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

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## Chapter 4 Antiquities and heritage legislation

### 4.1 Introduction

Physical evidence of the past has been legislated by governments for centuries.<sup>671</sup> Archaeological heritage was first regulated in the West through the application of the law of treasure trove; while this was viewed as common patrimony in Europe, England required individual property rights to be respected through the payment of compensation upon government retrieval of such objects.<sup>672</sup> This intertwining of property rights and heritage protection is rooted in a particular understanding of the land in England, rather than landscape. British land law and rights to property have influenced the management of land resources in former British colonies throughout the world, and therefore influenced the protection of heritage.<sup>673</sup> Domestic heritage legislation in the Lesser Antilles thus crystallised in unique spatial circumstances as described in Chapter Two, influenced by a particular geographical location, and an understanding of land as denial of place. This has important implications for the conceptualisation and administration of heritage.

A further challenge is accommodating post-colonial and progressive notions of heritage, which have arisen since the Cultural Turn.<sup>674</sup> As discussed in Chapter Three, this influenced the World Heritage Convention's pivot away from the restrictive concept of heritage as property, from objects and monuments viewed in isolation from a culture, to emphasising heritage as inheritance and promoting landscapes as the setting of communities who are the creators of that heritage. Considering the implications of these developments for the Lesser Antilles requires a review of existing relevant laws within those nations.

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<sup>671</sup> O'Keefe and Prott, *Law and the cultural heritage*; J Carman, *Valuing ancient things: Archaeology and Law*, (Leicester University Press 1996) 34-35. See also B Boer, and G Wiffen, *Heritage Law in Australia* (Oxford University Press 2006).

<sup>672</sup> See T Bonyhady, *The law of the countryside the rights of the public* (Professional Books 1987) 268-285 for a general discussion of the law of treasure trove in England. For its effects on other common law jurisdictions, see K Wiltshire *Heritage, Federalism and the Environment* (R L Matthews 1985) 47-63, 48 for discussion of the Australian example.

<sup>673</sup> See Peter C James, 'Anglo-Australian Law and the Aboriginal Cultural Heritage', (1995) *Historic Environment* 11:2, 3: 52-56 at 53.

<sup>674</sup> Strecker *Landscape Protection in International Law* 122.

In this chapter, the core domestic legislation concerning protection of the archaeological heritage in the Lesser Antilles is analysed. These laws include antiquities and heritage protection legislation. Laws establishing institutions for the protection of this heritage, such as museums and National Trusts, provide the administrative apparatus of the heritage protection framework in this region. The analysis makes a distinction between laws developed during the colonial era and later consolidated as part of the laws of newly independent nations (Grenada, St Vincent and the Grenadines, and Barbados are compared in this regard); and post-independence heritage protection legislation, developed recently in the states of Antigua and Barbuda and St Kitts and Nevis. This area of law is very much in flux (laws were repealed during the writing of this chapter), so proposed laws not yet in force have also been examined for insight into the evolving understanding of the regulation of heritage resources.

## **4.2 The role of heritage legislation in the Caribbean and the modern concept of heritage**

Early forays into cultural policymaking in the Caribbean ignored the role of cultural heritage. Suzanne Burke has remarked that culture has never been considered an autonomous area of policy, usually requiring a relationship with other policy domains, such as tourism, education, community development, industry and trade, to justify its protection.<sup>675</sup> Indeed, developing countries with rich heritage resources tend to be focused on economic development, and poverty drives looting as a form of alternative income. Protecting heritage sites is often deemed a peripheral consideration when confronted with the immediate needs of the population, such as jobs, health care and education.<sup>676</sup> Nevertheless, at the state level, the preamble of the Constitution of Grenada acknowledges that cultural rights play a central role in achieving the ideal standard of living required for individuals in a free society.<sup>677</sup> This is in keeping with

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<sup>675</sup> Suzanne Burke, 'The evolution of the cultural policy regime in the Anglophone Caribbean', *International Journal of Cultural Policy* 13:2 (2007), 169-184, 170. I would also add that cultural policymaking in the region continues to ignore sustainability and environmental considerations in favour of cultural festivals, which produce immediate monetary benefits, and which can be linked to the cultural industries and economic development, as Barbados has done most recently with its Cultural Industries Development Authority Act (not discussed in this research).

<sup>676</sup> O'Keefe and Prott 18.

<sup>677</sup> The Grenada Constitution 1974, s 2(e)

international conventional law,<sup>678</sup> and signals an understanding that culture is relevant to quality of life. But where does cultural heritage repose in this relationship?

Heritage resources have been defined, classified, excluded and reincorporated over time due to what Janet Blake calls the uncertainty ‘over the exact nature of its subject matter’.<sup>679</sup> International cultural heritage law recommended that a traditional heritage law regime should include State control over and grant approval for excavations, oblige any person finding archaeological remains to declare them, define the legal status of the archaeological subsoil, classify historical monuments and supervise restoration, approve the removal of monuments, create and maintain reserves and parks in zoned areas, promote education of the public, and facilitate access to the sites.<sup>680</sup> As the previous chapter has shown, the definition of heritage is not fixed, having evolved from a focus on objects and sites to now encompass dynamic relationships with those objects and sites, from universality of heritage to the local communities who generate and give value to these heritage resources.<sup>681</sup> The intangible heritage central to cultural relationships, responsible for generating ‘a sense of place’ of a people, is critical to their social identity, diversity and sustainability.<sup>682</sup>

The traditional conservation associated with colonialism and the new concept of heritage as expressed in the international cultural heritage law and landscape chapters are therefore recurring underlying themes in this analysis of heritage law of the Lesser Antilles. As a result of the Cultural Turn, heritage protection has moved away from its elitist colonial roots and antiquarian traditions. This is of particular significance to post-colonial states such as the Lesser Antilles, because it affords these countries the opportunity to deconstruct the inherited regulatory

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<sup>678</sup> ICESCR, art 15 - the right to participation in cultural life. Grenada became party to this treaty in 1991.

<sup>679</sup> Janet Blake, ‘On Defining the Cultural Heritage.’ (2000) *ICLQ* 49: 61-85.

<sup>680</sup> Originally laid down in various soft law documents such as the New Delhi Recommendation on International Principles Applicable to Archaeological Excavations, adopted on 5 December 1956, the Recommendation concerning the Safeguarding of the Beauty and Character of Landscapes and Sites, adopted on 11 December 1962, and the Recommendation concerning the Preservation of Cultural Property Endangered by Public or Private Works, adopted on 19 November 1968, to name a few.

<sup>681</sup> Blake, *International Cultural Heritage Law* 9.

<sup>682</sup> Simon Molesworth, ‘Managing Heritage Cities in Asia and Europe: The Role of Public-Private Partnerships’. Delivered at the Public Forum and Experts’ Meeting - *International National Trusts Organisation’s Network Experiences in Public Private Partnership Approaches towards Management of Heritage Cities*, 12-14 July 2012, Yogyakarta, Indonesia.

framework for heritage protection. This will be addressed in the following sections on heritage law, as applicable.

### 4.3 Antiquities legislation

The oldest antiquities legislation in the Lesser Antilles is the Preservation of Historic Buildings and Antiquities Act 1976 from St Vincent and the Grenadines. The Minister responsible for the implementation of the legislation is the Minister for Tourism, linking heritage resources to tourism assets.<sup>683</sup> ‘Antiquity’ is defined as any object, other than a historic building, the preservation of which is desirable because of ‘traditional, archaeological, palaeontological or historic interest’.<sup>684</sup> The inclusion of traditional value as one of the criteria for assessing heritage raises the question as to whether this is progressive and would allow for heritage valued by the community to be protected, or conservative in the sense of the colonial tradition.

Listing is a duty of the Minister.<sup>685</sup> The Minister can do all that is necessary to restore a building where the owner does not comply.<sup>686</sup> Acquisition of a historic building or antiquity is an option, but must be for a public purpose as outlined in the Land Acquisition Act.<sup>687</sup> However, the Act has since been amended by the Planning Act, which empowers the Minister for Planning to make this list. The implications of conflicting mandates are a recurring feature in this chapter, and the potential incapacitation of these laws is discussed in the subsequent chapter on planning legislation.

The St Kitts National Trust Act was drafted to work in tandem with the St Kitts and Nevis National Conservation and Environmental Protection Act (NCEPA),<sup>688</sup> and contemplates the possibility of concurrent jurisdiction.<sup>689</sup> This is because Part IX of the NCEPA concerns

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<sup>683</sup> St Vincent and the Grenadines Preservation of Historic Buildings and Antiquities Act 1976, s 2

<sup>684</sup> SVG Preservation of Historic Buildings and Antiquities Act 1976, s 2

<sup>685</sup> *Ibid.*, s 4

<sup>686</sup> *Ibid.*, s 4(3) and 4(8)

<sup>687</sup> *Ibid.*, s 3

<sup>688</sup> St Kitts and Nevis is a federation, and its Constitution empowers Nevis to make its own laws in a number of specific areas – s 106 Constitution of Saint Christopher and Nevis 1983. These areas however do not override Parliament’s lawmaking powers – s 37. Where the title of a law does not refer to Nevis, it applies to the island of St Kitts only.

<sup>689</sup> St Kitts National Trust Act 2009, s 4(2)

Antiquities and Historic Buildings. This is the only other antiquities legislation in force in the Lesser Antilles. Section 47 of NCEPA defines antiquities to include:

- (a) any ancient monument which dates or may reasonably be believed to date from a period prior to 1900;
- (b) any statues, engravings, carvings, inscriptions, paintings, writings, metallurgic art, coins, gems, seals, jewels, arms, tools, ornaments and all other objects of art which date or may reasonably be believed to date' from a period prior to 1900;
- (c) any abandoned wreck and all objects of archaeological association which have remained unclaimed for fifty years in the territorial waters of Saint Christopher and Nevis.

