

“De Beach Belong to We!” Socio-economic Disparity and Islanders’ Rights of Access to the Coast in a Tourist Paradise

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Abstract

The Caribbean islands share a history of plantation economy in which the “1%” not only controlled the natural resources and economies of the region, but also owned the majority of the “99%” who were enslaved. This disparity in wealth approximated a racial divide in the society, as the wealthy minority was predominantly “white” while the dispossessed majority was mainly non-whites. While the coastlands were always of importance in these export-oriented agricultural colonies, beach and backshore lands unsuitable for agriculture were less so, often being utilized for boatyards/fishing depots, cemeteries and “tenancies” or squatter settlements housing the landless.

Since World War II, and particularly since the Cuban revolution in 1960, beach-oriented tourism has become the leading economic activity in most Caribbean countries. Competition for coastal resources has generally been resolved in favour of foreign currency, transferring much coastal property to foreign ownership and increasingly shutting off the local population’s access to the sea. As the majority of foreign investors and tourists are white, this also has racial connotations. This paper examines the legal and administrative responses to the challenges that this situation presents which have been adopted by the Anglo-Caribbean Small Island Developing States (SIDS), with particular reference to the islands of Jamaica, Barbados, Tobago and some of the member countries of the Organisation of Eastern Caribbean States (OECS).

Key words

Caribbean; Tourism; Beaches; Access Rights; Social Inequality

Resumen

Las islas del Caribe comparten una historia de economía basada en plantaciones, en la que el 1% de la población controlaba los recursos naturales y la economía de la

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región, y al 99% restante, que vivía esclavizado. Esta diferencia en la riqueza traía consigo una división racial en la sociedad, ya que la minoría rica era principalmente "blanca", mientras que la mayoría desposeída era principalmente "no blanca". Mientras que las tierras costeras tenían siempre importancia en estas colonias agrícolas orientadas a la exportación, las playas y terrenos inadecuados para la agricultura lo eran menos, utilizándose muchas veces como astilleros o almacenes de pesca, cementerios o asentamientos ilegales para los sintierra.

Desde la Segunda Guerra Mundial, y en particular desde la revolución cubana de 1960, el turismo de playa se ha convertido en la principal actividad económica en la mayoría de los países del Caribe. La competencia por los recursos costeros se ha resuelto en general a favor del capital extranjero, transfiriendo muchas propiedades costeras a dueños extranjeros y, cada vez más, cerrando a la población local el acceso al mar. Como la mayoría de los inversores extranjeros y turistas son blancos, esto también tiene connotaciones raciales. Este artículo analiza las respuestas legales y administrativas a los desafíos surgidos por esta situación, que se han adoptado por Anglo-Caribbean Small Island Developing States (SIDS) (Pequeñas Islas y Estados en Desarrollo Anglo-Caribeños), con especial referencia a las islas de Jamaica, Barbados, Tobago y algunos de los países miembros de la Organización de Estados del Caribe Oriental (OECS).

Palabras clave

Caribe; turismo; playas; derechos de acceso; desigualdades sociales

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1. Introduction

The beautiful islands of the Caribbean archipelago lie at the heart of a region - extending from the coast of Brazil into the Guianas, along the Caribbean coast, throughout the Caribbean itself and into the southern United States - which has been referred to as "Plantation America" (Wagley 1960).¹ The socio-economic system characteristic of this area, known as the "Plantation Economy" (Best 1968) - born in north-eastern Brazil,² incubated in Barbados and initially spread from there to the Leeward Islands, Jamaica and South Carolina (Green 1987) - was dependant, after the near-total genocide of the indigenous inhabitants, on the exploitation of masses of African slaves and European and Asian indentured servants by a privileged few, under a system dependant for its moral justification on institutionalized racism.³ The plantation economies that developed in these so-called "Hinterlands of Exploitation" (Best 1968)⁴ were based on mono-crop primary production on plantations for export to and the enrichment of the metropolitan country with sovereignty over the particular colony.

Plantations are characterised as "total economic institutions" in which there is virtually no distinction between the organization that is the unit of production and the society (Best 1968). The paramount characteristic of this society was inequality. Based on the rough population data available for the Leeward Islands in 1834, the date of the abolition of slavery in the British Empire, plantation society there comprised an overwhelming majority of black slaves (approximately 85%), an intermediate group of free coloured persons (some 10%) and a small minority (about 5%) of whites (Hall 1971, p. 8). Even in Barbados, where for various historical reasons including the existence of a substantial population of "poor whites",⁵ there were more resident whites and fewer free coloured persons than in the other islands, in 1834 the society comprised 75.5% slaves, 13.5% whites and 11% free coloureds (Beckles 2004, p. 44). Although the average number of slaves for whom slave owners received financial compensation from the British government upon the abolition of slavery ranged from a low of seven persons in Trinidad to a high of 29 persons in Antigua, the averages are misleading. The vast majority of slave owners owned only a few slaves, but the planters owned large numbers. For example, in Trinidad, where the plantation economy was still in its infancy at emancipation, 80% of slave owners claimed compensation for less than 10 slaves and only 1% claimed compensation for more than 100 slaves, but in the mature plantation economy of Tobago, while 60% of slave owners claimed for less than 10 slaves, 12% of claimants owned more than 100 slaves (Williams 1962, p. 85).

¹ According to Wagley (1960), Plantation America is one of the three cultural spheres into which the Americas can be divided, the other two being Euro-America and Indo-America; the latter being further divided by other scholars into two sub-regions, Indo-America and Mestizo-America.

² Sugar cane plants and the knowledge of sugar production techniques were brought to Barbados from Pernambuco (Recife) in Brazil before 1647 (Ligon 2000, p. 119).

³ As stated by Beckles (2004, p. 64), "Racism became the most effective social idea that determined ownership and access to economic resources, social status, and cultural legitimacy. Over the 211 years during which Africans were legally enslaved, socially brutalized and psychologically terrorized ... the values and practices of racism, the idea that people can be kept subordinate and deemed inferior because of their cultural and physical differences, was legally concretized as the norm and benchmark."

