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Emparking Empire: Exclusionary Nature and Spatial Injustice in Commonwealth Caribbean Environmental Law

By Amanda Byer*

ABSTRACT

Recent scholarship on the environment has involved an examination of the role of Empire in shaping our relations with the natural world. Parks and protected areas were some of the earliest conservation mechanisms deployed by colonial authorities to protect wilderness and they continue to fulfil this objective in modern environmental law. This paper complicates our understanding of parks as tools of spatial injustice and emblematic of exclusionary conservation in the law. It traces the origins and development of parks in the Commonwealth Caribbean (former British colonies in the Caribbean) using a legal geographical lens to assess their impacts on local communities and place attachment in the region. By paying attention to the way in which imperial imaginaries of wilderness were consolidated in the law at the expense of local communities, this paper highlights the need to democratise and diversify approaches to nature in the law. This is of particular importance to small island developing states, such as those in the Caribbean region, who rely on pristine nature as a core tourism asset but also face unique vulnerabilities in an age of environmental polycrisis.

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INTRODUCTION

Protecting nature through park management achieved worldwide attention in the 1800s, as this was the conservation model promulgated by the US National Park Service. But the 'wilderness' or untouched nature subject to legal protection is based on ideas of much older vintage. As a colonial construct, Edenic nature was created by isolating and eliminating local communities that shaped and protected nature. While the US park system has been the subject of historical and environmental analysis in the context of environmental racism and environmental justice,[1] the reliance on wilderness to suppress and silence communities is also relevant to the Caribbean islands.[2] These insular environments are often associated with paradisiacal imagery but were depopulated and transformed when Indigenous homelands were converted to slave colonies. In light of the challenges these small island developing states are likely to face in the climate and environmental crisis, a re-examination of the legal framework for environmental protection in this region is warranted.

While the role of Caribbean nature has been analysed in the history of the British and other European empires,[3] environmental legislation's role in reconceptualising and legitimising this understanding of nature in the Commonwealth Caribbean is underexamined. I argue, using a legal geographical lens, that Commonwealth Caribbean environmental law via parks legislation is rooted in colonial ideas about nature as vacuous space and this propagates spatial injustice. The introduction of the common law was instrumental to the reordering of the Caribbean landscape and entrenching control of land for plantation agriculture, which caused ecosystems to deteriorate. Forest reserves were then introduced to stem the resulting ecological decline in these colonies to maximise and prolong economic exploitation. Both the understanding of nature, and the means of protecting nature through the creation of parks (i.e. emparkment) are therefore colonial and exclusionary by design and based on extractivism.[4]

This paper outlines the spatially unjust process of emparkment, which echoes the historical enclosure movement in Britain

1 eg Dorceta E Taylor, *The Rise of the American Conservation Movement: Power, Privilege, and Environmental Protection* (Duke University Press 2016).

2 Malcom Ferdinand 'Behind the Colonial Silence of Wilderness: "In Marronage Lies the Search of a World"' (2022) 14 Environmental Humanities 182.

3 Malcom Ferdinand, *Decolonial Ecology: Thinking from the Caribbean World* (Polity Books 2022) 127; Pablo F Gomez, *The Experiential Caribbean: Creating Knowledge and Healing in the Early Modern Atlantic* (University of North Carolina Press 2017); JR McNeill, *Mosquito Empires: Ecology and War in the Greater Caribbean, 1620–1914* (Cambridge University Press 2010); Richard H Grove, *Green Imperialism: Colonial Expansion, Tropical Island Edens and the Origins of Environmentalism, 1600-1860* (Cambridge University Press 2005); Richard H Drayton, *Nature's Government: Science, Imperial Britain, and the 'Improvement' of the World* (Yale University Press 2000).

4 William Beinart and Lotte Hughes, *Environment and Empire* (Oxford University Press 2007) 289.

whereby the commons was replaced with private property. The first section of this paper explains the legal geographical framework for assessing spatial injustice. In the second section I trace the foundations of emparkment from England to the Eastern Caribbean, where some of the first nature reserve laws were drafted as experiments in legal conservation. I then review contemporary Eastern Caribbean parks law to identify the retention of spatially unjust practices in conservation law. I suggest that the law can respond to diverse emplaced understandings of nature but that this requires robust participatory mechanisms to recognise the interests of local communities with sustainable relations in nature. Following this, I consider the role of the Escazú Agreement, the first environmental treaty for Latin America and the Caribbean, with its explicit aims of contributing to the right to a healthy environment and sustainable development, as a potentially transformative pathway for achieving spatial justice before concluding with some final thoughts.

1. ASSESSING SPATIAL INJUSTICE: THE LEGAL GEOGRAPHICAL FRAMEWORK

Legal geography investigates the relationship between law and space, or 'the where of law', the social spaces, lived places and landscapes that explain law's relationship with society, to understand the basis for law's authority: legal geography asks whether law's presumed neutrality is in fact 'spatial blindness', ignorance of place, or at the very least spatial selectiveness, dismissing some places in favour of others.[5] But the reliance on highly abstracted legal doctrine, which prioritises the cogency of legal rules and facts can often obscure the material impacts of those decisions.[6] The consequences of law's spatial blindness, and how established legal categories can be reconciled with the material reality of geography are therefore key questions for this field.[7] Legal geography thus emphasises the need for localisation of the law. In other words, law must make room for local conditions, must be rooted in local conditions of existence, in order to be effective.[8] Rather than focusing only on the content of legal rules, looking at law 'from the ground up', from the entangled reality of people and places, generates new perspectives on how law and space interact, in potentially unjust and inhumane ways.[9]

Legal geography understands law and space as relational, acquiring subjective meaning through social action.[10] Law

[5] Antonia Layard, 'Reading Law Spatially' in Naomi Creutzfeldt, Marc Mason and Kristen McConnachie (eds), *Routledge Handbook of Socio-legal Theory and Methods* (Routledge 2019) 232; Irus Braverman and others (eds), *The Expanding Spaces of Law: A Timely Legal Geography* (Stanford University Press 2014) 1; Antonia Layard, 'What is Legal Geography?' (*University of Bristol Law School Blog,* 11 April 2016) <http://legalresearch.blogs.bris.ac.uk/2016/04/what-is-legal-geography/>.

