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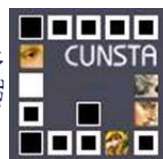
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Saggi

The landscape protection: a comparative approach to an idea

Denise La Monica*

Abstract

This article aims to inquire the beginning of landscape protection in historical and comparative perspective. The laws and the official acts, that have been approved by different countries, are intended as a reliable evidence on the basis of which it would be possible to outline historical and geographic contexts for the development of landscape protection. The French, British and Italian contexts will be analyzed, approximately from the year 1864, when the law for protection of the Yosemite Valley was approved in the USA, to the year

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This contribute has been developed in two stages: firstly, in 2015, I held two seminars on the beginnings of landscape protection in France and in the United Kingdom, thanks to the invitation by professor Salvatore Settis, in occasion of his Cattedra Borrominiana, that was coordinated by professor Christoph Frank, in Mendrisio University (Switzerland); secondly I had the opportunity of considering again these topics during my fellowship in the Italian Academy (New York, Columbia University) at the beginning of 2018 (January-April 2018). While I was thinking about composing

1906, when the first law was approved in France, in order to specifically and exclusively protect the landscape.

Questo contributo intende affrontare il tema della nascita della tutela del paesaggio in prospettiva storica e comparativa. Le leggi e gli atti ufficiali sono la fonte primaria di analisi, attraverso le quali si tenta di costruire una intelaiatura generale che consenta di individuare epoche e situazioni storiche in cui il paesaggio ha cominciato ad essere percepito, nelle sue varie sfumature, come un bene collettivo meritevole di protezione. I contesti analizzati sono Francia, Regno Unito, Italia e Stati Uniti a cavallo del Novecento, tra la norma istitutiva della protezione per la Yosemite Valley (1864) e l'approvazione della legge francese del 1906, la prima legge europea esclusivamente e appositamente dedicata alla tutela del paesaggio.

1. *Cultural heritage studies*

The studies on the protection of cultural heritage in historical perspective have traditionally been approached within domestic systems¹, on the ground that every State not only has its own cultural heritage, characterized by its specific features, artists and institutions², but also it is regulated by its own legal system, with its hierarchy of laws, its types of legal instruments and its fundamental constitutional principles³. Conventionally the 'cultural heritage'

a book on this topic, it appeared reasonable to me to propose an attempt of comparative reflection to the *Capital of Cultural Heritage*, one of the few scientific Italian journals that is clearly oriented towards this kind of topics. Consequently, I am very grateful to this journal and, particularly, to Professor Patrizia Dragoni who was kindly available to discuss my research. I must express my deep gratitude to Salvatore Settis, Donata Levi, David Freedberg, Barbara Faedda for their support; moreover I am very grateful to Giancarla Periti, Christoph Frank, Salvatore Aglioti, Susanna Mancini, Simona Cerutti, Magnus Schneider and Maddalena Spagnolo for their attention and interest and to Ilaria Pavan for her friendship.

¹ Assmann, Czaplicka 1995; Leerssen 2006; Poulot 2006, pp. 14-18; *Whose Culture?* 2009; Hutchinson 2013. Hobsbawm 2009, *passim*, about the Nation as a modern concept which has been developed in the 19th century; recently Thatcher 2018, who has mapped the «actors» in preservation of historic buildings in a clear graphic; on the words «monument», «historic monument» and «patrimoine» see Choay 2009, pp. 195-197, p. 209.

² For a general overview of the Italian legal system addressing the protection of cultural heritage in the second half of the 19th century: Mattaliano 1975; Bencivenni *et al.* 1987; Condemni 1993; *L'archivio della Direzione Generale delle Antichità e Belle Arti (1860-1890)* 1994; Gioli 1997; D'Alconzo 1999; Balzani 2003; Curzi 2004; on the Italian legal system in general Jalla 2003; Cecchini 2012; Levi, La Monica 2015. Regarding the Italian cultural heritage: Settis 2012; Settis 2014; Tosco 2014; Settis 2017. For a general overview of the British legal system: *The Conservation Movement* 2005; Mynors 1999; Glendinning 2013. For the French legal system: Auduc 2008a; *Il patrimonio culturale in Francia* 2007; Greenhalgh 2015; Thatcher 2018 in comparison with Italy; moreover Poulot 1988, *passim*. Ambrosini 1972, provides some general considerations about the development of the Roman Law in the Italian history and about the juridical concept of 'custom' (*consuetudine*), pp. 326-328.

³ Poulot 2006, pp. 1-6. *I territori del patrimonio* 2016.

is intended here as a complex system of movable or immovable, tangible and intangible assets, whose conservation is a matter of public interest and which are considered as worthy of being protected for the current and future generations⁴. The identity, definition and composition of what we – as an individual, as a community, as a Nation or State – intend as 'cultural heritage' change in space and in time, according to many different and varying factors (political, historical, geographic)⁵.

This research will develop in historical perspective, with a comparative approach, and will focus on a part of 'cultural heritage' that we usually call 'landscape' or 'natural beauties'. Many States have developed their own vocabulary about this specific topic: in the Italian laws, we find the expressions «paesaggio» (art. 9 Cost. 1947; art. 2 *Codice dei beni culturali e del paesaggio* 2004) and «bellezze naturali» (L. 778/1922, Italy)⁶; the French law, dated to 1906, uses the expressions «sites naturels» and «monuments naturels» (see Appendix, doc. 4). Regarding the United Kingdom, the identification of the natural items is even more difficult: the word «landscape» appears in the legal system only from the *Harbors Act* (sec. 1), dated to 1964⁷. However, this does not mean that the concept had been previously absent from the British legal system or that other words would not have been used before for this concept. The expression «natural amenities» was used in the *Housing, Town Planning, &c. Act* (sec. 1), dated to 1919⁸; the word «beauty» was referred to natural items in the *Statute* of the National Trust, dated to 1907⁹ and was

⁴ Cassese 1975; Giannini 1976; Alibrandi, Ferri 2001. In the Italian tradition, the cultural heritage is primarily tangible; according to Giannini, the intangible assets are protected by means of legal tools through their tangible expressions; in other words, from the legal point of view, the Italian juridical system has been judged as capable of protecting the intangible heritage only by means of its tangible expressions. Indeed, one of the last modifications to the 2004 Italian Code for cultural heritage, that was added by means of the d.lgs. 62/2008, was exactly aimed at protecting the intangible heritage and the cultural diversities in case they were represented by tangible assets (art. 7bis: «qualora siano rappresentate da testimonianze materiali»); as a consequence, the Italian juridical system seems as still strictly connected with the material protection of the intangible heritage.

⁵ For a general overview on the concept of 'cultural heritage', among many other possible citations: Poulot 2006, Gilliman 2010, Brunelli 2014. See also Vecco 2009.

⁶ Colasanti, *et al.* 1935; recently a new version of this contribution has been issued: Gambi, Gregory 2000.

⁷ *Harbours Act* 1964, Sec. 1: «“project” means: ... (b) other interventions in the natural surroundings and landscape including those involving the extraction of mineral resources» (available here: <<http://www.legislation.gov.uk/ukpga/1964/40/schedule/3/paragraph/1#text%3Dlandscape%20>> 29.08.2018).

⁸ *Housing, Town Planning, &c. Act* 1919, Sec. 1: «Provided that ... any scheme shall take into account, and so far as possible preserve, existing erections of architectural, historic, or artistic interest, and shall have regard to the natural amenities of the locality, and ... that the natural amenities of the locality shall not be unnecessarily injured...» (available here: <<http://www.legislation.gov.uk/ukpga/1919/35/contents/enacted>> 29.08.2018).

⁹ *National Trust Act* 1907: «... the Association was incorporated for the purposes of promoting the permanent preservation for the benefit of the nation of lands and tenements (including buildings)

mentioned three times, jointly with the «natural interest», as something that must be preserved in the *Town and Country Planning Act*, dated to 1932 (sec. 1: «natural interest or beauty»)¹⁰.

Generally, the expression «cultural heritage» could be adopted here according to the main Italian law approved in 2004¹¹. Indeed, the art. 2¹² establishes that «cultural heritage» is composed both of cultural goods and landscape goods («1. *Il patrimonio culturale è costituito dai beni culturali e dai beni paesaggistici*»). Moreover, according to the Italian *Code 2004* (art. 131), the «landscape» is defined as a portion of territory where the (historical) interaction between man and nature is «recognizable and expressive of the national identity». Therefore, in order to develop the current research and to create a shared and clear vocabulary at least in this preliminary contribute, I conventionally assume that all these different expressions (*paesaggio*, *bellezze naturali*, natural beauties, amenities, *sites naturels*, etc.), stemming from different legal systems, can refer to the same concept of landscape. This concept can be approximately described as an item that has been produced by nature and that has adopted an aesthetic value, on the basis of a long lasting (historical) interaction between man and nature. These factors (nature, man, history) might be considered as 'least common denominators' to shape the concept of landscape in this research¹³.

of beauty or historic interest and as regards lands for the preservation (so far as practicable) of their natural aspect features and animal and plant life...» <<https://www.nationaltrust.org.uk/documents/download-national-trust-acts-1907-1971-post-order-2005.pdf>> 29.08.2018.

¹⁰ *Town and Country Planning Act* 1932, Sec. 1: Scope of planning schemes: «A scheme may be made under this Act with respect to any land, whether there are or are not buildings thereon, with the general object of controlling the development of the land comprised in the area to which the scheme applies, of securing proper sanitary conditions, amenity and convenience, and of preserving existing buildings or other objects of architectural, historic or artistic interest and *places of natural interest or beauty*, and generally of protecting existing amenities whether in urban or rural portions of the area».

¹¹ Juridical comments to the 2004 Code: Cammelli *et al.* 2004; Famiglietti, Tamiozzo 2005; Sandulli 2007; Famiglietti, Pignatelli 2015. On the Italian legal system see also: Aini 1991.

¹² This article 2 of the 2004 *Code* is extremely important in the Italian juridical tradition because it derives from the article 9 of the 1947 Constitution («*la Repubblica tutela il paesaggio e il patrimonio storico artistico della Nazione*»), which situates the protection of the historical and artistic heritage and of the landscape among its fundamental principles, see also Marini 2002; Settis 2012.

¹³ The juridical sources are sometimes not taken in consideration by the literature interested in this topic: Cosgrove 1988, pp. 161-188, Chapter *American Landscape*, does not recall the official acts that had been approved to protect the wilderness or to create national parks. However, *ivi*, p. 14 defines the landscape as a «social product, the consequence of a collective human transformation of nature» and distinguishes it from the «wilderness».

2. *State of the art*

The history of protection of artistic, archaeological, architectural heritage has mostly been studied following the national criterion. For example, the formation of the administrative protection system and the destruction of immovable assets have recently been studied with regard to France in the 19th century¹⁴; moreover, the cultural debate about the notion of landscape in Europe has recently been reconstructed mainly from a philosophical and literary point of view¹⁵; the rise of the protection movement, related to cultural assets in the United Kingdom, in France and in Germany, has been widely studied¹⁶; the protection of Niagara Falls, as a case-study of diplomatic international activity, has shed light on an innovative perspective in comparative analysis¹⁷. Mostly in the Italian tradition, the laws and public acts (by-laws, petitions, public speeches, official requests, up to the laws at the highest level of the juridical hierarchy) are intensively used as a reliable source, in order to create a trustworthy framework, with which the cultural debate and historical reconstruction can be intertwined¹⁸. This last mentioned method is very profitable and has been already applied to the protection of landscape in Italy at the beginning of the 20th century¹⁹ and then to the development of landscape protection, up to the current times²⁰. A more general question arises about when, where and how the landscape began to be perceived as worth protecting as part of the larger cultural heritage, in order to reconstruct the origins and the development of the idea of protecting the landscape. This task can be achieved by following its history in different countries and in various cultural contexts, by pointing out the cross-references and the cultural exchanges and by using the laws as primary source.

