of the British Empire. It had no local legitimacy.⁴¹² Indeed, by the 1800s, the creation of colonial botanic gardens had become standard practice in the consolidation of new conquests of the British Empire.⁴¹³ The significance of this network of gardens lies in the fact that they were not simply clearing-houses for the transfer of economic crops, but the bases from which wide-ranging collecting missions were dispatched into surrounding territory.⁴¹⁴ Such botanical and scientific knowledge was necessary for maintaining imperial interests. Environmental watchwords, such as climate, deforestation and health were used to explain away the economic or political causality of imperialism even as laws established reserves to facilitate imperial expansion.⁴¹⁵ The masking of the landscape was therefore facilitated by the framework of these early conservation laws, supported by mapmaking, surveying and reserving techniques to enable implementation.

In colonising space in the Caribbean, the environment was socially constructed so that the ‘tropics were invented as much as they were encountered’; the idea of the tropics as ‘warm, fecund, luxuriant, paradisiacal and pestilential’ was central to the constitution of British colonial knowledge and was a critical ingredient in the larger colonising process.⁴¹⁶ But this visualisation masked the violence and degradation of both people and land. The fact that oceanic islands were perceived as highly desirable ‘Edenic’ locations in long-running European cultural traditions served to underscore the shock of their rapid degradation, which also imperiled the transit of company ships relying on their watering and supply station roles. These were the circumstances in which the colonial governments of many small islands became environmentalist, if only to ensure their own survival and that of their agricultural settlers and slaves.⁴¹⁷

Colonial ideologies of improvement stressed the appropriation of lands from local residents and the transformation of imperial environments into sources of economic and moral value, and

⁴¹² Ibid.

⁴¹³ Drayton, ‘Imperial Science and a Scientific Empire’ 151.

⁴¹⁴ Ibid., 153.

⁴¹⁵ Georgina Endfield and Samuel Randalls, ‘Climate and Empire’. In Beattie, Melillo, and O’Gorman (eds) *Eco-Cultural Networks* 21-44, 25.

⁴¹⁶ Damodaran 137.

⁴¹⁷ Ibid., 131.

private property regimes conferred ownership rights to advance these objectives.⁴¹⁸ Colonial authorities facilitated the orderly exploitation and management of the environment through regulatory intervention, as the colonial state by definition and practice was designed to serve economic and political ends that were often at odds with the long term interests of the colonised.⁴¹⁹ The legacy of colonial resource management policies continues today. When colonies obtained ‘flag’ independence, the environment they inherited was already severely damaged from years of exploitation by colonial administration.⁴²⁰ The capacity of post-colonial states to internalise and enforce environmental norms is hobbled by the colonial ideology and its attendant administrative apparatus.

Humans modify their environments and ‘grow in both understanding and misunderstanding of the natural world.’⁴²¹ This misunderstanding of nature is at the heart of the Caribbean understanding of the past, and manifests in continued inappropriate centralised government decision-making, and frequent reliance on cumbersome authoritarian modes of regulation which together disenfranchise communities closest to nature.⁴²² These practices were played out in the earliest types of conservation legislation drafted for the region. This conservation legislation conserved the ‘plantationscape’, in which the Caribbean landscape had been rearranged as scenery, in no small measure due to the use of topographic surveys, to re-envision and control the environment. The ‘images and the processes involved in renaming, landmarking and resource assessment [led] to the establishment of colonial boundaries and colonial order’ and allowed explorers, surveyors and cartographers to shape the way the Caribbean was visualised and interpreted.⁴²³

As land was treated as space rather than place, property law and environmental law were not rooted in the needs and capacities of these environments, and a lack of understanding of these ecosystems quickly led to their decline. Monoculture plantations faced collapse as a result of

⁴¹⁸ Beattie, Melillo, and O’Gorman, ‘Introduction: Eco-Cultural Networks and the British Empire’ in Beattie, Melillo, and O’Gorman (eds), *Eco-Cultural Networks and the British Empire* 3-21, 9.

⁴¹⁹ Benjamin Richardson, Ikechi Mgbeoji, and Francis Botchway, ‘Environmental law in Post-colonial Societies: Aspirations, Achievements and Limitations’ in Benjamin J. Richardson and Stephan Wood (eds), *Environmental Law for Sustainability* (Hart Publishing, 2006) 413-443, 415.

⁴²⁰ Ibid.

⁴²¹ John M MacKenzie, ‘Foreword’ in Beattie, Melillo, and O’Gorman (eds) *Eco-Cultural Networks*, xv.

⁴²² Richardson et al ‘Environmental law in Post-colonial Societies’ 416.