[6] Layard, 'Reading Law Spatially' ibid 233.

[7] ibid 237.

[8] Jane Holder and Carolyn Harrison (eds), *Law and Geography* (Oxford University Press 2003) 4.

[9] Robyn Bartel and others, 'Legal Geography: An Australian Perspective' (2013) 51(4) Geographical Research 339, 341.

[10] Nicholas K Blomley and Joel C Bakan, 'Spacing Out: Towards A Critical Geography of Law' (1992) 30(3) Osgoode Hall Law Journal 661, 666.

and space influence the way power and social life are manifested, including the corresponding problematic and oppressive patterns that characterise them.[11] Law configures space in ways that have consequences for justice and injustice in the world because it shapes relations of power.[12] Legal geography examines these systemic asymmetries of power – domination, exploitation, and marginalisation both in the world and with respect to access to law. Contexts include racism, colonialism, homelessness and environmental justice.[13] The legal geographical perspective is therefore indispensable for revealing the workings of power that conventional spatial blindness obscures and for 'identifying the whys, hows and wheres [sic] of injustice that are otherwise invisibilized and legitimized'.[14]

Understanding and exposing the spatial assumptions inherent in law that are presented as neutral and abstract can introduce new possibilities regarding the production of more geographically sensitive and representative (spatially just) legal rules and practices.[15] By situating law in space, that is, within its physical conditions and limits, legal geography embeds place-based knowledge in law's foundations.[16] Legal geography is further useful for distinguishing between generic and space and lived-in spaces, the latter encapsulated by the term place, to which collective meaning has been ascribed. Places differ by geographic location, by culture and demographics, so a spatial analysis of the environment rejects notions of a homogenous environment, in favour of lived-in landscapes that are locally encoded through human practices and interaction with a diversity of ecosystems over time.[17] A spatial reading of environmental law thus sheds light on the ways in which law acknowledges or dismisses cultural dimensions of the environment. A lived-in space or place reflects locally unique and dynamic relationships with nature that rely upon local knowledge and limits to sustain such places and peoples. Prior to the consolidation of land under Western Empires, most areas reflected complex uses and relations with land, which acted as bases for identity and common survival for communities.[18]

2. ENCLOSURE THROUGH EMPARKMENT: CONVERTING LIVED-IN NATURE TO SCENERY

Parks and protected areas have long been accepted in the law as mechanisms for conserving nature. However, Karen Fog Olwig and Kenneth Olwig have interrogated the 'neutral' qualities of parks, which originate in the English landscape garden park. In its cultivated blandness, the natural park would become

11 ibid 669-670.

12 David Delaney 'Legal Geography II: Discerning Injustice' (2016) 40(2) Progress in Human Geography 267, 268.

13 ibid.

14 ibid, at 272.

15 Layard (n 6) 241.

16 Bartel and others (n 9) 349.

17 Luke Bennett and Antonia Layard 'Legal Geography: Becoming Spatial Detectives' (2015) 9(7) Geography Compass 406, 410.

18 Nicole Graham, *Lawscape: Property, Environment, Law* (Routledge Cavendish 2010); Martti Koskenniemi 'Sovereignty, Property and Empire: Early modern English Contexts' (2017) 18(2) Theoretical Inquiries in Law 355.

the symbolic justification for the social and environmental changes that undermined the very place or landscape it replaced.[19]

Parks first emerge from the enclosure movement in Britain, which enclosed open spaces and common lands in order to facilitate agrarian commerce.[20] These common lands supported a range of diverse interests and uses that reflected communal livelihoods and practices, and provided rights of representation that could be asserted before locally developed institutions to mediate conflicts and vary customary rules to adapt to the changing environment.[21]

Technological advances in surveying and mapping techniques facilitated land's transformation from complex geophysical environment to abstract cartographic space, easily divided into parcels for sale.[22] Land's features, processes and functions supporting community subsistence were all eliminated. Land was now to be 'improved' through agriculture to produce crops and goods for trade.[23] The commodification of land meant that natural boundaries and barriers were no longer relevant. In contrast with peasant laws, designed to regulate resources to promote care of place, the new land practices no longer observed limits.[24] Care for place was thus eliminated, because land now only existed in the law as alienable property rights. New laws emerged to buttress the ambitions of an increasingly propertied bourgeois class, such as the Enclosure Acts of 1760-1830 which legislated 'improvement' via fencing of common fields and pastures.[25]

The landscape park completed land's transformation into abstract property, as it was a visual adornment of the landowner's exclusive right and access to land. The present day park is largely inspired by the pastoral artistic tradition of this idealised English landscape that flourished in the eighteenth century, masking the dissolution of communal land.[26] The enclosed working English common converted to agricultural tracts, as well as grassy parks surrounding the manor house.[27] Parks therefore represent nature in stasis, and that natural scenery is the carapace of a formerly vibrant functional nature that supported people and their livelihoods. Parks disguise the democratic conflict at the heart of differing perceptions of land and nature.[28]

19 Kareen Fog Olwig and Kenneth Olwig, 'Underdevelopment and the Development of "Natural" Park Ideology' (1979) 11(2) Antipode: A Radical Journal of Geography 16, 17.

