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From Protections to Protection:
Rethinking Italian Cultural Heritage Policy
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INTRODUCTION

As with all works of art, books can be valuable cultural objects. Once read, however, books can also become burdensome objects, due to the enormous amount of storage space they require.

A few years ago, for example, my father decided to rearrange his bookshelf. New books could not find a place, and even the old ones were not well shelved. He took all the books down and divided them into two categories. He then shelved all the first choices, along with the most valuable second choices, leaving some room for new acquisitions. Most of the remaining books were boxed and stored in a closet. The least interesting books he sold or gave away.

My father did not do anything extraordinary: he simply acted like any reasonable book lover who realizes his bookshelf is too small to store all his books.

On a much larger scale, Italy is faced with its own overburdened "bookshelf." Sixty percent of the world's documented cultural heritage is located in Italy.¹ Indeed, cultural heritage is probably the most valuable property of Italy. The Italian "bookshelf" includes evidence of the human presence since the beginning of the civilization. Near the city of Isernia, archaeologists have discovered traces of the *homo erectus* dating back over 700 thousand years. Since then, nearly every subsequent civilization has left traces of its existence in Italy.

In fact, important discoveries are still being made today. The *Ministero per i Beni culturali* ("Ministero"),² the governmental department appointed to protect the cultural heritage, lists, among the archaeological discoveries of 1999, the recovery of sixteen Roman boats dating from the third century B.C. to the fifth century A.D., of frescos dating from 1200 B.C., and of the partly painted remains of a Roman villa dating from the second century B.C.. As part of the work done in preparation for the Year 2000 Jubilee, the *Ministero* reports the recovery of a paleo-christian basilica in Fiumicino, a road and a mausoleum in the cluster of Velletri Cathedral, the Campidoglio's wall inside the Carcere Mamertino, a marble podium of the Round Temple at the Foro Boario, and a building from the tenth century B.C. also near the Foro Boario.³ Clearly, the discovery process is not complete.

So what is Italy doing to preserve and protect such a vast and valuable bookshelf? Is the manager of Italian cultural heritage acting reasonably, as my father did, in bringing order to his shelves?

This article attempts to answer these questions.

Part I examines Italy's current cultural heritage policies; Part II offers a critical assessment of these policies; Part III presents several proposals for improving the management of Italy's cultural heritage. This article concludes that Italian regulation of cultural heritage protection itself is fine, and that most of the

1. Laura Torretta, *Opere d'arte alla catena?*, IL SOLE-24 ORE, July 23, 2000, at 36.

2. More information on the *Ministero* is available at its website, <http://www.beniculturali.it>.

3. See the complete list of all 1999 discoveries at <http://www.beniculturali.it/novita/iniziative/bilancio2000/premessa.html> (last visited Aug. 13, 2001).

inefficiencies are the product of the way those policies have been implemented: by preferring “protections” to protection. In this paper, “protections” is synonymous with the idea—generally adopted by Italian managers of cultural heritage—that the “protection” of cultural heritage is better achieved by keeping it away from visitors, private entities, researchers, and the market.⁴ Conversely, this article argues that protection of cultural heritage would actually be better achieved by giving it to visitors, private entities, researchers, and the market.

I. ITALIAN CULTURAL HERITAGE POLICY

The Italian management of cultural heritage is strictly under State control and permeates all stages of the archaeological process. This policy reflects the Italian government's view of cultural heritage as a permanent property of the state, and consequently of the public. Because of the enormous value and importance of the archaeological objects, the State is seen as the best body to preserve and protect the treasures of the past.

A. HISTORICAL BACKGROUND

Italy's state-control policy was expressed by the regulations of the pre-unification Italian states. Since the fifteenth century, those states, concerned over the progressive loss of the works of art in their possession, adopted restrictive laws against the export, sale, and theft of cultural property. More recently, those principles were expressed in the laws of the Pontifical State (“*Stato della Chiesa*”) and of the Kingdom of the Two Sicilies (“*Regno delle Due Sicilie*”).⁵

1. The Pontifical State

In Rome, restrictions applied by various Popes succeeded in preserving many of the city's most important works in spite of countless violations that led to the sale

4. The Italian government seems to be more concerned with preserving its legal and managerial tradition than with protecting cultural heritage. This view is clearly summarized by Antonio Paolucci, *Soprintendente* of Florence and Pistoia, who recently wrote:

Today the issue of cultural patrimony protection is proposed in a new way. The European unification leads to a confrontation between two totally different legal traditions, and forces us to make a difficult mediation between the two: the Italian protectionism on one hand, and the liberalism of the majority of European countries on the other hand. . . . There is the risk that the whole of Europe will switch toward the more permissive regulations, . . . and that Italian laws will be . . . neutralized. It would be a tragic scenario for our art and history treasures, but above all a defeat of culture itself. Because the legal tradition, [which is] the result of five centuries of elaboration . . . , is a value that it is worthy of preservation in the interest of the national cultures and civilizations, and, therefore, of the European identity itself.

Antonio Paolucci, *Introduction* to SIMONELLA CONDEMI, *LA SALVAGUARDIA DEI BENI CULTURALI. LINEAMENTI DI STORIA DELLA TUTELA* 17-21 (Istituto per l'Arte e il Restauro “Palazzo Spinelli” 2a ed. 1997).

5. Michele Salazar, *La Disciplina degli Scavi, di Ritrovamenti e delle Scoperte di Cose d'Arte nello Stato Pontificio e nel Regno delle Due Sicilie*, in *RITROVAMENTI E SCOPERTE DI OPERE D'ARTE* 81-99 (Giuffrè' ed., 1989).

of works of art and archaeological finds to foreign collectors and the despoliation of several ancient monuments such as the Coliseum. In the eighteenth century, the Popes set up the first public museums, the Museo Capitolino and the Museo di Pio Clemente in the Vatican, underscoring the public aspects of ancient works.