2.1 *Method: the rules of the game*

In order to prompt possible answers to this question, the *laws* will be intended as the *primary source* of information: they will be considered as an historical source and, accordingly, they will be studied and interpreted on the basis of other sources (firstly the parliamentary debates). Moreover, the *laws* will be considered as the *point of arrival of previous long-term processes*, given that

¹⁴ Auduc 2008, Greenhalgh 2015.

¹⁵ Conwentz 1909; Walter 2004.

¹⁶ Swenson 2011, 2013 and 2018.

¹⁷ Hall 2012; see also Hall 2104.

¹⁸ Gioli 1997; Balzani 2003 and 2004 (on the landscape protection in Italy); Settis 2010.

¹⁹ Piccioni 1999 and 2014.

²⁰ Settis 2010 and 2012. The main urban planning law (l. 1150/1942), the Italian Constitution (1947, art. 9), the 'decentralization' decrees (D.P.R. 616/1977), the Galasso law (l. 431/1985) and the recent Cultural Heritage Code (d.lgs.42/2004) are the Italian legal pillars for protection of landscape.

they can be often assumed as the partial, not complete and last result of a long and hidden previous path. Beyond the already widespread appreciation of the romantic literature and of the landscape painting for the natural beauties²¹, my attention will be focused on the shift from the *cultural, abstract and theoretical appreciation* for them to the *concrete request for legal protection*. This kind of request aims to directly involve the public authorities in preserving an asset by acquiring it (expropriation procedure) or by controlling it, according to specific rules. In all these cases, an official body should be created and charged with the management of the assets to be preserved; consequently the official preservation requires a serious taking on of responsibility from the appointed public bodies. From this perspective, the laws can be interpreted as a conclusive outcome of compromises among different interests: private against public; local against national; economy against culture; tradition against progress. Nonetheless, besides all these limits, or maybe even more just for these social and political interactions that are at the core of every political system, the laws can also be considered as an *official statement of concern* for several interests or specific assets or social groups, and sometimes against or to the disadvantage of others. Precisely according to this role, the *laws* will also be considered as useful 'termini', *boundary stones*, in this research: the French law, which is dated to 1906, is the point of arrival.

With respect to the many important studies conducted on each national tradition, this research tries to add a different point of view in the analysis: the *comparative perspective* will indeed be used to propose cross-references, among the different legal systems, in order to follow and reconstruct the development of the idea of protecting landscape among different countries²². This means that it will be necessary as first to summarily outline the historical preservation profile of every State, in order to present some considerations about their historical approach to the protection of landscape.

2.2 Method: chronology and geography

Since the first laws for protection of landscape were mostly approved in the first three decades of the 20th century, the end of the 19th century and the beginning of the 20th are worth analyzing in order to investigate not only the laws themselves, but also the cultural background, which led to the creation

²¹ A recent overview in Hall 2016; further information in Walter 2004.

²² Baldwin Brown 1905 presents an international overview at the beginning the 20th century: he collects rules from many countries in order to demonstrate that the United Kingdom also needs to be provided with a general law for protection of cultural heritage; Settis 2008, pp. 27-33. See also *Towards world heritage* 2011; *From plunder to preservation* 2013, with a large geographic view and a comparative approach, even if focused on the North-American and British legal systems.

of protection systems, especially the period from 1864 to 1906, that is from the Yosemite Act to the first French law that was specifically devoted to the protection of landscape. The 19th century is generally considered as the period in which the concept of 'Nation' has been particularly developed, alongside the concurrent need for self-representation²³: not only statues, paintings and buildings, but also landscapes or natural amenities might have played the role of representing each Nation.

As for the geographical boundaries, three countries in Europe (France, Italy and the United Kingdom) will be compared with the USA. The French and Italian legal systems are very similar, because both of them derived from the Roman law system and were remarkably affected by the Napoleonic administrative reforms; but the contemporary history of these two countries was so deeply dissimilar that their legal systems for protection of cultural heritage, and specifically of the landscape, had developed in a very different manner²⁴. On the contrary, the United Kingdom system presents some features that are completely different from the ones deriving from the Roman law system, such as the principle of the arm's length and the common law system²⁵.

3. *The French legal frame*

In the 19th century, France was already a united State with its rules, bodies and administrative structures: the *Historical Monuments Commission* was created in 1837 and it was appointed with the 'classément' of the historical monuments; the first national law for protection of historic buildings was approved fifty

²³ Walter 2004; Hobsbawm 2009.

²⁴ Hall 2005, p. 148: in 1897 Robert Hunter assessed legislation from Europe, the USA and Canada and evaluated the French one as the most attractive.

²⁵ Cassese 2000; Allison 2000. A preliminary research on the first laws for the protection of cultural heritage in German area might be carried out on the basis of the information that is already available in literature. For instance, Baldwin Brown informs that a ministerial edict for the protection of places and trees was approved in Bavaria, in 1901 (Baldwin Brown 1905, p. 102); subsequently, in 1904 the Ministry of Interior sent a joint minute to the local authorities to invite them to be careful about the general appearance of their districts (Baldwin Brown 1905, p. 116); moreover, a general law was approved in order to protect the cultural heritage on 1st October 1902, in Hesse-Darmstadt; it included some articles (arts. 33-36), devoted to the protection of natural heritage (Baldwin Brown 1905, pp. 108-112, p. 116; Swenson 2013, pp. 297-298). The German area is very interesting for different reasons: 1) the foundation and development of the *Heimatschutz*, as a cultural movement which aimed at diffusing the awareness of the importance of landscape; 2) the approval of official acts for the protection of historical and natural assets by different local authorities; 3) the creation of local authorities in charge of protection of monuments. With regard to the protection of landscape, a general and specific law was still missing at the beginning of the 20th century, even if the protection of natural beauties had been partially inserted in other laws. On these aspects: *Conservazione e tutela dei beni culturali in una terra di frontiera* 2008.

years later, in 1887 (see Appendix, doc. 3)²⁶. In this official act, some basic legal arrangements, which are usually displayed and applied in other legal systems too, can be singled out. Firstly, a law defines the necessary features that an immovable or movable asset must possess, in order to be listed under a specific protection system. These features usually consist of the presence of an 'interest', which is described through its 'type' (artistic, archaeological, historical, etc.)²⁷. The procedure of selection (listing in United Kingdom; *classément* in France; *vincolo* in Italy) creates limits to actions (not to act) or obligations to actions (to actively engage, for example in maintenance, repair, restoration, etc.).

The first national law for protection of natural assets was approved in France in 1906²⁸: it was the first law to specifically and exclusively regulate the «sites and *natural monuments* having artistic interest» (see Appendix, doc. 4). In this case, the law can be interpreted as a point of arrival, so it would be meaningful to start the analysis from its contents. In every Department of France, a Commission had to be instituted, in order to create a list of the *natural assets*, which had a «general interest under the *artistic* or *picturesque* point of view». After the insertion in this list, their owners were expected to declare their approval or not for the constraints deriving from the *classément*. If they accepted, they would not be able to modify the condition or aspect of their properties without permission of the Commission. Otherwise, in case the *classément* was not accepted, the Commission could decide to apply the expropriation procedure to acquire those properties²⁹. This protection system, introduced by the 1906 Law (see Appendix, doc. 4), was based on the 'listing system' or *classément*, that had been already applied to the historical monuments according to the French law dated to 1887 (see Appendix, doc. 3).

²⁶ *Loi relative à la conservation des monuments et objets d'art ayant un intérêt historique et artistique*, in *Recueil général des lois, décrets et arrêtés...*, Paris 1848-1964, tome XVII, Art. 15515. Challamel 1888 outlines a brief history of the protection movement in France, mentioning the most famous episodes (the «Guerre aux démolisseurs!», pronounced by Victor Hugo in 1832; the accusation of «vandalism» by Montalembert; the creation of the *Commission des monuments historiques*, in 1837). Challamel very clearly explained the limits in the Commission activity for the private buildings: if the owner had not accepted the limits that would have been imposed by the *classément*, the only weapons at the disposal of the public bodies would have been the expropriation procedure, but it required a long and expensive procedure (p. 9). On this law, another historic comment is Ducrocq 1889. On these themes, see Auduc 2008A with preceding bibliography.

²⁷ In some legal systems, as the Italian one, the 'kind of interest' must be combined with its 'intensity' as well as the intensity required to justify the protection with the 'ownership' of the asset: for instance, if the 'cultural' asset belongs to a private person, the intensity of the interest, that is required for the protection, must be higher than if it belongs to public bodies and changes according to its kind.

²⁸ *Loi pour la protection des sites et monuments naturels*, in *Journal officiel de la République Française*, 24th April 1906, p. 2762 (DOC. 4). On this law: Auduc 2008B, pp. 3-7; *La loi pour la protection des sites et monuments naturels* 1909.

²⁹ According to the law approved on March 3rd 1841, *De l'expropriation pour cause d'utilité publique* (<<https://www.legifrance.gouv.fr>> 29.08.2018).

The concepts of *picturesque*³⁰ and of «monuments naturels» play a very important role in this law, but they deserve to be accurately understood, on the basis of their occurrences in the 19th century juridical and literary production³¹. Among the many cases that could be mentioned regard the request for protection of natural beauties in France during the 19th century, one is particularly interesting because it presents the local request for juridical protection of some natural 'things' *before* the approval of a national law. In the Vosges Department, in 1863, during one of the work sessions of the *Société d'Emulation*³², a letter by the painter Lucien Rambaud denounced the destruction of «sites pittoresques»³³. Against these damages, he suggested to the department to «buy these marvelous things», which were «charming for their geology and botany, for their admirable sites, for their lakes, waterfalls and historical memories»³⁴. Theoretically, the Department approved the

³⁰ Landow 1971, Chapter 3.2; Marshall 2002; moreover Fusco 1982, pp. 767-768, summarizes the contents of the French literary genre of the *Voyages Pittoresques* in «descrizione di luoghi, di popoli, di costumanze tipiche». During the 19th century, the concept of 'picturesque' appears in many publications: for instance, in albums of illustrations that usually have the expression «*Vues pittoresques*» in the title or in charts or maps, which are very often entitled as 'plan pittoresques' and which illustrate the most interesting buildings and places in a geographic area; moreover, this adjective appears in titles of journals, which are dedicated to history, geography and local uses (from 1832, for example, *Le Magasin Pittoresque* was issued; from 1843 *Revue Pittoresque*; from 1860 *La Science Pittoresque*); finally, the adjective '*pittoresque*' is widely applied also to the titles of books devoted to the description of journeys to far and exotic countries, but also to inner and not well known French regions. Cachin 2006, pp. 295-343, part. p. 308 has stated that this kind of literature «reconnects France with its regional, rural and popular roots». *La France Pittoresque* (1835) by Abel Hugo, who was the brother of the more famous Victor, presents the knowledge of «beauties, of *natural curiosities* and country wealth» as a «source of noble pride for every Frenchman» and states that «both the general aspect and the *natural beauties* mirror the national identity».