20 JM Neeson, *Commoners: Common Right, Enclosure and Social Change in England, 1700-1820* (Cambridge University Press 1993); Nicholas Blomley, 'Making Private Property: Enclosure, Common Right and the Work of Hedges' (2007) 18 Rural History 1.

21 See Kenneth Olwig, *Landscape, Nature, and the Body Politic: From Britain's Renaissance to America's New World* (University of Wisconsin Press 2002).

22 Nicholas Blomley 'Law, Property, and the Geography of Violence: The Frontier, the Survey, and the Grid' (2003) 93 Annals of the Association of American Geographers 121.

23 Graham (n 18) 48.

24 ibid 53.

25 Kenneth Olwig, 'Virtual Enclosure, Ecosystem Services, Landscape's Character and the "Rewilding" of the Commons: the "Lake District" Case' (2016) 41(2) Landscape Research 253, 256.

26 Olwig and Olwig (n 19) 18.

27 Kenneth Olwig, 'Commons & Landscape', Landscape, Law & Justice: Proceedings (Workshop on Old and New Commons, Oslo 2003) 17.

28 Olwig and Olwig (n 19) 16.

Landscape as scenery thus reflected the triumph of the ideology of enclosure, or the desire to enclose and transform nature as property.[29] It was the first step in creating nature as vacuous space, a purposeful manipulation of the relations between people and their environment, which can destabilise places and communities.[30] Emptying nature of people, of evidence of habitation in turn created demand for the pastoral illusion inspired by the Biblical Eden,[31] known as untouched nature.

Such conceptions of nature were used to legitimise and rationalise particular land uses and even provide an escape from the reality of social and environmental change brought about by these economic processes. In fact, as Fog Olwig and Olwig point out, it is not nature that is being protected but environmental changes that facilitate and uphold capitalist interests.[32] This is not progressive use of nature or protecting the environment, but the reduction of spatial definitions of the environment, eliminating its cultural dimension as a peopled place. This created demand for a nature that never existed, and spurred the development of early tourism, as travellers searched the world for 'natural' landscapes to visit and capture on canvas (landscape painting). Nature became fixed, as static, uninhabited scenery.[33] Lost in this reshuffle of reality were the dynamic lived-in spaces, the commons and public spaces used by local communities.

This accepted version of nature was accessible only to an accepted class of people. The artificial wilderness as scenery, associated with the absence of Man, was an 'ideological Nature erasing evidence of previous use' and only the leisure classes were granted permission to interact with Nature.[34] Thus parks were an illusion disguising sites of struggle[35] and inherently exclusionary. Parks reflect power over nature, and power over its inhabitants, and obscure the economic and social realities being manipulated in order to facilitate control and oppression.

Transformation of nature into abstract property rights drove subsequent developments in the law that would have enduring spatial consequences.[36] Parks arise at the same time as displaced and impoverished commoners were migrating to industrialised centres, where town and country legislation was being introduced to prevent overcrowding, as well as facilitate agrarian land use. Contemporaneous archaeological legislation was being implemented to protect these pastoral scenes and symbols of the constructed past, as well as support slum clearance to protect these sites from encroaching urban settlements. Legal development around property rights to uphold such rights and insulate them from challenge can thus be seen in the practices and mechanisms laid down in planning, environmental and cultural heritage law to maintain this abstract and exclusionary nature.

29 Kenneth Olwig, 'Representation and Alienation in the Political Landscape' (2005) 12 Cultural Geographies 19, 28.

30 Annika Dahlberg, Rick Rohde and Klas Sandell, 'National Parks and Environmental Justice: Comparing Access Rights and Ideological Legacies in Three Countries' (2010) 8(3) Conservation and Society 209.

31 Olwig and Olwig (n 19) 17.

32 ibid.

33 Olwig and Olwig (n 19) 18.

34 ibid 20.

35 ibid 21.

36 Usha Natarajan and Kishan Khoday, 'Locating Nature: Making and Unmaking International Law' (2014) 27(3) Leiden Journal of International Law 573, 576.

In transforming the environment to benefit a few at the expense of many, unsustainable and undemocratic practices became institutionalised and naturalised. Enclosure is therefore a means of creating spatial injustice, as the process led to the violent resettlement of rural commoners in order to extinguish diverse uses of space. This logic would also be applied to lands acquired in the New World. The transformation of inhabited nature through its conversion to colonial property rights,[37] or ownership of land, was facilitated by the law, and emparkment maintained spatially unjust use of land to benefit elite interests in the plantocracy.

3. ENCLOSURE IN THE NEW WORLD: PLANTATIONS, NATURE RESERVES AND EARLY CONSERVATION LAW

Kenneth Olwig has observed that enclosure practices were adapted and deployed in new territories that would become colonies of the British Empire, a process he has termed 'virtual' enclosure.[38] Virtual enclosure occurs whenever the character of landscape is 'pre-defined according to an assumed spatial logic that comprehends nature as a bounded scenic property, reinforcing ideas about privatisation, private property and management control'.[39] What is relevant is that enclosure reduces environmental diversity through spatial consolidation and spatial enclosure.[40] This is an extension of abstract nature, now imperial nature, protecting capitalist interests on a global scale through the concretisation and concealment of detrimental environmental change.

