

Forever Young

Celebrating 50 Years of the World Heritage Convention



edited by

Elisa Baroncini, Bert Demarsin, Ana Gemma López Martín,
Raquel Regueiro Dubra, Ruxandra-Iulia Stoica

with the collaboration of Manuel Ganarin and Alessandra Quarta

Volume I

6

Un'anima per il diritto: andare più in alto

Collana diretta da Geraldina Boni



Mucchi Editore

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L'orizzonte meramente tecnicistico su cui ogni tipo di riflessione sembra oggi rischiare di appiattirsi non solo non cancella quegli interrogativi fondamentali che si confermano ineludibili per ciascuna disciplina in cui si ramifica il pensiero giuridico: ma li rivela, anzi, in tutta la loro impellenza. È dunque a tale necessità che facciamo riferimento nel cogliere e sottolineare il bisogno che si avverte di 'un'anima per il diritto', ispirandoci in modo particolare a quegli ammonimenti che Aleksandr Solženicyyn rivolgeva a studiosi e accademici dell'Università di Harvard nel 1978 e che, a distanza di decenni, mantengono intatta la loro validità. Muovendo dalla domanda «se mi chiedessero: vorrebbe proporre al suo paese, quale modello, l'Occidente così com'è oggi?, dovrei rispondere con franchezza: no, non potrei raccomandare la vostra società come ideale per la trasformazione della nostra. Data la ricchezza di crescita spirituale che in questo secolo il nostro paese ha acquistato nella sofferenza, il sistema occidentale, nel suo attuale stato di esaurimento spirituale, non presenta per noi alcuna attrattiva» – dichiarazione che si riempie di significato alla luce della vicenda personale, tanto dolorosa quanto nota, di colui che l'ha pronunciata –, l'intellettuale russo individuava infatti con profetica lucidità i sintomi e le cause di tale declino. In questo senso, ad interpellarci in modo precipuo in quanto giuristi è soprattutto l'osservazione secondo cui «in conformità ai propri obiettivi la società occidentale ha scelto la forma d'esistenza che le era più comoda e che io definirei giuridica: una 'forma d'esistenza' che tuttavia è stata assunta come fondamento esclusivo e per ciò stesso privata dell'anelito a una dimensione superiore capace di giustificarla. Con l'inevitabile, correlata conseguenza che «l'autolimitazione liberamente accettata è una cosa che non si vede quasi mai: tutti praticano per contro l'autoespansione, condotta fino all'estrema capienza delle leggi, fino a che le cornici giuridiche cominciano a scricchiolare». Sono queste le premesse da cui scaturisce quel complesso di valutazioni che trova la sua sintesi più efficace nella seguente affermazione, dalla quale intendiamo a nostra volta prendere idealmente le mosse: «No, la società non può restare in un abisso senza leggi come da noi, ma è anche derisoria la proposta di collocarsi, come qui da voi, sulla superficie tirata a specchio di un giuridismo senz'anima». Se è tale monito a costituire il principio ispiratore della presente collana di studi, quest'ultima trova nella stessa fonte anche la stella polare da seguire per cercare risposte. Essa, rinvenibile in tutti i passaggi più pregnanti del discorso, si scolpisce icasticamente nell'esortazione – che facciamo nostra – con cui si chiude: «E nessuno, sulla Terra, ha altra via d'uscita che questa: andare più in alto».

* La traduzione italiana citata è tratta da ALEKSANDR SOLŽENICYN, *Discorso alla Harvard University, Cambridge (MA) 8 giugno 1978*, in Id., *Il respiro della coscienza. Saggi e interventi sulla vera libertà 1967-1974. Con il discorso all'Università di Harvard del 1978*, a cura di SERGIO RAPETTI, Jaca Book, Milano, 2015, pp. 219-236.

Un'anima per il diritto: andare più in alto

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Section I

From Cultural Property
to World Heritage

ALESSIA LEGNANI ANNICHINI

THE PROTECTION OF CULTURAL HERITAGE IN THE HISTORY OF ITALIAN LAW*

Abstract: The essay reconstructs the first legislation on the protection of cultural heritage in the Italian peninsula. Fundamental turning point were 15th-17th centuries, which saw the popes, with edicts and bulls, invite citizens to preserve the ancient buildings; the pontifical legislation was a model for most of the Italian states of the Ancient Regime.

The 19th century, as a consequence of the tragic dispossession committed by Napoleon, is notable for a revival and strengthening of the legislation for the safeguard of cultural heritage, which culminated in the Pacca's Edict (1820). The essay ends with an analysis of the first Italian regulation laws subsequent to the political unit, culminating in the law 1089/1939.

1. *Foreword*

The need to safeguard historical, artistic and cultural heritage has characterised all – or almost all – seasons of our history. From time to time, rulers have tried to emphasize, through protection, continuity with the past and show respect for its testimonies.

Before analysing the origins and evolution of the legislation *de qua*, I feel it is appropriate to make a few clarifications. Firstly, the object of protection in the past has only partially coincided with the current concept of cultural heritage: it has not always been the same, but it has grown and become more specific over the centuries and societies. Secondly, the ways of protecting what we now call 'cultural heritage' have changed over the long period of time that we want to cover here, albeit in a synthetic way for space reasons. Thirdly, the causes of protection have become more precise and diversified in different historical periods.

* Double-blind peer reviewed content.

2. *Urban decency in the Late Middle Ages*

My research starts from the Late Middle Ages, when, after the looting and demolitions of the Germanic peoples that had characterised the previous season¹, the idea that the essence of civil life should be manifested in the decorum of the nascent cities was revived in communal Italy: public buildings and churches – therefore real estate – became symbols of the city's identity, and they were considered to belong to the entire community and had therefore to be protected.

In particular, Rome, which had been devastated by the Dark Ages, began a slow recovery after the year 1000, when the popes began to issue a number of measures aimed at ensuring the preservation and decency of the architecture and the city layout, which consisted largely of private buildings with adapted classical ornaments. Between the 12th and 13th century, the Eternal City began to show signs of a building and urban renaissance: the papacy used the image of the past to consolidate its spiritual and secular supremacy².

In this context, it is relevant to remember the dispute – dating back to 1162 – over the ownership of the *Colonna Traiana* between the abbess of St. Cyriac and the Priest Angelo of the Church of St. Nicholas, regarding which the Roman Senate decided that the church and the column were the property of the abbess, «salvo honore publico Urbis eidem Columpne ne umquam per aliam personam obtentu investimenti huius restitutionis diruatur aut minuatur, sed ut est ad honorem ipsius ecclesie et totius populi Romani, integra et incorrupta permaneat, dum mundus durat, sic eius stante fig-

¹ The age of the Germanic kingdoms was characterised by an absolute lack of attention to ancient monuments and the sovereigns themselves, who for the most part – with the exception of Theodoric – devoted themselves to looting, demolishing and reusing classical remains. On this subject see F. BOTTARI, F. PIZZICANNELLA, *I beni culturali e il paesaggio. Le leggi, la storia, le responsabilità*, Zanichelli, Bologna, 2007, pp. 87-88 and V. CURZI, *Patrimonio culturale e pubblica utilità. Politiche di tutela a Roma tra Ancien Régime e Restaurazione*, Minerva edizioni, Bologna, 2004, pp. 22-27.

² F. BOTTARI, F. PIZZICANNELLA, *op. cit.*, pp. 91-94

ura». This is one of the first medieval documents to explicitly regulate the protection of monuments as public property; any violation is punished with the confiscation of property and death³.

The worst years for Rome's artistic heritage coincided with the Avignon captivity. With the Pope gone, the Eternal City suffered even greater devastation than during the barbarian invasions: the perpetrators of these raids were above all those families (Orsini, Colonna, Caetani) who had become rich thanks to the support and favours of the Roman Curia⁴. Francesco Petrarca († 1374) was a witness to the miserable state of Rome, as can be seen from a letter to Cola di Rienzo († 1354), in which he regrets the situation, and he expresses his pleas to Popes Benedetto XII and Urbano V to return to the Eternal City⁵.

3. *The Papal State: a forerunner in the protection of cultural heritage*

During the humanistic period, the Church strongly felt the need to restore a continuity with the past and to evoke its splendour: classicism became a model for the present and for this reason a new, albeit embryonic and circumscribed, conscience of conservation and protection of the historical-artistic heritage asserted itself. It is not yet possible to speak of real protection measures, but rather of

³ The document traced by Carlo Fea is published in S. ROMANO, *Arte del medioevo romano: la continuità e il cambiamento, in Roma medievale*, edited by A. VAUCHEZ, Laterza, Roma-Bari, 2010², pp. 267-280. The argument is well outlined by F. BOTTARI, F. PIZZICANNELLA, *op. cit.*, p. 95 and V. CURZI, *op. cit.*, pp. 27-28.

⁴ V. CURZI, *op. cit.*, p. 29.

