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

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Summary

In the introductory chapter, the theoretical and methodological context for the research is laid out and key concepts defined. The scope of the study area is demarcated, comprising the independent English speaking islands of the Lesser Antilles (Antigua and Barbuda, Barbados, Dominica, Grenada, Saint Lucia, St Kitts and Nevis, St Vincent and the Grenadines, and Trinidad and Tobago). The significance of an integrated definition of heritage resources to small land masses is underscored. This cultural nature is known as landscape and is the source of a people's heritage. Valuing heritage via the protection of landscape supports the survival of local livelihoods and community cohesion, which has implications for the future sustainability of culturally diverse small island economies. This approach to heritage protection benefits from new legal methodologies such as legal geography and legal anthropology, which look at the particular space (geographic location or place) heritage emanates from to determine successful protection strategies for the local community (spatial justice), and consider norms beyond textual legislation to determine the effectiveness of regulating heritage resources. With this in mind, the laws examined relate to museum and national trusts, antiquities, land use planning, and parks and protected areas. The chapter summarises the research questions, and outlines the layout and structure of the dissertation.

Chapter Two develops the theoretical framework as it relates to the Caribbean landscape and spatial justice, applying Kenneth Olwig's landscape theory to reveal the law's role in defining and ultimately erasing landscape, and the implications for heritage protection. Landscape as it exists in common law countries is traced to its roots in England, and an overview is provided of the reduction of the communal landscape in its dynamic form to its aestheticised shadow today, as a landscape garden. This is known as enclosure, and enclosure laws helped transform landscapes into private property for elite interests, under the guise of avoiding 'waste' of land and promoting efficiency of agriculture, while displacing commoners and their local way of life. This practice was so successful that it was transplanted throughout the British Empire, resulting in the imperial landscape. The implications for heritage protection are illustrated by way of examining the transformation of the Amerindian landscape in the Lesser Antilles to the plantationscape. Amerindian genocide was justified by framing indigenous peoples as dangerous and unhygienic occupiers of space. Expelling these peoples facilitated the conversion of their clan approach to land into private property. This suppression of community identity and humanity continued via the importation of enslaved African labour for the purpose of exploitative monoculture. The law as an instrument of empire enabled these practices - the earliest conservation laws such as the King's Hill Reserve Act in St Vincent and the Grenadines created colonial reserves to maintain the plantation economy. By denying local and enslaved peoples access to space exclusively in favour of the plantocracy, spatial injustice is embedded in the legal framework and the heritage of local communities is expunged. This sets the tone for the relationship between landscape, law and heritage.

Confronting this legacy begins in Chapter Three, which explores the development of landscape protection in international law with reference to the Lesser Antilles. Amy Strecker's seminal work on the subject is discussed, highlighting landscape's emergence as visual background in soft law instruments such as UNESCO recommendations, to its emergence as a heritage category in the World Heritage Convention, as well as its treatment in environmental law and human rights law, before finally becoming a subject in its own right in the European Landscape Convention (ELC). The ELC places people at the centre of landscape and by recognising the value of community relationships with the land to sustainable development, no longer dismisses landscape as an aesthetic backdrop. Both the EU and Inter-American court systems are examined to assess interpretation of landscape protection. The Inter-American system is more progressive but restricts landscape rights to indigenous communities only. While there is no counterpart to the ELC in the Caribbean, the future for landscape protection with the newly adopted Escazú Agreement on Access to Information, Public Participation and Justice in Environmental Matters in Latin America and the Caribbean is speculated upon, given the Escazú Agreement's requirements for the procedural environmental rights of communities to be respected where there is proposed land use change, which demonstrates recognition of the diversity of land uses reflective of landscape, in spite of the absence of communal rights to landscape in the common law. Ultimately, this chapter acknowledges that international law has taken a progressive stance in protecting local communities and their rights.

Chapter Four is the first of three chapters to examine contemporary domestic legislation, in this case antiquities and heritage legislation. National trusts of the Lesser Antilles, which are the main bodies responsible for heritage, evolve out of the National Trust of England and Wales, so their development is compared and contrasted with this model institution. National trusts prioritise colonial heritage as they were originally designed to uphold private interests in the first place. Museum law is not well developed, but three examples from Barbados, Grenada and Trinidad and Tobago are discussed. Laws in draft, namely the Antiquities bills of Antigua and Barbados, are examined with an eye to the future development of heritage law in those countries. While there are attempts to become progressive, underlying assumptions that remain embedded in antiquities law continue to influence its drafting and enforcement. These demand an object-based approach to heritage, disembodied from the wider relationship with communities and the environment which imbue that heritage with value and sustains its existence.