⁴ Best classifies the externally propelled economies established in the Americas under the mercantilist system of hegemonic metropolitan-hinterland relations into three classes: Hinterlands of Conquest (corresponding to the case of Spain in Central and South America), Hinterlands of Settlement (corresponding to the case of the North Eastern North America) and Hinterlands of Exploitation. This economic classification mirrors the cultural classification made by Wagley (1960); however, Best's classification of hinterland economies has been criticized as not reflecting the sequential process of colonial historical development, in Thomas (1968).

⁵ Before the discovery of Australia, offenders sentenced to transportation by courts in Britain were sent to Barbados and Virginia to serve as indentured servants. In the case of Barbados, this included many rebels involved in the Monmouth rebellion and the Jacobite uprisings. See Shepherd (1977), O'Callaghan (2001), Jordan and Walsh (2008).

Emancipation did little to address the structural inequalities in West Indian society. In Barbados, which is relatively flat and where the majority of arable land had been cleared and occupied by sugar plantations by the mid-1600s, at emancipation the usable agricultural land (estimated at 100,000 acres) was fully appropriated. Less than 2% of the population with holdings of more than 1 acre were in possession of all the land. The owners of the existing 489 plantations - all but three of whom were white - controlled some 85% of the total land area and almost all of the 625 persons with more than 10 acres of land were white (Beckles 2004, p. 45). In Barbados there were no unallocated Crown lands to which the ex-slaves could relocate in order to escape the hegemony of the planters; as a result the vast majority were forced to continue to work and reside on the plantations as land tenants, at peril of eviction from their house spots and provision grounds if they did not provide labour to the plantations. As Beckles says, for ex-slaves in Barbados, "Freedom began ... with the fear of homelessness and the certainty of landlessness." (Beckles 2004, p. 51).

In the other islands where unallocated Crown land was still relatively abundant in 1834, due both to their rugged topography and the more recent development of plantation economy, the British government anticipated that, if vacant land was available on which they could engage in subsistence farming, after emancipation the ex-slaves would leave the plantations on which they had previously been enslaved, leaving the plantations without a reliable labour supply. Hence, in January 1836 the Secretary of State for the Colonies issued a circular requiring the Government in each colony to implement the policy of the British government, "to prevent the occupation of any Crown Lands by persons not possessing a proprietary title to them, and to fix such a price upon all Crown Lands as may place them out of the reach of persons without capital" (Secretary of State for the Colonies 1836).⁶ Notwithstanding that stringent legal measures designed to prevent squatting were adopted in support of this policy, including threats of summary eviction, punitive fines and incarceration, emancipation led to an upsurge in squatting on Crown lands (Brereton 1982, p. 81). In Dominica, for example, it has been estimated that about 40% of all the ex-slaves fled the estates after emancipation (Trouillot 1988, p. 88). Nevertheless, this policy of holding "a dead hand over Crown lands to prevent people getting them"⁷ was not discontinued for more than 50 years, until the West Indies Royal Commission recommended a radical change of policy in 1897 (Kirke quoted in Ramsahoye 1966, Momsen 1987).

The essential features of plantation economy – mono-crop production and export orientation – were therefore the key drivers of land values and land use patterns in the colonial Caribbean, both before and after emancipation. A premium was placed on agricultural lands suitable for the cultivation of sugar cane, including the coastal plains of the more mountainous islands. In addition, with the exception of interior towns like Saint Joseph in Trinidad and Spanish Town in Jamaica founded during the previous era of Spanish control of those islands, all the capitals and major settlements in the islands are coastal port towns founded in the days of sail and thus situated on the leeward sides of the islands. Outside of the ports and surrounding urban areas dedicated to import-export activities and other plantation-related mercantile functions, except for strategic sites required for defensive fortifications, during most of West Indian history the beach and backshore areas fringing the islands were therefore considered relatively worthless.

Consequently, up until about 50 years ago these peripheral areas were utilized primarily for boatyards, fishing depots and, like other areas unsuitable for

⁶ Although leaving the detailed arrangements to the Government of each Colony, the Circular stipulated that in future no Crown land should be disposed of to individuals except by public sale, a minimum price being fixed, the highest bidder in all cases being entitled to preference

⁷ Evidence given by Justice A. H. Kirke (cited Ramsahoye 1966 p. 132), one of the Commissioners appointed to report on land titles in British Guiana, before the West Indies Royal Commissioners in 1898.

cultivation, for Churchyards, cemeteries and "negro-yards" for housing slaves. For example, in and around Holetown, the site of the original 1627 English settlement in Barbados, which now lies at the heart of the prime tourism zone known as the "platinum coast", the coastal land north of the small town centre is occupied by St. James' Parish Church and churchyard cemetery and at Mount Standfast a little further north, by low-income tenancies of chattel housing on rented lands,⁸ which evolved from plantation slave yards. During the extension in the 1970s of Barbados' foremost luxury hotel, the US\$1000+ per night Sandy Lane, which is located immediately south of Holetown, excavations uncovered an extensive burial site (Greenidge 2004, p. 83). This is likely to have been one of the mass graves in which the more than 20,000 victims of the 1854 Cholera Epidemic were interred, as Sandy Lane woods remained intact until the 1960s and a still untouched woodland in the heart of another prime coastal tourism district, the Maxwell-St. Lawrence Gap area on the South Coast, is reputed to be another "cholera ground".⁹ Likewise, visitors landing at the international airport in Castries, St. Lucia, cannot help but be amazed to find that the municipal cemetery covers the entire backshore area between Vigie beach and the end of the runway.

