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

Byer, A.B.

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**Author:** Byer, A.B.

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## Chapter 6 National parks and protected areas legislation

### 6.1 Introduction

When national parks were first established to protect pristine natural environments, they were underpinned by imperial interests that manifested as environmental racism.<sup>970</sup> As Karen Fog Olwig and Kenneth Olwig write with respect to the English landscape garden parks discussed in Chapter Two, the natural park was originally the symbolic justification for the social and environmental changes which undermined the very landscape.<sup>971</sup> There was nothing natural about the English landscape park, as it was a pastoral illusion employed as a device to disguise the brutal economic realities of destruction of peasant village communities through enclosure.<sup>972</sup>

When transposed to the United States, the park ideal transcended the need to hold nature and society in balance, and now excluded society in the search for pure, untamed ‘wilderness’. Fog Olwig notes that this was spurred by the loss of the American frontier as the country rapidly developed.<sup>973</sup> Yellowstone Park, the first American national park, was originally admired for its resemblance to the British landscape garden park, a factor in its eventual preservation in 1872.<sup>974</sup> Local land use was considered an obstacle to conservation by the authorities, and in the colonies, local populations were either forcibly evicted or had their access rights severely curtailed to create parks and reserves.<sup>975</sup>

In slave colonies such as those in the Caribbean islands, colonial reserves dominated in order to maintain plantation agriculture, and also served as living laboratories that nurtured the embryonic disciplines of colonial botany and ecology. These proto-parks and their underlying philosophy have come to influence present day legislation in the region. This chapter considers the role of parks legislation in the protection of landscape today, and the implications for heritage

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<sup>970</sup> Dahlberg et al, 209.

<sup>971</sup> Fog Olwig and Olwig, ‘Underdevelopment and the Development of “Natural” Park Ideology’ 17.

<sup>972</sup> Ibid.

<sup>973</sup> Fog Olwig, ‘National Parks, Tourism and Local Development: A West Indian Case’ 22.

<sup>974</sup> Fog Olwig and Olwig, ‘Underdevelopment and the Development of “Natural” Park Ideology’ 18.

<sup>975</sup> Dahlberg et al, 210. See also Chapter Two on landscapes and the eviction of commoners and later Native peoples, and Chapter Three on landscape’s influence on the philosophical underpinnings of the World Heritage Convention.

protection. Specifically, parks and protected area laws in the Lesser Antilles are assessed in terms of their ability to protect the local heritage in the context of spatial justice.

## 6.2 The history of the English commons

As explicated in Chapter Two, Olwig's framework for landscape shows that the commons symbolically epitomised shared abstract values as well as democracy. Historically, the commons represented an area in which citizens of a landscape territory would have use rights in the common land. These rights derive their power from the common, customary, laws of the town or land, in contrast to the rights bestowed by statute and state bureaucracy.<sup>976</sup> Rights in the commons were central to the establishment of one's rights, membership and standing in the wider community, and guaranteed one's right to its protection and fellowship.<sup>977</sup>

Property rights and use rights are thus two different things: while 'property can be sold under legal statute and title, use rights are customary and rooted in an ever changing practice rather than title or deed, and cannot be sold as such. Customary rights are, in principle, unwritten and subject to constant revised in the light of current practice'.<sup>978</sup> Olwig emphasises that while the classic commons is nominally the property of the Lord of the Manor, the lord need not have use rights to the commons.<sup>979</sup> The present day park is largely inspired by the pastoral artistic tradition of the English landscape park ideal that flourished in the eighteenth century, masking the dissolution of communal land.<sup>980</sup> At the same time as many working English commons were being enclosed for intensive agriculture, many estate owners chose to allocate the lands surrounding the manor house to grassy parks.<sup>981</sup>

The commons today tend to carry meanings that draw upon these earlier notions of shared resources and regulatory regimes expressing participatory forms of governance rooted in ancient

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<sup>976</sup> The commons predate the institutionalisation of the modern state, since such rights could not have been expressed, as now, by the statutes and bureaucratic institutions that certify citizenship and issue passports. Rights were rooted in the land – to lose one's rights in the land was tantamount losing one's citizenship. See Kenneth Olwig, 'Commons & Landscape'. *Landscape, Law & Justice: Proceedings from a workshop on old and new commons*, Centre for Advanced Study, Oslo, 11-13 March 2003, 15.

