Chapter 4
Influencing Factors on Cultural Good and Heritage

Abstract This chapter focuses on influencing factors which are able to shape values. History and laws are impressive influencing factors. Prior to unification of Italy, the call to public *utilitas* of Cultural Good has always influenced political and juridical debate since the XVIII century first phase of making cultural heritage protection and conservation law. A reasoned historic normative *excursus*, from 1462 Pope Pius II's Bull "Cum alman nostram Urbem" to current Cultural Heritage and Landscape Code, passes in review the historical and current Italian set of rules which represent the evolution of conservation and preservation principles in a country which is universally recognized as the hosting place of the 40% of the world cultural heritage.

4.1 The Importance of History in the Formation of Values

The reference to the public *utilitas* of the Cultural Good has always influenced the juridical and political debate since the first laws on conservation, even before the unification of Italy (1860).

Since this founding moment, the theories and rules based on public *utilitas* built the regulatory system of the cultural goods up to the present day.

At the beginning of the eighteenth century, in the pre-unification States, the need to safeguard and conserve the cultural heritage was felt in the field of the sale, exportation, and also restoration of the cultural goods. The Papal State was the first at legislating in the matter of the cultural goods. With the enacting of the Edicts and Papal bulls, the official documents of the State of the Church, it was attempted to limit both the purloining of works of art and the vandalisms on the ancient monuments, symbol of the civilization that should not be lost but protected. The Papal State was the major holder of a huge cultural heritage which included monuments of great value and many collections, that in turn belonged mostly to the major noble Roman families. To this regard, the most important edict, which afterward will be the basis for the edicts enacted in the other Italian States, is the Pacca Edict, named after the cardinal camerlengo who wrote it in 1820. The Pacca Edict will not be

A. M. Colavitti, *Urban Heritage Management*, The Urban Book Series,
https://doi.org/10.1007/978-3-319-72338-9_4

legislatively modified until 1903, when the Nasi Law and subsequently the Rosadi Law, will be issued. These two laws introduce important modifications and innovations in the discipline of the cultural heritage management.

The analysis of the regulatory *excursus* concerning the conservation of the historical-artistic heritage during the Liberal era is preliminary to the examination of the main aspects of the discipline of the works of art, and was regulated by the Law 1089 of 1939, while the individual natural good and the natural goods as a whole were provided for, still in 1939, by the Law 1497.

The decisive turning point in the field of the legislation of the cultural goods will happen in 1939 when Luigi Bottai, that was required, as Minister for Education, to handle the cultural goods, enacted the two famous laws named after him, namely the Law 1089 of 1939 on the goods of historic and artistic interest and the Law 1497 of 1939 on the natural beauties. These laws will represent the basis for the whole later legislation with its further national and regional modifications. In 1974 the Ministry for the Cultural and Environmental Assets was founded to gather in a single Department a discipline that was once under the separated jurisdiction of the Department for Public Education and the Department for the Environment.

In the early 1980s, the Bassanini Reform emphasized more the economic potentiality, than the role of protection, conservation, and enhancement of the goods.

At the end of the 1990s and precisely in 1998, the Ministry for the Cultural and Environmental Assets took the name of Ministry for Cultural Activities and Cultural Goods as a summary of its redefinition and reformation.

The terminology used to define a cultural good changed as well. The concept of cultural good was in fact extended to the network of the economic activities it can be linked to as an economic good itself, but also to the concepts of protection, conservation and, above all, enhancement. The reform generated the Testo Unico (Consolidating Statute) of the Cultural Goods, Legislative Decree of 29 October 1999 n. 490, that is the gathering of the whole body of regulations on the Cultural Goods enacted until then. The Consolidating Statute became active on January 1st, 2000.

On January 22nd 2004, the Department for the Cultural Heritage decided to enact the Code of the Cultural and Landscape Heritage, thereby reforming the Title V of the Constitution on the delegation to the Regions (Legislative Decree no. 42). The Code substantially renewed the field of the conservation of the cultural goods as opposed to the Consolidating Statute.

4.2 The Legislation in the Pre-unification States

4.2.1 The Papal State

The firsts organic measures are in the Bull "Cum almam nostram urbem" (1462) by Pope Pius II and in Sistus IV's Bull "Cum provvida" (1474), that, in the sixteenth and especially in the seventeenth century will be followed by a more complex

regulation in order to avoid the dispersion due to the collections of the Roman noble families. The same intention also under the papacy of Nicholas V (1447–1455) and then under the one of Pius II (1458–1464).

In 1462, Pope Pius II with the Bull "Cum almam nostram urbem" issued the excommunication, imprisonment, and confiscation of the goods for those who demolished, destroyed, or damaged the ancient public buildings or the remains of them, in Rome and in the surrounding territory, even if they were situated in private properties, without the "licence" of the Roman Pontiff.

In 1474, Pope Sixtus IV issued the bull "Cum provvida" that, on the contrary, tried to prevent the churches from being stripped of the marbles and ancient embellishments.

An important action of conservation was carried out, all around the city, by Pope Julius II Della Rovere (1503–1513) in order to bring back prestige to what has become just the shadow of Rome. The "Renovatio urbis" became with him the "Restauratio Romae".

In 1515, Pope Leo X (1513–1521) established, in Rome, the office of "Prefetto delle antichità" (Prefect of Antiquities) and charged Raphael with supervising the city as he already did in 1513.

Raphael, together with Antonio da Sangallo, was appointed in 1513 "Maestro delle strade" (Master of the roads) and as such he renovated Piazza del Popolo, via Leonina (today via di Ripetta) and via Lata (today via del Corso). Thanks to his new office, Raphael could intervene on those who wanted to "dig" in Rome and enforce the prohibition of destroying the epigraphs.

In 1545, Pope Paul III (1534–1549), inaugurated the Council of Trent, which had a crucial role also in the liturgical language of the sacred art. He also opened a strong and deep season of conservation and entrusted it, through the "Brief" of November 28, 1534, to Latino Giovenale Manetti, commissioner of antiquities, with the duty of keeping under check the conservation of the works of art and avoiding their exportation from Rome. With the Brief of 1547, he assigned the same duty to Michelangelo who accepted it without compensation.

His appointment as superintendent continued also under Pope Julius III (1550–1555), under whom the jubilee of 1550 was instituted, and the "alma Roma" was celebrated also thanks to the archeological discoveries, the development of the artistic collections, and the support given to the artistic production of the counter-reformation period.

Michelangelo's work continues under the papacy of Paul IV (1555–1559) and under Pius IV (1559–1565), this last one being the Pope who closed the Council of Trent.

Saint Pius V (1566–1572), under whose pontificate the Battle of Lepanto (1571) was won against the Turkish Fleet, and who enforced the Norme Tridentine (the new rules issued by the Council of Trent in the Catholic Liturgy), favored an important series of conservation policies.

Through the Bull "Quae publicae utilia" of 1574, the Pius V defined the duty of the conservation of the ancient monuments to protect the public usefulness and decorum.

At the end of the sixteenth century, Pope Gregory XIII (1572–1585), reforms the Roman Statutes in which the competence of the conservators of the Roman people, in guarding the ancient monuments, was reiterated (1580).

The beginning of the seventeenth century saw the election, as superintendent of Rome, of another great artist, who changed, once again, the look of the city with his admirable works. Gian Lorenzo Bernini succeeded to Raphael and Michelangelo as superintendent of Rome under Pope Urban VIII (1623–1644).

Under Urbano VIII's pontificate, the saying "quod non fecerunt barbari fecerunt Barberini" (what the barbarians did not do, Barberini did) was coined, because the Pope, in order to complete the Fabric of Saint Peter, did not disdain to strip great monuments of marbles and bronzes. However, under him, in order to contrast the vandalism and prevent the action of conservation from being a mere inactive surveillance, the need to issue written rules for the protection of the ancient monuments, fully emerged.

The cardinal Ippolito Aldobrandini in fact, in 1624, enacted an edict, rightly named Aldobrandini, which banned "the extraction of marble or metal statues, antiques or similes" and the exportation of ancient and artistic items without the licence of the Pope and it also introduced the mandatory notification of the goods discovered during excavation activities. The transgressors were punished with a fine.

The Aldobrandini edict is considered as the foundation of the regulation on conservation, because, while it introduced a list of the items to conserve, it extended the juridical action to "the works both ancient and modern" and gave also the necessary attention to the private collections of antiquities which in turn, led to the museum collections.

The legislation of the eighteenth century still contained, in the field of protection, rules for the discipline of the conservation of the cultural goods, their circulation within the State and the exportation abroad of the findings of the archeological discoveries.

In 1686 was enacted the edict of CardinalAltieri: the rigor already present in the former edict is reinforced. Coffers, boats, and other items were thoroughly searched to make sure there were no thefts and robberies, given the spreading of illegal excavations, alienations, and exportations of the goods and the falsification of the paintings. Furthermore, the Pope instituted a specific training for the people responsible for arts and crafts, which, with the exercise of drawing and manual practice, could guarantee correct interventions of conservation, and even help the development of artistic skills. To this end, he restored the monumental complex of San Michele a Ripa Grande which, from hospice for old and outcast people, became a productive art factory and a professional and spiritual training workshop for young artist and expert restorers.

Under Pope Clement XI (1700–1721), the activity of conservation went on. Clemens XI created the Lapidary Gallery and enlarged the Vatican Library, the Quirinal, the Capitoline Hill, and the Vatican's museum collections.

Cardinal Spinola enacted two important edicts, the "De proibizione sopra l'estrattore di statue di marmo e metallo, figure, antichità e simili" (1701) and the "Editto sopra le pitture, stucchi, mosaici ed altre antichità, che si trovano nelle cave, iscrizioni antiche, scritture e libri manoscritti" (1704) which were suggested by the Commissioner of Antiquities Francesco Bartoli.

Bartoli is particularly interesting because extended the conservation also to "libri manoscritti et altre scritture tanto pubbliche quanto private" (books, manuscripts, and other writings both public and private).

The importance of such an edict relied on the emphasis given to the bibliographic and archivist heritage which, until that time, had not been considered at all as a conservation tool, and because it recognized the public interest of documents important for both sacred and profane history.

Therefore, new regulations were enacted, such as the one which established the need to sketch the objects that could not be rescued, and copy and preserve the inscriptions; moreover, rules for the conservation of books and archives, that, until then had only benefitted of measures separated from the general laws on conservation, were added as well.