As observed by Lowenthal in 1961, a turning point in West Indian history:¹⁰

"The view that land is valueless save as a commodity persists in many aspects of West Indian life today ... It is evident in the readiness of individuals and governments to sell and lease land to foreign corporations and in the easy faith that the highest income per acre is the greatest national good. ... Thus West Indian property owners and residents alike traditionally repudiate West Indian land, save as a source of wealth. But although this is the most notorious tradition, it is not the only one. Rejection of the milieu implies, and often conceals, the opposite sentiment: a deeply felt attachment to the land that transcends the realm of economics ... these supra-economic values have a long, if hitherto mute, heritage of association with Caribbean lands. The prime connotation is freedom. ... Land in the West Indies is enjoyed increasingly by residents as a source of recreation and inspiration. ... The evils of the past when their ancestors were slaves on the land, no longer blind West Indians to the landscape's actual glories." (Lowenthal 1961, p. 3).

2. The rise of tourism

Tourism is not a new phenomenon in the Caribbean. Barbados is famously the only place outside the United States visited by George Washington, who travelled there in 1751 in the hope of restoring the health of his ailing elder brother.¹¹ By the 1800s Barbados boasted several elegant hotels. In the era before the invention of air-conditioning, these were situated on the breezy east and south coasts of the island. Several of these historic hotels have recently been demolished,¹² but the some have been modernized and are still in operation.¹³ Notwithstanding the

⁸ The tenantry system is fully explained by Beckles (2004), and the legal characteristics of tenancies are analyzed in Matthews Glenn (2008). There are a number of scholarly articles on chattel houses including Fraser (1972), Gibson (1984) and Matthews Glenn & Toppin-Allahar (1997).

⁹ As a child growing up in Barbados, oral history identifying various areas as "cholera grounds" was transmitted to the author and her siblings by their grandparents.

¹⁰ Decolonization of the British West Indies began with the attainment of political independence by both Jamaica and Trinidad & Tobago 1961. With the exception of Anguilla, the British Virgin Islands, the Cayman Islands, Montserrat and the Turks and Caicos islands, which remain British Overseas Territories, all the former British colonies in the Caribbean are now independent nation states. It is also the approximate start date of the rapid growth of institutionalized mass tourism in the West Indies.

¹¹ The George Washington House that he occupied is adjacent to the Garrison, within the UNESCO World Heritage Site in Barbados.

¹² The Marine Hotel, the Ocean View Hotel and the Windsor Hotel all former located in Hastings, Christ Church, on the south coast. Of these only the Ocean View was on the seaward side of the coast road. A small hospitality training hotel has been built on the government-owned site of the Marine and a shopping mall has been constructed on the site of the Windsor, but the site of the beach front Ocean View - which was evidently demolished for speculative purposes - remains vacant.

¹³ Reference is made to the Crane Hotel on the south eastern coast and the Atlantis Hotel on the rustic east coast. This Bathsheba-Cattlewash area on the east coast, made accessible in the late 1800s by the

existence of hotels in Barbados and elsewhere in the Caribbean in the pre-World War II period, leisure travel was limited to the wealthy and was not a significant economic activity in the Caribbean (Taylor 1993). The development of international mass tourism has only been a world-wide phenomenon over the past 50 years, following the advent of international air travel. A contributory factor in the particularly rapid growth of tourism in the rest of the Caribbean is the withdrawal of Cuba from the sector in 1960, following the Cuban revolution.

The exponential increase in tourism in the Caribbean since 1960 has resulted in the transformation of the economies of all the countries without a significant mineral endowment, from reliance on export agriculture to reliance on international tourism. Although the number of tourist arrivals varies greatly between the islands, as a broad generalization it can be said that the level of tourist arrivals in 1960 was less than 5% of that attained in 2010. In other words, over the past 50 years the number of tourists visiting the Caribbean has increased more than 20-fold or 2000%. This led the United Nations to warn early on that:

"After surviving æons of geological evolution, hurricanes, floods, drought, tropic sun and five centuries of colonial exploitation, the islands of the Caribbean now confront a new hazard, a virtual tidal wave of people, spilling out from the continental melting pots, seeking permanent or temporary respite from the urban revolution. Drawn by idealized concepts of tranquil islands in the sun, this flood-like migration into the Caribbean basin is having far reaching, occasionally promising and potentially disastrous effects upon all aspects of island life". (United Nations General Assembly 1969)

The resulting socio-economic transformation has been so comprehensive that in many islands that were major sugar-producers 50 years ago, notably in the Leeward Islands, most agricultural land has been abandoned and not a blade of sugar cane can now be found. The development of tourism was encouraged by all the countries in the region, which offered generous fiscal incentives to foreign investors and established special agencies to promote and market tourism abroad (Taylor 1993, Worrel *et al.* 2011). Similar strategies were utilized in an effort to attract light industries, for the purposes both of economic diversification and import substitution, but with less success. From the inception of the tourist industry questions have arisen about its direct and indirect economic benefits.

Whatever the merits of these arguments, as has been pointed out elsewhere (Toppin-Allahar 1972), there is a critical difference between an economic strategy of reliance on visible exports of primary and secondary products and one of reliance on invisible exports generated by tertiary activity in the tourism sector. In the case of tourism the export product is consumed in the country of origin; hence, its consumption has direct social and environmental impacts in the destination country selling the tourism product. Not all of these impacts on the destination country are negative; however, in the small island developing states (SIDS) of the Commonwealth Caribbean there are three main factors that give rise to negative social impacts.

First, with the exception of Jamaica,¹⁴ given the small territory and local population of the islands the number of stopover and cruise ship visitors received by the islands annually is overwhelming. In 2013 the twin island state of Antigua & Barbuda, with a total population of 89,069, received 243,932 stopover visitors and 533,993 cruiseship passengers, the vast majority of most of whom visited the 280 sq. km. (108 sq. mi.) main island of Antigua. Similarly, the already overcrowded

long defunct railway from Bridgetown, remains the traditional holiday area for Barbadians. The old Edgewater Hotel at Bathsheba has closed down since this paper was first written.

¹⁴ Jamaica, with an area of 10,911 sq. km. (4,213 sq. mi.) and a population of 2,714,734, is the smallest of the four large islands (Cuba, Jamaica, Hispaniola and Puerto Rico) that make up the Greater Antilles; all the other islands referred to in this paper are situated in the Lesser Antilles. In 2013 Jamaica received 2,008,409 stopover visitors and 1,288,184 cruise-ship passengers but tourism is concentrated on the north and west coasts of the island.