<sup>977</sup> Olwig, 'Commons & Landscape' 19.

<sup>978</sup> *Ibid.*, 20.

<sup>979</sup> *Ibid.*, 17.

<sup>980</sup> Fog Olwig and Olwig, 'Underdevelopment and the Development of "Natural" Park Ideology' 18.

<sup>981</sup> Olwig, 'Commons & Landscape' 17.

custom, despite the fact that agriculture no longer dominates the landscape.<sup>982</sup> Olwig observes that this new expression of the commons is a recreative and symbolic commons, rather than an 'old' productive commons. The landscape of the commons might be insignificant in economic value, but socially and symbolically central in community life.<sup>983</sup> The contested character of the commons, Olwig argues, has less to do with friction between differing property institutions, than with a conflict at the abstract symbolic level of social ideals, between the institution of property itself and its symbolic opposite, the pastoral commons. They reproduce ancient tensions concerning 'the commons as a locus of community identity and cultural capital within a changing and evolving historical relationship between the symbolic and economic dimensions of the commons'.<sup>984</sup>

Parks in the UK today thus evolve out of the restoration, albeit to a very limited extent, of the commons, which had been enclosed since the 1700s, resulting in the loss of public spaces. During the first decades of the twentieth century, the British labour movement demanded access to the countryside by invoking the ancient customary rights of commons,<sup>985</sup> and now the idea that cities and nations ought to have shared common landscapes, in which the larger citizenry have rights of access, has gained traction.<sup>986</sup> The UK National Parks and Access to the Countryside Act 1949<sup>987</sup> implemented the so-called 'right to roam' long sought by the Ramblers' Association and its predecessors on certain upland and uncultivated areas of England and Wales. The Act required the mapping of all local rights of way, the establishment of national parks and the delegation of power to local authorities to secure access to open country areas.<sup>988</sup> It made provision for the recording, creation, maintenance and improvement of public paths and for securing access to open country, and amended the law relating to rights of way. This element of the act was implemented in stages as definitive maps of different regions were produced.<sup>989</sup>

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<sup>982</sup> Olwig, 'Commons & Landscape' 16.

<sup>983</sup> *Ibid.*, 19.

<sup>984</sup> *Ibid.*, 20.

<sup>985</sup> Olwig, 'Representation and alienation' 29.

<sup>986</sup> Olwig, 'Commons & Landscape', 17.

<sup>987</sup> Subsequently amended by the Wildlife and Countryside Act 1981 and the Countryside and Rights of Way Act 2000.

<sup>988</sup> Dahlberg 217.

<sup>989</sup> National Parks and Access to the Countryside Act 1949.

### 6.3 Challenges for commons in Caribbean parks law: Exclusive conservation and the emergence of colonial reserves

There is no counterpart to the UK National Parks Act in the Lesser Antilles, because there was no such restoration in the former British slave colonies, in which native populations had been displaced and local custom lost. Imperial landscape sought, throughout the world, to reduce the living and changing social and legal force of custom to picturesque tradition and costume, and thereafter obliterate it, often with disastrous social and ecological consequences. Enclosure thus often went hand in hand with the construction of reserves which transformed working commons (shaped by practice and custom) into ideal pastoral landscape scenes,<sup>990</sup> while literally alienating enslaved populations from the land.