In 1820, the Vatican formally regulated the activity of archaeological research with the "*Editto*" signed by Cardinal Bartolomeo Pacca, providing that archaeological research should be authorized by the cardinal himself. The landowner and/or the discoverer were entitled to a limited property right over the artifacts after submitting them to an evaluation Committee. The artifacts were then saleable on the market, but with certain restrictions. If the Committee declared the artifact "highly valuable," the owner was allowed to sell it only within the city of Rome, and had to provide notice to the Vatican of the transaction. Export of the artifacts was allowed only with a license.⁶

2. The Kingdom of the Two Sicilies

The Decree of May 14, 1922 regulated cultural heritage in the Kingdom of the Two Sicilies. Under this regulation, excavations were to be licensed by the public authorities and supervised by public inspectors. Landowners acquired a property right over the discovered artifacts, but all such objects were submitted to the Ministry to be evaluated and, in the meantime, were not saleable. Even after evaluation by the Ministry, the objects were saleable on the market only if the trade was expressly licensed.

B. CURRENT REGULATIONS

1. Sources and scope

Cultural heritage was first regulated by the Italian legislature in the Law of June 1, 1939, n1089 ("L 1089/39").⁷ The principles expressed by the L 1089/39 are very similar to those that inspired former regulations. After sixty years, the legislature confirmed this policy in the Legislative-Decree of October 29, 1999 n490 ("LD 490/99").⁸

Technically, the LD 490/99 is a "*Testo Unico*," which is not a new regulation of cultural heritage, but only a law unifying and coordinating all former statutes on the specific subject.⁹ The *Testo Unico* sets out some new directives (i.e., simplification, decentralization, externalization) without changing the ground rules

6. CONDEMI, *supra* note 4, at 17-21.

7. On the Law of 1 June 1939 n 1089, see generally Mario P. Chiti, *The Protection of Cultural Property*, in RAPPORTS NATIONAUX ITALIENS AU XIII CONGRÈS INTERNATIONAL DE DROIT COMPARÉ – MONTRÉAL (Giuffrè' ed. 1990).

8. Hereinafter, LD 490/99.

9. Vittorio Angiolini, *Testo unico*, in ENCICLOPEDIA DEL DIRITTO, vol. XLIV, 525-535 (Giuffrè' ed. 1992).

of the policy on cultural heritage. Therefore, rather than introducing a new legal discipline of cultural and environmental heritage, LD 490/99 tends to reaffirm and reorganize the former legislation adopted in 1939. Any new aspects are marginal.¹⁰

Notably, LD 490/99 regulates not only archaeological artifacts but also a wide series of other categories of objects, all treated as cultural heritage. The list set out by LD 490/99, articles 2-4, includes artifacts and locations of artistic, historical, and demo-ethnic-anthropologic value; artifacts and locations of interest to paleontology, pre-history, and the primitive cultures; particularly important locations linked with the history of politics, military, humanities, art, and culture; artistically or historically important collections or series of artifacts; book collections with exceptional cultural value; archives; numismatics; manuscripts, autographs, correspondence, documents, incunabula, rare and valuable books, prints and incisions; rare and artistically or historically valuable maps and musical scores; rare and artistically or historically valuable photos; and artistically or historically valuable houses, parks, and gardens.¹¹ Thus, the scope of LD 490/99 is extremely broad, regulating all cultural objects in existence. Unfortunately, this broad scope tends to undercut some of the unique peculiarities of archaeological artifacts.

Whether or not an artifact included in that list is an “artistically and historically valuable” artifact is decided by the *Ministero* (LD 490/99, article 6).¹² Their determination is crucial in the life of archaeological artifacts: if the *Ministero* declares the object to be of “cultural interest,” it falls under the discipline of LD 490/99.¹³ Otherwise, the law protecting cultural heritage does not regulate the object. The political implications of such a judgment are self-evident, and affect the whole implementation of the policy.¹⁴ From a methodological point of view, the *Ministero* makes its determination based on a mixture of technical and political judgments, without seeking external advice. The decision-making process has been criticized for being too “closed-off and separated” from the expertise of other

10. Moreover, the purpose of gathering together all relevant statutes regulating cultural heritage is not entirely fulfilled, but this is not the main point of the article. See, Marco Cammelli, *Il Testo Unico, il commento e cio' che resta da fare*, 2 AEDON. RIVISTA DI ARTI E DIRITTO ON LINE (2000) at <http://www.aedon.mulino.it/archivio/2000/2/cammelli.htm>.

11. Under LD 490/99, article 2.6, artifacts and works of living artists, if made in the last fifty years, are explicitly excluded.

12. RAFFAELE TAMIOZZO, *LA LEGISLAZIONE DEI BENI CULTURALI E AMBIENTALI. GUIDA RAGIONATA PER STUDENTI, SPECIALIZZANDI E OPERATORI, AMMINISTRATIVI E TECNICI, DELLE PUBBLICHE ISTITUZIONI DI TUTELA* 24-42 (Giuffrè ed. 1998). The legal nature of the *Ministero's* declaration of cultural interest has been debated over the years. In the early 1990s, the majority of legal experts (“dottrina”) and the higher administrative court agreed that the *Ministero's* declaration plays a mere declarative function, just asserting that an artifact has cultural interest—and that the artifact is under a specific legal discipline—and not being the source of its nature. See Consiglio di Stato Sez VI, May 31, 1990, n 558, *IL CONSIGLIO DI STATO* 833 (1993) and Consiglio di Stato Sez VI, Nov. 18, 1990, *IL CONSIGLIO DI STATO* 1747 (1991).

13. Even if the text of LD 490/99, article 4, is less than clear, all “valuable testimony of civilization” actually not under the authority of LD 490/99 might be regulated in the future.

14. In Part IV, the article will explore how the *Ministero* interprets the regulation, and will conclude that many of the inefficiencies of the system could be avoided by changing the manner of interpretation of the “cultural interest.”

bodies, especially universities and private research institutions.¹⁵ The unilateral decision-making process of the *Ministero* weakens the authority of its advice, particularly from a technical point of view.

