

CULTURAL HERITAGE
AND IDENTITY
ACROSS EAST AND WEST

Italy, China, Japan, South Africa
between Law and History

Edited by
Emma A. Imperato

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THE LEGAL PROTECTION OF CULTURAL HERITAGE AND THE DEEP WEB PHENOMENON

Virgilia Fogliame

1. *The protection and enhancement of the historical-artistic heritage*

This contribution aims to provide a reconstruction in relation to the theme of the circulation of cultural assets, and of the instruments provided by the Italian legal system for contrasting the “pathological” aspect that characterises the theme, namely the illicit trade of the same. In particular, this research will be developed in concentric circles, starting from the attention progressively attributed, in the Italian legislative panorama, to the concept of “protection” and “conservation” of the cultural asset, to then to address the profile relative to the “enhancement” of the same, understood as “expression of the dynamic principle of movement and circulation”¹.

The objective proposed by the present research can only be achieved through a preliminary historical analysis of the themes mentioned, highlighting the “aspects of continuity” between the regulations for the protection of cultural heritage starting from the Kingdom of Naples up to the solutions proposed in the current regulatory framework in force in Italy².

On closer inspection, the concept of “protection” of the cultur-

¹ For a complete and in-depth analysis of the topic, see the recent volume P. Giulierini, L. Melillo, D. Savy (eds.), (2018), *Archeologia ferita: lotta al traffico illecito e alla distruzione dei beni culturali*, Editoriale Scientifica: Naples.

² P. D’Alconzo, A. Milanese, (2018), Scavi e mercato antiquario a Napoli tra Sette e Ottocento: dalla legislazione alla prassi di tutela, in P. Giulierini, L. Melillo, D. Savy (eds.), cit., p. 1 ff.; P. D’Alconzo, (1995), in A. Fittipaldi (eds.), *Musei, tutela e legislazione dei beni culturali a Napoli tra ‘700 e ‘800*, Quaderni del Dipartimento di discipline storiche dell’Università degli studi di Napoli Federico II, Luciano Editore: Naples, p. 33 ff.; M. Speroni, (1988), *La tutela dei beni culturali negli stati italiani preunitari. I. L’età delle riforme*, Giuffrè: Milan, p. 195 ff.

al heritage was established in Italy quite early, as evidenced by the historic letter sent by Raphael to Leo X, dating from 1519, which represents the first root of a “trattato d’architettura” on the protection of ancient monuments. This letter highlights the marked sensitivity and emotional involvement of the artist in relation to the worrying conditions (due to centuries of neglect) of the structures visited and, therefore, defined by himself as “corpses of a noble homeland”³.

The thought of Charles of Bourbon seems to be moving along the same lines as Raphael’s considerations, as emerges from some quotations extracted from a dispatch dated 24th July 1755 addressed to the Regia Camera Sommaria: “The Provinces, from which this Kingdom of Naples is composed [...] have at all times administered a very large copy of rare monuments of antiquity [...]. *But because no care and diligence has been used in the past in gathering and keeping them*, everything that has been unearthed most valuable has been extracted from the Kingdom, so that it is now very poor, *where other Foreigners from distant countries they are enriched by it and make it their greatest ornaments, drawing huge profits from it.* [...] The King all this in his mind with regret addressing, and considering, that in the most cults of Europe the extraction of such relics of antiquity, without the express

³ The Artist had been commissioned by the Pope to study the ruins of Rome, in order to create a map of the ancient city. Some passages of the letter are of great interest: “[...] having been very studious of these antiquities, and having taken no small care in looking for them minutely, and measuring them with diligence: and reading the good authors, compare the works with the scriptures; I think I have obtained some information on ancient architecture. Which in one point gives me great pleasure, for the knowledge of something so excellent: and great pain, seeing almost the corpse of that noble homeland, which was queen of the world, so miserably torn. [...] But why will we complain about the Goths, Vandals, and other such perfidious enemies; if those, *who as fathers and tutors had to defend these poor relics of Rome, they themselves have long waited to destroy them?* How many pontiffs, Holy Father, who had the same office as your holiness, but not the same knowledge and greatness of soul, nor that clemency that makes it similar to God: how many, I say, pontiffs have waited to ruin ancient temples, statues, arches, and other glorious buildings! [...] Therefore, Holy Father, it must not be among the last thoughts of your holiness that you *take care, that the little that remains of this ancient mother of Italian glory and greatness*, as a witness to the *value and virtue* of these divine souls, that even at times with their memory they excite the spirits who are among us today to virtue, *may not be extirpated and spoiled by the evil and ignorant [...]*” (italics added). *Amplius*, F. P. Di Teodoro, (2015), La Lettera a Leone X di Raffaello e Baldassar Castiglione: un nuovo manoscritto, in *Annali della Scuola Normale Superiore di Pisa. Classe di Lettere e Filosofia*, vol. 7, fasc. 1, p. 119 ff.