As noted in Chapter Two, the earliest legal interventions in the Lesser Antilles relevant to heritage concerned the creation of colonial reserves. Before the 1760s, the effects of colonial economic globalisation were addressed on a piecemeal basis in order to protect local food, fuel, timber supplies, and what were already recognised as rare island species. However, in the mid-1760s, responses to deforestation in particular suddenly changed. A suite of forest reserve legislation, responding to fears of deforestation-induced climate change slowly began to spread around the world, especially throughout the French, British, and Dutch empires.<sup>991</sup> The King's Hill Act established a botanic garden in St Vincent and the Grenadines in 1763 as part of a wider improvement ideology.<sup>992</sup> Gillespie notes that this is the first commonly recognised environmental sanctuary, as in one established by the State, and not by an individual.<sup>993</sup>

Grove highlights that colonial conservation in the Eastern Caribbean was more about constructing a new landscape, through the displacement of 'primitive' peoples, since uncultivated forests represented wildness and lawlessness.<sup>994</sup> Property law and environmental law were not rooted in the needs and capacities of these environments, and a lack of understanding of these ecosystems quickly led to their decline.<sup>995</sup> Graham emphasises that this

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<sup>990</sup> Dillman 185.

<sup>991</sup> Damodaran 133-34.

<sup>992</sup> Grove, in *Nature and Society* 155.

<sup>993</sup> Alexander Gillespie, *Protected Areas in International Law* (Martinus Nijhoff 2007) 7.

<sup>994</sup> Grove, *Green Imperialism* 280.

<sup>995</sup> Beattie, Melillo and O'Gorman, 'Introduction' in Beattie, Melillo, and O'Gorman (eds), *Eco-Cultural Networks and the British Empire*, 3-21, 15.

dismissal of space makes property law promote a lack of care for place.<sup>996</sup> Therefore, conservation, especially in former colonial societies, is hardly ever neutral, even where grounded in science, and especially challenging when it comes to the natural environment and the historic relationship with communities. This is exclusive conservation, in which conservation is for the purpose of perpetuating colonialism, to the detriment of colonised environments and peoples.

#### 6.4 National parks legislation in the Lesser Antilles

The islands with national parks legislation in place in the Eastern Caribbean are Antigua and Barbuda, Dominica, Grenada, St Kitts and Nevis, and St Vincent and the Grenadines.<sup>997</sup>

Antigua and Barbuda's National Parks Act of 1984 makes no reference to protected areas. The long title of that act states that its purpose is to 'provide for the establishment of National Parks and a National Parks Authority; to make provision for the preservation, protection, management and development of the natural physical and ecological resources and the historical and cultural heritage of Antigua and Barbuda...' which indicates that both cultural and natural resources are contemplated for protection under national park status.

'Park' is defined very narrowly as a 'National Park established under and by virtue of section 20 and the Nelson's Dockyard National Park established under and virtue of section 24.'<sup>998</sup> Nelson's Dockyard was recently designated a UNESCO World Heritage site and has always held specific historical significance for Antigua and the international community given Admiral Horatio Nelson's association with the site. The Minister may, on the request of the National Parks Authority, by Order published in the Gazette declare any area of land or water or both land and water described in the Order to be a National Park; and such Order is subject to affirmative

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<sup>996</sup> Graham 205.

<sup>997</sup> Barbados and Saint Lucia do not have national parks legislation, although Saint Lucia has individual parks. The St Lucia Conservation Authority established under legislation allows for licences to conduct business in parks. Trinidad and Tobago has no national parks and protected areas legislation, although there have been plans to establish a national protected area system plan since the 1960s. Currently, protected areas have been declared under the Forest Act (Chap 6:01), Conservation of Wildlife Act (Chap 67:01), Environmental Management Act 2000 (Environmentally Sensitive Areas Rules), and the Marine Preservation and Enhancement Act (Chap 37:02). These areas formally designated total over 50 locations, and increased under an OAS project to 75 sites. A national protected areas policy was promulgated in 2011. See <<https://www.protectedareastt.org.tt/>> accessed 5 February, 2018.