'Improvement' of nature via agriculture was central to the imperial vision. In slave colonies such as those in the Caribbean, colonial reserves were created to sustain plantation monoculture. Plantation agriculture in the Caribbean slave colonies resulted in a complete restructuring of the land and removal of Native peoples, the importation of West Africans as slave labour, and the manipulation of natural resources in such a manner as to maintain the plantocracy's property rights.[41] Conservation itself is wedded to the colonial project, as conservation disciplines such as ecology and botany emerged during the expansion of European empires, gathering knowledge about market crops for the purpose of maximising yields.[42] Theories on agriculture, climate and deforestation informed the design of early reserve legislation, which reflected the pretext that land around the world was being underutilised in the absence of agrarian development.[43] One dominant

37 Graham (n 18) 90.

38 Olwig (n 25) 253.

39 ibid.

40 ibid 254.

41 Beinart and Hughes (n 4) 37.

42 Drayton (n 3). See also Londa Schiebinger and Claudia Swan (eds), *Colonial Botany: Science, Commerce and Politics in the Early Modern World* (University of Pennsylvania Press 2005) and Londa Schiebinger, *Plants and Empire: Colonial Bioprospecting in the Atlantic World* (Harvard University Press 2004).

43 Anthony Pagden 'The Struggle for Legitimacy and the Image of Empire in the Atlantic to c. 1700' in Nicholas Canny (ed), *The Origins of Empire: British Overseas Enterprise to the Close of the Seventeenth Century* (Oxford University Press 1998) 43.

understanding of nature would therefore be imposed. The effects of extensive degradation to the landscape would be masked using legally established reserves. This can be seen in the second phase of the British Empire in the Caribbean, which was more deliberate in its approach to acquiring territory.[44]

Under the Peace of Paris, the constituent territories of the Grenada Governorate (Grenada, Dominica, St Vincent and the Grenadines, and Tobago) were ceded to Britain by France at the end of the Seven Years' War. The strategy for the Grenada Governorate involved rapid development of sugar plantations, which required deforestation and major allocation of land and transfer of ownership.[45] In Tobago, woodlands were to be preserved for the repair of fortifications and buildings, and to prevent drought from deforestation.[46] As Richard Grove notes, prioritising timber reserves was foremost in the minds of colonial authorities and administrators because of the shocking ecological decline of nearby Barbados at the time of the signing of the Peace of Paris.[47] Barbados was one of Britain's first possessions in the Caribbean and its early success as a sugar colony had been surprising as it had been largely experimental, but this resulted in the land being completely denuded of forest cover and experiencing soil exhaustion. Profits from the colony had enriched its planters and sugar interests in the Empire, and all were eager to replicate its success. But perfecting the formula required a more systematic approach to creating sugar colonies.

Thus, the earliest legal interventions in the Eastern Caribbean relevant to nature concerned the creation of colonial reserves (rain, timber and botanical) to buttress plantation agriculture. Before the 1760s, the effects of colonial degradation on the environment had been addressed on a piecemeal basis, to protect the local food supply or to prevent depletion of a natural resource. However, by the mid-1760s, deforestation-induced climate change had become a worldwide trend observed throughout the French, British, and Dutch empires, and more focused and robust regulatory intervention was required.[48] Legislation[49] established a timber reserve in St Vincent and the Grenadines as part of a wider improvement ideology.[50] This was followed in 1763 by a botanical garden to collect information on economic crops and to supplement medicinal supplies to maintain the colony.[51] Alexander Gillespie notes that this garden is the first commonly recognised environmental sanctuary, as it was established by the State, and not by an individual.[52] Similar laws for reserves

44 Canny, ibid 30.

45 Grove (n 3) 269.

46 ibid 271.

47 ibid.

48 Vinita Damodaran, 'Environment and Empire: A Major Theme in Environmental History' in Mary N Harris and Csaba Lévai (eds), *Europe and its Empires* (Plus-Pisa University Press 2008) 129,133.

49 King's Hill Enclosure Ordinance No. 5 of. 1791.

50 Richard Grove, 'The Island and History of Environmentalism: the Case of St Vincent' in Mikulas Teich, Roy Porter and Bo Gustafsson (eds), *Nature and Society in Historical Context* (Cambridge University Press 1997) 148,155.

51 J'Nese Williams, 'Plantation Botany: Slavery and the Infrastructure of Government Science in the St. Vincent Botanic Garden, 1765–1820s' (2021) 44(2) Berichte Zur Wissenschaftsgeschichte 137.

52 Alexander Gillespie, *Protected Areas and International Environmental Law* (Martinus Nijhoff 2007) 7.

were enacted in the ceded islands, accompanying the plantations being established.

However, St Vincent's botanic garden was designed based on English experts' requirements, and not to service St Vincent itself. Colonial authorities appropriated local Indigenous knowledge at the expense of local peoples, designating them threats to security and public health, while using that herbal and medicinal expertise to protect the health of settlers and soldiers stationed in garrison towns. Absorbing land for reserves in addition to plantations had left fewer and fewer Indigenous homelands undisturbed, and accelerated tensions between Amerindians and Europeans. Reserves were thus also critical for undermining Indigenous bonds with the environment, since this would facilitate colonial settlement and the functioning of the Triangular Trade. The entrepôts of the Grenada Governorate were necessary nodes in the global trading network, receiving slave labour, providing sugar and other plantation crops, as well as resupplying vessels arriving from other parts of the Empire. Implicit in the creation of these reserves is the requirement that cultural nature be eliminated.

