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

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Chapter 8 Conclusion

In reviewing the legal framework for heritage protection in the Lesser Antilles, this research has drawn on new perspectives in the legal geography and legal anthropology fields to better understand the role of law, its strengths and weaknesses, and opportunities for improving implementation in this region. The concept of landscape as a term in legal geography has been explained herein as a place in which a community interacts with their natural and cultural environment in such a way as to define their relationships with the land and each other, prescribe the use of shared resources for those belonging to the land, and codify the practices and rituals that arise so that they can be transmitted over time to sustain the community. Because each environment is different and change is inevitable, the people, the practices and the institutions as shaped by this relationship will always be distinctive, and always tied to place – as a result, cultural identity has a particular spatial location. As 'cultural nature', landscape is the locus of cultural heritage, a public space or a common good, and its continued existence is relevant to the sustainability of heritage.

Crucial therefore to the effectiveness of heritage law is spatial justice, because acknowledging the spatial setting ensures that law accommodates local conditions, and legal rules are embedded in local conditions of existence, rather than abstract conceptions of universal application. Universal rules can contribute to spatial injustice by erasing the local specificities of place – this was typically practised during colonialism when various territories around the world were invaded by European settlers and subjugated to an imposed system of law, which remade these places into spaces that reflected the images, beliefs, practices and environments of Europeans, despite the fact that they were not located in Europe at all. The impact of the colonial enterprise on the landscapes of the Lesser Antilles was outlined in Chapter Two and is worth recalling here before considering the findings.

Slave colonies require the total erasure of place, any social linkages to the land, and any human presence in order to embed plantation agriculture. Laws were developed to protect spaces but only in the furtherance of imperial pursuits. These laws never considered the features of local natural resources, or the significance to communities, as by this time, all non-Europeans had restricted access to space. This impacted the Caribbean environment and the communities which

depended upon them, which was explored in Chapter Two. St Vincent's King's Hill Forest Act was the first law enacted in this context to establish a colonial reserve to sustain the functioning of the plantation system at the expense of Amerindian communities. It is representative of the legislation that would be enacted throughout the region.

The idea of the Caribbean as a placeless void enabled a legal system that prioritised abstract rules at the expense of local communities and customs. Regulation of the landscape was fraught with obstacles to heritage protection, because these heritage resources were consistently suppressed at the expense of private property rights. Colonialism in particular ensured that no other land use was permitted under the common law. Early common law in the Caribbean therefore developed features that have consequences for cultural heritage in the Lesser Antilles today. This leads to the following four findings.

The first finding of this analysis is that heritage institutions tend to uphold a colonial-era approach to heritage, because they are often not embedded in the communities they serve. National Trusts and state museums, the major heritage institutional actors, remain passive since they form no part of an integrated approach to protect public spaces. Trusts have limited language for recognising vernacular heritage and their legislation reflects the colonial-era National Trust law that prioritised private interests and the dominant class's perception of heritage. As Chapter Seven has shown, the National Trust of Trinidad and Tobago was unable to save Greyfriars Church of Scotland, a public site important to the abolition of slavery and independence from being demolished, despite having criteria in its legislation for listing and protection, and serving in an advisory capacity to the Government of Trinidad and Tobago. The same was true in Grenada when an Amerindian burial ground was discovered. Where Trusts attempt to challenge the State approved definition of heritage, they are often rendered ineffectual, as was the case in Saint Lucia. A landscape approach requires the decolonisation of heritage institutions, the practices of which have prioritised Eurocentric heritage, and overlooked the significance of landscapes to defining heritage, falling back on arbitrary definitions for classifying artefacts. Without place-based knowledge, these laws are unable to devise locally specific or place appropriate strategies for protecting heritage.[1195]

[1195] Bartel 347.

Heritage laws are often subject to the prerogatives of planning law, which leads to the second finding – that the planning process via EIAs can precipitate heritage destruction, because heritage is not considered an approved use of land in planning law. Planning law is directing development of post-industrial Britain, not the post-colonial Lesser Antilles. This is literally law for a different space and time, which makes use of listed buildings and preservation orders because heritage is viewed only as a visual accent to land, and only private property interests are protected as development is promoted. Industrial Britain's idea of heritage was aestheticised in order to provide a contrast to the perceived evils of urban London – this conceptualisation is irrelevant to the Lesser Antilles. These laws continue to promote development as construction, which can displace or disproportionately impact communities, as seen in the Lower Sauteurs EIA process in Grenada, where in spite of having provisions on the cultural heritage, and implementing language for the WHC, the EIA paid minimal attention to heritage resources.

Planning law often prioritises health and safety as a pretext for cleansing spaces of heritage resources, while upholding the rights of private landowners. Only aesthetic aspects of heritage such as facades of listed buildings are considered for preservation. The example of Greyfriars Church demonstrates this approach, as the developer alluded to the architectural merits of another church of similar denomination as justification for demolishing Greyfriars, ignoring its contribution to Trinidad's independence movement and value as a refuge for diverse immigrants and former slaves, ancestors of modern Trinidadians. Here the developer was challenged not for the actual destruction of an important public space, but for failure to secure approval for demolition as outlined in the law (and which was later granted). The planning authorities explicitly stated that their concern was not the historic significance of the site.