<sup>998</sup> Antigua and Barbuda NPA 1984, s 2

resolution of the Legislature.<sup>999</sup> The ‘Minister’ means the Minister to whom responsibility for Economic Development and Tourism has been assigned, which suggests that national parks are envisaged as primarily commercial assets to be marketed as tourism attractions, and not solely as mechanisms for the protection of heritage.<sup>1000</sup>

The NPA establishes the National Parks Authority, which is empowered to protect, preserve manage and develop the natural, physical and ecological resources and the historical and cultural heritage of Antigua and Barbuda. The Authority is a non-profit making organisation using any surplus funds it acquires for the enhancement of the natural, historical and cultural resources of Antigua and Barbuda in general and, in particular, of Parks. The Authority may carry out or permit to be carried out the repair, restoration and maintenance of any historic building in Parks.<sup>1001</sup>

Management plans are authorised for the management of parks. Specifically, the plan should -

- (a) identify the Park and assess the present state of its development;
- (b) contain a statement of objectives and policies on matters relating to, but not limited to-
  - (i) the development and use of all land in the Park;
  - (ii) maintenance and protection of natural resources and sensitive environmental areas;
  - (iii) protection and conservation of heritage resources and archeological sites (including buildings, structures and views);
  - (iv) provision of infrastructure and transportation<sup>1002</sup>

Provision is made for the protection of both natural and heritage resources, but there is no mention of an integrated approach to their protection, affirming the placement of parks within the remit of tourism; parks are to be developed, rather than exist as public spaces from which development rights have been withdrawn. Notably, the heritage resources to be protected include buildings, structures and views, which is a reminder of landscape as both site and sight,

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<sup>999</sup> Antigua and Barbuda NPA 1984, s 20(1)

<sup>1000</sup> Ibid., s 2

<sup>1001</sup> Ibid., s 4(a), (c) and (d)(i)

<sup>1002</sup> Ibid., s 10



in which the extinguished commons creates a shift in the way landscape is perceived as scenic space.<sup>1003</sup> This legislation, however must now be interpreted in conjunction with Antigua's recently passed environmental legislation, discussed later in this chapter.

Antigua's national parks legislation may be contrasted with Grenada's National Parks and Protected Areas Act 1991, which addresses the designation and maintenance of national parks and protected areas. The relevant minister is the minister responsible for the national parks system,<sup>1004</sup> which is vested in the Governor-General for the public uses of Grenada.<sup>1005</sup> The Minister is supported by clear organisational infrastructure in the form of a National Parks Authority,<sup>1006</sup> through which the Minister discharges his functions, the National Parks Council, which is an advisory body with representatives from government and civil society in the areas of tourism, environment and heritage, and the National Parks Fund, comprising admission fees, contributions and borrowed moneys, from which the park system is administered, and park staff is to be remunerated.<sup>1007</sup>

Interestingly, through parks and protected areas are not distinguished in the interpretation section, the Minister may establish parks by proclamation, which may include private land leased, purchased or donated.<sup>1008</sup> Protected areas may be established by Order for the purpose of preserving the natural beauty or flora and fauna of the area; creating a recreational area; commemorating an historical event of national importance; or preserving an historic landmark or place or object of historic, prehistoric, archaeological, cultural or scientific importance.<sup>1009</sup> It may therefore be inferred that protected areas attract legal protection for a specific stated purpose.

The objectives of the National Parks Advisory Council is to ensure the land comprising the national parks system 'endures unimpaired' for the enjoyment of present and future generations.<sup>1010</sup> The legislation therefore appears to contemplate a sustainable development

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<sup>1003</sup> See Chapter Two.