431 sq. km. (166 sq. mi.) island of Barbados, with a resident population of 277,821, received 508,520 stopover visitors and 570,263 cruiseship passengers. Even St. Vincent & The Grenadines, a 389 sq. km. (150 sq. mi.) archipelagic state with a population of 103,220, which has opted for a high end tourism product concentrated on the very small exclusive islands of the Grenadines, received 71,725 stopover visitors and 82,974 cruiseship passengers.¹⁵ Whilst all of these visitors are not in the islands simultaneously, most tourism facilities are concentrated in the same coastal areas occupied by pre-existing settlements and, given the large numbers of annual visitors, tourists are virtually always "in the face" of the local population.

Secondly, there is a great disparity in wealth between the average tourists and the majority of the local population of the islands. This can be illustrated by reference to the gap between the Gross National Income (GNI) per capita of the main tourist originating countries and that of the Commonwealth Caribbean SIDS. The GNI per capita of the USA and of Canada is more than three times that of Barbados, the best off of the Commonwealth Caribbean SIDS considered here, and more than ten times that of Jamaica, the poorest country.¹⁶ What this means in practice is that the average tourist is able to spend on a daily basis during their holiday more money than the average islander - particularly minimum wage earners with whom tourists are frequently in contact - can earn in weeks. Naturally, this can become a source of envy, temptation and resentment on the part of locals.

Thirdly, although ethnic diversity amongst tourist is increasing, because the USA, Canada and the UK are the major tourist originating countries, the majority of tourists are of European descent whilst, as a legacy of slavery, islanders in the Commonwealth Caribbean are predominantly of African descent.¹⁷ Consequently, tourism in the Caribbean juxtaposes vacationing whites and labouring blacks. As observed by an eminent Caribbean historian, the fundamental features of the industry – predominantly foreign ownership, expatriate and local elite management and black workers – echo those of the plantation economy (Harrigan 1974, p. 21). Hence, it should not be surprising that persistent efforts over the past 50 years by champions of the tourist industry to distinguish "service" from "servitude" have failed to persuade many West Indians. As noted by Dr. Jean Holder, long-standing head of the Caribbean Tourism Organisation (CTO), in a recent interview:

Because of our history of slavery, we keep constantly having to remind ourselves there is no servility in providing good service to our customers. As our societies were developing economically, politically and constitutionally there was always a resistance to tourism from certain elements of society. Despite its economic benefits we didn't embrace it totally because of elements that were so reminiscent of what happened before (Barker 2014).

3. Access to the coast

It is in this context that the right of access of islanders to the coast has become an issue in the Commonwealth Caribbean. The manner in which this issue has arisen in

¹⁵ All the foregoing data on visitor arrivals is taken from the Caribbean Tourism Organization (2013).

¹⁶ The World Bank gives the GNI per capita for the USA, Canada, and the UK, the major tourist originating countries as US\$52,340, US\$51,570 and US\$38,500 respectively. The figures for the Commonwealth Caribbean SIDS discussed here are: Barbados US\$15,080; the OECS Countries US\$8,840 and Jamaica US\$5,130. The figure given here for the OECS countries is the average for the six independent countries which are full members of the OECS: Antigua & Barbuda; St. Kitts & Nevis; Dominica; St. Lucia; St. Vincent & The Grenadine and Grenada. GNI per capita data is not available for Tobago as it forms part of the Republic of Trinidad & Tobago.

¹⁷ According to official 2010/2011 census data on the ethnic self-identification of the national population published by their respective government statistical services, the contemporary population of Jamaica is 92.11% Black, 6.06% Mixed and less than 2% as of other races; the Barbados population is 92.45% Black, 3.11% Mixed, 2.71% White and 1.73% of other races. Although for historical reasons the national population of Trinidad & Tobago is much more diverse (35.4% East Indian; 34.2% Black; and 22.8% Mixed), in Tobago the population is 85.2% Black, 8.5% Mixed and 2.5% East Indian.

different countries, and the legal and administrative responses adopted by governments in the region to the challenges that this situation presents, are examined below.

3.1. Jamaica

As the playground of Hollywood stars and the British elite in the years immediately after World War II, when Errol Flynn, Noel Coward, Ian Fleming and other prominent foreigners acquired properties there (Taylor 1993, Manzoor 2010), Jamaica was the pioneer of modern tourism development in the Commonwealth Caribbean. Jamaica was then, and remains now, the only Commonwealth Caribbean country which allows ownership of private beaches.¹⁸ This is evident from the provisions of the *Prescription Act*, enacted in 1882, which provides that the public may acquire a right to use a beach for fishing, bathing or recreational purposes, or to use any road, track or pathway passing over land adjacent to a beach as a means of access to such a beach, by uninterrupted use for a period of 20 years, provided that the use of the beach or the right of way has not been enjoyed by virtue of some consent or agreement given by deed or in writing (Jamaica. *Prescription Act*, s.4). Consequently, as admitted by the Government of Jamaica (GOJ) (2000, p. 3), "[a]ccess to the island's beaches has always been a controversial issue in Jamaica."

As a result of public agitation that fishermen and members of the general public were being squeezed out of beaches, a Commission of Enquiry was appointed in 1954 to investigate the issue of the uses of beaches and foreshore lands throughout Jamaica, taking into account the needs of the public for recreation (Government of Jamaica 2000, p. 1). This Commission recommended the introduction of legislation to address the problem, leading to the enactment of the *Beach Control Act* in 1955. This Act, which nationalized ownership of the seabed and foreshore, without prejudice to existing property rights and the rights of commercial fishermen existing before the coming into force of the Act on 1st June 1956, did not seek to confer on the public general rights to gain access to and use beaches, the foreshore and the sea. It conferred on the owners and occupiers of private lands adjoining beaches and their guests the right to use the foreshore for private domestic purposes; provided for the designation of public bathing beaches; and introduced a licensing regime for all trade, business or commercial uses of beaches, including fisheries (Antigua & Barbuda, *Beach Control Act*).

