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Artistic Canons and Legal Protection

Developing Policies to Preserve, Administer and Trade Artworks in 19th-Century Rome and Athens

Vittorio Klostermann
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Abbreviations and Notes to the Reader

Abbreviations

ASR	Archivio di Stato di Roma (Archive of the State of Rome)
AC	Archivio Capitolino (Capitoline Archive)
ASV	Archivio Segreto Vaticano (Vatican Secret Archive)
ΓΑΚ	Γενικά Αρχεία του Κράτους (General Archive of the State of Athens)
ΥΕΔΕ	Αρχείο Υπουργείο Εκκλησιαστικών και Δημοσίας Εκπαιδεύσεως (Archive of the Ministry of Ecclesiastical Affairs and Public Instruction)
ΔΔΕΑΜ ΤΠΠΑ	Διεύθυνση Εθνικού Αρχείου Μνημείων – Τμήμα Διαχείρισης Ιστορικού Αρχείου Αρχαιοτήτων και Αναστηλώσεων (National Archive of Monuments in Athens – Management of the Historical Archive of Antiquities and Restoration)

Notes to the Reader

A number of primary sources and unedited archival documents that were produced between the early modern period and the nineteenth century are quoted throughout this volume. I have attempted to retain the original capitalisation, spelling, and punctuation in translating them into English. The quotes in the original languages are in the footnotes. Some grammatical adjustments have been made for readability; these additions are inserted in square brackets.

Part of the definitions and the terminologies I have used to explain historical occurrences derive from current scholarship, and are applied retrospectively to past mentalities and epochs. Explanations on these conceptual aspects will emerge throughout the volume.

Introduction

Why art and law?

When, in 1927, the sculpture *Bird in Space* by Constantin Brancusi was inspected in American custom houses for entering the USA, the officers refused to waive the customs fee on the import of artworks, as prescribed by law, and recorded the piece under the category "Kitchen Utensils and Hospital Supplies". According to a US regulation of 1913, to qualify as "sculpture", works had to be "carved or shaped in the likeness of natural models" in "all proportions: length, breadth, and width".[1] A further directive of 1922 had enhanced these criteria by stating that "sculptures or statues have to be originals", must "not have more than two replicas or reproductions", and should "be the unique product of professional sculptors […] carved or sculpted, and certainly worked by hand"; in particular, when these works were cast "in bronze, or any other metal or alloy, they must be conceived exclusively as the professional output of the said sculptors". Despite this clarification, the American legal definition of an artwork was apparently not sufficient to encompass the aesthetic attributes of Brancusi's work – "it is not art", stated the officers. *Bird in Space* was thus charged a customs fee of 40 per cent of its economic value, and the question of whether it qualified as art was eventually resolved by the US Customs Court of New York.

Having studied art history and restoration of ancient artefacts for years, I came to realise that the case of Brancusi's *Bird in Space* was not an isolated one. Issues about the artistic attributes that an object should have in order to be identified as art had already arisen in the early modern period, and recurred in various circumstances throughout art history. Regarding the restoration of historical works, I had noticed that before the twentieth century not all artefacts were provided with the same level of attention and care during conservation interventions. The gradual development of innovative methodologies and approaches to restoration from the sixteenth century onwards and, in particular,

1 For the quotes and the report on the trial of 1927–1928, see Giry, An Odd Bird. This *cause célèbre* is widely discussed by art historians; see, for example, Rowell, *Brancusi contre États-Unis*.