permission of the Sovereigns has been prohibited [...] resolved that such a bad thing should be remedied once, so that this Kingdom does not go more and more impoverished of what abounds, to make the other provinces of Europe abundant, which are poor by themselves”⁴.

In these words, a clear negative position emerged with regard to the unlawful advantages obtained by foreigners following various spoliation works they carried out, considered harmful for the preservation of the historical and patrimonial identity of the Kingdom.

On this track, therefore, the first Neapolitan legislation concerning the safeguarding of cultural heritage was developed, expressing the full awareness of the economic-cultural value of the historical, artistic and archaeological heritage: the reference is to the two laws published on 16 October 1755, (*Prammatica LVII* and *Prammatica LVIII*), which subordinated the export of archaeological finds or similar assets to the request for a licence for their sale abroad⁵. However, although such legislation led to a significant drop in sales in the art market, it failed to completely stop the abusive export of such assets.

Despite the introduction of two further successive laws (*Prammatica LIX* and *Prammatica X*, which included an increase in penalties for those who did not respect the restrictions imposed), a market for artworks parallel to the official one developed, where the circulation of assets evaded, more often than not, to any kind of public control⁶.

⁴ Italics added. See L. Giustiniani, (1804), *Nuova collezione delle Prammatiche del Regno di Napoli*, IV, Stamperia Simoniana: Napoli p. 201 ff.; P. D’Alconzo, (1999), *L’anello del re. Tutela del patrimonio storico-artistico nel Regno di Napoli (1734-1824)*, Edifir: Florence; P. D’Alconzo, (2001), La tutela del patrimonio archeologico nel Regno di Napoli tra Sette e Ottocento, in *Archéologie et construction nationale en Italie (1870-1922)*, *Atti delle giornate di studio organizzate dall’École française de Rome* (Rome, 29-30 April 1999), monographic number of MEFRIM. Mélanges de l’École française de Rome. Italie et Méditerranée, vol. 113, p. 507 ff.

⁵ P. Colletta, (1975), *Storia del Reame di Napoli dal 1834 sino al 1825*, Utet: Turin, p. 120 ff.; P. D’Alconzo, Scavi e mercato antiquario a Napoli tra Sette e Ottocento: dalla legislazione alla prassi di tutela, cit., p. 5 ff.

⁶ F. Haskell, (1979), Mecenatismo e collezionismo nella Napoli dei Borbone durante il XVIII secolo, in *Civiltà del ‘700 a Napoli. 1734-1799*, exhibition catalogue (Naples 1979-80), I, Centro Di: Florence, p. 29 ff.; S. Pinto, (1982), La promozione delle arti negli Stati italiani dall’età delle riforme all’Unità. Parte prima. L’età delle riforme. I. Gli stati borbonici. I regni di Napoli e di Sicilia, in *Storia dell’arte italiana, Settecento e Ottocento*, Einaudi: Turin, p. 803 ff.; R. Di Costanzo, (1997), Tutela giuridica dei beni artistici e proprietà privata nel Mezzogiorno preunitario, in *Beni culturali a Napoli nell’Ottocento, Atti del Convegno di studi, Napoli*, Ministero per i beni e le attività culturali, Ufficio centrale

Only after a few years, due to the conspicuousness of this phenomenon, the control of exports of cultural assets was entrusted to the “Commissione di Antichità e Belle Arti”⁷.

