A SURVEY OF LAWS AND POLICIES REGULATING FOREIGN OWNERSHIP OF LAND IN THE WEST INDIES: GUARDING AGAINST FOREIGN DOMINATION

Mark A. Gloade
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GUARDING AGAINST FOREIGN DOMINATION2

I. INTRODUCTION

It is apparent from any treatise of West Indian history that the region's past has been characterized by extra-regional domination.3 Given the history of domination, it should come as no surprise that the Islands' inhabitants would seek some avenues of protection against continued domination. This Note examines the proposition that the Islands' laws and government policies which restrict foreign ownership of land are symptomatic of the desire on the part of their people to maintain some semblance of control over their lives, to foster a sense of autonomy, and to assure that their small and vulnerable economies4 are developed in a

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1. It is important to note at the outset of this survey that although many of the sources cited herein refer to the “Caribbean” and not to the “West Indies,” the islands of the West Indies are subsumed under the general geographic designation of “Caribbean.” See THE RANDOM HOUSE DICTIONARY OF THE ENGLISH LANGUAGE (2d ed. 1987). In addition, the sources consulted offer differing definitions of the geographical boundaries and which islands constitute the West Indies. Two representative definitions are those offered by Philip M. Sherlock and the World Book Encyclopedia. According to Sherlock, the designation “West Indies” once referred to the Caribbean archipelago (stretching from the Bahamas in the north to Trinidad and Tobago in the South), but today, the designation is limited to Jamaica, Trinidad and Tobago, Barbados, the Leeward Islands — the Virgin Islands, Anguilla, St. Martin, Saba, St. Christopher and Nevis [hereinafter St. Kitts-Nevis], Antigua and Barbuda, Montserrat, Guadaloupe; and the Windward Islands — Dominica, Martinique, St. Lucia, St. Vincent and the Grenadines, Grenada. See P. M. SHERLOCK, WEST INDIES 7 (1966). The World Book Encyclopedia, however, defines the modern day West Indies as consisting of three major groups of islands: The Bahamas — the Bahamas, Turks and Cacaos Islands; The Greater Antilles — Cuba, Jamaica, Hispaniola, Puerto Rico; and the Lesser Antilles — the Leeward and Windward Islands, Barbados, Trinidad and Tobago, Aruba, Bonaire, and Curacao (the latter three are also collectively referred to as the Netherlands Antilles). See 21 WORLD BOOK ENCYCLOPEDIA 165 (1984). In accordance with the most recent definitions, this Note will refer to the West Indies as defined in the World Book Encyclopedia.

2. The islands which are surveyed in this Note were chosen from among the independent English speaking nations of the West Indies.


manner consistent with their long term developmental interests. The islands which this Note will survey are: Antigua and Barbuda, Grenada, Saint Christopher-Nevis ("St. Kitts-Nevis"), St. Vincent and the Grenadines, Dominica and The Bahamas (collectively the "Islands").

II. HISTORICAL BACKGROUND

Europeans first became aware of the existence of the West Indies in 1492 when Christopher Columbus landed on San Salvador (now called Wattling Island) in the Bahamas. Columbus' discovery of this "new world" marked the beginning of the region's domination by external powers, a domination which continues today, though not in the traditional colonial context of the period prior to the 1960s, but rather in a dependency-based, hegemonic paradigm.

5. Although not surveyed here, Trinidad and Tobago also restrict foreign ownership of land (see infra note 136), as does St. Lucia. Telephone interview with Charles Flemming, Charge d'affaires, St. Lucia Mission to the United Nations, in New York City (Sept. 22, 1988) (on file at the office of N.Y.L. SCH. J. INT'L & COMP. L.) [hereinafter Flemming Interview]. Barbados, however, does not have any restrictions on foreign ownership of land. Telephone interview with T. Wilchire, Vice-Consul, Barbados Consulate General, in New York City (Sept. 23, 1988) (on file at the office of the N.Y.L. SCH. J. INT'L & COMP. L.) [hereinafter Wilchire Interview], and consistently ranks as one of the more prosperous nations in the region. See Pelzman & Schoepfle, The Impact of the Caribbean Basin Economic Recovery Act on Caribbean Nations' Exports and Development, 36 ECON. DEV. & CULTURAL CHANGE 753, 758 (July 1988).


7. Up to the point of Columbus' discovery of the West Indies, the Islands were inhabited by three groups of Indians: the Caribs, the Taino Arawaks, and the Ciboney or Guanahuatebey. Although the groups sometimes raided each other to procure slaves, and the Caribs — a migratory group from South America — had been steadily encroaching upon the territory held by the Arawaks, no one group dominated the region. See F. KNIGHT, supra note 3, at 6-20.


9. F. KNIGHT, supra note 3, at 180; Michael Manley, Prime Minister of Jamaica (reelected in national elections on Feb. 9, 1989 after an eight year rule by Edward Seaga. See Manley Victorious, Caribbean Contact, Mar. 1989, at 2, col. 1, refers to this new colonialism as "neocolonialism". See Manley, Grenada in the Context of History, Between Neocolonialism and Independence, CARIBBEAN REV., Spring 1985, at 9. The traditional colonialism model is the physical/military control of a territory to provide the conquering nation with resources.
With Columbus' discovery, the Spanish proceeded to build an economic system designed to exploit the riches of the new world. To accomplish this task, however, cheap labor was needed. In the first stages of the Spanish domination of the new world, they used the native Indians to do heavy manual work. Unfortunately, the natives were unaccustomed to the long hours of work imposed on them by the Spanish. The eventual result of the system of enslavement imposed by the Spanish was the extermination of most of the Indian population within a few decades of the Spanish arrival in the new world.

The demise of the Indian population presented the Spanish with the problem of being in possession of a vast empire without a labor force with which to exploit it; they solved this problem by looking across the Atlantic to Africa. The people they imported from the African continent would become the ancestors of most of today's West Indians.

The systematic exploitation of the Caribbean by the Spanish continued relatively unabated until the end of the 17th century. It was at this time that other European nations began to establish a foothold in the region, thus commencing the erosion of the Spanish Empire that would continue into the 18th century. This decline was due in large part to the rise in the fortunes of the British who began to make their presence known in the Caribbean and particularly in the West Indies where they acquired a foothold of several islands.

The hegemonic paradigm on the other hand involves the establishment of spheres of influences and cultural domination (this is the concept of the Caribbean as "America's backyard").

10. See F. Knight, supra note 3, at 24.
11. See F. Augier, supra note 3, at 12.
12. Id. at 13.
13. Id.; F. Knight, supra note 3, at 29.
15. The vast majority of the population of the West Indies is of African ancestry, but there are many minority groups, including a substantial East Indian population which was brought to the region at the tail end of slavery as indentured servants. See F. Augier, supra note 3, at 204-10.
16. Id. at 52. Before the beginning of the 17th century, many of the islands had remained unclaimed (see id. at 100) but by the end of the century most of the islands had been claimed by either the English, French or Dutch in addition to the Spanish. Id. at 26-34.
17. See id. at 93-97. The British had won trading concessions from the French during the wars of the Spanish Secession (1702-13), and had been granted St. Kitts. Id. at 91. The British later established naval bases in the islands (Port Royal in Jamaica and English Harbour in Antigua) to protect their trading concerns. Id. at 98.
The British domination of the Islands they were ceded or had captured from the other powers of Europe, was extensive, and it was accomplished by the use of an administrative system, based in England, that effectively left control of the colonies firmly in the hands of England. This is not to say, however, that the planters on the Islands completely lacked a voice in the affairs of the colonies; they did wield some power through Island legislative bodies.