Unlike the Vincentian legislation, there is a minimum age required to qualify as an antiquity. A licence must be obtained in order to excavate antiquities, and the licence will only be granted by the Minister after consultation with the Conservation Commission, once it has been determined that the potential licensee is competent and possesses sufficient funds for the excavation.<sup>690</sup> Conditions may be attached to such a licence. The Minister must be furnished with all proposed excavation plans and a list of all antiquities excavated, and he must personally inspect those excavated antiquities.<sup>691</sup> Nevertheless, antiquities excavated may be divided and delivered to the licensee, and the law of salvage applied, once the Minister in consultation with the Conservation Commission, determines whether any of those antiquities should be retained as cultural property or are required for educational, scientific, archaeologic or historic purposes of the Nation.<sup>692</sup> The commercial value of antiquities therefore appears to be weighed against their archaeological value. Where antiquities are accidentally discovered, they must be reported to the Minister and are prohibited from export unless licensed.<sup>693</sup>

NCEPA is the only law in the region to outline the form and content of a list as originally devised in the common law.<sup>694</sup> A building can only be listed where it has been recommended by the Conservation Commission, although owners of listed buildings must also be notified and

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<sup>690</sup> St Kitts NCEPA, s 48(2)

<sup>691</sup> SKN NCEPA, s 48 (3)

<sup>692</sup> Ibid., s 49

<sup>693</sup> Ibid., ss 50-51

<sup>694</sup> Richard Harwood, *Historic Environment Law: Planning, Listed Buildings, Monuments, Conservation Areas and Objects* (Institute of Art and Law 2012) 53.

have a right of appeal.<sup>695</sup> Private property rights are therefore given consideration, but the implication is that all persons with a legal interest in the land must consent to protection of the heritage.<sup>696</sup> The effect of listing is that alterations cannot be made to such buildings without the permission of the Building Board, in consultation with the Conservation Commission.<sup>697</sup> Where such acts are committed, a fine is to be paid, but no remedies concerning restoration are proffered and no development rights for such buildings are withdrawn, confirming Richard Harwood's assertion that listed buildings, in contrast to monuments, are intended to remain in 'an active, commercially viable use'.<sup>698</sup> Indeed, the legislation underscores this by stating that the Building Board shall give 'special consideration to the public interest in preserving the features for which the building is listed, and *shall endeavour to use all means reasonably available* to preserve those features.'<sup>699</sup> For conservation legislation, such protection is not very robust at all.

The Act does provide tax incentives to restore historic buildings. These include exemption from land and house tax, exemption from custom duties and consumption tax, professional advice from public officers without charge, and use of plant and equipment from the Public Works Department. In exchange for this support, owners are expected to make such buildings open for public visits.<sup>700</sup> This is a much stronger and practical framework than what is contained in planning legislation in some countries in the Lesser Antilles, as will be discussed in the next chapter. However, these incentives have not been extended to archaeological sites.

The Act makes provision for implementation via regulations, which may include the regulation and use of protected areas; the prevention of deterioration of historic sites; and prescribing terms for salvage as they apply to antiquities and wrecks.<sup>701</sup> Offences are also addressed. It is an offence to dig or remove an artefact, and an offence to deface, damage, or destroy historic buildings.<sup>702</sup> The Kittitian legislation therefore integrates cultural heritage within its

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<sup>695</sup> SKN NCEPA, s 52

<sup>696</sup> Also at issue in Australia, see Lesley-Anne Petrie, 'An Inherently Exclusionary Regime: Heritage Law – The South Australian Experience', (2005) *Macquarie Law Journal* 5: 177-199, 192.

<sup>697</sup> SKN NCEPA, s 53

<sup>698</sup> Harwood 13.

<sup>699</sup> SKN NCEPA, s 53(1) (emphasis added).

<sup>700</sup> *Ibid.*, s 54

<sup>701</sup> *Ibid.*, s 56

<sup>702</sup> *Ibid.*, s 57



conservation legislation, outlines a permitting system for antiquities and establishes relatively progressive mechanisms for the protection of built heritage.

With the repeal of Grenada's heritage protection legislation to accommodate new museum legislation (discussed later in this chapter), there are few examples of antiquities legislation in the remaining Lesser Antilles. Nevertheless, St Kitts' antiquities legislation may be compared to the Barbados Preservation of Antiquities and Relics Bill 2012 (Antiquities bill) and Antigua's Cultural Heritage Protection Bill 2016 (Cultural Heritage bill).

The Preservation of Antiquities and Relics Act has been in draft since 2012. Nevertheless, this bill, if passed, would represent the first piece of formal heritage legislation to be prepared by Barbados. The purpose of the bill is the preservation of places, structures and relics or other objects of archaeological, historical and cultural interest, by providing for export control of protected heritage, and licenses for archaeological excavation, to be administered and enforced by a board.

Of note is the interpretation section. Antiquities and relics have been given legal definitions. 'Relics' are objects exceeding one hundred years old 'which in the majority opinion of the Board is considered to be of such overarching value to Barbados that the Board is empowered to establish control or acquire the said object in the interest of preserving the patrimony of the nation',<sup>703</sup> which is interesting as patrimony is not a legal term found within the common law. Antiquity is also defined to include sites.<sup>704</sup> It is nevertheless curious that 'relic' is used. For one, it is a synonym for antiquity, and outdated at that. Its wider meaning in contemporary

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<sup>703</sup> Barbados Preservation of Antiquities Bill, s 2

<sup>704</sup> Barbados Preservation of Antiquities Bill, s 2 defined 'antiquity' as any

- (a) place or site;
- (b) monument or structure together with their settings and fixtures erected, formed or built by human agency that is affixed to the land or under the land; including:
  - (i) works of monumental sculpture and painting;
  - (ii) elements or structures of an archaeological nature;
  - (iii) inscriptions;
  - (iv) cave dwellings; and
  - (v) combinations of above features
- (c) monument or structure erected, formed or built by human agency that is located under water or on the seabed that is of historical, cultural or archaeological interest or is believed to be of historical or archaeological interest.

society points to objects that are outmoded, obsolete, or fragmented.<sup>705</sup> A relic is an object or custom whose original culture has disappeared, having historical value, but no modern use. And while technically accurate, it brings to mind Raymond Goy's 'dead musea',<sup>706</sup> and whether this conceptualisation would promote heritage as relevant for a dynamic national identity and contemporary Barbadian society, stimulate public participation, and support cultural enrichment as a public good outcome.

The bill however introduces new mechanisms to protect Barbados' heritage. A control list identifying categories of relics subject to export control is to be maintained, and illicit trade in cultural objects is deemed an offence with prescribed penalties.<sup>707</sup> Export of antiquities is illegal unless an export certificate has been granted by the Minister.<sup>708</sup> While there are no criteria given for this assessment, objects on the control list may not be exported and doing so will result in a fine or imprisonment.<sup>709</sup> A licensing system is outlined in Part 2 of the bill. Licenses are required for excavation, and must be recorded in a register.<sup>710</sup> Persons applying for licenses must have sufficient training and experience to undertake excavations, but these qualifications are not elaborated in any regulations. Conditions may also be imposed when granting the license.<sup>711</sup>

A cultural heritage statutory board is created, although cultural heritage is not defined.<sup>712</sup> The Board's composition is not specified, except to say that members must have experience relevant to cultural heritage.<sup>713</sup> The functions of the board are to advise the government on matters pertaining to the classification of relics, and to manage the control list as well as administer licenses and export certificates.<sup>714</sup> Compensation is to be paid where an antiquity is acquired by the State.<sup>715</sup> Where an antiquity is damaged, penalties are prescribed, which may be a fine or

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<sup>705</sup> 'Relic'. The Oxford English Dictionary, Oxford <<http://www.oxforddictionaries.com/definition/english/relic>> accessed 20 July 2016 and cf 'relic', the Merriam Webster Dictionary, Merriam Webster <<http://www.merriam-webster.com/dictionary/relic>> accessed 20 July 2016

<sup>706</sup> Goy 117.

<sup>707</sup> Barbados Preservation of Antiquities Bill, ss 4 and 8

<sup>708</sup> Ibid., ss 5 and 6

<sup>709</sup> Ibid., ss 4 and 7

<sup>710</sup> Ibid., ss 9 and 15

<sup>711</sup> Ibid., s 11

<sup>712</sup> Ibid., s 20

<sup>713</sup> Ibid., s 22

<sup>714</sup> Ibid., s 21

<sup>715</sup> Ibid., s 17

imprisonment or both.<sup>716</sup> The language pertaining to export control, licensing and acquisition is similar to the Kittitian legislation, discussed above.

In many ways, the bill appears to be an extension of the town planning legislation to manage the cultural heritage. The bill relies on the planning authorities through the use of preservation orders – section 19 states that preservation orders pursuant to section 28 of the Barbados Town Planning Act are to be issued where an antiquity needs protection or may be damaged or destroyed. Reference is also made to listed buildings and the use of enforcement notices in the town planning legislation. The bill introduces stronger mechanisms for protection of heritage, such as the use of definitions, export control, permitting and protection through ownership via compulsory acquisition, but ultimately these types of measures tend to be weak and acquisition and ownership can be difficult to enforce and monitor.<sup>717</sup> The proposed framework protects property rights through limited controls on listed buildings, and the system introduced for protecting heritage is based on its economic value. Listing in Barbados' legislation is therefore weakened in many cases to protect private property, because the long term benefit of heritage conservation to the public is not considered. Even if the property is identified as being of heritage significance, a non-consenting owner can put a stop to any protection being provided, because of the highest protection accorded to private property rights.<sup>718</sup>

The incremental development of Barbados' regulatory framework for heritage seems to reflect the growth and acceptance of the archaeological discipline in that country. There is an increased use of technical terminology in the Antiquities bill. Nevertheless, the traditional definition of heritage in which ancient objects are protected yet detached from the wider environmental and social context prevails.