However, the control of the art market turned out to be a complex task, given that in those years the Kingdom of Naples faced difficult economic conditions. Assisted by very low levels of education among the people, there was the awareness that only the art market could increase the economy of the Kingdom, since the demand from foreign countries was very high, and the internal supply was even higher. In this way, therefore, the problem of artistic dispersion did not come to an end, given that economic hardship was rife in all layers of society⁸.

Nevertheless, an opinion seems to be shared according to which the policies for the protection of cultural heritage adopted by the Kingdom of Naples – although characterised by an implicit contradiction⁹ – managed, in some way, to stem the phenomenon of spoliation by foreign countries, introducing the concept of the protection of cultural assets as a protection of the identity of the community. Such a concept – the subject of various scientific reflections – would constitute, as this research will attempt to highlight, the land on which the definition of cultural heritage will be built, intended as material testimony having the value of civilisation.

2. *The different conceptions of cultural heritage*

The idea of cultural heritage, and of its safeguarding from a public viewpoint, was a particularly important theme for the Constituent Assembly, which foresaw the importance of cultural heritage (and

per i beni archivistici: Rome, 2000, p. 58 ff. These contributions have been explicitly recalling (see nt. 22 – 46) by P. D’Alconzo, *La tutela del patrimonio archeologico nel Regno di Napoli tra Sette e Ottocento*, cit., pp. 517-527.

⁷ Commission constituted by archaeologists and trusted artists of the King, chaired by law by the Director of the Real Bourbon Museum, as highlighted by P. D’Alconzo, A. Milanese, *Scavi e mercato antiquario a Napoli tra Sette e Ottocento: dalla legislazione alla prassi di tutela*, cit., p. 15 ff.

⁸ M. Ruggiero, (1888), *Degli scavi di antichità delle province di terraferma dell’antico Regno di Napoli dal 1734 al 1876*, V. Morano: Napoli, p. 30 ff.; P. D’Alconzo, A. Milanese, *Scavi e mercato antiquario a Napoli tra Sette e Ottocento: dalla legislazione alla prassi di tutela*, cit., p. 16 ff.

⁹ *Ibidem*.

of its promotion) considered as a place of identity of a community: therefore, the actual wording of Art. 9 Const. defines the sections of to be promoted and safeguarded (culture, scientific and technical research, landscape, historical-artistic heritage), granting to the State legislation the discipline for agreements and co-ordinated action in the field of cultural heritage preservation (Art. 118, para. 3 Const.)¹⁰.

In particular, the headword “safeguard” emerges for the first time during the Constituent Assembly, in the session of 30 April 1947, used by Tristano Codignola, who opposed the concepts of “supervision” and “protection”, affirming that “*The State does not protect, it safeguards*” considering that the concept of “safeguarding” does not mean emergency protection, but a systematic and preventive protection through homogeneous policies established over time, and not through occasional and random interventions¹¹.

In Italy, the concept of *patrimonio culturale* has very deep roots, and very different semantic implications compared to the traditional concept in English of cultural heritage. In fact, a strong patriarchal/androcentric value has been detected implied in the expression patrimony: in this matter, the etymology of the word itself is significant to better explain this concept. The Latin word “*patrimonium*” comes from “*pater monere*” and it refers to family patrimony: but it does not only deal with the right of possession and therefore with the transmission of property, but rather of belonging to a line of descent¹².

¹⁰ Italics added. *Amplius*, F. Rimoli, (2017), Profili costituzionali della tutela del patrimonio culturale, in E. Battelli, B. Cortese, A. Gemma, A. Massaro (eds.), *Patrimonio culturale. Profili giuridici e tecniche di tutela*, RomaTrE-Press: Rome, p. 92; L. Casini, (2016), *Ereditare il futuro. Dilemmi sul patrimonio culturale*, Il Mulino: Bologna; P. Montanari, (2013), *Le pietre e il popolo. Restituire ai cittadini l'arte e la storia delle città italiane*, Minimum fax: Rome; S. Settis, (2012), *Azione popolare. Cittadini per il bene comune*, Einaudi: Turin; R. Chiarelli, (2010), *Profili costituzionali del patrimonio culturale*, Giappichelli: Turin, p. 216 ff.; A. Mattioni, (2008), Cultura e persona nella Costituzione, in L. Degrassi (eds.), *Cultura e istituzioni. La valorizzazione dei beni culturali negli ordinamenti giuridici*, Giuffrè: Milan; Zoppi M., (2007), *Beni culturali e comunità locali*, Mondadori Electa: Milan; M. Ainis, (1991), *Cultura e politica. Il modello costituzionale*, Cedam: Pdua, p. 57 ff.