³¹ On the basis of my preliminary analysis, conducted on French sources, my hypothesis is that the expression «*monuments naturels*» was usually referred to monumental trees or rocks, isolated or in groups. For example, in 1873 the Guernica Oak was proclaimed as «natural monument» and the French Republican politicians addressed to it as the «father of the freedom trees», since it was the symbol of the Basque battle for their freedom (Balmont 1877, p. 282). In 1884 the Lebanon Cedar Trees were described as «*monuments naturels les plus célèbres de l'univers*» while some rude tourists were openly denounced for having damaged their bark by cuts (Reclus 1884, p. 696). Aymard 1861 dedicated a treatise to the «giant among stones», called «Henry IV Head» and described the similar rocks as «*monuments naturels de forme gigantesque et singulière*»; pp. 337-338; «*monuments naturels de grandiose structure et surtout par des monuments de l'époque celtique*», p. 540. See also Fleury 1877.

³² In the Vosges Department, the *Société d'Emulation* was founded in 1825 from the fusion of two other previous societies, one dedicated to the archaeology and the other one to the agriculture. In 1829 this society was declared as «of public utility» and developed its activity by issuing its *Annales de la Société d'émulation du département des Vosges* from 1831.

³³ *Séance du 19 mars 1863*, and *Séance du 21 mars 1863*; in this last, p. 35, we can find the mention of the letter by L. Rambaud, which had been published still in 1863, but in a previous issue of the same journal, see Rambaud 1862.

³⁴ Subsequently this request was discussed in the official seat; the connected debate was published in *Vosges. Conseil général. Rapports et délibérations*, 26th August 1863, pp. 175-176.

general statement, but also admitted that unfortunately it did not have enough resources to buy the lands and the other assets (cascades, lakes) and to prevent them from transformation or even destruction. In the absence of a national law, and with limited financial resources, the local authorities recognized that, without a specific juridical instrument and with restricted concrete financial means, they could not protect them from destruction³⁵.

Meanwhile, however, the scholars who were devoted to ancient history or natural history, geology or folkloric studies, were interested in preservation of «natural monuments»; the public debates and the newspaper articles pressured the official bodies or authorities to deal with these requests. For example, in 1879, inside the already existing *Commission for the historical monuments*, a subcommission was instituted in order to «conserve the *primitive monuments*, the most important *natural monuments* and the *erratic stones* whose conservation the scholars require»³⁶. In 1880, an addition of 30.000 Francs to the annual financial report was asked for «the conservation of *megalithic monuments*» and of «*natural monuments*, whose preservation is equally required both by science and art»³⁷. The general law for the protection of historical monuments, which was approved in 1887, included the «megalithic monuments» among the assets to be protected; on the contrary, the «erratic stones» were excluded because they were considered as connected only with the «geological history» (see Appendix, doc. 3)³⁸. As a consequence, the natural assets were not perceived as worth protecting by a law yet.

In 1890, the *Touring Club de France* (TCF) was founded and started the issuing of its journal. It was a real mean of communication not only among its members, but also towards an even larger part of the society and the public institutions. Reports of travels, descriptions of excursions by bicycle, research for a safe way of living, pleasure of seeing beautiful scenery are only a few among the many features that we can easily find in every page of this journal. One of the battles, which were promoted by the TCF in these years, dealt with the protection of the four peaks of mountains called the 'Sons of Aymon'. In 1898 an article was dedicated to the protection of these mountain peaks, declaring that «les Quatre-Fils -Aymon, *roches curieuses*...étaient *menacés de destruction*»³⁹. The 'Four Sons of Aymon' (Ardenne Region) took the name

³⁵ The law approved on 3rd may 1841 permitted the expropriation for public utility, but it was necessary to pay an indemnity to the private owner, see Tetreau 1881.

³⁶ *Bulletin de la Société des sciences historiques et naturelles de l'Yonne*, 1880, session 4th April 1880, pp. XIII-XIV.

³⁷ *Journal Officiel de la République Française*, 1880, pp. 4866-4867. This additional sum had finally been assigned to the classification and protection of «natural» and «megalithic monuments» but only three years later, in 1883, in *Revue General d'Administration*, 1883, pp. 411-413. On this theme, briefly also Auduc 2002, p. 87.

³⁸ See also Challamel 1888, p. 12.

³⁹ *Revue mensuelle. Touring Club de France*, 1898, 15, n. 8, p. 302, available here: <<http://gallica.bnf.fr/>> 29.08.2018.

from four local and legendary heroes, the sons of the king Aymon, who defended their territory against the evil tyrant Charle Magne⁴⁰. To avoid the destructive use of the mountains as a quarry, a communication was sent to the local Prefect and to the General Council of Ardenne. Then, in a parliamentary seat (March 2nd, 1899), in a challenging way, Lucien Hubert, a republican deputy who came from the Ardenne Region, proposed to protect these mountains («site légendaire...site naturel») as «the first monument to the French Republic», in order to introduce the «naturels et légendaires» interests in the 1887 law, by means of an amendment⁴¹.

All these attempts reveal a widespread interest, to protect assets connected with nature. However, only in two cases it was possible to fulfill the task of protecting natural beauties. In the first case (1850), a part of the Fontainebleu forest, at risk of being cut down, was defended on the ground of a petition promoted by a group of painters belonging to the École de Barbizon, to preserve it as a source of images and inspiration for the painting art⁴². In the second case (1901), the source of the river Lizon was prevented from the transformation into an industrial plant: however, to protect its artistic aspect, the general law for the protection of water, just approved in 1898, was used⁴³. While this kind of interest was growing in the civil society, also on the political side the protection of natural assets was developing in connection with the interest for local customs and traditions. In 1900 the *Fédération Régionaliste française* (F.R.F.) was founded⁴⁴. One of its most important members was Charles Beauquier, deputy from Doubs in the Ardenne Region: he supported and promoted the law, which would have had his name, for the protection of natural beauties, in the institutional seats and in Parliament from 1901 to 1906, by using all the means of communication at his disposal⁴⁵. The growing relevance of the

⁴⁰ *Protection des sites pittoresques* 1899.

⁴¹ *Journal officiel de la République française. Débats parlementaires. Chambre des députés*, 2nd March 1899, pp. 616-619. M. Georges Leygues, who was Minister of the Culture (*Ministre de l'Instruction publique et des Beaux-Arts*) in the years 1898-1902 after a first appointment in the years 1894-1895, agreed with the theoretical fairness of protecting these «natural beauties», but also admitted that, unfortunately, the scarcity of funds did not allow for their expropriation. The expropriation indeed was the only legal instrument available in this period for this kind of protection (about this speech, see *Chronique des arts et de la curiosité, supplément à la Gazette des beaux-arts*, 11th March 1899, n. 10, p. 85).

⁴² Auduc 2008a, p. 320.

⁴³ On this issue, Barraque 1991.

⁴⁴ The journal of the *Fédération Régionaliste française*, firstly entitled *Correspondance Régionaliste*, then entitled *L'Action Régionaliste*, was another tool that was used to sustain this initiative. Thiesse 1992, p. 25 on Beauquier, p. 30 on the relationship between regionalism and the cultural local expressions.

⁴⁵ Beauquier sustained the need for a new administrative organization in France, which was aimed at giving wider autonomy to the local authorities. From 1901, Beauquier moved in three directions: he published a book entitled *La France divisée en Régions* (Toulouse, 1901), he founded the *Société pour la protection des paysages de France*; he presented his first proposal of law in the Chamber.

regionalist movement became an important political area of support for the protection of landscape as an expression of local identities⁴⁶. The regionalist movement was founded on the idea that the expression of local identities could enforce the image of France as a powerful State; the landscape was often represented as one of the most relevant features for this kind of expression. Precisely these two tendencies – the shared interest toward the protection of the landscape and its political use as an expression of the local identities – helped to approve the general law for the protection of «sites and monuments naturels» in France in 1906. Subsequently, indeed, it would have been presented as a «loi essentiellement décentralisatrice»⁴⁷ and it was considered as a model by the other countries⁴⁸.

4. *The Italian legal frame*

While France was creating its national legal system regarding the cultural heritage, the national Italian State was still forming its first national offices, laws and institutions⁴⁹. In the first forty years after the Italian unification (1860-1902), in spite of the many parliamentary debates concerning this issue, a law to protect the Italian heritage was not approved yet: in 1872 the minister Cesare Correnti presented the first bill for protection of the Italian cultural heritage, that had been written by Giovan Battista Cavalcaselle, an important art historian⁵⁰. Subsequently, other bills were presented, but the Senators contrasted them asserting that the 'public utility' would have put in danger their private interests. Fortunately, the States which had already been in existence in Italy for centuries, the so called *Stati preunitari*, had already protected their cultural assets before the Unification; many laws had already been promoted

⁴⁶ Auduc 2002, p. 86: «*décentralisation artistique et littéraire*». The Provinces could represent the local needs and could more easily give voice to the local artistic, scientific and literary aspects. In this case, the new administrative organization was basically conceived and promoted as a channel of expression for the local cultural diversities. Revel 1992, pp. 858, 873. Roncayolo 1992, part. p. 886.

⁴⁷ *La loi pour la protection des sites et monuments naturels* 1909, p. 8. Four new proposals of laws were published in *La loi pour la protection des sites et monuments naturels* 1909: the first one about the distribution of energies; the second one against advertisement; the third one about the forests reserves and the fourth on urban planning.

⁴⁸ Falcone 1914 stated that the French law system was «the best and the most effective» (p. 75) in this field. De Montenach 1908, against the destruction of the Swiss landscape, in his book recalled a sentence from Ruskin («*le paysage est la visage aimé de la patrie*») and mentioned the speech, that was held by Charles Beauquier in parliament in occasion of the presentation of the French law.

⁴⁹ Gioli 1997; Balzani 2003 and 2004; Settis 2011; Cecchini 2012; Mozzo, Visentin 2014; Levi, La Monica 2015.

⁵⁰ Levi 1988.

and approved in previous centuries⁵¹, as well as the related administrations, often called *Commissioni* o *Deputazioni* o *Società*, had already been founded and diffusely distributed in the entire pre-unification area (then called *Commissioni Conservatrici Provinciali* from 1871 and recreated by decree of the Ministry of Public Education)⁵². Consequently, the protection of cultural heritage had already been part of both the Italian administrative structure and of its legal tradition. Therefore, thanks to this ancient and very widespread juridical tradition and thanks to the net of local Commissions, despite the lack of a national law, the Italian Unified State, was capable of protecting, at least in part, its cultural heritage for forty years, by maintaining these more ancient laws and structures in force⁵³.

The first national laws for the protection of cultural (artistic, historical, archaeological) assets were approved in 1902⁵⁴ and in 1909⁵⁵. In 1912, the law for protection of «ville, parchi e giardini» was approved (L. 688/1912), in order to protect specific, well recognizable and delimited parks; but the first law to protect the natural beauties as such was approved only ten years later, in 1922, thanks to the decisive civic engagement of the philosopher Benedetto Croce.

