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

Byer, A.B.

Citation

Byer, A. B. (2020, June 24). *Heritage, landscape and spatial justice: new legal perspectives on heritage protection in the Lesser Antilles*. Retrieved from <https://hdl.handle.net/1887/123185>

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Issue Date: 2020-06-24

Chapter 7 Examples of conflicts over landscape as public space

7.1 Introduction

Cultural heritage law in the Lesser Antilles has not given rise to a rich body of case-law from which projections can be made about the implementation and enforcement of the law, save for instances where heritage protection is incidental, such as a challenge to a refusal of development permission where the site contains heritage resources, or an injunction to prevent the destruction of such resources where a building order has been violated.¹⁰⁴⁶ However, this chapter highlights examples of conflicts concerning public space that are worth analysing for the insight they provide into ongoing divergences between local and prescribed land uses in the law, which in turn underscore the symbiotic relationship between heritage and landscape protection. Importantly, these cases also reveal the extent to which the legal framework for heritage and landscape in the Lesser Antilles is spatially just in practice.

Regulation of the landscape implicates not only heritage law, but planning and environmental legislation as well, so these examples often involve these conflicting spheres of law, which were reviewed in Chapters Four to Six. Emphasis is placed on how legal mechanisms are employed (or not) to resolve these conflicts. In some cases the administration of the law is a critical factor in successful implementation. Where mandates are broad or obscure, administrators can contribute to the development of policy, which in turn can strengthen law through successive amendments, making it more locally specific. Poor administration therefore functions as a barometer for the efficacy of legislation.¹⁰⁴⁷

These scenarios demonstrate the challenges of current legislation to meet the needs of local communities. Significantly, communities are often the advocates for implementing sustainable heritage protection as part of a wider strategy to secure their livelihoods and way of life. The cases presented here are the most high-profile recent examples of spatial injustice concerning heritage resources. The example from Trinidad and Tobago highlights the challenges of protecting public spaces where the underlying framework is outdated and ineffective and serves as a useful introduction to the legal issues surrounding protection of public spaces in the region.

¹⁰⁴⁶ This is similar to other common law jurisdictions. See Petrie 188.

¹⁰⁴⁷ Petrie 188.

The Saint Lucia example focuses on the inherent tensions between policy and administration within heritage institutions. The first example from Grenada emphasises the shortcomings of the planning process where communities and heritage protection are concerned, while the case from St Vincent and the Grenadines serves as a valuable counterpoint. Finally, the second example from Grenada shows how implementation of appropriate parks law has become a springboard for spatial justice issues in that island, particularly as it relates to use and access. In all cases, it is clear that protection of the landscape, whether natural, cultural or public space, relies on coordinating various areas of law, which adds another layer of complexity and weighs against adopting a narrow approach to this issue.

7.2 Greyfriars Church of Scotland, Trinidad and Tobago

The Greyfriars Church of Scotland was a nineteenth century church located in Port of Spain, the capital of Trinidad and Tobago. Greyfriars was home to the first public library in the country, the location of the first meeting of the antislavery movement, and the first church to welcome all persons equally without regard to class or race, as well as permit parishioners to marry across religions.¹⁰⁴⁸ The church also became a sanctuary for refugees, namely displaced Protestants from Madeira, and has symbolised the integration of new cultures to the Trinidadian melting pot.¹⁰⁴⁹

In addition, Greyfriars was a fixture of Woodford Square, a fountained square situated in the heart of Port of Spain. The Square is lined by architecturally significant buildings such as the Red House (whose restoration has been delayed by the discovery of Amerindian burial remains during excavations), Holy Trinity Cathedral, the Old Public Library and the Old Fire Station – the latter formerly home to Saint Lucian poet and Nobel laureate Derek Walcott’s Trinidad Theatre Workshop. During the country’s independence movement, led by Dr Eric Williams, the

¹⁰⁴⁸ Kim Boodram, ‘National Trust to take legal action’ (*Trinidad Express*, 1 September 2015)

<https://www.trinidadexpress.com/news/local/national-trust-to-take-legal-action/article_95ccba41-68d0-575b-8755-6a1e933f5da2.html> accessed 30 July 2018

¹⁰⁴⁹ Mark Clarke, ‘Save our heritage for future generations’ (*Trinidad Express*, 2 December 2014)

<https://www.trinidadexpress.com/news/local/save-our-heritage-for-future-generations/article_d6dacaab-75c0-5b9d-bad1-de8b4a266f28.html> accessed 30 July 2018 and see also Angela Pidduck, ‘Historic church in dire need of repairs and assistance’ (*Trinidad and Tobago Newsday*, 3 October 2010)

<<https://archives.newspaper.co.tt/2010/10/03/historic-church-in-dire-need-of-repairs-and-assistance/>> accessed 30 July 2018

square was dubbed ‘the University of Woodford Square’ for its role as a forum for political gatherings.¹⁰⁵⁰ It was designated by the Trinidad and Tobago National Trust as a heritage district in 2015.¹⁰⁵¹

Greyfriars was one of two Anglican churches in the capital in need of refurbishment.¹⁰⁵² Despite a series of renovations, the property was in an advanced state of disrepair and eventually sold to businessman and real estate developer Alfred Galy in August 2014.¹⁰⁵³ There was immediate outcry, pointedly at the Trinidad and Tobago National Trust for not listing the church, which would have given it legal protection against such a fate.¹⁰⁵⁴ This prompted the TTNT to issue a statement on 13th August, 2014 in which they expressed concern at ‘the sale of one of our architectural treasures.’¹⁰⁵⁵ The Council of the TTNT stated that the church was recorded in its National Inventory of Cultural and Natural Heritage as a historical site, and was in the process of being listed in accordance with its legislation.¹⁰⁵⁶ The TTNT also advised that prior to the sale of Greyfriars, the National Trust through its member and technical adviser, the Historical Restoration Unit, of the Ministry of Works and Infrastructure, advised the Town and Country Planning Division on the management needs for the property as a built heritage monument, in keeping with conservation guidelines. Nevertheless the listing process was a protracted one, requiring extensive surveys, valuations and planning.¹⁰⁵⁷

¹⁰⁵⁰ ‘Repurposing of Woodford Square’ (*Trinidad and Tobago Guardian*, 23 November 2014)

<<http://www.guardian.co.tt/article-6.2.390758.5a110e2900>> accessed 30 July 2018

¹⁰⁵¹ Joshua Surtees, ‘Trinidad’s forgotten architectural gems’ (*The Guardian*, 16 February 2015)

<<https://www.theguardian.com/travel/2015/feb/16/trinidad-port-of-spain-architecture-tour>> accessed 30 July 2018

¹⁰⁵² Pidduck, ‘Historic church in dire need of repairs and assistance’, (*Trinidad and Tobago Newsday*, 3 October 2010)

¹⁰⁵³ Kalifa Clyne, ‘Owner of Greyfriars: Toxic roof removed from church hall’ (*Trinidad and Tobago Guardian*, 13 November 2014)

<<http://www.guardian.co.tt/article-6.2.390342.7e91ca0fce>> accessed 30 July 2018

¹⁰⁵⁴ Mark Fraser, ‘Greyfriars Church sold’ (*Trinidad Express*, 12 August 2014)

<https://www.trinidadexpress.com/news/local/greyfriars-church-sold/article_2b81668a-e44a-5bee-b54f-7738c63cb660.html> accessed 30 July 2018

¹⁰⁵⁵ ‘National Trust moves to protect historic Greyfriars Church’ (*Trinidad Express*, August 2014)

<https://www.trinidadexpress.com/news/local/national-trust-moves-to-protect-historic-greyfriars-church/article_75b7d56d-c75a-5320-8e9a-f9e476137a98.html> accessed 30 July 2018

¹⁰⁵⁶ See Chapter Four for a discussion of the listing process pursuant to the National Trust of Trinidad and Tobago Act.

¹⁰⁵⁷ ‘Save Greyfriars Church’ (*Trinidad Express*, 14 August 2014)

<https://www.trinidadexpress.com/news/local/save-greyfriars-church/article_b04f74c8-f023-5fe8-9741-c64a96d5b47e.html> accessed 30 July 2018

Mr Galy's response to the TTNT summarises the traditional approach to heritage in the region. He explained that of the two church properties, it was decided by church authorities that the other, St Ann's had more architectural merit and therefore worth refurbishing.¹⁰⁵⁸ According to Galy, 'From a practical pragmatic position, they had to save one of the two in the city and they saved the better of the two, also a very old icon, which has architectural merit and lends itself more to restoration'.¹⁰⁵⁹ It is notable that he cites the architectural features of St Ann's as making it more deserving of protection, compared to the community and historical value of Greyfriars. He further justifies his proposed development of the site by stating that, 'The building was not habitable, and was not conducive to spiritual worship. That's why it fell into disrepair, and became over the past ten years, a place for druggies, for people to defecate and to do all manner of things.'¹⁰⁶⁰ He underscores his position by emphasising the vacuity of the space: 'When I purchased [Greyfriars], there were no artefacts, there were no religious symbols, all the stained glass, the organs were all removed...and the ritual of the deconsecration had taken place. There was nothing in it at all.'¹⁰⁶¹

Galy appointed a team comprising an architect and an engineer to advise him on the future of Greyfriars by mid-September 2014. He also stated that the National Trust should prioritise which buildings it intended to save since it was virtually impossible to save all the dilapidated historical edifices. 'Not all buildings are good for restoration. The Trust has to understand they cannot save everything.'¹⁰⁶² The comments indicate a limited understanding of the role of the Trust, and its criteria for preserving historic properties. In Chapter Four it was noted that Trust legislation contains criteria for designating heritage as protected, which included sociological interest and association with well-known characters or events – Greyfriars certainly meets these requirements.¹⁰⁶³ He also stated that he had submitted an application to the Town and Country

¹⁰⁵⁸ Richard Charan 'Too late for Greyfriars' (*Trinidad Express*, 24 August 2015)
<https://www.trinidadexpress.com/news/local/too-late-for-greyfriars/article_3560b1be-c9e3-5c7f-a1ee-ca2e7224edc9.html> accessed 30 July 2018

¹⁰⁵⁹ Richard Charan 'Too late for Greyfriars' (*Trinidad Express*, 24 August 2015)

¹⁰⁶⁰ Charan, 'Too late for Greyfriars' (*Trinidad Express*, 24 August 2015)

¹⁰⁶¹ Ibid.