<sup>1004</sup> Grenada NPPA 1991, s 2

<sup>1005</sup> *Ibid.*, s 3

<sup>1006</sup> *Ibid.*, s 7

<sup>1007</sup> *Ibid.*, ss 8, 9 and 10

<sup>1008</sup> *Ibid.*, s 4

<sup>1009</sup> *Ibid.*, s 5

<sup>1010</sup> *Ibid.*, s 3(3)

model, not the strict conservationist approach traditionally applied to protected areas. A high threshold is set for these resources to remain in an unimpaired state, which is the first reference to the concept of integrity. A regulatory framework has been created for parks and protected areas, but in both the Antigua and Grenadian legislation there is an absence of mechanisms for engaging communities. Antigua's legislation explicitly states that the Minister responsible for the parks system is the Minister for Economic Development and Tourism. Grenada's legislation is vague, saying only that it is the Minister responsible for the time being for the park system – currently national parks are the responsibility of the Ministry of Tourism.<sup>1011</sup>

National parks and protected areas legislation in Dominica and St Vincent and the Grenadines evince a higher level of protection for these resources than Antigua and Grenada. Dominica's National Parks and Protected Areas Act 1975 explicitly states that the national parks system is dedicated to the people of Dominica.<sup>1012</sup> All lands in the parks and all lands set apart as protected areas shall constitute the national parks system, and are hereby vested in the State and dedicated to the people of Dominica for their benefit, education and enjoyment. Lands within the national parks system are to be maintained and made use of so as to leave them unimpaired for the enjoyment of future generations,<sup>1013</sup> which is similar but stronger language than Grenada's legislation, which also calls for sustainable management of parks and protected areas. The provisions concerning the establishment of national parks and protected areas are similar to Grenada's.<sup>1014</sup> The organisational apparatus for park management takes the form of an advisory council but no provision is made for a fund or authority as with Grenada. Dominica's legislation establishes participatory mechanisms that are not found in Antigua or Grenadian law. Notably, any proposed management plan for parks and protected areas must be published in the Gazette for inspection by the public and mechanisms for providing comments are provided.<sup>1015</sup>

St Vincent and the Grenadines' National Parks Act 2002 states that the act is for the establishment of an authority for national parks and for further preservation and protection, management and development of the natural, physical and ecological resources and the historical

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<sup>1011</sup> Interview with Mr Michael Jessamy, Heritage Officer, Ministry of Tourism, Civil Aviation and Culture (St George's, Grenada 1 April, 2016)

<sup>1012</sup> Dominica NPPA 1975 as amended, s 3

<sup>1013</sup> *Ibid.*, s 3(1) and (2)

<sup>1014</sup> *Ibid.*, ss 4 and 5

<sup>1015</sup> *Ibid.*, ss 11(4) and (5)

and cultural heritage, which is similar to the objectives of Antigua's national parks act. However, national park is specifically defined as any park, reserve, river or beach declared a national park under this Act and any other site prescribed by Order.<sup>1016</sup> The Minister promotes national parks for the preservation and protection, management and development of the natural, physical and ecological resources and the historical and cultural heritage of St Vincent and the Grenadines.<sup>1017</sup>

The Vincentian legislation is the most far reaching in terms of innovation and protection. The National Parks, Rivers and Beaches Authority is the authority responsible for managing parks, and its functions include advocacy and the promotion of conservation, use of historic resources for promoting tourism, and establishing a system for prioritisation and classification of parks.<sup>1018</sup> It is noteworthy that the legislation contemplates a classification system and the need to identify areas for immediate protection, not mentioned by the other laws in the Lesser Antilles. The authority must also ensure that activities outside park boundaries do not negatively impact the parks, and mediate and resolve potential conflicts between users of the park, namely between fishermen and tourist interests – this is the only law to acknowledge potential conflicts in access to public space and the only law empowering the regulating authority to engage in conflict resolution.