In the Spinola edict, as well as in Cardinal Valenti's edict of 1750, the theme of the conservation of the relics of the past as a document of the sacred and profane history, was interestingly highlighted in order to promote the "stima ella magnificenza e splendore (di Roma) presso le nazioni straniere" (estimation of Rome's magnificence and fame amongst foreigners) and to incite the "forestieri di portarsialla medesima città per vederle ed ammirarle" (foreigners to go to Rome in order to see and admire its beauties).

Under Pope Benedict XIII (1724–1730) the ecclesiastical archives were reorganized, the University of Camerino was created and another edict on conservation was enacted: the cardinal Albani's edict of 1726. He was a highly educated man who promoted a great collection of statues which became the core of the new Capitoline museum, and he also promoted the building of the Mansion-Museum in the via Salaria and the Library of Palazzo Mattei.

In 1726, the edict "Sopra li scarpellini, segatori di marmi, cavatori ed altri" forbid to saw, make others saw, break or spoil the columns or parts of them, if they can be reassembled in a whole column. Not less important were the edicts of 1726 and 1733 "Sull'estrazione delle statue di marmo o metallo, pitture, antichità e simili" that attempted to make the punishment of the violation of the rules of conservation effective, by intensifying the controls and promoting the reports of violations to the public authorities.

The summa of the legislation of the eighteenth century on the conservation in the Papal State was redacted under the pontificate of Benedict XIV (1740–1758), with the edict (January 5, 1750) of the Cardinal Silvio Valenti Gonzaga, Secretary of State and Camerlengo since 1747. The edict stated the "Proibizione della estrazione delle statue di marmo o metallo, pitture, antichità o simili," and meant to organize and innovate the subject of the monuments safeguard, that as we have mentioned, had been the target of many interventions between the seventeenth and eighteenth century.

Its most relevant contribution was the institution of selectmen for painting, sculptures and antiques, which had to identify the goods designed for exportation in collaboration with the commissioner of antiquities and elaborate the measures for the destination of the seized objects to the Capitoline Museums. Furthermore, the edict considered the relics of the past as useful testimonies of the sacred and profane history, and a way to attract to Rome foreign scholars and art enthusiasts. It also clearly illustrated the neoclassical concept that sees in the ancient work the "norm" of study for the artists. The list of the goods to save was abandoned and the conservation was extended to all the "opere illustri di scultura e pittura specialmente quelle che si rendono più stimabili e rare per la loro antichità" (notable works of sculpture and painting, especially the most appreciable and rare for their antiquity) whereas the exportation of ancient paintings and noteworthy artists, even if recently deceased, was forbidden. The maintenance and conservation of the collections became mandatory and the punishments for violators were extended also to the clergy.

In Rome, the body in charge of the conservation of the "cultural goods" is the "Commissario sopra le antichità e le cave" (Commissioner for the antiques and quarries), who had to work under the authority of the Apostolic Camera, namely the cardinal camerlengo and which, since the Valenti edict of 1750 was assisted by three selectmen/assessors: one for painting, one for sculpture, and the last one for cameos, medals, engravings and every other kind of antiques.

The legislative frame of the Papal State was completed and extended to all the aspects of the cultural heritage: from the conservation to the circulation and trade of the goods, to the rules to apply for the management of all the findings and discoveries.

The protected properties were both immovable and movable: the preservation of the first ones included the monumental buildings and the other buildings of historical and archeological interest. The movable properties were analytically listed in the Camerlenghi Edict; such edict was a merely exemplificative one, to the extent that a further law stated that all the "opere di qualsivoglia cosa, scolpite e dipinte, intagliate, commesse e lavorate, o in altro modo fatte" (works of any kind, carved or painted, engraved, made or operated in any possible way), even in case were not included in the list, were still protected. The properties were conserved as such, with no need of notification.

In 1764 Pope Clement XIII (1758–1769) appointed Winckelmann (1717–1768) as superintendent of antiquities for Rome; he arrived in Italy in 1755 to study the monuments of the Roman antiquity; in Rome, he met Mengs (1728–1779) the renowned theoretician of the Neoclassicism. Prior to that, Mengs had held a position as superintendent of the Roman antiquities while Bartolomeo Cavaceppi worked in the field of the restoration (1716–1799). A friend of Winckelmann and Mengs', Cavaceppi performed interesting restorations that were thought not scientifically correct. Precisely in this regard, the discourses and reflections by Winckelmann and Mengs on the theory of restoration are particularly interesting: the first one highlighted the value of the restoration as to understand the ancient work, but he also maintained that it is better to enjoy "un bel frammento di mezza

testa, di un piede, di una mano così com'è" (a great fragment of half head, foot, or hand as it is) instead of the enjoy the same item completed by modern integrations.

Meanwhile, in 1796, with the armistice of Bologna, Napoleon, who had invaded Italy, forced the Papal State to send to France a 100 works of art and 500 manuscripts.

Such request was exacerbated in 1797 with the Treaty of Tolentino.

Pope Pius VI (1775–1799) ordered some casts of the sculptures that had to be inexorably stolen to France from April to June 1798 where they arrived and were carried in triumph from the Field of Mars to the Louvre, then called "Musée Napoleon". The pillage went on also during the following years, particularly between 1798 and 1803 and from 1811 to 1814.

In 1802, with the edict of Cardinal Doria Pamphili Landi, Antonio Canova (famous artist of the nineteenth century and friend of his predecessor Winckelmann) was appointed as Inspector General of the Antiquities and the Fine Arts, at the request of Pope Pius VII (1800–1823). With such an appointment, the concept of management of the conservation radically changed.

The juridical rules started to be applied to every ancient monument regardless its state of conservation and it included the prohibition of fusing together or reusing the metal goods. A sum of money was also allocated to acquire works of art which constituted the collection of the so-called Museum Chiaramonti. Moreover, the private citizens were obliged to declare the goods they owned, and the exportation of such goods was forbidden.

In 1814, in this cultural and historical context of devastating events which totally upset the European political scenario under the aegis of the triumphant Napoleon, the first Treaty of Paris was stipulated and the cardinal Consalvi dared request the restitution of the pieces purloined from Rome and other cities of the Papal State and sent to France.

In 1815, after the defeat of Napoleon at Waterloo, the cardinal delegated the new Inspector General of the Antiquities and the Fine Arts, Canova, to go to Paris and retrieve the stolen goods. However, his mission was opposed by both Louis XVIII and Talleyrand, who intended to scrupulously abide by the Treaty of Tolentino.

Nevertheless, the support of Metternich allowed Canova to succeed in his mission and the art pieces returned to Rome in January 1816, although 39 of them were kept in Paris to appease the French government. Because of these events, Pope Pius VII, who understood the vulnerability of the cultural heritage, promoted an even wider and more precise legislation.

4.2.2 The Pacca Edict

In 1820, one of the most important edicts in the history of the legislation for conservation was issued, the Pacca Edict, named after Cardinal Pacca, Camerlengo of the Holy Catholic Church; the regulations were enacted in 1821.

The new norm went far beyond the simple enumeration of the goods that until then had been prevalent in the laws on conservation, but, starting from accurately cataloging the goods located in public and private buildings, instituted an automatic governmental restriction on the fruition of these goods, and even regulated the discipline of the excavations, with the extension of the State right of preemption and conservation to what will be called minor arts. The Pacca Edict represented a turning point for the notification of the goods: in fact, with such regulation, only the "notified" goods are safeguarded.

The Pacca edict had a very wide protectionist character, that did not consist only in the prohibition of exportation and damage or removal of the items destined to the public embellishment, but it contemplated also a form of systematic cataloging of the enormous historical-artistic papal endowment. Furthermore, the Institute of the fideicommissum, through which the household properties could be frozen, was established, in other words, all the properties, included the cultural goods, were forcibly assigned to the firstborn of the family in order to avoid their dispersion.

In addition, the Pacca edict repossessed the libraries and the archive heritage, even though the Spinola edict of 1704 had opted for a global conservation of the whole historical and artistic heritage which included also these categories of goods.

Furthermore, the Papal State applied the principle according to which the archeological material was subjected to the "sovereign right of regalia" and for this reason the excavations had to be granted a "licence" or rules to follow during the rescue operations to avoid damages to the archeological remains; the archeologists had to exert the highest caution in handling the sites of excavation; part of the recovered items was entrusted to the Apostolic Chamber.

The Commissioner of Antiquities exerted the vigilance; he had to be immediately informed of possible new findings to be able to examine them right away and give directions for their conservation. Moreover, he had to draw a detailed picture of the items that could not be saved.

The remains could not be sold before the commissioner had inspected them and the experts had assessed which ones had to become State property.

It must be also noted that, for the Papal State, the conservation of the ancient or not ancient monuments and works of art was a hugely problematic issue, because of a large number of items to handle and the financial crisis the Papal State went through in the nineteenth century.

4.2.3 The Protection on a Regional Level

One of the first States that understood the importance of a legislation to safeguard the cultural heritage was the Great Duchy of Tuscany, clearly under the impulse of the laws issued by the Papal State.

In 1571, a law against the removal of the emblems and inscriptions in the ancient palaces was enacted; again, in 1602 and 1603 two additional laws on the control of the exportation of the "good paintings", once limited to the so-called old State and

then extended to Siena and to the rest of the Medici family's dominion, were issued. However, such laws were limited to the paintings, with the absolute prohibition of exportation for the pictures included in a short list of deceased Italian painters. In the eighteenth century, the "rediscovery of the ancient" that prompted such a legislation, acquired a structurally modern awareness.

In 1744, the Great Duchy of Tuscany dealt with the safeguard of the Etruscan excavations in Volterra through the creation of a special deputation having the task of "pigliare distinta memoria delle antichità ritrovate" (taking precise note of the antiques found), in the attempt to avoid frauds that could compromise the great esteem the studies of the Etruscan characters had reached in Tuscany and abroad "siano commesse delle fraudi in pregiudizio della stima ben grande che hanno acquistato in Toscana e fuori gli studi dei caratteri etruschi").

In 1754 a law, textually referring to the prescriptions of the Valenti edict, was enacted for the safeguard of the "public decorum" of Florence and of the other cities and "places" of the State through the conservation of the "opere illustri e stimabili per le loro antichità e rarità" (illustrious works valuable for their antiquity and rarity). Such a law extended the protection to several categories of movable goods which were listed in accordance with the model of the Valenti edict and to all the "altre opere e cose rare" (other works and rare items).

In 1777, when the Lorena dynasty was established as the new ruler of Tuscany, the archives were opened to the scholars and in 1778 the diplomatic archive was created: this archive was an institution founded to specifically conserve, for the first time, "the ancient documents" that could foster erudition and bring enlightenment to the understanding of history "importanti lumi che… possono apportare… all'erudizione e alla storia").