¹⁰⁶² Mark Fraser 'I felt compelled to buy Greyfriars' (*Trinidad Express*, 17 August 2015)
<https://www.trinidadexpress.com/news/local/i-felt-compelled-to-buy-greyfriars/article_058b9f52-a7bc-53ba-8f27-80833b74137d.html> accessed 30 July 2018

¹⁰⁶³ National Trust of Trinidad and Tobago Act, second schedule, reg 4(c) and (e).

Planning Division for the development of the site which ‘will embrace culture, foods, our local foods, general business, sports and a range of business.’¹⁰⁶⁴

Lack of architectural merit would reduce any available support under the Planning Act, already limited in criteria for assessing historic value and with weak protections via preservation orders.¹⁰⁶⁵ Nevertheless, public dissatisfaction was expressed via a flurry of letters to the national newspapers. In November 2014, Minister Rodger Samuel received a petition with 2,000 signatures, calling on him to ensure the church was saved. ‘I was surprised at the amount. We might not have recognised that so many people were interested in this country’s history,’ he added. Public pressure was the impetus needed to trigger the planning process, and he noted that his ministry would review the case, and had contacted the owner to state its intent of making a Greyfriars an historic site. This involved preparation of a dossier on the site, publishing the information for public perusal and a final review by the Ministry of Legal Affairs.¹⁰⁶⁶

However on 9th November, 2014, a contractor removed the roof of the church hall in what appeared to be the start of demolition. Protestors, mainly from the activist group Citizens for Conservation, which used its Facebook page to rally supporters, obstructed the demolition crew and occupied the church hall to prevent further progress.¹⁰⁶⁷ Galy subsequently denied that there were plans for demolition, stating that a preliminary health and safety assessment of the property was being conducted and the roof had been removed because it was filled with asbestos.¹⁰⁶⁸ The Port of Spain City Corporation issued a stop order to Galy for demolishing without a proper permit, and he duly applied for the required demolition notice. The city engineer’s office advised that the notice was on hold as the corporation was in discussions with Galy and the Town and Country Planning Division.¹⁰⁶⁹

¹⁰⁶⁴ Charan, ‘Too late for Greyfriars’ (*Trinidad Express*, 24 August 2015)

¹⁰⁶⁵ See Chapter Five for a discussion of Trinidad and Tobago’s planning legislation.

¹⁰⁶⁶ Kalifa Clyne, ‘State moves to save Greyfriars’ (*Trinidad and Tobago Guardian*, 25 November 2014) <<http://www4.guardian.co.tt/news/2014-11-25/state-moves-save-greyfriars>> accessed 30 July 2018

¹⁰⁶⁷ Mark Fraser, ‘Protesters block demolition crew: confrontation at Greyfriars Church’ (*Trinidad Express*, 10 November 2014) <https://www.trinidadexpress.com/news/local/protesters-block-demolition-crew/article_80a66872-36ba-54c8-865b-7b54aa1ab2c3.html> accessed 30 July 2018

¹⁰⁶⁸ Ibid.

¹⁰⁶⁹ Michelle Loubon, ‘Galy defends demolition: Church a danger to the public’ (*Trinidad Express*, 31 August 2015) <https://www.trinidadexpress.com/news/local/galy-defends-demolition-church-a-danger-to-the-public/article_14008d6d-bafa-5a4c-8451-65936f0345dc.html> accessed 30 July 2018; Clyne, ‘State moves to save Greyfriars’, (*Trinidad and Tobago Guardian*, 25 November 2014)

Two weeks later, Galy returned to the site and continued demolition works, resulting in an injunction being filed by the corporation to compel him to desist. Following his 4th January, 2015 court appearance, the parties agreed to attempt to settle the matter out of court.¹⁰⁷⁰ Notably, the injunction, which resulted in an action before the High Court, concerned not the TTNT's notice of intent to list the property as protected heritage, but the illegal demolition of the site as Mr Galy had not been granted a permit.¹⁰⁷¹ According to the Municipal Corporations Act, no person may pull down or remove from its site any building within any municipality unless, not more than 14 days and not less than two days before such removal, he gives notice in writing. Any person who pulls down or removes any building from its site, and any owner of any such building who causes or permits any building to be removed from its site without having first given the notice would be liable to a fine of TT\$4,000.¹⁰⁷²

Three months after he was ordered to halt the demolition, Mr Galy submitted a method statement on 12th February, 2015 to the Port of Spain City Corporation outlining his plans for clearing the site.¹⁰⁷³ Nevertheless, the Council of the National Trust had gazetted its intention to list the Greyfriars Church of Scotland as a heritage site on 8th December, 2014. On 29th August, 2015, eight days after the Trust had listed the building, the demolition was completed.¹⁰⁷⁴ This is unfortunate as listing does not preclude development of a site; it was the developer who considered the intention to list a threat to his development plans.¹⁰⁷⁵ The TTNT explained that the effect of the listing meant that Mr Galy had to obtain permission from the Port of Spain

¹⁰⁷⁰ 'Bid to settle Greyfriars out of court' (*Trinidad Express*, 5 January 2015)

<https://www.trinidadexpress.com/news/local/bid-to-settle-greyfriars-demolition-out-of-court/article_857e6357-3494-502e-a423-c29ae55b42d3.html> accessed 30 July 2018

¹⁰⁷¹ Anna Lisa Paul 'Greyfriars owner submits demolition plan', (*Trinidad and Tobago Guardian*, 22 February 2015) <<http://www.guardian.co.tt/news/greyfriars-owner-submits-demolition-plan-6.2.375536.45d102b5ce>> accessed 30 July 2018 :

Adding that their concern did not lie with Galy's decision on whether or not he intended to preserve the remaining structure, the official said: 'The Corporation is concerned with the structural and safety aspects...' Discussions are said to be continuing between Galy and the Ministry of Diversity to determine the next step.

¹⁰⁷² The Trinidad and Tobago Municipal Corporations Act 2015, s 164 (1), (2) and (3). See also Paul, 'Greyfriars demolition stopped' (*Trinidad and Tobago Guardian*, 12 November 2014) <<http://www4.guardian.co.tt/news/2014-11-12/greyfriars-demolition-stopped>> accessed 30 July 2018

¹⁰⁷³ The official revealed that Galy had addressed several issues, including how he plans to safely approach further demolition, clear the site of rubble and other debris, safe removal of the asbestos roof and other conditions he would adhere to if he continued with the demolition. Paul, 'Greyfriars owner submits demolition plan' (*Trinidad and Tobago Guardian*, 22 February 2015)

¹⁰⁷⁴ Charan, 'Historic church falls' (*Trinidad Express*, 30 August 2015)

¹⁰⁷⁵ 'Greyfriars owner hires engineer' (*Trinidad Express*, 5 December 2014)

Corporation and the Town and Country Planning Division to undertake any alteration, demolition or destruction of this listed property, as well as that of the National Trust. This was never granted, and the Trust intended to seek redress from Mr Galy.¹⁰⁷⁶

The Mayor of Port of Spain, Tim Kee, confirmed that Greyfriars Church was not protected. The building was situated on freehold land and not listed as a protected property and as such, the Port of Spain City Corporation could not control Galy's actions.¹⁰⁷⁷ However, there are indications that Galy was not negotiating in good faith, as an intention to list the property was served on him in November by the TTNT,¹⁰⁷⁸ and he had attended meetings with Citizens for Conservation and other stakeholders for two weeks prior to demolition. Minister Samuel stated that the Town and Country Division had been in talks with Mr Galy concerning preservation of the church and that 'no demolition approvals were granted by the Port of Spain City Corporation' for the action.¹⁰⁷⁹

The TTNT attempted to demonstrate to the owner that the Greyfriars historical site could be developed sensitively and still operate as a viable business.¹⁰⁸⁰ Galy acknowledged that several meetings had been held with the National Trust and public authorities before demolition began, and there were discussions about retaining and restoring the property. However, he believed the lack of listing by the TTNT up to September 2014 and its subsequent listing following his purchase of the property reflected an inconsistent stance on the TTNT's part.¹⁰⁸¹ He admitted that the intention to list triggered the partial demolition, citing it as a 'red flag'.¹⁰⁸²

Nevertheless, the Council of the National Trust had gazetted its intention to list the Greyfriars Church of Scotland as a heritage site on 8th December, 2014. The Notice of Intention to List was signed by chairman of the Trust Professor Winston Suite. The church was to be named as part of

¹⁰⁷⁶ Kim Boodram, 'National Trust to take legal action' (*Trinidad Express*, 1 September 2015)

¹⁰⁷⁷ 'Government to rescue Greyfriars Church' (*Trinidad Express*, 26 November 2014)

<https://www.trinidadexpress.com/news/local/govt-to-rescue-greyfriars-church/article_e8c46649-8e93-5415-9890-ff60bd1a6643.html> accessed 30 July 2018

¹⁰⁷⁸ Subsequently gazetted – see the Trinidad and Tobago Gazette No. 156 of 2014, 8 December 2014.

¹⁰⁷⁹ Lisa Allen Agostini, 'No surprise here', (*Trinidad and Tobago Guardian*, 2 December 2014)

<<http://www.guardian.co.tt/article-6.2.391123.c15833cc9e>> accessed 30 July 2018

¹⁰⁸⁰ Kim Boodram, 'National Trust to take legal action' (*Trinidad Express*, 1 September 2015)

¹⁰⁸¹ Charan, 'Too late for Greyfriars' (*Trinidad Express*, 24 August 2015)

¹⁰⁸² Mark Fraser 'Greyfriars owner hires engineer' (*Trinidad Express*, 5 December 2014)

<https://www.trinidadexpress.com/news/local/greyfriars-owner-hires-engineers/article_dac1ab5f-3c5f-5a37-8144-39f664e96470.html> accessed 30 July 2018

the Woodford Square Historical District.¹⁰⁸³ The owner was notified when the Intention to List was gazetted and the Notice was also published in all three national newspapers.¹⁰⁸⁴ The Greyfriars property is now listed as demolished on the Heritage Asset Register of the TNTT.¹⁰⁸⁵

The TNTT's inability to identify, manage and protect a site valued by the public, and private landowners' ability to override any concerns in spite of opportunities for collaboration, is an example of the challenges posed to heritage protection. Perhaps Greyfriars has served as a cautionary tale, because other Woodford Square properties such as the Gingerbread House have since been restored rather than abandoned to suffer the same fate.¹⁰⁸⁶ Nevertheless, the failure of heritage law to protect heritage sites is apparent in the financial and political constraints placed on heritage institutions, the outdated process for listing and protecting, as in this case, the TNTT's register of heritage sites,¹⁰⁸⁷ the absence of procedural mechanisms for protecting heritage sites by recognising place-protective behaviour of communities affected by the loss of heritage as participatory decision-making, the use of preliminary assessments of the impact of development on heritage sites, and the application of the principle to make good where damage has been incurred.