Although the British abolished the legal practice of slavery in 1838, it would be many more years before they saw fit to grant universal adult suffrage to the Islands' inhabitants; the period between these events was marked by a great deal of unrest among the Islanders who had become dissatisfied with British rule. The unrest which started with emancipation continued during the 1920s in the form of labor riots that were felt throughout the Caribbean. These riots resulted in some palliatives which were paraded before the people as "reforms." It is worth noting, however, that initial enactment of many restrictions on foreign ownership of property came from this period.

This era of measured reform was characterized by a growth in

18. *Id.* at 59-60. Just as it had been with most of the other powers of Europe in their relation to the colonies, the crucial decisions concerning "the colonies were resolved outside the [region] in the metropolitan decision-making body." *Id.* And where the British did leave some control in the hands of the local planters, such control was generally exercised by a governor appointed by the crown. *Id.* at 59.

19. *Id.* at 59. The relationship between the Governor, who represented the interests of the crown, and the local Assembly and Council, comprised of local planters, was often characterized by friction and at times open hostility. In 1710, for example, one Governor so vexed the planters of Antigua that they attacked Government House and killed him. *Id.* at 103.

20. F. KNIGHT, supra note 3, at 124.

21. See *id.* at 145 ("Until the middle of the twentieth century the masses remained excluded from meaningful participation in their societies everywhere except in Haiti."). Jamaicans were allowed universal adult suffrage in 1944, Barbados in 1950, and the Leeward and Windward Islands in 1951. *Id.* at 221-22.

22. As the de facto system of slavery instituted by the planters after abolition (see F. AUGIER, supra note 3, at 172) slowly unravelled, the people moved to advance and protect their interests by forming trade unions. *Id.* at 271. By 1913, legally sanctioned trade unions had arisen. *Id.*

23. F. KNIGHT, supra note 3, at 179.

24. *Id.*

25. These Acts include: Aliens (Land-Holding Regulation) Ordinance, ch. 11 (Grenada 1922); Aliens (Land-Holding Regulation) Ordinance, ch. 96 (St. Vincent and the Grenadines 1922); Aliens Land Holding Regulation Act, ch. 102 (St. Kitts-Nevis 1923); and the Aliens Land Holding Regulation Act, ch. 105 (Antigua and Barbuda 1923) (repealed by Statutory Rule Order No. 8 (Antigua and Barbuda 1977)). The 1923 Antigua and Barbuda Act was no longer necessary in light of the enactment of Non-Citizens Land Holding Regulation Act, 1968, which provided for many of the same restrictions. See Non-Citizens Land Holding Regulation, No. 8 (Amendment), § 25 (Antigua and Barbuda 1977).
nationalism and class consciousness. World War I, with its ideals of freedom and putting an end to oppression, transformed soldiers into nationalist agitators who demanded some of the freedom for which they had fought in Europe. This new spirit, in combination with several other factors—the Harlem Renaissance; the United Negro Improvement Association and its leader, Jamaican national, Marcus Garvey; the Depression; the deterioration of West Indian sugar exports and the closing of emigration outlets—would contribute to the end of European colonialism in the Caribbean.

One other significant event occurred during this period—the rise of Representative Government Associations in most of the Islands. The granting of limited self-rule grew out of the discontent with the crown colony government, a discontent traceable to the World War. Although the locals did not demand self-rule, they did ask for a say in their affairs and eventually, councils were formed in several islands.

The labor unrest of the 1920s intensified in the 1930s and spread through the Caribbean “like fire on a windy day.” The hardships of the Depression also served to foster resentment of the Colonial Government, and increased “criticism of the Colonial [G]overnment spread throughout the West Indies.” The unrest fostered by the Depression forced the Colonial Office to appoint a Royal Commission, in 1938, to investigate social and economic conditions in the colonies. The report issued by the Commission concluded that broad social reform was needed in the region. The Commission’s recommendations, however, were largely ignored.

During World War II, criticism of the colonial system continued.

26. F. Knight, supra note 3, at 177.
27. See id. at 178.
28. Id.
29. F. Augier, supra note 3, at 272. The Grenada Association announced in 1921 that the Associations common purpose was to get “such a measure of representative governments as will enable [the people] to have an effective voice in their own government.” Id.
30. See id. at 272.
31. Id.
32. Id. at 273.
33. F. Knight, supra note 3, at 179.
34. F. Augier, supra note 3, at 277.
35. Id. at 278-83.
36. See id. at 283.
37. Id.
38. Id. at 285.
These years also brought a boom in West Indian sugar sales to Britain, and after the war, a tentative movement began toward greater autonomy in the region. A measured transfer of responsibility occurred in the running of local affairs from the Colonial Office—which was responsible for overseeing the British colonial possessions—to local elected representatives. The granting of universal adult suffrage was one of the first steps in this movement to greater autonomy in the post-war years.

In the 1950s and 1960s, the Islands' Government and the British Government moved to the realization of a Federation of the West Indian Islands. The concept of a federated state of the West Indies was first raised in the period immediately following World War II. The Islands moved toward the creation of the Federation out of a desire for greater self-sufficiency and a new sense of common goals and interests. The leaders of this Federation movement viewed such a proposal as a means of achieving unity, which they hoped would eventually lead to a collective independence. They also viewed such an amalgamation of small islands into a greater whole as the shortest route to self determination. The movement to create a united, political and economic relationship in the West Indies was slow, but in 1958 the task was completed. The Federation failed, however, to achieve the unity and independence for which its leading proponents had hoped, and the experiment failed within four years of the first elections, held in 1958.
After the failure of the Federation, Jamaica, Trinidad and Tobago were granted independence by Britain,\(^50\) meanwhile, the smaller islands entered a period of associated statehood with their colonial master.\(^51\) During this period, another important event occurred which stimulated the desire for West Indian autonomy: the Anguillan crisis followed by the British invasion of that small island.\(^52\) This affair fueled West Indian resentment against intrusive foreign domination.\(^53\) The incident also brought into the open the resentment felt by West Indians toward the status of associated statehood.\(^54\) The designation merely served to remind the Islands of their semi-colonial status,\(^55\) and they expressed dissatisfaction with the central provision of associated statehood that would have allowed Great Britain to intervene in their affairs at any time the British saw fit.\(^56\)

\(^{50}\) Attempts to explain the demise of the federation. According to Knight, the federation failed because of competing forms of nationalism: the "incipient patriachiquismo" of Trinidad and Jamaica and the "nationalism or internationalism" of the components of the federation proposal. \(^{Id.}\) at 205. Another commentator has asserted that the parties involved in forming the Federation were too concerned about the form the Federation would take and in their preoccupation with form, they instituted a structure which highlighted the worst features of West Indian society. \(^{Id.}\) at 206. Others have speculated that the federation failed because it lacked local support and the disparity in wealth between the islands was so great that the larger and relatively wealthier colonies of Trinidad and Tobago and Jamaica felt they would be burdened by the poverty of the smaller islands. Note, \(^{supra}\) note 46, at 210.