⁴²³ Damodaran 135.

unsustainable patterns of resource exploitation. Plantation agriculture depleted soil nutrients and deforestation, causing erosion, and led to the calling for new practices and regulations.⁴²⁴ The production of knowledge about environments coincided with their exploitation under imperial regimes. It was no wonder that the first forays into legislative protection of the natural heritage coincided with the erasure of cultural heritage – these laws wrote native peoples out of existence, erasing their identity, contributions and culture from the landscape, as well as dehumanising enslaved African labour so that no new communities could arise. This completed the creation of the imperial landscape, from which it is difficult to build a new narrative that interweaves cultural identity, ecological integrity and justice.⁴²⁵

2.3 Landscape and spatial justice

Landscape integrates environmental and cultural values and accommodates diverse non-proprietary interests in land besides private property and ownership.⁴²⁶ These interests represent a multiplicity of spatial definitions, as people use space according to their own interpretations, layered experiences that give rise to cultural practices passed on from one generation to the next.⁴²⁷ Spatial injustice can be created by reducing landscapes to abstract space such as private property, as was the case in the Caribbean, where the common or clan perception of landscape of the semi-nomadic Kalinago peoples was converted by the British to private property, resulting in the expulsion of these inhabitants from their homes and their access to these resources withdrawn.⁴²⁸ This imperial landscape is thus both a defined geographic place and an intangible space in which a uniform meaning is imposed.

Space is a result of the struggle between different spatial definitions which co-exist and challenge one another. When more than one body seeks to occupy the same space at the same time, ‘a conflict of bodies that will never be sated’ occurs.⁴²⁹ A way to negotiate this conflict is

⁴²⁴ Beattie, Melillo, and O’Gorman, ‘Introduction: Eco-Cultural Networks and the British Empire’ in Beattie, Melillo, and O’Gorman (eds), *Eco-Cultural Networks and the British Empire* 3-21, 15.

⁴²⁵ Ferdinand 187.

⁴²⁶ Strecker 189.

⁴²⁷ Herzfeld 128 and 145.

⁴²⁸ Grove, *Green Imperialism* 282, 285-6, and 291.

⁴²⁹ Andreas Philippopoulos-Mihalopoulos, ‘Geography, Justice and a Certain Fear of Space’ (2011) *Law, Culture and the Humanities* 7(2): 187-202, 199.

through a 'permanent state of oscillation', where the parties with their individual legitimate claims alternate in taking possession of the space and retreating from that claim.⁴³⁰ Spatial justice thus 'demands a radical gesture of withdrawal'.⁴³¹

The virtual enclosure found in the Caribbean colonies required a social and cultural evacuation of space in order to serve imperial interests, which was supported by a legal framework.⁴³² This is known as 'spatial cleansing', or the conceptual and physical clarification of boundaries, with a concomitant definition of former residents as intruders.⁴³³ The move toward formal mapping of properties gave this legal weight, so that relationships defined in alternative terms were replaced by abstract description, enumeration and measurement.⁴³⁴ Spatial cleansing ensures harmony between an imperial ideology and the physical environment.⁴³⁵ The implications for heritage are profound, because with the extinguishing of communities and society at large, came the imperial narrative, which absorbed both native and enslaved populations, their memories, practices and identities.

By restricting access to space, legal frameworks can reform landscapes.⁴³⁶ Through a focus on public safety and order, early colonial laws essentially bequeathed spatial privilege to the planter class - those who would enjoy full access to and benefits of private space through their economic standing. Simultaneously, loss of access and rights to space coincided with the denial of the humanity of the enslaved Africans. Thus, 'public space' becomes exclusionary rather than a common ground for all persons, and the landscapes of public spaces are to some degree 'cleansed' of social difference.⁴³⁷

Spatial complexity and recognition of place specificity alongside historical contexts can thus be important to the realisation of justice.⁴³⁸ Deploying the spatial justice lens allows us to view conflicts over common resources not merely as challenges to government authority but 'as

⁴³⁰ Philippopoulos-Mihalopoulos, 'Law's Spatial Turn', 201.

⁴³¹ Philippopoulos-Mihalopoulos, 'Spatial justice: law and the geography of withdrawal' (2010) *International Journal of Law in Context* 6 (3): 201-216, 202 and see Bengtson 81.

⁴³² Herzfeld 132.

⁴³³ Ibid., 142.

⁴³⁴ Ibid.

⁴³⁵ Ibid., 129.

⁴³⁶ Bengtson 90.

⁴³⁷ Martin, and Scherr, 'Lawyering Landscapes' 380-81.