during the nineteenth century, did not imply that these were necessarily applied to all the typologies of artworks available on the art market or included within a collection. Sculptures and paintings were considered more significant than the so-called minor arts, but they were themselves assigned different artistic and aesthetic importance according to their style, iconography, and epoch of production. These factors, in broad terms, were the basis of specific conservation choices, which involved either the full reconstruction of the piece with new parts, some relatively minor interventions, or its preservation in a state of non-restoration, and even, in some cases, its destruction or disposal. To give a few examples: classical statues were in high demand and extensively restored in both Rome and Florence especially from the sixteenth century on;[2] however, in both places, the figures of animals did not receive as much attention as busts, and these, in turn, did not receive the same privileged care as full human figures. Furthermore, towards the late seventeenth century, the practice of cleaning and retoucing frescoes and murals emerged in Rome, but only works that were from "eternal" artists, such as Raffaello, Sacchi and the Carraccis. At a later stage, the conservation of movable paintings on canvas became widespread, first in Venice in the early eighteenth century, mostly because the city environment was so humid. New debates on proper restoration techniques arose in the nineteenth century. When in 1816 Antonio Canova declared that the statues of the papal collections were to be kept unrestored "in their original antiquity", he implicitly referred to classical sculptures: after viewing the Parthenon's marbles in London he had realised that the "unmatchable" qualities of classical art should be preserved it their pure, genuine *status quo*. Yet even this was selective: when in 1818 Berthel Thorvaldsen restored the sculptures of the Temple of Aegina by integrating new parts, the academic circles of Rome – Canova included – did not condemn the restoration but applauded the work for improving the "rigid", "inexpressive" attributes of these severe-style pieces. In the same way, the first restorations of monuments in Greece in the middle of the nineteenth century were informed by the perception that the ancient classical remains, and to a lesser extent the Medieval and Byzantine examples, were to be preferred to any other typology of architecture. The Venetian and Frankish monuments – not to mention the Ottoman ones – were thus demolished without any regret.

However, it was clear that the artistic and aesthetic value attributed to different categories of artefacts played a fundamental role not only for the practices of restoration that I have mentioned here, but also for collecting and circulating the artworks within the art market, and for constructing the first methodologies for art history in the early modern and modern centuries. It is in this wide framework that I endeavoured to understand the system of values, their

2 Rossi Pinelli, Chirurgia della memoria.

implications, and the aesthetic paradigms that supported the recognition of artistic meaning in an object in centuries and cultural attitudes so distant in time. The supposed superiority of classical sculpture over other artistic styles was central in determining both the aesthetic choices and the approaches to several artistic practices for centuries; but what about the styles and the typologies of artefacts that did not follow this canon? What level of artistic significance did these works have? How and when did they start to attract the interest of restorers, collectors, administrators and, in particular, scholars and critics? For an art historian, these questions implied finding reliable evidence and methodologies to uncover the processes that transformed an artefact from being a simple object to being an "artwork" worthy of protection, collection, and research.

While studying the restoration of artefacts, it gradually became evident to me that the organisational systems that dealt with the conservation, collecting, and trading of artworks in the early modern and modern centuries were founded on constructs of rules and prescriptions which not only informed the artistic and the legal value assigned to historical remains but also defined the administrative aspects related to their protection. These old regulations included clear characterisations of the objects which they governed, as well as general classifications of the artistic qualities that an artefact should have in order to be protected by the relevant law. This meant that each regulation, when issued, contained clear definitions of what was understood as an "artwork" in its respective epoch. Old legislation on the protection of the artistic heritage, therefore, was an effective instrument to resolve an art-historical question from a legal perspective.

A recent example for how relevant the law is for interpreting what is "art" and "artwork" can be observed in the verdict of the United States Customs Court that opened this discussion – Constantin Brancusi's *Bird in Space*. In 1928, in assessing the appeal against the duty set by the customs officers, the US customs judges declared that the sculpture "was art" on this basis:

> There has been developing a so called new school of art whose exponents attempt to portray abstract ideas rather than to imitate natural objects. Whether or not we are in sympathy with these newer ideas and the schools which represent them, we think the facts of their existence and their influence upon the art world as recognised by the courts must be considered. The object now under consideration is shown to be for purely ornamental purposes, its use being the same as that of any piece of sculpture of the old masters. It is beautiful and symmetrical in outline, and while some difficulty might be encountered in associating it with a bird, it is nevertheless pleasing to look at and highly ornamental. And as we hold under the evidence that it is the original production of a professional sculptor and is in fact a piece of sculpture and a work of art according to the authorities above referred to [that is, the experts consulted for the lawsuit], we sustain the protest and find that it is entitled to free entry under paragraph 1704, supra.[3]