Grove highlights how this was accomplished via the law. Colonial conservation in the Eastern Caribbean was designed to displace peoples perceived as 'primitive', their 'uncultivated' forests representing wildness and lawlessness.[53] These forests were in fact Amerindian landscapes, but the Amerindians' clan approach to land was not recognised as a legitimate land use practice by English colonisers. English property law and environmental law were imposed, rather than defined by the needs and capacities of these environments, and ignorance of these places subsequently led to their decline,[54] as was seen in Barbados. The legal infrastructure created for conservation, especially in former colonial societies was never neutral, even where grounded in science, for scientific exploration and experimentation recreated these environments as bountiful paradises that could be repeatedly exploited. Colonial conservation thus perpetuated the idea of a placeless nature protected in the law, to the detriment of colonised environments and peoples who sustained nature as a means of communal survival. Conservation law achieved this through the spatial cleansing effects of emparkment, erasing the cultural footprint of local communities (whether physically displaced or displaced-in-place),[55] their practices and values, and abstracting place-specific characteristics in favour of a generic nature amenable to extraction and exploitation.

Colonial ideologies of improvement emphasised the need to maximise land's potential, transforming imperial environments into sources of economic and moral value, while private property regimes conferred ownership rights on European settlers to advance these objectives.[56] The 'orderly' exploitation and

[53] Grove (n 3) 280.

[54] James Beattie, Edward Melillo and Emily O'Gorman, 'Introduction' in James Beattie, Edward Melillo and Emily O'Gorman (eds), *Eco-Cultural Networks and the British Empire: New Views on Environmental History* (Bloomsbury 2015) 15.

[55] Sharlene Mollett 'A Modern Paradise: Garifuna Land, Labor, and Displacement-in-Place' (2014) 41(6) Latin American Perspectives 27, 30 referring to the process of constraining land use practices of local communities relevant to livelihoods and cultural mores so that the effect is analogous to displacement, in spite of the fact that there is no actual physical ejection from the land.

[56] Beattie, Melillo and O'Gorman (n 54) 9.

management of local environments was naturalised via colonial land use practices and upheld in the law, while materially the conditions created would have long-term repercussions for the colonised.[57] Political independence ended colonial rule for the local population. But the spatial implications for an inherited environment that was degraded from centuries of exploitation by colonial administration,[58] and still subject to the legal system that defined it solely in terms of property rights must be considered. Does the legal framework uphold exclusionary conceptualisations of nature? An examination of the modern parks legislation in some of the countries of the former Grenada Governorate, now part of the Eastern Caribbean, is undertaken to explore this question.

4. MODERN PARKS AND PROTECTED AREAS LEGISLATION IN THE EASTERN CARIBBEAN: A LEGAL GEOGRAPHICAL ANALYSIS[59]

The islands with national parks legislation in place in the Eastern Caribbean are Antigua and Barbuda, Dominica, Grenada, St Kitts and Nevis, and St Vincent and the Grenadines. As sovereign states, these islands have drafted legislation to promote environmental protection, making use of parks and protected areas. This analysis involves an assessment of the legal provisions, to determine the capacity of these laws to be responsive to place-specific conditions affecting the local environment. A central question is whether parks legislation has reckoned with the colonial character of the park and its function of entrenching spatially unjust practices through the conceptualisation of a pristine, placeless nature.

Antigua and Barbuda's first modern parks law, the National Parks Act of 1984, focused on establishing a National Parks Authority as well as making provision for the protection of ecological and cultural resources. However, the NPA placed the responsibility for establishing national parks policy and institutional architecture for parks with the Minister for Economic Development and Tourism.[60] This was later amended to the Minister 'to whom the responsibility of National Parks has been assigned' while the function of preparing park plans now requires consultation with the Town and Country Planner and the public.[61]

The most recent legislation concerning parks and protected areas, the Environmental Protection and Management Act 2014 (Antigua EPM Act 2014), complements Antigua's National Parks Act.[62] 'Protected

[57] Benjamin J Richardson, Ikechi Mgbeoji and Francis Botchway, 'Environmental Law in Post-colonial Societies: Aspirations, Achievements and Limitations' in Benjamin J Richardson and Stepan Wood (eds), *Environmental Law for Sustainability* (Hart Publishing 2006) 415.

[58] ibid.

[59] This section is revised and abridged with permission from Amanda Byer, *Heritage Landscape and Spatial Justice: New Legal Perspectives on Heritage Protection in the Lesser Antilles* (Sidestone Press 2022).

[60] See ss 2, 5, 6 and 7, and Sch 1. It is noteworthy that Antigua's Public Parks Act of 1965 originally designated the Minister 'for the time being charged with the responsibility for the subject of Lands' as responsible for parks (see s 2).

[61] Antigua National Parks Amendment Act 2004 amending s 10 of the Antigua National Parks Act.

[62] Antigua EPMA 2014 s 2.

area' is defined as an area of national significance based on the biological diversity located in the area and can be a wildlife or forest reserve'.[63] Protected areas, although defined, do not explicitly provide for heritage resources,[64] focusing instead on the study and conservation of 'any ecosystem, flora, fauna or landscape'.[65] This separation of nature and culture into separate protected area categories is replicated in the other islands as well.