This delay in the protection of natural beauties could be explained through the still largely agricultural economy and the connected lack of an industrial development in Italy⁵⁶, but also through the contrast between the private interests and the defense of public utility and public domain⁵⁷. Nonetheless, the need for protection of the landscape was strongly perceived and debated

⁵¹ The most known Italian laws, addressed to the protection of cultural heritage, have been issued as a collection since the end of the 19th century (Mariotti 1892, then Emiliani 1996). On the laws of the ancient Italian States: *Tutela e restauro dei monumenti in Campania 1860-1900* 1993; on Volterra, Bozzoli 2014; on Florence, Fileti Mazza 2006.

⁵² *Del restauro in Lombardia* 1994; Foramitti 2004; Musacchio 2014; La Monica 2016.

⁵³ Challamel 1888, p. 12 misunderstood the contemporary Italian situation, thinking that the laws of the ancient States had ceased from being in force after the Unity; on the contrary, these laws remained in force, but it was very difficult to apply them (Gioli 1997, Settis 2011).

⁵⁴ L. 185/1902, *Disposizioni circa la tutela e la conservazione dei monumenti ed oggetti aventi pregio d'arte o di antichità*, in *Gazzetta ufficiale del Regno d'Italia*, 27th June 1902, n. 149.

⁵⁵ L. 364/1909, *Norme per l'inalienabilità delle antichità e delle belle arti*, in *Gazzetta ufficiale del Regno d'Italia*, 28th June 1909, n. 150.

⁵⁶ On the different uses of Italian land between the second half of the 19th century and the period after the Second World War, see Haussman 1972, p. 125: «il miracolo economico, l'improvvisa e rapida espansione delle industrie...fu una svolta sconcertante, ... e segnò una rottura definitiva con la tradizione millenaria; rottura, si badi bene, che era iniziata già assai prima nelle altre Nazioni fortemente industrializzate dell'Occidente Europeo»; Calabi 1980; Insolera 1993 and 2001, pp. 1-10; Le Goff, 1982, p. 12 on the relationship between urban and rural space during the Mediaeval Age. Argan, Fagiolo 1972.

⁵⁷ Settis 2010 and 2012. «Che una legge in difesa delle bellezze naturali d'Italia sia invocata da più tempo e da quanti uomini colti e uomini di studio vivono nel nostro paese, è cosa ormai fuori da ogni dubbio»: this was the incipit of the speech held in Senate by Benedetto Croce, Minister of Public Instruction, on 25th September 1920 (A.S. 204). To enforce his statement, Croce reminds that two «ordine del giorno» had already been approved in 1905 and in 1908 in order to confirm the «necessità ed urgenza» of such a law.

by learned societies, naturalists and scholars interested in biology and botany, geology and natural sciences⁵⁸.

With respect to other countries, the Italian situation was rather peculiar: on one side, the still largely agricultural economy and the lack of an industrial development in those years had as a result the preservation of traditional countryside; on the other side, however, the construction of railways and train stations and the enlargement of the towns influenced the urban surroundings. Belong to these years indeed the battles to protect the pine forest of Ravenna, which led to the approval of a specific law in 1905, as well as many other local debates on the destruction of some local natural sites or aspects. The most important among these local debates were recalled by the famous article written by Corrado Ricci and published in *Emporium* in 1905, which transformed numerous, differentiated and still not widely known questions in a national larger issue. Approximately from this year, and thanks to this article, the question of Italian landscape became a national matter; indeed, the first draft of a law for protection of the cultural heritage in its entirety was presented in 1908 and it also included «i Giardini, le foreste, i paesaggi, le acque, e tutti quei luoghi ed oggetti naturali che abbiano interesse storico, archeologico e artistico» (art. 1, c. 2). Nonetheless, this passage of the law was cancelled, and the law was approved in 1909, but including only the archaeological, artistic and historical heritage and postponing the question of the landscape⁵⁹.

5. *The British legal frame*

In 1871 John Lubbock (1834-1913), an archaeologist, expert of natural sciences and pupil of Charles Darwin, received a telegram about the construction of some cottages near the prehistoric site of Silbury Hill (Avebury), a funerary hill (*tumulus*) already studied and dated to the prehistory. To stop the cottages, no legal instrument was available yet: so Lubbock *bought* the land with the prehistoric hill with his *own money* and prevented it from being damaged. However, despite his wealth, he could definitely not buy all the sites and monuments at risk! On the contrary, this peculiar case made him understand that the archaeological remains were in danger and that it was necessary to approve official legal instruments to carefully protect them and «the land around them»⁶⁰.

⁵⁸ Piccioni 1999 and 2014.

⁵⁹ On these topics, here only briefly mentioned, Piccioni 1999 and 2014; Settis 2010 and 2012; Balzani 2003 and 2004.

⁶⁰ Challamel 1888, pp. 20-21; Chippindale 1983; Delafons 1997; Patton 2007, p. 102; Emerick 2014, pp. 29-69. In 1873, the law draft was presented in Parliament for the first time (*Ruskin and the Environment*, p. 114) and subsequently it was presented again every year. In 1881 Lubbock

After ten years of parliamentary battles, in 1882 the *Ancient Monuments Protection Act* was approved but it protected only the prehistoric remains (see Appendix, doc. 2)⁶¹; in the same years, the protection of «open spaces», promoted by the *Commons Preservation Society*, was somehow «overlapping» respect to that of «places of beauty» and «natural monuments», with the fortunate result that, sometimes, natural beauties have been protected as «open spaces and green lands»⁶². The interest in the protection of natural beauties or amenities appears even more as strictly connected with their contemporaneous destruction or transformation⁶³. Notwithstanding the strong pressure in public opinion on these topics⁶⁴ in the United Kingdom, no law was available, so that it was continually necessary to alert the public, to create alliances, to find argumentations and rhetorical strategies to win the battles, one by one. Obviously, the results were not always predictable: some of these battles indeed were lost and the natural beauties would have been consequently strongly modified. In some of these cases a movement of protest fought against the so called 'progress' destroying the natural beauties, by creating societies, by publishing articles in newspapers, by organizing conferences and public protests and, even, by sustaining concrete and legal opposition in the official public seats (by submitting parliamentary bills).

In these years, the *Commons Preservation Society* was founded (1865) and focused its attention on the protection of common grounds and green lands against their privatization⁶⁵; in addition the landscape and the rural amenities started being protected by the *National Trust*, from 1895: according to the legal principle of the arm's length, this private body in a certain way plays the role

promoted the publication of a book entitled *Our ancient monuments and the land around them*, in order to make the public opinion aware of the risks the prehistoric monuments were running.

⁶¹ Subsequently the types of «monuments» had been enlarged from the only «ancient» ones to those belonging to other periods («mediaeval structure, erection» or «remains»), see *Ancient Monuments Protection Acts* 1892 and 1900; Hall 2005, p. 149.

⁶² Hunter 1907. In the *Appendix*, he added the *Ancient Monuments Protection Act* dated to 1882, 1892, and 1890 (defined «slight») and the 1906 French law. «Such places have been saved, not merely to provide so much open ground free from buildings, so much area for exercise and recreation, but also for the sake of beauty of view, of hill and wood, and also, sometimes, for instance, in the case of the New Forest, for the *perpetuation of the economic history of the land*, as visible evidence of the habits of the people from century to century» (p. 18).

⁶³ During the so-called 'industrial revolution', the impressive expansion of industries deeply modified the way of living, with terrible consequences on the health and safety of people. The urban growth was strictly intertwined with the abandonment of rural areas and affected the rural areas by means of railways and petrol stations; advertisements and metallic bridges.

⁶⁴ On the idea and perception of a radical change: Baldwin Brown 1903: «In a sense, the alterations of the last century are greater than all those the country has seen since its Teutonic conquerors settled down upon its fields, but even these transformations have not yet obliterated the timeworn landmarks, the significance of which the student of antiquity will train himself to seize» (p. 44). Choay 2009, pp. 198, 202 on the concept of 'industrial revolution'; Tarn 1980.

⁶⁵ Shaw, Lefevre 1896 and 1910.

that, in other countries or legal systems, belongs to the public administration⁶⁶. The *Trust* acquires lands or estates by its resources or receives them by donors, and it is appointed to conserve and preserve them for future generations.

Among the most important personalities who fought for the protection of nature in the United Kingdom we must obviously mention two important art historians: John Ruskin and William Morris⁶⁷. In Ruskin's reflection, the relationship between man and nature, or better between artifact and its social environment, is constantly present⁶⁸. In 1871 Ruskin was so worried by the so called «land question» that he promoted the creation of a fund to buy and preserve the lands as such, green and open. Moreover, in 1876 he actively took a position in a debate «against Railways», by writing the introduction to a pamphlet against the railways in Cumberland⁶⁹. Nonetheless, these battles show us that a general legal instrument was still unavailable: against the huge power of corporations, every battle for the protection of natural scenery should have been fought, case by case, finding the most allies and suitable arguments.

In 1896, after the many battles conducted over the construction of railways, in the *Light Railways Act*, a rule was introduced to facilitate the protection of «any building or other object of historical interest, or ... any natural scenery»⁷⁰. Subsequently, the need for regulation of the development of urban and rural areas was perceived and approached firstly by means of the *Housing, Town Planning Act* regarding the urban structures (1909); then by means of the *Town and Country Planning Act* (1932): in this act the 'planning' of the countryside became compulsory among the activities that had to be achieved by the public administration in the management of the territory⁷¹.

⁶⁶ Hall 2005. On the principle of the «arm's length», see also, *Cultural Policy and Democracy*, ed. By Geir Vestheim, 2016: it consists of the different allocation among various public or private bodies of different activities in order to avoid overlapping interests.

⁶⁷ Some years after the foundation of the *Society for protection of ancient buildings* (1877), in 1884 William Morris wrote that «our towns must not eat up the fields and natural features of the country», evidently aiming at focusing the attention on the wider problem of the British Countryside. Thompson 1955 and 1976, pp. 26-27, 50, 226-243; Donovan 2008. Given the great importance of the beliefs and ideas of William Morris in this field, it is not possible to treat them in an enlarged and sufficiently developed manner; here it is only possible to mention him, inviting to take in consideration the relative very wide bibliography (*From William Morris* 2005).

⁶⁸ *Art and Socialism*, in *Collected Works*, XXIII, p. 209, mentioned in *William Morris* 2010, p. 25.

⁶⁹ On the Lake District: Marshall, Walton 1981, pp. 204-219, and La Trobe Bateman 1884; Harwood 1895; Readman 2018.

⁷⁰ Section 22, *Preservation of scenery and objects of historical interest*: in this case the Light Railways Commissioners should take in consideration the presented observations, but they were not obliged to respect them.

⁷¹ It would be very interesting to focus the reflection on the consumption of rural areas promoted by some architects (Patrick Geddes, Ebenezer Howard and Raymond Unwin) approximately in the two first decades of the 20th century. Subsequently, the position of Patrick Abercrombie, expressed, for example in two articles published in 1912 and 1914 on these topics, the foundation of *The*

6. *The United States legal frame*

When Baldwin Brown, professor of History of Art at Edinburgh, published his book in 1905, he expressly aimed at promoting the approval of a general law for the protection of cultural and natural heritage in the United Kingdom⁷². The entire book is actually a commented collection of the legislation promoted by other countries to defend their cultural heritage. Only in the *Appendix*, he added a «Note» on the «care of monuments» and on the «protection of natural scenery» in the USA. Starting from the assumption that «the problems in a comparatively new country are however different from those that confront the denizens of the older historical lands», on one hand he described some protective measures, that had been already locally adopted by some States (Ohio, Illinois) in order to protect their historical assets; on the other hand, he pointed out the creation of Yellowstone Park in 1872 as «the first idea of preserving the amenity»⁷³.