In 1780 Pietro Leopoldo of Tuscany, deferential to the free-trader ideals, liberalized the market of the cultural goods, but the export ban remained.

In Florence, the duties of the safeguard of the monuments were entrusted to the Academies of Fine Arts.

In 1784, the crisis of the Academy of the Arts of Drawing of Florence and its subsequent suppression caused the transferring of the competences, that since 1781 belonged to the director of the Uffizi, to the Grand Duchy government. The Duchy decided to enact sanctions for whoever damaged the art pieces, as the Papal State had done.

In Tuscany, with the rescripts of 1749 and 1750 and with the Law of 1762, it was established that the objects found in the excavations belonged in principle to the "regio fisco" (royal treasury). The archeological research had to be "licensed" in this case as well. The researcher or the discoverer and the owner of the land, in case of an accidental discovery, had the right to a reward of one-third of the items found, or to a sum of money if the findings could be divided or if they were so important to be exhibited in the Grand Duchy gallery.

All the described laws, inspired by the cultural sensitiveness of the Popes, were in turn imitated by the Teresian legislation, in the Lombardy-Veneto State.

In this state a measure was issued in 1754, then reiterated in 1818, in which the exportation of objects of artistic and cultural value was banned.

The duties of safeguard, especially in Parma as it had been in Florence, were entrusted to the Academies of Fine Arts. The Academies, which had been created to preserve all the works of art from the pillaging of the first half of the eighteenth century, were assigned to protect only the "great works of painting and sculpture". Starting from 1745 the export of all the artworks which contributed to the decorum and embellishment of the State was banned, but later such a prohibition was substituted by the right of preemption in favor of the kingdom.

With the discovery of Herculaneum and Pompeii, Naples drew a great deal of attention from all over Europe. Therefore, the need to adequate the legislation of the Kingdom of Naples to the level of the other European States became rapidly urgent.

The idea was that not just the foreigners could take advantage of these goods but also "per intelligenza dell'antichità e per rischiaramento dell'istoria e della cronologia e per perfezione di molte arti" (thanks to the knowledge of the antiquity and the enlightenment of history and chronology and to the perfection of many arts), as stated in Charles III of Spain's dispatch of July 24th, 1755, everyone had to be able to learn and benefit from it.

A list of protected goods became also necessary, as had happened with the edicts of the Papal State, therefore the "ancient paintings" and the ancient "instruments" were added to the lists.

This is the reason why Charles III of Spain, in April 1773, presented a notification to the Tribunal of the Inquisition of the State to ask for the creation of a specific legislation of conservation.

In the Kingdom of Naples, just like in the Papal State from which the legislation derives, three experts with skills similar to those of the experts operating in the Roman State, were put in charge of the conservation actions.

Even the rules on the exportation referred to the Papal state regulations.

Some specific rules about the excavations were also added in order to protect the Vesuvian cities uncovered in those years.

A particular and strict control was applied to the excavations of Pompeii and Herculaneum where it was necessary to prevent the pillaging of the pieces considered particularly important.

The private excavations were required to obtain a "royal permission" but the control, entrusted to often incompetent officials, often allowed violations.

The Sicilian regulations of 1778 and 1790 are very important for the qualities of the antiquities of the Demone and di Noto Valleys, and included a public funding for their realization and the appointment, under a superintendent (the famous archeologist Prince of Biscari), of an "expert architect, with the task of visiting the antiquities and observing the needs" and of a "painter of views" with the task of painting "all the existing monuments".

Furthermore, for the first time in 1822, the activity of excavation was disciplined.

On the contrary, the Piedmont region showed a total lack of interest for the whole issue of the rescue of the antiquities. This happened because of the liberalistic spirit permeating the Albertine Statute (Statuto Albertino), which became the

basis of the constitutional laws of the Kingdom of Italy, and attributed a sacred value to the Property Right, without admitting any restriction or coercion.

The Statute was based on the sacred nature of the Property Right; in this scenario, the violation of the property right as well was considered as a very serious crime. Anyway, the Statute did not contemplate any legislative prohibitions. This aspect of the Piedmont legislation created a real conflict with the laws of the other Italian States, after the unification of Italy.

4.3 The Legislation in the Modern Age

The regulations on the "cultural goods" of the ancient Italian States had to be revisited after the Italian unification in 1860; this re-elaboration work continued until 1903.

In 1861 all the legislations of the pre-unitary States, including the Papal State, were repealed.

The Kingdom of Italy, rather than a totally new State, was an institutional reality founded by the Kingdom of Savoy, and based on the Albertine Statute which became "perpetual and irrevocable fundamental law of the Monarchy."

Furthermore, after the Italian unification, the divisions and misunderstandings between State and Church deepened, especially after the adoption of the laws of suppression of the religious orders and congregations and the devolution to the State of goods, museums, and libraries (1866). Further Conflicts were caused by the abolition of the theological faculties in the State Universities, the seizure of the properties of the religious orders and the suppression of the Casa generalizia dei Gesuiti (Motherhouse of the Jesuits) in 1870.

Regarding the conservation, the first years of the unified Kingdom of Italy were characterized by a strong tendency toward privatizations, in line with the Albertine Statute which ratified, as said before, the inviolability of the private property.

The Parliament abolished the fideicommissum bonds and issued a regulation of conservation. Those same laws though, in the Papal State, by obliging the owner to keep the collections intact and by ratifying their inalienability in order to guarantee their conservation through the hereditary transfer had assured the maintenance of precious cultural heritage.

Moreover, the subsequent extension of the Rattazzi Law to the whole territory frustrated the possibility of decentralization and the chance of conservation of those antiquities that, although minor, could represent better than others the relationship between the good and the territory it came from.

4.3.1 Law n. 2359 of June 25th, 1865

The first State Law (Law n. 2359) was issued on June 25th, 1865 and concerned the "expropriation of the monuments dilapidated for the owners neglect." This law recognized the urgent need of measures for the cataloging, restoration, conservation, and vigilance on the enforcement of the laws that had been proposed to the Parliament by scholars such as Giovanni Battista Cavalcaselle.

Other issues were the institution of public authorities responsible for the management of the antiquities and how to staff them. The Public Education Ministry was designated to manage the cultural goods and the "Commissions of Fine Arts" of the Regions were entrusted by the Ministry with the duties of:

1. Cataloging
2. Conservation
3. Archeological research
4. Exportation

Finally, a Central Board for the Fine Arts was also created as a subdepartment in the Public Education Ministry.

4.3.2 Law n. 286 of June 28th, 1871

This law guaranteed (art. 5) control over the antiquities until the issuing of a new organic discipline on the subject and repealed the ban of the right of the Fideicummissum, establishing that the following items could not be taken outside of the country:

- Libraries;
- Collections;
- Galleries

Only the artistic goods could be exported. This rule had a great success and the Kingdom of Italy became the owner of seven fideicommissary collections. The eighth collection was purchased by the Provincia di Roma (Province of Rome) but it became anyway a public property.

The cultural good was acquired for a cultural use only if it could be defined as public.

4.3.3 The Historical Right

The last government of the Historical Right (Destra Storica) had Ruggero Bonghi (1846–1895) as Minister for the Public Education. During his tenure, from

September 1874 to March 1876, Bonghi was able to give an important contribution to the spreading of the Italian culture at home and abroad.

Bonghi's first decision was to organize services for conservation and enhancement of the cultural heritage, especially after the suppression of the religious institutes.

With the Royal Decree n. 2440 of March 28th, 1875, he instituted the Direzione generale degli Scavi e dei Musei (Directorate General of Excavations and Museums) as part of the Education Department and the technical agencies that later became the archeological superintendence.

Another institution promoted by Bonghi was the Giunta di Archeologia e Belle Arti (Committee of Archaeology and Fine Arts), that worked as a central coordinator of five peripheral commissions, of which three were continentals and two for the islands. This centralistic structure, according to Minister Bonghi, better satisfied the scientific and administrative needs of the whole national territory.

Bonghi was also the founder of the Victor Emmanuel II Central National Library, the Pigorini Ethnographic Museum, and promoted an organic bill in which conservation and enhancement, public and private interest, the cultural good and its context, could be legally combined.

4.3.4 The Historical Left

The rise to power of the Historical Left (Sinistra Storica) was not followed by the endorsement of any parliamentary proposal on the historical-artistic heritage, but, on the contrary, a law that allowed the alienations of the already fideicommissary galleries and libraries was enacted.

However, in 1881, the Minister for Education Guido Baccelli transformed the Directorate General of Excavations and Museums into Directorate General of Antiquities and Fine Arts.

He also transformed the Committee of Archaeology and Fine Arts into the Permanent Commission of Fine Arts and reformed the role of the conservation personnel by creating a personnel for archeology and museums, cataloging and conservation. He also founded, at regional level, 12 Commissioners for the Antiquities and Fine Arts, that were assisted by additional Technical Councils.

In the same period, Giuseppe Fiorelli, director general of the antiquities and fine arts, understanding the importance of the pre-unitary regulations, discussed in a book the "Leggi, decreti, ordinanze e provvedimenti generali emanati dai cessati governi d'Italia per la conservazione dei monumenti e la esportazione delle opere d'arte" (General laws, executives orders, ordinances, provisions issued by the pre-unification states of Italy, regarding the safeguard of monuments and the export of artworks).

This collection, reprinted in 1901 in appendix to the bill of the Minister for Education Nicolò Gallo, had the singular fortune to appear twice, in 1892 and in 1978 under the name of other proponents, and it has been at the basis of many studies on the

subject until about 1980–1985. However, it had several limits: it was written with practical purposes only and did not include all the regulations issued on the subject but just an anthology of them, without detailing the sources of the cited texts.

Later on, the Minister Pasquale Villari restored the Committee of Archaeology and Fine Arts, substituted the Directorate General with a Technical Inspectorate and promoted the Law 7 February 1892 no. 31 according to which the abuses and violations of the heritage were prosecuted.

In 1894, when Guido Baccelli returned to office, restored the Directorate General of Antiquities and Fine Arts and the system of coordination and control entrusted to the central structure of the Regional Commissioners.

Therefore, the century came to an end without an organic and complete legislation.

4.4 The Legislation in the Contemporary Age

The juridical analysis concerning the discipline of the historical-artistic and archeological heritage is based on the Albertine Statute, expression of the most classical liberal (i.e., the Italian liberal thought) tradition, which in art. 29, paragraph 1 establishes: "Property of all kinds whatsoever shall be inviolable" (Greco 1980), therefore confirming the absolute disposal of the patrimony for the owners, without mentioning anything about the classification of the objects of art for their conservation. In fact, the national legislator was not very concerned about protecting the artistic heritage.