While Mr Galy was roundly criticised, and the TNTT threatened legal action for the breach of the National Trust Act,¹⁰⁸⁸ it has been noted that the final demolition was a calculated risk on his part, as the fine for proceeding without a permit was only a few thousand dollars, hardly a punitive figure when one considers that the development was worth over TT\$30 million. The disparities that exist today with regard to fines and modern development signal the need to

¹⁰⁸³ Trinidad and Tobago Gazette No 156 of 2014, 8 December 2014; Anna Lisa Paul, 'Greyfriars owner submits demolition plan' (*Trinidad and Tobago Guardian*, 22 February 2015) <<http://www.guardian.co.tt/news/greyfriars-owner-submits-demolition-plan-6.2.375536.45d102b5ce>> accessed 30 July 2018

¹⁰⁸⁴ Trinidad and Tobago Gazette No 82 of 2015, 4 August 2015; Kim Boodram, 'National Trust to take legal action' (*Trinidad Express*, 1 September 2015)

¹⁰⁸⁵ Greyfriars Church was listed as stage 7 according to the Trust criteria. The Heritage Asset Register is the official list of Trinidad and Tobago's historic sites that are worthy of notation and preservation. The register is authorised by the National Trust of Trinidad and Tobago's Council: <<http://nationaltrust.tt/location/greyfriars-church-hall/>>; Richard Charan 'Historic church falls' (*Trinidad Express*, 30 August 2015) <https://www.trinidadexpress.com/news/local/historic-church-falls/article_e571c8db-4468-5467-a683-f3c282a36481.html> accessed 30 July 2018

¹⁰⁸⁶ Jewel Fraser, 'A Heritage Building lives on in Trinidad' (26 March 2015, *The New York Times*) <<https://www.nytimes.com/2015/03/27/greathomesanddestinations/a-heritage-building-lives-on-in-trinidad.html>> accessed 30 July 2018

¹⁰⁸⁷ <<http://nationaltrust.tt/heritage-sites/heritage-asset-register/>>

¹⁰⁸⁸ Kim Boodram, 'National Trust to take legal action' (*Trinidad Express*, 1 September 2015)

update legislation and revise listing criteria to accommodate public spaces as significant heritage in National Trust legislation. In addition, the TTNT at the time of the November partial demolition had no functioning board. One was subsequently appointed by Cabinet the week prior to the partial demolition, but it was not expected to be fully operational until the week following the partial demolition.¹⁰⁸⁹ The City Corporation of Port of Spain was also criticised for failing to set appropriate development guidelines for new owners of historic sites.¹⁰⁹⁰ The Government of Trinidad and Tobago was aware of the Church's dilapidated state for a number of years, yet had made no decision concerning its protection. The lack of synchronicity in the planning and heritage legislation, reflected in the inadequate institutional arrangements of the TTTT and the planning authorities, also hindered the process and ultimately failed to protect a public space from its lawful owner.

This case demonstrates the conflict between heritage and planning law, as planning law often facilitates development. Where planning law mechanisms such as notices and injunctions are deployed, it is often in the developer's interest to ignore these measures, because enforcement is often limited and lacking teeth. The narrative surrounding Greyfriars also illustrates the postcolonial planning process, which is intolerant of other spatial uses, and focused on clearing clutter, evacuation of space and treating former residents as transgressors through ejection of protesters. While Mr Galy engaged in talks with stakeholders, and was open to some insertion of the cultural heritage, this would be on his terms.¹⁰⁹¹ Notably, Mr Galy contrasted the value of the 'architectural icon' which Planning would be amenable to preserving, with Greyfriars (despite its equally relevant value) which had become publicly unsafe, both in terms of environmental health and crime due to 'placeless' vagrants, recalling both the expulsion and alienation of commoners in England, and Herzfeld's summation of postcolonial planning law's approach to demolishing suspect sites and cleansing these spaces of unacceptable denizens who are now considered interlopers, in the name of progress.¹⁰⁹²

¹⁰⁸⁹ Clyne, 'Owner of Greyfriars: Toxic roof removed from church hall' (13 November 2014, *Trinidad and Tobago Guardian*)

¹⁰⁹⁰ 'Slap on the wrist for Greyfriars Church demolition' (*Trinidad Express*, 10 December 2014)

¹⁰⁹¹ Charan, 'Too late for Greyfriars' (*Trinidad Express*, 24 August, 2015)

¹⁰⁹² Herzfeld 139, 142.

7.3 Saint Lucia National Trust and Maria Islands Nature Reserve, Saint Lucia

Even where there are instances in which a heritage institution is functioning and has a management framework in place, public spaces can still be threatened. This example from Saint Lucia demonstrates challenges associated with an evolving heritage institution that is attempting to protect public spaces in a manner that challenges traditional notions about the role of heritage in the authorised heritage discourse.¹⁰⁹³

The Saint Lucia National Trust (SLNT) is charged with the conservation and sustainable use of Saint Lucia's natural, built and cultural heritage, and is a leading heritage actor in that island. The Trust manages 25 heritage sites with over 240 hectares conserved. In particular, it holds a 99-year lease of Pigeon Island and owns the Maria Islands Nature Reserve.¹⁰⁹⁴ The Government of Saint Lucia designated Pigeon Island as a National Park in 1979 and as a National Landmark in 1992 under the auspices of the Trust.¹⁰⁹⁵ The site was occupied by Amerindians followed by the British and French, and there are several defence heritage sites on its grounds.¹⁰⁹⁶

The Maria Islands Nature Reserve was declared a Nature Reserve in 1982 by the Government of Saint Lucia in recognition of their special function as a wildlife habitat and their unique flora and fauna. There are over eighty plant species found on Maria Islands, and the island is home to five endemic reptile species. The islands are comprised of Maria Major, which is 10.1 hectares and Maria Minor (1.6 hectares). The Reserve is also a major nesting site for migratory birds which travel thousands of miles from the west coast of Africa to nest annually. The Saint Lucia

¹⁰⁹³ See Chapter Four which describes how heritage institutions can uphold certain regimes of power, especially the status quo. In situations where the interests of communities and governments may not be compatible, non-state heritage actors are offered expected to assimilate. Laurajane Smith has critiqued this control of heritage in *The Uses of Heritage* (Routledge 2006) 44.

¹⁰⁹⁴ Saint Lucia National Trust, 'Proposed elimination of government's annual contribution to the Saint Lucia National Trust for the 2017-18 financial year' [press release] 24 April, 2017, 2.

¹⁰⁹⁵ Pigeon Island National Park Bylaw (S.I. No. 47 of 1982) implements s 16 of the Saint Lucia National Trust Act 1975, and addresses the management and control of the Pigeon Island National Park. It regulates the opening hours of the Park, prescribes entrance fees, lays down rules for the conduct of persons in the park, provides for the protection of plants and wildlife and the soil, and prohibits use of vehicles and introduction of animals in the Park without permission.

¹⁰⁹⁶ Tom Dart, 'Derek Walcott museum closes amid row over Caribbean tourist developments' (*The Guardian*, 21 June 2017) <<https://www.theguardian.com/books/2017/jun/21/derek-walcott-museum-st-lucia-caribbean-tourism>> accessed 30 July 2018

Forestry Department of the Ministry of Agriculture provides support by monitoring the birds' migratory patterns to determine closed seasons.¹⁰⁹⁷

Unlike many of its counterparts in the Lesser Antilles, the SLNT enjoys a substantial subvention from the Government of Saint Lucia. For twenty years, the Government's annual contribution to the SLNT has been EC\$500,000, which the Trust has put towards programmes and operations. Since 2000, this amount was further augmented by an EC\$200,000 special annual contribution to help the SLNT fund the establishment of its head offices."¹⁰⁹⁸ Along with the Saint Lucia Archaeological and Historical Society, the SLNT was designated a Referral Body under the Planning and Development Act of 2002, with the goal of assisting the Planning Department and the Development and Control Authority (DCA) in approving repair, restoration, and maintenance projects on structures of architectural or historic interest within designated national parks or national monuments.¹⁰⁹⁹

The SLNT's subvention was cut during the year 2017-2018, the Government of Saint Lucia citing severe budget constraints, and the SLNT's failure to develop its sites. The SLNT believed this was a retaliatory response to the Trust's vocal objections to projects that would affect these two protected areas – the Maria Islands Nature Reserve, one of only two wildlife reserves on Saint Lucia, and the Pigeon Island National Landmark.¹¹⁰⁰ The SLNT had expressed opposition to the 'Pearl of the Caribbean' project proposed by international investors, which they believed posed a serious threat to the country's ecological, cultural and archaeological heritage. The developers intended to construct a causeway linking the Maria Islands Nature Reserve to the mainland, which could potentially threaten the coastline and the endemic species within the reserve.¹¹⁰¹ In addition, the SLNT objected to a planned dolphinarium at the Pigeon Island

¹⁰⁹⁷ <<https://slunatrust.org/sites/maria-island-nature-reserve/>> accessed 9 November 2018

¹⁰⁹⁸ Saint Lucia National Trust, press release 24 April, 2017, 1.

¹⁰⁹⁹ Milton Eric Branford 'Saint Lucia' in Siegel and Righter 73; Saint Lucia National Trust, Press release, 3.