Spatial cleansing narratives continue to drive 'development', often aligning with the laudable goals of promoting health and safety. Evacuation of space upholds Western notions of development, as planning was first practiced in the Lesser Antilles through virtual enclosure, evicting undesirable peoples to acquire private property for the colonisers for sugar plantations. Such laws extended the practices of industrial Britain without recognising the Caribbean as a different environmental and cultural space. The Greyfriars developer justified its demolition by characterising it as a 'crime-ridden' space infested with drug addicts – the focus was on clearing space, not maintaining community memory.

The EIA for the Lower Sauteurs area in Grenada did acknowledge the importance of the historic Leapers' Hill site, but never substantively addressed the wider significance to the landscape and to community vitality during its community consultations, or in the design of the breakwater. When an Amerindian burial ground was later revealed along the same shoreline, impacting the local coastal communities and other archaeological sites, their spaces and their livelihoods, there was no recognition of the existing modalities in place for planning authorities to coordinate with heritage institutions or communities, perhaps because it would be onerous to do so. By contrast, in the case of St Vincent and the Grenadines, the planning authorities acquiesced in the inclusion of a heritage impact study that recommended as a mitigation measure an alternate space for the threatened heritage resources which would be open to the public as a model Amerindian settlement. In this case, the SVG National Trust worked alongside the planning authorities to represent the public interest, and was likely successful because the Amerindian Village presented no obstacle to the continuation of the development project.

The third finding is that where national parks and protected areas legislation are in force, the type of conservation that is promoted for public spaces is often exclusionary, in the spirit of the colonial reserves established to sustain plantation agriculture. This is demonstrated by the fact that many parks are managed with a preservationist approach, to protect pristine natural environments, rather than supporting sustainable relations between places and local residents. This is because parks are defined as tourism assets and managed by the Ministry of Tourism (in Antigua and Barbuda, Grenada and St Kitts and Nevis) which means that foreign access to pristine environments is prioritised over local access. While communities legally have access rights to these spaces, they very rarely have a say in their designation or development, because consultation mechanisms are underdeveloped. This was demonstrated during the proposed relocation of Grenada's Camerhogne Park, which the public protested until the authorities relented. In the absence of access to public spaces, communities who object to the law's attempts to privatise public space will enact spatial justice through informal means to defend their traditions and practices. The example of Camerhogne Park demonstrates the capacity of the public to reclaim space – making use of quasi-legal means because their participatory and other procedural rights are limited in the law. Spatial justice is thus a process which is evident when spatial definitions continuously alternate between a dominant and more subordinate position. The

protection of such places ensures that various community uses can continue to develop and interact in multiple ways in relation to these resources, as is characteristic of the commons.

Place is therefore the cross-cutting factor that these laws neglect to address, leading to regulatory glitches in heritage protection. Chapter Seven provided examples of the erosion of heritage institutions and ineffective implementation of heritage law, as well as public actions to defend heritage resources outside the formal legal framework. The public has engaged in place-protective behaviour that challenges or varies the application of these laws. Mechanisms and procedures are supplemented by protests and petitions, which in turn are evidence of informal customs, social conventions and norms governing use and definition of these spaces.[1196] The Saint Lucia National Trust challenged the Government of Saint Lucia via press releases. In Grenada, letters, petitions, protests and declarations were used to demonstrate conflicts over public space. In other circumstances, stakeholders find ways to collaborate with the government, civil society and academia to preserve spaces, as with Argyle in St Vincent and in a more limited fashion, Sauteurs in Grenada.

The ways in which non-State heritage actors are challenging national approaches to cultural heritage represent in varied form the rebuke of private property definitions of public space, and evidence of landscape reasserting itself. None of these heritage laws are sufficiently participatory to ensure that communities are adequately represented and engaged where their interests in heritage resources may be under threat. This reflects the regional pattern of community challenges to protect these places, suggesting a regional approach to landscape might be necessary. Given the example of the European Landscape Convention, which poses challenges for developed states despite its successes, and the potential problems with a Global Landscape Convention, such a treaty may not be forthcoming in the near future. Nevertheless, there are alternative ways to address place protection should such an instrument prove infeasible. This leads to the fourth and final finding – that procedural environmental rights may provide communities in the Lesser Antilles an opportunity to formalise their rights of access and use, and by extension support landscape protection.

[1196] Bartel et al 346.

While there is no substantive right to landscape in law because of the narrow definition of property, international law is proving to be progressive in landscape protection, by offering mechanisms that support community access, engagement with and definition of the cultural heritage. The Eurocentrism of international cultural heritage law that favoured monumental and iconic heritage has been challenged in the last few decades, so that international law has evolved to embrace a broader anthropological approach to culture and cultural heritage, recognising communities' role as heritage creators and stewards. The landmark Council of Europe Landscape Convention defines international law's stance on landscapes, by placing people at the centre of the planning process, while the Convention on Biological Diversity's Akwé: Kon Guidelines recommends involvement of indigenous and local communities in the EIA process.