Only in 1865, the first hints of regulation on the vigilance and conservation of the things of art started appearing; in particular, the Law n. 2359 of June 25th, 1865, in art. 83 established that: "Every historical monument or national antiquity of immovable kind, the preservation of which is in danger as long as it belongs to any group or private citizen, can be acquired by the State, Provinces or Municipalities through the process of expropriation for reasons of public utility" (Mattaliano 1975).

However, only in 1870, with the Seizure of Rome, the problem of the conservation of the national artistic heritage rose with all its urgency.

The extension of the Italian Laws and, in particular, of the Civil Code of 1865, to all the former papal territories, allowed the abolition of the practice of the fideicommissum institute, that had had the purpose of entrusting the cultural goods in the hand of a family and of its heirs (Torrente, Schlesinger 1990), and was the only surviving restriction, at that time, for the conservation of the museums and galleries of Rome.

The need to assure protection to the national historical-artistic axis collided with the ideological radicalism of those which, by supporting the necessary abolition of the fideicommissum, embraced Carlo Armellini's thinking. Armellini, in fact, claimed in a speech to the Papal Parliament: "The freedom bell that rang for the people, should have rung also for the objects" (Parpagliolo 1934).

The Law no. 276 of June 28th, 1871, partially solved the problem, because it re-established the pre-unitary laws regarding the conservation of the cultural heritage, although the fideicommissum had been already abolished.

It was only with the bill "Correnti" (Cesare Correnti) of 1872, that the Chambers started a series of studies which led, in 1902, to the first organic laws on the Italian artistic patrimony.

That long and tormented parliamentary procedure led to the realization of the "Nasi" Law (June 12, 1902, no. 185), named after the then Minister for Education, which highlighted: "…the resistances had to be overcome, for the influences on the private properties which were occurring in appliance with the regulation on the items of historical and artistic interest…" (Giannini 1975). The legislator of 1902 had the duty of clarifying the relationships between private property and things of art that were also object of conservation, and therefore stated that the first organic and unitary discipline for the conservation of the things of artistic and historical interest, did not intend to modify the concept of propriety set by the common right, but to establish the necessary rules to prevent the owners of the goods from using them as they wished, causing a damage to themselves and a harm to the nation.

The "Nasi" Law established, as a condition for the individuation of the movable and immovable things susceptible of protection, the declaration of antiquity and value; the Law of 1902 referred to works of great value to indicate the conserved goods but it did not establish the same protection for the ancient excavation objects of great archeological importance, but that also lacked "value" as defined in the law.

Another incongruence was the different juridical coverage of the inside and of the outside of an antique building, when parts of it could be modified without a previous authorization of the Minister for Education when they involved the internal part of the building and were not accessible to the public sight.

The ideal overcoming and completion of the defects of the 1902 law arrived with the Law n. 364 of June 20th, 1909 (the Rosadi Law). It "represented a solid bulwark against which the traps set to the National historical and artistic heritage mostly died down" (Mattaliano 1975). The "Rosadi" Law, in art. 1 abolished the principle set by the "Nasi" Law, according to which the protected goods had to be necessarily registered in an appropriate official catalog and defined "valuable", and declared that the "…immovable and movable things of historical-artistic and archaeological interest" (Mattaliano, 1975) had to be subjected to its regulations.

The Law of 1909, in articles 12, 13, and 14, established a protective net to safeguard the buildings of great artistic value, not only directly, by prohibiting interventions of demolition or restoration devoid of the necessary authorization by the Ministry, but also indirectly, by mandating the public notification of projects of new public works, which could, even barely, affect the value of the monument. The "Rosadi" Law, enacted under the government of Giovanni Giolitti, represented a moment of undoubted legislative progress, on the conservation of the national historical-artistic heritage.

For the first time, the law gave enough relevance to the "… architectural good as a public good, a value in itself, to be lived and enjoyed, and to the protection of these goods by the Government instead of deferring them to the interests of the private

owners" (Spadolini 1976). Afterwards emerged the flaws whichcharacterized the legislative production ofGiolitti Administration, especially when theowner's rights were not so much protectedagainst the procedure of public interestdeclaration of a given good to safeguard. However, this issue does not lessen the importance of the Laws of 1902 and 1909, that set the general criteria and allowed the abandon of the practice "of individual provisions for this or that good, in a time that largely favored an idea of property free from restrictions" (Cassese 1976).

The legislative revolution of Giolitti's government, in the first postwar period, resulted in the constitution of an autonomous Undersecretary Bureau of Fine Arts and Antiquities, that was later suppressed (after only 4 years of activity) by the fascist regime and separated from the Public Education Ministry, in the conviction that "… school culture and non school culture must have a separated administration, coordinated in the final goals but distinct in the operative tools" (Greco 1980).

Regarding the protection of the landscape, the first provisions of landscape conservation were strongly influenced by the study of the geographic sciences (Galasso 1964). Therefore, the prevailing of a merely descriptive notion of landscape, greatly affected the character of the safeguard discipline.

Coherently with such vision, in the period between the two world wars, the policy of conservation and restoration was re-launched and led to the enacting of several special laws, namely, the Law n. 688 of June 23rd, 1912, on the protection of the natural beauties and the Law n. 788 of June 11th, 1922, on the panoramic beauties.

The first of the two laws "added" the landscape issue to the previous legislation, in particular, to the measures of the Law 364/1909, that were extended also to villas, parks, and gardens of historical and artistic interest. This addition clearly denoted the lack of a law regulating the safeguard of the landscape heritage, in the Italian legislative body of that time.

Nevertheless, some normative texts of the 1920s should be seen as an attempt to integrally preserve the "landscape features" of the protected good, and they deserve to be mentioned, among the conservation measures of the fascist era, as a first organizational definition of what today we would call "protected natural areas" of the entire national territory.

They were: the Royal Decree n. 1584 of December 3rd, 1922, institutive of the Gran Paradiso National Park and the Law n. 1511 of July 12th, 1923, institutive of the National Park of Abruzzo, that set as its 1st and founding article the goal of conserving the natural beauties.

Such measures were followed by others equally oriented toward the establishment of protected natural areas, in particular the law institutive of the National Park of Circeo (Law n. 285, of January 25th, 1934,) and the law institutive of the Stelvio National Park (Law n. 740 of April 24th, 1935), which promoted, besides merely conservative measures for the landscape good, also hotel industry and a global touristic development in the territory of the park.

From the analysis of the "pre-constitution" legislation in the sector of the landscape, emerges the creation of provisions concerning the forms of social–economic development of the protected areas, with specific reference to the values

of the tourism and of the collective use of the landscape. Such indications were understood and absorbed by the provision of the Law n. 1497/39, on the protection of the natural beauties, with which, at least according to the intention of the law-makers, the necessity of landscape safeguarding prevailed, with a more strict aesthetic-impressionistic view of the landscape itself, namely a perception of landscape intended "…exclusively under the profile of the natural frameworks that they (the landscape values) realize…" (Sandulli 1967).

With this premise, we can appreciate the conceptually related nature of the Law of 1922 and of 1939.

Moreover, the Law n. 788 of June 11th, 1922 regulated, for the first time, the landscape and the panorama landscapes protection.

The law was elaborated in a time in which the attention to the problems concerning the landscape was not particularly developed. In fact, the conservation was conceived then as a set of rules highlighting "the peculiar characteristics of the territory in which the people live and from which, as from an ever fresh source, the human soul draws inspiration of actions and thoughts."[1] Therefore, despite the undoubted innovations introduced by the Law 778/22, the directives remained the same as the ones of the Law n. 364 of June 20th, 1909 (Martini 1979),[2] for the antiquities and fine arts.

Only the Law 1089/39 (the "Bottai" Law, by Giuseppe Bottai), although indirectly, managed to partially protect what it called "panoramic beauties" (Martini 1979).[3] In fact, the Law of 1922 did not distinguish the relative competences of the Department of the Public Works and of the Department of the Public Education with reference to the landscape conservation. This measure was later accomplished by the Law 1497/39; the Law 788/22 would rather reinforce the mandatory distances between the natural beauties protected by the law and the new constructions (Mattaliano 1975).[4]

[1]Cfr. the bill n. 204 "Per la tutela delle bellezze panoramiche e degli immobili di interesse artistico", then law n. 778 of 1922, that the law n. 1497 of 1939 is based on, presented to the Senate of the Kingdom of Italy on September 25th, 1920, during the XXV legislature, by the then Minister for Public Education, Benedetto Croce.

[2]Art. 4 of the law 788/22 repeats the same formula of art. 14 of the law of 1909, amended by art. 3 of the aforementioned law n. 688/12, with regard to the faculty of the governmental authority of imposing distances, measures and other rules necessary in case of buildings, reconstructions and actuations of land use plans, in order to avoid a damage to the state of full enjoyment of the panoramic beauties, caused by the new works".

[3]"The formulation of article 21 of the law 1089/39 is wider on the protection to grant to the protected buildings, as it aims at avoiding that the perspective and light are damaged and that the conditions of environment and decorum are altered."

[4]"The natural beauty or the landscape beauty cannot be altered or damaged by values and especially by new constructions built outside the perimeter of the bound immovable properties. It has been necessary to introduce in the bill a special provision in order to avoid the impediment to the enjoyment of the natural and panoramic beauties, the obstruction of the view, the alteration of the perspective, and also to avoid that new works can elevate themselves as a curtain in front of the beautiful landscape scene or bring in it a off-key note".

Only with the Royal Decree of the Law 1497/39 an organic re-elaboration of this issue was finally developed, with the goal of keeping the look of the protected landscapes unchanged, because of their unique natural beauty; nevertheless, the owners' authority to alienate the goods was not limited, but only the use of such goods, had to be kept under control by the public authorities.

The effort made by the late fascist legislator should be considered critical for the study of the mechanisms of conservation of the artistic and landscape goods, because "… it represented an authentic global program of cultural policy" (Cassese 1976). In this complex of legislative and organizational reforms, the Law n. 1089 of June 1st, 1939, was particularly important: it considered the things of art as the principal cultural goods, but also the landscape beauties and the archives, that were respectively regulated by the Law n. 1497 of June 29th, 1939, and by the Law n. 2006 of December 22nd, 1939.

The issue of the conservation of the things of artistic and historical interest was, essentially, exemplified in the Law n. 1089/39 and its following modifications: the art. 1 of this law, mandated in fact, that "the immovable and movable things of artistic, historical, archeological and ethnographic interest" were all subjected to these regulations. The law included also paleontology items and primitive civilizations remain, objects of numismatic interest, as well as manuscripts, cartographies, important documents, rare and precious books, villas, parks, and gardens of historical interest.