The Act provided that, in the process of determining applications for licences, the Authority¹⁹ must consider the public interest with respect to fishing, bathing and recreation, the environment and the future development of adjoining land, and every decision to grant or refuse a licence must be published; however, there is no requirement that notice of applications must be publicised. In this respect the Jamaican legislation compares unfavourably with similar beach control laws later enacted by several Organisation of Eastern Caribbean States (OECS) member countries.²⁰ For example, the Antigua and Barbuda *Beach Control Act* (Antigua and Barbuda, *Beach Control Act*, Revised Laws of Antigua & Barbuda 1992, Cap.45), which is typical of the eponymous legislation in the other islands, provides that every application for a licence must be published in the official *Gazette* and a local newspaper, and the public must be afforded the opportunity of making representations in respect of the application. When deciding on applications the Minister must consider and protect, by terms of the licence or otherwise, the public

¹⁸ With the notable exception of Negil Beach on the west coast, the majority of beaches in Jamaica are embayed, being surrounded on their landward sides by land that is often in private ownership.

¹⁹ Originally, this was the Beach Control Authority. After its establishment in 1992, the Natural Resources and Conservation Authority (NRCA) assumed responsibility for the administration of the Act. By virtue of an order made under the *Executive Agencies Act 2000*, the NRCA has been incorporated into the National Environment and Planning Agency (NEPA), which is now responsible for beach control.

²⁰ Anguilla, Antigua & Barbuda, Dominica and Saint Lucia.

interest with respect to fishing, bathing or recreation and the future development of adjoining land. Additionally, notice of every licence issued must be published in the official *Gazette* and there is a right of appeal to Cabinet (which is not restricted to the applicant) against the decision of the Minister; however, the decision of the Cabinet is final and cannot be challenged in any legal proceedings.

Under the older Jamaican legislation, two types of annual, renewable licences could be issued: ordinary licences, which conferred non-exclusive rights and could be issued to several holders simultaneously, and exclusive licences, conferring rights to use the foreshore and seabed within 25 metres of the High Water Mark (HWM) on sole holders. Exclusive licences were issued to hotels for many of the best beaches in the island during the two decades after the coming into force of the Act in 1956 and, although the practice of issuing exclusive licences was discontinued in 1976,²¹ the existing exclusive licences continued to be renewed annually. By 2000, there were 275 such exclusive licences held by hotels, guest houses and villas, still in force (Government of Jamaica 2000).

The first objective of the Beach Policy adopted by the GOJ that year was stated to be the provision of physical and equitable access to the foreshore and sea to all persons on a managed basis. One of the strategies for attaining this objective was to amend the *Beach Control Act* to confer on the public a qualified right to walk along the foreshore and bathe in the sea within licensed areas, subject to rules to be determined by the licensee in consultation with the Authority, always provided that the exercise of that right of access did not interfere with the quiet enjoyment of the owners of private property (Government of Jamaica 2000, p. 36). Over a decade later, no such amendment has yet been enacted.

The principal strategy adopted in 2000 to achieve the objective of physical and equitable access to the foreshore and sea to all persons was the proper maintenance and management of public beach facilities and public rights of way to beaches. As mentioned previously, under the *Beach Control Act* the Authority could designate any beach adjacent to publicly owned lands as a public bathing beach. Legally, such a declaration could also be made with respect to beaches adjacent to private lands, but this has never been done. By 2000, 87 public bathing beaches had been declared (one-third as many as exclusive private beaches), and only 17 (approximately 20%) of these were considered up to standard (Government of Jamaica 2000, p. 36). This is not surprising as arrangements for the maintenance and management of public beaches in Jamaica have been blighted by the debt crisis that has afflicted that country over the past 25 years.

As part of the structural adjustment measures imposed on Jamaica by the IMF in 1985, the GOJ was required to divest itself of the existing public beach facilities; however, the effort to privatize these facilities attracted no viable proposals and the facilities fell into disrepair. In 1989 ownership of the facilities was transferred to the Tourism Development Company, for the purpose of letting them out to concessionaires, as a result of which by 2000 there were 18 commercial recreational beaches open to the public in Jamaica (Government of Jamaica 2000, p. 36). Use of public bathing beaches is free, but a fee is payable for use of the beach facilities. Unsurprising in this context is the observation made in the Beach Policy, adopted 45 years after the Commission of Enquiry which led to the enactment of the *Beach Control Act*, that:

"Today for many there are still unanswered questions about the rights and obligations of both property owners and the general public ... There is a general perception that there are fewer and fewer opportunities for enjoying the beach as more coastal development takes place and because most public bathing beaches are in a state of disrepair." (Government of Jamaica 2000, p. 1).

²¹ During the first term of the left-leaning Michael Manley administration.

3.2. Barbados

In Barbados it was the same issue of increasing coastal development, particularly the alienation of coastal land and intensification of built development along the west and south coasts of the island in the 1960s and '70s that brought the issue to the fore. The main road along the west coast, which connects Bridgetown, the capital, Holetown, the original British settlement, and Speightstown, the former second port town serving the northern Parishes, runs parallel to and only a short distance away from the coastline. The same is true of stretches of the main road along the south coast, between Bridgetown and the historic village of Oistins. The erection of luxury hotels and apartments, many of which are multi-storey structures, between the road and the beach along both coasts had the effect of shutting off the view of the sea from the main road and inland areas within one generation. This led a Community-Based Organisation (CBO)²² to commission a systematic study of the southern and western coastlines of Barbados in 1980 in order to identify the surviving "Windows to the Sea" and to make recommendations with respect to the areas which should be reserved and developed for public purposes (Hutt 1980). As presciently pointed out by that report:

"This consideration is important psychologically: it is vital for the success of tourist development that members of the Barbadian public should not feel that they are being prevented from enjoying the beauty of their coastline, with its fine beaches and excellent sea bathing, by the construction of rows of high-rise hotels and apartment blocks dominating considerable stretches of the coast with limited and not easy to find access points to the beaches. If deprived of access to the beaches by the absence of easily located, clearly marked entry points, with adequate parking areas and basic amenities, feelings of resentment and frustration will develop and constitute a serious threat to the tourist industry. The fact that there has been a massing of tourist hotels and apartment blocks along a number of stretches of the south and west coasts, and that this is likely to be intensified in the future, makes it vital that ample provision be made for Barbadians to enjoy areas of fine beaches and safe sea bathing without feeling that this is a result only of reluctant and grudging concessions on the part of the government. Lip service paid by the government to the principle of access by the public to all beaches is not enough ..." (Hutt 1980, p. 5-6).