¹¹ The observation is taken from S. Staiano, (2018), intervention at the Congress held at University of Naples Federico II on 10 December 2018 for the presentation of the book *Archeologia ferita: lotta al traffico illecito e alla distruzione dei beni culturali*, in P. Giulierini, L. Melillo, D. Savy (eds.), Editoriale Scientifica: Naples.

¹² M. Giampieretti, (2011), La salvaguardia del patrimonio culturale italiano tra identità e diversità, in L. Zagato, M. Vecco (eds.), *Le culture dell'Europa, l'Europa della cultura*,

In doctrine, different conceptions that gravitate around the concept of cultural patrimony have been highlighted¹³: the first is a *conception of unity*, which sees the cultural patrimony as an *expression of the identity of a community*¹⁴.

In the Italian scenario, this conception appeared rather early, even before the creation of the Ministry of Cultural and Environmental Heritage: it refers to the works of Franceschini's Commission¹⁵, where it emerged that the concept of cultural commodity embraces all of that which constitutes a material testimony proving the value of civilisation: this definition opens the way to the affirmation of the value of cultural heritage as the essential aspect of the identity of a community

Franco Angeli: Milan; P. Clemente, (2011), *L'antropologia del patrimonio culturale*, in L. Faldini, E. Pili (eds.), *Saperi antropologici, media e società civile nell'Italia contemporanea, Atti del 1° Convegno nazionale dell'ANUAC (Matera, 29-31 maggio 2008)*, Cisu: Rome; M. Herzfeld, (2010), *Engagement, gentrification, and the neoliberal hijacking of history*. *Current Anthropology*, vol. 51 (Supplement 2), p. 259-267; M. Vecco, (2007), *L'evoluzione del concetto di patrimonio culturale*, Franco Angeli: Milan, p. 18 ff.; E. Bellato, *Evoluzioni patrimoniali: nuovi usi e significati di un concetto ormai storico*, in *Citizens of Europe. Cultures and Rights. Culture e diritti*, available on line at this link: <https://edizionicafoscari.unive.it/media/pdf/chapter/978-88-6969-054-9/978-88-6969-054-9-ch-10.pdf>.

¹³ “La cultura, o civiltà, intesa nel suo ampio senso etnografico, è quell'insieme complesso che include la conoscenza, le credenze, l'arte, la morale, il diritto, il costume e qualsiasi altra capacità e abitudine acquisita dall'uomo come membro di una società” (E. B. Tylor, (1871), *Primitive culture. Reasearches into the development of mythology, philosophy, religion, language, art and custom*, Murray: London, (trad. it. (2000), *Alle origini della cultura. Vol. IV: Animismo. L'anima e le anime. Dottrina e funzioni*, Ist. Editoriali e Poligrafici internazionali: Pisa-Rome, p. 2). This conception of culture spread the belief that artworks constituted authentic proofs of the cultural expressiveness of a people, to be protected and safeguarded.

¹⁴ C. Bortolotto, (2011), *Patrimonio intangibile e autenticità: una relazione indissolubile*, in *La ricerca folklorica*, n. 64, p. 15; M. Maggi, (2009), *Musei alla frontiera. Continuità, divergenza, evoluzione nei territori della cultura*, Jaca Book: Milan; H. De Varine, (2005), *Radici del futuro. Il patrimonio culturale al servizio dello sviluppo locale*, in D. Jalla (eds.), Clueb: Bologna; S. Troilo, (2005), *La patria e la memoria. Tutela e patrimonio culturale nell'Italia unita*, Mondadori Electa: Milan; D. Lowenthal, (1998), *The Heritage Crusade and the Spoils of History*, Cambridge University Press: Cambridge; K. Pomian, (1996), *Nation et patrimoine*, in D. Fabre (eds.), *L'Europe entre cultures et nations*, Éditions de la Maison des sciences de l'homme: Parigi, pp. 85-95; A. Emiliani, (1974), *Una politica dei beni culturali*, Einaudi: Turin, p. 289 ff.