The definition of the safeguarded good contained in the first part of art. 1 was intentionally left open, because "the lists must be considered as merely exemplificative of particular goods included in the general category" (Grisolia 1952).

This complex evolution of the management of the cultural goods led the Italian legislators to avoid a static definition of the goods in need of conservation, and, on the contrary, put at the center of the law the intrinsic historical-artistic value of the good examined (Law n. 1089/39).

The category of the protected goods had to be open, because of the existence, as a unique classificatory criterion, of a recognizable interest of the good itself, which is "the result of a necessarily historicized evaluation, meaning a judgment that changes according to the historical events" (Alibrandi 1988).

Therefore, the norm established by the Law n. 1089/39, did not concern only the goods recognizable for their intrinsic historical-artistic value, but, coherently with the open formula of art. 1, the art. 2, extended the protection also to buildings without artistic value, but recognized "… of important interest for their reference to the political, military, literary, artistic and cultural history" (Anzon 1975).

Moreover, not only the single goods, but also the series of goods that, singularly considered, would not have an exceptional artistic value, could be covered by the government protection.

The legislator established a protection network also for the goods that are important, not as such, but because they are linked to a momentous social–political scenario, and can be construed as the material testimony of a civilization (Cassese 1976), necessary for its enjoyment by the community.

The legislative protection of the national cultural heritage, strongly wanted by Bottai, was completed by the Law 1497/39, concerning the protection of the natural beauties that, as previously mentioned, was the natural completion of the proliferation of the special laws issued in the first decade of the fascist period.

The protection assured to the natural beauties by the Bottai Law and by the whole complex of the laws promulgated before the writing of the Italian Constitution (1947), was not exhaustive and was explicitly repealed by the art. 166 Legislative Decree n. 490 of October 25th, 1999.

The remarkable public interest became the necessary condition for the conservation of the cultural goods, as asserted by the decree of the Minister for Education, which instituted special provincial commissions having the task of writing detailed lists of the panoramic beauties.

The provision of the art. 10 of the Law 1497/39 is illuminating: the provincial commissions have decision power over panoramic beauties considered individually and globally, through the compilation of a single list, or more supplementary lists. Such list is transmitted by the Superintendent to the Ministry, and from the Ministry to the interested Municipalities, the provincial associations of professionals and artists, farmers, and industrialists.

4.4.1 The Nasi Law

The Nasi Law (June 12th, 1902) extended the safeguard for only 1 year on the part concerning the exportations.

This problem was tackled by the following Law n. 242 of June 27th, 1903 and subsequently by the Rosadi Law of 1909.

The law still had an elitist and authoritarian outlook and mandated the inclusion in the Lists of immovable and movable goods, belonging to private and not private subjects, that had to declare the transfer of property within 1 year from the promulgation of the law.

The Directorate General of Antiquities and Fine Arts started the publication of the Lists, but only completed a list of the monumental buildings of great value.

4.4.2 Regulations of the Nasi and Rosadi Laws

With the Royal Decree n. 431 of July 17th, 1904, the Nasi Law was issued as a complex of 418 articles. For Italy, it was the first organic regulation in the field of the conservation of the antiquities and works of art, although in its enforcement was still inadequate for the legally prescriptive and exclusive character of the Lists that, being incomplete, left out some important goods and did not show effective control measures that were often too ambiguous, particularly to handle safeguard and conservation issues of peculiar private interests.

The Law of 1902, although widely insufficient, represented the qualifying moment for the catalog of the art pieces.

The Law of 1909, on the contrary, by focusing on the notification as a fundamental tool of conservation, disciplined the restorations, the excavations and the exportations of the cultural goods and clearly stated the preemption right of the public authorities and the inalienability of the goods of historical and artistic interest belonging to the State.

Furthermore, the law had new administrative features that allowed the respect for the private interests which should not be trampled on by the public institutions.

Overall the Nasi and the Rosadi Laws were still imprecise and precarious, but they formed the platform for the regulations of the safeguard discipline, which ended up clarifying their effects.

On June 27th, 1903, the Law n. 242, concerning the exportation, was also enacted in order to manage the growing need for rigor in the protection of the heritage.

The Law n. 364 of June 20th, 1909, (Rosadi Law), gave a more concrete indication of the cultural value of the heritage and of the ethical–juridical need to safeguard it. The law included 188 articles, enacted by the Royal Decree on 30 January 1913 n. 363.

They instituted the mandatory notification of the historical-artistic and archeological relevance of the good, and substituted the Lists with the goal to subject the goods to the regime of conservation; moreover the articles established the inalienability of the items belonging to the State or to public bodies, considered the right of preemption to be exercised on the private goods and widened the sphere of government protective intervention, specifying ways and terms of it, especially in the field of the archeological research.

In 1911 the Directorate of Antiquities and Fine Arts published 11 volumes of Lists of the monumental buildings, clarifying that they were not exhaustive and that the action of conservation could be exercised also on the goods not included in such lists.

The same year the Public Records Office Regulations were enacted, with the Royal Decree n. 1163 of October 2nd, 1911, by the Ministry of Interior the Archives depended on.

In 1912, the Law n. 688 of June 23rd, extended the regulations of the Law n. 362 of 1909 to villas, parks, and gardens with the limitation of their historical-artistic character.

After the First World War the Italian artistic heritage was in a very bad condition.

In the postwar atmosphere, after the bill proposed by Benedetto Croce, the Law n. 778 of June 11th, 1922, was issued to introduce in the Italian system the juridical protection for the panoramic beauties and re-affirme Gentile's concept of "beauty of nature".

4.4.3 The Legislation of 1936

In 1936 a very important season for the discipline of the conservation was inaugurated.

That year, Giuseppe Bottai became Minister for Public Education, position he held until 1943.

He enacted many measures to complete and sharpen this discipline, also thanks to the collaboration of leading scholars such as Carlo Giulio Argan and Giovanni Nencioni.

When he had been Governor of Rome, in 1935, he meant to make "Rome as beautiful as during Augustus' time" and had planned the Universal Exposition of 1942, that was never inaugurated because of the war.

In 1936, he was appointed Minister and in the Department of Education he developed a wide program both for education and art with an intense propaganda activity which led to measures and official notifications.

The notification n. 11998 of July 28th, 1938, about the cataloging, was very important.

In 1938, Bottai also founded the Institute for the Pathology of the book, thereby supporting the laboratories of restoration and the public libraries.

But it is in 1939 that he started the specific program on art and conservation.

With the Law n. 2006 of December 22nd, 1939, he defined the new organization for the Public Records Office; he instituted the Special Superintendence for Modern and Contemporary Art in the homonymous National Gallery (Galleria Nazionale d'Arte Moderna e Contemporanea, GNAM); he founded the journal "Le Arti", which became the official magazine of the ministry; he inaugurated the Central Institute for the Restoration and he promoted and oversaw the approval of the Laws of 1939, the Laws that are named after him (Bottai Laws) and precisely the n. 1089 of 06//01/1939, containing 73 articles, and the Law n. 1497 of 06/29/1939, with 19 articles, which reiterated the interest in the protection of the artistic and naturalistic heritage.

Years before, the Croce Law had defined for the first time the concept of "beauty of nature".

In the Bottai Laws, the same "beauty of nature", was interpreted differently. Some of the most important scholars of the time such as Roberto Longhi collaborated with Bottai, particularly for the definition of the methods of cataloging of the heritage.

4.4.4 The Law n. 1089 of June 1st, 1939

This law concerned the protection of the items having an artistic or historical value and it was applied to a great deal of goods: moveable and immoveable properties with artistic, historical, archeological, or ethnographic value; properties related to

paleontology, prehistory, and primitive civilizations; those having numismatic interest, manuscripts, autographs, correspondence, notable documents and artifacts, books, printed materials, and recordings considered rare or valuable as well as villas, parks, and gardens of artistic or historical interest. On the contrary, the works of living authors or works younger than 50-years old did not need to conform to this regulation.

The law also introduced many innovations, such as the protection of the immoveable properties of particular interest, due to their connection to the political, military, and cultural history in general; the prohibition to disperse the collections; the duty, for those who held or possessed any moveable or immoveable property, of obtaining the approval of the competent authority for any work they intended to perform on their property; the application of the rules of the so-called areas of respect; the right of expropriation for reasons of public interest; the ban of exportation if it caused a serious damage to the heritage; the regulation of the exportation and of the archeological discoveries; the need of consulting with the National Council on Education, Sciences, and Arts in cases of dubious findings, attributions of authorship, legislation interpretation etc.

A regulation of implementation was also added, but it was never signed by Mussolini because of the fall of the fascism on July 25th, 1943.

The Law 1089/39 art. 8 also introduced measures concerning "the items belonging to religious bodies", that widened the agreement of the Concordat between State and Catholic Church, the Lateran Treaty of 1929, that had mentioned the "ecclesiastical property" as a distinct patrimony.

The Article 8 of the Law 1089/39 concerned exactly the measures that regulated the ecclesiastic properties, that the Administration would apply, after an agreement with the religious authority ensured that the needs of worship were met.

The norm intended, first of all, to verify that the goods were actually directed to the worship, and it referred to the dedication or benediction of the good in compliance with the canon law and, second, to establish whether or not the "sacred item" was an asset of the Church.

The discipline of the Concordat also included the goods having a concrete liturgical and cultural interest and those used to transmit historical and religious memories that represented elements of continuity of the religious experience for the believers. These two concepts have been subsequently adopted by the article 19 of the Consolidating Statute of 2000.

The discipline of the ecclesiastic cultural heritage of religious interest or, as defined in the past, the discipline of the things belonging to the ecclesiastic bodies, showed, as main intent of the State, from the Concordat to the contemporary laws, a disregard for a model of conservation based on coercive instruments and the definition of the procedures negotiated with the Church to adapt the conservation of the ecclesiastic heritage to the worship needs.

After the Reform of the Concordat in 1984, the Italian Government instituted a fund for the buildings of worship and decreed to take charge of their conservation, restoration, safeguard, and enhancement.

4.4.5 Law n. 1497 of June 29th, 1939

This Law concerned two kinds of goods: precisely the *individual beauties*, immoveable goods of particular beauty such as villas, parks, or gardens and the *group beauties*, complexes of special aesthetic value and panoramic beauties.

More specifically, the law protected: immovable properties of great natural beauty or geological peculiarity; villas, gardens, parks standing out for their uncommon beauty; groups of real estate properties having a distinct aesthetic and traditional value; panoramic beauties considered as natural paintings; viewpoints (belvedere) from which the public can enjoy the view of those beauties.