\(^{51}\) F. Augier, \(^{supra}\) note 3, at 302. During the years between the proposal that the islands form a federation and the realization of that goal, Trinidad and Tobago and Jamaica had improved their infrastructure and economic strength (Trinidad and Tobago also has oil reserves and Jamaica has vast Bauxite reserves), therefore these islands were more prepared than any other for independence. In addition, they did not want to be burdened by the relatively chronic poverty in the other islands; this reluctance was instrumental in breaking up the Federation. \(^{See H. Blume, The Caribbean Islands 76 (1968); see also supra note 40.}\)

\(^{52}\) Anguilla, which in 1969 had a population of 6000, declared its independence from the associated state of St. Kitts-Nevis-Anguilla in February 1969. N.Y. Times, Feb. 8, 1969, at A10, col. 5. The vote was 1,739 to 4. \(^{Id.}\) A major part of the dispute involved the Anguilla's asserted right to look after her own international affairs which were handled by the British under the associated statehood system. N.Y. Times, Mar. 19, 1969, at A1, col. 3; see also infra note 56 and accompanying text; Note, \(^{supra}\) note 46, at 222. It should be noted, however, that although the Anguilla crisis fostered a great deal of resentment in the region, the incident was not the single factor which motivated the islands to declare their independence, this is understandable given their utter dependence on Britain at the time.

\(^{53}\) \(^{See Note, supra note 46, at 222.}\)

\(^{54}\) \(^{Id.}\)

\(^{55}\) \(^{Id.}\)

\(^{56}\) West Indies Act, 1967, ch. 4, § 2. This section provided that the British government
Not surprisingly, in this atmosphere of perceived British hostility and external domination, the small islands of the West Indies, despite their links to mother England, decided to opt for independence. The Bahamas declared its independence from Great Britain in 1973; Grenada in 1974; St. Vincent and the Grenadines in 1979; Antigua and Barbuda in 1981; St. Kitts-Nevis in 1983; and Dominica in 1978.

III. THE CONTEMPORARY SETTING

With independence, the former colonies became autonomous nations, and with this new status came all the privileges and burdens attached thereto. More importantly, however, the independence of the West Indian islands did not signify that they were free of British domination. It appears that the independent nations of the West Indies cannot and do not want to be totally free of Great Britain on one hand, and are increasingly turning to the United States on the other.

The increasing dependence on the United States is due in large part to the policies underlying the Monroe Doctrine of 1823, which was aimed
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at preventing European intervention in the Americas and later evolved into a justification for American intervention in the region. The change is also due to the overwhelming United States presence in the region militarily, economically, and culturally.

The modern day West Indies may be characterized as a region in search of an end to the cycle of dependency under which it currently exists. The newly independent states are in a vulnerable economic position because they lack the markets, technologies, and natural resources necessary to reduce their dependence on foreign power.

West Indians know they have no economic or political security, but as pointed out, "[t]he reduction of dependency [i.e. augmenting security] is almost certainly incompatible with the goal of rapid economic growth." The simple fact is that in countries the size of these islands, an unregulated economic environment would be alien and impractical.

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65. See H. Blume, supra note 50, at 72.

66. The United States has several air and/or naval bases on several islands. In addition to the old installations on Cuba (Guantanamo), Puerto Rico and St. Thomas, United States Virgin Islands, the United States has bases in Trinidad, St. Lucia, Antigua and the Bahamas. H. Blume, supra note 50, at 72. These bases are strategically located to protect the entire Western Hemisphere in accordance with the tenets of the Monroe doctrine. See id.

67. The United States is the regions largest trading partner and supplies the region with most of its major foreign currency earners: tourists. See The Caribbean, Economist, Aug. 6, 1988 at 3, 16 [hereinafter The Caribbean].

68. The proximity of the United States, the recent technological revolution in communications and the influx of tourists from the United States mainland have all combined to instill American ideas and customs into the people. Id. at 4. This American influence is so pervasive that it dominates the entire region. Id.

69. Segal, The Caribbean in the Year 2000, Caribbean Rev., Summer 1979, at 7, 45 ("[D]ependency is a constant feature of all Caribbean countries," and the desire to reduce this cycle of dependency ranks next to equity as a goal in the Caribbean."). As a recent publication produced by the Grenada Industrial Development Corporation noted, "Grenada is . . . dependent upon the external forces of international business and finance for its development and growth." Grenada Ind. Dev. Corp., A Business Opportunity Awaits You in Grenada 2 (1986). The majority of the islands in the West Indies, like Grenada, lack extensive natural resources and are in the same position.

70. Segal, supra note 69, at 45; see also supra note 4 and accompanying text.

71. P. Sherlock, supra note 1, at 5.

72. Segal, supra note 69, at 46. Rapid economic development is incompatible with the reduction of dependency because "even with subregional or regional organization[s], [the region] simply lacks the markets, technologies, and natural resources to substantially reduce its dependence." Id. If the region were to attempt a rapid development of its economy, it would entail a greater degree of dependence because of rising debt obligations and the fact that it does not have the markets resources or technologies to maintain such a rapid growth.

73. Friedland, Grenada's Stab at Free Enterprise: A Slow Start, a Chancy Future, N.Y. Times, July 29, 1984, at C3, col. 3.; see also E. Williams, supra note 3, at 512 (noting that although an open economic system in such new countries would be "extremely difficult")
as well as fatal to the developmental goals of the inhabitants because their share in the island would be reduced with the influx of unregulated foreign investment.\(^7\)

Another constraint on West Indian autonomy is the increasing influence of the United States in the economic and social affairs of these tiny susceptible states.\(^7\) This increased influence was at once welcomed and despised:

West Indians had moved out of the metropolitan orbit [sphere of influence] of the United Kingdom into the American orbit, and they both welcomed and resented the fact. They have always had a 'love-hate' relationship with [the United States] that was for so many West Indians a land of opportunity and a land where they met insults and discrimination.\(^7\)

With the passing from the British sphere into the American sphere came increased economic contacts between the West Indies and the United States,\(^7\) and with this increased economic contact, a concern has developed that the Islands are moving into a relationship much akin to colonialism.\(^7\) As Dr. Eric Williams, the late Prime Minister of Trinidad and Tobago,\(^7\) observed:

> because of their small size — openness would make them vulnerable to manipulations from the old world (presumably the United Kingdom), the new world (presumably the United States) and international business interests — such an open strategy is not altogether impossible.

\(^7\)4. Interview with Telbert King, Trade and Investment Promotion Officer, Antigua and Barbuda Mission to the United Nations, in New York City (Sept. 22, 1988) [hereinafter King Interview]; Telephone interview with Dr. Adley Meguid, Economic Advisor, the St. Kitts-Nevis Mission to the United Nations, in New York City (Sept. 22, 1988) [hereinafter Meguid Interview]; Blaize Interview, supra note 58. (Transcripts of these interviews are on file at the office of the N.Y.L. SCH. J. INT’L & COMP. L.). An unregulated economic environment may prove fatal to the developmental goals of the inhabitants of the islands because as foreign investment increases, governments will be pressed to tailor policies to the needs and desires of the investors, thereby making the goals of the inhabitants secondary. \textit{Id.}

\(^7\)5. \textit{See P. SHERLOCK, supra note 63, at 339.} The Caribbean Basin Initiative (\textit{see infra note 77}), the invasion, and extended occupation of Grenada demonstrate the influence of the United States in the region.