¹¹⁰⁰ 'St Lucia Prime Minister cuts funding for National Trust' (*Antigua Observer*, 26 April, 2017)

<<https://antiguaobserver.com/st-lucia-pm-cuts-funding-for-national-trust/>> accessed 3 July 2018

¹¹⁰¹ Dart, 'Derek Walcott museum closes amid row over Caribbean tourist developments' (*The Guardian*, 21 June 2017)

National landmark in the north of the island. With the loss of the subvention, the Trust has had to close other historic properties, such as the Derek Walcott Museum.¹¹⁰²

The Government of Saint Lucia addressed the removal of the subvention in the annual budget speech of 2017-2018:

The Trust is charged with conserving the natural and cultural heritage of Saint Lucia. It is an advocacy group and is responsible for developing the sites which have been vested in it. As an advocacy group, the Trust performs that function reasonably well. The Trust has, however, not performed well in developing the sites that are vested in it. The Government has supported the Trust through an annual subvention as well as through the vesting in the Trust, premier heritage sites. *These valuable national assets can and should be leveraged to generate more significant revenue to sustain its operations, and thereby the Trust is being asked to revise its business model to become financially independent. As a result, the annual subvention will be discontinued. However, the government will continue to provide support to initiatives the Government believes has merit in supporting the development objectives of the state.*¹¹⁰³

Several observations may be made here. The Government of Saint Lucia views nature reserves and other such spaces as elements of the broader national development strategy, aligned with tourism development and the private sector. Heritage appears to have purely commercial value, without consideration for the social linkages the public may have with these spaces. The Government suggests that these heritage assets must be positioned as major income earners, but there is no mention of the community valuation of these sites as they are historically, environmentally and culturally significant, only the vague criterion of ‘merit’ in meeting the development objectives of the state. This is a conservative approach to heritage and implies that the state defines the role of these resources for the community, which the SLNT appears to contest in its challenges to the development of public spaces.

The SLNT was criticised for poor management of heritage properties such as Maria Islands and Pigeon Island. However, there was no positive move on the Government’s part to enhance the SLNT’s capacities to perform these functions as defined in the Saint Lucia National Trust Act,

¹¹⁰² Dart, ‘Derek Walcott museum closes amid row over Caribbean tourist developments’ (*The Guardian*, 21 June 2017)

¹¹⁰³ Government of Saint Lucia. ‘Annual Budget Speech for the financial year 2017-2018’, delivered by Hon. Allen Chastenet, Prime Minister and Minister for Finance, Economic Growth, Job Creation, External Affairs and the Public Service, 9 May 2017, 42 (emphasis added).

such as increasing technical capacity in heritage management or community involvement. This would be well within the State's duties to provide an enabling environment for the protection of cultural rights, ensuring preconditions for participation, facilitation and promotion of cultural life, and access to and preservation of cultural goods via cultural heritage institutions such as the Trust, as discussed in Chapter Three.¹¹⁰⁴

Finally, in calling on the SLNT to become financially independent, the Government of Saint Lucia nevertheless withdrew the SLNT's funding without consultations between the two parties, and with no proposal to restructure and upgrade the SLNT on a phased basis. The future of the SLNT therefore appears uncertain now that its ability to administer and implement the law is impaired. Other administrative processes that affect heritage protection concern the conduct of Environmental Impact Assessments, as with Lower Sauteurs (Grenada) and Argyle (St Vincent and the Grenadines).

7.4 Lower Sauteurs EIA Process /St Patrick's Breakwater, Grenada

The construction of the St Patrick's breakwater in Sauteurs, on the northeastern coast of Grenada, demonstrated the critical need for engaging communities residing near or amongst heritage resources, who maintain these resources because they regard them as their own.

The coastal community of Sauteurs relies on the sea for food security and their livelihoods. The area is also home to Leapers' Hill, an important location in Grenadian history due to its association with the reputed last stand of the Kalinago people against French colonisers. Trapped by the French in a retreat, the story goes, some 40 Kalinago jumped from Morne du Sauteurs into the sea, where they perished.¹¹⁰⁵ It is an important archaeological site, one of many documented in the early 1980s by the Foundation for Field Research (FFR) and the University of Florida. Around eighteen human burials were excavated and transferred to the Grenada National

¹¹⁰⁴ Interestingly, Saint Lucia is the only state in the Lesser Antilles not party to the ICESCR, but is a party to the WHC and signatory to the Escazú Agreement. See also Chapter Three for the discussion on erga omnes obligations against heritage destruction of landscapes of significant importance.

¹¹⁰⁵ Melanie Newton, 'The Race Leapt at Sauteurs: Genocide, Narrative and Indigenous Exile from the Caribbean Archipelago' *Caribbean Quarterly* 60:2 (2014).

Museum at that time.¹¹⁰⁶ This was prior to the existence of heritage legislation and an extensive planning framework in the country.¹¹⁰⁷ Nevertheless, the discovery failed to inspire efforts to secure the site.

Erosion caused by intense wave action exposed what appeared to be an Amerindian burial ground at Sauteurs during the first weeks of 2018. The Sauteurs community had reported skeletal remains and artefacts washing up on the beach, and expressed concerns that the nearby breakwater project was responsible for the exposure of the site. This breakwater was built as one of a number of mitigation efforts recommended by a 2013 EIA study for the Lower Sauteurs area.¹¹⁰⁸ The EIA had been undertaken as part of the development of a Climate Change Adaptation (Disaster Management) Plan for the Coastal Communities of Lower Sauteurs, Grenada. The plan was intended to strengthen community capacity to address climate change impacts, but did not substantively consider the cultural heritage implications of the project for the community, despite the use of participatory methodologies. However, it must be noted that this was not a requirement of the original terms of reference.

While the EIA identifies Sauteurs as a historic site, it delved no deeper into the significance for the community. There were community consultations, but the questionnaire forms indicate that no questions addressed the protection of the local heritage.¹¹⁰⁹ While this was in keeping with Grenada's physical planning legislation, which has no guidance on EIAs for archaeological sites, the Act at the time did call for a liberal and purposive interpretation of the legislation, which included an objective to protect the cultural and natural heritage, and had established an Advisory Committee on Cultural and Natural Heritage.¹¹¹⁰ Although this law was referenced in the report, these provisions were not alluded to.¹¹¹¹

¹¹⁰⁶ Curlan Campbell, 'Amerindian burial site under siege' (*Now Grenada*, 1 March 2018) <<https://www.nowgrenada.com/2018/03/archaeologists-saving-amerindian-burial-site-under-siege/>> accessed 15 November 2018

¹¹⁰⁷ Chapter Four explains that the Grenada National Museum was only established by an Act of Parliament in 2017.

¹¹⁰⁸ Government of Grenada. Climate Change Adaptation (Disaster Management) Plan for Lower Sauteurs. Grenada. Prepared by OECS/Geotechnical Investigative Services, 2013, 5.

¹¹⁰⁹ Government of Grenada. Climate Change Adaptation Plan for Lower Sauteurs – Appendix 1: Vulnerability Survey Documents. Grenada. Prepared by OECS/Geotechnical Investigative Services, 2013.

¹¹¹⁰ The Physical Planning and Development Control Act 2002 was repealed in 2016 and replaced by the PPDC Act of 2016. The latter was discussed in Chapter Five.

¹¹¹¹ Government of Grenada. Report of the Climate Change Adaptation Plan for Lower Sauteurs 13.

The failure to consider community linkages to the heritage site subsequently had implications for the protection of Amerindian heritage, which is noteworthy because at the time, the National Heritage Protection Act 1990 made provisions for the protection of Amerindian heritage and outlined a process for the involvement of the National Trust. Under this act, two nearby Amerindian heritage sites Pearls and Grand Bay, had been scheduled, as part of the wider Amerindian landscape.¹¹¹² These laws were not referenced in the report.¹¹¹³ While the Physical Planning Unit did conduct a site visit with the Ministry of Culture during a rescue excavation involving community volunteers, no strategy was prepared for protecting the site, in spite of the recent enactment of museum legislation.

The 2004 Akwé: Kon Voluntary Guidelines provide a baseline for considering the impacts of EIAs on landscapes and were discussed in Chapter Three. The range of cultural aspects of Sauteurs that could have been considered included traditional knowledge about the history of the site,¹¹¹⁴ which may have flagged the possibility of undiscovered archaeological sites, before the human remains were discovered. This could have been supported by the Museum, which was in possession of remains previously retrieved from the same site. Possible impacts on customary use of the area, community practices, as well as associated ceremonial activities were addressed via only one question on the community questionnaire.¹¹¹⁵ Social aspects that should have been considered included impacts on land use practices, and other traditional systems of natural resources and access to biodiversity resources, particularly the ocean environment as it was a coastal community, and the effects on the social cohesion of the community. Only the economic considerations from potential loss of fisheries and traditional medicine sources were touched upon cursorily in the questionnaire.¹¹¹⁶

The implications for underlying values, following impacts of potential change to the area, and evolving views of the local community regarding their future and ability to achieve future

¹¹¹² Repealed in 2017.

¹¹¹³ Government of Grenada. Report of the Climate Change Adaptation Plan for Lower Sauteurs 13.

¹¹¹⁴ Three general questions of relevance on the community risk assessment addressed whether risks to the protection of social and economic assets, and the protection of cultural and ecosystem assets had been identified, and the vulnerability of indigenous flora and fauna. There were three questions on the community questionnaire asking respondents to identify any cultural resources, community livelihoods and cultural rituals. See the Climate Change Adaptation Plan for Lower Sauteurs – Appendix 1: Vulnerability Survey Documents. It is unclear whether the 2004 Akwé: Kon Voluntary Guidelines were consulted.

¹¹¹⁵ Akwé: Kon Guidelines, para 27.

¹¹¹⁶ Ibid., para 43.

aspirations were not explored.¹¹¹⁷ The Lower Sauteurs coastline includes beach area which operates as a public space to commemorate holidays and to gather for other special functions. Loss of beach area does not simply represent loss of sand, but loss of identity of the community, their practices, livelihoods, and ways of life. While the project was intended to bolster existing infrastructure and render the area climate-resilient, this is precisely why the impact assessment process should have been as comprehensive as possible, to incorporate consideration of the social and cultural dimensions of the area, which reflect the community's valorisation of coastal resources. Identifying the full range of stakeholders, not just the settlement nearest to the breakwater site, but all inhabitants of the wider Sauteurs landscape (not just Lower Sauteurs), as well as ongoing participation in the EIA process, during construction, could have provided critical information. This extensive participatory process and attending to the cultural, social and environmental nuances of communities was addressed in the Escazú Agreement, discussed in Chapter Three.

Concerns for sustainability, where development occurs in proximity to, takes place on, or likely impact heritage resources appear to be lacking. This should require that the impact assessment process while maintaining a balance between economic, social, cultural and environmental concerns, on the one hand, also ensures where appropriate that opportunities for the conservation and sustainable use of biological diversity, the access and equitable sharing of benefits and the recognition of traditional knowledge, innovations and practices are maximised.¹¹¹⁸

While the EIA was intended to inform the preparation of a community plan to strengthen community capacity to address climate change impacts, the failure to accurately assess and define the social and cultural aspects of the space, notwithstanding the use of participatory methodologies, ultimately affected the siting and design of the breakwater with implications for the future of the community. While this was not a requirement of the original terms of reference, existing relevant legislation at the time was not applied. The problems were further exacerbated by the response of the government, which did not seek to engage the community in new consultations. In spite of these discoveries, the enactment of new legislation, and a new cultural

¹¹¹⁷ Ibid., paras 44 and 45.