3 Giry, An Odd Bird.

Such a declaration represented a definitive point for the legal and artistic recognition of abstraction in art, both within art history scholarship and the administrative establishment of the 1920s USA. It implied the acknowledgment of the fact that, in art, a new challenge to portray abstract and conceptual ideas had superseded the centuries-old classical tradition of imitating natural objects and human figures, thus denoting the end of the classical canon even in legal terms. While the authoritative position of the judges embodied a positive tribute to human creativity, it was possibly also an admission of the fact that laws need to be revised and expanded from time to time to ensure that it complies with the social and cultural requirements and the innovations of the relevant community. Furthermore, in the framework of similar declarations there emerges a specific attitude to legislation related to artistic heritage that, essentially, constitutes the cornerstone of the present volume: in developing and formalising decrees, prescriptions and other rules, legislators drew upon and were influenced by pre-existing concepts and values of a legal nature that were not yet formulated as laws. Legislation, before being a collection of prescriptions, is an ethical code, a system of values, a moral principle and a shared culture. It is the recognition of these factors that informed my approach in the development of this study.

On the contents and the methodologies of a book on art and law

Legislation on the protection of artistic heritage, therefore, is a cultural phenomenon, which can be approached not only as culture in itself – as a product of specific civilisations and scholarly views – but also as a generator that expands and propagates culture in turn. Similarly, the administrative and bureaucratic structures devoted to the safeguarding of historical remains in general, and artefacts in particular, are results of cultural systems, and largely reflect the mind-sets of the pertinent society – particularly the dominant part of that society – as well as its artistic insights, its relation to the past, and perceptions about the future. However, in relation to its interconnections to the humanities, and in particular to art history, legislation has generally been considered in terms of its practical consequences, that is, from its legal basis and its effects on social life, attitudes and governorship. Furthermore, the methodology applied applied in order to achieve an understanding of this legislation has been mostly descriptive and informative, rather than explanatory and analytical. Considering these premises, the approach to old legislation through the lens of art history that shapes this study is distinctly interpretative. I aim to understand the early laws published on the tutelage of the artistic heritage in the Papal States and Greece in relation to both their causes and effects, constantly intertwining juridical perspectives and artistic scholarship. My attention is on the historical origins and the cultural implications of the directives that were issued in these

regions between the fifth and the nineteenth century, focusing in particular on the *Chirografo Chiaramonti* and the *Edict Pacca*, issued in Rome in 1802 and 1820 respectively, and a German-Greek *Gesetz*, issued in Athens in 1834.[4]

It is essential to clarify that the nineteenth-century laws issued in the Papal States and Greece are very closely related, as the latter adopted and refined aspects – both conceptual and juridical – established within the former. Approaching these edicts together not only makes it possible to understand the construction of consistent systems for safeguarding heritage in the places that had been the most plundered of Europe for centuries, but also to outline the changes that their issuing prompted in scholarship, artistic taste and the art market in both Rome and Athens – and beyond. Furthermore, and importantly, these new legal systems have proved to be very influential for the elaboration of contemporary concepts and attitudes towards the protection of the arts in several countries in Europe. One of these concepts, which forms the heart of the current understanding of heritage protection, relates to the early elaboration of the definitions of "local" and "minor" artefacts in the first decades of the nineteenth century. The increase in significance of these designations in small communities within the Papal States and Greece, and their subsequent incorporation into the *Edict Pacca* of 1820 and the *Gesetz* of 1834, represented fundamental steps in the development of both art history scholarship and new legal models of protection, which permit us to identify the source of various procedures of safeguarding heritage adopted in recent times.

The reader should be aware of a further methodological aspect related to this: a structure where innovations within legislation and scholarship not only informed each other, but also led to constant evolution. According to such a paradigm, the development of artistic scholarship prompted improvements within legislation, and the broadening of legislation in turn induced further expansion of artistic scholarship and culture. Such a fundamental stipulation challenges the simplistic correlation of cause-and-effect which too often characterises the understanding of cultural attitudes, historical events and artistic innovations, and tends to incorporate new interdisciplinary perspectives of the understanding of juridical innovations in connection to the humanities.

4 The full name of the Greek regulation is: *Gesetz, die wissenschaftlichen und artistischen Sammlungen des Staates, ferner die Auffindung und Erhaltung der Alterthümer, sowie deren Benützung betreffend*; in Greek: *Περὶ τῶν ἐπιστημονικῶν καὶ τεχνολογικῶν συλλογῶν, περὶ ἀνακαλύψεως καὶ διατηρήσεως των ἀρχαιοτήτων και τῆς χρήσεως αὐτῶν*. Explanations on this double German/Greek title are given in Chapter One; hereafter I will refer to this legislation simply as *Gesetz*.