⁵ «[...] Così a poco a poco le rovine se ne vanno, ingenti testimonianze della grandezza degli antichi. E voi, tanti migliaia di forti, taceste di fronte a pochi ladruncoli che infuriavano in Roma, come in una città conquistata; taceste non dico come servi, ma come pecore, e lasciate che si facesse strazio delle membra della madre comune» (*Lettera di Petrarca a Cola di Rienzo e al popolo romano*, F. PETRARCA, *Epistole*, edited by U. DOTTI, Torino, 1978, p. 903). Among others, Petrarca's complaints are reported by G. VOLPE, *Manuale di diritto dei beni culturali. Storia e attualità*, Cedam, Padova, 2007, pp. 21-22 and V. CURZI, *op. cit.*, pp. 29-30.

discontinuous and fragmentary interventions conceived from time to time by the popes in order to curb predatory behaviour and avoid damage and dispersion.

I would like to recall, first of all, the bull *Etsi de cunctarum* (1425) in which Martino V († 1431) on the one hand condemned and punished damage to public buildings and on the other protected private ones, requiring owners to restore them if they were damaged⁶. This measure started the recovery of the city. Then there is the bull *Cum Almam Nostram Urbem* (1462) by Pio II († 1464), which forbade anyone from «demolire, distruggere, abbattere o trasformare in calce» ancient buildings or their ruins without a papal licence; it affirmed for the first time the importance of handing down monuments to posterity, as a enrichment for the city and a testimony to ancient virtues⁷. Lastly, the bull *Cum provida Sanctorum Patrum decreta* (1474), with which Sisto IV († 1484) introduced the protection of movable property and prohibited the sale of sacred works of art preserved in churches, providing the punishment of excommunication for those guilty of this crime-sacrilege⁸. From this moment on, the object of protection was no longer just immovable property, but also manuscripts (the first nucleus of the Vatican Library was born), finds from archaeological digs and works of sacred art, especially marbles and tombstones.

As for the ways in which, through bulls and edicts, the popes tried to protect the riches of Rome, we can identify, first of all, the

⁶ For the text of the bull see A. THEINER, *Codex Diplomaticus domini temporalis S. Sedis*, III, Torchi Vaticani, Roma, 1862, pp. 290-291.

⁷ PIUS EPISCOPUS, *Cum Almam Nostram Urbem* (28 aprile 1462), in A. EMILIANI, *Leggi, bandi e provvedimenti per la tutela dei beni artistici e culturali negli antichi stati italiani 1571-1860*, Nuova Alfa Editoriale, Bologna, 1996, pp. 151-152.

⁸ SIXTUS EPISCOPUS, *Cum provida Sanctorum Patrum decreta* (7 aprile 1474), in A. EMILIANI, *op. cit.*, pp. 152-153. On the regulatory measures of the humanist popes for the protection of cultural heritage see F. BOTTARI, F. PIZZICANNELLA, *op. cit.*, pp. 96-103; G. VOLPE, *op. cit.*, pp. 25-27; S. CONDEMI, *Dal "decoro et utile" alle "antiche memorie". La tutela dei beni artistici e storici negli antichi Stati italiani*, Nuova Alfa Editoriale, Bologna, 1987, pp. 14-19; V. CURZI, *op. cit.*, pp. 35-36; and A. MANFREDINI, *Antichità archeologiche e tesori nella storia del diritto*, Giappichelli, Torino, 2018, pp. 74-77, regarding specifically archaeological goods.

prohibition to demolish and damage ancient buildings, as well as the duty to restore them if they were ruined; then, the obligation to tear down new buildings close to the testimonies of the past to prevent them from obstructing the view; the establishment of magistrates *ad hoc* with the task of protection and, finally, the prohibition to plunder the memories of the past. I cannot, however, fail to point out a contradictory attitude in the policy of the humanist popes. While on the one hand they were the first to initiate a policy of protecting the historical and artistic heritage, on the other hand they did not hesitate to allow and even order the actual stripping of it in order to build and embellish new churches and palaces.

The first archaeological excavations, which brought to light sensational discoveries such as the *Apollo* and the *Laoconte*, date back to the age of Giulio II († 1513). For this reason, in addition to regulations to protect urban decency and control plundering, regulations were needed to curb clandestine excavations and protect the assets found underground⁹.

It was his successor, Leone X († 1521), who in 1515 appointed Raffaello Sanzio († 1520) as *Prefetto della Fabbrica di San Pietro* (Prefect of the Fabric of St. Peter's)¹⁰. According to Volpe, he was the first 'technical' administrator for the cultural sector¹¹. Raffaello, already *Maestro delle strade e Ispettore Generale delle Belle Arti* (Master of the Roads and Inspector General of Fine Arts), had tried to prevent the master builders from destroying the old inscriptions and appealed to the Pope to put an end to the raids that had been taking place in Rome for centuries¹². From this moment on,

⁹ F. BOTTARI, F. PIZZICANNELLA, *op. cit.*, pp. 104-105.

¹⁰ *Breve di Leone X che nomina Raffaello architetto del tempio di San Pietro*, in F. MARIOTTI, *La legislazione delle belle arti*, Unione cooperativa editrice, Roma, 1892, p. 205.

¹¹ G. VOLPE, *op. cit.*, pp. 27-28, who, however, points out that the literature does not agree on this point.

¹² «[...] quanta calce si è fatta di statue et altri ornamenti antichi, che arderei dire che tutta questa Roma nuova che hor si vede, quanto grande ch'ella sia, quanto belli, quanto ornata di pallaggi, chiese (...) tutta è fabbricata di calce di marmi antichi! [...]» (F.P. DI TEODORO, *Raffaello, Baldassar Castiglione e la lettera a Leo-*

the past appeared less and less as something to be plundered and more and more as something to be discovered and equalled. The subsequent bulls and edicts were aimed at identifying which assets to protect.

In the age of the Counter-Reformation, the Roman Church, having regained strength and authority after the crisis of the Protestant Reformation, could no longer limit itself to emphasising its links with the past, but had to bring back to memory those testimonies that linked it to the Church of the origins. For this purpose, the popes undertook powerful campaigns of intervention on Christian monuments, taking care of their protection and instituting (in 1534) the office of *Commissario delle Antichità* (Commissioner of Antiquities). He was the first real superintendent, called upon to supervise excavations, the city's monuments and ancient buildings; to prevent demolition, alienation and transformation into quarries; to order ordinary maintenance; and to prevent new buildings and walls from being built next to the monuments¹³.

Between the 16th and 17th century, monuments, ancient buildings, paintings and sacred furnishings were protected, as were archaeological finds, to which the pontiffs paid increasing attention. They stipulated that, if they were sold, part of the proceeds would be assigned to the Apostolic Chamber, and they prohibited excavations without a licence¹⁴. Introduced by the *Editto Aldobrandini* of 1624¹⁵ and then re-proposed in all subsequent regulatory measures, the main instrument of protection for movables was the export ban,

ne X, San Giorgio di Piano (BO), 2003, pp. 65-69). The episode is recalled by V. CURZI, *op. cit.*, p. 37.

¹³ On the institution of this figure see F. BOTTARI, F. PIZZICANNELLA, *op. cit.*, pp. 107-109; G. VOLPE, *op. cit.*, pp. 28-29 and V. CURZI, *op. cit.*, pp. 44-46.

¹⁴ We may recall the *Editto Aldobrandini* of 5 October 1624, the *Editto Sforza* of 29 January 1646 and the *Editto Altieri* of 1686, edited by A. EMILIANI, *op. cit.*, pp. 55-66 and analysed by A. MANFREDINI, *op. cit.*, pp. 98-103.

¹⁵ The text of the *Editto Aldobrandini* of 5 October 1624 is published in A. EMILIANI, *op. cit.*, pp. 55-56.

the violation of which was severely punished¹⁶. In the middle of the 17th century, the protection legislation was perfected and extended for the first time to valuable movables held by private individuals, whose clandestine sale was prohibited.

The policy of safeguarding cultural assets in the Papal States was consolidated in the 18th century, when there was a growing awareness of the aesthetic and economic value of the artistic heritage, a source of international prestige¹⁷. In this period, among the many measures for the protection of cultural heritage, we can mention the *I Editto Spinola* of 1704, which explained the twofold purpose behind the conservation of ancient memories: on the one hand, knowledge of history and, on the other, the promotion of Rome's international prestige. Leaving the previous discipline for real estate to survive, this edict dealt with works of art (including manuscripts), prohibiting their exportation; with finds, imposing the obligation to report them; and with ancient inscriptions, prohibiting their removal¹⁸.

Cardinal Annibale Albani († 1751) also intervened in the matter with two edicts. The first, dated 21 October 1726, reaffirmed the validity of the previous regulations and the importance of preserving the ancient memories from which Rome received – and still receives – so much prestige; it forbade excavations without a licence and those near ancient buildings; it innovated in the approach to fortuitous discoveries – according to the classical concept, a gift from luck or from God to the inventor –, subjecting them to a form

¹⁶ Recalls G. VOLPE, *op. cit.*, pp. 30-34 how the export ban was reiterated by the *Editto Sforza* of 1646, the *I Editto Spinola* of 1704, the *II Editto Albani* of 1733, the *Editto Valenti Gonzaga* of 1750, the *Editto Dora Pamphili* of 1802 and the *Editto Pacca* of 1820.

¹⁷ On papal legislation between the 16th and 18th centuries see S. CONDEMI, *op. cit.*, pp. 19-22, 35-51, 65-74; M. SPERONI, *La tutela dei beni culturali negli stati italiani preunitari, I. L'Età delle Riforme*, Giuffrè, Milano, 1988, pp. 11-48 and S. BEDIN, L. BELLO, A. ROSSI, *Tutela e restauro nello Stato Pontificio*, Cedam, Padova, 1998, pp. 59-75.