\(^7\)6. \textit{P. SHERLOCK, supra note 63, at 339.}

\(^7\)7. This increased economic contact is illustrated by the Generalized System of Preferences (established by the Trade Act of 1974, 19 U.S.C. § 2462 (1982)), which provided that many of the products of the Caribbean would be eligible to enter the United States duty-free, and the Caribbean Basin Economic Recovery Act of 1983, 19 U.S.C. § 2701 (1983). \textit{See also Caribbean Trade, 8 CARIBBEAN DATELINE, June 17, 1988, at 1.}

\(^7\)8. \textit{See Manley, supra note 9.}

\(^7\)9. Dr. Williams died in 1981 while in office. Interview with Babooram Rambisoon,
Metropolitan [i.e. industrialized nation] economic assistance can serve to promote the objective of Commonwealth Caribbean economic integration, if such assistance is directed towards unifying the region and making it ultimately more independent economically. On the other hand, metropolitan aid designed to protect metropolitan political, diplomatic or commercial interests in the region will not only be a divisive factor but will serve to perpetuate the present deep-seated patterns of dependence.80

This view was echoed by Vauhan A. Lewis, Director General of the Organization of Eastern Caribbean States (the “O.E.C.S.”), who noted that when the purse strings are controlled by an extra-regional entity—whether a country or a financial entity—there will sometimes arise the perception among the people of the region affected that the powerful extra-regional force—and here Lewis points to the United States—is engaging in de-stabilization efforts to meet its goals in the region.81

A recent development which relates directly to the economic relationship between the United States and the West Indies, and to a lesser extent to issues of West Indian autonomy,82 is the Caribbean Economic Recovery Act of 198383 (the “CBI Act”). The goal of the CBI Act is, ostensibly, to improve the living conditions in the region, to spur economic development, and to obtain political and social stability.84 Contrary to the expectations President Reagan may have had, however, the CBI Act did not “set the region afire with enthusiasm.”85

Upon President Reagan’s proposal for a Caribbean Basin Initiative, there were warnings and cries afoul from many sectors in North America and the Caribbean.86 The responses ranged from complaints that the

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Consul General, Trinidad and Tobago Consulate General in New York City (Nov. 11, 1988) [hereinafter Rambisoon Interview] (copy of transcript on file at the office of the N.Y.L. SCH. J. INT’L & COMP. L.).

80. E. WILLIAMS, supra note 3, at 513.

81. See Lewis, supra note 4, at 9 (noting that these goals are often couched in terms of “hemispheric security”).

82. Caribbean Basin Economic Research Act of 1983, 14 U.S.C. § 2701 (1983). The Caribbean Basin Economic Recovery Act (the “CBI Act”) relates to issues of West Indian Autonomy because there is a fear that the measure is nothing more than an American initiative to maintain its control of the regions economic and political development. See supra note 80-81 and accompanying text.

83. See supra note 77.


85. Clasen, supra note 84.

86. See infra notes 87-91 and accompanying text.
Initiative would not do enough, to admonitions that the plan was nothing more than an unabashed attempt to increase American influence in the region.

The heads of governments in the Caribbean Economic Community (the "CARICOM") expressed their gratitude for the CBI Act but also noted that they hoped that the plan would not undermine regional integration efforts. Other nations, namely Mexico and Canada, have voiced their concern that the Initiative had failed to include any serious consultation with the governments of the region and was being used as an ideological tool directed against particular countries, rather than as a method aimed at improving the economic and social conditions of the region. This sentiment was echoed by the members of CARICOM. Church organizations and small business groups in the Caribbean have voiced their concerns that the CBI Act only serves to enhance American control in the region, open the door to the increased participation of American multinationals in the local economies, and increase the dependence of the region on the United States.

The CBI Act provides in part that the President of the United States has absolute discretion in designating a Caribbean country as a beneficiary (i.e., eligible to receive the benefits of the Act). The President

87. See Clasen, supra note 84, at 716.
88. Id. at 718.
89. Baker & Toro-Montserrat, supra note 4, at 11.
90. Id. at 14.
94. The benefits of the CBI Act provide for duty free entry of the products of the designated beneficiary countries if such article is "the growth, product or manufacture" of the beneficiary country. An article falls under this definition if:

A) that article is imported directly from a beneficiary country into the customs territory of the United States; and

B) the sum of (i) the cost or value of the material produced in a beneficiary country or two or more beneficiary countries plus (ii) the direct costs of processing operations performed in a beneficiary country or countries is not less than 35 per centum of the appraised value of such article at the time it is entered.

Id. § 2703. Section 2703 further provides that certain items shall not be afforded special treatment:

b) The duty-free treatment provided under this chapter shall not apply to —

1) textile and apparel articles which are subject to textile agreements;

2) footwear, handbags, luggage, flat goods, work gloves, and leather
also has the authority to terminate the benefits to the country on sixty
days' notice to the Congress and Senate. This provision of the CBI Act
gives the President broad discretionary authority in deciding which
country will benefit from the Act, and may be one of the reasons for
much of the apprehension expressed by the Island about the Act:

[T]he broad authority given to the President to exclude or limit
the benefits to uncooperative governments are two of the reasons
why the measure appears motivated as much by political or
security considerations (communist expansion) as by a genuine
interest in fostering economic development. [In addition], the
President is given enormous leeway to exclude or include certain
countries for [any] subjective reasons not intended to be
considered. The controversy that surrounded intimations by the
Administration that Grenada (prior to the U.S. invasion) . . .
would not be eligible for the designation under the Act illus-
trates how the President can use the designation process to
advance his political or foreign policy objectives in a manner
which the Act did not contemplate.

The potential for abuse of the Act is also illustrated by the cancellation
of trade agreements with Trinidad and Tobago following their outspoken
condemnation of the invasion of Grenada led by the United States in

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wearing apparel not designated at the time of the effective date
of this chapter as eligible articles for the purpose of the
generalized systems of preferences under title V of the Trade Act
of 1974;

3) tuna, prepared or preserved in any manner, in airtight containers;
4) petroleum, or any product derived from petroleum, provided for
in headings 2709 and 2710 of the TSUS; or
5) watches and watch parts (including cases, bracelets and straps),
of whatever type including but not limited to mechanical, quartz
digital or quartz analog, if such watches or watch parts contain
material which is the product of any country with respect to
which TSUS column 2 rates of duty apply.

Id.

95. Id. § 2702(A)(2) provides:
If the president has designated any country as a beneficiary country for purpose
of this chapter, he shall not terminate such designation (either by issuing a
proclamation for that purpose or by issuing a proclamation which has the effect
of terminating such designation) unless, at least sixty days before such
termination, he has notified the House of Representatives and the Senate and
has together with their considerations entered into such designation.

Id.

96. See Baker & Toro-Montserrat, supra note 4, at 14; Clasen, supra note 84, at 741.
97. Id.
98. Id. at 726.
The United States-led invasion is another important development in the contemporary setting which relates directly to West Indian autonomy interests. Although some West Indian forces did invade the island with the American troops, the operation was not unanimously received by the heads of states and leading figures in the region. Of the thirteen member-nations of CARICOM, four were vehemently opposed to the United States-led action.