¹¹¹⁸ Ibid., para 56.

policy calling for increased protection of heritage sites,¹¹¹⁹ the site was not secured and there is no management structure currently in place for its protection. While there is community interest, and laws in place, implementation is a challenge. The Museum, with no board or staff, could not put a team in place to investigate, document and mitigate the situation.¹¹²⁰ Nevertheless, community members publicly queried the siting of the breakwater and took part in the excavations to rescue endangered heritage.

The Lower Sauteurs Grenada case represents the culmination of a number of pressing issues concerning the protection of heritage. When the government and its institutions fail to consider the wider meaning of the landscape, they are likely to be ineffective in protecting cultural heritage. The impact can be seen in the St Patrick's breakwater situation, which affects coastal communities, their spaces and livelihoods. Despite noting that the area has an important cultural site, mechanisms such as consultations, surveys and EIAs are rendered purposeless because they neglect to substantively integrate cultural and social factors into the process.¹¹²¹ Grenada subsequently repealed its 2002 physical planning legislation in 2016, and the new law has conservatively redrafted many of the provisions concerning national heritage protection, reflecting in many ways the reassertion of private property rights to the detriment of heritage.

This failure to invoke and implement both heritage and planning legislation may be contrasted with the success of the St Vincent and the Grenadines National Trust and Vincentian planning authorities, which were actively involved in the EIA process for Argyle International Airport.

7.5 Argyle International Airport EIA Process, St Vincent and the Grenadines

With St Vincent and the Grenadines, the limitations of planning legislation to manage and protect heritage, namely through the absence of progressive mechanisms for recognising community linkages to that heritage, were addressed in creative ways during the EIA process for the Argyle International Airport. In 2007, plans for the construction of an international airport at

¹¹¹⁹ The Government of Grenada. Grenada National Cultural Policy 2012, Positions 2.4 (Museum) and 2.5 (Historical and Archaeological Sites) respectively. See Chapter Four.

¹¹²⁰ Curlan Campbell, 'Amerindian burial site under siege' (*Now Grenada*, 1 March 2018)

¹¹²¹ Akwé: Kon Guidelines, para 23.

Argyle on the Windward coast of the island were announced.¹¹²² This would upgrade existing facilities to accommodate increased tourist traffic. The topography of St Vincent limits its options for siting a new international airport, as it is a very rugged island with only a narrow strip of relatively flat land between the sea and the mountains. This is the only location suitable for an airport capable of handling large jet traffic and placed the Yambou Valley petroglyphs and colonial heritage directly in the path of destruction.¹¹²³

The Yambou Valley area represents 2000 years of landscape change in St Vincent.¹¹²⁴ The proposed airport construction would endanger the petroglyphs, require destruction or relocation of a Catholic church to make room for the new runway, as well as the removal of the ruins of a sugar factory near the site.¹¹²⁵ These petroglyphs were part of a group of Vincentian petroglyphs under consideration for UNESCO World Heritage status.¹¹²⁶ In addition, the Our Lady of Lourdes Catholic Church was built by Dom Charles Verbeke, and is a mixture of Byzantine, Flemish, and Romanesque architectural styles that has made the cathedral one of the finest examples of ecclesiastic architecture in the Lesser Antilles.¹¹²⁷ The sugar factory site has an intact water wheel among its components.¹¹²⁸

The public announcement in the local newspaper on 28th September, 2007, which reported that the Vincentian government, through the International Airport Development Company (IADC), would construct the new airport, elicited responses from all sectors of society.¹¹²⁹ The St Vincent and the Grenadines National Trust (SVGNT) raised the issue of preserving the site with the CEO

¹¹²² Richard Callaghan, 'St Vincent and the Grenadines: Recent Efforts in Protecting Heritage in Siegel and Righter 83.

¹¹²³ *Ibid.*, 85.

¹¹²⁴ The St Vincent and the Grenadines National Trust notes that the old sugar mill at Escape, Argyle, will be the centre piece of a new heritage landscape on the Windward side of St Vincent. The mill had been lost, swallowed up by the forest, until it was rediscovered by engineers working on the new airport in 2007. The mill was water-powered and a large water wheel is still in location. There are several ruined buildings on the site ready to be restored into a working museum of St Vincent's agricultural history. Also at the site will be the Yambou 1 petroglyphs which will have moved the half-mile from their current location at the Argyle Airport site. When the site is complete, visitors can walk through 2,000 years of Vincentian history in one afternoon. See the website of the SVG National Trust <<http://www.svgnationaltrust.moonfruit.com/escape-heritage-park/4568200610>> accessed 31 July 2018

¹¹²⁵ Paul E. Lewis 'St Vincent and the Grenadines' in Siegel and Righter 80.

¹¹²⁶ UNESCO Tentative List of St Vincent and the Grenadines: <<https://whc.unesco.org/en/tentativelists/5749/>> accessed 15 October 2019.

¹¹²⁷ Lewis 80.

¹¹²⁸ Website of the SVG National Trust <<http://www.svgnationaltrust.moonfruit.com/>> accessed 31 July 2018

¹¹²⁹ Lewis 80.

of the International Airport Development Company.¹¹³⁰ Following a slew of newspaper articles and television interviews, and statements by the SVGNT and the Roman Catholic Church, the Vincentian government announced late in October 2007 that they had hired a German firm, Kocks Consult GmbH of Koblenz, Germany, to conduct an Environmental Impact Assessment of the area. The study was presented to the public approximately three months after its release to the government, but only one of the three volumes that comprised the report was released, and there has been no public discussion of its contents.¹¹³¹

Paul Lewis writes that the original course contemplated would have condoned state destruction of the site to accommodate the airport. The government did not originally intend to conduct an EIA, but reluctantly complied after realising the potential negative public feedback to the project. Plans for the removal/repositioning of the affected sites were subsequently implemented by a multinational team of experts in collaboration with the SVGNT.¹¹³² In addition, archaeologist Richard Callaghan notes that although only impacts on natural resources were included in the scope of the EIA, Kocks Consult elected to include a discussion of the potential impacts on heritage resources given the importance of the site to the local community.¹¹³³

Callaghan notes that government efforts to mitigate the effects of the construction on the site were conducted in the prefeasibility, construction and post-construction phases of the project. Construction plans were examined to determine if the runway could be redesigned to avoid the site. This would have required extending the runway into the sea, adding a prohibitive cost to the airport project. As an alternative, the IADC funded the transfer of the petroglyphs, and the production of high-quality reproductions. This was accomplished with the support of the SVGNT, with a relocation team that included archaeologists and restoration specialists as well as senior engineers.¹¹³⁴ The SVGNT invited a team of archaeologists from Leiden University, led

¹¹³⁰ Callaghan 83.

¹¹³¹ Lewis 80.

¹¹³² Ibid. See also 'IADC National Trust working on petroglyphs solution' (*Searchlight*, 12 October 2007) <<https://searchlight.vc/searchlight/news/2007/10/12/iadc-national-trust-working-on-petroglyphs-solution/>> accessed 30 July 2018

¹¹³³ Callaghan 84.

¹¹³⁴ Ibid. See also 'SVG National Trust saves petroglyphs at Argyle' <<https://searchlight.vc/searchlight/news/2007/06/29/svg-national-trust-saves-petroglyphs-at-argyle/>> (*Searchlight*, 29 June 2007) accessed 30 July 2018

by Corinne Hofman to conduct the rescue excavation.¹¹³⁵ The excavation uncovered the first complete early colonial Island Carib settlement in the Lesser Antilles.¹¹³⁶ Other proposed mitigation efforts included preparation of an archaeological display in the airport terminal¹¹³⁷ as well as a park as a new public space, showcasing the features of the archaeological landscape such as the excavated settlement. The Leiden University archaeologists also worked with local experts to reconstruct this Amerindian village, which was completed in 2016.¹¹³⁸ The design and construction of the village included input from descendants of the indigenous communities from Saint Vincent and nearby islands, as well as stakeholders from government, civil society and other members of the public.¹¹³⁹ Clearly the significance of the site, the public pressure and the international attention served to encourage a level of scrutiny not provided for in the planning legislation or current policy.¹¹⁴⁰

In the summer of 2019, two indigenous communities actively involved in the construction of the Amerindian village returned to the site to call attention to the need for its restoration, and to share proposals for its maintenance and resolving ownership issues. As a result, the Government of St Vincent and the Grenadines affirmed its commitment to the Amerindian Village and communicated that contractors were being sought to properly manage the site and enhance its facilities.¹¹⁴¹ This demonstrates the power of communities to protect landscapes by (re)defining

¹¹³⁵ See also Arie Boomert, 'From Cayo to Kalinago: Aspects of Island Carib archaeology' 291-307 at 291 and Alistair J Bright, 'Removed from off the face of the island': Late pre-Colonial and early Colonial Amerindian society in the Lesser Antilles' 307-325 at 317 in Corinne L Hofman and Anne van Duijvenbode (eds) *Communities in Contact: Essays in archaeology, ethnohistory & ethnography of the Amerindian circum-Caribbean* (Sidestone Press 2011).

¹¹³⁶ Corinne L Hofman and Menno LP Hoogland, 'Caribbean encounters: rescue excavations at the early colonial Island Carib site of Argyle, St. Vincent' 63-76 at 64, in Corrie Bakels and Hans Kamermans (eds), *Analecta Praehistorica Leidensia: The end of our fifth decade*. Publication of the Faculty of Archaeology, Leiden University 2012.

¹¹³⁷ Callaghan 85.

¹¹³⁸ 'Reconstruction of Amerindian Village St. Vincent - Completed by local volunteers' (29 June 2016) <<https://www.universiteitleiden.nl/nexus1492/news/reconstruction-of-amerindian-village-st.-vincent-%E2%80%93-completed-by-local-volunteers>> accessed 6 December 2019

¹¹³⁹ Tibisay Sankatsing Nava and Corinne L Hofman (2018), 'Engaging Caribbean Island Communities with Indigenous Heritage and Archaeology Research', *Journal of Science Communication* 17(4): 1-10, and CL Hofman and MLP Hoogland, 'Connecting Stakeholders: Collaborative preventive archaeology projects at sites affected by natural and/or human impacts', (2016) *Caribbean Connections* 5(1): 1-31. See also 'Start of Reconstruction of indigenous village in St. Vincent' (8 February 2016) <<https://www.universiteitleiden.nl/nexus1492/news/start-of-reconstruction-indigenous-village-in-st.-vincent>> accessed 6 December 2018

¹¹⁴⁰ Callaghan, 84.