¹⁸ For the text of the Edict of 30 September 1704 see A. EMILIANI, *op. cit.*, pp. 66-69. This measure is analysed by A. MANFREDINI, *op. cit.*, pp. 113-114.

of control and publicity. He also regulated the conduct of stonemasons, marble sawyers and quarrymen, prohibiting them from damaging the finds and inscriptions, and to this end he established equal penalties for each offender: loss of the object, a fine, three lengths of rope¹⁹. The *II Editto Albani* (1733) offered an important clarification on the nature of the object of protection, which was limited to rare artistic works, the fruit of the creative genius of the present and the past. Consequently, the cultural-historical testimonies of a people, expressions of the different tastes of each era, were not included among the assets to be protected. For the first time, tourist function was included in the reasons for protection in this legislation: rare and valuable assets are prestigious attractions that attract foreign visitors to the city²⁰.

The *Editto Valenti Gonzaga* (1750) dates back to the middle of the 18th century, a *summa* of all the 18th century pontifical legislation on the subject, which, in addition to the other functions already mentioned, assigned to the protection of rare, valuable and antique objects also an educational function, considering the work of art as a sure standard of study for those who apply themselves to the exercise of those noble arts, with great advantage for the public and private good²¹. It also prohibited the export of works of art from the Papal States without a licence – granted by the pope for ancient works and by the Chamberlain for modern ones – and to this end definitively established the procedure for controlling exports. A real and proper inquisitorial process was envisaged against malicious exporters, sanctioned with corporal punishment, the confiscation of the «roba» (destined for the Capitoline museums) and a fine of 500 gold ducats; it also provided for warnings and penalties

¹⁹ The *I Editto Albani* of 21 October 1726 is published in A. EMILIANI, *op. cit.*, pp. 70-71.

²⁰ The *II Editto Albani* of 10 September 1733 is published *ibid.*, pp. 72-75. For a reflection on these edicts see F. BOTTARI, F. PIZZICANNELLA, *op. cit.*, pp. 115-116 and A. MANFREDINI, *op. cit.*, pp. 114-116.

²¹ For the text of the *Editto Valenti Gonzaga* of 5 January 1750 see. A. EMILIANI, *op. cit.*, pp. 76-84.

for accomplices. In addition, *Assessors*²² were instituted to flank the *Commissario sopra le antichità e le cave* (Commissioner for Antiquities and Quarries), and excavations in sensitive areas were regulated.

The sale of archaeological artefacts was subject to an inspection by the *Commissario alle antichità* (Commissioner of Antiquities) in order to allow for a valuation of the goods to be sold. Failure to comply was punished with the loss of the «roba», a fine of 10 Italian gold scudi and corporal punishment. Those who had quarries, workshops or warehouses had to allow inspections and were not allowed to sell any finds before at least five days had passed, in order to allow experts to assess the case, under penalty of the same punishments.

This edict deplored the trade in altered or falsified works, which were sold to foreigners for exorbitant prices. This crime was punished with the same penalties as for illegal exports. Lastly, it forbade stonemasons, foundrymen and other metalworkers to break, take away or alter marble, statues and metal objects without the appropriate permits, punishing offenders with corporal punishment, confiscation and a fine of 25 Italian scudi²³.

4. *Legislation for the protection of cultural heritage in other Italian states of the Ancien Régime*

The legislation protecting cultural property in the Papal States since the late Renaissance was a model for most other Italian states of the *Ancien Régime*.

While in Tuscany and Naples there was considerable legislation on the subject, elsewhere (Parma – Lombardy) it was limited to

²² One for painting, one for sculpture and one for cameos, incisions and other antiquities.

²³ This regulatory measure is analysed by G. VOLPE, *op. cit.*, pp. 32-34 and A. MANFREDINI, *op. cit.*, pp. 117-119.

sporadic and circumscribed interventions; in the Kingdom of Sardinia it was not even present until the 19th century.

In Tuscany, the legislation on cultural heritage was aligned with that of the papacy from the 16th century onwards, and the provisions issued between the end of the 16th and 17th centuries remained in force in their fundamental lines throughout the Medici government. These provisions can be traced back to three main lines of action. The first aimed at regulating the export of ancient and modern artistic objects. The second aimed at the acquisition and conservation of semi-precious stones, and the third aimed at regulating archaeological excavations and discoveries. Under the first aspect, there is a law by Grand Duke Cosimo I, dated 30 May 1571, against the removal or violation of tablets and plaques on the walls of palaces and other buildings, public or private, in memory of their builders or founders. This provision shows, on the one hand, the desire of patrician families to defend an external sign of their prestige and, on the other, the intention to protect a cultural asset to preserve the memory of those who had built those palaces that were the ornament and splendour of Florence²⁴.

The subsequent legislation is closely linked to the intense activity in the field of collecting and promoting the fine arts of Cosimo I's sons, Francesco I and Ferdinando I. In particular, the latter forbade the unlicensed exportation of paintings from Siena and Florence in 1602, establishing that authorisation could never be granted for the works of certain great painters²⁵. The prevalence of public interest over private property rights is evident in these measures. Moreover, he also turned his attention to archive material, which he

²⁴ The law, dated 30 May 1571, is published in A. EMILLANI, *op. cit.*, pp. 23-24.

²⁵ «Michelangelo Buonarroti, Raffaello d'Urbino, Andrea del Sarto, Mecherino, Il Rosso Fiorentino, Lionardo da Vinci, Il Francia Bigio, Perin del Vaga, Jacopo da Pontorno, Titian, Francesco Salviati, Agnolo Bronzino, Daniello da Volterra, F. Bartolomeo di S. Marco, Fra Bastiano del Piombo, Filippo di Fra Filippo, Antonio Correggio, Il Parmigianino, Pietro Perugino» (Deliberation of 6 November 1602, in A. EMILLANI, *op. cit.*, pp. 31-32).

began to look at with cultural intentions, due to the value of the historical document, and not only probative, that it contains²⁶.

In the Lorena period, the discipline of protection was no longer limited to paintings, but an *Editto del Consiglio di Reggenza* of 1754 extended the prohibition of unlicensed exportation to all works of art and to all cities of the Grand Duchy, under penalty of confiscation of the object and payment of a fine equal to twice its value. This legislation was based on the *Editto Valenti Gonzaga*, from which it differed in the application of afflictive penalties, which were not applied arbitrarily but only if the offender was unable to pay the fine²⁷. Pietro Leopoldo's subsequent *motu proprio* of 1780, in contrast to the Enlightenment ideals, liberalised excavations and the antiquities trade, while maintaining the ban on exporting antique paintings without authorisation²⁸.

The second series of legislative provisions of this period was linked to the need to procure a large quantity of semi-precious stones for the work of the *Opificio*, founded in 1588 in Florence on the initiative of Grand Duke Ferdinando I de' Medici and destined to play a fundamental role in the history of conservation. To this end, the unlicensed extraction and trade of semi-precious stones from Siena and Florence was prohibited²⁹. As for the last group of regulatory interventions, Tuscany lacked a specific law on archaeological excavations and discoveries until the years of the government of Francesco Stefano di Lorena, who regulated the matter with two rescripts (1749 and 1750), in which he established that

²⁶ The Medici regulations of 24 October 1602, 5 November 1602, 6 November 1602 and 11 December 1602 are edited by A. EMILIANI, *op. cit.*, pp. 28-33. On the first regulations prohibiting the export of paintings from Tuscany see S. CONDEMI, *op. cit.*, pp. 33-34, 52-61; A. MANSI, *La tutela dei beni culturali e del paesaggio*, Padova, Cedam, 2004, pp. 14-15; M. AINIS, M. FIORILLO, *L'ordinamento della cultura. Manuale di legislazione dei beni culturali*, Giuffrè, Milano, 2015³, pp. 167-168.

²⁷ *Editto* (26 December 1754), in A. EMILIANI, *op. cit.*, pp. 40-41.

²⁸ This *motu proprio* of 5 August 1780 is published *ibid.*, pp. 43-44.

²⁹ The regulatory measures of 7 July 1597, 12 July 1597 and 4 July 1602 are published *ibid.*, pp. 24-26.

found objects belonged to the royal treasury and stipulated that those worthy for some rare particularity should be selected by the ducal antiquarian, leaving the remaining 1/3 to the inventor and 1/3 to the owner of the land. It made archaeological research subject to a licence and imposed the obligation to report even accidental discoveries, setting a prize equal to 1/3 of the value of the things found for the discoverer and the owner of the land. It also punished unauthorised excavation and failure to report finds, although only with the loss of the right to the prize³⁰.

The Neapolitan legislation of Carlo and Ferdinando di Borbone also drew on the papal model, in particular the export control systems for cultural goods laid down by the *Editto Valenti Gonzaga* of 1750. The territory of the Kingdom of Naples abounded in classical and medieval remains and ruins. For this reason, the sovereigns issued measures to protect both the archaeological and artistic heritage, prohibiting its exportation, and to regulate the excavation and collection of finds.