To the credit of successive governments of Barbados, the value of this independent study was recognized and the results were incorporated into public policy for the use and development of coastal land, starting with the first Physical Development Plan for Barbados, adopted in 1983,²³ but this did not put an end to controversy about public access to beaches in Barbados. Unlike any other Commonwealth Caribbean country except Jamaica (Griffith-Charles 2010, p. 15), Barbados has never placed any legal restriction on the purchase of land by non-nationals. This omission has allowed foreign purchasers to price Barbadians out of the market for coastal land while a market-value based land tax regime has compelled most Barbadian owners of coastal land to sell such land for development.

In accordance with common law principles, in Barbados the foreshore lying between the high and low water marks of ordinary tides is a moveable freehold vested in the Crown. This part of the beach (the wet beach) is covered by the sea twice daily at high tide and is relatively narrow as Barbados is an oceanic island with a very limited tidal range. While there has never been any impediment to locals walking along the foreshore, in accordance with the same common law principles coastal properties in Barbados are bounded on the seaward side by the high water mark and include the part of the beach above the reach of the sea at high tide (the dry beach). Property fences are generally placed further inland and many tourist

²² Christian Action for Development in the Caribbean (CADEC)

²³ Government of Barbados, Town and Country Development Planning Office, *Barbados Physical Development Plan* (1983) 132pp.

accommodation facilities and beach bars place beach furniture on the dry beach for the exclusive use of their patrons.

As is the case in many countries, the development of tourism in Barbados has been accompanied by the creation of new types of job opportunities in businesses upstream and downstream of the accommodation sector. Some of these in the informal sector are the vending of water-sports services by jet-ski and boat operators, handicraft (and sometimes illegal drugs) by itinerant vendors, and of sexual services by male prostitutes known locally as "beach boys". Whilst this problem is by no means unique to Barbados, in the context of preserving the public's right of access to beaches, the regulation of such activities in order to limit the constant harassment of visitors while on the beach has been a challenge for the relevant authorities since the inception of the modern tourist industry in the 1960s. This led to the enactment in 1970 of a *Parks and Beaches Act* which, in addition to providing for the preservation and beautification of the islands parks and beaches, provided for the appointment of Beach Wardens to whom beach users could turn for protection from such harassment (Barbados, *Parks and Beaches Act*).

In 1982 this initial legislation was repealed and replaced by the *National Conservation Commission Act*,²⁴ which established a licensing regime for beach vendors under which a Police certificate of character was a requirement for the grant of a licence. Such licences are revocable upon conviction for a criminal offence involving moral turpitude as well any offence against the person. In addition, selling goods and services on a beach without a licence or in breach of the terms of a licence, and soliciting on a beach for any illegal or immoral purpose, were made criminal offences liable upon conviction to a fine or imprisonment, in the case of a initial offence for 6 months and for a repeat offence 12 months (Barbados, *National Conservation Commission Act*).²⁵ Upon the coming into force of this legislation, an eminent lawyer, Mr. Jack Dear, Q.C., then Chairman of the Barbados Tourist Board, made a speech in which he stressed the restraints on enterprising locals that had been introduced by the new law. In a memorable and popular response to this intervention, in 1983 the seven-time Calypso King of Barbados, the Mighty Gabby (2002), released a hit song called "Jack", the chorus of which is as follows:

*Jack don't want me to bathe on my beach,
Jack tell them to keep me out of reach
Jack tell them I will never make the grade,
Strengthen security, build barricade.
That can't happen here in this country,
I want Jack to know that the beach belong to we!
That can't happen here over my dead body,
Tell Jack that I say that the beach belong to we!
The beach is mine, I could bathe anytime,
Despite what he say, I can bathe anyway*

The direct connection between the composition of this song and the coming into force of the 1982 legislation is clear from the opening words of the third verse:

*I used to sell coral and lime, but Jack insists that is a crime;
Now when I see the police face, I running pace with my briefcase.*

²⁴ As defined by this Act - and the legislation it repealed and replaced - the beach includes all land adjacent to and within 33 metres (100 ft) of the landward limit of the foreshore (i.e. the dry beach and backshore areas in private ownership).

²⁵ The only offences under the former Act related to vandalism of beach facilities and littering.

Notwithstanding the legal and administrative measures which have been adopted in Barbados over the past 50 years in an effort to strike a balance between the right of public access to beaches and the rights of beach users, including tourists, not to be harassed on beaches, the problem still persists. For example, there are recent reports of complaints by business owners in the St. Lawrence Gap/Dover area on the south coast of increasing lawlessness in the area, including the harassment and even physical intimidation of visitors by beach vendors (Clarke 2013). In addition, cruise tourism which has blossomed over the past 25 years has now reached a point where there are concerns that busloads of day-trippers from cruise-ships are crowding Barbadians out of the very beaches and public beach facilities preserved for the benefit of locals as a result of the "Windows to the Sea" initiative in 1980 (Evanston 2012a). In the end, therefore, carrying capacity may become just as important a consideration with respect to access to beaches as the state of public policy and the law (Evanston 2012b).