Keeping these aspects in mind, it is helpful to approach such a wide-ranging volume by familiarising oneself first with its three main sections. These concentrate on the conceptual, administrative, and commercial implications of the edicts, respectively, and deal with the Papal States and Greece one after the other. The evolution of a consistent concept of artistic heritage, and the widening awareness of how important it is to protect the arts, is the focus of the "Conceptual Chronicles" in Chapter One. In this section, the definitions of "art" and "artwork" that were prevalent in the edicts issued in Rome and Athens between Late Antiquity and the early modern period constitute the background for examining the innovative laws that were shaped in both places in the first decades of the nineteenth century. The efforts to define the "artefacts" to protect, in this context, confirm that the interests of the early legislators were devoted essentially to old works, that is, monuments, antiquities, and paintings that had been produced a long time ago and were perceived to be "relics of the past". Pursuing such a rationale, the gradual broadening of the juridical interpretation of "artwork", and the introduction of the concepts of "local" and "minor" heritage in nineteenth-century legislation, are specifically traced through the mutual inferences of various factors, among which historical events, artistic scholarship, aesthetic taste, and practical conservation of the artefacts played a fundamental role. Regarding the Papal States, substantial focus is placed on the implications of the Jacobin seizure of Rome of 1798–1799 and the confiscations of artworks imposed by the French on the Pope with the Treaty of Tolentino; on the second French occupation of the Papal States of 1809–1814 and the systematic removals of artworks that Napoleon carried out to furbish his museums in Paris; and on the events that followed the Restoration of the Papacy in 1816, and particularly the issues related to the relocation of the works that were returned to Rome after the Congress of Vienna. Regarding Greece, attention is given to the questions which emerged in the aftermath of the independence from the Ottoman Empire, and the early initiatives on the protection of local heritage engaged by the government of Ioannis Kapodistrias in the late 1820s; and on the establishment of the Bavarian Court in Athens in 1832, as well as the cultural and conceptual clashes which followed the encounter of the Central-European entourage with the Greek milieu.

The "Administrative Chronicles" in Chapter Two focus on the immediate repercussions of enforcing the new laws and how they required the establishment of a widespread system of heritage administration disseminated throughout the provinces and the minor areas of the Papal States and Greece. In this framework, aspects of the organisation of an early protection of the "local" and "minor" artworks are reconstructed from scattered records in the Archive of the State of Rome, in the files *Camerlengato I* (1814–1823) and *Camerlengato II* (1824–1841); in the General Archive of the State of Athens, in the files *Υπουργείο*

Εκκλησιαστικών και Δημοσίας Εκπαιδεύσεως (Ministry of Ecclesiastical Affairs and Public Instruction) *Α΄* (1833–1848) and *Β΄* (1848–1854); and in the National Archive of Monuments in Athens, in the section *Τμήμα Διαχείρισης Ιστορικού Αρχείου Αρχαιοτήτων και Αναστηλώσεων* (Management of the Historical Archive of Antiquities and Restoration). In the case of the Papal States, data from archival sources suggest that we must consider the role of the provinces in setting up both the administrative standards and the legal instruments essential to the functioning of the edict of 1820. This was the case, for instance, with the catalogue of the papal artworks proposed by the officers of Perugia in 1825. Regarding Greece, similarly, the analysis of the documents reveals an early management system for the archaeological sites and the first assemblages of artworks into local museums, which were established in the provinces of the state soon after the issuing of the law in 1834.

In the "Trading Chronicles" in Chapter Three, the discourses on the repercussions of heritage legislation on social life and collective attitudes are expanded to include the impact of the edicts of 1802, 1820 and 1834 on the export of artefacts in both the Papal States and Greece. The implications of legislation on the administrative procedures for controlling the trade of old artworks encompass the interpretation of aesthetic taste and artistic scholarship in the nineteenth century as well as the assessment of the legal value assigned to the materials that were allowed to enter the art market. This necessarily involves a scrutiny of the legal loopholes of the three edicts, and of the gaps which permitted smuggling and looting of artefacts even after an effective system of heritage administration and protection was established in both countries. An evaluation of the endeavours to foil the laws and the official establishment of the time allows us to shed light on both positive and negative social aspects, and on the resolutions implemented to reduce the cases of infringement in Rome and Athens, respectively. At the same time, data on the approved sales of artworks permits the framing of gradual further connotations of the concepts of "art" and "artwork" in the relevant contexts: the assessment of material that was ultimately excluded from the scope of the legislation, indeed, sheds light on the "relics of the past" that were not yet perceived to be worthy of protection.