In the second half of the 19th century, the protection movement was effectively rising in the USA⁷⁴: from the 1880s publications and public petitions began being presented for the protection of anthropological and archaeological heritage⁷⁵; in 1872, the request for protection of natural areas achieved an important task with the institution of Yellowstone as a «national park» (see Appendix, doc. 6)⁷⁶.

In addition, the Yosemite Valley and the Mariposa Grove Tree had already

Town Planning Review and the publication of *England and the Octopus* (1928) would be the main topics of a new and separate research.

⁷² Baldwin Brown 1905, pp. 243-248; on him Cooper 2013 and 2014.

⁷³ Baldwin Brown 1905, pp. 243-248.

⁷⁴ Disalver 2016. See also: <<https://www.nps.gov/archeology/sites/antiquities/about.htm>> 29.08.2018.

⁷⁵ Lee 2006; Norris 2006; Sellars 2008; McManamon 2014 describe a series of events which, determined the subsequent approval of the Antiquities Act. Here I mention the most relevant of them, only to give the idea of the complexity and interest of this social and historical situation. In 1879 the *Archaeological Institute of America*, the *Bureau of Ethnology* in the Smithsonian Institute and the *Anthropological Society of Washington* were instituted; in 1879 F. Putnam published his archaeological *Report*; in 1897 Henry Lewis Morgan became President of the American Association for the Advancement of Science; from 1880 the ruins in New Mexico had been published (Pecos Ruin) and in 1882 a petition for their protection was presented to the Committee on Public Lands. In 1889 a petition was presented to protect Casa Grande Ruin, known from the 17th century. Congress authorized the President «to reserve from settlement and sale the land on which said ruin was situated and so much of the public land adjacent thereto as in his judgement may *have been* necessary for the protection of said ruin and of the ancient city of which it *was* a part» (March, 2nd 1889) (see also Lee 1970). This act was conceived similarly to that related to Yellowstone 1872, that was a sort of agreement between the State of Florida and the Federal Government, on the basis of which that important natural area was given as a grant to the California State and it would have remained at its availability only as long as the California would have respected the rules of the agreement (see Appendix, doc. 6).

⁷⁶ See also Joly 1884; Zittel 1885; Bryce 1912 and in general Runte 1979.

been protected thanks to the approval of a very special act in 1864, with which they were attributed as a «grant» by the Confederate Government to the California State (see Appendix, doc. 5)⁷⁷. Then the Casa Grande Ruin (1889) and the battlefield of Chickamauga (1890) were protected as national parks too. In other words, these four examples demonstrate the application of a new protection system in the USA, largely in advance of many other countries and even before the USA general law for the protection of cultural goods, the *Antiquities Act*, which was approved later in 1906 (see Appendix, doc. 7)⁷⁸.

Beyond the invention of specific innovative legal arrangements for natural areas, two other aspects are interesting in a comparative perspective: the foundation of a *Trustee of Public Reservations* in Massachusetts in 1891, before the foundation of the *National Trust* in the United Kingdom (1895)⁷⁹ and the probable important role played by the *General Land Office* in protecting public lands for different reasons (areas given to communities as a reserve or as a grant to build schools or hospitals or to cultivate specific products). In conclusion, what seems to be predictable at this stage of the research and on the basis of the up to now described sources and events, is that in the New World it was probably possible to experiment with new legal arrangements, which were still difficult to apply in the Old World. A private body, capable of managing public assets, indeed, was created in Massachusetts, before that the National Trust had been created in the United Kingdom; nonetheless it is arguable that the solid and stable relationships among some key figures on the two sides of the Atlantic Ocean should have influenced the development in the USA of this private and volunteering organization.

7. A comparison among different legal frames

The 'objects' of the laws in force in Italy, France, in the USA and in the United Kingdom during the 19th century deserve to be analyzed in order to understand how the idea of protecting landscape developed in different countries. Up to 1902 the *Editto Pacca* (1820) (see Appendix, doc. 1) was considered as one of

⁷⁷ Disalver 2016; Runte 1979 and 1990, Rothman 1989.

⁷⁸ Hays 1999 on the 'gospel of efficiency' of the Roosevelt Administration, pp. 65-73; p. 86 publishes a passage from a letter sent by President Roosevelt to Senator La Follette on February 19th, 1907: «My experience tends to make me believe ... that the point to be aimed is not so much an indiscriminate forbidding of all combinations for whatever purpose, but rather a *supervision* which will prevent noxious combination that does take place being in the interest of the public».

⁷⁹ Hall 2005, p. 137: the Bostonian landscape architect Charles Eliot, friend of James Bryce, travelled in London and in the Lake District in 1886; he was given a copy of the proposal by Robert Hunter to create the National Trust; about the parks, Bryce 1912.

the most important laws for protection of cultural heritage in Europe⁸⁰. The items to be protected were indicated by means of a general definition «Antichità Sacre e Profane» and «Oggetti di Belle Arti»(art. 3)⁸¹. Moreover, whereas neither the «natural» interest, nor the protection of areas are present in this law, here we find only the protection of specific assets, defined on the basis of their types (pagan antiquities, Christian antiquities, objects of art).

In the United Kingdom, the *Ancient Monuments Protection Act* (1882) (see Appendix, doc. 2) protected only the monuments which had been inserted in the list attached to the law, with the land around them. The commentary of the law very clearly described the object of the protection:

The expression “ancient monuments to which this Act applies” means the monuments described in the Schedule hereto, ... and “ancient monument” includes the site of such monument and such portion of land adjoining the same...

The listed monuments were essentially the prehistoric ones (isolated stones, trenches, hills), still often difficult to recognize in their larger natural contexts; however, subsequently, in 1892 and 1900, other historical periods and types of objects were added among the protected assets.

In France, the 1887 law (see Appendix, doc. 3) addressed the «movable and immovable items whose conservation could have a national interest under the point of view of history of art» (art. 1, art. 8), that were movable assets, belonging only to public bodies, and immovable ones, both belonging to public and private bodies⁸². To be protected, these items had to present a «national

⁸⁰ Carpentier 1902, p. 1, published a translation in French of the Italian Law 185/1902, immediately after its approval, and connected it with the *Editto Pacca*. The Italian Law 185/1902 was admired because of its «hardness and inflexibility» and because it protected the general interest: «La décision avec laquelle elle fait passer le bien public et la conservation du patrimoine national avant l'intérêt privé, peut servir de modèle aux nations» (p. 2). According to Challamel 1888, the *Editto Pacca* was a model for the law approved in Greece for protection of antiquities (1834). The *Editto Pacca* can be considered as one of the most important outcomes of the secular papal juridical production on these themes, which went back up to – at least – an act by Martino V (1425, *Et si in cunctarum*, see also Curzi 2004). It was the main law of the Papal State and remained in force in Italy until the approval of the first law in 1902.

⁸¹ In subsequent articles some specific types of objects are added to this general definition (doc. 1): collections of statues and paintings, museums of antiquities (Art. 7); objects which are precious for their antiquity, art and knowledge (Art. 13); engraved marbles (Art. 17); remarkable blocks of marble (Art. 18); paintings and mosaics (Art. 20). This is a typical way, that is used by legal sources, to point out objects or to describe rules: at first, the general rule is given, then the specific indications follow. In art. 54, other similar types of objects are indicated (Art. 54: «Statue, Busti, Bassi rilievi, Cippi, Lapidi, Sostruzioni, le stesse piccole Colonnette di Marmi»), that, had to be protected because of their rarity and beauty, as long as they were still existing in squares, streets and colonnades of Rome.

⁸² The weak point of this law consisted in the fact that the listing and the correlated protection system could not have been applied, if the owner of the land had not agreed. In those cases, the only weapon available for the public authorities was the expropriation. For this reason, a few years after the approval, Beauquier proposed other laws aiming at improving the protection system.

interest» under the point of view of «history» or of «art». As a consequence, neither the British Act (1882), nor the French law (1887) included the 'natural interest' or larger areas; they protected only appointed assets, which had already been pointed out by a listing procedure.

On the contrary, the 1906 French law was the first national rule (see Appendix, doc. 4) which had been specifically approved to protect the landscape and which subsequently served as a model in many other national contexts, especially when the politicians of other countries tried to promote the approval of similar laws in their own countries (for example in 1920 in Italy). The precise objects of this law were «sites and natural monuments having artistic and picturesque interest» and the meaning of these expressions is fully explained and described by a comment published in 1909⁸³:

A landscape is a part of territory whose different items form a picturesque or aesthetic set, because of the disposition of its lines, shapes and colors.

A site is a portion of landscape having a particularly interesting aspect

A natural monument is a group of items due to the nature, such as rocks, trees, irregularities of the ground and other features, which, all together or separately, create an aspect worth conserving

A landscape can comprehend some items purely natural or can include, in its set, some human works, such as structure, ruins, church towers, figures, urban sites, and so.

This comment explicates accurately all the types of natural items that have already been mentioned: the expression «natural monuments» is used for specific type of natural objects; the word «site» is used for places, which present interesting features as a whole; the «landscape» include both of them.

Passing to the USA, even before the French law, already in 1864, the protection of the Yosemite Valley and of the Mariposa Grove Tree was established by a really peculiar act⁸⁴: «the “cleft” or “gorge” and the headwaters of the Merced River, and known as the Yo-Semite Valley» were «granted to the State of California» by the Congress (see Appendix, doc. 5). For its part, the State of California had to «accept this grant upon the express conditions that the premises shall be held for *public use, resort, and recreation*; shall be *inalienable* for all time». Currently it is still unclear who created and invented this specific juridical solution: against the assault of the private individuals who claimed for the settlement rights, the State of California took the role of not answering as not having ownership of the land. Nonetheless, this solution permitted the protection of all these assets, up to the year 1890, when the same area

⁸³ *La Loi pour la protection des sites et monuments naturels* 1909, pp. 7-8.

⁸⁴ *An act authorizing a grant to the state of California of the “Yo-semite Valley,” and of the land embracing the “Mariposa big tree grove*, June 30, 1864 (13 stat. 325), <https://www.nps.gov/parkhistory/online_books/anps/anps_1a.htm> 29.08.2018.

became a National Park⁸⁵. Moreover, the subsequent creation of Yellowstone as a national park in 1872 established that a tract of land was «reserved and withdrawn from settlement, occupancy, or sale» and «dedicated and set apart as a public park or pleasuring-ground for the benefit and enjoyment of the people». This juridical formulation was successful and would have been applied to other subsequent protected areas. In these two cases (1864, 1872) a tract of land had been withdrawn from the current use, set apart and destined to be preserved for the benefit of future generations.

8. Conclusions

Initially, in Europe, *specific types of objects* (monument; statue; painting; building; church) and *specific types of interest* (artistic, archaeological or historical) were protected by means of official acts. Only subsequently, *new types of interest*, such as the *natural* one, have been added. The *natural interest* is usually connected with sites, natural monuments, landscape. The *natural areas* were originally protected with legal instruments similar to those used for historical monuments or archaeological sites (listing, *classément*, restrictions). Nonetheless, different solutions were sometimes adopted, which were completely new and pragmatic, such as the foundation of societies specifically aiming at the protection of natural areas in the UK (CPS, NT)⁸⁶. The protection of *cultural* assets was sometimes rhetorically used as a justification for promoting the preservation of *natural* assets as well. The connection of the natural heritage with the cultural one was intensively used in order to convince the Governments to approve rules for the protection of landscape⁸⁷. In USA the fact that *an area* was given as a grant by the Government to a single State is an innovative procedure in the field of cultural heritage (Yosemite), but not in the field of the public lands management.