In contrast, Antigua has chosen to draft implementing legislation for the Underwater Heritage Convention and incorporate general principles of heritage law. The long title of Antigua's bill makes clear that the scope of this law is comprehensive, as it is 'for the protection of cultural heritage, encompassing land-based as well as submerged immovable heritage as well as movable objects, in Antigua and Barbuda'. 'Cultural heritage' is thus broadly defined to include

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<sup>716</sup> Barbados Preservation of Antiquities Bill, s 16

<sup>717</sup> Andrew North MacLaren 'Protecting the Past for the Public Good: Archaeology and Australian Heritage Law.' PhD diss., University of Sydney, 2006, 135

<sup>718</sup> Petrie 192.

underwater heritage, undiscovered heritage, and any trace of human existence that is older than 50 years.<sup>719</sup>

Section 3 states that the competent national authority (CNA) is the national parks authority, which would integrate cultural heritage legislation with the natural heritage, and update Antigua's parks legislation (discussed in chapter 6). The role of the CNA is both substantive and administrative. The CNA is responsible for 'issuing permissions' to ensure the effective control, protection, conservation, presentation and management of cultural heritage. The CNA's role is also to encourage and foster research, public awareness, appreciation and education in cultural heritage, supporting NGO establishment and cooperation and fostering the establishment of museums, as well as establishing and updating an inventory.<sup>720</sup> Here we see similarities to the functions of the National Trust, particularly in the Grenada National Trust Act, which has similar museum-making powers (discussed in Section 4.5). The inventory will include a list of important public and private cultural heritage whose export would constitute an 'appreciable impoverishment of the national cultural heritage', which is more precise and focused than the Barbados bill's reference to ensuring the patrimony of Barbados; a list of underwater cultural heritage that is located within the limits of national jurisdiction; and a list of underwater cultural heritage, located beyond the limits of national jurisdiction if that underwater cultural heritage has a verifiable link with the State. The inventory will also be open to limited public access, to ensure that no information that would endanger the heritage is disclosed, which is the most modern feature of such legislation in the region.

Part III of the bill addresses the discovery, report and displacement of cultural heritage. A permit is needed for the exploration and displacement of the cultural heritage.<sup>721</sup> This is the only law that explicitly states that safety and environment procedures must be obeyed in order to be granted a permit.<sup>722</sup> Part VI of the bill concerns 'activities incidentally affecting heritage'. Developers are required to report their proposed activities to the CNA 60 days in advance of such activity, if those activities take place in an area containing cultural heritage or there is a

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<sup>719</sup> Antigua Underwater Cultural Heritage Bill, s 2

<sup>720</sup> *Ibid.*, s 5

<sup>721</sup> *Ibid.*, s 6

<sup>722</sup> *Ibid.*, s 7(7)(b)

reasonable expectation that it may do so.<sup>723</sup> Such heritage may include sites, battlefields, ports or trade routes, on land or sea. An impact assessment must be undertaken and the costs are to be borne by the developer where the development involves industrial activity.<sup>724</sup> Nevertheless, criteria are provided for the contents of the heritage impact assessment, which must include:

- (a) the assessment of the project area and the identification of cultural heritage therein;
- (b) the prevention, to the extent possible, of impact to cultural heritage caused by the project in the project area and its surrounding environment;
- (c) the mitigation of negative effects caused by the project in the project area and its surrounding environment;
- (d) the conservation of the affected cultural heritage; and the promotion of affected cultural heritage and the dissemination of knowledge about it.<sup>725</sup>

It is mandatory to consult the CNA, not just the planning authorities, before development permission can be granted.<sup>726</sup> This section would therefore modify the planning permission process and would be the only legislation in the Lesser Antilles making explicit provision for heritage impact assessments. In addition, the bill vests cultural heritage of an archaeological character in the State, abolishes the law of finds, and limits the application of the law of salvage.<sup>727</sup> The Government of Antigua and Barbuda may also acquire any cultural heritage for the benefit of the nation.<sup>728</sup>

Annex 2 of the Schedule to the Antigua bill addresses ‘rules concerning activities directed at cultural heritage of an archaeological character, including underwater cultural heritage’. The Schedule states that any activity directed at cultural heritage must be authorised in a manner consistent with their protection and for the purpose of making a significant contribution to their protection and enhancement or to gain knowledge about them. In situ preservation of the cultural heritage of an archaeological character is considered the first option before engaging in any activity, including recovery or displacement. Commercial exploitation or sale is prohibited, but

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<sup>723</sup> Ibid., s 15

<sup>724</sup> Ibid., s 15(2) and (4)

<sup>725</sup> Ibid., s 15(4)

<sup>726</sup> Ibid., s 15(3)

<sup>727</sup> Ibid., s 16(1) and (2)

<sup>728</sup> Ibid., s 17

responsible public access, museum exhibition, exchange between museums and scientific research are exceptions to this rule. This addresses for the first time the value of heritage beyond excavation, although the language does not go so far as to reference community relationships with such sites.<sup>729</sup>

Commercial exploitation is also addressed in more detail, which is stated as fundamentally incompatible with the protection of the cultural heritage, while enumerating the following as exceptions to the general rule: professional archaeological services in conformity with the law and authorised by the CNA, and authorised research projects that do not compromise the scientific or cultural interest or integrity of the material.<sup>730</sup> Any adverse effects on the cultural heritage must be mitigated. Non-destructive techniques and surveys are preferred to excavation and recovery.<sup>731</sup> Also addressed is the treatment of human remains as well as the need for international cooperation to ensure exchange of historical, technical and scientific knowledge, professional exchange and access to effective protective measures.<sup>732</sup>

There are rules governing archaeological research, specifically the content of project proposals, which must include a site maintenance policy, safety policy, environmental policy, a plan for documentation and archiving recovered cultural heritage and a publication programme.<sup>733</sup> The methodology and techniques must be as non-intrusive as possible.<sup>734</sup> Preliminary assessment of the site is required, including background studies of the archaeological and environmental characteristics of the site, as well as the consequences for the long-term stability of the cultural heritage of the site.<sup>735</sup> All team members must be qualified and have demonstrated competence appropriate to their roles in the project.<sup>736</sup> A conservation programme must be put in place, in close cooperation with the competent authorities and in keeping with professional state of the art standards.<sup>737</sup> There is, however, no mention of community consultation.

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<sup>729</sup> Antigua Underwater Cultural Heritage Bill, schedule, rule 1

<sup>730</sup> *Ibid.*, rule 2

<sup>731</sup> *Ibid.*, rule 3

<sup>732</sup> *Ibid.*, rules 4 and 5

<sup>733</sup> *Ibid.*, rule 6

<sup>734</sup> *Ibid.*, rule 9

<sup>735</sup> *Ibid.*, rule 10

<sup>736</sup> *Ibid.*, rule 13

<sup>737</sup> *Ibid.*, rule 14

A site management programme must be developed in close cooperation with the competent authorities to provide for in situ protection and management of the cultural heritage in the course of and upon termination of fieldwork.<sup>738</sup> It shall include public information, reasonable provision for site stabilisation, monitoring, and protection against interference but once more, no community element. Activities must be documented in accordance with current professional standards of archaeological documentation.<sup>739</sup> A safety policy and an environmental policy are required.<sup>740</sup> Reporting obligations, including archiving of such reports are addressed.<sup>741</sup> Public archaeology initiatives are expected where appropriate. This includes access to a synthesis of the final report, barring the inclusion of any information that is confidential or sensitive in nature; and making the report available in relevant public records.<sup>742</sup>

Were it enacted, the Antigua Cultural Heritage Bill would advance heritage law in the region with its approach to the law of finds, integration of environmental principles, and modern conservation mechanisms such as the use of impact assessments and access to information, as well as communicating best practices for archaeological excavations for the benefit of the people of Antigua and Barbuda.

#### 4.4 Museum legislation

The framework for antiquities management in the Lesser Antilles also includes museums. As repositories for the tangible remains of the past and present, and centres for educational and technical advancement, museums can be public or private institutions. By being legally incorporated, they can more easily own property and are given perpetual existence.<sup>743</sup> This section focuses on state museums. Cummins notes that museums in the English-speaking Caribbean evolve out the natural resource collections that flourished during the height of the British Empire, especially the Great Exhibitions, which showcased resources, valuables, and even peoples from the colonies as a means of civilising unruly nature in these imperial outposts,

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<sup>738</sup> Ibid., rule 15

<sup>739</sup> Ibid., rule 16

<sup>740</sup> Ibid., rules 17 and 18

<sup>741</sup> Ibid., rules 19 and 20

<sup>742</sup> Ibid., rule 21

<sup>743</sup> Patty Gerstenblith, 'Museum Practice: Legal Issues' in Sharon Macdonald (ed), *A Companion to Museum Studies* (Wiley-Blackwell 2011) 269.

ultimately making museums places of ‘order and surveillance’.<sup>744</sup> This establishes a relationship between the museum and the maintenance of the imperial landscape. The museum as an instrument of civilisation and edification was later linked to social reform through education, with the earliest colonial legislation establishing public libraries featuring museum displays throughout the British West Indies.<sup>745</sup>

Originally, conservative museums considered collection the ‘sole reason for the museum, with exhibition, education, culture, and the social good ... rationalizations and window dressing used to justify the basic collecting passion.’<sup>746</sup> While other heritage and cultural institutions are concerned with the advancement of knowledge, it is this collection and interpretation function—through objects, spoken written and visual transmission - that originally distinguished the museum. Other functions may supplement these core functions.<sup>747</sup> Collections contained in a museum represent this generation’s legacy to the next.<sup>748</sup> Ideally, museums protect and share heritage, enhance our understanding of these resources, and so contribute to the public good. Collections have to be registered and studied, otherwise they have no interpretive value. They must be catalogued and researched. Without scholarly research, thoughtful study and documentation, the interpretive educational function of the museum is shallow, offering little understanding and appreciation for the collective heritage.<sup>749</sup>

The new museum discourse has transformed this perception. This shift specifically occurred in the 1980s as part of the Cultural Turn, during which questions about representation, how meanings come to be inscribed, and by whom, were recognised as political.<sup>750</sup> What was researched and why, was just as important as what was ignored, or taken for granted, meaning that museology can continue to exclude and uphold certain regimes of power, especially the

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<sup>744</sup> Ariese 14 and see Alissandra Cummins, ‘Natural History = National History: Early Origins and Organizing Principles of Museums in the English-speaking Caribbean.’ In Cummins, Farmer and Russell (eds) *Plantation to Nation* 11-46.

