

Law no. 1089 of 1 June 1939

The Origin and Consequences of Italian Legislation on the Protection of the National Cultural Heritage in the Twentieth Century

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Abstract The author seeks to set out a criticism of the alleged innovations brought about by the 1939 Italian law on the “Protection of objects of artistic or historical value”. The law came in those years during which Fascist authorities struggled to keep on national soil a great deal of cultural property, which belonged to those who were trying to flee Italy following the harshening of persecutory regulations. Yet, scores of valuable public and private works of art had been reaching Nazi top brass following the Italian government’s own initiative. This eventually hindered the legitimacy of part of the cultural restitutions granted to Italy by the Allied military authorities after 1945.

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Keywords Cultural property. Restitution. Fascism.

1 Why to Discuss a 1939 Law After Eighty Years. A premise

Part I of this volume takes into account the multifaceted factors that have and continue to threaten cultural property worldwide. Previously, the topic was investigated during the first session of the international conference held in Venice in 2015. In the wake of this initiative, it seemed worth retracing the somewhat controversial dawn of the current Italian legislation on protection of cultural property, beginning with Law no. 1089 of 1 June 1939, which is indeed the cornerstone upon which the subsequent legislation was built.

The 1939 measure stems from a broader reform within the Italian administration that Giuseppe Bottai – Fascist Ministry of National Education – carried out in the 1930s. From these origins, Law no. 1089 is both one of the founding principles of current art legislation and a genuine legacy of the Fascist dictatorship. This twofold nature has inspired a (re)considera-

tion of the measure, which has gained new perspectives thanks to the debate fostered by this volume. Following the establishment of the first Italian Republic in 1946, Bottai's reforms remained formally and substantially untouched for over four decades.¹ The Veltroni-Melandri Consolidated Act can be regarded as a long-awaited attempt at harmonisation. Nevertheless, both Law no. 1089's structure and language would stand intact (Cosi 2008). Indeed, Law no. 352/1997 had the Veltroni-Melandri being nothing more than a "formal and substantial coordination", a "reorganisation" and "simplification of proceedings".² Owing to a literal reproduction of the 1939 provisions, the Veltroni-Melandri Consolidated Act appears not to have been able to substantially improve the matter, thus driving Bottai Law, its formulations and principles, well beyond the end of the twentieth century (Sciullo 2000).

After Bottai's reforms, a major innovation took place on 22 January 2004 with the adoption of the *Urbani's Code*.³ Its key new features lie in the solutions given by the Code to previous administrative and procedural issues affecting cultural protection and preservation (Cosi 2008). For instance, one measure was meant to regulate antiques and second-hand property trade (arts. 63 and 64), while another modified cultural property circulation and restitution provisions according to current European and international guidelines (arts. 64*bis*-87*bis*). Nevertheless, there is a clear resemblance between Urbani's Code and its Fascist ancestor, based on its wording and content alike.⁴ Moreover, it took four years for Bottai's law to be abrogated after the entry into force of the 2004 Code.⁵ Yet, even if the long-standing Fascist law was eventually put aside, cultural legislation in Italy largely still recalls those original statutes. Even now, private and pub-

1 Law 1089/39 has not faced any relevant amendment, except for the harmonisation of provisions regarding export procedures with the new EU agreements on free movement of goods. See Law 8 August 1972, no. 487 (<http://www.normattiva.it/uri-res/N2Ls?urn:nir:stato:legge:1972-08-08;487!vig=>), following the ECtHR ruling of 10 December 1968 (*Commission of the European Communities v Italian Republic*, 7/68, in *Racc.*, 562 ff) (2017-12-15).

2 Law 8 October 1997, no. 352, "Disposizioni sui beni culturali". *Gazzetta Ufficiale*, 243, 17 October 1997 (s.o. 212).

3 *Gazzetta Ufficiale*, no. 45, 24 febbraio 2004 (s.o. 28/L).

4 Indeed, Part Two, Title I of the Code was drafted based on a scheme laid out by Fascist lawmakers. After outlining the object of their dictates, Urbani's Code and Law no. 1089 both begin with those provisions regarding the preservation and protection of art objects, then moving on to the regulation of sales and exports. In the 1939 and the 2004 texts alike, chapters on archaeological findings follow right after. The 2004 Code frees itself from the old structure only later on, through its new insights on public access to and enhancement of CH (Title II, Part Two).