Section 54 of the EPM Act outlines the categories of protected areas established under the law: these include forest reserves, areas for scientific research and multiple-use areas for 'secondary economic and recreational benefit'.[66] In section 54(1) a protected area is designated without prejudice to Antigua's Physical Planning Act. The Act also contemplates situations in which natural resources should be conserved and amenities, economic and social interests improved in rural areas, but these are not parks and are not explicitly linked to landscapes or public spaces.[67] This legislation, through modernising the national parks system and referencing sustainable development and climate resilience objectives, does not seem to consider nature as a cultural space and parks are defined quite narrowly, in addition to subjecting conservation to the prerogatives of planning. Also clear is the tiered approach to uses of land, with development prioritised, while livelihoods and recreational uses are of secondary value.

Grenada's National Parks and Protected Areas Act 1991 is supported by clear organisational infrastructure in the form of a National Parks Authority,[68] an advisory body (National Parks Council), and a National Parks Fund.[69] A range of protected areas may be established: for the purpose of preserving the natural beauty or flora and fauna of the area; creating a recreational area; commemorating an historical event of national importance; or preserving an historic landmark or place or object of historic, prehistoric, archaeological, cultural or scientific importance.[70] The objective of the National Parks Advisory Council is to ensure that land comprising the national parks system 'endures unimpaired' for the enjoyment of present and future generations.[71] This implies a high standard of ecological integrity in the regulatory framework for parks and protected areas, but in both the Antiguan and Grenadian legislation there is an absence of mechanisms for engaging communities.

Dominica's National Parks and Protected Areas Act 1975 explicitly states that the national parks system is dedicated to the people of Dominica for their benefit, education and enjoyment.[72] Lands within the national parks system are to be maintained and made use of so as to leave them unimpaired for the enjoyment of future generations,[73] the language of which seems to have influenced

63 ibid.

64 ibid, s 54.

65 ibid, s 54(1)(b) (emphasis added).

66 Sch X to the EPM Act also includes the IUCN's classification system of parks and protected areas.

67 Antigua EPM Act, s 52(2)(b) and (c).

68 Grenada NPPA Act, s 7.

69 ibid, ss 8, 9 and 10.

70 ibid, s 5.

71 ibid, s 3(3).

72 Dominica NPPA 1975 as amended, s 3.

73 ibid, s 3(1) and (2)

Grenada's legislation.[74] The organisational apparatus for park management takes the form of an advisory council but no provision is made for a fund or authority as with Grenada. Dominica's legislation establishes participatory mechanisms that are not found in Antiguan or Grenadian law. Notably, any proposed management plan for parks and protected areas must be published in the Gazette for inspection by the public and mechanisms for providing comments are provided.[75]

The St Vincent and the Grenadines' National Parks Act 2002 establishes the National Parks, Rivers and Beaches Authority as the authority responsible for managing parks, and its functions include advocacy and the promotion of conservation, use of historic resources for promoting tourism, and establishing a system for prioritisation and classification of parks.[76] The authority must also ensure that activities outside park boundaries do not negatively impact the parks, and mediate and resolve potential conflicts between users of the park, namely between fishermen and tourist interests – this is the only law to acknowledge potential conflicts in access to public space and the only law empowering the regulating authority to engage in conflict resolution. However, where heritage is mentioned, it is only in the context of external value, as a tourism asset, rather than for local communities.

Parks must have management plans, based on scientific data, and the Authority must maintain a list of natural resources. The Authority is also required to establish an effective interpretation programme, to establish public information and education programmes to create national conservation awareness, and to network with other agencies managing parks and conducting biological research. This is the only parks authority in the region with such extensive roles allocated for community engagement, environmental monitoring and data collection for sustainable park management.[77]

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

Terms used in protected areas management as well as cultural resource management are defined. 'National park' is defined as an area consisting of a relatively large land or marine area or some combination of land or sea containing natural and cultural features or scenery of national or international significance and managed in a manner to protect such resources and sustain scientific, recreational and educational activities on a controlled basis.[78] 'Protected area' is defined as a national park, nature reserve, botanic garden, historic site, scenic site or any other area of special concern or interest designated under section 3(1) of this Act, which potentially contemplates

[74] Ss 4 and 5 Dominica NPPA also recall the language of Grenada's legislation.

[75] Dominica NPPA ss 11(4) and (5).

[76] SVG NPA 2002 s 4.

[77] ibid, s 7.

[78] NCEPA 1987, s 2.

public spaces.[79] However, the Minister responsible for national parks and protected areas is defined as 'the Minister for the time being charged with the subject of Development',[80] indicating once again the policy objectives that are prioritised in land use. The Minister, in consultation with the Conservation Commission, designates an area as protected by notice published in the Gazette.[81] The duty to consult the general public is as extensive as that of the Vincentian legislation. All persons enjoying rights within the boundaries of a proposed protected area are invited to raise any claims and objections at a specified time and place. [82]

Some trends may be observed in the legislation. Many of the islands have aligned park protection with the tourism industry. In many cases, parks are considered the responsibility of the tourism sector, as in Antigua and Grenada. In recent years, some countries have attempted to integrate park management with environmental conservation and rely on scientific criteria in demarcating these areas for protection. Where there is promising language concerning the role of communities or their interests, or consideration of cultural values attached to nature, it is often underdeveloped. Most of the laws mention cultural heritage – but in terms of commemorating the past, rather than acknowledging present-day cultural practices embedded in the environment.