As O.E.C.S. Director General Vauhan Lewis pointed out, some of the ill feelings resulting from the United States-led incursion may have been caused by the perception by many in the Caribbean that the United States uses its military option too often to remedy what are essentially regional economic problems. Lewis asserts that

99. Baker & Toro-Montserrat, supra note 4, at 12. In the years that have passed since the enactment of Caribbean Basin Economic Recovery Act of 1983, the benefits to the region have been mixed. According to the United States International Trade Commission (the "Commission") (Annual Report on the Impact of the Caribbean Basin Economic Recovery Act on U.S. Industries and Consumers, Investigation No. 332-227 Publication 2122, Sept. 1988), the Caribbean Basin Economic Recovery Act of 1983 has not had a wholly positive impact on the region: "[T]he value of imports from [Caribbean Economic Recovery Act of 1983] beneficiaries declined from $8.8 billion in 1983 to $6.1 billion in 1986 and $6.0 billion in 1987." Id. at 1. The Commission speculates that this drop was the result of steeply falling United States imports of crude and refined petroleum products. Id. At the same time, U.S. exports to the region amounted to $6.7 billion, while imports were $6.0 billion resulting in a trade surplus with the designated beneficiaries. Id. The fact of a trade surplus with the Caribbean Basin Economic Recovery Act of 1983 countries distinguished the region as one of the few areas in the world where the United States recorded a trade surplus. Id. at 12. The Commission also noted that the countries of the region are not taking full advantage of Caribbean Economic Recovery Act of 1983 due in part to the perception by many in the region that the United States would implement protectionist measures should any venture under Caribbean Basin Economic Recovery Act of 1983 become successful. Id. at 5.

100. On Oct. 25, 1983, United States Marines, Army Rangers and the small forces of several Caribbean nations landed on the 133 square mile island of Grenada in order to "protect innocent lives" and in response to the requests of the several Caribbean nations who asked that the United States take action. See Kenworthy, Grenada as Theater, 1 World Pol'y J. 635, 641-42 (Spring 1983).

101. See Treaster, Quarrelling Caribbean Nations Meet, N.Y. Times, July 5, 1984 at A3, col. 1; see also Manley, supra note 9; Barrow, The Danger of Rescue Operations, CARIBBEAN REV. 3 (1985). Mr. Barrow was the Prime Minister of Barbados (1966-1976) and led that country until his death in 1986 after his election to office in the same year. Wilchire Interview, supra note 5.

102. Treaster, supra note 101.

103. See Lewis, supra note 4 at 8. In addition to the United States-led invasion of Grenada, the United States was involved in: a rescue mission in the Dominican Republic in 1965 and an occupation action from 1916 to 1924; the aborted attempt at the Bay of Pigs, Cuba, in 1961; and an occupation of Haiti from 1915 to 1934. See F. Knight, supra note 3, at 220-23; see also Grenada Revisited, N.Y. Times, Feb. 20, 1986, § A(5)(Editorial), at 22, col. 1 ("Too often in the Caribbean, the United States has reached for the gun to
what the United States policy makers see as a crisis of regional security—specifically of Cuban communist expansion into a weak area—... can more usefully be seen (and many in the Caribbean prefer to see) as a slowly developing crisis of economic and social (dis)organization implicit in the economic and social development strategies of the 1960s and maturing at the present time.104

IV. THE LEGAL FRAMEWORK

The five countries addressed in this Note all have a law-making framework that involves many people at many levels of the law enactment and policy implementation process (i.e., there is a great deal of community involvement in the law-making system despite the fact that the laws and policies are ultimately promulgated by Parliament).105 As Phillip Sherlock, an author and frequent commentator on West Indian issues notes:

In exercising policy and putting legislation into effect, the governments in all the islands make use of local government institutions and of a number of statutory boards created to carry out special tasks. Industrial and Agricultural Development Corporations, School Boards, Public Service Commissions, and scores of voluntary and semi-government organizations indicate an active concern among West Indian people with their own affairs.106

In addition, all five nations have British style parliamentary democratic governments.107

A. The Bahamas

The Immovable Property (Acquisition by Foreign Persons) Act, 1981 (the “Property Act”),108 was enacted by the Bahamas legislature on April

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104. Lewis, supra note 4, at 8.
105. See P. SHERLOCK, supra note 1, at 94.
106. Id.
108. An Act to Regulate the Acquisition of Immovable Property By Foreign Persons, 3 July 1981 (Bahamas 1981) [hereinafter Immovable Property Act].
3, 1981, and took effect on November 1, 1983.\textsuperscript{109} The stated objectives of the Property Act are to “supervise, control and regulate the acquisition, holding and disposal of immovable property in the Bahamas.”\textsuperscript{110} The policy considerations at the base of these objectives are to advance Bahamian economic and social interests by controlling land ownership for the benefit of the people of the Bahamas and controlling the development of the economy.\textsuperscript{111}

The concern for local control and development is evident in the Property Act.\textsuperscript{112} It provides that any foreign person\textsuperscript{113} wishing to acquire land in the Bahamas, whether through a purchase arrangement or by trustee and grantee arrangement, must acquire a permit issued by the Foreign Investment Board, consisting of the Prime Minister, as the Chairman, and other ministers of government appointed by him.\textsuperscript{114}

\begin{itemize}
\item \textsuperscript{110} Id. Immovable Property is defined as including “land covered by water, land of any tenure, and tenements and hereditaments, corporeal or incorporeal and houses and other buildings and also an undivided share in land . . . .” Immovable Property Act, supra note 108, § 2(1)(d).
\item \textsuperscript{112} As Professor Dyer notes, “The Bahamas, like Malta, Bermuda and other small nation states, has decided it can no longer tolerate land acquisition and use by foreigners without consideration for the developmental goals of the country.” Id. at 128.
\item \textsuperscript{113} A person is inclusively defined as any public body and any body of persons corporate or unincorporated. A foreign person is a person who is not a citizen of the Bahamas, or a company incorporated in the Bahamas where any of its shares or capital is beneficially owned by a foreign person, or where it is in any manner controlled by a foreign person, any company incorporated outside the Bahamas, and international organizations. See Immovable Property Act, supra note 108, § 2.
\item \textsuperscript{114} The Immovable Property Act provides:
\begin{itemize}
\item \textsuperscript{a} no foreign person shall acquire or hold any immovable property in The Bahamas except under the authority a permit granted to such foreign person by the Board; and every conveyance which is not made under the authority of a permit purporting to convey any immovable property to any foreign person shall be null and void and without effect for purposes of law and in regard to all persons and no interest whatsoever whether legal or equitable shall pass to such foreign person by reason of such conveyance or any other matter: but the foreign person shall be entitled to recover with such legitimate deductions as may be justified in law any and all moneys paid by him as consideration for the said conveyance;
\item \textsuperscript{b} no person shall convey any immovable property to another person as trustee or a grantee to the uses of, a foreign person or otherwise transfer any immovable property for the benefit of a foreign person except under the authority of a permit granted to such trustee of grantee by the Board; and every conveyance purporting to convey any
\end{itemize}
\end{itemize}
Although it would seem that the law is firm in its commitment that no foreign person shall acquire land in the Bahamas, this is simply not the case.\(^\text{115}\) It is clear from the Property Act that the government of the Bahamas is not prohibiting a foreign person to buy land, but is implementing a policy "of reporting and regulation [of] foreign acquisition of immovable property to preserve one of its major assets and to accomplish its goal of economic and social betterment for its citizens."\(^\text{116}\)