5 D.L. 22 December 2008, no. 200, "Misure urgenti in materia di semplificazione normativa". Also Law 18 February 2009, no. 9. *Gazzetta Ufficiale*, 42, 20 February 2009.

lic objects of art, as well as some places of natural relevance, are subject to a regime of special protection based in Law no. 1089. This is the reason why political and historical circumstances surrounding the drafting and approval of Bottai's provisions deserve renewed attention.

2 Historical Notes for an Appraisal of the Measure

2.1 Political Collusion and the Art Market (1933-43)

Almost ten years after the March on Rome and the inception of the Grand Council of Fascism, Mussolini's and Hitler's governments chose contemporary art as a launchpad for their renewed ties. On 14 February 1933 – a few days before the Reichstag fire and the Nazi Party's dictatorial takeover – the Kronprinzenpalais in Berlin inaugurated the exhibition *Neue Italienische Meister*. The Italian ambassador Vittorio Cerruti presided along with the president of the German Parliament and interim minister of Prussia, Hermann Göring. The latter took the opportunity in his opening remarks to recall a long-standing cultural and political brotherhood between the two governments.

Interestingly, the selected exhibits were merely the first example of many unequal cultural 'exchanges' Nazi leaders were particularly keen on throughout their two decades of power. On this occasion, Italy presented claims for the return of a national masterpiece by Francesco Paolo Michetti, *Iorio's daughter* (1895). Eventually, its government ended up paying a considerable amount of money to the Nationalgalerie where the painting had been displayed since 1906. With this sum (36,000 Reichsmark) the Berlin gallery purchased several Italian and German works. As a result, Germany received fifteen pieces by renowned representatives of the Italian avant-garde, including Funi and Sironi, Severini, Modigliani, De Chirico and Carrà, in exchange for the price of a single piece of artwork (Scholz, Obenaus 2015).⁶ In May 1939, when the Pact of Steel definitively led Italy into the tragic path of Hitler's politics, art market speculation by German buyers took off. The situation did not immediately become a clear abuse by Nazi authorities, thanks to the newly consolidated relationships between

⁶ These early celebrations did not spare Italian art from the severe eye of the German commission responsible for the seizure of so-called degenerate art. In November 1937, works by Sironi, Montanari and Modigliani were taken away from the Nationalgalerie and amassed in some Köpenicker Straße warehouses. Later on, only Sironi's *Composition* and Montanari's *Christ* found their way back to the Berliner Museum. Modigliani's *Head of a woman* was marked as "internationally valuable" and, in June 1939, it was sold at auction by Fischer Gallery in Lucerne, along with many other so-called 'degenerate' – but profitable – pieces (Scholz, Obenaus 2015).

the two dictatorships.

In June 1939 Hans Posse, director of the Dresda Galleries, was tasked with running the Linz Collection and its dedicated committee, the Sonderauftrag Linz, on behalf of the Führer.⁷ From that moment until his death in 1942, Posse became the primary contact for every middle-men working to enrich Hitler's collection.

A key agent to Sonderauftrag Linz in Italy was Prince Philipp von Hessen, married to King Vittorio Emanuele's second daughter and SA commander since 1925. The Prince provided Posse with extensive local support and made a bargaining chip out of Italy in order to be granted top brass approval.⁸ At the same time, Hermann Göring extensively relied on less ordinary types of transactions such as exchanges and donations prompted by personal and political interests.

In mid-1937, the Prince of Hesse accompanied Sonderauftrag Linz's representatives on their tour of Italy. Soon after, the Führer's attention was drawn to the Roman statue dubbed *Discobolo Lancellotti* after its owner, Prince Filippo Lancellotti.⁹ Consequently, the owner asked the Ministry of National Education for permission to sell and transfer the piece to Germany. The Ministry turned down the request, as the statue was listed as unsellable under Law 364/1909 provisions on antiquities and works of art. Given the repeated and pressing demands, the Directorate General of Fine Arts set up a commission of three State officers,¹⁰ in line with the 1909 Law. The commission's report, as well as the final decision by the Supreme Council on Antiquities and Fine Arts, claimed that transferring the *Discobolo* represented a severe loss for Italy's CH.¹¹ On 7 May 1938, a note from Germany pointed out the Führer's personal interest in the *Discobolo*, asking for the export license to be approved.¹² Once again, Bottai

7 A real distinction did not seem to exist between art objects from Hitler's private collection and those meant to end up at the Linz Museum. In both cases acquired pieces were catalogued as Führer's property (NARA, National Archives and Records Administration, *Records of the Roberts Commission*, 1943-6/Consolidated Interrogation Reports/C.I.R. # 4. Linz: Hitler's Museum and Library).

