GLOBAL PERSPECTIVES
ON LEGAL HISTORY 25

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Legal Transfer and Legal Geography in the British Empire

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MAX PLANCK INSTITUTE
FOR LEGAL HISTORY AND LEGAL THEORY

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1. Introduction

Nature has been an important vein of historical analysis, particularly in the context of European Empires (Dutch, French and British).[1] Imperial projects were land-hungry, and the absorption of land during colonisation led to a now recognised pattern of dispossession and genocide of Native peoples, accompanied by the degradation of the natural environment.

Islands figure prominently in the history of Western environmentalism, as they were often viewed as paradises and laboratories for experimentation.[2] The Caribbean islands were foundational to the development of the ecological sciences, conservation, forest management, and biodiversity[3] – and through the development of conservation mechanisms such as timber, rain and botanical reserves[4] – of conservation law. This marriage between the sciences and environmental law is often seen as necessary for securing environmental law's legitimacy.[5] This chapter challenges this assumption by exposing the spatially unjust circumstances under which this historical relationship between law and science was kindled. Empires facilitated the phys-

* This research has received funding from the European Research Council (ERC), under the EU's Horizon2020 research and innovation programme, grant agreement no. 853514. Thank you to Donal Coffey and Stefan Vogenauer, who chaired the Legal Transfer in the Common Law World Stream at the Third Annual Legal Histories Conference 2022, to which a version of this chapter was first presented.

1 Crosby (1986); Beinart/Hughes (eds.) (2009); Beattie et al. (eds.) (2015); Damodaran (2008); Mrozowski (1999); Schiebinger/Swan (eds.) (2005); Schiebinger (2004).

2 Halikowski Smith (2010).

3 Ferdinand (2021) 12; see also McNeill (2010); Scobie (2019); Grove (1996); Raby (2017); Gómez (2017); Drayton (2000).

4 Drayton (1993).

5 Humphreys/Otomo (2016).

ical environment's transformation into passive nature, separate from human habitation as an object for observation and experimentation, and exploitable as property rights. This, however, has threatened the very ecological integrity of the natural environment. The law's current relationship with the environment therefore forecloses any possibility of environmental protection,[6] because conservation is an extension, rather than a repudiation, of property's extractive imaginary.

The foundational status of islands and their environmental destruction (most notably in the Caribbean) to colonial conservation was first explicated in Richard Grove's definitive account of "green imperialism".[7] While relying on Grove's significant contributions, this chapter examines how science, as the trans-imperial conduit for knowledge about the environment, redefined complex nature around the world as detached from people, and considers the legal geographical implications of this transition from lived-in nature to abstract space in law for Caribbean nations today. A legal geographical approach explores these developments through the lenses of landscape and spatial justice. Landscape is a cultural geographical descriptor for a peopled place, specific to a locality, and relying on locally derived practices to maintain sustainable human-environment interactions. The loss of landscapes can lead to spatial injustice, whereby local peoples are displaced, either physically or through imposed constraints that impair their constitutive relationships with place.[8] This often has implications for their livelihoods, cultural identity and survival.

The aim of legal geography is thus to expose the "concealed, forgotten or prohibited connections between peoples and places."[9] Legal geography asks whether law's perceived abstract and neutral character is in fact evidence of law dismissing place.[10] This "spatial blindness", or at the very least spatial selectiveness, means that established legal categories may need to be reconciled with the reality of geography in order to be effective.[11] By challenging this putative universality of concepts, legal geography emphasises the need for localisation of the law – law must make room for local conditions, or

6 Natarajan / Dehm (2019); Natarajan / Dehm (eds.) (2022).
7 Grove (1996).
8 Mollett (2014).
9 Bartel et al. (2013) 343.
10 Layard (2016).
11 Layard (2019) 237.

forms of regulation must be rooted in local conditions of existence, in order to be effective.[12]

According to Nicholas Blomley and Joel Bakan, legal geographical analysis involves the identification of fixed legal and spatial representations, and exploring such implications; demonstrating the underlying social motives (and thus the non-objectivity) of these representations, and using these strands of the analysis to challenge the status quo in order to catalyse progressive change.[13] Legal geography thus examines systemic asymmetries of power – domination, exploitation, and marginalisation both in the world and with respect to access to law. Contexts can include racism, colonialism, homelessness and environmental justice.[14] The legal geographical perspective is therefore indispensable for revealing the workings of power that conventional spatial blindness obscures and for "identifying the whys, how and wheres of injustice that are otherwise invisibilized and legitimized".[15]

As Robyn Bartel et al have noted, ignoring geography has significant consequences; if we do not ask questions about the location of law's impact, and therefore also who it impacts on, its true destructive potential, including its capacity for enabling ecological collapse, may be dismissed.[16] Legal geography is therefore cognisant of the historical context of large-scale landscape change, examining material conditions, limits, and connections over time.[17] By situating law in space, that is, within its physical conditions and limits, legal geography encourages place-based knowledge to form law's basis. This requires a paradigm shift, from "the alienation of people and place in law and geography to their necessary connection".[18]

The first part of this chapter outlines the material and cultural impacts of the colonisation process on Caribbean nature. I then consider how scientific developments as a response to these impacts informed the imperial project, embedding a concept of the environment as paradise that facilitated the propertisation of nature, its degradation, and the exclusion of local com-

12 Holder/Harrison (eds.) (2003) 4.
13 Blomley/Bakan (1992) 690.
14 Delaney (2016) 268.
15 Delaney (2016) 273.
16 Bartel et al. (2013) 341.
17 Bartel et al. (2013) 349.
18 Ibid.

munities. The legal geographical aspects of colonial conservation law are underscored by tracing the formative activities and decisions of lawmakers and the events influencing early colonial reserve legislation, drawing linkages between conservation and spatial injustice. I conclude with some thoughts on the ramifications of these practices for contemporary Caribbean law and policy in the age of the climate polycrisis. The focus of the analysis is on the British Empire, and its impact on the Lesser Antilles in the Caribbean, where some of the first colonial reserve laws were enacted.

2. Colonialism in the Caribbean and its impact on nature

This section offers a general impression of the environmental impacts of colonialism on the Caribbean region. The magnitude of colonialism cannot be truly understood without reference to environmental factors that illustrate the scale of the transition from landscape to space.[19] Europeans transformed the New World, what Alfred Crosby has termed the greatest biological revolution since the Pleistocene era, reshaping the land and histories of many places by raising plants on extensive plantations.[20] This was carried to an extreme on the Caribbean islands, where the entire land mass became devoted to plantation agriculture. This distinguishes these islands from the settler states and conquered territories in other parts of the British Empire and explains the unique spatial and demographic dimensions of the Atlantic slave trade as they apply to the Caribbean.[21] The Caribbean had been originally inhabited by Amerindian peoples and its environment subject to use and even degradation, but this occurred on a localised scale, which allowed the environment to recover and maintain its resilience.[22] In terms of the archaeological record, there appears to be great variability in land use during Amerindian settlement in this region, but nothing on the catastrophic scale that would occur following colonisation.[23]

19 Beinart/Hughes (eds.) (2009) 8. See also Crosby (1986); Hooghiemstra/Olijhoek et al. (2018); Castilla-Beltrán et al. (2018).
20 Crosby (1972) 66.
21 Beinart/Hughes (eds.) (2009) 9.
22 Jiménez Fonseca (2010) 191–192; Denevan (1992) 377.
23 Keegan/Hofman (2017) 42–43.

In the Lesser Antilles, arable land was used for horticulture, and marine resources exploited, and there was land clearance resulting in significant environmental change.[24] But no Amerindian communities in 1492 had developed the concept of private ownership in land as would be later articulated by English common law; land was a communal resource, to be utilised fully within the limits of their technology and with an eye to sustainability, for the long-term conservation of food security.[25] With the advent of colonialism, and the acquisition of land, the relationship between Amerindian communities and their environment was drastically altered. Diverse land use practices was also suppressed as more and more land was absorbed by the colonisers.[26]

Plantation agriculture in the Caribbean slave colonies resulted in a complete restructuring of the landscape through the 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 planter/slave power dynamic.[27] All land suitable for sugar cane was deforested, and in some cases this meant that the entire island was reduced to sugar cultivation.[28] The industry required new technology and structures in the form of mills and transport such as rail and shipping and associated port infrastructure. Deforestation, soil loss and decline in soil quality transformed animal and plant communities.[29] The extreme land use and patterns of timber clearance made species recovery all but impossible, since their native habitats were being transformed into sugar plantations.[30]

At the end of the plantation agriculture period (1665–1833) in the English-speaking Caribbean, the lowland environment had been deforested, depleted in nutrients and invaded by alien species.[31] Capital-intensive plantation agriculture that was based on slave labour promoted very rapid environmental change in terms of deforestation, soil erosion, flooding, gullying,

24 Keegan/Hofman (2017) 210–211.
25 On land ownership practices predating colonialism, see Grove (1996) 285; Fitzpatrick/Keegan (2007) 29; Watts (1990) 77.
26 Watts (1990) 77.
27 Beinart/Hughes (eds.) (2009) 37.
28 Watts (1990).
29 Watts (1990) 438.
30 Ibid.
31 Watts (1990) 443.

local aridification and drying up of streams and rivers.[32] While a Caribbean-wide trend, these consequences dominated the ecosystems in the Lesser Antilles, where space for species survival was restricted, and "cane agriculture was at its most intense".[33] The transition to plantation agriculture was thus not democratic, inevitable or progressive in practice, in spite of claims of 'civilisation' and 'improvement' of land. Underlying the colonial mission was the reality of ecological upheaval. Empirical observations of the catastrophic effects of colonial plantation agriculture revealed that plantation policies were causing environmental damage.[34] This would have devastating consequences for Amerindian peoples, who were the original inhabitants of these landscapes.