¹⁵ Inquiry Commission established with law of 26 April 1964, no. 310, for the safeguard and enhancement of historical patrimony, archaeological, artistic and landscape.

and, therefore, testimony of civilisation, so as to increase awareness of it and its importance in social consciousness and, not least, politics¹⁶.

According to this perspective, cultural heritage is, first of all, memory and testimony acquired from the past; but it must be, at the same time, experience of the present and genesis of the future of the community, because its knowledge does not end in a mere actual aesthetic enjoyment, but it encourages and orientates to the creation of new culture, new art and, therefore, new patrimony¹⁷. And it is from this perspective that the law of the Council of State has been directed, according to which the cultural commodity has to be safeguarded not only for aesthetic reasons, but mostly for historical reasons, underlining the importance of the work or the commodity for man's historical and scientific progress¹⁸. The growing process of globalisation in every field, from the economy to communication, has increased the need to highlight the identity aspects which distinguish a community: this need has taken, especially in this historic phase, the form of the enhancement of cultural heritage¹⁹.

The entire legislation of reference (Legislative Decree of 22 January 2004, no. 42, Code of cultural heritage and landscape) has intersected the issue of autonomies, developing around the relationships between the two activities – “safeguarding” and “protection” – and the breakdown of the functions between the State and territorial public entities. In fact, pursuant to Art. 3, para. 1, of the Code, the safe-

¹⁶ T. Alibrandi, (1999), L'evoluzione del concetto di bene culturale, in *Foro amm.*, p. 2701 ff.; M. S. Giannini, (1976), I beni culturali, in *Riv. trim. dir. pub.*, p. 8 ff.; M. P. Chiti, (1998), La nuova nozione di bene culturale nel d.lgs. 112/1998: prime note esegetiche, in *Aedon*, 1, p. 12 ff.; G. Caia (eds.), (2000), *Il testo unico sui beni culturali e ambientali*, Giuffrè: Milan, p. 5 ff.; B. Cortese, Patrimonio culturale, diritto e storia, in *Patrimonio culturale. Profili giuridici e tecniche di tutela*, p. 11 ff.

¹⁷ P. Häberle, (2006), *Costituzione e identità culturale: tra Europa e Stati nazionali*, Giuffrè: Milan; S. Urbinati, (2012), Considerazioni sul ruolo di ‘comunità, gruppi e, in alcuni casi, individui nell'applicazione della Convenzione UNESCO per la salvaguardia del patrimonio culturale intangibile, in T. Scovazzi, B. Umbertazzi, L. Zagato (eds.), *Il patrimonio culturale intangibile nelle sue diverse dimensioni*, Giuffrè: Milan, p. 56 ff.; F. Rimoli, (2016), La dimensione costituzionale del patrimonio culturale: spunti per una rilettura, in *Riv. giur. edilizia*, 5, p. 505 ff.; F. Rimoli, Profili costituzionali della tutela del patrimonio culturale, p. 92 ff.; V. Baldacci, (2014), Tre diverse concezioni di patrimonio culturale, in *Cahiers d'études italiennes*, 18, p. 50 ff.; L. Casini, *Ereditare il futuro*, p. 123 ff.

¹⁸ B. Cortese, Patrimonio culturale, diritto e storia, p. 12, explicitly recalling (see nt. 2) the sentence of the State Council of 17 October 2003, no. 6344.