<sup>745</sup> Alissandra Cummins, ‘Caribbean Museums and National Identity’, *History Workshop Journal* 58 (2004): 224-245.

<sup>746</sup> Edward Alexander, *Museums in motion: An Introduction to the History and Function of Museums* (Nashville 1979) 9.

<sup>747</sup> John Whiting, *Museum focussed heritage in the English-speaking Caribbean* (UNESCO 1983) 2.

<sup>748</sup> Whiting 2.

<sup>749</sup> Ibid.

<sup>750</sup> Ariese-Vandemeulebroucke, *The Social Museum in the Caribbean*, 24.



status quo.<sup>751</sup> Museums are now a space in which the heritage making process is conducted, where heritage is performed, constructed, promoted and transformed, and to apply the logic of legal geography, this means who is afforded space and who is not has implications for spatial justice. Heritage now relies less on artefacts and more on meanings and the intangible.<sup>752</sup> Displays are no longer treated as ‘chronological visual storage’ and the incorporation of vernacular architecture into the displays is intended to attract a more general rather than specialist public.<sup>753</sup> The old museology was concerned with methods for administration, conservation and education, and not the purpose of the museum. The three main departures from old museology concerned a) museum objects, now understood as situated and contextual rather than having inherent meaning; b) expanding museological functions to commercialism and entertainment; and c) the public perception of the museum and its exhibitions.<sup>754</sup>

For the Caribbean, this requires decolonisation of the museum, because museums play a role in the way that the history and culture of communities are represented and defined.<sup>755</sup> Decolonising the museum has been crucial for the empowerment of marginalised peoples who have been dispossessed and misrepresented, and strengthening identity via truth-telling, knowledge-making, education and the restoration of memory.<sup>756</sup> These museums have moved away from being ‘temples of elitism’ to ‘forums for community engagement’<sup>757</sup>, supporting public spaces and becoming public spaces themselves. Csilla Ariese’s work on the Social Museum in the Caribbean wrestles with these post-colonial themes of challenging the Authorized Heritage Discourse (AHD) to reclaim space and deconstruct colonial power dynamics by being more participatory and community-centered.<sup>758</sup> One post-colonial mechanism envisions the museum

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<sup>751</sup> Sharon Macdonald, ‘Expanding Museum Studies: An Introduction’ in Sharon Macdonald (ed), *A Companion to Museum Studies* (Wiley-Blackwell 2011) 21.

<sup>752</sup> Ariese-Vandemeulebroucke 31. See also Laurajane Smith, ‘Theorizing Museum and Heritage Visiting’ in Andrea Witcomb and Kylie Message (eds) *The International Handbooks of Museum Studies: Museum Theory* (John Wiley & Sons, 2015) 459-484 and Emma Waterton, Smith, Laurajane and Campbell, Gary, “The Utility of Discourse Analysis to Heritage Studies: The Burra Charter and Social Inclusion” (2006) *International Journal of Heritage Studies* 12(4): 339-355.

<sup>753</sup> Alexander 10.

<sup>754</sup> Macdonald, ‘Expanding Museum Studies: An Introduction’ 20.

<sup>755</sup> See Kevin Farmer, ‘New Museums on the Block: Creation of Identity in the Post-Independence Caribbean’ in Cummins, Farmer and Russell (eds) *Plantation to Nation* 169-177.

<sup>756</sup> Amy Lonetree, *Decolonizing Museums* (University of North Carolina Press, 2012) 1, 4-5, 9.

<sup>757</sup> Lonetree 6.

<sup>758</sup> Ariese-Vandemeulebroucke *The Social Museum in the Caribbean* at n 104.

as contact zone<sup>759</sup> in this regard, where it critically engages with the Western analytical perspective, and arguably with the imposed spatial definitions it upholds.<sup>760</sup>

Today, the three traditional museum objectives – collection, conservation and research - are integrated in the institutional mandate, and through exhibition, education and interpretation can bring understanding and appreciation to contemporary life, and contribute to the social welfare of these communities.<sup>761</sup> This requires collaboration with source communities, which is considered a best practice, in order to challenge ‘objectifying traditions that uphold colonial power relations and perpetuate colonizer serving images and models’.<sup>762</sup> Decolonisation can benefit from a robust regulatory framework, as museums interact with the law in a variety of ways. Legislation can support the protection of the collective heritage, and implement international cultural heritage law principles. Museums also play an important role in the fulfilment of cultural rights: for the full realisation of the right to take part in cultural life, the availability of and access to cultural goods and services (via libraries, museums, theatres and cultural events) is necessary, and states must guarantee such access.<sup>763</sup>

Nevertheless, not all museums in the Lesser Antilles have enabling legislation - Trinidad and Tobago, Barbados, and Grenada are the exception. As will be discussed later in the chapter, the National Trust often performed museum functions and in the case of Grenada, was empowered to set up museums, so there is an entangled relationship. It would seem that Antigua’s Antiquities bill would introduce such functions for its CNA. Distinguishing these roles and responsibilities has been an incremental process following independence.

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<sup>759</sup> Originally introduced by linguist Mary Louise Pratt, the contact zone refers to ‘social spaces where cultures meet, clash, and grapple with each other, often in contexts of highly asymmetrical relations of power, such as colonialism, slavery, or their aftermaths as they are lived out in many parts of the world today’. See Ariese 30. The concept has also been used by museologists in a more optimistic sense, as a dialogical space of equal reciprocity. But Robin Boast has argued that the contact zone can also entrench power imbalances – and so can be considered neo-colonialist in orientation. See Robin Boast, ‘Neocolonial collaboration: Museum as Contact Zone Revisited’ (2011) *Museum Anthropology* 34(1): 56–70, 64.

<sup>760</sup> See Ariese-Vandemeulebroucke *The Social Museum in the Caribbean* 31. The characteristics of the AHD are as follows: heritage was seen as intrinsic (that is, inherently known and unchanging such as sites, monuments and objects that physically exist in the environment) and experts were in charge of defining what was or was not deemed to be heritage. Special attention was paid to heritage that was considered to be significant for all of humanity (so-called ‘universal heritage’).

<sup>761</sup> Alexander 15.

<sup>762</sup> Lonetree 16-17, 171.

<sup>763</sup> Blake, *International Cultural Heritage Law* 300, 302

Trinidad and Tobago's National Museum and Art Gallery Act establishes a national museum with responsibility for a national collection.<sup>764</sup> The Museum board is composed of members with technical and scholarly expertise relevant to the collection and interpretation of historical and cultural material; public law; natural history; the visual arts; and management of museums and analogous institutions.<sup>765</sup> The Board's functions include the establishment of a National Collections Policy and all other policies required for the facilitation of the operations of the TT National Museum; research in historical and cultural material relevant to the national collection; dissemination of information relating to the national collection, and to the museum and its functions in Trinidad and Tobago and abroad; and exhibit historical and cultural material, both in Trinidad and Tobago and abroad.<sup>766</sup>

The Board's powers concern receiving historical material on loan or as a gift, loaning such material from the collection, and disposal of historical and cultural material. Copyright law applies to the reproduction of material for sale. The Board is also charged with maintaining the museum property. It is also established that the museum acts on behalf of the Government of the Republic of Trinidad and Tobago in the administration of a trust relating to historical and cultural material. Importantly, it is stated that the museum collects revenues by way of fees for the viewing of the national collection, and may operate any other business which may further the purposes of the TT National Museum.<sup>767</sup> The TT National Museum is therefore empowered to function as a modern body, through its diverse functions and array of mechanisms, such as this capacity to establish related businesses.<sup>768</sup>

Nevertheless, the legislation reflects the traditional character of a museum, since much of the remaining provisions is devoted to administrative matters, such as the transfer and disposal of material, use of technical guidance, the role of the Director as general and technical director, funding, staff remuneration and capacity strengthening.<sup>769</sup> There is no explicit relationship between international cultural heritage law and museum management, which appears to be dedicated to managing the national collection.

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<sup>764</sup> Trinidad and Tobago National Museum and Art Gallery Act 2000, ss 2 and 3

<sup>765</sup> *Ibid.*, s 4(2)

<sup>766</sup> *Ibid.*, s 12

<sup>767</sup> *Ibid.*, s 13

<sup>768</sup> This is similar to the UK Museum and Galleries Act 1992, s 3, which empowers its Board to form companies.