Another important objective of the Property Act is to put an end, or at least limit, land speculation which is seen as posing a threat to national sovereignty. The practice is seen as a subversive and exploitative force because such speculation could eventually price locals out of the real estate market and thereby adversely affect the national economy and the locals' interest in their country.\(^\text{117}\) The goal of limiting land speculation is reflected in the provision of the Property Act which requires that a person who has acquired a permit must use the permit within twelve months of its acquisition.\(^\text{118}\)

The Property Act also places numerous restrictions on corporations. The restrictions are extensive and go farther than some commentators think acceptable.\(^\text{119}\) The objection to the treatment of corporations under the Property Act is that the restriction on foreigners discriminates between corporations held by foreigners and those held by Bahamian nationals. It is asserted that this provision runs contrary to the notion that a corporation takes on the nationality of the state in which it is incorporated.\(^\text{120}\) Specifically, the Property Act provides that where shares

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\(^\text{115}\) Section 5(2) of the Immovable Property Act provides: Notwithstanding what is provided in subsection (1) the Board may in its absolute discretion and on such terms and conditions as it may think fit validate any purported conveyance made contrary to the provisions of subsection (1) by issuing a permit to the foreign person for the conveyance . . . . 

\(^\text{116}\) Dyer, \textit{supra} note 111, at 129. This goal is also affirmed by Section 6(4) of the Immovable Property Act:

Where immovable property owned by a foreign person is used by that foreign person as his usual place of residence in the Bahamas the provisions of this Act shall not affect any acquisition of that property by device or any falling into possession of an estate or interest in remainder expectancy or reversion in respect of that property where such acquisition is by, or such falling into possession in favor of, the spouse, child, grandchild, parent, brother, sister, niece, nephew of that foreign person . . . .

\(^\text{117}\) Glinton, \textit{supra} note 57, at 89; see also H. Blume, \textit{supra} note 50, at 117.

\(^\text{118}\) Immovable Property Act, \textit{supra} note 108, § 6(4).

\(^\text{119}\) Glinton, \textit{supra} note 57, at 120.

\(^\text{120}\) \textit{Id.}
in the corporation are owned, or held beneficially by a foreign person, or where the company is in any manner, controlled directly or indirectly, by one or more foreign persons, it is to be distinguished from other Bahamian companies and citizens for purposes of the Act and therefore would be subject to its provisions.  

The Property Act demonstrates that the primary intent of the Bahamian legislature is to protect the limited land resources of the Bahamas and to further the goal of autonomy. Prior to the enactment of the statute, land in the Bahamas could be bought and sold without consideration for the concerns of the local population. The statute, therefore, gives the government an important weapon in its fight to maintain a measure of local control over the pace of its development and the path that development will take.

Although the act has been in effect six years, there have been no challenges to its constitutionality, and the government has not amended any of its provisions since its passage.

B. Grenada

Laws restricting ownership of land in Grenada have been in effect since 1922. These early laws, however, limited ownership of land to "British subject[s]." Today, the Grenada law requires that a foreigner seeking to purchase property in Grenada for any purpose must obtain an Aliens Land-Holding Licence by application to the Cabinet. Like the Property Act of the Bahamas, the Grenada Act provides that the Governor in Council has the absolute discretion to give to an alien the right to obtain land. The Grenada Act also provides that any breach of the provisions of the Act will result in a reversion of title to the property to the government of Grenada. The Grenada law has many provisions for determining if a company is under alien control; primary among these determining factors is whether any of the company's directors is an unlicensed alien.

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122. See H. Blume, supra note 50, at 117.
123. See The Faculty of Law Library, Univ. of the West Indies, Barbados, Bahamas: Consolidated Index of Statutes and Subsidiary Legislation 39 (1988).
124. See supra, note 25.
125. Aliens (Land-Holding Regulation) Ordinance, ch. 11, § 2 (Grenada 1922).
126. Id. § 3(1).
127. Id. § 4(1).
128. Id. § 4(2). In addition, a forfeiture to the government (which must be obtained by judgment against the alien holder of the property, see § 5(1)). The government will be vested with all the rights the alien had in the land. Id. § (2).
129. Id. § 6(1)(a). This condition by itself would be sufficient to require a company to
The importance of preserving local control over limited resource of land on a 133-square-mile island is evident in the Grenada Act. The purpose of restricting foreign ownership of land in this manner is to maintain a sense of national identity among the people of Grenada.

Although there are numerous restrictions on ownership and acquisition of property in Grenada, the government actively seeks foreign investment. But what remains apparent from the laws restricting foreign ownership of land, is that the government is willing to forego some growth opportunities in order to maintain some sense of autonomy.

obtain a land-holding licence. See id. Other provisions which would require the Alien to obtain a license are:

(b) if more than one-third of the votes exercisable at any meeting of the company or which would be exercisable if a meeting of the company were held are vested in unlicensed aliens, or

c) in the case of a company having a share capital, in more than one third of the nominal amount of its issued shares are held by unlicensed aliens or,

d) in the case of a company not having a share capital is more than one-third in number of its members are unlicensed aliens, or

(e) if the amount paid or payable in any period of twelve months as dividends to those members of the company who are unlicensed aliens exceeds one-third of the total amount paid or payable by the company as dividends in the same period, or

(f) if more than one-third of the nominal value of the outstanding debentures (defined as including every mortgage or change by a company, whether floating or otherwise, on any of the company's property or on its undertaking or on its uncalled capital and also every obligation by the company (not being a bill of exchange or promissory note) for the payment of a debt or the payment of money lent or to be lent, and also debenture stock — see sec (2)) of the company are held by unlicensed aliens, or

g) if the annual interest on the debentures of the company for the time being held by unlicensed aliens exceeds one-third of the annual interest on all the debentures of the company for the time being outstanding.

Id. § 6(1)(b)-(g).

130. According to Norma Blaize, the Grenadian Consul General, foreign investors usually want an average of five to ten acres of land and usually require that their neighbors be involved in similar enterprises as they are. This can present a great deal of difficulty when the current neighbors happen to be people. Another problem with large scale foreign investment in small countries is that with such a great influx of money, conflicts between investor goals of creating an environment where they can maximize profits, and government goals of orderly development often clash. Blaize Interview, supra note 58.

131. Id. In this context, it is important to note that most Grenadians own their own land and therefore feel a certain attachment to it; the laws which restrict foreign ownership and acquisition of land thus assure the people of a certain degree of stability. Id.

132. Friedland, supra note 73. The Grenadian Consul General also notes that foreign investors are encouraged by the government to lease land on a long term basis. Blaize Interview, supra note 58.