On the one hand, the 1755 *Prammatiche* of Carlo VII of Borbone († 1788), aimed at protecting the archaeological and artistic heritage by prohibiting the sale and export without a licence of antiquities (ancient paintings, worked stones, marble, or finds from excavations). The issuing of licences was subject to the opinion of three experts and the export ban was not absolute but limited to items that were particularly valuable because of their excellence or rarity; offenders were punished³¹. As for the second aspect, the aim

³⁰ *Rescritto imperiale* (21 August 1750), in F. MARIOTTI, *op. cit.*, p. 254. On the protection of cultural assets during the Medici and Lorena governments see M. SPERONI, *op. cit.*, pp. 51-78 and F. BISOGNI, *Da Pietro Leopoldo a Napoleone: tutela e dispersione dei beni culturali a Siena e in Toscana*, in *Ideologie e patrimonio storico-culturale nell'età rivoluzionaria e napoleonica. A proposito del trattato di Tolentino*, *Atti del Convegno* (Tolentino, 18-21 Settembre 1997), Ministero per i beni e le attività culturali-Ufficio centrale per i beni archivistici, Roma, 2000, pp. 563-605.

³¹ The punishment was three years' imprisonment for non-nobles and three years' relegation for nobles. For the text of the *Prammatiche* of 25 September 1755, see A. EMILIANI, *op. cit.*, pp. 171-179.

was to protect the ‘unknown world’ that was emerging as a result of the archaeological excavations in Pompei and Ercolano but also to contain the phenomenon of illegal excavations and the removal of artefacts by circumventing the State’s right of pre-emption. For this reason, it was forbidden for anyone to carry out excavations without authorisation. Supervision was entrusted to special officials³².

In the Duchy of Parma, Duke Filippo di Borbone, installed following the Treaty of Aachen in 1748, issued legislation to protect cultural assets in order to compete with what his brother Carlo had done in Naples and to control the export of works of art. This need arose from painful episodes, such as the sale of Raffaello’s *Madonna Sistina* (conserved in Piacenza) to Frederick Augustus of Saxony in 1754. The centre of artistic culture in the small duchy was the Royal Academy of Painting, Sculpture and Architecture founded on 12 December 1752, which had the task of controlling the export of works of art³³.

Although Austrian Lombardy was the showcase of Habsburg reformism in Italy, it did not succeed in establishing real regulations to protect cultural assets. The only noteworthy provision is to be found, during the Theresian period, in the *Nuovi Ordini e Statuti dell’Accademia di San Luca*, founded in 1688, which forbade the alteration and unlicensed trading of ancient and modern paintings and sculptures without the authorisation of the Academy, under penalty of a fine of 25 Italian scudi³⁴.

³² On the two lines followed by Borbone legislation on protection see M. SPERONI, *op. cit.*, pp. 79-113 and, more briefly, M. AINIS, M. FIORILLO, *op. cit.*, pp. 168-169.

³³ *Grazie e pibid.legi accordati dalla munificenza del Real Sovrano alla Reale Accademia delle belle arti* (Parma, 8 June 1760), in F. MARIOTTI, *op. cit.*, p. 305, in which it was established that no illustrious works of painting and sculpture could leave Parma without consulting the Academy, which was obliged to report its opinion to the sovereign regarding the granting of the licence. On the first legislation to protect cultural heritage in the small Duchy see M. SPERONI, *op. cit.*, pp. 115-124.

³⁴ This Theresian regulation of 13 April 1745 is edited by F. MARIOTTI, *op. cit.*, pp. 277-279. On the measures adopted in Austrian Lombardy for the preservation of cultural heritage see M. SPERONI, *op. cit.*, pp. 125-132.

In the 18th century, the Republic of Venice implemented advanced forms of protection of cultural assets and became an alternative model to the Papal State in two aspects. Firstly, with regard to the object of protection, which was limited to paintings owned by the State and to ‘public paintings’, i.e., paintings kept in ecclesiastical institutions. In ancient times, there was already a general protection of these works, which covered all Church property, the disposal of which was prohibited by a decree of the Senate. Secondly, regarding the means used to safeguard these assets, namely in the creation of a catalogue of all paintings – conceived by Anton Maria Zanetti the younger – in order to prevent their sale and in the establishment of a public restoration workshop³⁵.

5. *Napoleonic spoliations*

At the end of the 18th and beginning of the 19th century, Napoleon conquered a large part of the Italian peninsula and inflicted a severe blow on our artistic heritage. In the various peace treaties – from the armistice of Bologna in June 1796 to the treaties of Tolentino (19 February 1797) and Campoformio in 1797 – he required the losers to compensate for war damage with valuable works of art, which were added to the many already stolen by the French armies. Hundreds of ancient and modern works of art, precious books and manuscripts and rare archaeological finds were systematically removed from Italian territories and sent to Paris. In the Papal State, the city most affected by this spoliation was, after Rome, Bologna, from which were stolen paintings by Perugino, Guido Reni, Raffaello, Ludovico Carracci and Guercino. Napoleon’s work was an enormous, methodical operation of art theft, which, on the one

³⁵ On the protection of cultural heritage in the Venetian Republic as an alternative model to the Papal State see L. OLIVATO, *Provvedimenti della Repubblica Veneta per la salvaguardia del patrimonio pittorico nei secoli XVII e XVIII*, Istituto veneto di scienze, lettere ed arti, Venezia, 1974, especially pp. 55-93; S. CONDEMI, *op. cit.*, pp. 61-64, 94-111 and M. SPERONI, *op. cit.*, pp. 135-188.

hand, was a plundering based on the right of war, but, on the other, was undoubtedly guided by the 'enlightened' desire to build up universal collections³⁶.

Following Napoleon's final defeat, the European countries tried to regain possession of their stolen property. With the Treaty of Paris (30 June 1814) and the subsequent armistice agreement (3 July 1815), the protection of the artistic heritage was dealt with at international level for the first time in law, requiring France to return the stolen works of art 'since they are inseparable from the country to which they belonged'³⁷. Thus, the plenipotentiary delegates of all the victorious powers arrived in Paris at the court of Louis XVIII. The State of the Church was represented by the sculptor Antonio Canova († 1822), *Ispettore generale di antichità e belle arti* (Inspector General of Antiquities and Fine Arts)³⁸ since 1802, who, despite his reluctance, proved to be a fine diplomat and recovered a large part of the goods taken from the Papal territories³⁹.

³⁶ Examples include the *Leone di San Marco* and the famous bronze horses of the Venetian Basilica; precious paintings by Tiziano and Tintoretto; the *Apollo* of the Belvedere, the *Laoconte* and the *Discobolo*; paintings by Raffaello including *Santa Cecilia*; Caravaggio's *La Deposizione* and many others. For a summary see G. VOLPE, *op. cit.*, pp. 38-39 and V. CURZI, *op. cit.*, pp. 68-71. See P. WESCHER, *I furti d'arte. Napoleone e la nascita del Louvre*, Einaudi, Torino, 1988; D. TAMBLLÈ, *Il ritorno dei beni culturali dalla Francia nello Stato Pontificio e l'inizio della politica culturale della restaurazione nei documenti camerali dell'Archibid. o di Stato di Roma*, in *Ideologie*, cit., pp. 457-513 e V. C. GOULD, *Trophy of Conquest. The Musée Napoléon and the creation of the Louvre*, Faber & Faber, London, 1965. The exhibition *Antonio Canova a Bologna* was recently dedicated to the works brought back to Bologna by Canova. *Alle origini della Pinacoteca* (4 December 2021 - 20 February 2022).

³⁷ G. VOLPE, *op. cit.*, p. 42.

³⁸ For the appointment provision, see F. MARIOTTI, *op. cit.*, pp. 206-207.

³⁹ Of the 506 paintings stolen from the pontifical territories, 249 were recovered, 248 remained in France and 9 were lost. The literature on Canova's work is extensive, without any claim to exhaustiveness see. G. CONTARINI, *Canova a Parigi nel 1815. Breve studio storico condotto su documenti e manoscritti originali inediti*, Premiata tipografia Panfilo Castaldi, Feltre, 1891; A. CAMPANI, *Sull'opera di Antonio Canova pel recupero dei monumenti d'arte italiani a Parigi*, in *Archivio storico dell'arte*, III, 1892, pp. 189-197; L. RAVA, *Antonio Canova Ambasciatore*, in *L'Archiginnasio*, 18, 1923, pp. 27-43; F. BOYER, *A propos de Canova et de la restitu-*

6. Legislation in the Italian states of the Restoration

As a consequence of the tragic plundering that took place during the Napoleonic era, the years of the Restoration saw the various states of the Italian peninsula engaged in a reinforcement of policies to safeguard cultural assets⁴⁰. Once again, the Papal State was the leader, being concerned with safeguarding both monuments, which had to be protected and enhanced, and public and private movable artistic property, which was to be prevented from being alienated and, above all, exported. It was Abbot Carlo Fea⁴¹ – since 1800 *Commisario alle antichità e agli scavi* (Commissioner for Antiquities and Excavations) – who suggested the legislative provisions to be promulgated on the subject of protection. At the heart of his modern and far-sighted concept was the recognition of the art object as a public good, the protection of which, within the competence of the State, had to be motivated by a dual intent: to unite the community around the assets in which it recognised itself and to pursue an economic interest, emphasising the economic benefits that a well-preserved cultural heritage could bring to a city, attracting tourists.

tion en 1815 des oeuvres d'art de Rome, in *Rivista italiana di studi napoleonici*, 1965, pp. 18-24; B. MOLAJOLI, *Le benemerenze di Antonio Canova nella salvaguardia del patrimonio artistico*, in *Da Antonio Canova alla convenzione dell'Aja. La protezione delle opere d'arte in caso di conflitto armato*, edited by S. ROSSO-MAZZINGHI, Sansoni, Firenze, 1975, pp. 13-44; M. NAGARI, *Canova a Parigi nel 1815*, in *Nuova Antologia*, 1992, pp. 268-281; C. PIETRANGELI, *Un ambasciatore d'eccezione: Canova a Parigi*, in *Antonio Canova*, Marsilio, Venezia, 1992, pp. 15-19; E. JAYME, *Antonio Canova, la Repubblica delle arti e il diritto internazionale*, in *Rivista di diritto internazionale*, LXXV, 1992, II, pp. 889-902 and F. ZUCCOLI, *Le ripercussioni del trattato di Tolentino sull'attività diplomatica di Antonio Canova nel 1815, per il recupero delle opere d'arte*, in *Ideologieo*, cit., pp. 611-627.