3.3. Tobago

Compared to Jamaica and Barbados, the tourism industry in Tobago is in its infancy. Although Tobago has the natural resource base for tourism, as the smaller member of the two-island Republic of Trinidad & Tobago, the development of tourism in Tobago lagged behind that of other Eastern Caribbean islands because the development of tourism has never been a national imperative for that oil-rich State.²⁶ An additional impediment to the development of tourism in Tobago before 1990 was the *Aliens (Landholding) Act*. Although in force since 1921, this Act was strengthened in 1969 to place considerable fetters on the ability of non-nationals to invest in Trinidad & Tobago (Trinidad & Tobago, *Aliens (Landholding) Act*).²⁷ Similar legislation exists in several OECS countries;²⁸ however, where the development of tourism is being actively promoted, such licenses are rarely refused. As a recent study of St. Vincent and the Grenadines shows, 87% of the 472 applications for Alien Land Holding Licenses in that country in the decade 2000-2010 were for the purchase of properties in the up-market resort islands of the Grenadines and, because of the appreciable application fees and the licence fees assessed on a scale-based property values, which are payable in addition to the usual 10% property transfer tax, the Government has a fiscal incentive to grant such licences to foreigners (Toppin-Allahar 2010, p. 20, 23).

The restrictions on the purchase of land in Tobago by non-nationals were relaxed in 1990 following the repeal and replacement of the *Aliens (Landholding) Act* by the *Foreign Investment Act*. Under the new legislation, a foreign investor may acquire less than one acre (0.4 ha) of land for residential purposes and/or less than five acres (2.24 ha) of land for trade or business purposes without a licence; however, the Act makes provision for the designation of areas within which foreign investors may not acquire any land without a licence (Trinidad & Tobago, *Foreign Investment Act*). In 2006 the Tobago House of Assembly (THA) appealed to the Prime Minister to invoke this provision to reinstate licensing requirements in Tobago where real estate prices had shot up 250% in less than four years because of land speculation by foreigners, driving local middle-income earners out of the private property market (Cupid 2006). This resulted in the enactment of the *Foreign Investment*

²⁶ Plans once existed for the development of beach resorts along the North Coast of Trinidad but these were shelved following the discovery of new and extensive offshore oil and gas fields off the east coast of Trinidad in the late 1960s. The author knows of these unpublished plans having worked in the Town & Country Planning Division of the Ministry of Planning & Development in Trinidad & Tobago from 1972 to 1980.

²⁷ Anecdotal reports are that the 1969 Act to amend the legislation was enacted in one day as an urgent measure to prevent a particular foreign investor acquiring monopoly control of the auto-assembly industry in Trinidad.

²⁸ According to Griffith-Charles (2010, p. 15), Alien Landholding legislation is in force in Anguilla, Antigua & Barbuda, Grenada, St. Kitts & Nevis, St. Lucia and St. Vincent & The Grenadines.

(*Tobago Land Acquisition*) Order 2007, which re-introduced the requirement for non-nationals to obtain a licence to purchase any land in Tobago.

Evidently, even this measure has not satisfied the political imperative in Tobago to keep land in the island in local ownership. In January 2013 a group of British investors started proceedings against the THA to recover damages and compensation in excess of US\$30 million in connection with the frustration of its plans to purchase the 184 acre (74.5 ha) Culloden Estate in northwest Tobago for construction of a five-star hotel resort. The investors alleged that they had suffered substantial financial losses because their application for a foreign investment licence, filed in 2007, had not yet been determined by the THA and, while their application was stagnating, the THA had taken steps to acquire the property on its own behalf. In response, the THA denied having the power to decide applications for foreign investment licences, which is vested by law in the central government, although the published guidelines for processing of such applications provide that all applications for foreign investment licences to purchase land in Tobago must be submitted to the THA (Alexander 2013, Kowlessar 2013a, 2013b, *Trinidad Guardian* 2013).

This matter is still pending, but it would not be the first instance in which the THA has stepped in to acquire a prime coastal property from private developers. In 2005, the State acquired the 60 acre (24.3 ha) Pigeon Point Estate adjacent to Buccoo Reef in southwest Tobago on behalf of the THA at a cost of US\$17.5 million.²⁹ The acquisition of this land by the government was precipitated by an incident in 2000 in which a Tobagonian fisherman entering upon the premises was shot and killed by a security guard employed by the subsidiary of the Trinidadian conglomerate which then owned the property.³⁰ There was particular public outrage about this incident because in Tobago the legal right of public access to the coast is enshrined in the *Three Chains (Tobago) Act*. This legislation was enacted in 1865 to clarify the status of land within a distance of three chains³¹ above the HWM which was shown on the original maps of Tobago as a reserve "appropriated to the use of the contiguous planter" except where required by the Crown for military purposes. It provides *inter alia* that, "the right of road to the public through the said strip or belt of land is hereby preserved." (Trinidad & Tobago, *Three Chains (Tobago) Act*, 1865)³² The existence of this right is well known in Tobago and dear to the hearts of Tobagonians.

3.4. OECS Countries

Similar coastal reserves exist in some of the OECS countries acquired, like Tobago, by Great Britain under the Treaty of Paris in 1763 (Toppin-Allahar and Matthews Glenn Forthcoming)³³. In St. Vincent, which was surveyed at the same time as Tobago, the right of access to the coast is also guaranteed by a *Three Chains Act*, enacted in 1887 (St. Vincent & The Grenadines, *Three Chains Act*, 1887); however, it appears that there is less public awareness of this issue in St. Vincent than in Tobago. This may reflect the fact that tourism in St. Vincent and the Grenadines is concentrated in the Grenadines and the Three Chains Reserve exists only on the original plans for the islands of St. Vincent and Bequia. The Three Chains reserve that once also existed in Dominica, for the same reason, was controversially sold

²⁹ The Government acquired the property by private agreement to avoid any future constraints imposed by the stated reasons for compulsory acquisition and potential litigation concerning the purchase price (Manmohan 2004, 2006).

³⁰ Robinson Crusoe Ltd, a member of the Ansa McAl group. The security guard pled guilty to manslaughter and was sentenced to eight years imprisonment in 2002 (Bahaw 2002).

³¹ A chain is an old surveying measurement comprising 100 links measuring 66 feet. Hence, three chains are 198 ft (60.35m).