¹¹⁴¹ Kenville Horne, 'Indigenous people await Village restoration' (*The Vincentian*, 9 August 2019) <<http://thevincentian.com/indigenous-people-await-village-restoration-p17710-135.htm>> accessed 4 December 2019

and defending their spaces, through physical action and as a matter of policy intervention. The model village is now a landscape of importance to Amerindian and national heritage in that island.

A major impediment to heritage protection is the lack of procedures governing development located near archaeological sites and other heritage resources. As Lewis notes, EIAs are only undertaken where the public become aware of such projects and place public pressure on the government to take this step.¹¹⁴² With the recent dispute over the proposed destruction of petroglyphs at the site of the new international airport in Argyle, which Lewis cites as evidence of the government's insensitivity to historical and cultural issues and heritage protection in general,¹¹⁴³ the planning process was made more spatially just by integrating considerations of the community linkages to the site, as advocated for by the SVGNT.

While cultural resources management is in its infancy on St. Vincent and the Grenadines, the Argyle airport project has demonstrated vast improvements in the approach to these resources. A decade ago, there was little organised interest despite the best efforts of some individuals. Recently, interest in cultural heritage has increased dramatically. This is exemplified by the support of the IADC even though the sites involved had not yet attracted protected status when construction plans had been announced.¹¹⁴⁴ The SVGNT played an important role in facilitating the planning process where sites are potentially at risk due to development. In the absence of clear legislation, the Trust has developed practices to protect the national heritage in cooperation with the government, and by involving international partners, thereby improving administration of the planning law.¹¹⁴⁵ Where legislation is absent or unenforced and the EIA process obscure, communities also attempt to engage in place protection in a variety of ways, as can be seen with Camerhogne Park in Grenada.

7.6 Camerhogne Park Relocation, Grenada

¹¹⁴² Lewis 79.

¹¹⁴³ Ibid.

¹¹⁴⁴ Callaghan 85-86.

¹¹⁴⁵ Ibid., 85.

Camerhogne Park provides an illustration of how public spaces are contested in the absence of participatory mechanisms in the law and how parks can play a role in the protection of the national heritage.

7.6.1 Historical background

Camerhogne Park (hereafter the Park) is located on Grenada's most popular beach, Grand Anse beach, which is situated on the island's south coast in the heart of the tourism belt bearing the same name. The name Camerhogne is an Amerindian term for Grenada in the Kalinago language.¹¹⁴⁶ Historically, the area was known to have been a coconut plantation as part of the larger Grand Anse estate in the colonial period, but during the construction of the Coyaba and Allamanda resorts, Amerindian graves were unearthed, suggesting it was inhabited much earlier than previously thought.¹¹⁴⁷ A number of surveys have been conducted in the past three decades that are indicative of the site's archaeological potential. The Park was proposed by consultant Leon Taylor in the 1980s during an OAS study of the beach area,¹¹⁴⁸ as a means of defusing social tensions between residents and tourists. Grenadians had objected to what they considered a reduction in community access to the major recreational area, during the construction of the Allamanda and Coyaba resorts on the beach. Public access to the coast, though not framed as such, has been in evidence since the colonial period, when beach and backshore areas were considered worthless to the plantation and allocated for use by the enslaved population.¹¹⁴⁹ As originally planned, the Park would take up a vacant area of ten acres west of an old hotel, the Riviera; it was eventually designed and established on 2.5 acres of land, in order to accommodate the Allamanda and Coyaba hotels. The National Parks and Protected Areas

¹¹⁴⁶ John Angus Martin, *A-Z of Grenada Heritage*, 2nd edn (forthcoming).

¹¹⁴⁷ Interview with Mr Michael Jessamy, Heritage Officer, Ministry of Tourism, Civil Aviation and Culture (St George's, Grenada 1 April, 2016)

¹¹⁴⁸ Letter of Leon Taylor (*The New Today*, 23 December 2015)

<<http://www.spiceislandertalkshop.com/talkshop/messages/974920.html>> accessed May 6 2017

¹¹⁴⁹ Christine Toppin-Allahar, "De Beach Belong to We! Socio-economic Disparity and Islanders' Rights of Access to the Coast in a Tourist Paradise.' 2015 *Oñati Socio-legal Series* 5 (1): 298-317, 302. Toppin Allahar also notes, at 311, that the right of public access to the coast through a reserve defined as three chains above the high water mark was enshrined in colonial laws in Tobago and a number of OECS countries. The statutory basis is not always clear today, but the right of public access to the coast appears to have been preserved.

Act¹¹⁵⁰ was enacted to support development of the national parks system, and Camerhogne Park has been managed by the Ministry of Tourism and Culture ever since.

Today Camerhogne Park is a public park hosting a range of activities by various user groups. It has beach frontage, and provides residents with access, parking, picnic and leisure facilities, while at the same time regulating development on the beach and minimising environmental impacts.¹¹⁵¹ Park activities include picnicking, yoga, exercising, and sunbathing. The park also functions as a transit area, muster point and meeting space for social functions and events such as film festivals, public education initiatives, marathons and charity walks. It is also close to transportation, shopping and entertainment venues and the playing field which parallels that section of the beach.¹¹⁵² Employees from those various businesses nearby meet to eat lunch in the park. The tensions between tourists and residents have largely dissipated as both user groups make use of the park.¹¹⁵³ As is typical of national parks, it is multifunctional and subject to a variety of spatial definitions, representing that balance between ideals in a recreative commons.¹¹⁵⁴

7.6.2 The proposal to replace Camerhogne Park

In 2015, it was announced that Egyptian developer Naguib Sawiris would be investing EC\$270 million in a new hotel project, which would include lands formerly occupied by the Riviera hotel. The first phase would see the construction of a new hotel, Silver Sands, which is expected to be a 400 room facility with a casino, and provide employment for 260 Grenadians when the hotel becomes operational, with employment for 100 persons during the construction phase.¹¹⁵⁵

During its second phase, the proposed project could absorb land currently designated as Camerhogne Park, which borders the Riviera property. The developer proposed a new green

¹¹⁵⁰ Discussed in Chapter Six.

¹¹⁵¹ 'Press release: 'The Save Camerhogne Park Committee finalises resolution for signing by political parties' (*Now Grenada*, 11 January 2018) <<http://www.nowgrenada.com/2018/01/the-save-camerhogne-park-committee-finalises-resolution-for-signing-by-political-parties/>> accessed 8 February, 2018

¹¹⁵² Letter of Leon Taylor (*The New Today*, 23 December 2015)

¹¹⁵³ Ibid.

¹¹⁵⁴ Dahlberg et al, 220; CM Hall and W Frost (eds) *Tourism and national parks: International perspectives on development, histories and change* (Routledge 2009) 307. See also Olwig, 'Commons & Landscape' 20 in Chapter Six.

¹¹⁵⁵ Linda Straker 'Camerhogne Park to be relocated' (*Now Grenada*, 6 January 2016) <<http://www.nowgrenada.com/2016/01/camerhogne-park-relocated/>> accessed 8 February 2018

space in the Grand Anse area, with neighbouring facilities for the community such as the Vendors' market, basketball and tennis courts. This was widely protested and generated a wave of discussions on the significance of the park. It should be noted that access to the project documents has not been made public, so it is unclear whether an environmental impact assessment has been undertaken, or even if Sawiris has indeed purchased the Riviera property at that time. Mechanisms for protecting the heritage, such as the Heritage Advisory Committee in the Physical Planning Unit and EIAs, were not deployed, at least to the public's knowledge.

The Prime Minister announced that Camerhogne Park would be moved to another location along Grand Anse beach, as it would allow for Grenadians to continue with their own activities without disruption or limits imposed by the hotel property, but this was also protested as the proposed location abuts a cemetery. It is noteworthy that the new park will be even smaller, with no beach frontage, if moved to the new site. No reference was made to the National Parks legislation and the process for designating such a park, and whether the park could be transferred, although legal minds in the community publicly supported the idea because it was in the 'national interest'.¹¹⁵⁶

A number of petitions were signed in favour of Camerhogne Park remaining in its original location and shared on social media. Demonstrations were also held in the park and supported by the Opposition in Parliament.

7.6.3 The legal status of Camerhogne Park

National parks legislation was passed in 1991 with the National Parks and Protected Areas Act. Prior to the passage of this law, a handful of laws addressed the establishment of other protected areas, on an individual basis, such as the Grand Etang Reserve Act, or on a thematic basis, such as marine reserves, parks, and sanctuaries under the Fisheries Act.

Although the park has been in use since the 1990s, and was landscaped with appropriate signage and public facilities such as toilets, showers, tables, and trash receptacles for picnicking, the park was never legally designated pursuant to the National Parks and Protected Areas Act. However, that legislation has never had implementing regulations to outline the details of the designating process for parks. Nevertheless, the park is managed by the Ministry responsible for national

¹¹⁵⁶Arley Gill, 'Relocate park and build hotel' (*Now Grenada*, 14 March 2016) <<http://www.nowgrenada.com/2016/03/relocate-park-build-the-hotel/>> accessed 8 February, 2018

parks, the Ministry of Tourism and Culture. A report in 2009 in support of the OECS Protected Areas and Associated Sustainable Livelihoods (OPAAL) project, to develop protected areas in the Eastern Caribbean, proposed a national system of parks and protected areas for Grenada. The report recommended that parks in Grenada be consolidated based on two categories: where it has been widely accepted as a park area based on administrative and management arrangements, or land that has been identified by other completed and accepted land use studies as priority areas of interest. The plan identified Camerhogne as belonging to the former category and suggested it be formally gazetted under the National Parks and Protected Areas Act.¹¹⁵⁷

7.6.4 Camerhogne Park as a contested public space

On 25th November, 2015, during a sitting of the lower house of Parliament, Prime Minister Dr Keith Mitchell announced in the Budget speech that the Park would be relocated.¹¹⁵⁸ He stated that Camerhogne Park would be moved to another location along Grand Anse beach, and that the developers would provide upgraded facilities such as a new vendors' market, and basketball and tennis courts. No reference was made to the legislation and the process for designating such a park.¹¹⁵⁹

There was public outcry and the administration immediately retracted its stance, stating that no firm decision had been made concerning the park.¹¹⁶⁰ The administration agreed to work with communities to address the matter, and Health Minister Nickolas Steele subsequently announced that a broad-based committee would be established to explore the possibility of improving Camerhogne Park.¹¹⁶¹ Nevertheless, there were no attempts to coordinate with the planning authority, which can designate environment protection areas, and has an advisory committee on

¹¹⁵⁷ Government of Grenada. Grenada Protected Areas System Plan Part 1: Identification and Designation of Protected Areas. OECS/Mel Turner, 200, 27 and 32.