3. The nature of empire: land improvement and the construction of 'paradise'

As Darina Petrova and Tomaso Ferrnado observe, separating people from place is critical to the project of creating nature as an object of scientific study and a legal concept.[35] This is accomplished via colonial violence, erasing spatially diverse uses in land by converting it to property for imperial interests. This process provides the grounds for the universalisation of nature and its detachment from local specificity and the place-making process.[36] Science and law are therefore complicit in the extinguishment of local landscapes during the colonial period. Reinforcing law's power and authority is achieved through emphasising law's adherence to these universal values, based on impartial reasoning.[37] This can be illustrated using the example of the Lesser Antillean islands of the Caribbean.

The Caribbean islands were originally perceived as paradise, an Eden or pastoral idyll.[38] In colonising lands in the Caribbean, the environment was socially constructed so that the "tropics were invented as much as they were

32 Grove (1997) 150.
33 Watts (1990) 447.
34 Grove (1997) 153–154.
35 Petrova/Ferrando (2022) 259–260.
36 Ibid.
37 Natarajan/Dehm (2019); Natarajan/Dehm (eds.) (2022); Anghie (2004); Fitzpatrick (1992); Gonzalez (2015).
38 Dillman (2015) 174–175 and 179.

encountered"; the idea of the tropics as "warm, fecund, luxuriant, paradisiacal and pestilential" was central to British colonial knowledge and was a critical ingredient in the larger colonising process.[39] But this understanding of nature was never informed by the realities of Caribbean ecosystems, and masked the violence and degradation of both people and land. So embedded was this belief in European cultural traditions of the 'Edenic' qualities of these islands that colonial authorities were wholly unprepared for the rapidity with which these places declined under plantation monoculture. Colonial governments therefore became environmentalists to extend the life of the Empire.[40] This required protecting 'paradise'.

The British Empire, unlike its European counterparts in the region, was concerned with presenting itself as an empire based on 'developing' land, rather than conquest or cultural domination.[41] Spain's initial success in extracting gold and other minerals had attracted other European nations to the Americas, but its results were not to be replicated by these countries. When these powers protested Spain's rights to the region, there was no precedent or international custom to reinforce European claims to the Caribbean or direct its interactions with Indigenous peoples, so they drew on ancient legal principles distilled from Roman private law to develop new international law.[42] *Res nullius* was one of the most influential Roman law principles, requiring that a thing acquired by occupation be *res nullius:* that the object acquired could not be someone else's property; it was the common property of all mankind. Ownership *(dominium)* could be acquired by capturing the object and putting it to some general agricultural use. *Res nullius* therefore provided the rationale for the establishment of *dominium* (lawful possession), which would be referred to as *terra nullius* in international law in order to legitimise possession.[43]

Land was therefore the medium through which Britain would accumulate wealth and property, its source of power. Britain focused on the exploi-

39 Damodaran (2008) 137.

40 Damodaran (2008) 131.

41 Pagden (1998) 34–35.

42 Welch (2014) 124, 128, and 129. Welch notes that the same principles that were appropriated in international law to discredit Spanish claims to possession of the Caribbean islands were also used, in addition to ideologies of natural rights, to deny sovereignty to the Indigenous peoples of the region. See also Tuori (2012).

43 Welch (2014) 129; Tuori (2012) 1028; Berry (2003).

tation of natural resources, an enterprise that was perceived as more enlightened and pacific in character.[44] Plantations and settlements were therefore necessary. This would determine the relationship with local peoples, since they were not to be converted or assimilated, but rather ignored or removed where necessary to enable access to land.[45] Britain's own experience with invasion and conquest had made it wary of claiming local laws and institutions were extinguished by a foreign power's entrée into new lands, believing that such measures heralded misfortune for conqueror and conquered alike.[46] Instead, British settlers were to be 'improvers' of the lands that they acquired, through agriculture and commerce. Only where newly colonised peoples demonstrated their inability to maximise land's potential through private property would it be acceptable to enclose such land. Therefore, their rights were to be respected, but their relations with land scrutinised and ultimately held unacceptable.

As Anthony Pagden notes, unlike the Spanish, the English were, therefore, predominantly concerned with securing rights not over peoples but over lands, which explains why the period of early contact and co-existence, when the settlers were dependent upon native agriculture subsequently transitioned to policies of either segregation or, when local populations appeared to threaten the existence of the settlements, attempted genocide.[47] Legal relations concerning land, and the rationale for land being characterised as unoccupied, were therefore implicated at the outset of British colonisation of the region.[48] In fact the *res nullius* claim is sometimes known as the agricultural argument.[49] Agriculture was considered the final stage of actualising nature's potential, requiring a high degree of co-operation found only among settled communities, whose activities would allow them to acquire by right of possession the land – the original inhabitants who were semi-nomadic and merely foraged could make no such claim.[50]

44 Pagden (1998) 36.
45 Pagden (1998) 37.
46 Pagden (1998) 41. The political culture of England, because it had itself been the creation of the Norman Conquest of 1066, was committed to the 'continuity theory' of constitutional law in which the legal and political institutions of the conquered are deemed to survive a conquest.
47 Pagden (1998) 41.
48 Pagden (1998) 42.
49 Pagden (1998) 43.
50 Pagden (1998) 46.

These arguments found their basis in natural law.[51] Relying on such precepts meant that any deviation from what were assumed to be universal conditions constituted a violation of those conditions, and "an alternative system of property ownership, land tenure, or rulership as practiced by the Amerindians would be not be regarded as an alternative, but simply as an aberration".[52] In fact, any resistance to improving these juridically and culturally 'vacant' lands would be in defiance of natural law.[53] It followed therefore from the English point of view that there was no conquest as these lands belonged to no no-one; they were created "quite literally, out of the State of Nature".[54]

The emphasis on agriculture as rational and enlightened meant that while formally there was recognition that Indigenous peoples should not be mistreated, the implication that their own relations with the environment (upon which their human rights and cultural identity depended) were irrational as a result of their primitive savagery, signaled that harmonious relations with European settlers would be all but impossible should they resist attempts to 'civilise' or settle them.[55]

Nicholas Canny observes that British presence in the Caribbean was at first indifferent, islands being occupied as sources of tobacco production and some bases for piracy in the 1600s.[56] Barbados' success as a sugar-producing island was wholly unexpected. After the 1640s there emerged a wealthy planter class not just in that island but in the Leeward Islands and Jamaica.[57] Such colonies therefore were based on white settlement, or colonies under white management which relied on enslaved Africans for a labour force – there would be little space for Indigenous populations.[58] It was often claimed that these islands were mostly uninhabited or unoccupied, but lack of evidence of settled agriculture does not mean that land was not in use. There is a

51 Pagden (1998) 37.
52 Pagden (1998) 44.
53 Pagden (1998) 46, 47 and 51.
54 Pagden (1998) 53.
55 Pagden (1998) 46.
56 Canny (ed.) (1998) 30.
57 Ibid.
58 Canny (ed.) (1998) 31–32.

paucity of data where firsthand Amerindian accounts of the colonial encounter as well as endogenous land use are concerned.[59]

In the 1700s, the mountainous islands in the Lesser Antilles were ceded to Britian, representing the second phase of British colonisation in the region.[60] These were the homelands of the Kalinago (then known as the Caribs)[61] and had been French colonies, adding a layer of complexity to the law.[62] Early attempts to sell land for plantations proved a challenging process, due to the topography of the islands, as well as the residents themselves,

59 Niddrie offers a good summary of English settlement in the region but it is very difficult to extrapolate (as per Niddrie and Murdoch) that Tobago was "a genuine desert island" Murdoch (1984) 561 or "unoccupied except by a few Carib Indians" – see Niddrie (1966) 68. Recent archaeological evidence is beginning to complicate the picture of land use in the pre-Columbian world, given the mobility of Amerindian groups throughout mainland South America and the Caribbean archipelago. See Hofman et al. (2019) 364, discussing the way in which Island Carib communities adapted settlement patterns to evade Spanish slave raiders by maintaining forested woodlands, and Keegan/Hofman (2017) 250. On Amerindian land use, settlement and conflict with European colonisers more generally, see Valcárcel Rojas (2016) 332; Anderson-Cordova (2017); Arranz Márquez (1991); Deive (1995); Ulloa Hung/Valcárcel Rojas (2016).

60 Settled territories were treated differently from territories that were conquered and ceded. In the settled territories (Barbados, Antigua and St Kitts and Nevis) the settlers took with them the English Common Law, the doctrines of English equity and the English Statutes so far as they were applicable to the conditions of the colony at the date of the settlement. In the conquered or ceded territories (Dominica, Grenada, Jamaica, Trinidad and Tobago) the English common law, the doctrines of English equity, and the Statutes of general application that were in force in England on a specified date were generally imposed sometime after the conquest. On the reception of the English common law in the Commonwealth Caribbean, see Marshall (1971) and Patchett (1973).