Furthermore, the law established the rules for: the compilation of the lists of the goods to protect; the institution of the apposite provincial committee; the measure of notification and its effects; the exercise of protection by the State and the duties of the privates and of the public bodies; the sanctions and especially the elaboration of territorial plans.

The Royal Decree n. 1375 June 3rd, 1940, was enacted through a series of sub-regulations.

These sub-regulations were under the coordination of the Provincial Committee for the safeguard of the natural beauties, presided by the Superintendent.

The Committee was in charge of proposing to the Ministry the area to protect through a legal restriction or bond of use.

The simple introduction of the bond gave rise to further limitations: every modification of the territory had to obtain the proper authorization from the competent superintendence; in case of non observance of the prescriptions of the Superintendence, the law enforced administrative and criminal sanctions such as suspension of the works, demolition, prosecution for the crime of destruction or alteration of the natural beauties.

The regulations of 1939 were meant to allow a more agile postwar reconstruction and their action went through two important moments: the application of the restrictions and the declaration of great interest which highlighted a new concept: from the individual interest to the interest of the whole community.

The Government had always intervened in a limited way, because it had basically settled on the old idea of mere restriction of use of the cultural good, which did not allow at the same time the possible development of the good itself.

Therefore, the monuments safeguard was based on a clear authoritarianism, centered in the monocratic technical role of the Superintendent, to whom the verification of compatibility of the interventions on the protected goods or on the protected areas was exclusively entrusted, although not always managed in the most consistent way.

Inspired by Gentile's idealism and Croce's aesthetics, the legislator had an aesthetic notion of "things of artistic, historical and archaeological interest", expressed in the concept of "natural beauty" of the Law n. 1497/39.

Essential instrument of the safeguard was, therefore, the restriction or bond that was not exactly a ban of building but it was a severe limit which was not associated to any form compensation for the loss of the *ius aedificandi*.

The law entrusted the Superintendence, that was already in charge of the control of the territory and of the things of artistic interest, with active tasks of control on a third part which substantially reduced the role of this institution.

The Regions, in turn, were entrusted with the drafting of the Territorial Landscape Plans, instituted by the Law 1497/39, on which the Law n. 431 of 1985, (Galasso Law, by Giuseppe Galasso) was later based, and that incontrovertibly enforced its regulations on the whole national territory included the regions under special statute.

The Law 1497/39 also acted on the decentralization of the power toward the Regions and entrusted them with the management of the use of the soil of their competence, and with the planning of the landscape through the regional landscape plans. The implementation of these plans allowed the Regions, through several subdelegation laws, to entrust, in turn, the Municipalities with the duty of assessing the works to be done on the protected landscape, and their compatibility with the regional landscape planning.

The rules enacted in the Laws of 1939 were elevated to the dignity of the National Constitution with the art. 9 of the Italian Constitution in which the Republic recognized among its fundamental duties the diffusion of the culture and the safeguard of the artistic, historical, archeological, and landscape heritage of the Nation.

The article 9 of the Constitution is also linked to article 33 which states that "art and science must be free from restrictions and teaching them is equally free" and to article 117 which gives the competence of the museums and libraries to the local municipalities.

In the art. 9, the expression used is "heritage of the Nation", thereby overcoming the particularistic vision of the 1939 legislator, as the expression "heritage" seems to be far wider than the term "things". The use of the word "nation" allowed the Central Government to absolutely reserve to itself the protection of the monuments and landscape.

However, today the Regions are allowed to establish the rules of the government of their territory; therefore, the specific fields of competence of State and Regions, after the issuing of the Code of 2004, is particularly controversial.

4.4.6 The Discipline of Protection of the Laws of 1939

The discipline that regulated the Laws of protection of 1939 was, as we already mentioned, focused on the "items of artistic, historical and archaeological interest."

The 1939 discipline and subsequently the discipline of the Consolidating Statute of 2000 are centered on the term "interest" that is assessed by a technical body, the Superintendence.

The instrument through which such assessment is expressed and acquires a juridical value is the Notification, issued by the Ministry as a result of the proposal put forward by the Superintendence. Therefore, the Notification interprets the role of the Superintendence as preeminent with respect to the role of the private citizen, owner of the cultural goods.

The Law 1089 states that the Republic owns everything (in the case of Sicily, for example, which is a region under special statute, to the Region), namely, the cultural goods cannot be subtracted from the public enjoyment and belong to the so-called unavailable heritage.

The movable goods can become available only in exceptional cases.

The properties owned by Provinces, Townships, Ecclesiastical bodies, and recognized associations are still subjected to the Law 1089/39, but do not need to be notified to the public authorities, although they must be declared and published in specific lists which allow public protection.

When a good attracts interest via notification or because it belongs to a qualified subject, the following main juridical consequences ensue:

- the inalienability of the items belonging to the State or to other Territorial bodies (Regions, Provinces, Townships);
- the inalienability of the good and the preemption in favor of the State in case the good is sold by privates;
- the expropriation of the items belonging to privates, in case of negligence;
- the preventive authorization of the temporary exportation of the item and the ban of its definitive exportation;
- the preventive authorization by the Superintendence for any intervention on the item;
- the indirect restriction/bond which ensures light, perspective, and decoration of the monument;
- the administrative and legal sanctions in case of non compliance (unauthorized search, omitted notification of the accidental finding of ancient and artistic items, stealing of ancient and artistic items, demolition, removal, modification and abusive restoration, removal of frescos, and coats of arms, etc.).

However, this regulation does not include what is probably the most effective duty the private owner should be held accountable for, namely, the ordinary maintenance of the cultural good. Furthermore, the legislation on the incentives for the private owners to provide for the restorations of the goods of artistic and historical interest is not very useful: the Law 1504 of 1961, in fact, established a public contribution for the owner, of only 50% of the incurred costs.

4.4.7 The Franceschini Commission

In 1964, the debate on the Italian cultural and artistic heritage and the problem of the decay and obsolescence of the heritage itself reached a new high.

To find answers to these issues, the Commission Franceschini, (named after his President, Francesco Franceschini), was summoned.

The conclusions of the Commission were collected in three volumes titled "Per la salvezza dei beni culturali" (For the rescue of the cultural goods).

The volumes contained 84 Declarations on which the Commission, that was dissolved in 1966, intended to focus its contribution and proposals.

Some of these Declarations can be summarized in the following key points:

- condition of the archeological excavations;
- degradation of the historical centers and of the natural landscape;
- omissions in the cataloging of the artistic and historical goods;
- condition of the museums.

The Declarations introduced proposals of interventions such as:

- introduction of the duty of maintenance of the private cultural goods by their owners;
- institution of "archaeological reserves;"
- protection also for the urban planning goods with particular reference to the historical centers;
- recourse to the "negative declaration" of bond with which the proposal of protecting the good can be reserved to the private citizen and not only to the public authority;
- systematic cataloging of the cultural goods.

4.4.8 The Papaldo Commission

In 1968 and in 1971, the Franceschini Commission was taken over by the Papaldo Commission; however, while the first one asked for the cultural goods to be managed by an Autonomous Administration subjected to the vigilance of the Ministry for Public Education, the second one proposed the institution of a special Department.

This proposal became law with the Legislative Decree no. 657 of December 14th, 1974.

However, the functions and the organization of the new Department were clarified by the Legislative Decree n. 805 of the President of the Republic (December 3rd, 1975).

In the 1980s, the fierce cultural debate and the need for reorganization of the whole cultural good sector, brought the legislator to consider the cultural goods as an instrument of development of new entrepreneurships.

Hence, a series of public initiatives of strong financial impact were implemented, in the hope of generating new economic resources.

4.4.9 The Galasso Law

Among the legislative responses to these cultural demands, the most interesting is surely the already mentioned Law n. 431 of August 8th, 1985, the Galasso Law.

With this law, a new form of protection for the landscape was introduced, in order to reform the protection described in the Bill 1497/39.

The legislator, aware of the instability of the landscape of the nation and of the need of protecting the "environmental goods" (term which substitutes the obsolete "environmental beauties"), introduced the bond *ope legis*, namely, a legal restriction with no need of proceedings for its implementation, to be applied to a whole series of natural realities, that were not considered on the basis of their aesthetic value, but on their scientific and geographical characteristics such as coasts, rivers, mountains, and others.

Some of these goods were protected by the Ministry through an absolute ban on the building which therefore prevented any modification of the existing arrangement of the territory.

Such bonds can be overcome only when the Regions adopted the Territorial Landscape Plans, directly affecting the territorial planning.

This law was revolutionary also for the way it tried to stimulate, through the introduction of unchangeable bonds, the establishment of the P.T.P.—Piani Territoriali Paesaggistici (Territorial Landscape Plans) by the Regions and it was enforced, under expressed order of the legislator, also in the Regions under a special statute.

Another legislative response to the economic demand on the cultural goods came from the article 15 of the Law 41 of 1986, which allocated conspicuous amounts of money for those initiatives of the Ministry for Cultural Heritage called Cultural "Deposit, or Vein".

The law introduced, also in the terminology, a vision of the cultural good mindful of its economic potential, which can become a necessary condition for any project of conservation and enhancement.

4.4.10 The Facchiano Law

In 1990, the Law 84, (Facchiano Law, by Ferdinando Facchiano) and in 1991, the Law 145, the Ministry continued the cataloging of the cultural heritage, that was promoted as an occupational resource.

4.4.11 The Ronchey Law

In 1993, the Ronchey Law n. 4 (by Alberto Ronchey) was enacted, highlighting the crisis of the bureaucratic model of 1975 because the management of the cultural heritage referred to the new profiles of public function implemented by the Bassanini Reform with the Legislative Decree n. 29 of 1993 that later became the Law n. 127 of 1997, which were actually incompatible with the structure of the Ministry.

Furthermore, this law bestowed administrative and financial autonomy to the Museum Institutes, freeing them from the control of the relative Superintendent.

Moreover, this law represented a crucial step toward the modernization of the museum system, allowing the opening of up-to-date expositive spaces and involving the private enterprises in the management and use of goods and services.

Meanwhile some additional regulations aimed at simplifying the bureaucratic machine, were issued to carry out the decentralization of the ministerial functions concerning the conservation of the landscape (Decree of the President of the Republic n. 616 of 1977), and the delegation, on the urban planning matters, to the ordinary statute Regions and to some special statute Regions as well.

These regulations were based on the Law n. 431 of 1985 on goods of artistic, historical, and archeological interest.

4.4.12 The Reform of the Ministry for Cultural and Environmental Heritage

In 1998, the Bicameral Committee for the reform of the whole cultural goods sector was instituted. When the debate on the level of the ministerial organization was already underway, some measures were introduced on tertiary activities more linked to the cultural goods than to the problems of conservation.