Chapter Five is dedicated to planning law, which is based on English town and country planning legislation. The chapter makes a distinction between those countries that have retained town and country legislation (Barbados, St Vincent and the Grenadines, and Trinidad and Tobago) and the remaining Lesser Antilles countries, which have developed modern physical planning and development control legislation. Town and country legislation from the UK reflects the needs of Postwar Britain, rather than the Lesser Antilles. Because this law was originally designed to promote development, often at the expense of heritage, heritage itself is not considered a legitimate land use in the Lesser Antilles, and is relegated to an aesthetic consideration.

Procedural mechanisms, such as a duty to consult the community and the environmental impact assessment are hampered by this narrow definition of land. Even where model legislation was developed for the subregion, underlying planning objectives continue to treat heritage as an obstacle to development, and often frames it as a threat to public health in need of removal, a form of 'spatial cleansing' to reinforce the accepted spatial definition of land as private property.

Chapter Six discusses landscape as public space, which is regulated by parks and protected areas legislation. The park ideal as first defined in English legislation disguised the forcible enclosure of communal land, a practice that was extended when park law was transported to the Americas. In the Lesser Antilles, these proto-parks took the form of colonial reserves for the purpose of supporting plantation agriculture, and excluded Amerindian peoples from these lands. Review of park laws reveals that this dynamic of exclusive conservation continues, whether through the design of parks, their prioritisation as tourism assets, and the use of fees, suppressing local community relationships that are responsible for the nurturing of heritage resources. This denies the public access to land, and curtails the multiplicity of spatial definitions associated with common land. This reinforces the premise that the inherited eco-imperialist framework was designed to extinguish local custom. Spatial justice is therefore relevant for challenging colonial legislation.

In the absence of caselaw, Chapter Seven highlights some examples of public space disputes in the Lesser Antilles that illustrate the inadequacy of current heritage legislation. Conflicts represent community action to protect landscape (and by extension their heritage) where the legislation fails them. In some instances, poor administration is an indicator of deficiencies in the law, such as in Saint Lucia, where the National Trust struggled to overcome its colonial legacy in its attempts to protect public spaces. Greyfriars Church in Trinidad and Tobago reveals the challenges of protecting public spaces where heritage law and planning law come into conflict. Even with a specific law and policy for protecting Amerindian heritage, Grenada's first example in Lower Sauteurs emphasises the shortcomings of the EIA process in planning where communities and heritage protection are concerned, while the EIA process in Argyle, St Vincent and the Grenadines serves as a valuable counterpoint because a contemporary indigenous community successfully challenged this process. Finally, the second example from Grenada, Camerhogne Park, shows how implementation of parks law can become a springboard for spatial justice issues in that island, particularly as it relates to use and access, with the public challenging the government's proposed sale of the park. These examples affirm that where public spaces are not recognised within the law and are undermined to reinforce private property interests, land is ascribed fixed spatial definitions that are colonial in character. Yet landscapes by their very nature are contested, with multiple interests and uses that differ from community to community, as the conflicts reveal. The law does not accommodate the range of communal interests that landscape represents, so these uses are unrecognised, resulting in spatial injustice and loss of heritage unless communities challenge these practices.

Chapter Eight concludes by observing that given these challenges arising across the Lesser Antilles, decolonising the legal framework requires moving away from the universal eco-imperialist forces that disrupted community bonds in the land, erased local knowledge of resource use and stifled associated cultural traditions. By drawing on perspectives from legal geography and legal anthropology, new insights have been revealed concerning the inadequacies of the legal framework for heritage protection. Deploying the landscape lens has exposed the ways in which community relationships with the land are essential for sustaining heritage. A spatially just analysis of the law highlights the narrow and abstract definition of land as property rights, which by erasing the specificity of place, fails to represent those diverse interests in land that vary from location to location and generate heritage. This makes heritage controllable and even disposable according to the law. Thus landscape as cultural nature contextualises heritage, importing sustainability, spatial justice and respect for communities into a framework for heritage protection. One way to translate these considerations into domestic law is to emulate the emancipatory trend in international law to protect local communities using procedural environmental rights. Ratifying the Escazú Agreement may thus be seen as a vehicle for implementing landscape protection in local law.