⁸⁵ *An act to set apart a certain tract of land lying near the headwaters of the Yellowstone river as a public park*, March 1, 1872 (17 stat. 32), <https://www.nps.gov/parkhistory/online_books/anps/anps_1c.htm> 29.08.2018.

⁸⁶ More recently, the legal systems have developed other ways and tools to regulate the large areas, mostly by means of the 'planning' process (*Town and Country Planning Act*, 1932; L. 1497/1939 and L. 1150/1942, Italy).

⁸⁷ For example, when Beauquier held his first speech in Parliament to promote the law for natural beauties, he referred to the concept of «*vandalism industriel*», comparing in this way the natural heritage with the historical and artistic one, that had been previously affected by «*vandalism*».

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Documentary appendix

1. *Doc. 1. Editto Pacca, 1820*
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DOC. 1. Editto Pacca, 1820

Bartolomeo per la Misericordia di Dio Vescovo di Frascati Card. Pacca della S.R.C. Camerlengo.

Gli antichi Monumenti hanno reso e renderanno sempre illustre, ammirabile, ed unica quest'alma Città di Roma. La riunione preziosa nel suo seno di sì auguste reliquie delle vetuste Arti, la gelosa cura di quelle che esistono, e che novellamente si dissotterrano, le vigili severe provvidenze, perché non si degradino, o si trasportino altrove lontane, sono i costanti e principali motivi, che attraggono gli Stranieri ad ammirarle, invitano la erudita curiosità degli Antiquari ad istituirne dotti confronti, ed infiammano la nobile emulazione di tanti Artisti, che d'ogni parte d'Europa quivi concorrono per farle scopo e modello de' loro studj.

Di ciò persuasi i Sommi Pontefici promulgarono savissime Leggi, che impedissero il trasporto di qualunque prezioso Oggetto antico fuori di Roma e dello Stato Ecclesiastico, e dettarono norme e discipline rigorose a regolamento degli *Scavi di Antichità*, e pel ritrovamento qualunque di *Monumenti d'Arte*.

Ma la dimenticanza di queste Leggi, e la trascurata osservanza delle medesime depauperarono Roma di molti insigni *Monumenti*. Quindi la Santità di Nostro Signore, felicemente Regnante, sommo protettore e vindice degli *antichi Monumenti*, alla cui conservazione e riparazione le sue cure clementemente e possibilmente rivolse in ogni tempo, desiderando porre un termine a tanti abusi e a tante perdite, con Suo Sovrano Chirografo del 1° Ottobre 1802 richiamò in pieno vigore le quasi annullate e già deluse disposizioni Legislative; dichiarò con saggia Munificenza, che si acquistassero gli Oggetti d'Arte, che fossero di maggior pregio ad arricchire i Suoi Musei, e de' quali ne rimanesse proibita l'estrazione, come si è eseguito, e provvide insieme puranco per l'avvenire all'acquisto dei medesimi Oggetti, che meritevoli di considerazione si rinvenissero negli Scavi, o che esistessero presso i Privati.

Ma quelle stesse passate vicende, che fecero temporaneamente perdere a Roma molti e molto stimabili e preziosi *Capi d'Opera per Arte, per Antichità e per Erudizione*, de' quali per un tratto di rettitudine, che ha fatto tanto onore ai Sovrani, dai quali è proceduto, fu avventurosamente ristorata, fecero del pari obliare le medesime più recenti prescrizioni Sovrane; per le quali cose Sua Beatitudine, intenta sempre alla speciale protezione delle Belle Arti, ci ha comandato coll'Oracolo della sua viva Voce di rinnovare, aggiungere e promulgare tutti quei Regolamenti, che tender possano a questo lodevole scopo, derogando alle passate Costituzioni, che vi si opponessero, e richiamandole in pieno vigore per il rimanente; poichè mentre a larga mano diffonde i suoi favori, non vuole che restino dimenticati que' necessarj riguardi ed ordinazioni, che col ricordato Suo Sovrano Chirografo non ha guari ordinò, e che tante Leggi Pontificie, e degli antichi Imperatori, aveano in ogni tempo decretato e stabilito.

In adempimento pertanto dei Voleri di Sua Santità, e per l'Autorità del Nostro Ufficio di Camerlengato, al quale privatamente appartiene la *cura degli antichi Monumenti*, e la protezione delle Arti, ordiniamo e comandiamo.

1. La Commissione di Belle Arti consultivamente stabilita da Noi per l'acquisto dei Monumenti d'Arte e d'Antichità ad ornamento dei Pontificj Musei, che testimonianze tanto rispettabili ci ha dato del più lodevole zelo, ed amore per le Arti stesse e per la Patria, rimane con Sovrana sanzione confermata ed ampliata, sempre però in via consultiva, e come il Consiglio permanente del Camerlengato in tutto quello, che concerne gli oggetti contemplati nella presente Legge.
2. Questa Commissione sarà composta dei seguenti Soggetti, Monsignor Uditore del Camerlengato pro tempore, Presidente; l'Ispettor Generale delle Belle Arti; l'Ispettore delle Pitture Pubbliche in Roma; il Commissario delle Antichità; il Direttore del Museo Vaticano; il primo Professore di Scultura dell'Accademia di S. Luca; uno dei Professori d'Architettura della medesima Accademia; e l'attuale Segretario della Commissione, successivamente al quale disimpegnerà stabilmente le di lui attribuzioni il Segretario Generale dei Musei.
3. Secondo il Chirografo Sovrano del primo Ottobre 1802, ha benignamente decretato e vuole Sua Santità, che Noi in figura di Supremo, ed indipendente Magistrato, abbiamo un'assoluta giurisdizione, vigilanza, e presidenza sopra le *Antichità Sacre e Profane*, sopra le *Belle Arti*, e quei che le professano, sopra gli Oggetti delle medesime non solo in Roma, ma anche nello Stato Ecclesiastico, e sopra le Chiese, Accademie non addette a Nazioni Estere, ed altre Società relative alle stesse Arti, niente affatto eccettuato, e con piena indipendenza da qualunque Persona ornata di qualsivoglia dignità anche Cardinalizia, e fornita di qualsiasi giurisdizione e privilegio.
È nostra intenzione poi, che la nominata Commissione sotto la piena Nostra dipendenza ed ordini seco Noi concorra alla esecuzione della

presente Legge, e ci coadjuvi non meno in tutte le individuate attribuzioni, e più specialmente ancora nella ristaurazione e conservazione dei pubblici Monumenti di Antichità, e d'Arte, che ci sono dalle Apostoliche Costituzioni, e più particolarmente da Sua Beatitudine confidati.

4. Le Autorità singolari, a Noi subordinate, o deputate in qualunque ingerenza delle Belle Arti, ed alla conservazione, cura e vigilanza delle antiche cose, od alla esecuzione di qualsivoglia parte della presente Legge, non potranno d'oggi innanzi prendere alcuna disposizione o relativa provvidenza, se non vi sia la Nostra approvazione sul parere della Commissione, rimanendo revocata dalla stessa Santità Sua alle suddette Autorità singolari qualunque facoltà e privilegio, che potesse fare in contrario a questa determinazione. Ogni contravvenzione sarà onninamente punita colla remozione dai rispettivi impieghi.
5. Nelle Provincie dei Pontificj Dominj gli Emi Cardinali Legati, e i Prelati Delegati formeranno rispettivamente sotto la loro, e Nostra immediata dipendenza una Commissione ausiliaria a quella di Roma, composta di due probi ed esperti Professori, o di due Soggetti delle medesime assai intelligenti, i quali unitamente al Segretario Generale della Legazione o Delegazione invigileranno all'adempimento della presente Legge, conferendo con Noi per mezzo degli Emi Cardinali Legati o Prelati Delegati, in pari modo che la Commissione di Roma, sopra tutte le materie contemplate nella presente Legge. Nella Legazione però di Bologna e nella Delegazione di Perugia, le rispettive Accademie di Belle Arti, che ivi si trovano tanto lodevolmente istituite, presenteranno degli Accademici di merito, fra i quali saranno scelti e nominati i Componenti le rispettive Commissioni ausiliarie, secondo il metodo stabilito per le altre Provincie, e cogli stessi regolamenti e dipendenza.
6. La Nostra Commissione principale in Roma, e le ausiliarie nello Stato verranno regolate da particolari istruzioni e discipline, che saranno ad esse comunicate.
7. Qualunque Superiore, Amministratore, e Rettore, o che abbia comunque direzione di pubblici Stabilimenti, e Locali tanto Ecclesiastici, che Secolari, comprese le Chiese, Oratorj, e Conventi, ove si conservano *raccolte di Statue e di Pitture, Musei di Antichità sacre e profane*, e anche uno o più *Oggetti preziosi di Belle Arti* in Roma e nello Stato, niuna persona eccettuata, sebbene privilegiata e privilegiatissima, dovranno presentare una esattissima, e distinta *Nota degli Articoli* sopra espressi in duplo sottoscritta, con distinzione di cadaun pezzo, assegnando il termine di un mese in Roma, presso l'Ufficio dell'infrascritto Segretario e Cancelliere della Rev. Camera Apostolica, e nello Stato presso la Segreteria Generale della Legazione, o Delegazione entro il termine di due Mesi da computarsi dalla pubblicazione del presente; e queste assegni saranno ricevute gratuitamente. Una di tali Note rimarrà sempre nel suddetto Ufficio e

Segretarie Generali diligentemente conservata, e l'altra confrontata coll'Originale dalla Commissione di Roma, o dalle Commissioni ausiliarie delle Provincie, sarà senza spesa alcuna restituita al Proprietario, ambedue corredate di quelle avvertenze e considerazioni, che si reputerà espediente di farvi.

Dalle Provincie inoltre si dovrà rimettere a Noi anche una terza Copia legale di queste Note, per conservarsi nel suddetto Ufficio di Camera.

Chiunque non darà nel termine stabilito questa descrizione o la darà mancante, od inesatta, sarà condannato ad un'ammenda di Scudi Cento per ciaschedun'Oggetto non assegnato, alla qual pena soggiacerà del proprio.