The new Ministry for Cultural Heritage and Activities, founded in October 1998 with the Legislative Decree n. 368, finally gathered the different competences of the cultural sector.

Such decree mandated that the Ministry dealt with:

- protection, management, and enhancement of the cultural and environmental goods, promotion of the cultural activities, with particular reference to the entertainment sector;
- promotion of books, reading, and editorial activities; promotion of the urban planning and architectural culture;
- vigilance on the CONI (The Italian National Olympic Committee) and on the Istituto di credito sportivo (a credit institution).

Furthermore, the Ministry was set to deal with the management of the image and usage rights of the protected goods. Its organization included the distinction between:

- political and administrative direction;
- decentralization and autonomy of the structures;
- efficiency and simplification of the procedures.

The Ministry exercised also functions of political–administrative nature supported by the work of vice ministers, while the management is entrusted to the Central Offices and the Human Resources Directorate General.

With the Regulation of organization, implementing the Legislative Decree 368/96 and the Legislative Decree 300/99, particular importance is given to the new role of the Secretary General, to whom the unity of the administrative action of the Ministry and the elaboration of an annual program of intervention are entrusted.

The Secretary General has also the function of authorizing the foundation of management companies by the Ministry or its participation to legal entities having a key role in the management of the cultural goods.

The organization on a general managerial level of the subdepartment of the Ministry changed: the criteria of specialization of the competences, some previously ignored cultural fields and the new tasks assigned to the Ministry by the institutive decree and to activities of programming with the regional administrations, became more prominent.

The four Central Offices and the Human Resources Directorate General are substituted by ten new general directorates:

- Directorate General for the historical-artistic heritage;
- Directorate General for the architectural goods and for the landscape: the association of these two different sectors underline the marginal role of the protection of the landscape in the new Ministry;
- Directorate General for the architecture and the contemporary art, with the Centre for the documentation and the enhancement of the contemporary arts and the new Museum of photography.
- Directorate General for the archaeological goods;
- Directorate General for the archives;
- Directorate General for the libraries, the cultural institutions and the promotion of books and the reading;

- Directorate General for cinematographic art;
- Directorate General for the live entertainment;
- Directorate General for the copyright and the literary property;
- Directorate General for the personnel and the relationships with the Unions.

On a peripheral level, the roles of the Superintendents are maintained with their control over Museums, Monuments, and Archeological Sites.

The Regional Superintendence has also the duty of coordinating the activity of the Ministry.

- The Central Institutes and other autonomous institutes such as:
- The Central Institute of restoration;
- The Laboratory for the precious stones;
- The Institute for the pathology of the book carries out an important activity of scientific and technological study and research.

Moreover, the Comando Carabinieri per la Tutela del patrimonio culturale (Italian military police for the protection of the cultural heritage) still depends upon the Ministry, with the task of retrieving the works of art illegally taken away from the territory.

The advisory body of the Ministry is the Council for the cultural and environmental goods, articulated in technical-scientific Committees with competence on:

- Archeological goods;
- Demo-ethno-anthropological goods;
- Architectural goods;
- Historical and artistic goods;
- Museums;
- Contemporary art and architecture;
- Landscape goods;
- Book goods;
- High cultural value publishing;
- Cultural institutions;
- Archive goods.

Such organizational profiles are based on the criterion of the specialty, which influences also the discipline of the interventions on the cultural goods.

The interventions on the cultural goods, because of the exceptionality and unrepeatability of a monument or an archeological site, have an exceptional and peculiar nature.

The priorities of the Public Administration in the work of restoration and archeological excavations are, above all, in the need to act with often traditional technologies, in a non destructive way, mindful of the uniqueness of the goods at issue, and not obsessively focused on the transparency of its choices or on the necessity of saving money.

For this reason, the legislator, through a regulation approved with the Decree of the President of the Republic n. 509 of 1978, decided, for the economic expenses of

the Ministry for Cultural and Environmental Goods, the possibility to have a much bigger budget compared to the ordinary one.

Recently a specific regulation of the reorganization of the Ministry for Cultural Heritage and Activities has been added, (art. 1, par. 104, of the Law n. 296 of December 27th, 2006), with the decree n. 233 of the President of the Republic, of November 26th, 2007.

4.4.13 The Legislative Decree n. 490 of October 29th, 1999: The Law of the Consolidating Statute for the Cultural Goods (C. S.)

The Consolidating Statute, in general, is a coordinated collection of the legislative regulations of a certain discipline, issued in the course of time and therefore has the precise aim of organically reorganizing a whole matter to the addressees and legislator's benefit.

After the two fundamental laws of 1939, there had been few legislative contributions in the field of cultural goods.

In 1997, the legislator felt the need of drawing the Consolidating Statute of the regulations on the cultural and environmental goods, to reaffirm the leading role of the Nation State in that sector, fearing that the process of decentralization toward a larger local autonomy could favor irreparable decay and negligence in the management of the cultural and environmental goods.

The Consolidating Statute, enacted in 1999 and aiming essentially at systematizing the rules and principles of 1939, reflected this approach.

However, for a complete reform of the subject, we have had to wait until later interventions.

The Consolidating Statute produced, in the discipline of cultural and environmental goods, a relevant contribution in terms of technical-juridical quality of its regulations.

With the Law n. 50 of 1999, the whole subject of the Consolidating Statutes was reorganized in the following way: C. S. with a code structure, to generally reorganize the subject; Inductive C. S. to only put together the legislative discipline with the regulatory one; Statutory C. S. to give uniformity to the procedures of statutory nature.

During the working groups of the VII Commission of the Chamber of the Representatives, the Government asked and obtained a very wide delegation of power, with the idea that, beside the reform of the global administrative structure of the cultural goods, it was also necessary to emphasize the special character of the cultural sector and the supremacy of the Nation State versus any other concurring subject in the management of it. The goal was to affirm, once and for all, the public interest nature of the protection of the goods. The result was the Legislative Decree n. 352 of October 1997,

The C. S. was drawn and approved by the Council of State, the National Council for cultural goods and the Unified Conference Nation State-Regions; it clearly gave more importance to the exceptionality of the cultural goods discipline than to the general principles of the administrative reform or the specific rules of the reformed Administration of Cultural Goods.

In particular, the Legislative Decree 112/98, introduced a polycentric model of administration of the cultural goods, in which the Nation State reserved its own right to control and guide the most important measures on cultural goods, for instance:

- Restrictions or bonds;
- Expropriations;
- Permissions;
- Exportations;
- Community protection against criminal violations.

This decree contained the principle that assured the enhancement and promotion of the cultural goods and activities, which must be targeted (art. 52) to "improve the access to the goods and the diffusion of the cultural awareness through reproductions, publications, and any other communication medium;" these measures should include "the organization of studies, researches and scientific initiatives… didactic and explicative activities… exhibitions… cultural events… cultural itineraries" through collaborations with "educational institutes… public and private subjects… competent bodies for the tourism… universities and research institutions."

On the contrary, the Legislative Decree 368/98 was focused on the new reorganization of the Department, which envisioned several decentralization and externalization provisions.

Ultimately, the severe limit of the C. S. seems the lack of a coordination with the general administrative reforms underway at that time, as the National Council pointed out: the C. S. was not efficiently focused on the conservation of the cultural goods, but wanted to cover also the delicate theme of the enhancement and enjoyment of them, not to mention other decisive issues, like the relationship with the privates for what concerned the economic management of the goods.

This limit is evident since the first regulation was issued, in which the material interpretation of the cultural good was re-affirmed as the Law 1089/39 mandated, at the expense of the more ambitious Legislative Decree 112/98.

We think though, that a broader concept of cultural good, as a complex of shared values, (as in art. 148, par. 1, letter a, of the Legislative Decree 112/98), would have led also to an unclear definition of the concept of safeguard of the goods, far beyond the limits recognized by the law.

For these reasons, priority was given to the material conservation of the goods as opposed to the enhancement, promotion, and management of them.

In fact, the methodological choice of the legislator of 1999, was to not alter excessively the huge effort of the past lawmakers.

4.4.14 The Legislative Decree n. 490 of 1999

As we mentioned above, the C. S. (Legislative Decree 490/99) contained all the most important laws related to the matter of cultural goods, and was divided into two titles, respectively, dedicated the first to the cultural goods and the second to the environmental goods.

The first aim of the C. S. was the simplification of the applicable rules.

This concept was substantially reiterated, even if a certain discretionary decision room is left to other statutory organisms such as the Constitutional Court, as the art. 9 of the Constitution explicitly affirmed (art. 1 and 138 of the C. S.).

Furthermore, the C. S. accepted

- Application of different general disciplines, the participation of the public, the convergence of the service industry, as the Law 241/90 on the administrative proceeding, the Legislative Decree 29/93 on the organization of the general management, or the Legislative Decree 157/95 on the public contract of services, all stated. However, the Decree did not include three other concepts, that will become the objects of an additional reformation of the sector;
- Decentralization and sharing of functions with Regions and local bodies, (Legislative Decree n. 112 of March 31st, 1998), which deferred to future legislation the exact individuation of the goods and tasks to entrust to the local system;
- Externalization in favor of the privates and other public subjects, (art. 10 of the Legislative Decree n. 368 of October 20th, 1998, and art. 31 of the Law no. 448 of December 1998);
- Organizational structure of the Ministry as by Legislative Decree 368/98 and articles 52–54 of the Legislative Decree n. 300 of July 30th, 1999.

For what concerns the innovations introduced by the C.A., some of the most substantial interventions are:

- Extension of the protection to new goods such as archives, books, and photographic material;
- Equalization of the private non profit institutions to the public ones (art. 5, par. 1) which is critical for the enforcement of the protection acts;
- Insertion of the principle of the bilateral regulation of religious items, through agreements with the Catholic Church and other religious denominations (art. 9);
- Updating of the idea of cultural good of religious interest, that took over the concept of items destined to worship; updating the concept of restoration (art. 34) which embraced the interventions on goods such as books (art. 39);
- Establishment of benefits (state funding) and duties (art. 44) for the private owners or any other owner of cultural goods;
- Simplification of the authorization process for the public works concerning the cultural goods (art. 36);
- Creation of a databank of the cultural goods illegally taken away (art. 83);

- Inclusion of useful principles and institutes belonging to other regulations as the one on the administrative procedure: procedure start-up (art. 7), referring to the public inquiry in the procedure of individuation of the environmental goods (art. 141);
- Democratization of the composition of the Provincial Committee for the protection of the cultural goods (art. 140);
- Clarification of the relationship between territorial landscape plans and general urban development plans, with the corollary of the feasible collaborations between local bodies and Superintendences for the land use plans (art. 150).