2. Archaeological research

As a general principle, archaeological research and, more generally, any action involving the discovery of cultural artifacts in any part of the national territory, is reserved to the State (LD 490/99, article 85). The State exercises its controls over the archaeological process through the *Ministero* and one of its branches, the *Soprintendenze Archeologiche*.¹⁶ Alternatively, the *Ministero* can enter into agreements with private individuals or organizations to take charge of conducting such research (LD 490/99, article 86). In any case, the public authorities retain the power to control and direct the private organizations in their searches.¹⁷ Consequently, all private archaeological searches undertaken without the approval of the *Ministero* are unlawful. The private owner of a piece of land can still excavate the subsoil, but not with the purpose of searching for archaeological objects. If a private owner discovers archaeological objects by chance, the search is not illegal, but the discoverer has a duty to carefully preserve all of the objects and give notice of the discovery.¹⁸ Once a preliminary investigation by the *Ministero* suggests that a search is worthy, the *Ministero* can enforce its exclusive right to conduct an excavation either by temporarily occupying the location or by simply expropriating the land. In both scenarios, the landowner is entitled to compensation for the taking of the property.

All discovered objects, if deemed to be artistically and historically valuable, belong automatically to the State, rather than to the landowner/discoverer, regardless of the accidental or intentional nature of the discovery (LD 490/99, article 88).¹⁹ The landowner/discoverer is entitled to an award proportionate to the

15. Daniele Manacorda, *Universita' e Tutela dei Beni Archeologici: Prospettive di Cooperazione*, 1 AEDON. RIVISTA DI ARTI E DIRITTO ON LINE (1999) at <http://www.aedon.mulino.it/archivio/1999/1/man.htm>; Carlo Marzuoli, *Ritrovamenti e Scoperte: L'Ultimo Monopolio?*, 2 AEDON. RIVISTA DI ARTI E DIRITTO ON LINE (2000) at <http://www.aedon.mulino.it/archivio/2000/2/marzuoli.htm>.

16. The Italian administrative system of separation of functions is complex. The *Soprintendenze* are the local and technical bodies of the *Ministero*, in a hierarchic relationship with the *Ministero*, with the specific function of promoting the protection of cultural heritage. There is a specific *Soprintendenza* dealing exclusively with the archaeological heritage. See, e.g., TOMMASO ALIBRANDI & PIERGIORGIO FERRI, *I BENI CULTURALI E AMBIENTALI* 112-14 (Giuffre' ed. 1995); Luigi Bobbio, *Lo Stato e i Beni Culturali: Due Innovazioni in Periferia*, 1 AEDON. RIVISTA DI ARTI E DIRITTO ON LINE (1999) at <http://www.aedon.mulino.it/archivio/1999/1/bobbio.htm>.

17. See, M. F. Lafarge, *Droit et Financement de l'archéologie en Italie*, in DROIT ET FINANCEMENT DE L'ARCHÉOLOGIE EN EUROPE 146-47 (Pierre-Laurent Frier, ed. 1998) (reporting empirical evidence that the concessions of research are not frequent and that in 1990, the *Ministero* signed only 194 concession agreements).

18. ALIBRANDI & FERRI, *supra* note 16, at 543-557.

19. See SALVATORE PUGLIATTI, *LA PROPRIETA' NEL NUOVO DIRITTO* 10 (Giuffre' ed. 1954) (interpreting this statute, already expressed in L 1089/39, as conferring to the State the ownership of the entire Italian subsoil: everything underground belongs to the State).

value of the finds, and is entitled to recover all damages caused by the intervention of the State (LD 490/99, article 89).

The *Soprintendenza* must authorize all research planned by private owners and involving artifacts regulated by DL 490/99. The *Soprintendenza* should issue the license within 90 days, starting at the moment of the request, discounting, up to a maximum of 30 days, the time necessary to achieve the documentation or the tests necessary to reach a decision. It may order an interruption in the works, if not licensed or executed in accordance with the license (LD 490/99, articles 23-24, 28).

While the possibility of an award and recovery for damages offers some incentive for landowners to report artifacts they accidentally uncover, the lure of the black market remains strong. For some landowners, the upside of controlling a valuable artifact, along with the avoidance of government interference, outweighs the risk of being fined.²⁰

3. The life of discovered artifacts

The State also has the right to control and make decisions concerning the future of all artifacts. Such objects, whether publicly or privately owned, may not be removed, destroyed, or modified without the authorization of the *Ministero*. Furthermore, they are assigned to destinations in keeping with their historic and/or artistic character.

All private and public organizations have a duty to submit a complete list of owned artifacts, and to give notice of all artifacts subsequently acquired, to the *Ministero* (LD 490/99, article 5). Collections and archives may not be divided without authorization.

The *Ministero* has the power to inspect an artifact's condition.²¹ The same governmental body must authorize any restoration, even if sponsored by private individuals. Such restoration also may be suspended by an order of the State (LD 490/99, article 28).

The *Ministero* may either directly provide or mandate to private persons all the activities of restoration and conservation required to avoid the deterioration of the objects. If in the interest of pursuing better protection of the artifacts, conservation and restoration of monuments, or undertaking excavations, the *Ministero* may proceed to expropriate (i.e., make a compulsory purchase) the artifacts, monuments, or sites by compensating the owners with an amount of money that is generally lower than the market price. While the regulations ensure full state control over cultural artifacts, they also have the consequence of discouraging non-state organizations from pursuing independent research and excavation.

20. See Torretta, *supra* note 1, at 36A (reporting that research conducted by Nomisma, an Italian research organization, found that there are five illegal trades of art for each lawful trade).

21. See Alberto Roccella, *Conservazione dei Beni Culturali: Semplificazione e Nuovi Poteri dell'Amministrazione*, 2 AEDON. RIVISTA DI ARTI E DIRITTO ON LINE (2000), at <http://www.aedon.mulino.it/archivio/2000/2/roccella.htm> (stating that probably in the near future the authorization of the *Ministero* will not be necessary anymore, because an authorization of the *Soprintendenza* will be the only requirement).

4. The circulation of cultural heritage

The *Ministero* also exercises its control over the circulation of artifacts, playing a role in every transaction involving an object with “public interest,” whether or not the State is a party. State control of transactions is based on two main principles: (1) the public enjoyment and accessibility of artifacts, and (2) the preservation of those artifacts.

a. National Circulation

LD 490/99 regulates transactions of artifacts, regardless of whether or not the State or some public body is involved. Artifacts owned by the State cannot be sold as long as the objects are exercising the public function of serving the “cultural interest.” Once an object is no longer of public interest, the *Ministero* may authorize its sale.