¹⁹ V. Baldacci, Tre diverse concezioni di patrimonio culturale, cit., p. 51.

guarding of cultural heritage consists “in the exercise of the functions and in the discipline of direct activities, on the basis of adequate cognitive activity, identifying the commodities which form the cultural heritage and guaranteeing their protection and conservation for purposes of public use”, and comes under the exclusive competence of the State. Separate from the concept of “safeguarding”, but inextricably linked to it, is the concept of “enhancement” which, pursuant to Art. 6, para. 1, of the Code “consists in the performance of the functions and in the discipline of the activities aimed at promoting the knowledge of the cultural heritage and ensuring the best conditions of use and public use of the heritage itself [...] in order to promote the development of culture”, and constitutes a matter of concurrent competence²⁰.

The second conception refers to the economic value of the cultural commodity, intended as the market value of the same.

Such a conception has suffered with the change in approaching this matter, which started at the beginning of the 20th century, related to the sale of cultural commodities: it has, in fact, been noted how during the era dominated by a liberal ideology, the market of artworks and archaeological findings (with the exception of national monuments) was completely free from any restrictions: only starting from the beginning of the 20th century, was there a widespread idea that cultural heritage was strictly connected to the idea of national identity (referring to the “unitary concept” of cultural commodity, as mentioned earlier), and that it was therefore necessary to regulate its economic exchange in order to restrict its export abroad. It was only then, therefore, that a stratification of regulatory constraints appeared in Italy, where the first law was no. 185 of 12 June 1902 (the so-called Nasi Law), which put a partial stop to the export of artworks²¹.

Still today, the news is full of cases of artworks being sold at auction for very high prices; but the circulation of the commodities of cultural heritage does not always happen legally. This is a huge problem that involves Italy in particular, along with Greece: the reference is to the illicit trade of cultural heritage on the Web²².

²⁰ B. Cortese, *Patrimonio culturale, diritto e storia*, cit., p. 17.

²¹ S. Sicoli, (1978), *La formazione dello Stato unitario*, in A. Rossari, R. Togni (eds.), *Verso una gestione dei beni culturali come servizio pubblico: attività legislativa e dibattito culturale dallo stato unitario alle regioni*, Milan, p. 69 ff.; V. Baldacci, *Tre diverse concezioni di patrimonio culturale*, cit., p. 53.

²² P. G. Ferri, (2017), *Le nuove frontiere del traffico illecito di beni culturali ed il suo*

3. Cultural heritage and deep web

The inadequacy of the regulatory tools aimed at curbing the illicit trade in cultural heritage on the web is, to date, caused by the progressive growth of illegal and extremely sophisticated procedures of sales of such assets, so sophisticated that even the common investigative skills employed by the authorities are often inadequate and, not least, insufficient in order to effectively oppose them²³.

As a matter of fact, the rapid growth in the use of the web for on-line purchases has encouraged the expansion of illegal sales of certain commodities, carried out by a number of national and international criminal organisations, which have taken advantage of the endless possibilities offered by the web (or rather, *the absence of well-defined national borders; non traceable procedures; the anonymity of the actors*)²⁴ with the aim of creating non-traceable areas of exchange (the so-called “deep web”) in order to avoid the criminal liability connected to these activities²⁵.

Therefore, the main problem consists in an inability to identify and locate, at least in a reasonable amount of time, those responsible for such crimes, since in the most “hidden” part of the web, the so-called “dark net”, a series of illegal activities take place, also through on-line shops (the so-called “black market”), where it is possible to carry out anonymous transactions: a market that concerns, in particular, the sales of weapons, explosives, narcotics and, not least, cultural heritage commodities. In this last case, the offer made available on the web activates a new form of collectibles which end up feeding demand, consequently causing further thefts, illegal excavations and forgery of commodities at an increasing pace²⁶.

contrasto, in R. Cosentino, D. Rizzo, A. Russo (eds.), *Il patrimonio ritrovato a Cerveteri. I predatori dell'arte e le storie del recupero*, Gangemi Editore: Rome, p. 19.

²³ L. Lupária Donati, Tutela dei beni culturali e processo penale, in *Patrimonio culturale. Profili giuridici e tecniche di tutela*, p. 196.

²⁴ M. C. Colombini, La ricerca e l'analisi nel Deep Web: i Black Market, in *Sicurezza e giustizia*, no. IV_MMXXV, p. 42.

²⁵ L. Lupária Donati, (2018), Traffico illecito dei beni archeologici: accertamento dei reati e questioni processuali, in P. Giulierini, L. Melillo, D. Savy, cit., p. 4 ff.