³² See generally Toppin-Allahar, C. and Matthews Glenn, J.: *The Coastal Reserves in Saint Lucia and Tobago: Origins, Legal Status and Implications for Coastal Zone Management*. [Work in progress].

³³ Toppin-Allahar, C. and Matthews Glenn, J.: *The Three Chains Reserve in Dominica, St. Vincent and Tobago: Historical Origins and Legal Evolution*.

off as Crown lands in 1856. Although, the right of public access to the coast through the Three Chains in Dominica was evidently preserved, it appears that the exercise of this right is not a contentious issue in that country. Although a Three Chains reserve once existed in Grenada, it is of different origin and appears not to have survived to the present day.³⁴

The coastal reserve that once existed in Grenada and is shown on the map of the island compiled from French land records in 1763 (Paterson 1780) was a reserve of 50 paces³⁵ known as the "*Cinquante Pas du Roi*." In St. Lucia this reserve, established in 1787 when the island was a French colony, still exists and is called the "*Cinquante Pas de la Reine*", although it is often erroneously referred to even in official documents as "The Queen's Chain". In St. Lucia the land within the 50 paces is vested in the Crown and was reserved for the development of towns, fortifications, and other public and necessary works.³⁶ The fact that this land is publicly-owned implies no general right of access to the coast and, although in 2007 the Government of St. Lucia adopted a *National Land Policy*, this document unfortunately left policy with respect to the "Queen's Chain", including policy on public access to the coast, to be formulated after further study (Saint Lucia, Ministry of Physical Development, Environment and Housing 2007).

In all of the aforementioned islands the existence of a coastal reserve is an accident of history, not the product of any contemporary initiative to provide public access to the coast. The first country in the Commonwealth Caribbean to enact modern legislation establishing a legal right of public access to beaches is the Federation of Saint Christopher (St. Kitts) and Nevis. The *National Conservation and Environmental Protection Act 1987* (NCEPA), declared that all rights in and over the beach were vested in the Crown and the public has the right of access and the right to use or enjoy the beach for recreational activities and purposes. It also provided for the establishment of public access to every beach in St. Kitts and Nevis, over public and private land, by means of compulsory acquisition if needed. Further the Act mandated that where permission is granted for any coastal development which is likely to affect public access to a beach from the landward side, the provision of public access through the development free of charge must be a condition of regulatory approval (Saint Christopher (St. Kitts) & Nevis, *National Conservation and Environmental Protection Act*, especially s. 24).

Unfortunately, it is arguable that this well-intentioned provision is unconstitutional because the definition of "beach" in the Act includes land above the HWM to a maximum distance of 20 metres inland. Hence, the purported vesting of the beach in the Crown would amount to an uncompensated expropriation of private property (Toppin-Allahar 2004, p. 3-4). It has been recommended that, while the provisions relating to public access to beaches should be retained, the provisions purporting to vest land above the high water mark in the Crown should be replaced by provisions conferring regulatory control over the backshore area on the relevant agency (Toppin-Allahar 2004, p. 33). Draft legislation which *inter alia* makes this change was prepared in 2005 (Toppin-Allahar 2005), but it has not yet been enacted. This is ironic as, unlike the NCEPA, enacted in 1987 in compliance with a condition for the grant of foreign aid for the development of tourism in the southwest peninsula of St. Kitts, the 2005 draft legislation was not donor-driven.

³⁴ Toppin-Allahar, Christine: Whatever happened to the coastal reserve in Grenada? [Work in Progress].

³⁵ As defined in the pamphlet accompanying the 1763 survey map of Grenada, the Pace comprised 3.5 feet old French measure, each equivalent to 1.066 English feet. Hence, the reserve of 50 Paces amounts to 186.55 ft (56.84m).

³⁶ Ministerial Dispatch of 3rd December 1757, endorsed by the Decree of the Sovereign Council of 5th September 1781 concerning the *Cinquante Pas du Roi*. Reprinted in Appendix II, Saint Lucia Ordinances (1957 Revision).

5. Conclusion

Trinidad's Nobel Laureate, the acerbic V.S. Naipaul, writing in 1962 about his first return visit to the West Indies after having migrated to Britain as a university student, opined that:

"Every poor country accepts tourism as an unavoidable degradation. None has gone so far as some of the West Indian islands, which, in the name of tourism are selling themselves into a new slavery." (Naipaul 1969, p. 210)

Few people in the Commonwealth Caribbean today, who have benefited from the alternative opportunities offered and material benefits generated by the development of international mass tourism in the region over the past 50 years, would share the level of his indignation.

In fact, the development of tourism has been one of the main drivers of concern about environmental issues in the Caribbean, because civil society organisations concerned about the environment are still weak and, in any conflict between environment and development, Caribbean governments generally favour development. Nevertheless, a West Indian cannot help but be somewhat indignant that, in its pioneering study of environmental laws in the region, the Caribbean Law Institute used "Tourism" as the subject heading for analysing the laws relating to the conservation of the natural assets of Commonwealth Caribbean countries (Pollard 1991).³⁷ Moreover, the fact that, except for a few cases from Trinidad & Tobago and Belize, all the major modern environmental cases in the Commonwealth Caribbean have been concerned with the adverse environmental impacts of tourism projects,³⁸ speaks for itself.

Less visible but still very real are the changes to the traditional ways of life and the social tensions generated by the development of institutionalised mass tourism in relatively poor societies with a history of racism and gross inequality. In this context, the struggle of members of the public in the region for equitable access to the coast may only be the visible tip of the volcano.

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³⁷ Perhaps this is accounted for by the fact that the Caribbean Law Institute was a joint project of the University of the West Indies and Florida State University funded by USAID.

³⁸ See the following cases: *Spencer* [#1] 1993; *Spencer* [#2]; *National Trust for the Cayman Islands* 2000; *Northern Jamaica Conservation Assoc.* 2006; *Virgin Islands Environmental Council*. 2009; and *Save Guana Cay Reef Assoc. Ltd.* 2009.

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