⁴³⁸ Dahlberg 220.

expressions of ‘place protective’ behaviour which arise through strong place attachment and locally specific views on how places should change (or not) over time.’⁴³⁹ Herzfeld notes that belonging is couched in spatial terms, and local knowledge, rooted in lived experience, is resistant to the imperious claims of universalism and abstraction.⁴⁴⁰ Resistance is therefore also spatial. ‘People use space according to their own understandings, rather than by following the prescriptions of protocol, and the resulting configuration is almost always a palimpsest representing the many phases of struggle that is rarely conclusive in its results and that also rarely comes to a clearly defined end.’⁴⁴¹

This means that the boundaries of place itself are subject to social negotiation, potentially disrupting the ‘geographical complacency’ that characterises the industrialised world, specifically our built environments and their natural settings.⁴⁴² This geographical complacency is a product of the colonial era, and a feature of the imperial landscape.

2.4 Conclusion

In this chapter, landscape’s origins were explored, as were the historical developments that undermined customary law and reduced landscape to scene, space, property and ossified tradition or heritage. Transforming customary rights into common law private property rights through the erection of boundaries and fences changed the British landscape physically, and severed local communities culturally, as the exclusion of commoners led to the creation of the landless poor, who flooded urban centres. The subsequent rise in vagrancy saw increasing numbers transported to the New World. Law no longer protected the diverse rights and obligations of various and specific interests in particular localised resources; instead it protected the standardised rights and wealth of the private realm, independent of location.⁴⁴³ This gave rise to the imperial landscape and was subsequently extended into the New World.

⁴³⁹ Bartel and Graham 276.

⁴⁴⁰ Herzfeld 129.

⁴⁴¹ Ibid., 145.

⁴⁴² Ibid., 129.

⁴⁴³ Graham 60.

Britain's ability to manipulate indigenous polities and customs was a vital component of its growing dominance over the Atlantic. The philosophy of imperialism required a new set of structures, mechanisms and laws. Using these instruments and techniques, Caribbean ecosystems were completely reconfigured under colonialism, marked by a total rearrangement of societies, demographics and the environment. The Caribbean landscape as plantation was spatially removed from its Amerindian origins and the very origins of landscape itself. Alienation of its inhabitants was extreme. Amerindian populations were removed, deported, killed, and expunged from the legal record, their 'savagery' excluding any consideration as civilised peoples and their management of land at odds with English property law. When enslaved Africans, who were alienated from their own landscapes, were introduced as foreigners to this new region, they lost their human qualities due to their race, and became 'things', dehumanised chattel appurtenant to the land, moveable property to be inherited and sold as the contents of an estate, with no way of life and no recognised attachment to the land. The slave was subject not only to an individual owner's will but to the claims of creditors, heirs, other family members, and the state.⁴⁴⁴

What does this mean for identity, for history and collective memory, and ultimately Caribbean heritage? The British working class was able to lobby for a restoration, in a limited sense, of their access rights, in the form of the Countryside Act. But former slaves were unable to appeal to a way of life prior to the plantation system that they were born or introduced to, as they were denied a cultural heritage. Their status as chattel precluded their recognition as a people and polity with a relationship to the land. The consequences of plantation agriculture in the Caribbean further entrenched a system that is contextualised not by the environment but by the exploitation of that environment as 'improvement'. Where conservation was practised, it was to serve the imperial mission, not local needs. Knowledge of plants was needed to strengthen colonial botany, and maintain plantation agriculture. Spatial cleansing narratives entrenched the idea of evacuating space of social and cultural differences, and creating exclusive spaces for the elite.

This presents a challenge for law when a state's existence is premised on maintaining a divide between the land and its people. Repairing that divide requires the revelation of these hidden

⁴⁴⁴ See Walter Johnson (ed), *The Chattel Principle: Internal Slave Trades in the Americas* (New Haven, 2005).

relationships with the land, to explore the ways in which historic patterns undermined management of heritage resources, and to empower communities to challenge this dynamic. Landscape in its substantive, political sense challenges imperial power, because it reflects the interests of its inhabitants, not the empire.⁴⁴⁵ Law, especially property law, has been a strategic ordering device for imperialism, inspired by the pictorial and graphic techniques rediscovered during the Renaissance. Contested landscapes are about spatial justice, because landscape not only embodies the social and natural world, but how we position ourselves relative to the world. Nowhere is this clearer than in the postcolonial Caribbean landscape, where the physical environment is a reflection of the political landscape, bolstered by legally prescribed land uses, which implicate law in the destruction of landscape.

It is this legacy that heritage law must confront because protecting heritage in a sustainable manner requires protecting the place from which it is derived. How the legal framework for heritage protection addresses this challenge is discussed in the next chapter, beginning with the role of international law in landscape protection vis-à-vis nation states, and then focusing on domestic legislation in the Lesser Antilles in the chapters that follow.

⁴⁴⁵ Mitchell, 'Just landscapes or landscapes of justice?' 788.