²⁶ P. G. Ferri, Le nuove frontiere del traffico illecito di beni culturali ed il suo contrasto, cit., p. 19; M. C. Colombini, La ricerca e l'analisi nel Deep Web: i Black Market, cit., p. 44.

One of the most popular ways to access the so-called “deep web” is T.O.R. (acronym for The Onion Router), a system born in 1995 thanks to the United States Navy with the aim of guaranteeing and protecting governmental conversations from being intercepted by foreign secret service agencies. This system is composed of an ensemble of virtual tunnels which allows users to surf the web without leaving any trace, making traffic anonymous, because the data connected to any sort of communication does not pass directly from the client to the server but goes through the T.O.R server, which acts as a router²⁷.

The features of T.O.R. clearly demonstrate how difficult it is to contrast such illegal activities which are carried out exploiting this platform, because long, necessary and well-coordinated (and, not least, extremely expensive) investigations are required, leading to an inevitable slowdown in the procedures of identification²⁸.

The characteristics of these procedures make it possible that the illegal trafficking of such commodities is free from an associative context of criminal nature, because most of these crimes are carried out through occasional and temporary networks by individuals who operate independently²⁹.

In these cases, the criminals conduct cannot be controlled using the same investigative measures that the law provides for countering criminal organisations: for this reason, the ordinary bill approved by the Chamber of Deputies on 18 October 2018 in relation to “*Disposizioni concerning crimes against cultural heritage*” contemplates, on one side, the introduction of a crime for “organised activities involved in the illegal traffic of cultural heritage” (Art. 15 *quaterdecies* c.p., which contemplates imprisonment from 2 to 8 years) and, on the other, the possibility for Officers of the Criminal Investigation Department specialised in cultural heritage to work undercover in all those operations against the illegal trade, with the aim to destroying them from the inside³⁰.

And, since the majority of the *players* who are mostly interested in

²⁷ M. C. Colombini, *La ricerca e l'analisi nel Deep Web: i Black Market*, cit., p. 42.

²⁸ P. G. Ferri, *Le nuove frontiere del traffico illecito di beni culturali ed il suo contrasto*, cit., p. 19.

²⁹ L. Lupária Donati, *Traffico illecito dei beni archeologici: accertamento dei reati e questioni processuali*, cit., p. 4.

³⁰ Hereto.

these transactions are museums and auction houses, the extension to the crimes against the cultural heritage of the regulations relating to the administrative liability of bodies deriving from crime, appears to be a viable solution from many points of view: according to some, in fact, especially the profile relating to the autonomy of the responsibility of the body could produce the virtuous effect of inducing the *players* who operate in this trade, to equip themselves with an apparatus of internal regulations so as to prevent unlawful and illegal acts, and thus avoid the risk of sanctions being applied³¹.

These are solutions that, therefore, would tend to reduce the intervention within the boundaries of the *extrema ratio*, thus relying on preventive administrative protection: the introduction of a discipline capable of attributing greater responsibility to the bodies involved in these dynamics could, therefore, prove to be one of the most effective solutions in order to put a stop to the illicit conduct involving the circulation of cultural assets, especially those which happen through such complex procedures, that are extremely difficult to defeat³².

³¹ L. Lupária Donati, *Tutela dei beni culturali e processo penale*, cit., p. 204. The A., on the point, also notes (see nt. 42) that similar procedures have been planned in the recent Law no. 57 of 29 April 2015 with ratification and execution of the European Convention for the protection of the archaeological patrimony providing, at Art. 10, that “per quanto concerne i musei e gli altri Istituti analoghi la cui politica di acquisto è soggetta al controllo dello Stato, [ciascuna parte si impegna] ad adottare i provvedimenti necessari affinché essi non acquisiscano elementi del patrimonio archeologico sospettati di provenire da scoperte incontrollate, scavi illeciti o deviazioni di scavi ufficiali”.

³² A. Massaro, *Diritto penale e beni culturali: aporie e prospettive*, in *Patrimonio culturale. Profili giuridici e tecniche di tutela*, p. 192.