Parks must have management plans, based on scientific data, and the Authority must maintain a list of natural resources, specifically rivers, streams, springs, swamps, waterfalls, water pools and beaches in the State. The Authority is also required to establish an effective interpretation programme, to establish public information and education programmes to create national conservation awareness, and to network with other agencies managing parks and conducting biological research. This is the only parks authority in the Lesser Antilles with such extensive roles allocated for community engagement, environmental monitoring and the collection of data for the sustainable management of parks.<sup>1019</sup>

The National Parks Board is empowered to set policy for the preservation, protection, management and monitoring of parks, as well as an advisory role to the Minister on the facilities

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<sup>1016</sup> SVG NPA 2002, s 2

<sup>1017</sup> *Ibid.*, s 3

<sup>1018</sup> *Ibid.*, s 4

<sup>1019</sup> *Ibid.*, s 7

necessary for use and enjoyment of the parks. This is the only law to make mention of a policy developed specifically for parks.<sup>1020</sup> Another mechanism addressed is the national park plan; this plan must include an inventory of the park's resources, policies concerning land use, maintenance and protection of natural environmental areas, and protection and conservation of heritage resources and historical and archaeological sites.<sup>1021</sup> However, the term 'heritage resources' is not defined, and not distinguished from 'historic resources' which is also used in the legislation.<sup>1022</sup> In preparation, review or amendment of a national park plan the Director shall consult with members of the local community, local authorities and other persons or groups of persons affected by the national park plan.<sup>1023</sup> This is the most participatory of the provisions on community engagement, more extensive than Dominica's, and notably absent in Antigua and Grenada's legislation.

The Vincentian legislation is also more robust than its Lesser Antillean counterparts because it prohibits acts in national parks, including the removal of archaeological or cultural material, and performing any act or engage in any activity likely to destroy, endanger or disturb wildlife.<sup>1024</sup> This is the only park legislation that prohibits clandestine excavations, although it should be noted that in some of the islands referenced above, offences concerning heritage are addressed in heritage or antiquities legislation. Nevertheless, St Vincent's law is the most advanced, in terms of the degree to which natural and cultural heritage is integrated, the number of mechanisms created to support effective management, and the participatory approach taken to managing public conflicts and involving local communities in park management.

It is clear that many of the islands have aligned park protection with the tourism industry. In many cases, parks are considered the responsibility of the tourism sector, as in Antigua and Grenada. In recent years, some countries have attempted to integrate park management with environmental conservation. Antigua has enhanced park protection with its new environmental legislation, the Environmental Protection and Management Act 2014 (hereafter EPMA 2014), which defines archaeological sites as 'an area declared to be a site of historical significance under this or the National parks act or any other related Act', indicating that the new

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<sup>1020</sup> Ibid., ss 8 and 9

<sup>1021</sup> Ibid., s 10(2)(b) and 10(2)(c)

<sup>1022</sup> Cf SVG NPA 2002, ss 7(2)(c) and 10(2)(c)(iii)

<sup>1023</sup> SVG NPA 2002, s 10 (3)

<sup>1024</sup> Ibid., s 23(1)(g) and s 23(1)(i)

environmental legislation is intended to complement Antigua's National Parks Act.<sup>1025</sup> 'Cultural resource' is now defined as 'a historical, architectural, archaeological or cultural site or an artifact, and includes a place or object that enhances the knowledge or preservation of the environment and cultural heritage of people of Antigua and Barbuda', while 'protected area' is defined as an area of national significance based on the biological diversity located in the area and can be a wildlife or forest reserve'.<sup>1026</sup>

The EPMA is also ambitious in terms of environmental law, including amongst its objects the sustainable management of the country's resources.<sup>1027</sup> The 'polluter pays' and precautionary principles, central guiding principles in environmental law, are both enshrined in the law.<sup>1028</sup> In addition, the EPMA refers to the St George's Declaration of Principles of Environmental Sustainability 2001, concluded under the auspices of the OECS, and is the normative framework for the sustainable development of the Eastern Caribbean sub-region (discussed in Chapter Three).<sup>1029</sup> This reference to the sub-regional authority is unique amongst the park laws reviewed in this chapter. The law strengthens the national framework for environmental management as well as offers enhanced and focused protection for the cultural heritage.