Transactions involving objects owned by private organizations must also be authorized. Authorization shall be granted only if (1) it is not against the interest of public collections, (2) there is not a danger to the conservation of the artifacts, and (3) the objects will remain accessible to the public (LD 490/99, article 55).

Another option is available to public bodies: an agreement with private entities, under which the State retains ownership of the object while the private entity exercises management over the object (L 448/1998, article 32.e). Many commentators, including the former head of the *Ministero*, Giovanna Melandri,²² emphasize the benefits of externalizing all managerial costs without giving up the property right and conclude that signing such agreements is a “wise, useful, and efficient way . . . [of] assuring the protection, valorization, and accessibility” of cultural heritage.²³ However, such agreements may fail to enhance the potential of some artifacts. Since they are not the fully entitled owners of these objects, the private entities may direct their investments away from state-owned artifacts and toward those that are privately owned. Moreover, the State itself often does not get any real benefit from ownership.

Transactions between private parties need not be authorized ahead of time, but the parties must notify the *Ministero* of such transactions within 30 days. The notice must report the names of the parties, the identification and location of the artifacts, and the elements of the agreement (LD 490/99, article 58). This mechanism allows the State to buy artifacts from private individuals and corporations, since the State is entitled to a first-option right on transactions among private citizens. Within two months from the completion of a private transaction, the State may acquire the artifacts by paying the same amount paid by the private buyer. The notice, therefore, appraises the State of the transaction and allows it the opportunity to exercise its first-option right (LD 490/99, article 60). Meanwhile,

22. Giovanna Melandri, *Beni Culturali, Largo ai Privati*, IL SOLE 24 ORE, Aug. 5, 2000.

23. Angela Serra, *Il Regime dei Beni Culturali di Proprieta' Pubblica*, 2 AEDON. RIVISTA DI ARTI E DIRITTO ON LINE (1999), at <http://www.aedon.mulino.it/archivio/1999/2/serra.htm>.

the agreement between the private parties is suspended until the State's 60 day first-option right period expires. In most cases, the State chooses not to exercise its first-option right. Still, a private buyer and seller must take this possibility seriously when making an agreement.²⁴ The first-option right gives the State control over all private transactions. In other words, the State could become the owner of all objects on the private market it finds to be in the "public interest" standard. Alternatively, the *Ministero* can make a different use of its authority, by exercising its first-option right or by refusing to authorize only those transactions involving objects of extraordinary interest for the State. The key, then, is the "public interest" standard and its interpretation. While the regulation is well balanced, getting good results lies entirely within the discretion of the *Ministero*.

b. International Circulation

LD 490/99 regulates international trade of cultural objects, reflecting the retentionist policy of Italy, a policy common to the major source nations.²⁵ Although international trade law regarding cultural property exceeds the scope of this article, a few observations are required to appreciate the international context in which Italy manages its cultural heritage.

The field is an intricate mix of national, EU, and international regulations. Article 20 of LD 490/99 states that "the activity of protection and valorization of the cultural property shall comply with the principles of cooperation among States, International Organizations included, fixed by all executed conventions executed in Italy concerning the protection of the international and the national cultural heritage."²⁶

LD 490/99 also regulates the export of artifacts. As a general principle, export is forbidden because it harms the national cultural heritage. If someone wants to export an artifact, for example, he has to give notice to the appropriate public agency. The agency can then issue a document that certifies the free-circulation status of the artifact if it determines that the export will not damage the "historical and cultural national patrimony." If the agency refuses the certification, the exporter has the right to appeal the decision. The State can always exercise a first-option right to buy the object, by paying the amount of money declared in the notice of export.

24. Enrico Bellezza, *La Circolazione dei Beni Culturali in Ambito Nazionale*, 2 AEDON. RIVISTA DI ARTI E DIRITTO ON LINE (2000), at <http://www.aedon.mulino.it/archivio/2000/2/bellezza.htm>.

25. John H. Merryman, *Two Ways of Thinking about Cultural Property*, 80 AM. J. INT. L. 831 (1986); John H. Merryman, *The Retention of Cultural Property*, 21 U.C. DAVIS L. REV 477 (1988), also published in THINKING ABOUT THE ELGIN MARBLES: CRITICAL ESSAYS ON CULTURAL PROPERTY, ART AND LAW (Kluwer Law International ed., 2000) (stating that retentionist countries oppose international trade in cultural property, trying to keep cultural objects from being exported from the national territory; a source nation is a country providing objects to the market and where the object first reaches the market); Mario P. Chiti, *La Tutela e la Valorizzazione dei Beni Culturali in Ambito Internazionale*, 1 AEDON. RIVISTA DI ARTI E DIRITTO ON LINE (2000) at <http://www.aedon.mulino.it/archivio/2000/1/ch.htm>.

26. LD 490/99 article 20.

C. CATALOGUING ARCHAEOLOGICAL OBJECTS

Cataloguing all archaeological objects owned or otherwise under control of the State is a necessary step in carefully managing the cultural heritage. This is especially true in Italy, given the enormous number of artifacts located there. In Italy, the responsibility of cataloguing cultural artifacts resides with the Ministero, along with other public bodies such as the *Istituto Centrale per il Catalogo e la Documentazione* (ICCD).²⁷ The ICCD has the duty to provide a catalogue of all existing cultural objects, including all transportable objects and the whole archaeological and natural patrimony of Italy. These data are collected in a national catalogue of cultural heritage. This national catalogue, however, is far from being complete.²⁸

This incompleteness persists for two main reasons. First, cataloguing cultural heritage is very expensive,²⁹ and funding is insufficient to cover all the expenses necessary to complete the catalogue. Additional funds have been allocated in recent years, assuring some new resources for ICCD, but do not fully solve the budgetary problems.³⁰ Even when the necessary resources are available, the cataloguing process is slowed by a second problem: administrative confusion. Funds are divided among many small projects, with little or no attention paid to the big picture.