61 Kalinago is the term favoured today by their descendants in Dominica. "Carib" is used here as the historical term denoting the inhabitants of the Lesser Antilles in the 18th century.

62 Note Jebodh (2019) 21: "With regard to the conquered or ceded territories, the law in force at the time remained effective until modified by the action of the Sovereign, thereby giving rise to the establishment of statutory reception provisions in order for English law to become applicable. The prevailing law remained until the moment where the British Parliament enacted new laws for governance under the Royal Prerogative. Prerogative power would end at the time when a legislative assembly was established within the ceded or conquered territory, with the British Parliament no longer having the prerogative to legislate for the colony. This was evidenced in Campbell v Hall 98 ER 1045 (KB), where the Court of the King's Bench held to be invalid a proclamation by the King imposing an export tax on the inhabitants of Grenada, an island which had been conquered from France and was also subject to an earlier proclamation granting an assembly to the island."

who were believed to inhabit the best lands and refused to recognise British control of the island. While initially the formal position was to offer them compensation for the transfer of their land to English settlers,[63] the Caribs resisted at every turn, maintaining their autonomy until they were forced to negotiate a treaty resulting in their removal to a reservation.[64] The pace of development was 'frantic' as planters built aqueducts, dams and mills first on Grenada and then on the other islands.[65] However many of these plantations were operating at a loss, and often faced financial ruin.[66]

These plantations were speculative land ventures – thousands of acres controlled by oligarchs to whom vast sums of credit had been extended from investors and banking institutions, and this required the protection of property ownership, through clear property delineation via surveying and mapping to impose a sense of order, provide security and defence.[67] Data collecting missions about tropical environments were intended to improve crops yields so that the plantations could flourish, and source botanical medical supplies so that settlements and garrisons could withstand disease and provide a buffer against the Caribs.[68] These scientific collecting missions, along with surveying and mapping techniques, were the means by which Amerindian landscapes would be erased and property rights legitimised. The colonial nature reserve plays a specific role in the redefining of nature, the maintenance of slave colonies, and surveillance and destruction of the Caribs.

The earliest environmental legal interventions in the Lesser Antilles to preserve paradise thus concerned the creation of colonial reserves. Prior to the 1760s, laws were drafted in a piecemeal fashion, protecting rare island species and sources of food, timber and fuel. However, in the mid-1760s, there was a shift in the way administrators responded to ecological threats. A

63 Murdoch (1984) 561, referring to lands in St Vincent, then a neutral territory because of the inability of Europeans to successfully gain control of the island. See Treasury to the land commissioners, 8 Jan. 1768, The National Archives (UK), Colonial Office Files (hereafter cited as CO) 101/11, 434–436.

64 Murdoch (1984) 562.

65 Quintanilla (2004) 17.

66 Murdoch (1984) 570. As far as the land sales policy was concerned, the results were predictable throughout the Ceded Isles: planters ceased paying their instalments and the receiver, or his deputies, instituted lawsuits for the recovery of the money owed.

67 Quintanilla (2004) 18–19.

68 Welch / Finneran (2022) 196.

suite of forest reserve legislation, influenced by scientific research concerning deforestation-induced climate change, soon spread around the world, especially throughout the French, British, and Dutch empires.[69] A botanical garden was established in St Vincent in 1765 by then General Robert Melville for the collection of varieties with medicinal, nutritional and economic value and drew on local indigenous knowledge;[70] Alexander Gillespie states that this is the first commonly recognised environmental sanctuary, as in one established by the State, and not by an individual.[71] This was followed in 1776 by the first timber reserve in Tobago to prevent deforestation and attract rainfall. The King's Hill Enclosure Ordinance[72] legally established another timber reserve in St Vincent in 1791.[73]

These laws were based on desiccationism. Harri Siiskonen writes that since the late 17th century, natural philosophers had been developing what became known as "desiccation theory".[74] In the British and French colonies, this would provide the theoretical basis for conservation in the 18th century. Dessication refers to the drying up of surface water, a lowering of the water table and a decrease in rainfall. Desiccation was thought to be a result of human misuse, especially the shifting or extension of cultivation, which acts directly on surface and soil water availability and impacts negatively on rainfall. Human misuse was believed to derive from population increase.[75]

In the mid-18th century, the European scientific societies – the Royal Society, the Royal Society of Arts, the Académie des Sciences and, especially, the Royal Geographical Society – deployed and propagandised ideas about deforestation, desiccation and climate change to ensure large scale forest conservation.[76] The French naturalist and botanist Pierre Poivre, who had travelled widely in Asia and had knowledge of many tropical environments, pioneered the application of desiccation theories to tropical conditions. In

69 Welch / Finneran (2022) 133–134. The Main Ridge Forest Reserve Ordinance of 13th April, 1776 is considered the oldest legally protected forest in the Western Hemisphere. See Niddrie (1966) 76.
70 Welch / Finneran (2022) 196.
71 Gillespie (2007) 7.
72 Act no. 5, 1791 as amended in 1895 (St Vincent).
73 Grove (1997) 155.
74 Siiskonen (2015).
75 Siiskonen (2015) 283.
76 Siiskonen (2015) 284.

1763, he warned the scientific community about the dangers of deforestation, especially in tropical colonies, pointing out that it would lead to a decline in rainfall. Poivre's speech laid the foundation for forest protection policies in Dutch, French and British colonial island territories,[77] demonstrating the permeability between European Empires in linking diverse environments as imperial featureless space.[78] The scientific societies would have direct political influence on the development of new colonies though plantation agriculture, which required deforestation, land allocation and plant transfers across the Empire; Sir Robert Melville, the first governor of the Grenada Governorate, who had established the botanical garden in St Vincent, was influenced by climate theory and was himself a member of the Society of Arts.[79] Island forest protection programmes from St Helena, St Vincent, Barbados, Montserrat, and Mauritius – thus provided a basis and a replicable model for colonial conservation policy in the 19th century.[80]

Colonial ideologies of improvement stressed the appropriation of lands from local residents and the transformation of imperial environments into sources of economic and moral value, and private property regimes conferred ownership rights to advance these objectives.[81] Colonial authorities advanced the orderly exploitation and management of the environment through regulatory intervention, as the colonial state by definition and practice was designed to serve economic and political ends that were often at odds with the long-term interests of the colonised.[82] The conceptual threads of what was deemed appropriate land use for improvement, minimising climate impacts on that land to maximise yields, and controlling population growth for environmental health reasons had been brought together to develop a climate and forest planning framework that could be implemented in such a way as to displace and oppress local peoples. New conservation legislation such as the King's Hill Enclosure Ordinance

77 Damodaran (2008) 134.
78 Ibid.
79 Grove (1996) 269.
80 Siiskonen (2015) 284.
81 Beattie et al. (eds.) (2015) 9.
82 Richardson et al. (2006) 415.

was developed as a key instrument of colonial landscape control, to bring nature and people to heel.[83]

4. Reserving space, eliminating place: protecting paradise through landscape destruction and spatial injustice

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 settlement proposals of the Lords Commissioners for Trade were submitted to the Lords of the Committee for Plantation Affairs on 18th November 1763. In early 1764 they were laid before the Lords of Treasury and the King in Council, Lord Hillsborough representing the Lords Commissioners for Trade on the council. The proposals were issued as a proclamation on 1st March 1764, and approved as an Order in Council on 26th March of that year.[84] The proclamation stipulated that lands were to be immediately surveyed.[85] The strategy for the Grenada Governorate involved rapid development of sugar plantations, which required deforestation and major allocation of land and transfer of ownership.[86]

At the time of the formation of the Grenada Governorate, the colonial land policy in place, meant to secure rapid settlement, encourage productivity and ensure a crown revenue, was flailing due to inefficiency in local implementation and inadequate revenue.[87] The policy for disposal of Crown lands in the Ceded Islands in the West Indies was not to grant land free upon petition, as was typically practiced, but to sell it at public auction at a minimum price per acre, and in lots of a maximum size to prevent "engross-

83 Damodaran (2008) 134.

84 CO 101/1, no. 26, proclamation of 1764.

85 CO 101/1, no. 26, proclamation of 1764, p. 121: "Plan for the speedy and effectual settlement of His Majesty's islands of Grenada, the Grenadines, Dominica, St Vincent and Tobago and for the designated parts of H. M. Lands […] to H. M. Order in Council made upon the representation of the Commissioner for Trade and Plantations dated 3rd November 1763 and the alterations proposed therein by the reports of the Lords of the Treasury and Commissioners for plantation affairs of 25 Jan. and 4th Feb. 1764".