It is the human rights field that has advanced the furthest, at times bypassing the State in the face of abuse of inaction. Human rights law recognises the cultural rights dimension to landscape, or rights of access to enjoy landscape as cultural heritage as well as the associated rights of customary rights or collective property, in addition to affording communities the opportunities to be heard and protected where their interaction with the environment is critical to their quality of life (the human rights dimension to landscape as framed in the rights to a healthy environment).

The Inter-American Court system in particular has taken an innovative approach to developing landscape rights, although only in the context of indigenous communities thus far. Nevertheless, human rights law also has the potential to offer cultural rights protection to everyone, which would include the right to enjoy access to the cultural heritage as part of the right to a cultural identity. All communities have intimate connections with public spaces as the settings for their lives, and depend on the continuation of these spaces for human existence. Innovative, participatory and sustainable approaches to natural and cultural resources are therefore necessary for protecting these dynamic spaces. The Inter-American Court of Human Rights' approach has influenced the drafting of the first regionally binding environmental treaty in Latin America and the Caribbean, the Escazú Agreement.

Should it enter into force, and be ratified by states in the Lesser Antilles, the Escazú Agreement may provide a regional framework for integrating community concerns and place-based considerations in the law via the use of participatory mechanisms. Escazú aims for full implementation of the rights to environmental information, to participate in environmental

decision making, and to access to environmental justice in the courts. Procedural rights can strengthen the capacity of communities to engage more effectively in heritage governance through access to environmental information, use of participatory mechanisms to strengthen the duty to consult the public in decision-making, and access to justice, such as extending the standing to make claims to individuals, communities and groups even where they lack title to property, should they be affected by any proposed development that would negatively impact the environment. Communities will therefore have enabling mechanisms to contest landscape use.

Escazú has acknowledged that specific social, geographic, cultural and environmental circumstances must be factored into strategies for enhancing participatory governance of the environment. This opens the door to accommodating locally specific needs of communities where natural resources are concerned, and by extension, secures the protection of the landscapes they live in. In lieu of a regional framework for landscape protection, this may be the appropriate option for the Lesser Antilles to meet the needs of these communities.

Law configures space in such a way that has implications for heritage protection in the Lesser Antilles, entrenching power dynamics that disregard local communities and privatise public space. Yet local resources have local limits, are informed by local needs and practices, and so-called 'universal' principles that underpin the law are neither neutral in formation or purpose. A sense of belonging, identity, and memory, the building blocks of heritage, all have spatial references. In order to sustain heritage resources that are rooted in the land, any approach to heritage protection must therefore contend with issues of land access and ownership for excluded cultural groups, by recognising community definition of public spaces. Ironically, international law's progressive stance on heritage has created an arena for local communities to advocate for protection of their resources. Lawmaking at the international level is contributing to the crystallization of law by recognising local custom as an important source of law, which has implications for the protection of human rights, landscape and heritage in the Caribbean.

This dissertation has argued that landscapes, as the dwelling places of communities, are important to local livelihoods, practices, memory and identity, and so ultimately act as the cradle of cultural heritage. Legal protection of cultural heritage will not be effective unless it is based on an understanding of this symbiotic relationship. Landscape as an approach emphasises the importance of the relationship between local communities and their environment in the creation

of place, and spatial justice as the objective, focuses on the relevance of space to delivering effective legal services. As a complement to one another, they afford opportunities for reforming the legislative framework for heritage protection by integrating local conditions and circumstances found in the Lesser Antilles when drafting, implementing and enforcing the law.

This research has made a number of contributions. It has produced the first overview of cultural heritage law in the Lesser Antilles. It has presented an innovative approach to heritage protection via a legal geographical analysis of cultural heritage law. In exposing the colonial origins of these laws, I demonstrated how these doctrinal foundations suppress local definitions of space, which has impacted modern attitudes towards landscape, by treating heritage resources as simply scenic in value. This has implications for the sustainable development and survival of these small island states. A spatial justice lens was employed to demonstrate how prioritising placelessness can marginalise communities and undermine the protection of heritage resources, while legal geographical and legal anthropological perspectives enhance the understanding of law beyond its formalist textual presence, to embrace non-formal but locally relevant norm-setting behaviours that are critical for the sustainability of these resources, and decolonise the imposed common law tradition.

I suggested that 'where' heritage is located can be as important as what heritage is and why it serves a purpose. When place is narrowly or selectively defined in the law, heritage is controllable and even disposable. Place must be recognised as a specific geographic location, while acknowledging the mutability of identity and social relationships associated with that place. Landscape shines a spotlight on the deficiencies of property law and how it affects heritage governance. As cultural nature, it contextualises heritage, importing sustainability, spatial justice and respect for communities into a framework for heritage protection. For the Lesser Antilles, cultural heritage cannot be appreciated in a vacuum, held apart from the painful, oppressive past that created it. That past is recorded in the landscape, and is obscured by the law via its allocation of land and power to private interests. Revealing these connections between land, law and people is thus critical to achieving sustainable heritage protection.