As a result of these problems, some regions have started cataloguing activities at a local level.³¹ However, relations between the *Ministero*, ICCD, and the local authorities have been fractious.³²

27. The ICCD has been established by DPR 805/1975 article 12 and has administrative and financial autonomy, with exclusion of the management of its employees. Among its duties are the elaboration of cataloguing programs and their implementation, the publication of the results of its activities, and the coordination of peripheral departments and foreign institutions. More information is at <http://iccd.beniculturali.it> (last visited Aug. 13, 2001).

28. Manacorda, *supra* note 15 (describing the catalogue condition as "pre-modern"). See generally, Lafarge, *supra* note 17 (giving an interesting picture of the European administration of the cataloguing process, and of cultural heritage regulations).

29. The data shows that each file that has been prepared for the undergoing Map of the Risk for the Artistic Patrimony costs about \$1,000. See A. Che., *Per le opere d'arte in pericolo una banca dati con la diagnosi*, IL SOLE-24 ORE, Dec. 18, 2001, at 18.

30. See Lafarge, *supra* note 17. Examples of extraordinary financial intervention are *Legge Finanziaria*—the yearly law regulating the State budget—1986 article 14-15 (allocating 300 million dollars to cultural heritage), Law May 20, 1988 (allocating 120 million dollars to cataloguing management), Law April 19, 1990 n 84 (stating some general directives to develop the cataloguing process and allocating 65 million dollars) and Law February 10, 1992 n 145 (allocating 32 million dollars to cataloguing management). More recently, on the occasion of the Year 2000 Jubilee, the Government allocated other extraordinary funding to cultural heritage (*see infra*).

31. *Id.* (reporting examples of those projects are the Carta dell'Argo (Agro's Map) led by the municipality of Rome and cataloguing 16,000 archaeological sites in the countryside surrounding Rome, and the not yet completed Map of Locations Under Archaeological Risk led by the region Emilia Romagna).

32. Carla Barbati, *Nuova Disciplina dei Beni Culturali e Ruolo delle Autonomie*, 2 AEDON. RIVISTA DI ARTI E DIRITTO ON LINE (2000), at <http://www.aedon.mulino.it/archivio/2000/2/barbati.htm> (last visited Aug. 13, 2001) (pointing out that private and public entities tend to work separately with their funding); Nicoletta Gazzeri, *La Catalogazione dei Beni Culturali tra Competenze del Ministero e*

As a result of this lack of full cooperation, central and local authorities may set different standards involving different timing and different instruments.³³ Under these circumstances, building a comprehensive national catalogue of the Italian archaeological heritage is an unrealistic goal.

II. A CRITICAL ASSESSMENT OF ITALY'S CULTURAL HERITAGE POLICY

A. THE GOOD NEWS

Some evidence is reassuring.

Every year new treasures of the past are brought to light.³⁴ In addition, attendance and income at Italy's museums continues to grow. In 1999, the number of museum visitors reached 24,884,599, a 10% increase from 1998,³⁵ and a 30% increase from 1985.³⁶ Income from this increased attendance grew 15%, reaching \$60 million.³⁷ These increases can be attributed to such factors as extended hours, better accessibility, new facilities such as bookstores, coffee shops, audio tours, and the large number of museums that opened or reopened during 1999.

Specific success stories abound. For example, in the last two years, attendance at the *Soprintendenza* of Pompeii has increased by 70,000, and income has grown six-fold. In the Siena region, twenty-four small museums formed a "museum system," allowing them to pool their resources to create a common marketing strategy. Consequently, the number of yearly visitors at these small museums grew from 1,500 to 10,000 from the early 1990s to the present.³⁸

For 2000, the budget of the *Ministero* nearly doubled, from \$1.2 billion to \$2 billion.³⁹ This increased funding will sponsor the restoration of 263 sites, including \$90 million allocated to churches, \$80 million to museums, and \$40 million to archaeological sites. The government also allocated additional resources in anticipation of the Year 2000 Jubilee, including the hiring of 1,000 new museum

Iniziativa Regionale: Quadro Storico e Prospettive di Sviluppo, 1 AEDON. RIVISTA DI ARTI E DIRITTO ONLINE (1998), at <http://www.aedon.mulino.it/archivio/1998/1/gazze.htm> (last visited Aug. 13, 2001).

33. See Lafarge, *supra* note 17, at 124.

34. A list of some of the most important discoveries of 1999 is available at the *Ministero's* website, which also notes that in 1999, the *Carabinieri* detected and recovered 13,564 stolen artifacts. Ministero per i Beni Culturali, *Comando Carabinieri Tutela Patrimonio Artistico – Statistiche 1999*, at <http://www.beniculturali.it/cctpa/statistiche1999.html> (last visited Nov. 12, 2001).

35. *MBAC Bilancio 2000*, at <http://www.beniculturali.it/novita/iniziative/bilancio2000/musei.html> (last visited Aug. 13, 2001).

36. *Legambiente per i Beni Culturali*, at http://www.legambientedoc.com/documenti/1997-1999/vi_congresso/documenti_tematici/bbcc.html (last visited Aug. 13, 2001).

37. *Id.*

38. Touring Club Italiano, *Musei: trovato il sistema*, at <http://www.touringclub.it/qui/2000/jun/musei.shtml> (last visited Aug. 13, 2001).

39. The data should not deceive the reader: the *Ministero* has been reformed in 1998 and now its scope has been extended from cultural heritage and protection of the environment to sport, entertainment, contemporary architecture, and promotion of books and reading. Not having doubled the budget would not have been sustainable.

assistants, extending hours for the major collections and locations, and marketing and promoting all public museums.

Also in 2000, several important new collections and locations opened to the public. For example, Diocletian's Baths in Rome hosted a collection devoted to the Roman epigraphs; Balbo's Crypt in Rome hosted the Museum of Mediaeval Archaeology; the remains of the Roman Quintilis' villa, located in an archaeological park, became publicly accessible; a new archaeological site opened in Ostia Antica; and the *Ministero* finished the restoration of the Neptune temple and Paestum's Basilica.⁴⁰

B. THE BAD NEWS

The situation is not entirely positive.

Although many artifacts are brought to light every year, an indefinite number of objects undoubtedly remain under the soil. The number of projects is insufficient to ensure that the treasures of the past will be discovered and preserved in the best way possible. Many Italian farmers are asked not to plow their fields too deeply, so as to avoid harming potential archaeological sites not yet explored. This policy harms both the cultural heritage and the economy, resulting in underutilization of potential croplands.