¹¹⁵⁸ Linda Straker 'Camerhogne Park to be relocated' (*Now Grenada*, 6 January 2016); Government of Grenada, '2016 Budget Statement', presented by Dr the Rt Hon Keith C Mitchell, Prime Minister and Minister of Finance and Energy, 25 November 2015, 51.

¹¹⁵⁹ Arley Gill, 'Relocate park and build hotel' (*Now Grenada*, 14 March 2016)

¹¹⁶⁰ 'No decision on Camerhogne Park' (*Now Grenada*, 13 January 2016)

<<http://www.nowgrenada.com/2016/01/no-decision-camerhogne-park/>> accessed 8 February 2018

¹¹⁶¹ 'Government to work along with Critics on Camerhogne Park' (*Now Grenada*, 15 January 2016)

<<http://www.nowgrenada.com/2016/01/government-work-along-critics-camerhogne-park/>> accessed 8 February 2018

the natural and cultural heritage to vet applications for planning permission and make recommendations for the protection of heritage resources.¹¹⁶²

Both former Attorney General Sir Lawrence Joseph and former Senator Arley Gill publicly supported the project, citing it as in the nation's interest, framing the matter as a choice between 'preservation or development', and appealing to the public to avoid letting 'emotionalism' hold sway.¹¹⁶³ Both writers, practicing lawyers by profession, failed to make reference to environmental law and the existence of parks legislation in Grenada. There was no discussion of the function of parks or the role they play in national development. There was no reference to the natural heritage or historical significance of the site, except in dismissing such value. In fact, Mr Gill pronounced the park of 'no remarkable historical significance' but cited no research or study that would validate his statement.¹¹⁶⁴

Consultations continued between the developer and various interest groups across Grenada, including civil society and the private sector.¹¹⁶⁵ During this time, the park continued to be used by the public. A petition to save the park drew 15,000 signatures, not an insignificant figure on a small island of 100, 000 people.

The issue became increasingly politicised when the Opposition Party took up the mantle. A town hall meeting was held,¹¹⁶⁶ locally and within the Grenadian diaspora, as meetings were held in Brooklyn, New York on 13th March, 2016.¹¹⁶⁷ There was an 'Occupy Camerhogne Park' sit-in demonstration. A 'Save Camerhogne Park' committee was established and a 'People's resolution' prepared in January 2018, which was disseminated to political parties throughout the nation for signing as evidence of commitment to protecting the park for recreational use for

¹¹⁶² See the Grenada PPDC Act discussed in Chapter Five.

¹¹⁶³ Sir Lawrence Joseph 'Camerhogne Park and the national interest' (*Now Grenada*, 7 March 2016) <<http://www.nowgrenada.com/2016/03/camerhogne-park-and-the-national-interest/>> accessed 8 February, 2018

¹¹⁶⁴ Arley Gill, 'Relocate park and build hotel' (*Now Grenada*, 14 March 2016)

¹¹⁶⁵ 'Government consultations on Camerhogne Park' (*Now Grenada*, 5 March 2016) <<http://www.nowgrenada.com/2016/03/government-consultations-on-camerhogne-park/>> accessed 8 February 2018

¹¹⁶⁶ Press release: 'NDC Statement on Town Hall Meeting for Camerhogne Park' (*Now Grenada*, 16 January 2016) <<http://www.nowgrenada.com/2016/01/22054/>> accessed 8 February 2018

¹¹⁶⁷ Kellon Bubb, 'Camerhogne Debate reaches Brooklyn' (*Now Grenada*, 17 March 2016) <<http://www.nowgrenada.com/2016/03/camerhogne-park-debate-reaches-brooklyn/>> accessed 8 February 2018

future generations.¹¹⁶⁸ The title is ‘Protect Camerhogne Park in perpetuity: People’s Resolution, January 31st, 2018’. The committee therefore references the people of Grenada as the authority to publish the resolution, and focuses on the long-term preservation of the park, ‘in perpetuity’.

The Camerhogne Park resolution documents the conflict relating to Camerhogne Park and the concerns of the interested parties, and situating both within the historic and environmental context. Prime Minister Mitchell’s speech is referenced, in which he announced a new park would be developed by the investors. Environmental threats such as climate change are mentioned, including the particular threats for small island developing states such as Grenada, and their coastal vulnerabilities. The resolution highlights the purpose of the Park as the solution to conflicting uses, and the fact that the Park’s original size had been reduced in order to accommodate hotel development.

The resolution makes reference to the Constitution of Grenada, the highest law of the land, which protects the rights of its citizens to own property; that the Government of Grenada has a responsibility to protect the national assets and national patrimony for the use and enjoyment of its citizens now and in the future. Importantly, the resolution refers to Camerhogne Park and Grand Anse beach as forming part of the ‘patrimony’ of Grenada, though not a legal term in the common law, nevertheless one charged with meaning, as it connotes property inherited from one’s ancestors, not inappropriate given that the park’s name, Camerhogne, can be taken to mean Ancestral Grenada. The resolution concludes with an appeal for signature as evidence of the ‘irrevocable commitment to protect and preserve, in perpetuity, Camerhogne Park, at its current location as public green space for the use and enjoyment of the people of Grenada’.¹¹⁶⁹ The Mitchell administration did not sign the resolution.

Nevertheless, the public occupation of the Camerhogne Park space, and resorting to quasi-legal means through the establishment of the committee and its resolutions, are evidence of a public position. The community saw the park as a public space that was important to their identity and their well-being. The government ignored or was unaware of the significance of the park to

¹¹⁶⁸ Press release: ‘The Save Camerhogne Park Committee finalises resolution for signing by political parties’ (*Now Grenada*, 10 January 2018) <<http://www.nowgrenada.com/2018/01/the-save-camerhogne-park-committee-finalises-resolution-for-signing-by-political-parties/>> accessed 8 February 2018

¹¹⁶⁹ ‘Protect Camerhogne Park in perpetuity’, People’s Resolution, January 31st, 2018, available at: <<http://www.nowgrenada.com/2018/01/the-save-camerhogne-park-committee-finalises-resolution-for-signing-by-political-parties/>>

serve both tourists and residents, believing it to be a politicised issue on the part of the opposition, and appealing instead to the nation's need for development and growth via foreign revenue injection that a new high end resort would offer. At no stage in the discussions were park laws referred to, just the fact that people viewed the park as established and that it was a public space for all to use.

7.6.5 Virtual enclosure and spatial injustice in Camerhogne Park

The spatial logic of virtual enclosure is based on much older ideas of land as property and landscape as scenery, which can lead to spatial injustice. As Olwig notes, virtual enclosure extinguishes the commons, creating a shift not just physically with the spatial definition of land as property¹¹⁷⁰ but psychologically in the way land is comprehended, accompanied by the rise of the perception of land as scenic space.¹¹⁷¹ Nature as landscape scenery now assumes a scalable spatial order and harmony.¹¹⁷²

The idea that space is a result of the struggle between different spatial definitions which co-exist and challenge one another can be linked to the concept of spatial justice, which Andreas Philippopoulos-Mihalopoulos has explained as requiring withdrawal.¹¹⁷³ When more than one body seeks to occupy the same space at the same time, 'a conflict of bodies that will never be sated' occurs. A way to negotiate this conflict is through a 'permanent state of oscillation', where the parties with their individual legitimate claims alternate in taking possession of the space and retreating from that claim.' Spatial justice thus 'demands a radical gesture of withdrawal'.¹¹⁷⁴

The multifunctionality of parks is an inherent characteristic of socially constructed and contested spaces.¹¹⁷⁵ Bengsten notes that giving priority to certain groups is a way to minimise the claims of others.¹¹⁷⁶ Practically speaking, another park could have been designated, but the historical and cultural use of Camerhogne Park was ignored. The physical characteristics of the park are also reflective of the people's desires, normativities and agency, as well as legal structures.

¹¹⁷⁰ Olwig, 'Virtual enclosure and alienation' 256.

¹¹⁷¹ Olwig, 'Virtual enclosure and alienation' 254.

¹¹⁷² Ibid., 258.

¹¹⁷³ 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.' 201.

¹¹⁷⁴ Bengsten 81.

¹¹⁷⁵ Hall and Frost (eds) *Tourism and national parks* 307 as cited by Dahlberg et al 220.

¹¹⁷⁶ Bengsten 89.

Removal can be therefore be associated with the determination to establish a space of law through the formal sale to the resort developers.¹¹⁷⁷

The government reserved the right to define the space of the park, yet this was contested by the public. The government therefore retreated from its claim, and this ‘radical gesture of withdrawal’¹¹⁷⁸ is in fact evidence of spatial justice. The presence or absence of regulation does not lead to spatial justice necessarily.¹¹⁷⁹ Although the park was never legally designated, Bengsten has written that this is not conclusive –multiple spaces can co-exist without the need for structural interventions and formal regulation.¹¹⁸⁰ The park had been in use since 1990, with signage declaring it a park, and public facilities maintained by the Government of Grenada via the Ministry of Tourism, Civil Aviation and Culture. The government by its actions therefore recognised and supported the park and its use by communities.

Spatial justice is thus a process which is evident when spatial definitions continuously alternate between a dominant and more subordinate position. Public contesting of the government’s definition of Camerhogne Park occurred over a three year period. People can reclaim the right to define space, and there is ample evidence of Grenadians occupying and using the park during the protest period. Examples of space occupation include watching movies and yoga, continuing to use the park daily, along with the more obvious demonstrations within the park.¹¹⁸¹

Thus particular spatial definitions have been established that complement each other. This is evidence of the existence of a type of commons, because the commons tend to be contested places where differences must be worked out in the common interest.¹¹⁸² Prime Minister Mitchell’s statements about moving the park can be taken as a bid to subtly shift the approved spatial definitions of Camerhogne Park. His appeals to national development and the vaunted attractiveness of the new space, are evidence of this. Although it was not a visible power play by the authorities, nevertheless, the aim was to establish a particular space without community consultation.¹¹⁸³ The letters of the former Attorney General and a former Senator calling for

¹¹⁷⁷ Ibid., 81.