86 Grove (1996) 269.

87 Murdoch (1984) 550.

ment".[88] These grants were largely made, not by the governor of the colony, as had traditionally been the case, but by the Privy Council, operating through its Committee for Plantation Affairs and on the advice of the Board of Trade. Murdoch notes that there was a disconnect between those in Britain and an understanding of local challenges in the colonies.[89] Emphasis was placed on the new "soils" of these colonies in comparison to the exhausted environments in the old islands, emphasising the potential wealth, natural and economic, of the fertile Tropics.[90] These safeguards did not prevail because they were not informed by local understandings of the Caribbean landscape.[91]

Climate change was seen as a major threat to colonial economic projects,[92] because Barbados, then a cardinal node of the British Empire, was in the throes of an ecological crisis.[93] Thus as early as 1764, a system of reserves was established by the proclamation, incorporating conservation as an instrument of conquest and control:

> *such a number of acres* as the Commissioners should from the best of their judgement project *should be reserved in woodlands* to His Majesty's His Heirs and Successors in one or more different parishes in *each part of each island, respectively in order to preserve the seasons so essential to the fertility of the islands and to answer all public services as may require the use and expense of timber.*[94]

The relevant legislation addressing local climate change included the Grenada Governorate Ordinance of March 1764, the Barbados Land Ordinance of 1765 and the St Vincent King's Hill Enclosure Ordinance of 1791.[95] These laws echoed the language of the proclamation, and reference the need to attract rainfall to promote forest growth, which would later be repeated as the rationale for new laws that established forest reserves in the Empire.[96] In

88 Murdoch (1984) 550–551.
89 Murdoch (1984) 550.
90 Murdoch (1984) 559; Quintanilla (2004) 14, 15–16.
91 Quintanilla (2004) 15–16.
92 Grove (1996) 276.
93 Ibid.
94 Pro Co 101/1, no. 26, proclamation of 1764, p. 123, emphasis added.
95 Grove (1996) 266.
96 See the preamble of Grenada's Grand Etang Forest Reserve Ordinance 1906: "Where it is of vital importance for the conservation and promotion of the rainfall and water supply in the Island of Grenada that the forest growth in the vicinity of Grand Etang should be maintained and preserved […]".

the English-speaking Caribbean, The King's Hill Enclosure Ordinance constituted one of the earliest attempts at forest protection legislation in the English-speaking world based on climatic theory.[97] King's Hill bridged the gap between French physiocratic conservationism as developed on Mauritius by Pierre Poivre and evolution of a British colonial environmentalism.[98] Forest reserves were a strategy to reverse any possibility of soil exhaustion and timber scarcity as had befallen Barbados,[99] but the expertise informing the design of the reserves did not rely on local conceptualisations of nature. Soame Jenyns, a member of Parliament and the Society of Arts (which also contained members with interests in these islands) was highly influential in promoting the belief that forests on the Ceded Islands should be protected to enhance economic yields.[100] According to Grove, the survey and subdivision of the Ceded Islands into plantation plots and forest reservations was highly reminiscent of the laying out of the East Anglian fenlands by the Jenyns family, though Soame himself had never visited St Vincent and the fen landscape had nothing in common with tropical Caribbean environments.[101]

Richard Grove points out that the choice of St Vincent was expert-driven: the colony did not receive legislation because of its local conditions but because its island geography was deemed suitable for the imported technological assumptions of the available experts.[102] No indigenous conceptualisations of nature were considered relevant to its design. Desiccation-based forest legislation was attractive to Vincentian colonists because of concerns about supplies of ship timber, a problem that impacted the empire as a whole.[103] Reserves were therefore created in the specific historical context of expediting the Ceded Islands' absorption into the Empire, by facilitating the development and maintenance of plantation agriculture, at the expense of the local lived-in realities of Amerindian inhabitants, and the needs of later enslaved African peoples. As reserves were appendages of the plantation

97 Grove (1997) 160.
98 Grove (1997) 161.
99 Grove (1996) 279.
100 Grove (1996) 274–275.
101 Grove (1996) 275, 278, 279.
102 Grove (1996) 157.
103 Grove (1996) 155.

economy, they supported the engrossment of land, and through the provision of timber and medicinal botanical supplies strengthened the ability of garrisons to amplify surveillance efforts and encroach on Carib lands. The creation of the Tobago reserve had been a harbinger of what was to come, for as Grove noted, no concession was made for the consideration of common land, with the reserve itself being designated Crown land.[104]

Amerindian resistance to European colonisation had never abated. By 1700, the Amerindian population had been drastically reduced in the Lesser Antilles as a result of these conflicts.[105] St Vincent absorbed increasing numbers of escaped enslaved Africans, leading to the formation of a Black Carib identity on the island alongside the communities that remained Kalinago. Both groups, along with other communities in the Lesser Antilles would be engaged in land use conflicts, culminating in the Carib-English Wars on St Vincent and the defeat of the Caribs in 1797.[106]

Initially, the Caribs of St Vincent did not accept the concept of private property as laid out in the British proposals,[107] which reflected the policy that only those practicing settled agriculture could be considered legally entitled to claim sovereign rights over land.[108] This land use ideology justified the expropriation and colonisation of native lands,[109] since the Caribs were semi-nomadic,[110] and believed in a common or clan perception of landscape.[111] In the parceling of land to planters, town dwellers, and some small-scale farming for British settlers, no provision was therefore made for the Caribs. Large tracts of land were designated forest reserves on colonial maps. As Grove notes, mapmaking took on an oppressive quality, for what was omitted was as important as what was represented: cartographically the Caribs were excluded; within twenty years they ceased to exist as a separate

104 Grove (1996) 284.
105 Hofman et al. (2019) 363.
106 Ibid.
107 Grove (1996) 285–286.
108 As Grove observes, the 1764 Proclamation makes provision for planters, small-scale white settlers, reserves and even French settlers that swear an Oath to the Crown, but no mention is made of the Carib population, even when St Vincent and Dominica are named – see Proclamation no. 26 of 1764.
109 See Gonzalez (2015) 158 and, more generally, Anghie (2004).
110 Grove (1996) 286.
111 Grove (1996) 291.

population in Tobago,[112] and nature was reduced to empty and controllable space.

While legally the process of creating the Grenada Governorate can be understood through the proclamations, orders and other available legal documents, the legal norms anchoring the plantation economy, which was rife with inefficiency and financial loss, had implications for the environmental quality of the lived-in landscape. As Europeans encroached on Carib territories, no provisions were made for their survival, so that poverty, starvation and famine resulted.[113] Under the pretext of managing environmental health and security, forest management by colonial authorities became the means by which European settlements could be expanded and the Caribs suppressed. The Caribs rejected attempts to survey their lands and declared themselves autonomous. While the status of Carib land was still under dispute, lots were sold to English planters, and eventually the Caribs were forced to swear an oath of allegiance to the Crown.[114] Finally, the remaining Black Carib population was transported to Central America as a means of completely neutralising the threat to settler property.[115]

The Caribs were not the cause of inefficiency in the plantation economy. British plantation agriculture in the Caribbean rested on a complex and permanent system of borrowed capital, to finance the establishment of plantations, and short-term loans to cover the yearly overhead expenses, with profits on each year's crop going to pay off these debts. This system was vulnerable to environmental and economic factors affecting the crop, and planters in the Ceded Islands also had not realised that their plantations were long-term investments, with no immediate returns on the horizon.[116] As plantation agriculture was speculative and not in alignment with the capacity of local environments, plantations were frequently in arrears, especially in Dominica, and the underlying challenges with local Amerindian populations also made St Vincent difficult to settle.[117]

112 Grove (1996) 283.
113 Grove (1996) 280.
114 Murdoch (1984) 562.
115 See Taylor (2012). Today the descendants of the Black Caribs identify as the Garifuna. See also Palacio (2005).
116 Murdoch (1984) 569.
117 Murdoch (1984) 571, 573.

Initially, the Governorate was ruled from Grenada, which had become Britain's second largest sugar producer at the time, making planters anxious to replicate that success throughout the other Ceded Islands.[118] But this was not to be. Property law and environmental law were not rooted in the needs and limits of these environments, and a lack of understanding of these ecosystems quickly led to their decline.[119] Paradoxically, the Caribs' local knowledge of these landscapes had been relied upon to establish a foothold in these islands via the botanical gardens, but prioritisation of land use for commercial profit, along with abrupt large scale land change undermined the locally specific customary rules of commoning and land use practiced by the Caribs.

Nicole Graham emphasises that this dismissal of lived-in space makes law promote a lack of care for place.[120] Conservation in former colonial societies is thus hardly ever neutral, even when grounded in science, and especially where it concerns highly valued natural resources embedded in indigenous homelands. This is exclusive conservation, in which conservation is for the purpose of perpetuating colonialism, to the detriment of colonised environments and peoples.[121]

Creating reserves eliminated lived-in places, withholding the land from the communities that once inhabited them. Grove highlights that colonial conservation in the Eastern Caribbean was more about constructing a new landscape, through the displacement of 'primitive' peoples, since uncultivated forests represented wildness and lawlessness.[122] This was effected through the law, as land was reallocated and ownership transferred to European settlers. It was about 'claiming' and consolidating territory, organising economic space, and subduing unruly peoples, and the creation of forest reservations was often followed by the forced resettlement of peoples, starvation and famine.[123] Conservation therefore involved the biological reconstruction of the forest environment to serve the interests of the Empire.[124]

118 Quintanilla (2004) 17.
119 Beattie et al. (eds.) (2015) 15.
120 Graham (2010) 205.
121 Beinart / Hughes (eds.) (2009) 289.
122 Grove (1996) 280.
123 Ibid.
124 Ibid.

This was spatial cleansing,[125] since the evacuation of these places unmade the Amerindian landscape – it eliminated the cultural dimension of land (the presence of Amerindian peoples, evidence of their relations with the land, their practices and livelihoods, as well as their knowledge of these ecosystems). Henceforth, the Empire would be the filter through which the environment would be defined, valued, legitimised and understood.