After clarifying what the reader will find in this book, I think it is also useful to identify the aspects and topics that will not be covered. The complex undertaking of illustrating how the conceptualisation of art was modified within the development of specific jurisprudence, in relation to historical events, artistic scholarship, and aesthetic taste, required a strict focus on the objective of the discussion, rather than on the variety of data to include. This implies that factors which are fundamental to the history of art trading and art collecting, for instance, were not necessarily crucial to resolve questions related to heritage

protection. A fundamental example, in this regard, concerns the market of contemporary artefacts that flourished in Europe between the eighteenth and the nineteenth century, which involved communities of living artists and wealthy buyers on a large scale. Even though the contemporary arts industry supported the change of taste in the practices of art collecting, particularly within the rising of the middle classes before and after the French Revolution, the artefacts of living artists were altogether excluded from the protective restrictions of the edicts that are examined here. The legislators of both Rome and Athens were quite aware of the fact that limiting the circulation of new artefacts would cause a serious blow to the local economy. At the same time, the ultimate difference between a freshly-produced work of art and an old "relic" that was part of the history of the country was already evident to scholars and administrators. Indeed, analysing the patronage of the arts and the circulation of contemporary works in Europe involves approaches and discourses that are different from the perspectives employed to understand legislation in connection to art history. For that reason, this aspect is intentionally marginalised in the development of the chapters.

A further aspect that is deliberately minimised concerns the role of the so-called acquiring countries within the market of old paintings and antiquities in the early modern and modern period. Although this became a decisive factor for the subsequent development of new systems of arts protection, this book considers the function of the places that were eager to acquire old relics – such as France, Germany and England – exclusively in relation to the responses that were set up to control the art market in the Papal States and Greece. The focus, indeed, remains on the legal measures established in these supplier countries to defend and limit the loss of what they considered "local heritage". What it is interesting to note, on the other hand, is that major beneficiary countries that might be expected to be concerned about the future of the arts, such as France and England, did not issue any legislation on the protection of national heritage before the second half of the nineteenth century. Similarly, in the German-speaking regions the only districts to publish a specific regulation on the protection of monuments before the Congress of Vienna were the Margraviate of Ansbach-Bayreuth and the Landgraviate of Hesse-Kassel in 1780,[5] as well as the Kingdom of Bavaria in 1808 and 1812.[6] Evidently, the interest in the arts displayed in these places responded to paradigms that were different from the

5 von Trützschler, The Development of the Legal Protection of Monuments in Germany; Hammer, *Die geschichtliche Entwicklung des Denkmalrechts in Deutschland*; Huse, *Denkmalpflege*.

6 Reichstein, Federal Republic of Germany.

questions on the protection of the heritage that arose in Rome and Athens. For this reason, this aspect is not explored any further.

Historical and historiographic questions

Clearly, legislation itself provides fundamental material for understanding the development of the law and the administration of artistic heritage. The edicts issued on the protection of the arts in the Papal States and Greece have been gathered by scholars in essential compendiums, which form ready references to old legislation in their original languages – that is, principally, old Italian and Modern Greek. However, before evaluating the sources that are currently available to contextualise new research in art history and law, we should reflect on the nature of the early studies that have approached these issues from a cultural perspective in both countries. In fact, the history of the conservation and safeguarding of artworks can be defined as both an ancient and a recent question. It is an ancient question when we consider that the very first treatises exploring old legislation, antiquarian subjects and the conservation of monuments altogether were published in the Papal States between the late eighteenth and early nineteenth century. The author of these early studies was the antiquarian, barrister, and Commissary for Antiquity Carlo Fea, who was not only to play a fundamental role in the implementation of the nineteenth-century edicts on the safeguarding of artworks in Rome. He was also the first to consider the reciprocal implications of law and antiquity, and to use old decrees as legal evidence in the courts of justice to support the right of the Papacy to defend its own heritage. As a highly qualified lawyer, holder of the major office in antiquities, and man of infinite determination, Fea would be a key player in the development of a legal framework for the protection of heritage in the Papal States. It is significant that the first version of his legal history of antiquity, "Dissertazione sulle rovine di Roma", was added as an introduction to the Italian translation of Johann Joachim Winckelmann's *Geschichte der Kunst des Altertums* when it was issued in Rome in 1784.[7] Fea's dissertation offered an early overview on the initiatives undertaken to preserve the ancient monuments in Rome between Late Antiquity and the end of the Middle Ages, inserting fundamental comments on the regulations set up by rulers to attain this goal. In a subsequent essay of 1802, *Relazione di un viaggio ad Ostia*, Fea enhanced the chronologies of papal legislation by including in his review the edicts issued in Rome between the mid-fifteenth and late sixteenth centuries.[8] Although his interpretation of