<sup>769</sup> Trinidad and Tobago National Museum and Art Gallery Act, ss 14-18, and ss 25-26

Unlike Trinidad and Tobago, the Barbados Museum and Historical Society Act predates independence and consists of one page. The Barbados Museum and Historical Society is in fact a historical society that functions as a museum, and not a national museum, an impression cemented by the fact that the entity throughout the act is referred to by its abbreviated name, ‘the Society’. Much of the content of the Act concerns liability for debts, powers of the Society including the preparation of by-laws, the recovery of fines, dispute resolution and saving rights of the Crown.<sup>770</sup> The Barbados Museum nevertheless functions as a de facto national museum and is very active, sitting on the Barbados World Heritage Committee and advising Town and Country Planning authorities on the mapping of heritage resources such as archaeological sites for input in the national development plan and vetting development applications where consulted.<sup>771</sup>

Given the sparseness of this legislation, it is remarkable that the Barbados Museum is among the best-run in the Lesser Antilles. One reason for this is the fact that the institutional arrangements for heritage protection, which involve major stakeholders such as Planning and the National Trust, are centralised within the planning system, and these stakeholders enjoy a positive relationship.<sup>772</sup> Barbados is one of the most politically stable countries in the English-speaking Caribbean, with a fairly homogenous polity, and established heritage practices have been in place in Barbados prior to independence. The Barbados World Heritage Committee, which counts the National Trust, Museum and Planning Authority among its members, has seen the successful inscription of Historic Bridgetown and its Garrison on the World Heritage List.<sup>773</sup>

The highest level of policy decision-making for Historic Bridgetown and its Garrison is public sector-led through the Cabinet of the Government of Barbados, which holds ultimate responsibility for the management of the property but has delegated authority to the Barbados World Heritage Committee, which in turn shares it among the respective responsible government agencies and also collaborates with several non-governmental organisations and civil society,

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<sup>770</sup> Trinidad and Tobago National Museum and Art Gallery Act, ss 3-7

<sup>771</sup> Interview with Mr Kevin Farmer, Deputy Director, the Barbados Museum (Bridgetown, Barbados, 9 March 2016)

<sup>772</sup> Ibid.

<sup>773</sup> Interview with Dr Donna Greene, Senior Cultural Policy Officer, and Sheron Johnson, Cultural Policy Officer and UNESCO focal point, The Ministry of Community Development and Culture, Government of Barbados (Bridgetown, Barbados, 9 March 2016).

including a number of property owners.<sup>774</sup> This means that there is community representation and participatory governance in the administration of the property, through advisory functions on conservation policies and programmes for the property, as well as evaluation and monitoring of the property and implementation of international conventional law for heritage.<sup>775</sup> The museum is a stakeholder in managing this important site.

This is in stark contrast to Grenada, which has recently enacted comprehensive legislation to establish a national museum, broadly defining its objectives and establishing a governance structure. This new legislation combines museum governance with antiquities protection. The museum property is state-owned, but previously its management had been undertaken by a privately incorporated company. The Grenada National Museum Act was gazetted on 21<sup>st</sup> July, 2017. The GNM is established as a statutory body with a Board to manage and preserve the national collection of objects, records and other historical and cultural material that provide evidence of the history of the people of Grenada, Carriacou and Petite Martinique.<sup>776</sup> Its drafting has been influenced by the Trinidadian legislation, particularly in its scope, functions and powers.

The national collection is defined as the national collection of objects, records and other historical and cultural material providing evidence of the history of the people of Grenada, Carriacou and Petite Martinique, and is in the sole ownership of the National Museum. Also defined are ‘antiquity’ and ‘artefact’. An antiquity may be an artefact or a place, building, site or structure which is at least fifty years old. An artefact is defined as a movable object or fossil remains or impressions.<sup>777</sup> ‘Monument’ means a place, building, site or structure, which the Minister considers to be of public interest by reason of its historical, anthropological, archaeological or palaeontological significance, but this definition does not go so far as to say that these heritage resources attract any distinctive legal protection, as with the UK Monuments Act, wherein monuments are scheduled and development is forbidden.<sup>778</sup> However, as with that Act, places and sites are included within the legal definition of monument. Similar to Trinidad

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<sup>774</sup> UNESCO website for Historic Bridgetown and its Garrison <<http://whc.unesco.org/en/list/1376>> accessed 27 March 2016

<sup>775</sup> Ibid.

<sup>776</sup> Grenada National Museum Act 2017, s 3

<sup>777</sup> Ibid., s 2

<sup>778</sup> Harwood 14-15. UK Monuments and Archaeological Areas Act 1979

and Tobago's legislation, 'historical and cultural material' is defined to mean any material that pertains to the 'historical, geological, biological, cultural or artistic heritage' of Grenada, which would include natural heritage.<sup>779</sup>

The National Museum is responsible for the establishment, operation and administration of museums in Grenada (originally a responsibility of the National Trust); the preservation and display specimens, artefacts, and other materials that illustrate the natural or human history of Grenada; maintaining and providing access to the national collection in accordance with the national collections policy; research and communication of the knowledge of the natural and human history of Grenada by exhibits, publications and other means; and serving as an educational organisation.<sup>780</sup>

Like Trinidad and Tobago, the Board is responsible for shaping policy, the establishment of the national collection, museum operations, research and excavation, public records, exhibiting material and museum finances.<sup>781</sup> The powers of the Board are laid out in language that mirrors the analogous provision in Trinidad and Tobago's legislation. The Board may set up specialised committees to assist the Museum in its work and also form one or more bodies corporate to further the purposes of the National Museum.<sup>782</sup> Board members must have technical or scholarly expertise relevant to the collection and interpretation of historical, natural and cultural material; public law, company law or intellectual property law; qualifications or adequate knowledge in history, the natural sciences, pedagogy or heritage management; technical knowledge in the field of the visual and performing arts; qualifications in accounting or marketing and fundraising experience; or qualifications or experience relating to the functions, operations and management of museums, archives and analogous institutions.<sup>783</sup> These areas of expertise reflect a new direction in museum management and policy, particularly in valuing marketing, fundraising, and intellectual property expertise. In addition, The Schedule to the Act concerns the constitution and procedure of the Board, and requires representation from the

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<sup>779</sup> Grenada National Museum Act 2017, ss 2 and 4

<sup>780</sup> *Ibid.*, s 4

<sup>781</sup> *Ibid.*, ss 6-7

<sup>782</sup> *Ibid.*, s 8

<sup>783</sup> *Ibid.*, s 11

National Cultural Foundation and the National Trust, ensuring linkages between tangible and intangible heritage for a harmonised approach to heritage protection.<sup>784</sup>

The Grenada National Museum can apply for grants in addition to any funding committed by Parliament.<sup>785</sup> Funds are to be applied in a manner similar to Trinidad and Tobago's legislation, for the maintenance of the National Collection, museum property, for staff salaries and also for enhancing technical capacity of museum staff.<sup>786</sup> All artefacts found in Grenada are vested in the Government, and the Minister may request in writing the return of any artefact, save those discovered prior to the passage of the Act, and where ownership and rights have been waived and extinguished. Failure to surrender a requested artefact is an offence.<sup>787</sup> Where antiquities have been discovered, or there is knowledge of a discovery, this is to be reported to the Museum Director or adequate person.<sup>788</sup> All reasonable measures must be taken to protect the find. It is an offence to excavate, search or remove any antiquity other than for the purpose of protection. Nevertheless, it is within the government's discretion to pay a reward.<sup>789</sup>

To operationalise the law, regulations may be made inter alia, for the conduct of excavations, preservation, restoration, analysis, documentation and presentation of antiquities, management and control of antiquities and monuments, access to excavations, payment of fees, operation and administration of the National Museum, and reproduction and sale of artifacts.<sup>790</sup> Such regulations do not prohibit or restrict the access of lawful owners, occupiers, and persons beneficially interested to monuments, or such persons authorised by same, which ensures recognition and protection of the rights of private landowners.<sup>791</sup> Notably, the GNM Act repeals the National Heritage Protection Act, which was ineffective, but had provided legal protection for sites of Amerindian significance via scheduling and a permitting system facilitated by the

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<sup>784</sup> Grenada National Museum Act 2017, schedule, para 2

<sup>785</sup> Grenada National Museum Act 2017, s 12

<sup>786</sup> *Ibid.*, s 14

<sup>787</sup> *Ibid.*, s 21

<sup>788</sup> *Ibid.*, s 22

<sup>789</sup> *Ibid.*, s 22(3) and (4)

<sup>790</sup> *Ibid.*, s 23

<sup>791</sup> *Ibid.*, s 23(2)

National Trust.<sup>792</sup> No alternative method of protection for these sites was provided in the new Act, or mechanisms for involving communities that interact with these resources.

While Grenada has a cultural policy that addresses the enhancement of the museum and protection of archaeological sites,<sup>793</sup> there are challenges facing museum law implementation even when new institutional arrangements are put in place. Archaeological objects and sites are but components of the landscape, which develop new meanings as places are used and reinterpreted by communities. Failure to understand this impairs the functioning of museums in their role as guardian and interpreter of heritage, when these objects are singled out for protection but communities who interact with them are excluded from strategies for such protection.

A 1983 study commissioned by UNESCO examined the development plans of museums in the Caribbean to determine whether these institutions adequately met the needs of their communities, both in terms of the preservation of the historical and cultural heritage and the education of people in these matters.<sup>794</sup> Its author, Whiting, made a number of recommendations that appear to hold true today, almost forty years later.<sup>795</sup> He observed that the isolation and fragmentation of museums from other elements of a nation's heritage community does not allow material support or synergy in progressing with plans. Museums are outliers in the heritage protection framework, competing for sparse resources, instead of appearing to contribute and support the nation.<sup>796</sup> The isolation and abandonment of museums affirms Burke's general views on culture not being an independent policy area worthy of focused funding.<sup>797</sup>

Although Whiting's study does not reference landscape, his recommendations concern the integration of cultural and natural heritage, which he believed would remedy the lack of control over export of archaeological material, and lack of control of excavation sites, which a museum that coupled national park functions or an eco-museum could address; in fact he notes that a

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<sup>792</sup> Grenada National Museum Act 2017, s 24

<sup>793</sup> The Government of Grenada. Grenada National Cultural Policy 2012, Positions 2.4 (Museum) and 2.5 (Historical and Archaeological Sites) respectively.