8 NARA *Records of the Roberts Commission*, 1943-6/Consolidated Interrogation Reports/C.I.R. # 4. Linz: Hitler's Museum and Library.

9 Renowned marble Roman copy (II century A.D.) now displayed at the National Roman Museum of Palazzo Massimo in Rome.

10 Biagio Pace, Amedeo Maiuri and Carlo Anti.

11 NARA *Records Concerning the Central Collecting Points*, "Ardelia Hall Collection". Munich Central Collecting Point, 1945-51/Restitution Claim Records/Italy Claims - Paintings Claimed by Italy Still At The Munich Central Collecting Point, 9-14.

12 NARA *Records Concerning the Central Collecting Points*, "Ardelia Hall Collection". Munich Central Collecting Point, 1945-51/Restitution Claim Records/Italy Claims - Paintings Claimed by Italy Still At The Munich Central Collecting Point, 15.

personally refused to fulfil Germany's request, yet on 3 June 1938, Mussolini ordered the Minister to approve the transfer of the statue to Germany.¹³ Following this procedure, scores of masterpieces were moved from Italy to Germany as soon as the Führer or its Reichsmarschall claimed them.

In 1941 a piece in a State collection got for the first time involved.¹⁴ On 13 August, a note by Mussolini to the superintendent of Trent ordered that the ancient German altarpiece displayed at the City Museum of Vipiteno (Bolzano) be donated to Göring as a birthday gift.¹⁵ The following year, in January, the altarpiece was put on a train to Berlin and handed over to the Reichsmarschall.¹⁶ In June, Bottai complained to the Foreign Affairs minister Galeazzo Ciano about the duty-free privilege given to Germans while the Vipiteno negotiations were still undergoing. Ciano simply settled the issue by assuring that his Ministry would foot the bill. This eventually led to the Italian State charging itself while the Reich authorities had been totally exempted from any payment (Siviero 1984). While the Vipiteno affair was ongoing, Bottai asked Superintendencies for comprehensive lists of artworks recently transferred to Germany. Issued on 1 September 1941, the order included a request for reports on the activity of German buyers within the Italian art market (Siviero 1984). A few days later, the head of Lazio's Superintendency, Rinaldo de Rinaldis, reported the most frequently occurring name in his records to be the Prince of Hesse. Based on his statements, the Prince was not just personally in charge of frantically purchasing works of art, he also happened to be particularly helpful whenever a German dealer needed an export permit granted despite Italian restrictions.

In November 1941, after having re-issued a ban on the transfer and export of State and other public cultural property (circular no. 170), Bottai allowed for 34 crates filled with artwork to be transferred to Germany on behalf of Göring. The Reichsmarschall was in Florence one more time towards the end of 1942, rounding up scores of antique dealers and middlemen (Siviero 1984). Among them was Eugenio Ventura, who carried

13 NARA *Records Concerning the Central Collecting Points*, "Ardelia Hall Collection". Munich Central Collecting Point, 1945-51/Restitution Claim Records/Italy Claims - Paintings Claimed by Italy Still At The Munich Central Collecting Point, 26-27.

14 Even if the events in Italy after military occupation go beyond the scope of this work, it must nonetheless be noticed that a severe threat to State and public collections only appeared towards the end of 1943, when Germany took control of the Fascist administration.

15 The altarpiece, dated 1456-8, comprised four wooden panels by Hans Multscher. Two-panels of unknown authorship belonging to the same period and school came with it (Siviero 1950).