Law's conservationist interventions were therefore profoundly influenced by the eco-imperialist ambitions it served.[126] Species were preserved in detachment from local needs.[127] Forest and botanical reserves supported priorities of the British Empire, and had no local legitimacy.[128] Indeed, by the 1800s, the creation of colonial botanic gardens had become standard administrative practice in the consolidation of new conquests of the British Empire.[129] The significance of this network of gardens lies in the fact that they were not simply clearing-houses for the transfer of economic crops, but the bases from which wide-ranging collecting missions were dispatched into surrounding territory.[130] Such botanical and scientific knowledge was necessary for maintaining imperial interests. A new scientific vocabulary containing words such as climate, deforestation and health concealed the economic and political machinations of Empire even as laws established reserves to facilitate imperial expansion.[131] The muzzling and masking of the landscape was therefore executed by the framework of these early conservation laws, and supported by mapmaking, surveying and reserving techniques which reframed the violent conversion of land use as administrative and technical processes of managing vacant space to enhance its fertility for the good of the Empire. The network of reserves (rain, timber and botanical) was thus used to exclude and then reconstruct the lived in landscape as wilderness or passive nature, which could be studied and exploited in order to maximise the plantation crop. The overlap between members of Parliament, Scientific Societies and investors in plantations in the Caribbean colonies ensured that land as a commercial asset would prevail over other uses

125 Herzfeld (2006).
126 Beinart / Hughes (eds.) (2009) 289.
127 Ibid.
128 Ibid.
129 Drayton (1993) 151.
130 Drayton (1993) 153.
131 Endfield / Randalls (2015) 25.

in the region, which had dire consequences for the Amerindian communities. In keeping with this idea of limiting land use to the propertied, enslaved communities were also denied access to nature as part of their dehumanisation. When enslaved Africans, who were alienated from their own landscapes, were introduced as foreigners to this new region, they lost their human qualities due to their race, and became 'things', dehumanised chattel appurtenant to the land, moveable property to be inherited and sold as the contents of an estate, with no recognised attachment to the environment.[132] Herzfeld remarks that belonging is couched in spatial terms, and local knowledge, rooted in lived experience, is resistant to the imperious claims of universalism and abstraction.[133] Recreating complex lived-in landscapes as inert space in nature reserves thus denied these communities a place in these landscapes – it denied them access to their homelands, the ability to create new homelands, and their spatial expressions as communities.

5. The legacy of reserving nature on Caribbean law and policy today

Colonial reserve legislation continues to impact Caribbean landscapes. When these colonies gained independence, the environment they inherited was degraded due to years of exploitation by colonial administration.[134] The production of knowledge about these environments had coincided with their exploitation and Indigenous dispossession under imperial regimes,[135] but law's aspatiality and neutrality provide a patina that has never been challenged in the Commonwealth Caribbean legal context, so that newly independent states continue practices of extraction and spatial cleansing in the name of progress and development.

What a spatial justice analysis of these historical developments reveals is that environmental and conservation law can mask spatial violence in the landscape, even where it is underpinned by scientific concepts and advances in botany, ecology and climate science. In fact, earnest data collection and experimentation can be drafted into the service of imperial interests and detach and erase local communities from their lived-in spaces. The preserva-

132 Johnson (ed.) (2005); Byer (2022).
133 Herzfeld (2006) 129.
134 Richardson et al. (2006) 415.
135 Ferdinand (2021) 187.

tion of an imagined domesticated 'wilderness' in the form of a reserve conveniently favours and upholds spatial cleansing practices at the expense of peopled places.[136] Such reserves represent a static, pristine and passive nature that never existed. It is therefore difficult to disentangle science, empire and conservation in the Lesser Antilles as they are linked by landscape destruction and legitimised by the law. Reserves are also created in the service of planters' property rights, to support the expansion of plantations and the profitability of crop yields, exclude other land uses, and defend these properties through maintenance of settlements and garrisons, and surveillance and elimination of undesired peoples under the guise of its public health function. This makes nature valuable only in terms of its commercial qualities.

The loss of the cultural dimension of land had profound implications for Amerindian peoples and later enslaved Africans, as neither culture had relied on ownership to define their relationship with the land. Nature continues to be defined in the law today as property, resisting alternative conceptualisations of land that draw on a lineage that existed for millennia, and predated the common law.[137]

What are the implications of a universal spatial definition of Nature as property rights, that relies on scientific findings for its legitimacy? For one, Nature is now a monolithic space, rather than inhabited multicultural places. In the EU, the complexities of ecosystems as lived-in spaces are lost in the prescribed remedies for addressing environmental protection, such as conserving Irish peatlands as carbon sinks, because there is lack of engagement with 'bog' communities (who have cut turf for fuel for centuries) on the cultural valuation of such sites.[138] This definition of the environment is problematic because it isolates human beings from nature, and pathologises the human relationship with nature as solely exploitative. At the same time,

136 For example, Antigua's Environmental Protection and Management Act 2014 defines "Protected area" as "an area of national significance based on the biological diversity located in the area and can be a wildlife or forest reserve" (s 2 of the EPM Act). The focus is on the study and conservation of "any ecosystem, flora, fauna or landscape" but no provision is made for the protection of heritage resources (s 54(1)(b)). This language is typical of the other reserve and parks legislation in the modern Lesser Antilles.

137 Laws that established colonial reserves of the former Grenada Governorate are still very much in force, such as the Grand Etang Reserve Act 1906 (Grenada).

138 On this topic, see Häyrynen et al. (2021); O'Riordan et al. (2016); Laffan/O'Mahony (2008).

science was regarded as infallible. Yet scientific developments share the abstract spatial logic of the colonisation process that dominates nature through the conversion of land to space and the reservation of that space for property owners.

Protecting passive nature upholds colonial ideas about space with implications for lived-in spaces, livelihoods, human rights, even sovereignty, territorial integrity and democratic citizenship, by relying on climate theory and conservation when promoting energy, climate and ecotourism projects.[139] It is the law that entrenches the idea that scientific conservation and ecology are neutral in nature, whereas a legal geographical analysis reveals the ways in which law is spatially blind to its impact on landscapes. This abstract logic in the law prevails and can enact spatial violence on communities closest to nature, even where they have not been physically displaced.[140]

Resource alienation can be cloaked in concepts of nature conservation, echoing colonial patterns of land use. Known as "green grabs",[141] these market transactions are also disconnected from the local geography in the manner of the first nature reserves, restricting local use and access to a homogenised nature necessary for meeting global targets for stemming biodiversity loss or climate-induced impacts.[142] As extensions of property rights, they 'reserve' the right to exploit nature at the expense of local needs and limits. They generate profits for elite interests, which are prioritised over local livelihoods. "New narratives of landscape are being constructed […] Green grabbing […] occludes people, livelihoods and social-ecological relationships from view, rendering lands open to new 'green' market uses."[143]

In the Caribbean, national parks and protected areas laws emphasise the value of protecting nature in terms of tourism assets and access for scientific research.[144] Reference is made to sustainable development for future gener-

139 Fairhead et al. (2012); Sheller (2009); Borras/Franco (2012).

140 Mollett (2014); Borras/Franco et al. (2012) 850, emphasises that the current trend relies on control rather than physical dispossession.

141 Fairhead et al. (2012).

142 Fairhead et al. (2012) 244 and 247.

143 Fairhead et al. (2012) 251.

144 "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

ations,[145] but this is a generic definition, reflecting global economic concepts of development for the public good, detached from the reality of physical limits.[146] The Minister designates parks in his discretion, based on scientific criteria and not always in consultation with local communities, so the effectiveness of these parks in the local context is not clear, as environmental norms that reflect the lived-in reality of Caribbean environments are not prioritised in the law. This is concerning, because Caribbean islands continue to find themselves in the crosshairs of the climate crisis,[147] especially vulnerable to sea level rise, increased high energy events, flooding and food insecurity.[148] The region has always depended on its natural environment for survival – marine resources, agriculture and now tourism demand healthy and resilient ecosystems.

The 'green' turn in private sector investment, in which investments are made in projects that are aligned with positive environmental and climate change objectives, has begun in the region. These investments are specifically market-based responses to climate change that make use of mitigation strategies in the Global South to offset industrial and polluting activities in the Global North.[149] Increasingly, they are seen as forms of carbon colonialism and land grabs,[150] placing restrictions on local communities and the way they engage with their environments.

the St Kitts and Nevis National Conservation and Environmental Protection Act 1987. The Minister responsible for these areas is defined in the same section as "the Minister for the time being charged with the subject of Development", which indicates that national planning prerogatives are prioritised, and conservation plays a role in the national development agenda.

145 The protected areas legislation repeat the generic definition of sustainable development: see Grenada's National Parks and Protected Areas 1991 s 3(3); Dominica National Parks and Protected Areas Act s 3(2), See also Antigua's Environmental Protection and Management Act 2014 s 4(a) "environment managed in a sustainable manner", "protection of the environment for present and future generations"; and Schedule X to the Act defining national park: "Definition: Natural area of land and/or sea, designated to (a) protect the ecological integrity of one or more ecosystems for present and future generations."

146 On the problem of sustainability more generally as conceived in international development as a way for the Global North to manage its relationship with the Global South, see Mitchell (2011).