8. I medesimi Superiori, Amministratori ec. saranno tenuti di renderci consapevoli della prima intenzione, che avessero di *alienare* in tutto o in parte gli Oggetti, che abbiano meritato le avvertenze e le considerazioni della Commissione di Roma, o delle Commissioni ausiliarie delle Provincie secondo le disposizioni del precedente Articolo, e ciò ancora nel caso che gli Oggetti medesimi avessero a mutar Proprietario per titolo anche diverso dalla vendita, esibendone *Nota* nelle forme ivi ordinate. Le contravvenzioni saranno punite con un'ammenda, non minore della metà del valore degli Oggetti disposti senza le volute cautele a carico dei suddetti Superiori, Amministratori ec.
9. Le Commissioni prenderanno cura diligente di visitare generalmente presso qualunque Proprietario e Possessore gli Oggetti di Antichità, e ritrovandone di singolare e famoso pregio per l'Arte o per l'Erudizione, dovranno di essi dare a Noi una speciale descrizione, ad effetto di *vincolare* i Proprietarij e Possessori suddetti a non poter disporre di tali Oggetti, che nell'Interno dello Stato, e con Nostra Licenza, anche per averne ragione di acquisto per conto del Governo, e rimanendo inoltre sempre obbligati nel caso di *alienazione* tanto il Venditore che il Compratore, a denunciare l'atto dell'*alienazione* stessa, sotto pena della perdita degli Oggetti per qualunque mancanza.
10. Tutte le volte che crederemo opportuno, ci riserbiamo di destinare delle Persone di Nostra particolare fiducia per verificare, se si conservino presso i Possessori gli Oggetti assegnati, o se siane stato fatto uso a norma della presente Legge.
11. Sarà permessa la vendita ed il commercio degli *Oggetti di Antichità e d'Arte*, non contemplati dell'Art. 7, liberamente se seguirà entro quest'alma Città di Roma.
12. Qualunque *Articolo e Oggetto di Belle Arti*, che voglia estrarsi dalle Provincie dello Stato per l'Estero, o da quest'alma Città di Roma per le Provincie o per l'Estero, sarà sottomesso alle più rigorose ispezioni, riserbata solamente a Noi la facoltà di permetterne la relativa *estrazione*,

e annullando conseguentemente per espresso comando di Sua Santità ogni ordinazione, abuso, e consuetudine in contrario.

13. La Nostra Commissione in Roma e le Commissioni ausiliarie nelle Provincie, saranno da Noi incaricate di visitare gli *Oggetti preziosi per Antichità, per Arte, e per Erudizione*, de' quali, si richiegga l'estrazione. Dopo che le Commissioni avranno separatamente esaminati questi Oggetti, si uniranno, ed a voti segreti consultivamente delibereranno sul merito degli Oggetti stessi.
14. Se i medesimi non si riconosceranno necessarj o di sommo riguardo per il Governo, ne sarà permessa l'esportazione all'Estero, mediante pagamento di Dazio del 20 per cento.
15. Gli Assessori della Scultura e della Pittura sotto la Nostra dipendenza e del Commissario delle Antichità continueranno in Roma a fare le stime degli Oggetti d'Arte da estrarsi all'Estero, per regolare il pagamento del Dazio stabilito, avvertendo, come per lo passato, di non comprendere giammai i moderni restauri, poiché essendo questi una industria dei moderni Artefici, non vogliamo che ne risentano aggravo.
16. Per le estrazioni da Noi permesse alle Dogane di confine delle Provincie, gli Stimatori Doganali continueranno le stime collo stesso metodo prescritto agli Assessori della Pittura e della Scultura.
17. I *Marmi scolpiti da Autori non viventi, appartenenti al decadimento ed al risorgimento della Scultura*, dovranno essere soggetti alle medesime Leggi che le Antichità, e quante volte abbiano qualche singolar merito per la storia delle Arti, dovranno prendersi in pari considerazione, che le cose antiche.
18. Vogliamo ancora che oltre le antiche Sculture, s'intendano compresi nella presente Legge i *Massi ragguardevoli dei Marmi di pregio*, quando specialmente si distinguessero per la Mole, o presentassero un antico lavoro.
19. Gli Oggetti contemplati nei precedenti Articoli 17 e 18 saranno gravati del medesimo Dazio dei Monumenti antichi nel caso di permessa estrazione.
20. Non dovendosi poi trascurare le *Pitture e i Musaici antichi*, ordiniamo, che i Quadri di Scuole Classiche, le Tavole, le Tele ed i Musaici, che possono illustrare il decadimento, il risorgimento, e la Storia delle Arti, siano sottoposti alle medesime discipline ed allo stesso Dazio che le Sculture antiche.
21. Quantunque ad incoraggiare le Belle Arti si osservi costantemente, che ogni Artefice possa liberamente far trasportare fuori dello Stato le sue Opere senza Dazio alcuno; pure volendo Noi, che non si confondano le Opere moderne con le antiche sottoposte a Dazio di estrazione, comandiamo che ancor esse siano assoggettate alla Visita del Commissario delle Antichità e degli Assessori rispettivi della Scultura e della Pittura, e munite non meno della Nostra licenza, sotto pena della perdita delle divisate Opere.

22. Gli Oggetti preziosi per Antichità, per Arte, o per Erudizione saranno introdotti dall'Estero nei Dominj Pontificj, e dalle Provincie dello Stato Ecclesiastico nell'alma Città di Roma senza pagamento alcuno di Dazio, fermi per altro nel rimanente i Regolamenti Doganali per la verificaione e movimento di questi medesimi Oggetti.
23. Tutto quello che sarà stato giudicato di sommo riguardo sia per l'Arte, sia per l'Erudizione, dalla Commissione di Belle Arti in Roma, o dalle Commissioni ausiliarie delle Provincie nelle ispezioni eseguite per domandata estrazione all'Estero, rimarrà sempre vincolato col denegato permesso relativo a non poterne disporre, che nei modi, e termini e sotto le pene, comminate all'Art. 9.
24. Nel caso di vendita forzata ordinata dai Tribunali, e col mezzo della metà del valore degli Oggetti disposti senza le volute cautele a carico dei suddetti Superiori, Amministratori ec. della subasta, e delibera relativamente ad Oggetti di Antichità di ragguardevole merito per l'Arte o per l'Erudizione, o per rarità e mole di Marmi, incomberà ai Ministri delle Depositarie pubbliche de' Pegni di darne conveniente denuncia a Noi, e rispettivamente alla Nostra Commissione in Roma ed alle Commissioni ausiliarie nelle Provincie, sotto pena di essere responsabili del valore degli Oggetti venduti senza questa cautela.
25. Ad animare vi è maggiormente gli Amatori, e Ricercatori delle antiche cose in questo Suolo sacro alle Arti, in cui si rinvencono giornalmente preziosi Monumenti, Sua Beatitudine ha risoluto di largheggiare ancora sulle Leggi concernenti le *Escavazioni*, determinando Noi i Regolamenti da osservarsi invariabilmente e rigorosamente nelle medesime Escavazioni. Per tale effetto non potrà d'ogg'innanzi aprirsi Scavamento di sorta alcuna per ritrovare Antichità, e Tesori nascosti anche da persone privilegiate e privilegiatissime, e meritevoli di particolare menzione, *sia ne' suoi Fondi, che negli altrui*, senza il Nostro speciale *permesso* sotto pena di Scudi Duecento, e la perdita degli Oggetti rinvenuti.
26. Coloro che hanno ottenuto finora le licenze di scavare, le quali non siano scadute di termine, dovranno denunciarle entro il Mese dalla pubblicazione del presente presso l'infrascritto Segretario, e Cancelliere della R. Camera, che le riceverà gratuitamente, e dovranno i medesimi rigorosamente conformarsi a queste Nostre ordinazioni, se vogliono continuare gli Scavi; altrimenti facendo saranno giudicati come privi di qualunque licenza, e come tali puniti.
27. Il permesso di scavare sarà accordato solamente a coloro, che giustificheranno la proprietà del Fondo, o la licenza del Proprietario.
28. Il Governo non prenderà parte delle condizioni, che si combineranno fra il Proprietario del Fondo, e l'Intraprendente, ma questi ci sarà strettamente responsabile della esecuzione della Legge.

29. Gl'Intraprendenti dichiareranno la situazione precisa del Suolo, nel quale si propogono di stabilire lo scavamento.
30. Successivamente a questa istanza Noi faremo eseguire una Visita sopra luogo per tutte le ispezioni necessarie, e concorrendo gli estremi voluti per tali operazioni, sul parere della Nostra Commissione in Roma, e delle Commissioni ausiliarie nelle Provincie, accorderemo il richiesto permesso colle seguenti condizioni.
31. Saranno determinate le distanze, nelle quali potranno aprirsi gli Scavamenti, lungi dalle Pubbliche Vie, dagli Edificj, e dalle Case abitate, Mura Urbane, e Castellane, dagli Acquedotti, come pure dai Ruderj di antichi Monumenti, e dai Cemeterj Cristiani.
32. Ci riserbiamo sempre la facoltà di ordinare la chiusura degli Scavamenti, quante volte compromettano la sicurezza publica, e la salubrità dell'Aria.
33. Gl' Intraprendenti degli Scavamenti saranno obligati di esibire in cadauna Settimana nella Nostra Segretaria del Camerlengato, e presso le Segretarie delle Legazioni e Delegazioni nelle Provincie la dichiarazione degli Oggetti qualunque, che saranno stati ritrovati, con descrizione esatta, e diligente secondo le Note prescritte all'Articolo 7, o ancor più frequentemente, se lo esigesse il merito dei Monumenti, sotto pena della perdita degli Oggetti stessi, e di Scudi Cinquanta per cadaun' Oggetto.
34. Innanzi che gli *Oggetti ritrovati negli Scavamenti* siano stati visitati dalla Commissione di Belle Arti in Roma, e dalle Commissioni ausiliarie nelle Provincie, e sia stato pronunciato da Noi, se possano servire al Governo per il loro insigne pregio sia d'Arte, sia d'Erudizione, o per rarità e mole di Marmi, non ardisca alcuno metterli in Commercio, o farvi il minimo ritocco o restauro sia in Marmo sia in Stucco, denunciandoli, e ritenendoli per il detto termine nello stato, come suoi dirsi vergine, affinchè possano essere in tal modo visitati.
35. Se gli Oggetti siano stati posti in Commercio innanzi il termine stabilito, cadranno in commissum, oltre l'ammenda di Scudi Cento per cadaun'Oggetto.
36. Se siano stati poi gli Oggetti ritoccati, e restaurati solamente, il Contravventore soggiacerà alla pena di Scudi Duecento, e nel caso di acquisto per i Pontificj Musei, sarà assoggettato ancora alla qualunque perdita di spesa occorsa per il restauro.
37. Volendo i Proprietarj ritenere per proprio uso, ed ornamento gli *Oggetti ritrovati negli Scavamenti*, e prescelti in servizio del Governo, ciò loro sarà permesso a condizione, che venendo poi nella determinazione di alienarli debbano notificarlo a Noi, come pur si prescrive nell'Articolo 8 per gli Oggetti già esistenti, onde si possa procedere all'acquisto dei medesimi, dichiarando però che si avrà riguardo solamente al merito dello antico dei Monumenti, non computati i ritocchi o restauri fatti dopo la prima ispezione della Commissione all'atto del ritrovamento.