16 NARA *Records Concerning the Central Collecting Points*, "Ardelia Hall Collection". Munich Central Collecting Point, 1945-51/Restitution Claim Records/Italy Claims - Correspondence, 93-5.

out the exchange of several masterpieces with Göring's agent, Walter Andreas Hofer. Eleven Renaissance paintings were thus handed over to the Germans in exchange for nine impressionist masterpieces belonging to the Nazi art hoard stored at the Jeu de Paume in Paris.¹⁷ In March 1943, Hofer returned again to Florence in order to complete the transaction and to grant Ventura with false statements meant to trick Italian authorities.¹⁸

2.2 Jewish-Owned Cultural Property

Up to 1943, the Fascist administration had been the only one responsible for carrying out racial persecution against individuals and their property on Italian soil. Provincial storage depots, banks, shipping companies and State agencies such as the Ente di gestione e liquidazione immobiliare (the agency for estate management and liquidation, specifically created to enact racial provisions against Jewish property)¹⁹ confiscated and retained huge amounts of private belongings. This happened due to three key acts, namely: tighter border controls following the RDL no. 1928/1938; limits to private ownership imposed on Jewish citizens by RDL no. 1728/1938; ownership restrictions for private citizens from enemy countries after the 1939 law of war (measure enacted by RDL no. 1415/1938). After the proclamation of the Manifesto in Verona on 30 November and the increase in severity of the RSI's racial policies, all Jewish property became subject to seizure by Italian authorities. However, before the military occupation by the Reich, a relatively small number of artworks belonging to seized property had been transferred to Germany.

A notable example of one of these was a privately-owned painting by Rubens seized by the Florence Superintendency. Despite the owner withdrawing her export request in order to have the artwork returned, the piece was sold to representatives of the Führer after negotiations taking place in 1941. Indeed, Italian local authorities had been actively involved from the start.

However, at the beginning of 1938 only a few actions had been taken against cultural property owned by Jewish citizens and communities,

¹⁷ Among the 11 paintings exchanged by Ventura there were one *Madonna* by Paolo Veneziano, Reni's *Atalanta and Ippomene* and two Della Robbia's. Göring gave away works by Cézanne and Degas, Van Gogh, Monet, Renoir and Sisley.

¹⁸ NARA *Records of the Roberts Commission, 1943-6/Consolidated Interrogation Reports/C.I.R. # 2 - The Goering Collection.*

¹⁹ Set up by R.D.L. 9 February 1939, no. 126, "Norme di attuazione ed integrazione delle disposizioni di cui all'art. 10 del R. decreto-legge 17 novembre 1938-XVII, n. 1728, relative ai limiti di proprietà immobiliare e di attività industriale e commerciale per i cittadini italiani di razza ebraica". Repealed by R.D.L., 26, 20 January 1944.

even if inventories of property belonging to victims of political and racial persecution had already been compiled. At that point in time, attention was mostly focused on attempts to export valuable art by those who were fleeing the country.²⁰ For instance, in January 1939 the Directorate General of Antiquities and Fine Arts had to address a request by the Trent Superintendent and his colleagues regarding some high-value property seized after custom controls. A government note eventually assigned priority to the *integrity of the national heritage*, national law being thus aimed at enriching public collections. On 4 March 1939 (a few months before the Bottai Law was approved), the Ministry of National Education issued circular no. 43 in order to address the massive outflow of foreign Jews from the end of the previous year. This prompted custom officers to cut down on the issuance of *nulla osta* and to overestimate the value of artworks, so as to prevent private owners from exporting their collections. Subsequently, on 13 September 1940 the Directorate General of Public Safety issued circular no. 63886 on the ban on trade in Jewish owned artworks and antiquities.²¹ Subsequently, a rebuilt Fascist Council of Ministers released a decree by Mussolini on the seizure of Jewish cultural property. The decree never officially entered into force. Nevertheless, the new minister of National Education Biggini imposed its implementation on all local authorities as early as December 1943.²² Seizure of Jewish art and memorabilia by the Italian government eventually merged into a more comprehensive racial policy, which resulted in the confiscatory law of 4 January 1944. Consequently, in April, the Ministry appointed fine arts officers as the holders of seized artworks and other cultural property, thus aiming at preventing them from being lost, smuggled or scattered among officers' parlours.²³

20 NARA *Records Concerning the Central Collecting Points*, "Ardelia Hall Collection". Munich Central Collecting Point, 1945-51/Restitution Claim Records/Italy Claims - Paintings Claimed by Italy Still At The Munich Central Collecting Point,17.