147 Baptiste / Rhiney (2016).

148 Giorgi (2006).

149 Lyons / Westoby (2014) 13.

150 Ibid. See also Bachram (2004).

This form of nature in stasis and its associated values do not reflect local realities in the Global South[151] and in the words of Keston Perry "entrench a coloniality of being";[152] rather than minimising and transforming that inherited vulnerability to environmental harm, these new initiatives are entrenching and exploiting it.[153] We are assured that "the science is clear"[154] [154] but offsets, debt for nature swaps and other forms of sustainable finance continue to displace residents from the Global South,[155] and current proposals for climate mitigation are reproducing the inequalities of colonialism.[156]

The Organisation of Eastern Caribbean States represents many of the states in the Lesser Antilles and the former Grenada Governorate. With additional funding from the European Union, and technical assistance from the Caribbean Natural Resources Institute, the OECS is developing its "Green-Blue Blue Economy Strategy and Action Plan", which would provide a more structured framework for implementation of a holistic, sustainable economic development plan, "combining green and blue strategies for sustainable development".[157] The Strategy notes that:

> A green economy is one which minimises ecosystem degradation, and is low carbon, resource efficient and socially equitable. Within this, a blue economy focuses specifically on coastal and marine resources. In an OECS green-blue economy, growth in employment and income levels is driven by investment into economic

151 For the significance of ocean geographies and 'grabs' of the seabed, see Braverman (ed.) (2022) and Ranganathan (2019).

152 Perry (2022) 562.

153 Wrathall et al. (2015).

154 et al. (2023): 'The State of Carbon Dioxide Removal', the first comprehensive global assessment of the current state of carbon dioxide removal published by the University of Oxford in 2023 addresses failure to solve the climate change problem as a matter of technological constraints. See https://www.stateofcdr.org/ (accessed 19 January 2023).

155 Lyons / Westoby (2014); Bachram (2004).

156 Hickel / Slameršak (2022); Ciplet et al. (2022). The Intergovernmental Panel for Climate Change's sixth assessment report also names colonialism for the first time as a historical and ongoing driver of climate change. See the Working Group II contribution to the sixth assessment report: IPCC (2022), https://www.ipcc.ch/report/sixth-assessment-report-working-group-ii/ (accessed 19 January 2023).

157 Joint press release of OECS and CANARI, https://canari.org/wp-content/uploads/2019/07/OECS-and-CANARI-Green-Blue-Economy-Strategy-and-Action-Plan.pdf (accessed 18 December 2022).

activities, assets and natural infrastructure which conserve biodiversity and ecosystem services that are critical to OECS countries and territories.[158]

Detached from local cultural contexts, this language appears sound. But as Perry explicates, debts held by bondholders, private investors, or multilateral agencies can be exchanged as forms of investments in "nature conservation" and "environmental projects".[159] In this process, the debtor country is supervised by a trustee or third party, such as the IMF or environmental NGO, who acts on behalf of the creditor to ensure investments meet environmental sustainability objectives. Environmental objectives and criteria for assessing sustainability appear to be defined in collaboration with this third party, which is not actually subject to the laws of the debtor country, while marginalised workers and communities from that country are distanced from decision-making power to determine fiscal or 'development' goals and environmental priorities.[160] The new plan for a Blue Economy in the Eastern Caribbean, which builds on the Green-Blue economy, states as its objective the creation of a model economy[161] that can be replicated around the world, reinforcing yet again that this region is a placeless template upon which environmental milestones can be generated for the global community. New instruments for the blue economy are thus simply extending the extractive frontier of colonial Caribbean nature to the sea.[162]

These new forms of spatial injustice are making use of old narratives from the colonial conservationist era. Communities are not empowered to engage in negotiations concerning their environments; this reflects what Fairhead, Scoones and Leach have identified as two underlying narratives in the green grabs process: communities are often framed as "environmentally destructive, backward and disordered, needing reconstruction to conform with modernist visions of sustainable development or naturalized and romanticized as green primitives, part of increasingly globalized media spectacles."[163] These framings echo the colonisers' approach to Amerindian and enslaved African communities, providing the pretext for enclosing and withholding land in the name of environmental protection. This masking facilitates the

158 Ibid.
159 Perry (2022) 567.
160 Ibid.
161 The OECS Blue Economy Strategy and Action Plan (October 2021), executive summary ii.
162 Perry (2022) 562.
163 Fairhead et al. (2012) 251.

spatial disconnect between the Global North and the Global South, exploiting geographic disparities that exacerbate local impacts and ultimately undermine sustainable people-place relations.

New proposals for resolving environmental problems rely on a placeless interchangeable nature where the same practices and mechanisms can be implemented. Though climate change is no longer framed in terms of dessicationism and deforestation, environmental protection laws remained shaped by the logic of the early European conservationists. The development of land has been subject to strategies that seem to rely on a natural environment that is passive and malleable, advocating for sustainable ecologies while exacerbating conditions that make people and place vulnerable through an extension of the extractive logic.[164] This reflects a particular legacy of land use, patterned on colonial constructions of nature as easily exploitable. How will the application of generic legal instruments that conceive of a homogenous nature resolve differentiated impacts generated by uniquely place-specific manifestations of global environmental problems?

6. Conclusion

This article has examined the way in which the British Empire abstracted various environments as vacuous space or wilderness, aided by imperial collecting missions and the transfer of scientific knowledge, and then depoliticised colonial violence via the deployment of (environmental) legal concepts and mechanisms, transforming understandings of lived-in nature to a nature that is defined by tradeable property rights that exist today. In particular, the re-ordering and degradation of Caribbean Island environments inspired and informed the conservationist consciousness and ethos, which today underpin the abstract logic of international environmental law.

The unpeopling of nature in the Lesser Antilles was facilitated by the use of colonial reserve legislation, which affirmed the prioritisation of land for plantation agriculture, eliminating local land uses, and disconnecting people from their local geography. Colonial conservation thus perpetuated a placeless nature upheld in the law, to the detriment of colonised environments and peoples who in actuality sustained nature for their livelihoods and

164 Sheller (2021) 1442.

continued way of life. The uptake of this placeless nature in international environmental law demonstrates the significance of Caribbean landscapes, which were sacrificed at the altar of environmentalism, the ecological sciences, and environmental legal mechanisms to generate a new spatially unjust ontology.

Places differ by geographic location, by culture and demographics, so a spatial justice analysis of the environment rejects notions of generic nature in favour of lived-in spaces that are locally encoded through human practices and interaction with specific environments over time. A lived-in space or place reflects locally unique and dynamic relationships with nature that rely on local knowledge and limits to sustain such places and peoples. Prior to the consolidation of land under Western Empires, most places reflected complex uses and relations with land, acting as a base for identity and common survival, otherwise known as landscape. Legal geography emphasises not just who but where is marginalised in struggles for domination and power – in this context, the centrality of the Caribbean to modern environmental law has been overlooked and has implications for spatial justice today.

I have argued, using a legal geographical lens, that Caribbean commonwealth environmental law is rooted in colonial ideas about nature as vacuous space, which required the extinguishment and depopulation of landscapes. 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 used to stem the ecological decline in these colonies, in order to maximise economic exploitation. In maximising economic exploitation, other uses of land, particularly the cultural dimension, were eliminated. Reserves by definition were intended to support spatial cleansing prerogatives of the Empire to create a static nature for collection and experimentation, withholding access and use of land from other people in the landscape. This understanding of nature, and the means of protecting nature (conservation) are therefore colonial and exclusionary by definition and must be deconstructed.

Reserving space is thus a form of spatial injustice. 'Paradise' denies local people connections to nature and suppresses community cohesion. A spatial justice filter invites a more rigorous analysis and would caution against homogenised and commercialised views of nature. New paradigms that are being taken up in environmental law, such as rights of nature, re-wilding and earth jurisprudence, as well as environmental and climate justice, may

be entrenching binaries that view Man as external to or a primitive form of nature in favour of wilderness, which never existed and conveniently ignores the lived-in experiences of people closest to nature. Proposals for the green economy should therefore attract greater scrutiny in light of the spatial justice considerations outlined in this chapter.

Relations with nature have endured, but these reimagined and reclaimed understandings of nature continue to be undervalued in a legal system that was designed to exclude them. Pluralising the law is necessary to arrest the unitary definition of environment in the law, and is decolonial, as this imposed singular definition became entrenched during the consolidation of the British Empire which erased people and place. New perspectives that restore the diverse relationships of marginalised and oppressed peoples with nature[165] will be important to the realisation of environmental and ultimately spatial justice.

This would accommodate diverse spatial definitions, since law's dismissal of spatial diversity, or people-place relations has consequences for community cohesion and ecological resilience. Without place specificity, small island developing states such as those in the Caribbean will be unable to address the local manifestations of the climate crisis and incorporate a vision of sustainability that is driven by the region's own cultural values and limits. A reconceptualisation of nature in the law that does not destabilise or degrade place means that nature must be emplaced, rejecting the vacuity of space, and embracing pluralistic values in the environment.