<sup>794</sup> Whiting 1.

<sup>795</sup> Ibid., 6.

<sup>796</sup> Ibid., 12.

<sup>797</sup> Burke 170.



small island may be considered analogous to a US national park.<sup>798</sup> The museum's evolving role today includes the environment, as the new ICOM definition has moved from the 1960 definition of collection including only material objects, to the more general ICOM emphasis on 'the tangible and intangible heritage of humanity and its environment'.<sup>799</sup> Overall, Whiting concludes that a clear heritage policy is needed with the role of the museum clearly defined.<sup>800</sup>

The most successful museum assessed in this chapter, is in fact a historical society. The Barbados Museum and Historical Society has managed to develop local practices with very little legislative support. It engages with the Barbados National Trust and the Town and Country Planning Office, and other local stakeholders, and publishes a journal on Barbadian history, as there is active research on local history. In Trinidad and Tobago's legislation there is no indication of such institutional linkages between the local National Trust and other heritage stakeholders. With Grenada's new legislation, implementation arrangements are not yet in place, making any analysis premature. There is representation from the Ministry of Culture, the National Trust and National Cultural Foundation on its Board. The Grenadian legislation also gives the National Museum a role in the preservation of antiquities, as they are recognised as important to the national interest. However, the legislation does not locate antiquities within their wider communities, and given that the museum's track record of institutional coordination is poor, there is danger that the legislation may not support the needs of communities unless there is true institutional transformation that addresses institutional and enforcement weaknesses.

In all three states, the government dominates the institutional arrangements. The need to localise the museum is in keeping with the needs of heritage protection in the Lesser Antilles. Museums as legislated are instruments of empire, institutions that reordered the colonised world by objectifying and representing cultures, communities and land according to the spatial dictates of the paternalistic imperialism that characterised the nineteenth and early twentieth centuries. The new museology sees museums as postcolonial, able to reconstitute themselves after the

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<sup>798</sup> Whiting 13.

<sup>799</sup> Patrick O Keefe, 'Preliminary Study on the advisability of preparing an International Instrument for the protection and promotion of Museums and Collections (legal and technical aspects)' (UNESCO, n.d.) 15. And International Council of Museums Statutes, Adopted by the Eleventh General Assembly of ICOM: Section IIF Definitions: Article 3 (Copenhagen, Denmark, June 14, 1974). In *Development of the Museum Definition According to ICOM Statutes* (1946–2001). Paris: International Council of Museums, 2009. Electronic document, <[http://archives.icom.museum/hist\\_def\\_eng.html](http://archives.icom.museum/hist_def_eng.html)> accessed May 25, 2018

<sup>800</sup> Whiting 13.

dissolution of the colonies in the later twentieth century, a museology that promotes ‘education over research, engagement over doctrine, and multivocality over connoisseurship.’<sup>801</sup> But at their core museums retain collecting and exhibiting functions, which are colonial in origin.

Boast argues that the museum as contact zone, is and continues to be used instrumentally as a means of ‘masking far more fundamental asymmetries, appropriations, and biases’, in spite of the new museology transforming the museum from a site of determined edification to one of educational engagement in the 21<sup>st</sup> century.<sup>802</sup> This masking continues because of the masking inherent in landscape formation in the Lesser Antilles. The museum will transcend this dynamic once it is unmoored from its place in the landscape. As Ariese has stated, museums in the Caribbean can become more resilient as they diversify, embrace the dynamism inherent in heritage, and act more purposefully as subjective actors in their societies through community engagement processes.<sup>803</sup>

## **4.5 National Trust legislation**

### **4.5.1 Background: the National Trust for England, Wales and Northern Ireland**

Institutions have played a significant role in the preservation of heritage, and no institution exemplifies this better than the National Trust. Britain’s consciousness of a national heritage manifested in an interest in preserving landscape and historic buildings, and can be traced to the nineteenth century with the establishment of voluntary organisations such as the National Trust, for which legislation was passed in 1895, the first heritage law of its kind.<sup>804</sup> When documenting the emergence of national heritage law, the Trust’s role in both landscape protection and heritage conservation is thus central.

Since the mid-nineteenth century onwards, interest in the preservation of open spaces and common land had been slowly building. With the passage of the Statute of Merton in 1235, Lords of the Manor had been given the right to enclose their common lands, gradually leading

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<sup>801</sup> Boast 64.

<sup>802</sup> Ibid., 67.

<sup>803</sup> Ariese -Vandemeulebroucke 226.

<sup>804</sup> Other organisations include the Commons Footpaths and Open Spaces Preservation Society (1865) and the Society for the Protection of Ancient Buildings (1877). John Anthony Floy, ‘Sustainable Heritage Tourism, Climate Change and the National Trust.’ PhD diss., University of Birmingham, 2015, 14 and at 15-16.

over the centuries to increased private ownership of land across Britain.<sup>805</sup> Preservation of the ancient heritage of England was influenced by the Picturesque movement in the eighteenth century, which aestheticised wilderness, inspired nostalgia for ‘olden-time’ England, and begat the institutionalisation of visual landscape.<sup>806</sup> With enclosure came displacement of the rural poor, emparkment of the countryside and urban migration. Enclosure thus fostered a specific notion of heritage as a counterpoint to mass industrialisation, a constructed pastoral idyll that never existed. The National Trust was founded in the late nineteenth century to protect this type of heritage, as a response to these social and physical impacts of industrialisation on people and the environment, as well as the growing movement towards social welfare reform.<sup>807</sup>

The Trust’s founders were active campaigners for the preservation of open spaces, but open spaces for whom? It has been argued that while the Trust established itself as an organisation for effecting social change, it was in fact represented by a circle of educated, privileged and influential people, with a specific and exclusive vision of society, and remains centralised and paternalistic to this day.<sup>808</sup> Octavia Hill, one of the founders, was a social housing reformer interested in protecting the countryside from the evils of urban sprawl and building development.<sup>809</sup> The Duke of Westminster, who was influential in the Trust’s early years through his wealth and political connections, was well known for his patronage of projects associated with public parks and slum clearance.<sup>810</sup> However, the Trust’s dual role of preserving landscape with places of historic interest aligned the preservation of the commons movement with the late nineteenth century Fine Art tradition, which normalised a bourgeois interpretation of history and society.<sup>811</sup> This is in keeping with the entrenchment of landscape as visual space, rather than shaped by community custom, and the spatial cleansing practices that so often require the expulsion of local communities in order to regulate access to public space.

The conferment of the principle of ‘inalienability’ on Trust holdings established by the 1907 National Trust Act effectively legitimised the perception of protecting private property in the

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<sup>805</sup> Floy 15.

<sup>806</sup> *Ibid.*, 18.

<sup>807</sup> *Ibid.*, 16.

<sup>808</sup> *Ibid.*, 18.

<sup>809</sup> *Ibid.*, 15-16.

<sup>810</sup> *Ibid.*, 121.

<sup>811</sup> *Ibid.*, 15-16.

national interest, and as Floy notes, reinforced this image of the Trust as a substantial private landowner who may not necessarily have everyone's interests in mind.<sup>812</sup> Throughout the twentieth century, the organisation evolved in response to changing political, economic and social conditions. By the 1930s, the Trust, a charity since the National Trust Act of 1919, was operated largely on a voluntary basis through local committees across the country overseen by land agents, with direction from a central office in London. The Trust was governed by a Council and an Executive Committee whose expertise lay in matters of finance, land management and heritage. The National Trust Acts of 1937 and 1939 were introduced at a time when the safeguarding of English country houses was seen as important for retaining part of the national heritage and culture. The Acts enabled an owner to donate their estate to the National Trust with an endowment, in return for exemption from death duties and the right to remain at the premises rent-free. These properties were acquired as part of the Trust's statutory purpose to preserve buildings of historic interest.<sup>813</sup> Following the era of country house expansion in the 1950s, the Trust began to turn its attention to protecting the natural environment in the 1960s.<sup>814</sup>

The original mission of the Trust concerned the preservation of open spaces and countryside from urbanisation, but protecting the landowners who enclosed much of these spaces for their personal exclusive use and deprived communities of common land belies a fundamental contradiction that was intentionally replicated in the British colonies, where the heritage movement was championed by the National Trust.<sup>815</sup> Stately homes and colonial mansions represent the heritage of the upper socio-economic classes who are the arbiters of culture. While preserving these buildings is undoubtedly of great regional and/or national importance, they do not reflect the whole history and heritage of the general population. By cementing the position of the dominant actors in society while devaluing subordinate identities, the Trust reinforced the colonial power dynamic, and ensured the colony's continued existence.<sup>816</sup> Trusts are therefore designed to maintain and promote unjust uses of space in the plantationscape.

By failing to recognise the importance of vernacular, everyday heritage to the communities for whom it is significant, there is also a failing to afford associated protection. A lack of protection

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<sup>812</sup> P Wright, *On Living in an Old Country* (Verso 1985) 52 as cited in Floy 18.

<sup>813</sup> Floy 122.

<sup>814</sup> Ibid.

<sup>815</sup> Petrie 178.