7 Fea was the curator of this volume. Fea, Dissertazione sulle rovine di Roma.
8 Fea, *Relazione di un viaggio ad Ostia*.

law and antiquity pursued, in some cases, the glorification of the Papacy and relevant initiatives for exalting the ancient legacy of Rome, Carlo Fea can truly be regarded as the first interdisciplinary commentator of early legislation on the protection of artistic heritage in modern history.

Following this essential precedent, there are two volumes worth mentioning among the early accounts produced in Italy on law, art, and heritage administration, one edited by Giuseppe Fiorelli in 1881 and one by Filippo Mariotti in 1892.[9] These collect the regulations published in the Old Italian States – that is, the old territories of Tuscany, Veneto, Piedmont, Lombardy, Emilia, as well as the papal provinces and southern Italy – between the early sixteenth century and the years after the unification of Italy in 1861, gathering the core material that is necessary to any study in art history and early law on heritage protection: the original texts of the edicts. Both volumes were compiled in a crucial moment in the history of the newborn Italian state, when the changes of strategy in the status of private property and the lack of government decisiveness with regard to the protection of artworks risked causing serious dispersals and damages to the public heritage. For this reason, both books need to be understood in connection to their strong political positions and related propaganda. What is significant, nevertheless, is that their respective publication was underpinned by a precise awareness of the importance of earlier legislation on the protection of artworks not only for the prospective administration of the fine arts, but also for the further development of scholarship, museums, and collections in modern Italy.

Regarding Greece, a valuable cultural insight – if we can use this contemporary definition – into nineteenth-century archaeological legislation is offered in Georg Ludwig von Maurer's three-volume *Das griechische Volk* of 1835.[10] Maurer, significantly, was also the author of the *Gesetz*, that is, the first comprehensive edict on the protection of heritage issued in Greece soon after the liberation from the Ottoman Empire. As a major statesman and professor of law, Maurer approached the legal safeguarding of artworks as one of the core elements that characterise good administration in modern states. He thus incorporated it within the development of wider systems of artistic institutes, scientific centres, libraries, and museums, as well as judiciary and bureaucratic institutions in Greece. This, indeed, is an interesting point that differentiates the Greek from the Italian legislation: the system of safeguarding elaborated by Maurer derived from a far-reaching idea of heritage, and was only one of the several sectors

9 Fiorelli, *Leggi, decreti, ordinanze e provvedimenti generali*; Mariotti, *La legislazione delle belle arti*.

10 von Maurer, *Das griechische Volk*.

which contributed to the perfect functioning of state public administration in modern European countries. When scrutinising these legal and cultural constructions in the development of the *Gesetz*, however, it should be noted that Maurer's position was the result of his Middle-European scholarship and background applied in a Greek context, where these paradigms were not necessarily fully comprehended and shared by the locals.

As mentioned, the history of the legal safeguarding of artefacts can be regarded not only as an ancient subject, but it relates to present-day questions too. With this I do not refer to the recent cutting-edge procedures established in European countries to defend heritage from misuse, smuggling, and physical deterioration, but, specifically, to the approaches that contemporary scholarship has developed to understand old legislation in connection to the preservation of monuments. Indeed, it is clear that the elaborations of Carlo Fea and Georg Ludwig von Maurer are relatively early, covering the first issues that arose on the legal protection of heritage in the nineteenth century. Despite the significance of their studies, the methodologies that are currently applied to understand the interconnections of law, culture, and art history have been defined in more recent years, particularly during the 1970s, reaching full development during the 1980s.