⁴⁰ On the legislation for the protection of cultural heritage in the pre-unitary states see M. SPERONI, *op. cit.*, *passim* e C. CAMPANELLA, *Due secoli di tutela. Dagli Stati preunitari alle leggi deroga*, Alinea, Firenze, 2012, pp. 19-29; notes in G. VOLPE, *op. cit.*, pp. 53-57.

⁴¹ Carlo Fea's role in the renewed interest in the preservation of cultural heritage is underlined by F. BOTTARI, F. PIZZICANNELLA, *op. cit.*, pp. 122-123.

The pontiffs used a variety of protection instruments, expressed in the *Editto Doria Pamphili* of 1802⁴², and developed in the *Editto Pacca* of 7 April 1820, which can be considered the first organic legal system for the protection of cultural heritage and a model of modern Italian protection⁴³. In the first place, the prohibition of demolishing or damaging ancient buildings⁴⁴ and the compilation of lists of works of art on the Venetian model⁴⁵, for which the *Commissione delle Belle Arti* (Commission of Fine Arts) was responsible⁴⁶. Then, on the one hand, we have the ban on the export of rare and artistic objects⁴⁷ and, on the other, the regulation of imports of works of art, not subject to any customs duty⁴⁸, with the obvious aim of favouring the latter and discouraging the former. Furthermore, the regulation of sales within the State⁴⁹, the prohibition of removing objects and furnishings from churches⁵⁰ and the obligation to report finds during archaeological excavations⁵¹. The *Editto Pacca* was extraordinarily innovative because it embraced the concept of the public value of cultural heritage, to be guaranteed in the name of the collective good, and it placed the protection of art objects not in their exclusive aesthetic value, but in their historical and documentary value.

⁴² The edict is none other than Pio VII's chirograph – drafted by Carlo Fea – promulgated the following day by Cardinal Doria Pamphilij, the text of which is edited by A. EMILIANI, *op. cit.*, pp. 86-95. On this measure see F. BOTTARI, F. PIZZICANNELLA, *op. cit.*, pp. 123-125; S. CONDEMI, *op. cit.*, pp. 114-121; G. VOLPE, *op. cit.*, pp. 42-49 and A. MANFREDINI, *op. cit.*, pp. 125-129.

⁴³ For the text of the edict see A. EMILIANI, *op. cit.*, pp. 100-111. On such legislation see F. BOTTARI, F. PIZZICANNELLA, *op. cit.*, pp. 127-128; S. CONDEMI, *op. cit.*, pp. 134-142; G. VOLPE, *op. cit.*, pp. 49-53; M. AINIS, M. FIORILLO, *op. cit.*, pp. 169-170; A. MANFREDINI, *op. cit.*, pp. 129-135.

⁴⁴ *Editto Pacca*, cit., artt. 40-43 and 54-57.

⁴⁵ *Ibid.*, art. 7.

⁴⁶ There was a Central Commission and Auxiliary Commissions in the main cities of the Papal States (*ibid.*, artt. 1-6).

⁴⁷ *Ibid.*, artt. 12-16.

⁴⁸ *Ibid.*, art. 22.

⁴⁹ *Ibid.*, artt. 8 and 11.

⁵⁰ *Ibid.*, artt. 52-53.

⁵¹ *Ibid.*, artt. 25-39, especially art. 33.

To a lesser extent, the other states of the peninsula tried to follow the line taken by the Papal States.

In 1854, in the Grand Duchy of Tuscany, Leopoldo II aligned the safeguarding interventions in the territories he governed with the provisions of the *Editto Pacca*, establishing the prohibition of the removal, destruction or abolition of any art object⁵². These measures, however, did not prevent Pollaiuolo's *Martirio di San Sebastiano* from emigrating to the National Gallery in London in 1857, where it was joined shortly after Piero della Francesca's *Natività*⁵³.

In 1828, in the Duchy of Lucca, Carlo I issued a decree on the maintenance of the city, its conservation and decoration, to make it more beautiful and pleasant. To this end, a special Deputation was set up, called upon to strictly supervise, prescribing the colours to be given to the houses and obliging the owners to repair the plaster, canals and paintwork⁵⁴. What was outlined in Lucca today would be defined as a sort of 'colour plan', aimed at protecting urban decorum.

In the Kingdom of the Two Sicilies, King Ferdinando I took two important measures in 1822. First, he ordered the necessary maintenance and restoration of the areas of Pompei, Ercolaneò and Stabia, dictating precise regulations on archaeological excavations⁵⁵. Then he issued a decree, inspired by the *Editto Pacca*, confirming Joseph Bonaparte's measures, including a ban on the export and movement of ancient or artistic objects without authorisation and a ban on the demolition of ancient buildings. He set up the *Commissione di antichità e belle arti* (Commission of Antiquities and Fine Arts), which was responsible for supervision and control and was charged with selecting the best finds from the excavations to be

⁵² Leopoldo II's Edict of 16 April 1854 is published in F. MARIOTTI, *op. cit.*, p. 260.

⁵³ F. BOTTARI, F. PIZZICANNELLA, *op. cit.*, p. 133.

⁵⁴ C. CAMPANELLA, *op. cit.*, p. 28.

⁵⁵ The decree of 14 May 1822 is published in F. MARIOTTI, *op. cit.*, pp. 271-272.

exhibited at the Royal Museum of Capodimonte⁵⁶. The Borbone king's reason for preserving and exhibiting the finds was the education and the decorum of the nation⁵⁷.

As already mentioned, until the 19th century, the Kingdom of Sardinia had no specific legislation on the protection of historical and artistic heritage. The turning point came with King Carlo Alberto, who in 1832 appointed a *Giunta di Antichità e belle arti* (Board of Antiquities and Fine Arts), based in Turin, to promote research and ensure the preservation of objects recognised as important for artistic and ancient studies⁵⁸. With the *Codice Civile degli Stati di Terraferma* of 1837 and the *Codice Penale Sardo* of 1839 he sketched out an embryonic discipline in defence of monuments and archaeological excavations; in 1841 he issued a number of circulars concerning the conservation of monuments on the island of Sardinia, in particular the *nuraghi*, and with the municipal and provincial law of 1859 he provided for municipal regulations on ornamentation and policing with which to safeguard the architectural and urban decency of towns⁵⁹. Throughout the 19th century, the legislation on protection in the Kingdom of Savoy remained fragmentary: the State exercised no rights over private property and placed no limits or preclusion on exports⁶⁰!

In some cities of the Lombardy-Venetia Kingdom, specific commissions – with different names⁶¹ – were set up with the task of consulting and cataloguing.

⁵⁶ The decree of 13 May 1822 is published *ibid.*, pp. 270-271.

⁵⁷ F. BOTTARI, F. PIZZICANNELLA, *op. cit.*, pp. 133-135 and M. AINIS, M. FIORILLO, *op. cit.*, p. 17.

⁵⁸ The *Regio Brevetto istitutivo of a Giunta d'antichità e belle arti* of 24 November 1832 is published in F. MARIOTTI, *op. cit.*, pp. 307-308.

⁵⁹ C. CAMPANELLA, *op. cit.*, pp. 27-28.

⁶⁰ F. BOTTARI, F. PIZZICANNELLA, *op. cit.*, p. 136.

⁶¹ In Venice the *Commissione per la Conservazione e la custodia degli oggetti d'arte preziosi esistenti nelle chiese e negli edifici pubblici*; in Padova the *Commissione consultiva Conservatrice di Belle Arti e Antichità*; in Vicenza the *Commissione della Conservazione della Cose Patrie*.

The Austrian government felt the need to promote a widespread and systematic protection of monumental heritage, making use of experts, even those not belonging to the state administration. The export ban, which had already been in place during the *Ancien Régime*, was reiterated in 1818⁶²; in 1827 it was replaced by the government's right of pre-emption⁶³. In 1849, King Franz Joseph absolutely forbade in his territory the trade in historical and artistic assets from the museums of Rome and the Vatican, Florence or Venice, as well as their import or export⁶⁴.