133. See Segal, supra note 69, at 47. This view was echoed by the Grenadian Consul
C. Antigua and Barbuda

Antigua and Barbuda restricts foreign ownership of land through the Non-Citizens Land Holding Regulation Act, 1968—No. 17 of 1968\textsuperscript{134} (the "Land Act"). The Land Act is similar to the Grenada Act,\textsuperscript{135} however the practical application of the two statutes vary between Antigua and Barbuda and Grenada. One example of this difference is exemplified in an Antiguan and Barbudan government policy that land in Barbuda may not be brought by any non-Barbudan; this edict includes Antiguans.\textsuperscript{136} Similar to Grenada and the Bahamas, such laws and policies are implemented for "the protection of the people in a poor country."\textsuperscript{137}

The concern is that if the land is available for anyone to purchase, local control of the everyday affairs would be non-existent, and the people would reach the point where they would not own or have any rights to the land on which they lived.\textsuperscript{138}

Despite the presence of restrictions on foreign ownership of land in the legislative code of Antigua and Barbuda, foreigners seem to be able to buy land rather easily. This is due to the enormous amount of discretion held by the Prime Minister in granting a land holding licence.\textsuperscript{139} In one incident involving the exercise of this discretion, the people of Antigua took issue with the government sale of fifty-three acres of land for the sum of U.S.$100 to a German national.\textsuperscript{140}

Despite petitions, demonstrations and meetings with the Prime Minister, the sale

\textsuperscript{134} Non-Citizen Land Holding Regulation Act, No. 17 (Antigua and Barbuda 1968).

\textsuperscript{135} This is to be expected in light of the common colonial ancestry of the islands.

\textsuperscript{136} King Interview, \textit{supra} note 74. Since this is merely a government policy however, it necessarily follows that should the government see fit to sell Barbudan land to foreigners, there would be no statutory bar against its doing so. \textit{See also infra} notes 139-40 and accompanying text.

\textsuperscript{137} King Interview, \textit{supra} note 74.

\textsuperscript{138} \textit{Id.} This view is shared by Babooram Rambisoon, Consul General of the Republic of Trinidad and Tobago. He points out that the laws in the various islands are designed for self protection and notes, "There [is not] a lot [of land] and we [do not] want to have foreigners coming in and telling us what to do." Rambisoon Interview, \textit{supra} note 79.

Trinidad and Tobago regulates foreign ownership of land through the Aliens (Land Holding) Act No. 36 of 1921, ch. 58.02 (Trinidad and Tobago 1921), which contains many of the same provisions as the Antigua and Barbuda, St. Vincent and the Grenadines, and Grenada Ordinances. This similarity includes the vesting of an enormous amount of authority to grant a license in a single government official. \textit{See § 4(1)}.

\textsuperscript{139} \textit{See Aliens (Land Holding) Act No. 36 of 1921, ch. 58. 02, § 4(1) (Antigua and Barbuda 1921).}

\textsuperscript{140} \textit{Bolans Take Issue with Foreign Adventurer, Outlet, Sept. 2, 1988, at 1, col. 2.}
of the land went forward nonetheless. This incident demonstrates that the enormous discretion given to the Prime Minister can result in the sale of property, a practice locals view as being detrimental to their interests. The incident also demonstrates that this discretion leaves Antiguans and Barbudans with little recourse should they object to the sale of land.

D. St. Vincent and The Grenadines

The laws of St. Vincent and the Grenadines are much the same as those of Antigua and Barbuda and Grenada. The Aliens (Land Holding Regulation) Ordinance (1922) (the "Land Ordinance"), amended by Statutory Rule Orders 3 and 7, 1978, provides that neither land nor a mortgage on land in St. Vincent and the Grenadines may be held by any unlicensed non-citizen. The Land Ordinance also provides for the granting of a license to a non-citizen by the Cabinet at its absolute discretion.

Once again, it is evident that the interest in guarding against foreign domination is paramount in the retention of this statute by St. Vincent and the Grenadines after they gained independence. The continued existence of this restrictive ordinance also illustrates that the islands are willing to sacrifice some economic growth interests in order to retain some sense of autonomy over their everyday affairs. According to Mr. Cecil John, Senior Assistant Secretary in the Office of Foreign Affairs of St. Vincent and the Grenadines, the local concern is for autonomy and orderly, labor-intensive development.

141. Id.
142. Aliens (Land-Holding Regulation) Ordinance, ch. 96, § 3 (St Vincent and the Grenadines 1922). This section in relevant part provides that subject to the provisions of this ordinance, neither land, nor a mortgage on land shall after the commencement of the ordinance be held by an unlicensed non-citizen . . . . " Id.
143. Id. at § 4(1). The section provides that the Cabinet may from time to time, grant to any alien a licence to hold land as owner or tenant or mortgagee for any estate or interest, either subject to any conditions or not: Provided that a licence shall be operative only as to the land described and as to the estate or interest specified therein, and shall be of no force or effect until registered in the office of the Registrar of Deeds.
144. See supra note 133 and accompanying text.
145. Telephone interview with Cecil John, Senior Assistant Secretary in the Office of Foreign Affairs, St. Kitts-Nevis Mission to the United Nations, in New York City (Oct. 3, 1988)(on file at the office of the N.Y.L. SCH. J. INT'L & COMP. L.). Charles Flemming, Charge d' affaires, St. Lucia mission to the United Nations, asserts that although St. Lucia has the same interests it has chosen to routinely grant Aliens land-holding licenses in its development scheme. Flemming Interview, supra note 5. Today St. Lucia is seen as one of the rising stars in the Caribbean Community. The Caribbean, supra note 67, at 11-12.
The Land Ordinance is complemented by the Land Development Control Ordinance of 1968 (the "Development Ordinance"). The Development Ordinance provides that every person must seek the written approval of the Development Control Authority (the "Authority") before commencing the development of any land in St. Vincent and the Grenadines; this edict includes locals. The Ordinance further provides that once the Authority has given its approval to a development plan, the developer must proceed in accordance with the plans. Violations of the Development Ordinance are punishable by a fine not to exceed $U.S.2,000. There is an additional fine of $U.S.50 a day in cases where the violation continues.

When the Development Ordinance is viewed in light of the Land Ordinance, the concern for locally controlled development is readily apparent. The two acts demonstrate a continuing and long-term commitment to controlling the development of St. Vincent's small and vulnerable economy.

E. St. Kitts-Nevis

St. Kitts-Nevis, the most recently independent of the new nations in the West Indies, restricts foreign ownership of land through the Aliens Land Holding Regulation Act (the "St. Kitts-Nevis Act"). As one would expect, given the similar developmental paths of the West Indian islands, the laws of St. Kitts-Nevis are very similar to those of Antigua and Barbuda, St. Vincent and the Grenadines, and Grenada. As with the other acts studied thus far, the St. Kitts-Nevis Act provides that the Cabinet may, "if it thinks fit" grant an alien "a licence to hold land as owner or tenement of mortgage for any estate or interest either subject to any conditions or not . . . ." The provisions in the Act for determining when a company will be deemed to be under alien control are identical to the provisions in the laws of Grenada.

146. Land Development Control Ordinance, Cap. 18, tit. XVIII (St. Vincent 1968).
147. Id. § 4.
148. Id. § 13.
149. Id. § 18(3).
150. See supra notes 57-62 and accompanying text.
151. Aliens Land Holding Regulation Act, ch. 102 (St. Kitts-Nevis 1923).
152. See generally F. Knight, supra note 3.
154. See Aliens Land Holding Regulation Act, ch. 102, § 6(a)-(g) (St. Kitts-Nevis 1922); cf. Aliens (Land Holding Regulation) Ordinance, ch. 11, § 6(a)-(g) (Grenada 1922). Again, given the common colonial heritage of the islands, the striking similarities in the laws is not unexpected. There is one notable difference between the two laws however; the St. Kitts-
FOREIGN OWNERSHIP OF WEST INDIES LAND

The St. Kitts-Nevis Act also provides that though a person remains an unlicensed alien holding land in St. Kitts-Nevis, he may continue to hold it on an annual tenancy basis. He may also hold it for one year if it is acquired by will or intestacy.