The C. S. basically revisited all the discipline of the cultural goods by issuing two main decrees: the Legislative Decree 112/98 and the Legislative Decree 368/98, which instituted the new Ministry for Cultural Heritage and Activities and defined its decentralized organizational system.

These two decrees led to the definition of regulatory models, especially the Regulation of art. 32 of the Law 448/98 on the methods of private management of the cultural heritage and the Regulation on the organization of the Ministry itself.

Very important was also the role played by the Merloni Law on the interventions of restoration or maintenance of the cultural goods, selection of the contractors, and of the methods of intervention.

4.4.15 The Law n. 137, of July 6th, 2002

With this Law, the Parliament intended to reorganize a system that was no longer conformed to the new national and European regulations.

This legislation limited, on the one hand, the role of the Government in some critical areas, such as the obligation to not repeal the current tools for the safeguard of the monuments and the obligation to not "cause further restrictions to the private property;" on the other hand, it also mandated the conceptual codification of the cultural good, individuating some fundamental features such as the new organization of the competences delineated by the Constitution, the harmonization with the new community regulation, the improvement of the effectiveness of the administrative action, the updating of the tools of individuation, and protection of the heritage, the opening to the private business world for management and cooperation (Giannini 1995; Torrente and Schlesinger 1990).

4.4.16 The Code of the Cultural and Landscape Heritage (Law n. 42 of January 22nd, 2004)

On May 1st, 2004, as for the art. 10 of the Law n. 137 of July 6th, 2002, the first Code of the Cultural heritage, composed of 184 articles, was enacted, under the

coordination of the Ministry for the Cultural Goods and Giuliano Urbani holding the position of Minister.

The complexity of the Code caused a great deal of controversy, but was also a decisive step forward in the interpretation of the general meaning of cultural good.

The criticisms were focused on specific innovations in the management and protection of the Italian cultural heritage and were based on the following points:

- The concept of protection was too "generous". The Nation State could invade the competences of the Regions on the enhancement of the goods and of the cultural heritage. The Code did not accept any of the proposals made by the Coordination of the Regions.
- The widening of the concept of "protection of cultural goods", that was assigned to the Nation State through the concepts of "promotion of the conscience" and "knowledge activities", should have been integrated in the "enhancement of cultural goods" that was under the sphere of influence of the Regions. The chronicle of the Code showed an infinite series of criticisms from 2004 to the present, also prompted by the recent additional decrees (decree 157/2006 and decree n. 62 and 63 of March 26th, 2008). The Regions complained that the new Code delegated the majority of the decisional power to the Central government. On the contrary, in the field of the landscape, the Code maintained the mandatory application of the Landscape Plan and reintroduced the binding opinion of the Superintendence, that should be given prior to the adoption of measures of protection by the Regions. The Superintendence should have been assigned a delegate function for decades, therefore enlarging its power on the territory and limiting the urban planning competences to be entrusted to the Municipalities.

Two important contradictions have been highlighted in the Code:

- the abrogation of the rule which allowed the municipalities and the provinces to grant private citizens the management of artistic-cultural heritage;
- the obligation of setting up joint-stock companies of completely public share-holding as if the code allowed the sale to privates but not the management of the acquired good; the lack of tools to make the sale desirable and effective for the revitalization of the sector.

Moreover, "for the first time the Code indicated which goods can be given to the privates and which ones can be kept public property".

The goods belonging to the Nation State were divided into three main categories:

- the goods subjected to public property and cataloged as absolutely inalienable;
- the goods that can be limitedly used by privates;
- the goods that can be bestowed to others and managed by the municipalities through the Urban Development Plan.

Another contested point was the so-called rule of the tacit approval, which gave the Superintendences 120 days to give an evaluation on the value of a building, that afterward could be sold (unspoken approval). Such rule was recently modified.

In general, the management of the public goods by the privates was viewed in a positive light, but the decriminalization of the construction violations and the possible alienation of the public goods in case of tacit approval by the Superintendences, were troubling.

Others argued that the code completely upset the rule of protection for the cultural goods.

In fact, we are inclined to choose the latter opinion because of the following points:

- The authorization to build on protected areas, given by the Regions after the verification of the landscape compatibility and within 30 days the opinion of the superintendence has been made public;
- The non binding but precautionary opinion of the superintendence could be ignored. The acquisition of the "pivot" Law 1089/39 on the protection of the cultural goods, of the law on the landscape of 1985 (Galasso Law) and of the Law 1497/39, erased their effects.
- The reduction or the abolition of the restrictions on almost the whole national territory, transformed it in a free unprotected zone, while the conditional amnesty for work done without planning permission, could have even more devastating effects.

Moreover, the new text accomplished the distinction of the competences between Ministry for Cultural Heritage and Regions: the first one has been entrusted with the safeguard of the artistic goods, while to the second ones have been assigned the enhancement of the goods.

At the moment, the debate on the subject is still strong and a general agreement appears far way.

The path of regulations that leads to the alienation of a good, which is per se already questionable, is aggravated by the principle of the tacit approval. What emerges is a dichotomy of evaluation between cultural and scientific value, between protection policy and policies linked to the economic exploitation of the goods.

However, the big innovation of the Code lies in the fact that the landscape goods are a fundamental part of the Italian cultural heritage as well and, as such, they are subjected to a particular consideration in the field of the territorial planning.

In addition, the space dedicated to the concept of protection, discussed in the articles 1 through 9, defining the basic principles of the protection discipline, is, commendably, very wide.

Part One: General Provisions

- art. 1, *Principles*, par. 2, reads as follows: "The protection and enhancement of the cultural heritage shall concur to preserve the memory of the national community and its territory and to promote the development of culture."

- art. 3, *Protection of the Cultural Heritage*, par. 1 "The safeguard consists in the exercise of the functions and in the regulation of the activities aimed at identifying, on the basis of adequate investigative procedures, the properties constituting the cultural heritage, and at ensuring the protection and conservation of the aforesaid heritage for purposes of public enjoyment;" par. 2 "Protection functions are also carried out by provisions aimed at conforming or regulating rights and behaviors inherent to the cultural heritage."
- art. 4, *Functions of the Nation State in the Protection of the Cultural Heritage*, par. 1 "In order to ensure the unified exercise of the functions of protection, under article 118 of the Constitution, the same functions are attributed to the Ministry for Cultural Heritage and Activities, herein after referred to as 'Ministry', which shall exercise the afore said functions directly. It may also confer these functions to the Regions, through forms of agreement and co-ordination pursuant to article 5, paragraphs 3 and 4. The functions already conferred to the Regions under paragraphs 2 and 6 of the same article 5, shall not be affected;" par. 2 "The Ministry shall exercise the functions of protection on cultural property belonging to the State, even when such property has been placed under the care of or granted in use to administrations or subjects other than the Ministry."
- art. 5, *Co-operation of the Regions and of other territorial Government Bodies in the* Protection *of the Cultural Heritage*, "municipalities, metropolitan areas and provinces, hereinafter referred to as 'other territorial government bodies', shall cooperate with the Ministry in the exercise of its safeguard functions pursuant to the provisions of Title I of the Second Part of this Code;" par. 2 "The protection functions provided for by this Code concerning manuscripts, autographs, papers, documents, incunabula, and book collections not belonging to the State and not subjected to State protection, as well as books, print and engravings not belonging to the Nation State, shall be exercised by the Regions;" par. 6 "The administrative functions for the protection of landscape assets shall be conferred to the Regions according to the provisions of the Third Part of this Code."
- art. 6, *Enhancement of the Cultural Heritage*, par. 1 "Enhancement consists in the exercise of the functions and in the regulation of the activities aimed at promoting knowledge of the cultural heritage and at ensuring the best utilization and public enjoyment of the same heritage. Enhancement also includes the promotion and the support of conservation work on the cultural heritage;" par. 2 "Enhancement is carried out in forms which are compatible with the safeguard of the goods, and which do not prejudice its needs;" par. 3 "The Republic shall foster and sustain the participation of private subjects, be they single individuals or associations, in the enhancement of the cultural heritage."

- art. 7, *Functions and tasks related to the Enhancement of the Cultural Heritage*, par. 1 "This Code establishes the fundamental principles concerning the enhancement of the cultural heritage. The Regions shall exercise their legislative powers in compliance with these principles;" par. 2 "The Ministry, the Regions and the other local government bodies shall pursue the co-ordination, harmonization, and integration of the activities for the enhancement of public properties."

Part Two: Cultural Property, Title I, Chap. 1, Object of Protection:

- art. 10, *Cultural Properties*. "A Cultural property consists in immovable and movable things belonging to the State, the Regions, other territorial government bodies, as well as any other public body and institution, and to private non profit associations, featuring artistic, historical, archaeological or ethno-anthropological interest." In par. 2 and in art. 11 are indicated all the typologies of properties considered as cultural. In Sect. 3, art. 45, that deals with "other forms of protection", while the prescriptions of indirect protection and its proceeding are described in art. 46; the safeguard is carried out by the Superintendent at the motivated request of the Region or other interested territorial government bodies, that, in turn, shall notify the owner, or holder of the building.

In Title II, *Enjoyment and Enhancement*, the Chap. 2, *Principles of enhancement of the cultural heritage*, clarifies in art. 111 the enhancement activities, par. 1 "The activities for the enhancement of the cultural heritage consist in the stable constitution and organization of resources, facilities or instrumental resources, designed for carrying out the functions and pursuing the aims indicated in article 6. Private subjects may concur, co-operate or participate in such activities;" par. 3 "Enhancement carried out by public initiative shall conform to the principles of freedom of participation, plurality of participants, continuity of activity, equality of treatment, economic feasibility and management transparency;" par. 4 "the enhancement carried out by private initiative is deemed as a socially useful activity and its goals of social solidarity are fully acknowledged."

- In art. 112 the rules for the enhancement of publicly owned cultural properties are exemplified, while in art. 113 the rules for the enhancement of privately owned cultural properties are shown.
- Art. 114 defines the parameter of quality of the enhancement, while the art. 155 concerns the direct or indirect management of the public properties.
- Art. 116, *Protection of cultural property conferred or granted in use*, par. 1 "Cultural properties which have been conferred or granted in use under article 115, paragraphs 9 and 10, shall remain subjected to all intents and purposes to their own legal regulations. The functions of protection are carried out by the Ministry, that can use the abovementioned properties at the request of, or with regard to the parties that have been conferred the goods, or have been granted the goods."

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