Even when excavations are going on, the protection of the sites is far from effective. In 1999, for example, 12,313 objects were stolen from archaeological sites.⁴¹ Many sites do not even have minimal protections such as fences. Furthermore, at many archaeological sites, the number of custodians is inadequate to cope with grave robbers. Not only do these robbers take treasures and sell them on the black market, they also severely ravage sites not yet documented. In the ancient Etruscan city of Veio, for example, robbers ruined more than 2,000 graves.⁴²

Landowners are another major source of illicit artifacts on the black market. Many landowners and developers dread the discovery of archaeological ruins at construction sites, since this inevitably means a suspension of the project until such time as the *Ministero* can check out the site. Thus, when facing a discovery of archaeological objects, landowners are tempted not to give notice to the authorities, so as to avoid what can potentially be financially ruinous construction delays. Rather, landowners may choose to dispose of any valuable finds on the black market, depriving the public of their enjoyment.⁴³

40. See *Ministero per i Beni Culturali*, *supra* note 34.

41. *Id.*

42. Touring Club Italiano, *I BENI ARCHEOLOGICI IN ITALIA, LIBRO BIANCO*, No. 6 (1997) [hereinafter TCI REPORT]. The Touring Club Italiano (TCI) is an Italian association providing a wide range of tourism-cultural services oriented to the promotion of Italian cultural heritage. The report provides many data and information relevant to this article.

43. See, for an historical perspective, Giuliana Luna, *The Protection of the Cultural Heritage: An Italian Perspective*, in *THE PROTECTION OF THE ARTISTIC AND ARCHAEOLOGICAL HERITAGE: A VIEW FROM ITALY AND INDIA* 19-28 (United Nations Social Defence Research Institute, ed. 1976) (reporting the dysfunctional aspects of the Italian cultural patrimony management).

Even when discoveries are reported to the *Ministero*, there is no guarantee they will receive first class treatment. In 1997, for example, while 1,613,988 objects were actively displayed in museums, another 7,443,463 objects remained unexhibited in warehouses.⁴⁴

In fact, recent history shows that entire collections are sometimes stored in warehouses and never viewed by the public.⁴⁵ For example, the Torlonia collection, comprised of 620 Greek and Roman statues, was recently removed from the Lungara stables in Rome when the building was transformed into a residence complex. The collection is still not publicly displayed. The principle stated in LD 490/99—that cultural artifacts owned by the State should serve the public enjoyment—is certainly not fulfilled under these circumstances.

Warehoused objects are not necessarily safer than artifacts displayed in museums or left on the site. In 1999, Italian museums suffered 2,042 thefts. In February 1990, masked men surprised six unarmed guards watching a storeroom in Herculaneum. After breaking through a wall, the thieves took four hours to select 223 of the most precious antiquities, as if they had a dealer's catalog in hand. The estimated value of the stolen artifacts was placed at around \$18 million.⁴⁶

In October 1992, for example, a man called the archaeological museum in Florence to warn them that he was about to deliver an historic artifact to the police station in nearby Cortona. The object was a letter-sized bronze sheet two centimeters thick but cut into seven pieces and bearing a lengthy Etruscan inscription. Francesco Nicosia, Chief Inspector for the *Ministero*, said that the bronze sheet delivered to him in Arezzo was probably found on a building site. The man who handed it over turned out to be a Calabrian carpenter who was subsequently tried and acquitted on the charge of theft of state property. The carpenter had indicated that the bronze had been found on a building site near Cortona but:

[S]ubsequent digs there by archeologists revealed nothing. This, in turn, leads the Inspector to speculate that the bronze sheet was found somewhere else and that the finders reluctantly turned it over to the museum either because they wanted rid of it or because they had tried and failed to find a buyer.

See, e.g., Paddy Agnew, "Tombaroli" Hit Jackpot with new Etruscan Words, IRISH TIMES, July 7, 1999.

In 1998, the world's largest collection of allegedly stolen antiquities was discovered at the home of Vincenzo Cammarata, in Enna, Sicily. Despite 12 months of inquiries, officers were unprepared for the array of archaeological treasures recovered: more than 30,000 Phoenician, Greek and Roman antiquities worth about \$30 million, most probably plundered from the ruins of Morgantina, in central Sicily. The investigating authorities linked the activity of Cammarata with the organized crime of the Mafia, suggesting disquieting scenarios for the future of archaeology. Jerry Doyle, *In the News*, CULTURE WITHOUT CONTEXT, Spring 1999 (Illicit Antiquities Research Centre, Cambridge, Eng.), [http://www.mcdonald.cam.ac.uk/IARC/cwoc/issue4/news.htm#Vincenzo Cammarata](http://www.mcdonald.cam.ac.uk/IARC/cwoc/issue4/news.htm#Vincenzo%20Cammarata).

44. See TCI Report, *supra* note 42; Manacorda, *supra* note 15.

45. In November 1999, for example, the Los Angeles County Museum of Arts displayed many artifacts discovered at a Pompeii site. The artifacts had previously been stored in the National Archeological Museum in Naples in "musty warehouses." Most of the pieces on display in Los Angeles "haven't been seen by the public for many years," said Anna Maria Ciarallo, the superintendent of archaeology at Pompeii. (Thomas H. Maugh II, *Technology Buried with Pompeii on Display at Museums*, LOS ANGELES TIMES, Nov. 27, 1999, at B1).

46. James Walsh, *It's a Steal (Theft of Cultural Artifacts)*, TIME MAGAZINE, Nov. 25, 1991, at 86.

III. SOME PROPOSALS FOR IMPROVEMENT

In this section, I shall suggest some proposals for improvement of the Italian management of cultural heritage. Some of these proposals would be quite easy to implement; others are perhaps less feasible given the conservative attitude of Italian policymakers. The proposals are discussed in order of anticipated political acceptance, from the most likely to the least likely to gain acceptance.

A. CONDUCTING A COMPREHENSIVE SURVEY

Improvement can start only with an understanding of the realities of the system. "Selection of the best and [most] representative is imperative, but this can be brought about only by adequate survey and inventorization."⁴⁷ During my research, I could not find any empirical data concerning the number and condition of archaeological objects warehoused in Italy. There are several explanations for this absence of data.