In the case of a mortgage acquired by an unlicensed alien, under a will or intestacy, the alien may not foreclose or take possession of the land unless he first obtains a license. Although the Act provides that the interest of a judgment creditor shall not be affected by anything in the Act, it further asserts that the "debtors land shall not be acquired by an unlicensed alien.”

Although the provisions in the Act appear to make the acquisition of property for any purpose a difficult proposition, it is important to note that recent developments in St. Kitts-Nevis have made the acquisition of land by foreign persons for investment purposes much easier. One such development is the implementation of a government policy, called the "Frigate Bay Development” project. This project will create a set-aside area of the country where the restrictions on alien landholding will be relaxed, and taxes on land purchase will not be levied. The goal of this policy is to foster development of the tourist industry.

The Act, when viewed in light of the above point, vividly demonstrates the dual and at times inconsistent goals of encouraging development while restricting the involvement of foreign persons in the

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155. Aliens Land Holding Regulation Act, ch. 102, § 3(a) (St. Kitts-Nevis 1922). The provision says in effect that the alien may hold the land subject to the right of the government, as landlord, to reenter and take the land at the end of a one year tenancy by the alien. See id. The section also provides that the Alien in this position may not hold more than five acres of land. Id.

156. Id. § 3(b).

157. Id. § 3(c). Licenses for this purpose are routinely granted. Flemming Interview, supra note 5.

158. Id. § 3(d).

159. Meguid Interview, supra note 74.


161. Id.
economy.\textsuperscript{162}

\section*{F. Dominica}

Dominica is another West Indian island which restricts foreign ownership of land in its statutory scheme. The relevant Dominican provision is the Aliens Land Holding Regulation Act (the "Dominican Act").\textsuperscript{163}

The Act defines a foreigner/alien as a "person not belonging to Dominica,"\textsuperscript{164} which is further defined as a person "who was not born in Dominica and who has not been ordinarily resident in the State continuously for a period of seven years or more."\textsuperscript{165}

The Dominican Act is also different in that the determinations as to the granting of the landholding license is left to a Minister, and not to the Cabinet.\textsuperscript{166} Consequently, in Dominica, the decision to grant a landholding license is concentrated in the hands of an individual rather than in a government body. The power wielded by the Minister with respect to the granting of landholding license is further reflected in Section 5 (4A) (5) which states that the Minister "may" grant and issue a license subject to such terms and conditions as he may consider desirable.\textsuperscript{167}

The concerns for Dominican economic development are illustrated in the Dominican Act. The Act provides that an alien may be exempted from the provisions of the Act by the Minister charged with responsibility for development where the alien "is party to any agreement or plan entered into with the Government of Dominica for financing the building and development of housing, tourism, forestry or agriculture \ldots".\textsuperscript{168}

\begin{footnotes}
\item[162] See \textit{supra} note 72 and accompanying text.
\item[163] Aliens Land Holding Regulation Act, Cap. 203 (Dominica 1961); \textit{amended by} the Alien Land Holding Regulation (Amendment) Act 21, § 2 (Dominica 1968).
\item[164] Id. § 2.
\item[165] Id. § 2(a).
\item[166] Id. § 5(4A)(1). The provision states that, No alien or person not belonging to Dominica shall conclude any agreement to hold land as owner or tenant or mortgagee for estate or interest unless he first makes application in writing to the minister for the time being charged with responsibility for the subject of land, and obtains from him a licence to hold the land in question. Id.
\item[167] Id. § 5.
\item[168] Aliens Land Holding Regulation Act, Cap. 203 (Dominica 1961), \textit{amended by} Aliens Land Holding Regulation Act (Amendment) No. 3, § 20(1)(a) (Dominica 1976). The concern for maintaining local control for development is also reflected in Section 5(4A)(3) and (4). Although the Immovable Property Act of the Bahamas does not provide for an exemption for aliens wishing to invest in business enterprises, the Act nonetheless states that the Board may, with respect to an application made under Section 5, "give special
Provisions of the Dominican law also differ in that the application for a landholding license must state specifically the “purpose for which the land is to be utilized.” The Act also requires that where the land is to be used for “purposes connected with agriculture, the applicant shall submit with his application such particulars as may be necessary to enable the Minister to ensure that the land will be put to full and efficient use.” The Act places similar requirements on real estate development projects.

The Dominican Act is in many ways similar to the laws of the other countries surveyed, however, it is clear that the provisions of the Dominican Act do not adhere to the old laws as much as other islands and more vividly reflects the concerns for local control of economic development.

V. CONCLUSION

The foregoing survey, and the existence of laws restricting foreign ownership of land, demonstrate that West Indians are aware that there is a great potential for foreign domination of their tiny islands by foreigners. Although no figures exist on the success or failure of these ordinances, it is evident that steps are being taken to maintain local consideration to . . . for a permit where the immovable property is required for the industrial, banking, or touristic project which is thought by the Board to be of special benefit to . . . the Bahamas.” Immovable Property Act, supra note 108, § 9(2). The Board may also give special consideration to land which is to be used for agricultural purposes. Id. § 9(3).


170. Id. § 5-4A(3). Similarly, the Immovable Property Act of the Bahamas provides that the alien who has acquired property pursuant to the Act must state “the purpose for which the property will be used.” The Immovable Property (Acquisition By Foreign Persons) Regulations 1983, made under The Immovable Property (Acquisition By Foreign Persons) Act 1981 § 7(1)(c). The Immovable Property Act names the Prime Minister as the Chairman of the Foreign Investment Board which was “established for the purposes of [the] Act.” Id. § 3(1)(a)-(c). Pursuant to his role as Chairman of the Board, the Prime Ministers' Office issued the Regulations cited above.

171. Aliens Land Holding Regulation (Amendment) Act 21, § 5-4A(4) (Dominica 1968) provides:

Where the land is to be used for any building estate or development project other than agriculture the applicant shall submit with his application detailed plans of his project, approved by the Central Housing Planning Authority, and shall observe such conditions as the Minister may from time to time stipulate to ensure that the project is being carried out.

Id.

172. See, e.g., supra notes 168-70 and accompanying text.

173. See supra notes 69-71 and accompanying text.
control over the one valuable resource many of the islands possess—the land.

The desire for local control is an issue of great importance to the people of the West Indies. Many commentators in the region are increasingly voicing their concern that the West Indian relationship with the United States is not fostering a sense of security and independence in the people,174 but is moving the region from a colonial relationship with England to semi-colonial relationship with the United States.

While control of their economies is a worthy goal for the island states of the West Indies to pursue (given that they are small developing nations with a dire need for economic assistance), it should not be expected that they will “completely repel foreign domination and develop programs aimed at self-sufficiency.”175 But as the laws and policies outlined above demonstrate, the autonomous interests are strong and will remain so even though a reduction in growth will inevitably result.

Mark A. Gloade


175. Note, supra note 46 at 233.