<sup>816</sup> Petrie 177-78.

can result in the loss of such heritage, which can ultimately result in the fragmentation of these social communities. When communities have no cultural heritage with which they can identify, there is a lack of a sense of well-being through exclusion, and a prevailing feeling of disengagement and displacement from mainstream society; the result being no sense of meaning, significance or place.<sup>817</sup> As the concept of heritage value shifts, so the vernacular and everyday heritage has been recognised as possessing value for communities and enhancing cultural diversity for the nation as a whole.<sup>818</sup> Trusts therefore have the potential to play a significant role in the recognition and protection of the heritage of all communities.<sup>819</sup>

#### 4.5.2 National Trusts in the Lesser Antilles

The National Trust figures most prominently as the main institutional actor responsible for heritage in the Lesser Antilles, which is unsurprising as they are former British colonies. They are modelled on the English Trust, although a number of islands have adapted the Trust to suit their needs. While the National Trust for England, Wales and Northern Ireland is a registered charity which describes itself as independent from government,<sup>820</sup> this is in contrast to Trust organisations in the Lesser Antilles, which are parastatal bodies having a measure of political independence but charged with government advisory functions. The following analysis begins with the most traditional of these institutions, and then proceeds to examine the more recent iterations of the Trust.

The Barbados National Trust Act of 1961 appears to be the basis for the Grenada National Trust Act 1967, as both laws share similarities in format and structure. For both countries, the legislation primarily focuses on the powers and administration of the trust as an organisation. Both laws establish the Trust as a membership organisation in the preamble, identify the founding members and the objectives of the Trust, create a Council to carry out the executive functions of the Trust, and address aspects of company law, such as its tax-exempt status.<sup>821</sup> They have public education functions, can acquire property, manage funds for the benefit of

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<sup>817</sup> Ibid., 180.

<sup>818</sup> Ibid., 182.

<sup>819</sup> Ibid., 179.

<sup>820</sup> Floy 8.

<sup>821</sup> The Barbados National Trust Act 1961, s 2 (incorporation), s 3 (funds), and s 4 (rules of the Trust); and the Grenada National Trust 1967 s 2 (incorporation), s 3 (liability) and s 4 (establishment of the Council) are virtually identical.

protecting heritage, and are charged with pursuing ‘a policy of preservation, and acting in an advisory capacity.’<sup>822</sup> There are however, distinctions.

In terms of scope of the organisation, the Barbados National Trust (BNT) is empowered to list buildings and monuments of historic and architectural interest, while the Grenada legislation also includes objects of prehistoric value within its list, as well as the power to establish museums.<sup>823</sup> This latter power has never been exercised, and even unlikelier a prospect with the enactment of new museum legislation in Grenada. Grenada’s legislation states that certain Trust property shall be inalienable, which is a reminder that the Trust is a landowner representing private interests.<sup>824</sup> On the other hand, such a provision could secure the interests of the more general populace, since it includes not just architectural heritage, but a diversity of resources valued by local communities, such as marine and submarine areas, lakes and rivers.

The Barbados National Trust is very active in that country, working in tandem with the Barbados Museum and sitting on the Barbados World Heritage Committee. Legislation for the BNT has provisions that are identical to the law establishing the Grenada National Trust (GNT), and in some ways is even more limiting. Yet the BNT was effectively functioning prior to independence and continues to have a good working relationship with the Town and Country Planning authorities.<sup>825</sup> The GNT does not enjoy a similarly consistent relationship with the Government of Grenada and coordination is sporadic. It is rarely active in the listing and protection of sites, although it sits on a number of advisory heritage committees. It has never acquired or managed property.<sup>826</sup>

The St Vincent and the Grenadines National Trust Act of 1969 is similarly rudimentary, but provides clear, detailed objectives that demonstrate an incremental progression in the understanding of the role of the Trust as a heritage institution charged with the protection of heritage resources. The Trust is charged with the responsibility to locate, restore and conserve areas of beauty, including marine areas, and conserve the natural life therein, making it the first

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<sup>822</sup> The Barbados National Trust Act 1961, preamble; the Grenada National Trust Act 1967, preamble.

<sup>823</sup> The Barbados National Trust Act 1961, preamble; preamble of the Grenada National Trust Act 1967.

<sup>824</sup> Grenada National Trust Act 1967, s 5

<sup>825</sup> Interview with Dr Karl Watson, President, Barbados National Trust (Bridgetown, Barbados 16 March, 2016).

<sup>826</sup> Interview with Mr Michael Jessamy, Heritage Officer, Ministry of Tourism, Civil Aviation and Culture (St George’s, Grenada 1 April, 2016)

Trust in the Lesser Antilles to include wildlife conservation within its remit.<sup>827</sup> Another first is the responsibility to make and keep inventories, which are to include natural heritage resources.<sup>828</sup> No other Trust in the post-Independence period contains this explicit reference. The St Vincent National Trust is also responsible for cooperating with persons and associations having similar objects, which indicates that the St Vincent Act envisages the involvement of other heritage partners and recognises the value of participatory governance to heritage protection.<sup>829</sup> The St Vincent Act also contemplates the allocation of funds to specifically execute these projects, which is more forward thinking than the National Trust laws of Barbados and Grenada.<sup>830</sup> However, the Vincentian legislation does not specify these funding sources, such as the grants, donations and bequests to be applied to such protection, as is stated in the Barbados and Grenada trust legislation.

This progressive development of Trust law continues with the Saint Lucia National Trust Act, passed in 1975. As with the Grenadian legislation, the Saint Lucia Trust can establish museums, and as with its Vincentian counterpart, list both natural and cultural resources as heritage.<sup>831</sup> However, the Saint Lucian legislation varies the preservation criteria to include resources of ‘traditional interest’, although this term is not defined in the legislation, so it is not clear if this is in the colonial tradition, or traditional to the community.<sup>832</sup> The legislation establishes a council, the composition of which includes two members of the Saint Lucia Archaeological and Historical Society.<sup>833</sup> Inviting representation from fellow stakeholders ensures cooperation between the two main heritage institutions in that state. Unlike the aforementioned laws, the Saint Lucian legislation addresses matters of membership in subsidiary legislation.<sup>834</sup> The law also contains language concerning inalienability of Trust property.<sup>835</sup> Notably, this is the first National Trust law to address enforcement in detail, making it an offence to deface historic

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<sup>827</sup> Saint Vincent and the Grenadines National Trust Act, s 4(a)

<sup>828</sup> *Ibid.*, s 4(e); s 4(d) states ‘to list the flora and fauna in areas of natural beauty for the purpose of conservation.’

<sup>829</sup> *Ibid.*, s 4(h)

<sup>830</sup> *Ibid.*, s 4(i)

<sup>831</sup> Saint Lucia National Trust Act, s 4(a), (b) and (c), and section 4(d)

<sup>832</sup> *Ibid.*, s 4(d)

<sup>833</sup> *Ibid.*, s 6

<sup>834</sup> See the Saint Lucia National Trust Rules 1984, which are prepared by the Council pursuant to s 9 of the SLNT Act

<sup>835</sup> Saint Lucia National Trust Act, s 10

buildings, authorising officers to arrest offenders, and also making it an offence to obstruct such officers.<sup>836</sup>

Trinidad and Tobago's National Trust Act was established in 1991 and postdates that state's independence. This legislation has the most developed criteria for listing.<sup>837</sup> Key terms include 'listing', which means the identification, cataloguing and recording of any property of interest; 'Minister' means the Minister to whom responsibility for culture is assigned; 'monument' means any building, structure or other work of man or nature, whether above or below the surface of the land or the floor of the sea, of national architectural, aesthetic or historic interest; and 'property of interest' means any monument and any fossil, place or site of natural beauty or national, historic, scientific or archeological interest.<sup>838</sup> Interestingly, the legislation was later amended so that the definition of 'The Minister' is now the 'Minister to whom responsibility for the Trust is assigned.'<sup>839</sup> This indicates that the Trust is no longer permanently subsumed by the Ministry of Culture.

The functions of the Trinidad and Tobago National Trust (TNTT) include listing and acquiring property of interest as the TNTT considers appropriate, and advising the Government on the conservation and preservation of property of interest,<sup>840</sup> amongst the usual conservation functions. The Trust 'may with the approval of the Minister'<sup>841</sup> prepare lists. This includes the ability to revise or revoke listings.<sup>842</sup> The Minister shall maintain a Register of all lists prepared in accordance with this section and shall make such lists available to the public.<sup>843</sup> Damaging or destroying listed property is an offence, and orders for the protection of listed property can be executed.<sup>844</sup> However, a landowner can also appeal against listing.<sup>845</sup>

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<sup>836</sup> Ibid., ss 16(e) and 16(o), 17- 18

<sup>837</sup> National Trust Act of Trinidad and Tobago Act, s 2

<sup>838</sup> Ibid.

<sup>839</sup> The National Trust of Trinidad and Tobago (Amendment) Act, 2015, s 2

<sup>840</sup> National Trust Act of Trinidad and Tobago Act, s 5(a) and (h)

<sup>841</sup> Ibid., s 8

<sup>842</sup> Ibid., s 8(1)(c)

<sup>843</sup> Ibid., s 8(4)

<sup>844</sup> National Trust Act of Trinidad and Tobago Act, ss 27 and 26

<sup>845</sup> Ibid., s 9



A number of sections address the institutional arrangements of the Trust, which have been somewhat modernised. The Minister appoints 6 of the 11 members of the Council.<sup>846</sup> The Trust should consult with other government and non-government entities performing functions pertaining to preservation.<sup>847</sup> Mechanisms for coordination such as memoranda of understanding are to be used to facilitate implementation of integrated programmes for the preservation of monuments or the protection and management of the environment. Tiers of membership are prescribed in the first schedule to the Act, including family members, junior members, visiting members and corporate members, and this is the only Trust in the Lesser Antilles to recognise and address the diversity of the public.