Abbreviations

CANARI Caribbean Natural Resources Institute
OECS Organisation of Eastern Caribbean States

165 Ferdinand (2021) 12.

Bibliography

Books, monographs and articles

Anderson-Córdova, Karen (2017), Surviving Spanish Conquest: Indian Fight, Flight, and Cultural Transformation in Hispaniola and Puerto Rico, Tuscaloosa (AL)

Anghie, Antony (2004), Imperialism, Sovereignty and the Making of International Law, Cambridge, https://doi.org/10.1017/CBO9780511614262 (accessed 17 October 2024)

Arranz Márquez, Luis (1991), Repartimientos y encomiendas en la Isla Española, Madrid

Bachram, Heidi (2004), Climate Fraud and Carbon Colonialism: The New Trade in Greenhouse Gases, in: Capitalism Nature Socialism 15,4, 5–20, https://doi.org/10.1080/1045575042000287299 (accessed 17 October 2024)

Baptiste, April, Kevon Rhiney (2016), Climate Justice and the Caribbean: An Introduction, in: Geoforum 73, 17–21, https://doi.org/10.1016/j.geoforum.2016.04.008 (accessed 17 October 2024)

Bartel, Robyn, Nicole Graham, S. Jackson, J. Prior, D. Robinson, Meg Sherval, Stewart Williams (2013), Legal Geography: An Australian Perspective, in: Geographical Research 51,4, 339–353

Beattie, James, Edward Melillo, Emily O'Gorman (eds.) (2015), Eco-Cultural Networks and the British Empire: New Views on Environmental History, London

Beinart, William, Lotte Hughes (eds.) (2009), Environment and Empire, Oxford

Berry, David (2003), Legal Anomalies, Indigenous Peoples and the New World, in: Saunders, Barbara, David Halijan (eds.), Whither Multiculturalism? A Politics of Dissensus (Studia Anthropologica), Leuven, 235–271

Blomley, Nicholas, Joel Bakan (1992), Spacing Out: Towards a Critical Geography of Law in: Osgoode Hall Law Journal 30,3, 661–690, https://doi.org/10.60082/2817-5069.1720 (accessed 17 October 2024)

Borras, Saturnino M., Jennifer C. Franco, Sergio Gómez, Cristóbal Kay, Max Spoor (2012), Land Grabbing in Latin America and the Caribbean, in: The Journal of Peasant Studies 39,3/4, 845–872

Braverman, Irus (2022), Introduction. Amphibious Legal Geographies: Toward Land-Sea Regimes, in: idem (ed.), The Laws of the Sea: Interdisciplinary Currents, London, 1–24

Byer, Amanda (2022), Heritage, Landscape and Spatial Justice: New Legal Perspectives on Heritage Protection in the Lesser Antilles, Leiden

Canny, Nicholas (ed.) (1998), The Origins of Empire: British Overseas Enterprise to the Close of the Seventeenth Century, vol. I, Oxford, https://doi.org/10.1093/acprof:oso/9780198205623.003.0001 (accessed 17 October 2024)

Castilla-Beltrán, Alvaro, Henry Hooghiemstra, Menno L. P. Hoogland, Jaime Pagán-Jiménez, Bas van Geel, Michael H. Field, Maarten Prins, Timme Donders, Eduardo Herrera Malatesta, Jorge Ulloa Hung, Crystal H.

McMichael, William D. Gosling, Corinne L. Hofman (2018), Columbus' Footprint in Hispaniola: A Paleoenvironmental Record of Indigenous and Colonial Impacts on the Landscape of the Central Cibao Valley, Northern Dominican Republic in: Anthropocene 22, 66–80

Ciplet, David, Danielle Falzon, Ike Uri, Stacy Ann Robinson, Romain Weikmans, J. Timmons Roberts (2022), The Unequal Geographies of Climate Finance: Climate Injustice and Dependency in the World System, in: Political Geography 99, 1–12

Crosby, Alfred (1972), The Columbian Exchange: Biological and Cultural Consequences of 1492, Westport (CT)

Crosby, Alfred (1986), Ecological Imperialism: The Biological Expansion of Europe, 900–1900, Cambridge

Damodaran, Vinita (2008), Environment and Empire: A Major Theme in Environmental History, in: Harris, Mary N., Csaba Lévai (eds.), Europe and its Empires, Pisa, 129–139

Deive, Carlos Esteban (1995), La Española y la esclavitud del indio, Madrid

Delaney, David (2016), Legal Geography II: Discerning Justice, in: Progress in Human Geography 40,2, 267–274, https://doi.org/10.1177/0309132516650354 (accessed 17 October 2024)

Denevan, William (1992), The Pristine Myth: The Landscape of the Americas in 1492, in: Annals of the Association of American Geographers 82, 369–385

Dillman, Jefferson (2015), Colonizing Paradise: Landscape and Empire in the British West Indies, Tuscaloosa (AL)

Drayton, Richard (1993), Imperial Science and a Scientific Empire: Kew Gardens and the Uses of Nature, 1772–1903, PhD diss., Yale (CT)

Drayton, Richard (2000), Nature's Government: Science, Imperial Britain, and the 'Improvement' of the World, New Haven (CT)

Endfield, Georgina, Samuel Randalls (2015), Climate and Empire in: Beattie et al. (eds.), 21–44

Fairhead, James, Melissa Leach, Ian Scoones (2012), Green Grabbing: A New Appropriation of Nature?, in: The Journal of Peasant Studies 29,2, 237–261

Ferdinand, Malcom (2021), A Decolonial Ecology: Thinking from the Caribbean World, Cambridge

Fitzpatrick, Peter (1992), The Mythology of Modern Law, Abingdon/London

Fitzpatrick, Scott, William Keegan (2007), Human Impacts and Adaptations in the Caribbean Islands: An Historical Ecology Approach, in: Earth and Environmental Science Transactions of the Royal Society of Edinburgh 98, 29–45

Gillespie, Alexander (2007), Protected Areas in International Law, Leiden, https://doi.org/10.1163/ej.9789004161580.i-320 (accessed 17 October 2024)

Gómez, Pablo (2017), The Experiential Caribbean Creating Knowledge and Healing in the Early Modern Atlantic, Wilmington (NC), https://doi.org/10.5149/northcarolina/9781469630878.001.0001 (accessed 17 October 2024)

Graham, Nicole (2010), Lawscape: Property, Environment, Law, London, https://doi.org/10.4324/9780203847169 (accessed 17 October 2024)

Grove, Richard (1996), Green Imperialism: Colonial Expansion, Tropical Island Edens, and the Origins of Environmentalism, 1600–1860, Cambridge
Grove, Richard (1997), The Island and the History of Environmentalism, in: Teich, Mikuláš, Roy Porter, Bo Gustafsson (eds.), Nature and Society in Historical Context, Cambridge, 148–163
Halikowski Smith, Stefan (2010), The Mid-Atlantic Islands: A Theatre of Early Modern Ecocide, in: International Review of Social History 55, 51–77, https://doi.org/10.1017/CBO9780511920677.003 (accessed 17 October 2024)
Häyrynen, Simo, Caitriona Devery, Aparajita Banerjee (2021), Contested Bogs in Ireland: A Viewpoint on Climate Change Responsiveness in Local Culture, in: Martinez, Grit (ed.), Culture and Climate Resilience. Perspectives from Europe, London, 69–95
Herzfeld, Michael (2006), Spatial Cleansing: Monumental Vacuity and the Idea of the West, in: Journal of Material Culture 11,1/2, 127–149, https://doi.org/10.1177/1359183506063016 (accessed 17 October 2024)
Hickel, Jason, Aljoša Slameršak (2022), Existing Climate Mitigation Scenarios Perpetuate Colonial Inequalities, in: Lancet Planet Health 6, 628–631
Hofman, Corinne, Menno Hoogl, Arie Boomert, John Angus Martin (2019), Colonial Encounters in the Southern Lesser Antilles: Indigenous Resistance, Material Transformations, and Diversity in an Ever-Globalizing World, in: Hofman, Corinne, Floris Keehnen (eds.), Material Encounters and Indigenous Transformations in the Early Colonial Americas, Leiden, 359–384
Holder, Jane, Carolyn Harrison (eds.) (2003), Law and Geography, Oxford, https://doi.org/10.1093/acprof:oso/9780199260744.001.0001 (accessed 17 October 2024)
Hooghiemstra, Henry, Thomas Olijhoek, Menno Hoogland, Maarten Prins, Bas van Geel, Timme Donders, William Gosling, Corinne Hofman (2018), Columbus' Environmental Impact in the New World: Land Use Change in the Yaque River Valley, Dominican Republic, in: Holocene 28,11, 1818–1835
Humphreys, Stephen, Yoriko Otomo (2016), Theorizing International Environmental Law in: Orford, Anne, Florian Hoffmann (eds.), The Oxford Handbook of the Theory of International Law, Oxford, 797–819, https://doi.org/10.1093/law/9780198701958.003.0040 (accessed 17 October 2024)
Jebodh, Rajiv (2019), Legal Transplant, Development of the Rule of Law and Postcolonial Certainty in the Commonwealth Caribbean, PhD diss., Roehampton
Jiménez Fonseca, Manuel (2010), The Colonization of American Nature and the Early Development of International Law, in: Journal of the History of International Law 12, 189–225
Johnson, Walter (ed.) (2005), The Chattel Principle: Internal Slave Trades in the Americas, New Haven (CT), https://doi.org/10.12987/yale/9780300103557.001.0001 (accessed 17 October 2024)
Keegan, William, Corinne Hofman (2017), The Caribbean before Columbus, Oxford, https://doi.org/10.1093/acprof:oso/9780190605247.001.0001 (accessed 17 October 2024)