The EPMA makes provision for protected areas in Part VII of the legislation. Protected areas, although defined, do not explicitly provide for heritage resources.<sup>1030</sup> Interestingly, they speak to the need to 'propagate, protect, conserve, study and manage any ecosystem, flora, fauna or *landscape*'.<sup>1031</sup> A category for multiple-use resource areas, which offers protection to ecosystems and resources while providing secondary social and economic benefits is also created.<sup>1032</sup> A natural resources inventory that includes cultural, archaeological and historic sites is required.<sup>1033</sup> These protection mechanisms demonstrate attempts to manage the cultural and natural resource endowment in an integrated fashion, and contemplate a version of the commons though not expressed as such.

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<sup>1025</sup> Antigua EPMA 2014 s 2

<sup>1026</sup> *Ibid.*

<sup>1027</sup> Antigua EPMA 2014, s 4

<sup>1028</sup> *Ibid.*, s 7(5)

<sup>1029</sup> *Ibid.*, s 2

<sup>1030</sup> *Ibid.*, s 54

<sup>1031</sup> *Ibid.*, s 54(1)(b) (emphasis added).

<sup>1032</sup> *Ibid.*, s 54(1)(e)

<sup>1033</sup> *Ibid.*, s 76(1)(d)

St Kitts and Nevis introduced the National Conservation and Environment Protection Act (NCEPA) in 1987. The purpose of the legislation is to provide for improved management and development of the natural and historic resources of Saint Christopher and Nevis for purposes of conservation; the establishment of national parks, historic and archaeological sites and other protected areas of natural or cultural importance including the Brimstone Hill Fortress National Park (a UNESCO site); and the establishment of a Conservation Commission. Of the laws reviewed here, the Kittitian legislation is most explicit in its protection of natural and historic resources and sets their protection on equal footing.

Terms used in protected areas management as well as cultural resource management are defined. ‘National park’ is defined an area consisting of a relatively large land or marine area or some combination of land or sea containing natural and cultural features or scenery of national or international significance and managed in a manner to protect such resources and sustain scientific, recreational and educational activities on a controlled basis.<sup>1034</sup> ‘Protected area’ is defined as a national park, nature reserve, botanic garden, historic site, scenic site or any other area of special concern or interest designated under section 3(1) of this Act, which potentially contemplates public spaces.<sup>1035</sup> Protected area is therefore envisaged as an umbrella category. Notably though, the Minister is defined as ‘the Minister for the time being charged with the subject of Development’<sup>1036</sup>, which indicates which policy objectives the act is expected to align with.

The Minister, in consultation with the Conservation Commission, designates an area as protected by notice published in the Gazette.<sup>1037</sup> The objectives of protected areas include the preservation of biological diversity, the protection of representative biological communities, sustaining ecological processes, the protection of selected natural sites of scenic beauty or of special scientific, ecological historic or educational value, including sites that are already degraded and need protection for restoration or sites that may become degraded if not protected; and to maintain or restore historic sites of cultural, archaeological, scientific or educational value or

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<sup>1034</sup> NCEPA 1987, s 2

<sup>1035</sup> Ibid.

<sup>1036</sup> Ibid.

<sup>1037</sup> NCEPA 1987, s 3

interest.<sup>1038</sup> The duty to consult the general public is as extensive as that of the Vincentian legislation. All persons enjoying rights within the boundaries of a proposed protected area are invited to raise any claims and objections at a specified time and place.<sup>1039</sup>