¹¹⁷⁸ Andreas Philippopoulos-Mihalopoulos, ‘Spatial justice: law and the geography of withdrawal’ 202.

¹¹⁷⁹ Bengtsen 90.

¹¹⁸⁰ Ibid., 92.

¹¹⁸¹ Bengsten 83.

¹¹⁸² Olwig, *Landscape, Nature and the Body Politic* 224.

¹¹⁸³ Bengsten 86.

relocation of the park ‘in the national interest’, strengthened the Mitchell administration’s efforts. It was clear which user was being given priority:¹¹⁸⁴ the wealthy foreign party, in a country with a history of foreign exclusive ownership of land (the approved spatial definition of land).

Through the attempted dissolution of a national park, the Mitchell administration was engaging in virtual enclosure; enclosing land understood as visual space,¹¹⁸⁵ rather than landscape. Spatial justice – access to space – is dependent upon the historical settings and ideological contexts in which the institutions controlling national park management have evolved. The conservation framework is directly related to how we perceive landscapes and by extension value them, and will reflect the views of those who make the decisions. Conservation therefore continues to be related to issues of power and justice.¹¹⁸⁶

Parks and protected areas legislation has not considered the needs of local communities, and the institutional arrangements that best reflect their relationship to the resources being protected, because of the region’s colonial past and entrenched institutional arrangements that underpin park governance. Traditional protected area legislation can only do so much because it was never intended to account for human presence – parks and protected areas are frozen in time, while landscapes are dynamic and reflect the community relationship with natural resources/community-nature interaction. The failure to allocate role and responsibilities to manage heritage resources reflects the bewilderment on the part of the authorities in identifying and recognising heritage as a resource necessary for sustainable development of small island states. The result is a ‘clash between two different cultural views of conservation, outdoor recreation and access rights, representing the government and the public.’¹¹⁸⁷

Martin and Scherr have noted the ways that legal frameworks, particularly those governing the use of public space, work to shape landscapes by restricting access to space for some people. For example, laws designed to maintain public order and cleanliness have in effect legislated the homeless out of space. Through a focus on public safety, these laws essentially render public space accessible only to some persons; those who already enjoy full access to and benefits of private spaces (such as homes, restaurants and the like) through their economic standing. Thus,

¹¹⁸⁴ Ibid., 89.

¹¹⁸⁵ Ibid., 90.

¹¹⁸⁶ Dahlberg et al, 209.

¹¹⁸⁷ Ibid., 215.

‘public space’ becomes exclusionary rather than a common ground for all persons, and the landscapes of public spaces are to some degree ‘cleansed’ of social difference.¹¹⁸⁸

Restricting public space eventually leads to virtual enclosure. Space then becomes accessible only to the richest, because they are likely to be the user group that can afford to enter the area and the multiplicity of spatial definitions are lost. Thus the increasing privatisation of public space is defaulting to the colonial style practice in which land is space, where colonialism promotes spatial privilege for the elite, at the expense of the general populace. There is a need to reform these institutional structures that arose in previous ideological contexts and develop the capacity to devolve control and decision-making powers to a local level.¹¹⁸⁹

The Mitchell administration ignored usage, practice and tradition when it proposed a new park space. The purported sale of Camerhogue Park is not a regulatory way of restoring spatial justice; instead it stifles a recreational space, by establishing boundaries in that public space that exclude the public. This is law reducing space to a controlled context.¹¹⁹⁰ Eliminating the space impedes the activities of the public and their use and definition of the area, while the offer of an alternative space controls access to certain spaces and certain spatial definitions.¹¹⁹¹ The Grenadian public challenged virtual enclosure and enacted their own justice - promoting group rights and common practices through the ‘people’s resolution’, appealing to the idea of ‘patrimony’ and viewing the natural heritage as an inheritance for future generations against damage and loss.

Without this perspective, the view of nature as blind to or separate from the existence of cultural landscapes and which became embodied in the purpose of national park management will prevail. This spatially unjust approach resulted in laws that provide for ‘state controlled commons governed by centralised institutions with top down management structures that ignore local people or regard them as the problem’.¹¹⁹² As Dahlberg writes, ‘attempts at change are often met with official resistance or lose out in competition with market forces aimed at increasing tourist access, tourists being perceived as less harmful to environment than land use

¹¹⁸⁸ Martin and Scherr 380-81.

¹¹⁸⁹ Dahlberg 221.

¹¹⁹⁰ Bengsten 88.

¹¹⁹¹ Ibid., 90.

¹¹⁹² Dahlberg et al, 219.

custom of local communities.’¹¹⁹³ By contrast, a landscape approach acknowledges these diverse interests that are not represented in property law.

These tensions are captured in Camerhogne Park, despite the existence of a parks framework and the park’s significance as a public space. The presence or absence of regulation is not dispositive – spatial justice must be considered on a case by case basis.¹¹⁹⁴ While the Government of Grenada defined the park in terms of a space created solely in law, in these legally grey areas, people enact their own justice by engaging in place-protective behaviour and appealing to a range of authorities – legal (the Constitution) and moral authorities (the people/patrimony) are represented in the Camerhogne Park resolution, which itself is a quasi-legal instrument. As of June 2016, the Prime Minister has indicated that the Park will not be absorbed or enclosed by the new resort.

7.7 Conclusion

These examples from the Lesser Antilles illustrate the contemporary challenges facing heritage protection, where public spaces are not recognised within the law and are undermined to reinforce private property interests. The result is that land is ascribed fixed spatial definitions that are colonial in character, yet landscapes by their very nature are contested. The law does not accommodate the range of communal interests that landscape represents, so the multiplicity of uses of public space remains unrecognised. Because it cannot accommodate various spatial definitions, there is friction between heritage protection and the law. This spatial blindness has resulted in a convoluted institutional framework and poor administration of the law, to which the OAS Heritage Legislation Survey alluded to, as discussed in Chapter One. As a result, landscape protection is not a priority, to the detriment of communities who are the bearers and creators of cultural heritage. In addition, current international best practice in the preparation of EIA reports which recommends the use of participatory processes is often deviated from, underscoring conservative and at times retrogressive positions on heritage protection, in order to entrench State interests.

¹¹⁹³ Ibid., 220.

¹¹⁹⁴ Bengtsen 90.

Many of these examples reflect the tension between the land use planning process and heritage protection. The Saint Lucia National Trust found itself in the crosshairs of the government when it was reprimanded for not maximising the ‘development’ potential of heritage ‘assets’, despite its legislative limits. The Trinidad and Tobago example also illustrates this well. In spite of Greyfriars being part of a proposed heritage district, the site was not considered ‘unique’ or aesthetically pleasing, as there was another Anglican church in existence, ignoring Greyfriars’ value as a public space and the criteria in the legislation for designating such spaces. As a result, the TTNT could not leverage support to protect Greyfriars, even with its attempts to list the site, challenge the developer in court, and the public calls for the site’s protection.

Planning and heritage law thus rarely work in alignment, unless heritage actors can make use of creative strategies, such as with the Argyle EIA process in St Vincent and the Grenadines. Here the SVGNT found the Airport Authority receptive to mitigation measures for heritage, in spite of limited legislative protection available in planning law. Recommended measures included a rescue excavation, the production of replicas and the relocation where possible of some of the archaeological resources. The SVG Trust advocated for the insertion of consideration of the impacts on heritage resources in the EIA process, facilitated the rescue excavation, and supported the creation of a heritage village as an alternative public space to protect some of the petroglyphs, developed through a participatory process with input from communities. Indigenous groups have occupied the village peacefully since its construction in order to advocate for its upkeep, an indication of its significance to the community and efforts to regulate use and access to this new space for future generations.

While St Vincent has benefited from the presence of an active Trust, which advocated for the protection of a prominent site, and an extant indigenous population that gave these heritage resources contemporary resonance, in Grenada the Trust and Museum played no vital part in the discussions surrounding the Lower Sauteurs EIA, in spite of existing legislation and the site’s importance. The Lower Sauteurs EIA gave minimal consideration to the heritage significance of the site since it was not the focus of its terms of reference, but the EIA prepared for Argyle reflected the fact that the authorities had succumbed to community pressure and assessed the impact of the airport development on the cultural heritage of the area. Interestingly, while St Vincent attempted to address the concerns of the community and the impact on the heritage

resources during the planning process, Grenada did not seek innovative approaches to this issue, despite having a policy and legislative framework that promoted conservation of historic sites. Even though it was within the ambit of the planning authority to consider the impact of the breakwater on the natural and cultural heritage and the coastal community of Sauteurs, it refrained from doing so. While it does recognise the existence of the cultural heritage, the authority failed to deploy protective measures because these sites have no perceived value in the face of economic considerations.

Deploying the spatial justice lens in the Camerhogue Park example allows us to view contested access to parks and public spaces not merely as challenges to government authority but as place-protective behaviour derived from community bonds with place, and locally specific views on how places should change over time, as was discussed in Chapter Two. Such protests can be indicative of community practices tied to land that are not accommodated by statute. They question the adequacy of parks law to regulate public spaces, presenting an opportunity to consider the ways in which the law, by ignoring or devaluing space, is ultimately effective. Spatial justice can therefore be enacted by the public, regardless of the existence of regulations. The Grenadian public challenged virtual enclosure and enacted their own justice - promoting group rights and common practices, and demanding that these alternatives to private property be recognised as legitimate land use. These efforts are attempts to localise the law to effectively respond to local needs and conditions.

Where cultural heritage law, environmental law and planning law interact, the process is far from harmonious. Yet while standing is only extended to private property owners, non-State heritage actors, whether communities or groups or institutional actors, are attempting to challenge current spatial definitions to protect heritage, whether this means defending access to space or the right to define such spaces. When the public is not excluded from decision-making concerning public spaces, as with the creation of a new park in St Vincent, the reaction is different from situations in which the public has no opportunity to (re) define spaces, as in Grenada and Trinidad and Tobago. In exploring these scenarios of heritage and landscape conflicts in the Lesser Antilles, Layard's strategy for achieving spatial justice as outlined in Chapter One, whether aspatiality, the dismissal of space 'is a defeat for citizens, localities, and place' has proven highly relevant.