21 Commissione Anselmi 2001.

22 Circular 1 December 1943, no. 665, *Requisizione delle opere d'arte di proprietà ebraica* (Commissione Anselmi 2001).

23 Commissione Anselmi 2001.

3 Effects on the Application of International Law on Cultural Restitution after 1945

At this point, it is interesting to consider how this misapplication of the Italian law on protection of cultural property spread, severely undermining the legal grounds on which to base any request for post-war international restitution. This assessment must take as its starting point those provisions stemming from the international regime on State responsibility and its primary codification, the 2001 ILC Draft Articles.²⁴ These articles largely reflect the tentative formulations brought forward within the League of Nations, starting in the 1930s. For this reason, the principles behind the 2001 Draft Articles are likely to apply here despite coming significantly after the events in question and despite their non-binding nature. Furthermore, doctrine and practice regard some of these principles as part of general law (Focarelli 2012).

The 2001 Draft Articles definitively link the conduct of the State to that of its agents, whether they are persons or organs (arts. 4-11). This approach is based on judicial practice, which progressively tends to condemn individuals acting on the behalf of the State rather than States as political entities. Part of the current doctrine has dubbed this practice ‘clever sanctions’, regarded by Picchio Forlati (2004, 126) as crucial in order to tie a State’s actions to its identifiable agents. International judgments following this orientation have often resulted in a more consistent and effective application of humanitarian law, owing to their ability to directly address the state *élites* and decision makers responsible for breaking the law (Zagato 2007, 150).

Questions now arise as to whether the Third Reich and its major representatives (or people acting on their behalf) may be held responsible for committing internationally wrongful acts which would legitimate Italy’s claim for the restitution of art objects transferred to Germany prior to 1943.²⁵ This is to assess if it would be reasonable to consider the breach of Italian customs and cultural property law by Germany during peacetime as a breach of international law. In order for this to be the case, a rule of international law binding States to respect for other State’s domestic

24 http://legal.un.org/ilc/texts/instruments/english/commentaries/9_6_2001.pdf (2017-12-15).

25 The 1954 Hague Convention and its (Second) 1999 Protocol also draw on principles of State responsibility. Nevertheless, they belong to international humanitarian law and for this reason their provisions only apply in the event of use of armed force and military occupation (see 1954 Hague Convention, art. 18 and 1999 Protocol, art. 3).

law should have been in place at that time.²⁶ However, no such rule exists nor existed at the time, other than that requiring respect for State sovereignty, as codified in the San Francisco Charter of the UN of 26 June 1945 (and even earlier, in the Montevideo Convention of 1933 on the Rights and Duties of States). Art. 2(1) of the UN Charter can be interpreted as a commitment not to interfere with each State's internal sovereignty and independence, thus regarding the need to abide by its internal law as a rule within the international community. This argument nonetheless fades away under the long-established principles of State jurisdictional immunity to be granted to each foreign entity.²⁷

Despite these considerations, claims for the return of artworks removed before the military occupation by the Nazi forces might well have relied on the Bottai Law's provisions and their enactment. However, the unlawful transfer of Italian cultural property to Germany before 1943 must be regarded as a case of collusion, rather than a direct violation of State sovereignty. Indeed, Italian authorities at no point had been firmly invoking Law no. 1089 to ward off Nazi pressing requests for high-value and renowned pieces of art, but rather complied with them.

Irrespective of its own political responsibility, at the end of the war Italy filed several claims to the US AMG in Germany. Requests concerned not only the cultural property seized and ransacked on national soil following the Wehrmacht's invasion, but also comprised property sold and transferred between 1937 and the downfall of Mussolini's government. Based on previous considerations, US military authorities could have reasonably turned down Italy's claims for artworks transferred to Germany before 1943. Indeed, the Peace Treaty between Italy and the Allies (1947) entitled the former – art. 77(2) – to a right of restitution only for property seized under duress by the Germans after September 1943. Despite this provision, US policies on the matter were far from clear, not least because of its plans for political endorsement within the newborn Italian Republic. At the same time, post-war political turmoil represented a unique opportunity for Italy to firmly uphold its demands, despite its controversial past.