While modern legislation was put in place in the Eastern Caribbean to establish a national parks system, echoes of the colonial administration remain. Tourism remains the primary form of interaction with passive natural scenery. The legislation's acceptance of inherited concepts perpetuates rather than disrupts this colonial framing, focusing on wilderness preservation and scientific solutions to prevent ecological degradation. Missing is any acknowledgment of the role that science has played in creating nature as a purely economic asset for elite or foreign interests, upheld by planning objectives. Instead, science continues to be relied upon to give environmental law its legitimacy.[83] Cultural heritage where acknowledged supports the interpretation of nature as tourism assets, rather than reflective of underlying diverse values embodied in lived in spaces, and there is often a clear binary in terms of categorisation of parks for natural or cultural purposes, rather than multifunctional public spaces. The protection given by these laws can all be overridden by planning legislation. Thus, environmental law, heritage law and planning law continue to facilitate land's primary economic purpose as an asset for development. How can environmental democracy be infused in the lawmaking process to potentially protect nature, not as placeless and abstract, but as locally emplaced living landscapes? The role of the Escazú Agreement is now examined in this context.

5. DEMOCRATISING NATURE IN CARIBBEAN LAW: THE ESCAZÚ AGREEMENT

In 2021 the Escazú Agreement on Access to Information, Public Participation and Justice in Environmental Matters in Latin America and the Caribbean (hereinafter

79 ibid.

80 ibid.

81 NCEPA 1987, s 3.

82 ibid, s 5.

83 Stephen Humphreys and Yoriko Otomo, 'Theorizing International Environmental Law' in Anne Orford and Florian Hoffmann (eds), *The Oxford Handbook of the Theory of International Law* (Oxford University Press 2016) 798.

Escazú) entered into force.[84] It is the first purely environmental treaty for the region. Antigua and Barbuda, Grenada, Saint Kitts and Nevis, Saint Lucia and Saint Vincent and the Grenadines are parties to Escazú.

Escazú is a regional response to Principle 10 of the Rio Declaration on Environment and Development,[85] which addressed the need for participatory governance in environmental issues:[86]

> Environmental issues are best handled with participation of all concerned citizens, at the relevant level. At the national level, each individual shall have appropriate access to information concerning the environment that is held by public authorities, including information on hazardous materials and activities in their communities, and the opportunity to participate in decision-making processes. States shall facilitate and encourage public awareness and participation by making information widely available. Effective access to judicial and administrative proceedings, including redress and remedy, shall be provided.[87]

On foot of this milestone, discussions have been held concerning the need for inclusive interpretations of Principle 10 that empower minority, Indigenous and vulnerable communities,[88] particularly those traditionally marginalised in terms of access to the environment. Recognising other emplaced ontologies erased by abstract exclusionary nature, would open the door to addressing Haughton's observation, that unsustainable societies are likely to be unjust societies.[89]

Escazú's provisions draw attention to the existence of multicultural communities that complicate perceptions of the environment as generic.[90] This is captured in the Preamble, which alludes to global soft law as well as principles specifically relevant to small island environments.[91] Article 2 does not define 'public' in terms of minorities or Indigenous communities; instead the term encompasses one or more persons, so potentially any individual, group or community, including vulnerable members of the public have a right to be heard. Environmental information must be disseminated to communities 'in different formats and disseminated through appropriate means, taking into account cultural realities'[92] which pays attention

84 Regional Agreement on Access to Information, Public Participation and Justice in Environmental Matters in Latin America and the Caribbean, Escazú, 4 March 2018 [hereafter Escazú Agreement].

85 Rio Declaration on Environment and Development, 14 June 1992, UN Doc A/CONF.151/26/Rev. 1 (Vol. I), Annex II (1992).

86 Stephen Stec and Jerzy Jendroska, 'The Escazú Agreement and the Regional Approach to Rio Principle 10: Process, Innovation, and shortcomings' (2019) 31(3) Journal of Environmental Law 533, 536.

87 Principle 10, Rio Declaration above at n 86.

88 The Office of the High Commissioner on Human Rights, 'Framework Principles on Human Rights and the Environment' (2018) <https://www.ohchr.org/Documents/Issues/Environment/SREnvironment/Framework-PrinciplesUserFriendlyVersion.pdf>.

89 Graham Haughton, 'Environmental Justice and the Sustainable City' (1999) 18(3) Journal of Planning Education and Research 233, 234; Joshua Gellers and Chris Jeffords, 'Toward Environmental Democracy? Procedural Environmental Rights and Environmental Justice' (2018) 18 Global Environmental Politics 99, 105.

90 Louis Meuleman, 'Cultural Diversity and Sustainability Metagovernance' in Louis Meuleman (ed), *Transgovernance: Advancing Sustainability Governance* (Springer 2013) 37.

91 Escazú Agremeent (n 84) Preamble, 7th recital.

92 ibid, Art 6(7).

to the diversity of communities that are engaged and active in environmental protection.

Each party is expected to establish conditions that are favourable to public participation in environmental decision-making processes given the social, economic, cultural, geographical and gender characteristics of the public.[93] The enumeration of these characteristics indirectly acknowledges the potential relevance of place, and the nuances of such places to more informed and responsive decision-making. Finally, and most significantly, Escazú extends legal standing in Article 8, which in common law jurisdictions is often linked to ownership of property, to all communities in defence of the environment, though how this is interpreted will be left to the states themselves.[94] This innovation has the potential to enable communities to access environmental justice in courts where their rights are undermined due to environmental degradation. While the trend in Eastern Caribbean environmental law has been notably conservative, Stec and Jendroska note the presence of the 'principle of non-regression and principle of progressive realisation' in Article 3.[95] These principles are not defined but bear a similarity to the 'antibacksliding' provision in Article 4(7) of the Aarhus Convention, the Escazú Agreement's European counterpart.[96] This provision is meant to ensure parties recognise the procedural environmental rights in Aarhus as a floor, and not a ceiling, for progressive development of the law,[97] and in the context of such transformative approaches to standing for communities in the Escazú Agreement, it is hoped that it will be purposively interpreted by states in their national legislation.