In the Duchy of Modena, the *Tariffa daziaria degli stati estensi*, dated 1857, prohibited the removal from the State of «those objects belonging to the fine arts and literature, the loss of which is known to be difficult to repair», providing for the confiscation of the goods in the case of attempted exportation and a fine from 10 to 10,000 Italian lire if the exportation was successful⁶⁵.

Overall, it can be concluded that the general intention of the various governments interested in keeping the historical and artistic heritage under control through the establishment of supervisory bodies with advisory and/or cataloguing functions was first and foremost a practical need for heritage conservation. This was accompanied by the need to manage archaeological finds, works of art and public monuments by adopting forms of constraint based on their conservation, a ban on exports and the granting of licences for interventions and excavations. There was also a need to protect the property of private individuals, removing valuable works from the exclusive discretion of the owners and thus configuring a broader principle of protection of the artistic heritage.

⁶² Sovereign Resolutions of 19 September and 23 December 1818, of which the *Notificazione* (Venice, 10 February 1819) informs us, in F. MARIOTTI, *op. cit.*, pp. 298-299.

⁶³ For the text of this measure of 19 April 1827 see *ibid.*, pp. 299-300.

⁶⁴ *Notificazione* (Vienna, 24 March 1849), *ibid.*, p. 302. On the Lombard-Venetian legislation see F. BOTTARI, F. PIZZICANNELLA, *op. cit.*, p. 136.

⁶⁵ *Tariffa daziaria degli Stati Estensi* (Modena 1857), in F. MARIOTTI, *op. cit.*, pp. 305-306.

Although the intentions were good, there was a lack of adequate commitment to implementation, so that the degradation and dispersion of the historical and artistic heritage, favoured by preponderant economic interests and the widespread insensitivity of the population, did not find resistant barriers during this period.

7. Unitary legislation

After the unification of the Kingdom of Italy, Parliament was reluctant to intervene due to art. 29 of the *Statuto Albertino*, in accordance with 19th century liberal ideology, considered all properties inviolable⁶⁶.

After the conquest of Rome, in an attempt to stop the alienation of the museum and archive collections of patrician families, Royal Decree no. 6030 of 27 November 1870 suspended in the territories of the former Papal State the effectiveness of the provisions of the Italian Civil Code of 1865, that suppressed the fideicommissum⁶⁷. It was an inherited institute of romanistic roots, which forever bound the possessions of a family. Law no. 286 of 28 June 1871 established the indivisibility of art collections between heirs⁶⁸ and Law no. 1461 of 8 July 1883 allowed collections to be sold only to the State or national bodies⁶⁹. For more than 40 years, the regulations inherited from the pre-unification states regarding cultural assets (Law no. 286 of 28 June 1871)⁷⁰ remained in force, and it was

⁶⁶ *Statuto del Regno di Sardegna*, Torino, s.e., 1848, art. 29.

⁶⁷ On the inalienability and indibid.sibility of private art collections through fedecommissum see E. FUSAR POLI, «*La causa della conservazione del bello*». *Modelli teorici e statuti giuridici per il patrimonio storico-artistico italiano nel secondo Ottocento*, Giuffrè, Milano, 2006, pp. 318-342; notes in D. MASTRANGELO, *Dall'Editto Pacca ai decreti modificativi del Codice Urbani. Breve storia della normativa sui beni culturali*, Aracne, Roma, 2011, pp. 15-16.

⁶⁸ Law no. 286, 28 June 1871, art. 4, in F. MARIOTTI, *op. cit.*, p. 189.

⁶⁹ *Ibid.*, art. 1.

⁷⁰ *Ibid.*, art. 5. On the questionable persistence of pre-unification laws in the aftermath of unification see E. FUSAR POLI, *op. cit.*, pp. 209-218.

only at the dawn of the new century with Law no. 185 of the 12 June 1902, *Sulla conservazione dei monumenti e degli oggetti d'antichità e d'arte* (On the conservation of monuments and objects of antiquity and art) – the so-called *Leggi Nasi* – that the discipline was unified throughout the country⁷¹. This legislation – which is deficient in many aspects, so much so that it has been called «legge inutile» (useless law)⁷² – bears witness to the spread of a more profound awareness of the themes of conservation and presents several interesting and topical reasons, which have been recently underlined⁷³.

The main lines of the modern discipline of protection are outlined by the subsequent Law no. 364 of 20 June 1909 *Per le antichità e le belle arti* (For antiquities and fine arts) – the so-called *Legge Rosadi* – and by the implementing regulation of 1913 (R.D. no. 363 of 1913)⁷⁴, which first of all specified the object, i.e. movable

⁷¹ C. LUCHETTI, *L'evoluzione delle normative sulla tutela del patrimonio culturale (la "Legge Nasi" e l'attualità delle sue previsioni)*, in *Giustamm. Rivista di diritto amministrativo*, 15, 2018, p. 2 underlines how this law stemmed from a wide-ranging and animated debate in Parliament between those who supported the free exercise of the prerogatives of private property and those, on the other hand, who upheld the State's duty to protect the nation's cultural heritage in the interest of all. On the process that led to the Nasi Law see E. FUSAR POLI, *op. cit.*, pp. 55-70, who also analyses its contents and limits on pp. 342-354, and A. RAGUSA, *Alle origini dello Stato contemporaneo. Politiche di gestione dei beni culturali e ambientali tra Ottocento e Novecento*, Franco Angeli, Milano, 2011, pp. 120-136.

⁷² R. BALZANI, *Per le antichità e belle arti. La legge n. 364 del 20 giugno 1909 e l'Italia giolittiana*, il Mulino, Bologna, 2003, p. 39.

⁷³ For a careful and thorough investigation of this law see C. LUCHETTI, *op. cit.*, pp. 1-16.

⁷⁴ The text of Law no. 364 of 20 June 1909 and Royal Decree no. 363 of 30 January 1913 *Regolamento per l'esecuzione delle leggi relative alle antichità e belle arti* are published in *Rassegna di Giurisprudenza sulla tutela delle cose d'interesse artistico o storico* (L. 1 giugno 1939, n. 1089), edited by E. CAPACCIOLI, Giuffrè, Milano, 1962, pp. 79-88. Cassese pointed out how this law represents «l'archetipo dello strumentario adottato nella prima fase legislativa: dichiarazione di interesse pubblico; obbligo di conservazione da parte del proprietario; poteri strumentali dell'amministrazione» (S. CASSESE, *I beni culturali sa Bottai a Spadolini*, in ID., *L'amministrazione dello Stato - Saggi*, Giuffrè, Milano, 1976, pp. 154-155). The fine volume by R. BALZANI, *op. cit.*, with a rich appendix of documents is dedicated to this legislation; see also A. RAGUSA, *op. cit.*, pp. 136-143 and G. VOLPE, *op. cit.*, pp. 88-93. Although dated, an exhaustive picture of the discipline *de qua* in the light of

and immovable property of historical, archaeological, palethnological or artistic interest⁷⁵. In order to protect the latter, the regulation of the constraints, now called notification, was envisaged in terms of limiting the rights of individuals, in the name of the public interest and the free exercise of property rights⁷⁶; the discipline of exports, with the provision of the institution of pre-emption for the State, based on the idea that the extension of public ownership of cultural heritage is the best remedy against the risks of tampering or cross-border dispersion of national assets⁷⁷; the establishment of special state bodies with protective tasks⁷⁸; the inventory of monuments and works of historical, artistic and archaeological interest⁷⁹, but also international agreements for the recovery of stolen goods abroad. For the first time, the prevalence of public interest over the private was affirmed⁸⁰.

The fact that the *Legge Rosadi* delimited the object of protection according to a typological criterion was not sufficient to legitimise the intervention regarding the feared demolition of Villa Aldobrandini in Rome and the use of that area for the construction of a large hotel, because the Senate had refused to add to the regulation gardens, forests, landscapes, waters and all those places and natural objects that presented such interest⁸¹. In order to remedy this shortcoming, Law no. 688 of 23 June 1912 was passed, which included the above-mentioned assets among those protected by the previous law⁸². Villa Aldobrandini was saved, and with it many oth-

Law no. 364/1909 is offered by L. PAPPAGLIOLO, *Codice delle antichità e degli oggetti d'arte. Raccolta di leggi, decreti, regolamenti, circolari relativi alla conservazione delle cose di interesse storico-artistico e alla difesa delle bellezze naturali*, I, La Libreria dello Stato, Roma, 1932, pp. 87-190.

⁷⁵ Law no. 364/1909, cit., art. 1.

⁷⁶ *Ibid.*, art. 5.

⁷⁷ *Ibid.*, artt. 8-11.

⁷⁸ *Ibid.*, art. 4.

⁷⁹ *Ibid.*, art. 3.

⁸⁰ This is emphasised by C. CAMPANELLA, *op. cit.*, p. 45.

⁸¹ In this sense F. BOTTARI, F. PIZZICANNELLA, *op. cit.*, pp. 142-146.