Interestingly enough, both the first parliamentary elections of the Italian republic and the sudden order from Washington for the return to “claiming governments” of all cultural property transferred by Nazi authorities against domestic law – not necessarily under military occupation or po-

26 1970 UNESCO Convention and its art. 3 on the respect of each State Party's provisions for the protection of cultural property do not apply to events preceding the Convention itself.

27 Object of the 1961 Vienna Convention on Diplomatic Relations and already part of customary international law (Focarelli 2012).

litical collusion - were dated April 1948.²⁸ From 1945 onwards, no other US-AMG directive would ever endorse such a position.²⁹ Years later, worsened international relations and brewing campaigns of suspicion put an end to this season of restitution. This is testified by the diplomatic uproar in 1948 following the restitution to Italy of several artworks, which were among those transferred to Germany after 1937. As a result of reciprocal protests and accusations among Italy, US and Germany, US occupation authorities removed themselves from ongoing negotiations with the Italian representatives for the return of the remaining cultural property held in Germany. This led to progressively leaving the issue of international restitution of artworks to the competent German authorities. German officers, who initially complied with Italy's requests, soon found themselves eager to act based on diplomatic (thus unpredictable) grounds rather than building on the previous Allies' policy on war reparations. As for the Italian government, the 1950's and 60's saw no effective political initiatives towards the return of what was still left abroad.

4 Final Remarks. Demystifying Law no. 1089

From the 1950s onward, expert and the public opinion did not seem overly keen on stressing the political paradox of the historical premises and provisions of Law no. 1089. Conversely, current contributions display rather positive approaches toward the 1939 measure (Tamiozzo 2009). This may be owing to a tendency to not fully distinguish between the achievements of this law and those generally obtained by Bottai's general reform of the fine arts administration (Cosi 2008). More often than not, this approach disregards the clear *raison d'être* of the single law, losing the opportunity for a more comprehensive historical review. The Minister of National Education's own words on the matter give nonetheless good hints in these regards.

On 26 March 1938, Bottai officially commented before the Senate on his Ministry's annual report, ushering in his legal reforms to the cultural sector. Unsurprisingly, the Fascist minister chose strongly provocative wording, calling for a much-anticipated transition from a protectionist and

28 NARA *Records Concerning the Central Collecting Points, "Ardelia Hall Collection"*. Munich Central Collecting Point, 1945-51/Restitution Claim Records/Italy Claims - Correspondence, 36.

29 The issue had been extensively considered on one occasion only, *i.e.* in the report submitted by the Director of the MFAA Italian branch, Norman T. Newton, on 5 January 1946 with the title *Works of art exported to Germany by Fascists* (NARA *Records Concerning the Central Collecting Points, "Ardelia Hall Collection"*). Munich Central Collecting Point, 1945-51/Restitution Claim Records/Italy Claims - Paintings Claimed by Italy Still at The Munich Central Collecting Point, 25-35).

conservative, even passive, safeguard³⁰ (in place since Law no. 364/1909) to a more exploitable one.³¹ This clearly matched a much more flexible application of contemporary rules on the transfer and sale of artworks. Indeed, even if Bottai's statements were indisputably in favour of protecting CH, boosting the economy through a strengthened art market appeared more than ever to be in harmony with new (but not further specified) national demands (Bottai 1940).³² Indeed, a few months after addressing the Senate, Bottai allowed *Discobolo Lancellotti* to be transferred to Germany, in an open clash with the government Commission of Fine Art.

Moreover, Bottai repeatedly claimed that protectionism on the art market was a consequence of the 1909 Law. In a speech before all Italian superintendents gathered in Rome in July 1938, he could not help but call this same law obsolete. Ultra-liberalism and lack of proper inventories in the wake of Italy's unification had been common justifications for the rigor of Law 364/1909. Consequently, the minister had assured his audience the inventory of works of art would now be complete enough for the government to loosen legal bonds still in place.³³ This also meant he planned on limiting the more severe provisions on transfer and sale to those cases implying extreme cultural losses for the national CH. For too long the art market had been suffering tough limitations and heavy taxation,³⁴ the minister maintained (Bottai 1940). Eventually, these government commitments were to result in draft articles on the safeguard of objects of artistic and historical relevance, which would later become Law 1089/1939.