In Greece, the first contemporary study on old legislation and administration of local artefacts was released by the archaeologist Angeliki Kokkou in 1977, *Η μέριμνα για τις αρχαιότητες στην Ελλάδα και τα πρώτα μουσεία* (The Care for the Antiquities in Greece and the First Museums).[11] Collecting impressive quantities of accurate data from diverse sources, such as nineteenth-century newspapers, books, government bulletins, and archival documents, Kokkou set fundamental parameters for subsequent research on the protection of archaeological heritage. Her discourse involved principally chronological narratives on the early management of antiquities in Greece, according to a methodology that descended from archaeological disciplines, and predominantly used an explanatory approach to analyse legislation and administration on the protection of the artefacts. In the 1980s, research widened Kokkou's perspective on the mutual influences of archaeological excavations, administration, and heritage preservation in nineteenth-century Greece, in the context of the massive restoration campaigns which were initiated for the best known local monuments, such as the Parthenon and the Acropolis of Athens. This research followed an interesting process of evolution, which resulted in the development of a single model of narrative on the nineteenth-century historical background that the subsequent literature appears to have accepted without too much questioning. Within such

11 Κοκκου, *Η μέριμνα για τις αρχαιότητες*.

a single-voice interpretation of the past, it is also possible to position the compendium (Essay on Archaeological Legislation), published by Vasileios Petrakos in 1982.[12] The book, for its part, offers a fundamental synopsis of the laws on the protection of heritage that were issued in Athens between the government of Ioannis Kapodistrias in the late 1820s and the present day. Interestingly, the author does not record the part of the edict compiled by the Bavarian king in 1836 as an addendum to the *Gesetz* of 1834, and omits to mention that, alongside the classical and mediaeval monuments, this law aimed to protect the Venetian and Ottoman remains in Athens. This exclusion is significant: aspects of history that did not match the official narratives on the great – invariably classical – past of Greece were generally omitted during the 1980s. It is not a coincidence, for instance, that the restoration works carried out on the Greek monuments in this period aimed to recover only the classical and mediaeval material, and ignored in particular Turkish remains. The interpretations of the past developed during the 1980s generally took a critical attitude towards the practices of administration, excavation, and restoration of monuments employed in nineteenth-century Greece, disapproving in particular of the policy followed by the Bavarian government in 1833–1863 and the initiatives undertaken in the management of archaeological digs during the 1870s. In any case, when contextualising the research produced in these years we should not underestimate the fact that Greece experienced a ferocious military dictatorship between the late 1960s and the early 1970s. The construction of the national narratives after the end of this regime in 1974 might have tended towards ignoring of the phases of history when Greece was not a free country, exalting, by contrast, aspects related to the peak of democracy represented by the classical age.

In more recent years, scholarship has possibly – and finally – opened a breach within the monolithic accounts of nineteenth-century administration of heritage in Greece, particularly within the works of the archaeologist Yannis Galanakis.[13] With regard to legislation, Galanakis pursues an interpretation of events that seeks to balance evidence from diverse sectors of the Greek social practices of this period. He observes the mutual influences of the activities of collecting, excavation, trading, and political diplomacy, together with the negative practices of smuggling and tomb robbing. By constantly referring to the shortcomings of the administration and the loopholes of the legal system of heritage protection, Galanakis has established a solid framework to overcome the general over-simplification of past studies in this field. Such a new theoretical background also appears to be open to the inclusion of the repercussions of

12 Petrakos, *Δοκίμιο για την αρχαιολογική νομοθεσία*.
13 See the bibliography and recommended literature for a full list of references.

aesthetic taste, artistic perceptions, and cultural constructions to the understanding of Greek legislation, embracing perspectives and methodologies that derive specifically from art history, rather than archaeology.