⁸² Law no. 688 of 23 June 1912, art. 1, in L. PAPPAGLIOLO, *op. cit.*, pp. 273-274.

ers. This measure gave rise to the legal protection of natural beauty, which was to take on an autonomous character only 10 years later with Law no. 778 of 11 June 1922, *Tutela delle bellezze naturali e degli immobili di particolare interesse storico*, the first law on landscape protection covering the entire national territory⁸³.

The last important piece of legislation on the protection of cultural heritage from a historical point of view dates back to the Fascist Era and it is due to Benito Mussolini, who wanted to turn Rome into the capital of the new Empire. The legislation of late Fascism represented an authentic overall programme of cultural policy⁸⁴. This is the Law of 1 June 1939, no. 1089 *Tutela delle cose d'interesse artistico o storico* (Protection of things of artistic or historical interest)⁸⁵, divided into 8 chapters and 73 articles. The so-called Bottai reform, named after the Italian Minister of National Education Giuseppe Bottai († 1959)⁸⁶, who was responsible for the main preservation provisions of the 20th century: measures of singular wisdom that contrasted with the imposing and distorting architectural and urban interventions on ancient cities during the Fascist period.

This law defined the scope of protection by extending it to include things, whether movable or immovable, that were of artistic, historical, archaeological or ethnographic interest and specified that these should include things of paleontological, prehistoric or primitive civilisation interest; things of numismatic interest; manuscripts, autographs, correspondence, notable documents, incuna-

⁸³ The text of Law no. 778 of 11 June 1922 is published *ibid.*, pp. 407-412. See G. VOLPE, *op. cit.*, p. 93.

⁸⁴ For the quotation see S. CASSESE, *op. cit.*, p. 156.

⁸⁵ Law no. 1089 of 1 June 1939 *Tutela delle cose d'interesse artistico e storico*, published among others by R. TAMIOZZO, *La legislazione dei beni culturali e ambientali*, Giuffrè, Milano, 2002², pp. 287-304.

⁸⁶ On the role played by Giuseppe Bottai in Fascist cultural policy see A. DE GRAND, *Bottai e la cultura fascista*, Laterza, Bari, 1978 and A. RAGUSA, *op. cit.*, pp. 206-221. The pages by G. BOTTAI, *Difesa del patrimonio artistico in tempo di guerra*, in ID., *La politica delle arti - Scritti 1918-1943*, edited by A. MASI, Editalia, Roma, 1992, are fundamental.

bula, books, prints and engravings of a rare and valuable nature; villas, parks and gardens of artistic or historical interest; immovable objects that, because of their reference to political, military, literary, artistic and cultural history, had been recognised as being of particular interest; works of contemporary art, provided that the authors were not living or were at least 50 years old⁸⁷.

In order to protect these assets, the legislation provided a set of instruments, some already known and some original. As for the former, we recall the constraint, a limitation on the freedom of private individuals, who had to submit to precise impositions in relation to the enjoyment of the property⁸⁸; then, the inventory of objects of historical or artistic interest⁸⁹; the prohibition of demolition⁹⁰, the prohibition of alienation of property belonging to the State or to corporate bodies⁹¹ and the prohibition of exportation⁹². On the other hand, there were original provisions prohibiting any use that was not compatible with their historical or artistic character⁹³; the obligation for private individuals to report any transfer⁹⁴ and the provision that accidental finds belonged to the State – and not to the individual – and had to be reported to the competent authority⁹⁵. This established the public monopoly of archaeological research and the fact that finds belonged to the State.

Law no. 1089 is the core of a large body of legislation passed in 1939⁹⁶, including Law no. 1497 *Protezione delle bellezze naturali*

⁸⁷ Law no. 1089/1939, cit., artt. 1-2. V. A. ANZON, *Il regime dei beni culturali nell'ordinamento vigente e nelle prospettive di riforma*, in *Ricerca sui beni culturali*, 1, Grafica Editrice Romana, Roma, 1975, pp. 99-102 and A. RAGUSA, *op. cit.*, p. 124.

⁸⁸ Law no. 1089/1939, cit., art. 3. On the constraint in the Bottai law see A. ANZON, *op. cit.*, pp. 102-106 and R. TAMIOZZO, *op. cit.*, pp. 55-73.

⁸⁹ Law no. 1089/1939, cit., art. 4.

⁹⁰ *Ibid.*, artt. 11-12.

⁹¹ *Ibid.*, art. 24.

⁹² *Ibid.*, art. 35.

⁹³ *Ibid.*, art. 11.

⁹⁴ *Ibid.*, art. 30.

⁹⁵ *Ibid.*, art. 44.

⁹⁶ On the Bottai Laws no. 1089/1939 for things of artistic and historical interest, no. 1497 for scenic beauty, no. 2006 for archives see G. BOTTAI, *Politica fasci-*

(Protection of natural beauty), which provided for territorial landscape plans to protect the so-called overall beauty⁹⁷, and Law no. 823⁹⁸, which reorganised the superintendencies, established at the beginning of the century, into four categories⁹⁹. From the Bottai reform emerged a broad and articulated perspective on the social role of the cultural heritage: the historical, artistic and environmental heritage was considered the centre around which the identity of the Italian people was built and gathered, therefore the State had to be its guarantor, no more and no less than in Roman times¹⁰⁰.

The Bottai laws, in which the concepts and terms of today's protection regulations appear already acquired, were «leggi avanzatissime, le migliori del mondo non solo per la loro epoca, perché nascevano dalla tradizione italiana di tutela che [...] era ed è la più antica e solida del mondo, anche sotto il profilo giuridico»¹⁰¹. They dictated a discipline that has remained substantially unchanged to

sta delle arti, Signorelli, Roma, 1940; F. BOTTARI, F. PIZZICANNELLA, *op. cit.*, pp. 153-163; G. VOLPE, *op. cit.*, pp. 94-96; D. FOLIGNO, *Spunti sistematici sulla legislazione del patrimonio artistico e panoramico*, in *Rivista di diritto pubblico*, s. II, XL, 1948, II, pp. 43-45; R. TAMIOZZO, *op. cit.*, pp. 1-49; *Rassegna di Giurisprudenza*, cit.; A. RAGUSA, *op. cit.*, pp. 221-232; S. CASSESE, *op. cit.*, pp. 153-183; A. ANZON, *op. cit.*, pp. 99-141; C. CAMPANELLA, *op. cit.*, p. 49-51 and M. AINIS, M. FIORILLO, *op. cit.*, pp. 174-176.

⁹⁷ L. SEVERI, *La vigente legge sulla protezione delle bellezze naturali e il suo regolamento d'esecuzione*, in *Il diritto dei beni pubblici*, XVI, 1940, pp. 371-387.

⁹⁸ On this law C. CAMPANELLA, *op. cit.*, pp. 52-53 and A. RAGUSA, *op. cit.*, pp. 228-232.

⁹⁹ The reform provided for a Superintendency dedicated to antiquities; a Superintendency dedicated to monuments; a Superintendency dedicated to galleries, museums, and indidual works of art from the Middle Ages and the modern age; and a mixed Superintendency dedicated to monuments and galleries.

¹⁰⁰ On this point, I refer to the essay by I. PONTORIERO in this same volume.

¹⁰¹ «highly advanced laws, the best in the world not only for their age, because they were born from the Italian tradition of protection which [...] was and is the oldest and most solid in the world, also from a legal point of view». The quotation is from S. SETTIS, *Italia S.p.a. l'assalto al patrimonio culturale*, Einaudi, Torino, 2002, p. 30.

this day, having been formally repealed in 1999, but confirmed in content by the recent code¹⁰².

The *Codice Civile del Regno d'Italia* of 1942 confirmed the binding legislation, as it recognises the owner's right to enjoy and dispose of things in a full and exclusive manner, but only «entro i limiti e con l'osservanza degli obblighi stabiliti dall'ordinamento giuridico»¹⁰³ and defines as state property – and, therefore, inalienable – «gli immobili riconosciuti d'interesse storico, archeologico e artistico» and «le raccolte dei musei, delle pinacoteche, degli archivi e delle biblioteche», if they belong to the State or local authorities¹⁰⁴. Art. 826 includes in the non-disposable heritage «le cose di interesse storico, archeologico, paletnologico, paleontologico e artistico, da chiunque e in qualunque modo ritrovate nel sottosuolo»¹⁰⁵.

The World War II inflicted on the Italian heritage, but not only on it, destruction and plundering of unprecedented severity by the Germans led, at international level, to the birth of UNESCO and the establishment of the *Monuments Men*. The UNESCO convention was established in Paris on 4 November 1946, based on the awareness that political and economic agreements were not enough to build a lasting peace and that this peace had to be based on education, science, culture and cooperation between nations¹⁰⁶. The

¹⁰² *Decreto legislativo 29 ottobre 1999, n. 490 – Testo unico delle disposizioni legislative in materia di beni culturali e ambientali, a norma dell'art. 1 della legge 8 ottobre 1997, n. 352, art. 166, in Gazzetta Ufficiale, 27 dicembre 1999, n. 302, s.o. n. 229.*

¹⁰³ «within the limits and with the observance of the obligations established by the legal system» (*Codice civile. Testo approvato con R.D. 16 marzo 1942 n. 262, Istituto poligrafico e zecca dello Stato, Roma, 1942, art. 832*).

¹⁰⁴ *Ibid.*, artt. 822 and 824, «properties recognised as being of historical, archaeological and artistic interest and collections of museums, picture galleries, archives and libraries».