In this regard, particularly noteworthy in the context of racial persecution and abuse of powers of the 1930's is the extension of the power of seizure, previously limited to situations where the integrity of the artwork was at risk, to more generic reasons of "public interest" (a wording that the 2004 Urbani Code contains unchanged). More in detail, this public interest included the need for restoration as well as the rather ambiguous

30 "[T]utela difensiva e conservatrice, di carattere passivo" (Bottai 1940).

31 "[T]utela manovrata" (Bottai 1940).

32 "[N]uove esigenze nazionali" (Bottai 1940).

33 In his 1956 Commentary on Law 1089/1939, the Calabria Superintendence of Antiquities officer Placido Olindo Geraci claimed that in the late 50s an exhaustive inventory of cultural property belonging to State and public bodies was not yet in place. The situation became particularly serious when it came to major national museums and this affected local and city museums alike. Collections were thus exposed to great threats, which grew more serious during and soon after wartime: "[I]l censimento esatto di tutte le cose di proprietà dello Stato e degli enti diversi da esso lascia molto a desiderare e gli ultimi eventi bellici hanno peggiorato la situazione: persino Musei nazionali importanti mancano ancora d'inventari aggiornati e completi, senza dire di quelli provinciali e civici, ciò che è causa di gravissimi abusi" (Geraci 1956).

34 "[T]roppo rigide limitazioni e troppo forti gravami fiscali" (Bottai 1940).

‘enrichment’ of national cultural assets (see Law 1089/39, art. 54). Additionally, auction house regulations had been deliberately excluded (and so are nowadays), so as not to hinder market growth. This growth was expected to open the opportunity for State and other public artworks to be either sold or swapped. Indeed, Bottai regarded these unprecedented exceptions to the long-standing rule of inalienability of State property as a means of stimulating the national economy (Bottai 1940).³⁵

Additionally, compared to previous measures on the fine arts sector (namely, Nasi Law of 1902 and Rosadi Law of 1909), it could be argued that the achievement of Bottai’s Law was the reorganisation of principles that had already been in place for at least thirty years. Yet, these same principles did not seem to urge initiatives such as a new law on the verge of a global conflict, amidst racial and political repression. This lack of urgency also lies in the fact that no regulatory acts whatsoever eventually implemented Bottai Law’s provisions. Indeed, the 1913 regulations for the application of Rosadi Law no. 364/1909 remained fully applicable, as they still are nowadays (based on Urbani Code’s art. 130). In this regard, when Placido Olindo Geraci put forth his tentative amendment to Law 1089, he underlined the law’s broad misapplication and ineffectiveness (due to “several unpredictable and unlucky events”³⁶). For Geraci, an overall lack of any judgements relying on Law 1089 was even more regrettable given what he regarded as a massive breach of its provisions (Geraci 1949).

In summary, while Bottai issued Law 1089 so as to tailor the art market to political interests and loyalties, its provisions were nonetheless misapplied in order to justify a drastic restriction on the transfer of cultural property belonging to persecuted individuals. Ironically, the only exception to these strict border controls were given to those pieces claimed by the Nazis, State- and public-owned artworks included. Therefore, Law no. 1089 of 1 June 1939 appears as a key element in the overall 1930s/40s fascist policy of malpractice and abuse, rather than a game-changer in the development of the Italian law on cultural protection. Indeed, this leaves us with doubts as to whether Law 1089/1939 was ever meant to be. Despite this, the current legal regime on CH (as well as higher education) in Italy appears to have excessively relied on this Fascist construct, rather than building on previous and more praiseworthy legislation.

³⁵ Notably, the draft articles allowed for Italian cultural institutions to exchange works of art only if a foreign counterpart was concerned. The requirement was eventually withdrawn from the final version of Law 1089. However, questions on to why the original version of art. 25 bores such reference remain. As Grisolia points out, doubts also arise as to the reasons for exempting the exchange of artworks from preservation and public accessibility requirements, which characterise any other kind of property transfer within Law 1089 (Grisolia 1939).

³⁶ “Una serie di imprevedibili e malaugurate circostanze” (Geraci 1949).

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