Laffan, Brigid, Jane O'Mahony (2008), 'Bringing Politics Back In'. Domestic Conflict and the Negotiated Implementation of EU Nature Conservation Legislation in Ireland, in: Journal of Environmental Policy & Planning 10,2, 175–197

Layard, Antonia (2019), Reading Law Spatially, in: Creutzfeldt, Naomi, Marc Mason, Kirsten McConnachie (eds.), Routledge Handbook of Socio-legal Theory and Methods, Oxford, 232–244, https://doi.org/10.2139/ssrn.3379709 (accessed 17 October 2024)

Lyons, Kristen, Peter Westoby (2014), Carbon Colonialism and the New Land Grab: Plantation Forestry in Uganda and its Livelihood Impacts, in: Journal of Rural Studies 36, 13–21

Marshall, O. R. (1971), West Indian Land Law – Conspectus and Reform, in: Social and Economic Studies 20,1, 1–14

McNeill, John Robert (2010), Mosquito Empires: Ecology and War in the Greater Caribbean, 1620–1914, Cambridge, https://doi.org/10.1017/CBO9780511811623 (accessed 17 October 2024)

Mitchell, Timothy (2011), Carbon Democracy: Political Power in the Age of Oil, New York

Mollett, Sharlene (2014), A Modern Paradise: Garifuna Land, Labor and Displacement-in-Place, in: Latin American Perspectives 41,6, 27–45, https://doi.org/10.1177/0094582X13518756 (accessed 17 October 2024)

Mrozowski, Stephen (1999), Colonization and the Commodification of Nature, in: International Journal of Historical Archaeology 3,3, 153–166

Murdoch, David (1984), Land Policy in the Eighteenth-century British Empire: The Sale of Crown Lands in the Ceded Islands 1763–1783, in: The Historical Journal 27,3, 549–574

Natarajan, Usha, Julia Dehm (eds.) (2022), Locating Nature, Cambridge, https://doi.org/10.1017/9781108667289 (accessed 17 October 2024)

Niddrie, David Lawrence (1966), Eighteenth-Century Settlement in the British Caribbean, in: Transactions of the Institute of British Geographers 40, 67–80, https://doi.org/10.2307/621569 (accessed 17 October 2024)

O'Riordan, Margaret, John McDonagh, Marie Mahon (2016), Local Knowledge and Environmentality in Legitimacy Discourses on Irish Peatlands Regulation, in: Land Use Policy 59, 423–433

Pagden, Anthony (1998), The Struggle for Legitimacy and the Image of Empire in the Atlantic to c. 1700, in: Canny, Nicholas (ed.), The Oxford History of the British Empire, vol. I: The Origins of Empire: British Overseas Enterprise to the Close of the Seventeenth century, Oxford, 34–54, https://doi.org/10.1093/acprof:oso/9780198205623.003.0002 (accessed 17 October 2024)

Palacio, Joseph (2005), The Garifuna, A Nation Across Borders: Essays in Social Anthropology, Belize City

Patchett, Keith (1973), Reception of Law in the West Indies, in: Jamaican Law Journal 1973, 17–35, https://doi.org/10.2307/375193 (accessed 17 October 2024)

Perry, Keston (2022), From the Plantation to the Deep Blue Sea: Naturalising Debt, *Ordinary* Disasters, and Postplantation Ecologies in the Caribbean, in: The Geographical Journal 189,4, 562–574, https://doi.org/10.1111/geoj.12470 (accessed 17 October 2024)

Petrova, Darina, Tomaso Ferrando (2022), Three Enclosures of International Law, in: Natarajan / Dehm (eds.), 255–283, https://doi.org/10.1017/9781108667289.015 (accessed 17 October 2024)

Quintanilla, Mark (2004), Mercantile Communities in the Ceded Islands: The Alexander Bartlet & George Campbell Company, in: International Social Science Review 79,1/2, 14–26

Raby, Megan (2017), American Tropics: The Caribbean Roots of Biodiversity Science, Chapel Hill (NC), https://doi.org/10.5149/northcarolina/9781469635606.001.0001 (accessed 17 October 2024)

Ranganathan, Surabhi (2019), Ocean Floor Grab: International Law and the Making of an Extractive Imaginary, in: European Journal of International Law 30,2, 573–600

Richardson, Benjamin, Ikechi Mgbeoji, Francis Botchway (2006), Environmental Law in Post-colonial Societies: Aspirations, Achievements and Limitations, in: Richardson, Benjamin J., Stephan Wood (eds.), Environmental Law for Sustainability: A Reader, Oxford, 413–443

Schiebinger, Londa (2004), Plants and Empire: Colonial Bio-prospecting in the Atlantic World, Cambridge (MA)

Schiebinger, Londa, Claudia Swan (eds.) (2005), Colonial Botany: Science, Commerce and Politics, Philadelphia (PA)

Scobie, Michelle (2019), Global Governance and Small States: Architecture and Agency in the Caribbean, Cheltenham, https://doi.org/10.4337/9781786437273 (accessed 17 October 2024)

Sheller, Mimi (2009), The New Caribbean Complexity: Mobility Systems, Tourism and Spatial Rescaling, in: Singapore Journal of Tropical Geography 30, 189–203, https://doi.org/10.1111/j.1467-9493.2009.00365.x (accessed 17 October 2024)

Sheller, Mimi (2021), Reconstructing Tourism in the Caribbean: Connecting Pandemic Recovery, Climate Resilience and Sustainable Tourism through Mobility Justice, in: Journal of Sustainable Tourism 29,9, 1436–1449

Siiskonen, Harri (2015), The Concept of Climate Improvement: Colonialism and Environment in German South West Africa, in: Environment and History 21,2, 281–302

Taylor, Christopher (2012), Black Carib Wars: Freedom, Survival, and the Making of the Garifuna, Jackson (MS), https://doi.org/10.14325/mississippi/9781617033100.001.0001 (accessed 17 October 2024)

Tuori, Kaarlo (2012), The Reception of Ancient Legal Thought in Early Modern International Law, in: Fassbender, Bardo, Anne Peters (eds.), The Oxford Handbook of the History of International Law, Oxford, 1012–1033, https://doi.org/10.1093/law/9780199599752.003.0043 (accessed 17 October 2024)

Ulloa Hung, Jorge, Roberto Rojas Valcárcel (eds.) (2016), Indígenas e indios en el Caribe: presencia, legado y estudio, Santo Domingo
Valcárcel Rojas, Roberto (2016), Archaeology of Early Colonial Interaction at El Chorro de Maíta, Cuba, Gainesville (FL), https://doi.org/10.5744/florida/9780813061566.001.0001 (accessed 17 October 2024)
Watts, David (1990), The West Indies: Patterns of Development Culture and Environmental Change since 1492, Cambridge
Welch, Andrew (2014), The History of International Law in the Caribbean and the Domestic Effects of International Law in the Commonwealth Caribbean, in: SOAS Law Journal 1, 124–138
Welch, Christina, Niall Finneran (2022), Interpreting the Indigenous and Imported Heritage of Medicinal and Culinary Plant Use in St. Vincent through the Gardens of John Nero and Alexander Anderson, in: Economic Botany 76,2, 189–204
Wrathall, David, Anthony Oliver-Smith, Alexander Fekete, Ebru Gencer, Marqueza Lepana Reyes, Patrick Sakdapolrak (2015), Problematising Loss and Damage, in: International Journal of Global Warming 8,2, 274–294

Legislation (in force)

Antigua
Environmental Protection and Management Act 2014
Dominica
National Parks and Protected Areas Act 1975
Grenada
Grand Etang Forest Reserve Act (Cap 124)
National Parks and Protected Areas Act 1991

Online sources

CO = The National Archives, UK (TNA), Colonial Office files on the Grenada Governorate, https://www.amdigital.co.uk/collection/colonial-caribbean (accessed 4 January 2023)
Giorgi, F. (2006), Climate Change Hot-Spots, in: Geophysical Research Letters 33,8, L08707, https://doi.org/10.1029/2006GL025734 (accessed 10 January 2023)
Gonzalez, Carmen G. (2015), Environmental Justice, Human Rights, and the Global South, in: Santa Clara Journal of International Law 13, 151–195, http://digitalcommons.law.scu.edu/scujil/vol13/iss1/8 (accessed 10 January 2023)
IPCC (2022), Intergovernmental Panel for Climate Change, Sixth Assessment Report – Working Group II Contribution to the Sixth Assessment Report, https://www.ipcc.ch/report/sixth-assessment-report-working-group-ii/ (accessed 19 January 2023)

Layard, Antonia (2016), What is Legal Geography?, in: University of Bristol Law School Blog, 11 April 2016, http://legalresearch.blogs.bris.ac.uk/2016/04/what-is-legal-geography/ (accessed 11 May 2021)

Natarajan, Usha, Julia Dehm (2019), Where is the Environment? Locating Nature in Environmental Law, in: TWAIL Reflections, 30 August 2019, https://twailr.com/where-is-the-environment-locating-nature-in-international-law/ (accessed 4 January 2023)

Smith, Stephen M., Oliver Geden, Jan C. Minx, Gregory F. Nemet et al. (2023), The State of Carbon Dioxide Removal – First Edition, University of Oxford, https://www.stateofcdr.org/ (accessed 19 January 2023)