First, there exists a general distrust among European cultures of empirical research, and social science more generally. Unlike in the U.S. and the U.K., continental policymakers do not generally use empirical evidence to advocate solutions. Their attention tends to be focused more on general principles than on data.

Second, there is a lack of funds. Since the available resources do not even cover the ordinary expenses of maintaining the status quo, and since empirical research is not seen as a priority, allocating funds to conduct a study is considered political suicide. Yet, a meaningful study can be conducted even with limited resources, assuming the questions are clear and focused and the researchers are qualified, well paid, and have access to all the relevant information.

Finally, the *Ministero* is reluctant to spread data around the country and overseas. This reluctance stems from a desire both to retain control and to avoid criticism. Such concerns are misguided, as there is no question that conducting a comprehensive study would only aid the *Ministero* in achieving its goals. In 1997, the British conducted a survey that could serve as a valuable model.⁴⁸ Ideally, the

47. H.F. CLEERE, *World Cultural Resource Management: Problems and Perspectives*, in *APPROACHES TO THE ARCHAEOLOGICAL HERITAGE. NEW DIRECTIONS IN ARCHAEOLOGY* 127 (Cambridge Univ. Press ed., 1984).

48. See Merriman & Swain, *Archeological Archives: Serving the Public Interest?* 2(2) *EUROPEAN JOURNAL OF ARCHAEOLOGY* 249-267 (1999). In 1997 the Museum and Galleries Commission (MGC) and the English Heritage (EH), the U.K. governmental agencies responsible, respectively, for museums and archaeology, commissioned a survey. Hedley Swain, the Head of the Department of Early London History and Collections and curator of the survey, published the findings in 1998.

The survey focused on issues related to archaeological archives. The study investigated all hot topics: the generation of archives, the quantity of materials and its conditions of storage, the cost of archiving, how archives are being used once in museums, and digital archives.

The study's findings are clear. Archives are "large in number and bulk, but . . . the main collections are concentrated in a small number of museums and units." Archives are "predicted to grow at a steady rate." Museum spaces are "inadequate to cope with future growth." Archives are "unstandardized, difficult to use, [without] long term destination." Finally, "storage conditions are often ramped and

study should gather data relating to the number of objects warehoused, their condition and value, the cost of storage, the authorities responsible for those warehouses, the objects already catalogued, and whether or not researchers and visitors can access those warehouses.

Even if problematic, the issue of archaeological archives must be addressed, as they were in the 1997 British survey. Compared with the U.K., Italy faces an even more severe situation, due to the huge number of objects not displayed.⁴⁹

The British survey reflects a starkly different approach to cultural management, compared to the Italian attitude of protectionism. A survey has the merits of identifying problems, projecting how to take charge of these problems, and facilitating an understanding of the critical issues presented by archaeological archives. Until Italy decides to undertake such a comprehensive study, its cultural heritage will continue to suffer from mismanagement.

B. INSTITUTING STANDARDS AND GUIDELINES

In addition to conducting a comprehensive survey, the *Ministero* also should develop uniform standards and guidelines concerning the storage of archaeological objects. These documents should be available both in paper form and at the *Ministero* Website. By instituting uniform standards and guidelines, every archaeologist, museum curator, and researcher would be capable of opening and maintaining a warehouse. Again, these additional facilities would only aid the *Ministero* in achieving its goals.

C. HIRING ADDITIONAL RESEARCHERS AND EXPERTS

Italy is filled with young students and researchers who are capable of preserving the country's rich cultural heritage, but universities are routinely ignored by Italy's cultural heritage policy.⁵⁰ With reasonable guidance to supplement their inexperience, an army of enthusiastic young researchers could prove extremely helpful. These students and researchers can contribute an updated level of knowledge, as well as familiarity with new technologies, all at a lower cost than more experienced workers would command.

If warehouses were opened to college students, graduate students, and

inadequate," and "little funding [is] available."

Therefore, the authors suggested some recommendations: promoting expertise among the curators of archives, the preparation of a set of core standards, a redefinition of guidelines for the disposal and dispersal of archaeological archives, a review of their physical condition, and a review of the nature and long-term curation of archaeological archives.

The survey shows that archaeological archives are problematic, especially if we intend "archaeology" as keeping the objects accessible to public and researchers and preserving them in the long-term.

49. The British survey presents data about the storage space occupied by artifacts (40,000 cu. m.) and not about the number of objects stored. However, if we compare the data reported by TCI, TCI REPORT, *supra* note 42, Italy has much more storage space devoted to archaeological objects.

50. Involving university and private institutions in the process would help reach a pluralism in scientific research, which would also enhance the value of the *Ministero* judgement of the "public interest". See Cammelli, *supra* note 10; Marzuoli, *supra* note 15.

researchers, they could discover, order and catalogue long-ignored objects.⁵¹ In addition, valuable experts for future, more difficult tasks would be trained. Most importantly, more objects would be re-discovered and displayed for the benefit of the public.

Unfortunately, two major obstacles threaten the adoption of this proposal: a lack of funds and cultural prejudice.

The lack of funds might be overcome by involving the private sector through sponsored research or by allocating the funds available for new research to academic institutions. Another option is to take the profits generated from the display of objects no longer warehoused, or from the sale of those objects, and to reinvest them in new research projects. Clearly, improving the discovery and preservation of artifacts is, in itself, of economic, in addition to cultural, benefit. Fewer objects would deteriorate over time; valuable artifacts would receive greater attention; and more objects would be displayed, leading to greater revenues from visitors. Also, improved monitoring of warehouses would inevitably lead to a decrease in robberies. For example, simply preventing the 1990 theft of the 223 objects from the Herculaneum would have saved artifacts valued at \$18 million!⁵² Investments in cultural heritage benefit not only the present, but also the future. Making additional funds available for hiring additional researchers and experts is undoubtedly justified, given the resulting economic and cultural benefits.