The selection, management and administration of any protected area established under this Act is the responsibility of the Minister in consultation with the Conservation Commission.<sup>1040</sup> The Conservation Commission has representation from government and civil society across both islands in the state of St Kitts and Nevis. The functions of the Conservation Commission are to advise the Minister on the selection of protected areas, and the care and maintenance of such areas.<sup>1041</sup> The Commission is responsible for promoting conservation as part of long-term national economic development, and acts as trustee of any protected area, historic building or monument.<sup>1042</sup> The requirements for management plans and the contents of such plans are also addressed.<sup>1043</sup> Similar to the Vincentian legislation and the updated Antiguan EPM Act, the Kittitian legislation promotes a variety of mechanisms such as inventories and management plans, and the use of multipartite bodies to ensure representation is cross-sectoral and interdisciplinary. What is clear is that even in those countries that integrate natural and cultural resources in one piece of legislation, the management of these resources remains separate. The dichotomy between natural and cultural resources remains intact and requires coordination between different pieces of legislation and the institutions they establish such as the National Trust and other foundations to conserve these resources.

Park management remains under-developed due to the lack of involvement of local communities and the limited mechanisms for their representation – St Vincent is the lone outlier in this regard and even this community involvement is regulated by the authorities. In Grenada, the national park system, despite the organisational structure created in legislation, has never been functional. There are attempts to recognise public spaces and commons, as in Antigua, but when public spaces are designed and managed in detachment from local communities, these resources are

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<sup>1038</sup> NCEPA 1987, s 4

<sup>1039</sup> *Ibid.*, s 5

<sup>1040</sup> *Ibid.*, ss 7(1) and 8

<sup>1041</sup> *Ibid.*, s 10

<sup>1042</sup> *Ibid.*, s 11

<sup>1043</sup> *Ibid.*, ss 13 and 14

ultimately undermined because the relationship shared with these communities often plays a role in their effective functioning.<sup>1044</sup>

## 6.5 Conclusion

Parks and protected areas in the Caribbean exhibit a complex provenance, having emerged during colonialism as colonial reserves to sustain plantation agriculture and the lifestyles of the planter elite. Laws creating parks and protected areas are among the earliest forms of landscape protection, established to preserve pristine environments, while ironically ignoring that these areas were in fact man-made landscapes, modified over ensuing centuries through local land use, first by Amerindian populations, then by enslaved African and where relevant indentured Asian labour. This inherited preservationist approach continues to be applied to these spaces, excluding the general public in the interest of the environment, while ensuring access for elite or expert interests, such as tourists, developers and scientists. Legally, the public does possess access rights, but the design of parks and the cost to access and use them both create obstacles to maintaining ongoing relationships with these resources. Ultimately, this has implications for recreational activities, customary practices, livelihoods, recreational activities, community cohesion and local identity. In spite of recent recognition of the need for local participation, local communities are largely absent from parks law in the Lesser Antilles, which instead are being developed as tourism assets.

Dahlberg notes that the ideological and institutional legacy surrounding the conceptualisation of contemporary national park policy will influence its effectiveness.<sup>1045</sup> This institutional legacy is very much dependent upon the type of colony concerned. In this case, the blueprint for Caribbean slave colonies entrenches eco-imperialist institutions that are hard pressed to recognise local community customs when they have been designed to expunge them. It is here that spatial justice becomes relevant, challenging the continuation of colonial ecology, and by extension, spatially unjust colonialism. True access requires a restructuring of parks, no longer

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<sup>1044</sup> See Andreas Philippopoulos-Mihalopoulos, who writes that spatial justice is understood in its simplest form as a geographically informed version of social justice', in 'Spatial justice: law and the geography of withdrawal' (2010) *International Journal of Law in Context* 6: 201-216 at 201; Peter Bengtson, 'Just Gardens? On the Struggle for Space and Spatial Justice' (2013) 39 *Australian Feminist Law Journal*: 79-92.

<sup>1045</sup> Dahlberg 220.



as exclusive reserves but as public spaces, in order to give recognition to the relationship with local communities that maintain and use them. The next chapter discusses some high-profile conflicts in the Lesser Antilles that demonstrate these issues relevant to the protection of landscape as public space and highlight the problems concerning the legal framework in practice.