Escazú was not created to protect place or grant communities a right to the landscape, but it does lay the preconditions for place recognition in the law through the codification of procedural environmental rights for local communities. It can equip local communities with the tools to contest the use of places they inhabit, challenge the regulation of access to these public spaces, and ensure that they are informed and able to participate in democratic processes that affect the environment. These factors could indirectly protect sustainable people-place relations. Should Escazú be adopted and applied in local law, there is the potential for a paradigm shift in the way that the environment, and local communities depending on the environment, are perceived. The acknowledgment of the cultural dimension of nature, which informs local values and practices, could contribute to its sustainability. There is therefore an opportunity for reconstruction of legal norms concerning the environment, to incorporate various spatial definitions of the environment into the law, and to ensure place integrity.

CONCLUSION

This paper has shown that the conceptualisation of nature as wild and untouched, the development of ecological sciences for its conservation, and the alignment with tourism emerge from colonial legal developments associated with removing land's cultural dimension. Recasting lived-in nature as abstract and

93 ibid, Art (10).

94 ibid, Art 8(3)(c).

95 ibid, Art 3(c).

96 Convention on Access to Information, Public Participation and Access to Justice in Environmental Matters, Aarhus, 25 June 1998. 2161 UNTS 447.

97 Stec and Jendroska (n 86) 7.

scenic in value was achieved through emparkment, which itself was a byproduct of the enclosure process. These processes have special resonance for the Caribbean as former colonies and current tourist destinations facing unique vulnerabilities to climate change and ecological degradation.

Concepts and mechanisms that emanate from the law (such as the methods of enclosure and emparkment, and the creation of property rights) are often presumed to be neutral. Legal geography questions this perceived neutrality as aspatiality, or dismissiveness of space, which can homogenise diverse localities and places as abstract, placeless nature. To create such a concept, racial violence and disempowerment can be masked through the deployment of legal mechanisms such as parks and property rights.

Parks can be understood as legal mechanisms created for protecting a colonial ecology, by embedding the spatial violence of empire. The park, as the plantation's shadow self, absorbs land and eliminates local interests. Parks are truly 'place-holders', preventing the formation of functioning places in the former Empire, or preventing the idea of nature as a lived-in place. Nature reserves were appendages to the plantation, entrenching its control over land. As an instrument extending control by private interests over the colony, the reserve extinguished other interests in land and was inherently spatially unjust. Truly democratising parks, democratising nature, requires a reimagining of the park's relationship with space and its capacity to contribute to place integrity. This requires an examination of parks law to determine whether it currently replicates the dynamic of spatially disempowering communities.

Legally, the public possess rights to access parks, but not communal agency over the park as a place. Parks in the Commonwealth Caribbean are not designed with customary practices, rural livelihoods, community cohesion and local identity in mind. While there are general goals pertaining to environmental conservation and sustainable development, mechanisms to engage local communities are not robust, and often such consultation exercises are administrative in character, as the focus remains on economic exploitation of nature as tourism assets or for scientific research. Where the cultural dimensions of nature are addressed, they are protected in detachment from the environment, as an artefact of the past, rather than representative of evolving values borne out of current sustainable people-place relations.

Legal geography thus offers a novel means of revisiting the relationship between land, law and empire. The current protection of nature is ineffective because it is spatially unjust - the law is dismissive of non-proprietary uses of land and values only a generic, uninhabited nature. Exclusionary conservation protects private property rights as the only means of maximising use of a primitive extractable nature. This abstract nature never existed – the environment was always lived-in and under complex management. Environmental conservation can therefore be a pathway to spatial injustice, and parks the instruments of spatial injustice, used to displace and dispossess local communities. Environmental law today still designs parks according to this abstract logic, as highlighted in this brief overview of modern parks legislation in the Eastern Caribbean.

Addressing spatially unjust approaches to the environment requires a re-conceptualisation of the environment construct itself, by critically engaging with and shedding received paradigms that appear to promote environmental protection, while in fact entrenching eco-imperialism. Such a view would recognise

that environmental democracy cannot be achieved via conservation of a nature that silences marginalised voices.[98] This invites scrutiny of local environmental laws in jurisdictions with an entrenched colonial legacy. Democratising nature must engage with the notion that minority, Indigenous and vulnerable communities are agents and knowledge-bearers, with their own understandings of nature, neither park nor property, but rather place or public space. Given its foundational aims and principles in environmental democracy and sustainable development, the Escazu Agreement is a potential platform for engaging communities, promoting their agency and inserting their geographical realities into environmental decision-making, whether in planning processes or in the courtroom.

Place and spatial justice are thus important concepts for reckoning with the colonial past, reimagining the normative framework, and realising justice for local populations. A legal geographical analysis adds another dimension to the understanding of nature, nature laws and fairness in decision-making where communities rely on that nature for their continued existence. Nature is not only worthy of protection in terms of historic preservation or because of its market value as a tourism attraction, but because it has contemporary cultural value for community identity, agency and survival.

[98] Ferdinand (n 2) 183.

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