Overcoming cultural prejudice may prove more difficult than finding additional funds. Cultural prejudice exists in several forms. First, there may be prejudice toward using young students and researchers to undertake tasks normally handled by more experienced professionals. Second, there may also be concerns about the private sector invading traditionally administrative spheres. Third, there is likely to be resistance when it comes to disclosing the uncomfortable facts of past cultural heritage management. Finally, labor laws may present an obstacle to employing young students and researchers. Still, none of these cultural obstacles are so compelling that they should outweigh the benefits to be gained by using the untapped resources of Italy's universities.

D. PRIORITIZING ARTIFACTS

Not all objects have equal archaeological, historical, and cultural value,⁵³ just as

51. Cataloguing is an especially crucial step of the process: during this stage, the researcher studies analytically and values the object, collecting data relevant for the protection of cultural heritage. On cataloguing, see Ede Palmieri, *La Catalogazione Elettronica dei Beni Culturali come Strumento di Tutela*, in LA TUTELA E CIRCOLAZIONE DEI BENI CULTURALI NEI PAESI MEMBRI DELLA C.E.E.: ATTI DEL CONVEGNO DI MILANO—14 MAGGIO 1990 (Beno Reverdini, Claudio Biscaretti di Ruffia, e Manlio Frigo, eds. 1992).

52. Walsh, *supra* note 46.

53. See JOHN CARMAN, VALUING ANCIENT THINGS: ARCHAEOLOGY AND LAW (Leicester Univ. Press ed., 1996). See also, Jos Deeben et al, *Proposal for a Practical System of Significance Evaluation in Archeological Heritage Management*, 2(2) EUROPEAN JOURNAL OF ARCHAEOLOGY 177-200 (1999) (proposing a framework to operate significance evaluation in the archaeological heritage management context).

not all objects have the same market value. Museums display, and warehouses accommodate, objects of varying artistic and cultural worthiness. Many warehoused objects will never be displayed, regardless of their value. The most valuable objects, however, clearly deserve the best treatment in terms of protection, preservation, and public display. Ideally, cultural heritage managers should replace the less valuable objects displayed in museums with the more valuable artifacts gathering dust in warehouses. Unfortunately, cultural heritage managers rarely undertake this sort of analysis. I could not find even a single example of the implementation of such analysis.

Obviously, each ancient object has a value. But what happens if a warehouse accommodates hundreds (or even thousands) of examples of the same artistic style? Storing all of these objects has the advantage of preserving them for the future. But storage is expensive. Retaining these objects has a cost, not only in terms of storage expenses, but also in terms of not being able to allocate resources for more worthy purposes.

The physical and financial resources allocated to take care of less valuable objects diminish the resources available to protect more culturally valuable objects, as well as those needed to promote excavations, reorganize museums, and better display the treasures of the past.⁵⁴

Ideally, warehoused objects should be selected on the basis of their "artistic, historical, archaeological, or demo-ethno-anthropologic" value, with the best objects receiving the maximum attention and care.

Less valuable objects should be catalogued and then removed from warehouses, leaving room for more valuable objects yet to be discovered. Although few national museums would be interested in displaying these less valuable objects, they nevertheless have a market value. Foreign or private museums and collectors would no doubt be eager to own many of these objects.

Selling these objects is legal under LD 490/99, article 55, which allows for the trade of cultural artifacts if the trade is not against the interest of public collections, if there is not a danger to the conservation of the artifacts, and finally if the object remains accessible to the public. The buyer would then be bound by the sale agreement to keep the objects available to the public. These works would likely sell at a premium since the *Ministero* would be able to certify each object's provenance and authenticity. The income generated from these sales could then be allocated to maintaining and expanding warehouses, promoting new excavations, and facilitating the display of previously warehoused objects.

One foreseeable disadvantage of this plan is that the State would lose ownership of certain less valuable artifacts. This damage, however, is minimal. Selling redundant objects ultimately does not harm the cultural heritage.

54. For example, more resources might prevent episodes like the tampering of 2000 graves in Veio: Marcello Guaitoli of the University of Lecce evaluated the damages at \$5,000 for each grave, for a total loss of \$10 million. TCI REPORT, *supra* note 42. Sponsoring new excavations might also reduce indirect costs like the issue raised by the ploughing of fields all around Italy: because of the danger to not-yet-excavated sites, every year farmers are asked not to plough too deeply to prevent damage. The productive loss is incalculable.

In addition, increased circulation of Italian objects abroad may provide many benefits. As one commentator has noted:

Countries that allow their art to spread abroad derive both obvious and subtle advantages. Art is a good ambassador. It stimulates interest in, understanding of, and sympathy and admiration for that country. Giving foreigners a taste of a nation's art by allowing export will attract foreign scholars, students, and tourists to visit that country and study its art; this can in turn stimulate and enrich that country's intellectual life. Indeed, appreciation and study of some art or artists has sometimes awakened abroad before it occurs at home. Foreign recognition may thus lead to a reevaluation of a nation's own art; indeed, international recognition may help define what constitutes a national art treasure.⁵⁵

In other words, by prioritizing artifacts and making less valuable objects available to private museums and collectors, both in Italy and abroad, the state would not only increase resources, but also improve its international cultural standing.

CONCLUSION

The protection of cultural heritage is best achieved by efficient management, not by overly protectionist policies (i.e., "protections"). Protections do not serve cultural heritage. The governmental inefficiencies described in this article have led to significant mismanagement of Italy's cultural heritage. Italy's archaeological patrimony policy, expressed by LD 490/99,⁵⁶ provides legal tools that should enhance the efficiency of the system. Unfortunately, the *Ministero's* implementation of that policy is skewed toward a conservative idea of "cultural interest" that considers all objects to be culturally valuable. This approach misallocates resources and fails to maximize the limited funds allocated to cultural heritage management.

The *Ministero* must undertake a cost/benefit analysis of its regulations. In addition, the Italian government cannot continue to face the immense task of protecting the nation's cultural heritage alone. Instead, the government should seek help from private researchers and experts. Finally, state managers should set priorities of protection by selecting the most valuable objects and emphasizing their protection and display. These proposals would reduce the costs and enhance the benefits of Italy's cultural heritage policy.

55. Paul M. Bator, *An Essay on the International Trade in Art*, 24 STAN. L. REV. 307 (1982).

56. See *supra* Part I(B).