¹⁰⁵ «things of historical, archaeological, palethnological, paleontological and artistic interest, by whomever and howsoever found underground» (*ibid.*, art. 826). On this point see D. MASTRANGELO, *op. cit.*, pp. 20-21).

¹⁰⁶ W.H.C. LAVES, C.A. THOMSON, *Unesco: Purpose, Progress, Prospects*, Indian University Press, Bloomington, 1957; R.P. DROIT, *Humanity in the Making: Overview of the Intellectual History of Unesco 1945–2005*, UNESCO, 2005; J. TOYE, R. TOYE, *One World, Two Cultures? Alfred Zimmern, Julian Huxley and the*

Monuments Men were a special corps of soldiers – without any military experience – recruited from among museum directors, librarians, art scholars and architects. This unique militia was commissioned by American President F.D. Roosevelt during the World War II to rescue European works of art threatened by bombing and to recover those stolen by the Nazis¹⁰⁷.

This unfortunate theft was remedied by the 1947 Paris Peace Treaty, which required the return of assets taken by the Germans after 1943. Thanks to the good relations with the American authorities, the Italian delegate, Rodolfo Siviero, succeeded in obtaining the extension of the rule to goods taken before that date. A special delegation was set up in 1953 with the task of identifying the looted works and recovering them. This commission – led by Siviero – remained in operation until 1987 and in 1995 the extensive and valuable list of stolen works was published¹⁰⁸.

8. *Discipline in the second half of the 20th century*

With the establishment of the Republic, the protection of cultural heritage became a constitutional value. Art. 9 of the Italian Constitution, in fact, states that «la Repubblica promuove lo sviluppo della cultura e della ricerca scientifica. Tutela il paesaggio e

Ideological Origins of UNESCO, in *History*, 2010, pp. 308-331 and P. DUEDAHL, *A History of UNESCO: Global Actions and Impacts*, Palgrave Macmillan, Basingstoke, 2016.

¹⁰⁷ The valuable work of the Monuments men is outlined in R.M EDSEL's book, *Monuments men. Eroi alleati, ladri nazisti e la più grande caccia al Tesoro della storia*, Sperling & Kupfler, Milano, 2013, from which the famous film is taken. To the specific activity carried out in Italy is dedicated the subsequent R.M EDSEL, *Monuments men. Missione Italia*, Sperling & Kupfler, Milano, 2014.

¹⁰⁸ On Rodolfo Siviero and the recovery of stolen works during World War II see G. VOLPE, *op. cit.*, pp. 96-109 and F. BOTTARI, F. PIZZICANNELLA, *op. cit.*, pp. 164-166.

il patrimonio storico artistico della Nazione»¹⁰⁹. The environmental and historical-artistic heritage is declared to be an indispensable tool for the cultural development of citizens¹¹⁰. This protection concerns two objects, of which the constituent felt the analogy and connection: the landscape and the historical-artistic heritage, both of which ideally, but legally relevant, belong to the Italian nation.

In post-war Italy, which had to be rebuilt and industrialised, however, this constitutional norm appeared to be an excess of zeal on matters considered marginal and the attention paid to such delicate and urgent issues came to a halt.

A turning point came with the establishment (by Law no. 310 of 26 April 1964) of the *Commissione di indagine per la tutela e la valorizzazione delle cose di interesse storico, archeologico, artistico e del paesaggio* (Commission of Inquiry for the protection and enhancement of things of historical, archaeological, artistic and landscape interest) – the so-called Franceschini Commission –, composed of experts, which two years later published the results of its work in three volumes entitled *Per la salvezza dei beni culturali in Italia*, in which it denounced the dramatic condition of Italy's cultural and environmental heritage, outlined an organic reform project and recommended some urgent interventions¹¹¹. The term 'cultural heri-

¹⁰⁹ «The Republic promotes the development of culture and scientific research. It protects the landscape and the historical and artistic heritage of the Nation» (*Costituzione della Repubblica Italiana*, Casa editrice stamperia nazionale, Roma, 1948, art. 9).

¹¹⁰ On the constitutionalisation of the protection of cultural heritage, see F. SANTORO PASSARELLI, *I beni della cultura secondo la Costituzione*, in *Studi per il XX anniversario dell'assemblea costituente*, II, Vallecchi, Firenze, 1969, pp. 429-440; F. FRANCESCHINI, *L'impegno della Costituzione Italiana per la salvaguardia dei beni culturali*, in *Studi*, II, cit., pp. 227-241; A. ANZON, *op. cit.*, pp. 93-98 and A. RAGUSA, *op. cit.*, pp. 233-257.

¹¹¹ On the Franceschini Commission and its work see F. CAPUANO, *Sui lavori della Commissione d'indagine prevista dalla legge 26 aprile 1964, n. 310*, in *Annali della pubblica istruzione*, XII, 1966, p. 471 ss.; A. ANZON, *op. cit.*, pp. 150-162; D. MASTRANGELO, *op. cit.*, pp. 24-25; F. BOTTARI, F. PIZZICANNELLA, *op. cit.*, pp. 166-169; M. AINIS, M. FIORILLO, *op. cit.*, pp. 176-177 and A. MANSI, *op. cit.*, p. 23.

tage' was already mentioned in international conventions, starting with the one signed in The Hague in 1954 for the protection of such assets in the event of armed conflict¹¹², but it was the Franceschini Commission that introduced the term into Italian political and legal language, explaining that it referred to any asset that constitutes material evidence of the value of civilisation.

In 1974 – with the Law no. 675 of 14 December – the *Ministero per i beni culturali e ambientali* (Ministry for Cultural and Environmental Heritage) was established – since 1998 the *Ministero per i beni e le attività culturali* (Ministry for Cultural Heritage and Activities) –, which was entrusted with the task of reviewing and updating the legislation of '39, which remained unchanged until then, except for the discipline on the export of works of art, which had meanwhile implemented the agreements on the free movement of goods in the European Community, dropping the previous prohibitions¹¹³.

It was only at the end of the 1970s that Italy began to realise the primary role of cultural and environmental heritage for the development of the national community. At that time, with great delay, the idea that these assets were not simply objects to be preserved or recovered, but resources to be put to good use in a cultural and economic perspective, appreciating their spiritual and material value, came to the fore. Law no. 184 of 6 April 1977 implemented the *Convention on the Protection of the World Cultural and Natural Heritage*, signed in Paris on 23 November 1972. The Convention provides that a special committee, set up at UNESCO, shall draw up and update every two years, on the proposal of the States concerned, a *World Heritage List* and, if necessary, a specific *List of World Heritage in Danger*. For the properties on these lists, the State

¹¹² *Convenzione per la protezione dei Beni Culturali in caso di conflitto armato*, The Hague, 1954.

¹¹³ *Decreto legislativo 20 ottobre 1998*, n. 368, art. 1, in *Gazzetta Ufficiale*, 26 ottobre 1998, n. 250. See F. BOTTARI, F. PIZZICANELLA, *I beni culturali*, cit., p. 173.

may request international assistance and participation in the financing of the necessary work from the *World Heritage Fund*¹¹⁴.

It was only in 1999, 60 years after the Bottai laws, that a reorganisation of all the preservation provisions enacted in the 20th century was finally achieved with the promulgation of the *Testo unico sui beni culturali* (Legislative Decree no. 490/1999), which protected cultural, environmental and landscape assets¹¹⁵. Five years later, the *Testo* paved the way for the first real rethinking of the entire discipline: the *Codice dei beni culturali e del paesaggio*, dated 1st May 2004¹¹⁶.

¹¹⁴ D. MASTRANGELO, *op. cit.*, p. 28.

¹¹⁵ *D. lgs. no. 490/1999*, *cit.*

¹¹⁶ *Decreto Legislativo 22 gennaio 2004, n. 42 – Codice dei beni culturali e del paesaggio, ai sensi dell'articolo 10 della legge 6 luglio 2002, n. 137*, in *Gazzetta Ufficiale*, 24 febbraio 2004, n. 45, s.o. n. 28. The legislator also recently intervened with the Law of 3 March 2022, n. 22 to regulate crimes against Cultural Heritage.

Un'anima per il diritto: andare più in alto

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This open access publication gathers young and senior scholars of the Una Europa Universities to celebrate the first fifty years of the UNESCO 1972 World Heritage Convention (WHC). Financed as a Seed Funding Grant of the Una Europa Alliance, the WHC@50 project offers an interdisciplinary analysis of the WHC, the jewel of the UNESCO Conventions. By introducing the (r)evolutionary concept of World Heritage and involving the International Community as a whole in the preservation, valorization and transmission to future generations of cultural and natural sites and landscapes of outstanding universal value, the WHC is indeed one of the major treaty instruments of our age. We therefore hope, through the final results of the WHC@50 research cooperation activity, to contribute to the dissemination of the WHC knowledge, attracting the attention of academics, politicians, experts, officials and civil society, and contributing to the debate for strengthening the 1972 UNESCO Convention, suggesting solutions to overcome the problematic aspects of its implementation and activities.

Elisa Baroncini, Bert Demarsin, Ana Gemma López Martín, Raquel Regueiro Dubra, Ruxandra-Iulia Stoica



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