The National Trust regulations are contained in the Second Schedule and outline the listing process in detail. The criteria for assessing whether a property should be listed appear to be heavily influenced by the World Heritage Convention, such as natural or outstanding beauty, ecological balance, uniqueness, artistic excellence, or aesthetics.<sup>848</sup> This would seem to justify protection of heritage on a hierarchical basis, and brings to mind the traditional, exclusionary philosophy of colonial heritage.<sup>849</sup> An optimistic interpretation would suggest that the criteria may be evidence of the Trust in transition. While the process employs thorough and robust standards, and the listing criteria focus on natural or outstanding beauty, aesthetics, rarity, uniqueness, and artistic excellence, reference is nevertheless made to provenance, Caribbean patrimony, and indigenusness to Trinidad and Tobago.<sup>850</sup> In regulation 4, which pertains to listing buildings, mention is made of sociological interest and association with well-known characters or events.<sup>851</sup> This Trust does seem to operate mainly in the manner of a landmarks commission, with a focus on preserving historic landmarks.

The Trust with the most modern legislation is located in St Kitts and Nevis. The Saint Christopher National Trust Act was passed in 2009 and its focused language reflects the experience of developing a functioning legislative framework for the protection of heritage. The long title states that the Trust is to ‘provide for the establishment of a National Trust for the

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<sup>846</sup> Ibid., s 12

<sup>847</sup> Ibid., s 15B(1)

<sup>848</sup> National Trust of Trinidad and Tobago Act, second schedule, reg 2

<sup>849</sup> Petrie 178.

<sup>850</sup> National Trust of Trinidad and Tobago Act, second schedule, reg 2(i), (j) and (m)

<sup>851</sup> Ibid., reg 4(c) and (e)

purpose of administering and preserving sites, buildings and objects of historical, archaeological, architectural, environmental and artistic importance to the Island of Saint Christopher'. The Act establishes a new organisational structure, as it transfers the assets of the Saint Christopher Heritage Society to this new reconstituted trust. Notably, the objects of the Trust are to be applied in a manner consistent with St Kitts' planning and environment and conservation legislation.<sup>852</sup> This recalls St Vincent's Historic Building and Antiquities Act discussed earlier in Section 4.3, which was amended to empower the Minister for Planning to identify heritage resources for listing, essentially subjecting heritage preservation to planning prerogatives.

The influence of the World Heritage Convention is seen not in the criteria as with the Trinidad and Tobago Trust Act, but in the delineation of cultural and natural heritage: the Saint Christopher Trust is responsible for the protection, preservation, restoration and interpretation of buildings, objects and monuments of archaeological, historical, architectural or artistic interest,<sup>853</sup> as well as the protection, conservation, interpretation and enhancement of the natural environment, including its animal and plant life, its submarine and subterranean areas and other places or natural and historical interest and beauty.<sup>854</sup> The Trust is also responsible for assisting in the preservation of traditional arts, craft, dance, song, language and other forms of expression, and documentary heritage, (manuscripts and photographic records, books and works of art) for the benefit and enjoyment 'of the people of the community'.<sup>855</sup> Here, traditional and community aspects of heritage appear to lean towards the general population and not the exclusive colonial heritage. The Trust is expected to promote Kittitian heritage through modern means, such as through the production of written, audio-visual, electronic or other appropriate material, and to present and interpret the cultural heritage of St Kitts by means of museum displays and exhibitions and other relevant productions, which implies a working relationship with local

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<sup>852</sup> Saint Christopher National Trust Act s4(2)(a): The objects of the Trust as set out in subsection (1) paragraphs (a) and (b) are not intended to derogate from or to supercede the provisions of the  
(a) National Conservation and Environment Protection Act; or  
(b) Development Control and Planning Act, 2000 and in the event that there is any conflict between the Acts referred to in subparagraphs (a) and (b) and this Act, the provisions of those Acts would prevail to the extent of the inconsistency.

<sup>853</sup> Saint Christopher National Trust Act 2009, s 4(1)(a)

<sup>854</sup> *Ibid.*, s 4(1)(b)

<sup>855</sup> *Ibid.*, s 4(1)(c) and 4(1)(d)

museums, or a blending of Trust and museum functions as with Grenada's National Trust legislation.<sup>856</sup>

The remaining functions are similar to those of the other National Trusts reviewed, concerning the attraction of funding and the vesting of property, as well as acting as a clearinghouse for knowledge and ideas.<sup>857</sup> But St Kitts' legislation also specifies that the Trust is to act in an advisory and lobbying capacity on:

- (a) matters concerned with the objects of the Trust that may be affected by public policy;
- (b) areas that have been designated or are to be designated as Trust property and the policy to be pursued for the preservation of the property and the means of enforcing that policy; and
- (c) matters that the Trust is desirous of promoting or supporting.<sup>858</sup>

The Trust is responsible for the management of the properties or sites specified in the Schedule, which lists an Amerindian petroglyph site, St Kitts' UNESCO site (Brimstone Hill Park), linking it to the WHC, a number of estates, and a catch-all provision for 'other monuments, buildings and sites which may from time to time be donated to, vested in or acquired by the Trust.'<sup>859</sup> Any immoveable property vested in the Trust shall be determined to be inalienable only by the Cabinet in consultation with the board. If any lands, properties or areas should be determined to be inalienable, then the Cabinet shall make an order so designating the land, property or area in question.<sup>860</sup> St Kitts' National Trust has therefore progressed the most in terms of overcoming the traditional features of the National Trust by recognising vernacular and community interests; nevertheless it is constrained by planning and environmental concerns.

## 4.6 Conclusion

Managing diverse cultural resources can be challenging for small island developing states in the postcolonial era. The colonial influence still denies the public a greater role in the definition and

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<sup>856</sup> Saint Christopher National Trust Act 2009, s 4(1)(e) and 4(1)(i)

<sup>857</sup> *Ibid.*, s 4(1)(f)- (k)

<sup>858</sup> *Ibid.*, s 6

<sup>859</sup> *Ibid.*, s 7 and schedule

<sup>860</sup> *Ibid.*, s 13

protection of heritage, and national decisions about land use reflect that property rights remain the cornerstone of the common law, while cultural heritage remains undefined and placeless. The laws appear fragmented, precisely because of this placelessness, and the museums, historical societies and National Trusts existing throughout the Lesser Antilles only seem to be effectively coordinated where they are integrated within the institutional framework for planning, as in Barbados. Nevertheless, the Barbados scenario calls for caution, as it is meant to support planning objectives which are not always compatible with heritage protection, a theme addressed in more detail in Chapter Five.

While the main purpose of antiquities laws is to promote and protect archaeological objects, the Authorised Heritage Discourse presented a view of heritage that was disembodied, without meaning for communities. When heritage institutions fail to consider place-based implications of collections, their wider meaning in community and environmental contexts, and when it assigns arbitrary numbers to determine their significance, they are likely to be ineffective in heritage protection. Museums remain underdeveloped, underused in terms of their ability to protect the cultural and natural heritage and protect cultural rights. These institutions must be embedded in the communities they serve to be effective.

The same may be said for the National Trust, which relied on an exclusive interpretation of heritage in order to maintain open spaces for the elite and protect their estates which were formed through enclosure. When tasked with the stewardship of heritage in the Lesser Antilles, these institutions reflect the spatial cleansing prerogatives of their precolonial ancestor; their legislation is conservative and fails to interrogate their role in the preservation of colonial spaces. As a result, National Trusts lack strong language for protection of the vernacular heritage in their legislation. There have been attempts to challenge this framework, and the National Trust's evolution makes it a barometer for the effectiveness of the heritage protection framework. Both Trinidad and Tobago and St Kitts and Nevis have been influenced by the WHC in drafting modern laws for the National Trust, seen in Trinidad's assessment criteria and in St Kitts' definition of heritage. Yet St Kitts appears to be the only state to truly modernise its trust by engaging in institutional consolidation and promoting heritage protection valued by its communities. Nevertheless, there has been no opportunity to address its effectiveness to date. Where other National Trusts remain active and effective, they must be aligned to traditional

planning legal principles (Barbados), or suffer the consequences (discussed in Chapter 7). National Trusts therefore have an important role to play in landscape protection and spatial justice, if they can evolve to meet the needs of post-colonial Caribbean societies. Most Trusts appear not to have maximised their potential, and this is in keeping with the role and state of heritage in the region.

Ultimately, an understanding of landscape is critical when drafting robust effective heritage legislation, because it ensures recognition of the relevance of community relationships with land to heritage and embeds sustainability in its protective mechanisms. Without this approach, heritage has only economic value in the form of tourist attractions, rather than any significance in the daily life of a citizen. When contextualized as part of an individual's environs, with a range of historical, social and scientific meanings for their community, it becomes possible to protect heritage as living custom. Legislation therefore should refocus its definitions and its protective mechanisms away from object- or site-based controls to a broader landscape concept and the spatial and temporal relationships that imbue it with meaning for communities. The current state of legislation reveals the deficiencies as a result of the object-based approach.

While Antigua's Antiquities bill attempts to move beyond the law of finds, it nevertheless finds itself in the same dilemma as Barbados and Grenada. These countries have restrictively drafted legislation, by focusing on a system of heritage exploitation, rather than protection, and prioritise arbitrary distinctions such as date range for valuing heritage objects, rather than what makes a place (and its features which might include such objects) significant. The heritage laws of St Kitts and Nevis, St Vincent and the Grenadines and Trinidad and Tobago in turn, are curtailed in effectiveness by planning prerogatives. An examination of planning law's relationship with heritage protection is the subject of the next chapter.