Turning the focus to Italy, current research affirming how important the old laws on safeguarding the arts were for an understanding of art history appeared in the mid-1970s, led, in particular, by the landmark studies of the Superintendent for the Artistic Heritage, Andrea Emiliani. As recorded in the volume *Una politica dei beni culturali* of 1974, during these years Emiliani intended to define the parameters for a new policy of administration for artistic heritage in Italy. He identified the laws on the protection of artworks issued in the Old Italian States as the models to follow in order to find effective solutions – both cultural and political – to current problems of managing historical artefacts.[14] Asserting the necessity to improve the supervision of heritage in countless sites in Italy, and to devolve its management to the respective regions, he also noted the emergence of an early interest in the "minor" and "local" artworks among art scholars in the late eighteenth century. In 1978 Emiliani edited the essential compendium *Leggi, bandi, provvedimenti per la tutela dei beni artistici e culturali negli antichi stati italiani*, which collects the original texts of the edicts issued in the Old Italian States between 1571 and 1860, recovering the data published by Fiorelli and Mariotti at the end of the nineteenth century.[15] Although he did not address it directly, Emiliani was probably aware of the fact that he was grounding his discussion in the questions of a new art history, which was both derived from methodological aspects of the social history of art devised a few decades earlier, and based on the reciprocal implications of cultural issues, historical events, legislation, legal tutelage, and the practical conservation of artworks.

Between the late 1970s and the 1980s, this new approach to heritage administration led to a number of scholars becoming interested in various cultural and juridical aspects of early laws on the fine arts of the Old Italian States. Among these academics, Orietta Rossi Pinelli, Antonio Pinelli, Mario Speroni, Simonella Condemi, and, more recently, Valter Curzi and Paola D'Alconzo, produced significant studies both in history of art and history of law, which proved to be fundamental to the construction of compelling methodologies of research in such an interdisciplinary field.[16] Most of the perspectives and the approaches presented in this volume fall into the thematic framework that descended from these early studies, by considering old legis-

14 Emiliani, *Una politica dei beni culturali*.

15 Emiliani, *Leggi, bandi, provvedimenti*. A new edition of this volume was issued in 2015, but for the purposes of this book I will use the 1996 edition.

16 See the bibliography for a full list of references.

lation in terms of art history and recognising the cultural function of the legal protection of the heritage. In regard to the methodologies, the position of Emiliani on the cultural value of law should be borne in mind when approaching Chapter One – and, I would suggest, when developing any further research in the legal history of art: "The old edicts issued [to protect] the artworks can be the breeding ground to assign to each epoch a […] class of things of art and culture", to identify the items which were believed to be worthy of protection.[17]

17 "I bandi emanati [per proteggere] i beni artistici possono divenire il terreno più fertile per […] assegnare a ogni età un registro di cose d'arte e di cultura". Emiliani, *Una politica dei beni culturali*, 36.

Chapter One – Conceptual Chronicles

Introduction

There can be no effective protection of historic and artistic heritage without first identifying what it is that needs to be protected. Conservation comes as a result of the collective recognition of an object as a work of art, and can be defined as the concrete consequence of a shared awareness of what art is and what it is not. Different epochs and communities have had different systems of values, semantics, and paradigms to attribute aesthetic meaning to an artefact. However, the awareness of the artistic qualities that make an object worthy of protection does not always coincide with the time when it is actually created. In this respect, Emiliani has argued that "we cannot expect the epochs of creativity to have developed a deeply historical thinking, one that is able to produce, simultaneously, both the artistic categories and the lexicon to approach such categories".[1]

The concepts of artistic heritage, and the related connotations of how best to protect art in different societies and epochs, are extremely vague and difficult to sketch in a sequential way, as they require a deep understanding of the aesthetic taste and the ideas of beauty that typify each cultural context. Legislation, from this perspective, offers the most reliable instrument for outlining both the various characterisations of artwork in different places and times, and the development and gradual broadening of the criteria adopted to attribute artistic value to works of art throughout centuries. The law can be implemented effectively only when it is precise, systematic, and clear. Therefore, the regulations issued to deter smuggling, illegal excavation, and improper restoration of artworks, as well as to control their export, have usually included long and detailed paragraphs with the lists of objects governed by these rules – an equivalent to what in current legislation would be known as a "definition".

1 "Difficile chiedere ai secoli della creatività una riflessione così profondamente storicista qual è quella che fa nascere le categorie e ne definisce parallelamente l'equivalente verbale". Emiliani, *Una politica dei beni culturali*, 36.