38. L'Art. 9 dovrà sotto le medesime pene osservarsi anche per gli Oggetti trovati negli Scavamenti.
39. Sarà denunciato nella dichiarazione, e descrizione ordinata nell'Art. 33, il ritrovamento sotterra d'ogni antico Fabbricato, onde prendere sul medesimo le disposizioni opportune per misurarlo, e ricavarne il disegno. La contravvenzione al presente Articolo sarà punita con un'ammenda di Scudi Cinquanta.
40. Non potranno rompersi *Muri, Pavimenti, Volte ed ogni altra cosa relativa agli antichi Edificj* senza il Nostro necessario permesso; né sarà accordato di demolire questi avanzi benché sotterra, che saranno giudicati interessanti; che anzi si procurerà trame memoria, e indicarli nella miglior maniera, quando non possano rimanere scoperti.
41. È vietato di rimuovere dal luogo, ove si trovano, le *Iscrizioni esistenti negli antichi Ruderj*.
42. In pari modo non potranno in conto alcuno distruggersi *gli avvanzi di Camere Sepolcrali, di Bagni od altro*, di cui possa interessare la conservazione, né togliere i Marmi, distaccare gli Stucchi, segare le Pitture, in special guisa se questi Monumenti esistano in luoghi chiusi, nei quali il Proprietario possa essere responsabile della custodia. Non sarà ammessa alcuna *modificazione* su questo particolare, senza la Nostra speciale annuenza.
43. Qualunque contravvenzione sarà punita colla perdita degli Oggetti e colla refezione dei danni.
44. I Proprietarj dei *Fondi*, in cui si troveranno, od esistessero Monumenti antichi, non potranno guastarli, o destinarli ad usi vili ed indegni, né potranno fare intorno agli stessi Monumenti lavori o fossi, e addossare Terreno od altro, che possa recare danno ai medesimi. In caso di contravvenzione saranno costretti a riparare a proprie spese tutti i danni cagionati nei medesimi Monumenti, oltre la detenzione di un Anno.
45. I medesimi Proprietarj vedendo deperire questi Monumenti, dovranno passarne presso la Segreteria del Camerlengato, e presso le Segretarie Generali delle Legazioni, e Delegazioni nelle Provincie la relativa denuncia, onde prendere intorno ad essi le opportune providenze. Colui che mancasse a questa disposizione, sarà obbligato a tutte le possibili riparazioni nel momento, ed a qualunque spesa, che si dovesse incontrare per quest'oggetto.
46. Riconoscendosi meritevole di particolare riguardo, e conservazione il Monumento scoperto, sarà nostra cura indennizzare il Proprietario della perdita del suolo, facendovi costruire a pubbliche spese ciò, che sarà necessario alla conservazione stessa del Monumento ed a renderlo accessibile.

47. Coloro che scopriranno per caso gli Oggetti d'Arte, e d'Antichità non potranno *distrarli*, e saranno sottoposti alle presenti generali disposizioni, e a quelle ordinate dal Chirografo Sovrano del primo Ottobre 1802.
48. In pari modo lo saranno quelli, che trovano Antichità, facendo Scassati, Fondamenti od altro, ed in particolar guisa i Cavatori di Puzzolana, e i Lavoratori delle pubbliche Strade.
49. Tutti gli Oggetti di Arte di Marmo bianco, o colorato, che si rinverranno negli Scavamenti, debbono considerarsi di proprietà dello Scavatore o Intraprendente, quando egli sia il Padrone del Fondo, o altrimenti dell'Inventore secondo le condizioni convenute col Padrone del Fondo, escluse le Miniere, e i Tesori, sopra i quali restano fermi i diritti Fiscali secondo le Leggi.
50. Nel caso *fortuito* l'Inventore dovrà avere la metà del ritrovato, cedendo l'altra a vantaggio del Padrone del Fondo. L'Inventore salariato o giornaliero trova pel suo Padrone, cui incombe la piena osservanza dei Regolamenti. L'Inventore che non adempie alle presenti disposizioni, perde ogni diritto.
51. Qualunque Cavatore di Puzzolana, sebbene munito della autorizzazione della Presidenza delle Strade, non potrà intraprendere il lavoro, se non abbia denunciato a Noi il luogo dello Scavamento sotto pena di Scudi Venti in caso di contravvenzione.
52. Richiamando in vigore la Costituzione della Sa: Mem: di Sisto IV. e l'Art. 9 del Chirografo Sovrano del primo Ottobre 1802, rigorosamente proibiamo di togliere dalle *Chiese pubbliche, e Fabbriche annesse*, compresi anche i semplici Oratorj, i *Marmi antichi scolpiti o lisci di qualunque sorta, e Pitture, Iscrizioni, Mosaici, Urne, Terre Cotte, ed altri Ornamenti, o Monumenti esposti alla pubblica vista, o ascosi e sepolti*, ricordando che Sua Santità nel medesimo Chirografo, per fare avere pieno effetto a questa proibizione, ha tolto ai Rettori o Amministratori delle suddette Chiese e Fabbriche annesse, ed Oratorj, di qualunque grado e dignità e di qualunque privilegio muniti, compresi anche i Rmi Cardinali Titolari e Protettori, e i Patroni o Laici o Ecclesiastici, le Congregazioni de' Vescovi e Regolari, del Concilio, della Disciplina Regolare ed altre, e lo stesso Emo Sig. Cardinal Vicario Generale di Sua Beatitudine in Roma, la facoltà di accordare sotto qualsivoglia ragione o pretesto alcuna licenza di levare dal loro luogo, e molto più di distrarre i detti ornamenti; la qual facoltà è unicamente a Noi riserbata, previo però l'esame e la relazione della Nostra Commissione in Roma, e rispettivamente delle Commissioni ausiliarie nelle Provincie.
53. La quale proibizione ha voluto Sua Santità nell'Art. 10 del mentovato Chirografo, e vuoi che abbia effetto per le Pitture delle su-dette Chiese, Fabbriche annesse, ed Oratorj, le quali non solo non potranno togliersi

- dal luogo, in cui sono situate, ma neppure farsi restaurare o sul luogo stesso o fuori senza la Nostra intelligenza e consenso.
54. Rimane poi richiamata alla più stretta osservanza l'inibizione sempre prescritta dalle Leggi di rimuovere, mutilare, spezzare, ed in altra guisa alterare o guastare *Statue, Busti, Bassi rilievi, Cippi, Lapidi, Sostruzioni, le stesse piccole Colonnelle di Marmi stimati per la loro rarità e bellezza esistenti nelle Piazze, Strade, e Portici di quest'alma Città di Roma*, e qualunque antico Monumento, e molto meno fondere gli *antichi Metalli figurati, Medaglie ed altre cose simili*.
 55. Non potrà in pari modo recarsi alcun danno ai *Monumenti antichi soprastanti al terreno*, o di spogliarli di materiali per qualsiasi motivo, nulla ostante che si adducesse il pretesto del risarcimento di pubbliche Strade, o il consolidamento di altro pubblico Edificio.
 56. Siccome ancora resta assolutamente vietato di guastare *gli avanzi qualunque delle antiche celebri Strade*, interessando sommamente la loro conservazione. Ogni costumanza e regolamento in contrario, sia della Presidenza delle Strade, sia di qualunque altro Tribunale o Dicastero, viene d'ordine espresso di Sua Santità da Noi anche più strettamente revocato.
 57. Le contravvenzioni agli Art. 51 e seguenti saranno punite con una multa di Scudi Cencinquanta, e colla refezione dei danni.
 58. Ogni Artefice Negoziante di Oggetti d'Arte e d'Antichità, sarà obbligato di tenere affisso il presente nel suo Studio o Residenza sotto pena di Scudi Cinque.
 59. Sarà sempre annessa una Copia di questo Editto a tutte le Licenze, che si concederanno per le Escavazioni, e del pari unita alle Note, che saranno restituite dalle Commissioni secondo l'Art. 7.
 60. Vuole inoltre Sua Beatitudine, che per l'esecuzione delle presenti ordinazioni, e di altre che sopra questa materia sono state promulgate da suoi Predecessori, non contradicenti a questa Legge, sia riservata a Noi una piena e privativa giurisdizione, esclusivamente da qualunque altro Tribunale ancorché Camerale, come dispose nell'Art. 15 del ricordato alirografo Sovrano del primo Ottobre 1802, nulla ostante qualsivoglia Suprema disposizione, che facesse o potesse fare in contrario, colle quali cose non intende impedire, che anzi animare i Capi d'ogni Tribunale ed Azienda, ed i loro Ministri ed Esecutori a cooperare, e dare ogni ajuto per lo scoprimento ed arresto dei Contrabandi, e per l'apprensione dei Contravventori, tutto riferendo in appresso al Nostro Tribunale.
 61. Comanda finalmente Sua Santità, che contro coloro che contravverranno alle presenti, o ad altre antiche prescrizioni, si possa da Noi procedere sommariamente, e colle facultà economiche, ed anche per inquisizione e per officio, ancorché gli Oggetti, intorno ai quali cade l'inquisizione, più non esistessero; nel qual caso ordina, che oltre le pene comminate nei

rispettivi casi, si debba dai Contravventori pagare il prezzo alla stima, anche di credulità e di affezione, che ne farà la Commissione Nostra consultiva in Roma, o quelle delle Provincie tolto di mezzo ogni ricorso, inibizione, ed appellazione, che non fosse stragiudizialmente segnata di Sua propria Mano, come in pari modo prescrisse ed accordò nel citato Chirografo.

B. Card. Pacca Camerl. D. Attanasio Udit. G.M. Farinetti Segr. e Cancell. della R.C.A.

DOC. 2. Ancient Monuments Protection Act, 1882

Chapter 73. Arrangement of sections

Preamble

...

An Act for the better protection of Ancient Monuments.

BE it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows: Ancient Monuments Protection Act, 1882

Short title of Act.

1. This Act may be cited for all purposes as the Ancient Monuments Protection Act, 1882.

Power to appoint Commissioners of Works guardians of ancient monuments.

2. The owner of any ancient monument to which this Act applies may, by deed under his hand, constitute the Commissioners of Works in this Act mentioned the guardians of such monument. Where the Commissioners of Works have been constituted guardians of a monument, they shall thenceforth, until they shall receive notice in writing to the contrary from any succeeding owner not bound by such deed as aforesaid, maintain such monument, and shall, for the purpose of such maintenance, at all reasonable times by themselves and their workmen have access to such monument, for the purpose of inspecting it, and of bringing such materials and doing such acts and things as may be required for the maintenance thereof. The owner of an ancient monument of which the Commissioners of Works are guardians shall, save as in this Act expressly provided, have the same estate, right, title, and interest, in and to such monument, in all respects, as if the Commissioners had not been constituted guardians thereof.

The expressions "maintain" and "maintenance" include the fencing, repairing, cleansing, covering in, or doing any other act or thing which may be required for the purpose of repairing any monument or protecting the same

from decay or injury. The cost of maintenance shall, subject to the approval of Her Majesty's Treasury, be defrayed from moneys to be provided by Parliament.

Power of Commissioners to purchase ancient monuments.

3. The Commissioners of Works, with the consent of the Treasury, may purchase out of any moneys which may for that purpose be from time to time provided by Parliament any ancient monument to which this Act applies, and with a view to such purchase the Lands Clauses Consolidation Acts shall be incorporated with this Act, with the exception of the provisions which relate to the purchase and taking of lands otherwise than by agreement. In construing the said Lands Clauses Consolidation Acts for the purposes of this Act, this Act shall be deemed to be the special Act, and the Commissioners of Works shall be deemed to be the promoters of the undertaking. Power to give, devise, or bequeath ancient monuments to Commissioners.
4. Any person may by deed or will give, devise, or bequeath to the Commissioners of Works all such estate and interest in any ancient monument to which this Act applies as he may be seised or possessed of, and it shall be lawful for the Commissioners of Works to accept such gift, devise, or bequest if they think it expedient so to do. Inspectors of ancient monuments.
5. The Commissioners of Her Majesty's Treasury shall appoint one or more inspectors of ancient monuments, whose duty it shall be to report to the Commissioners of Works on the condition of such monuments, and on the best mode of preserving the same, and there may be awarded to the inspectors so appointed such remuneration and allowance for expenses, out of moneys provided by Parliament, as may be determined by the Commissioners of Her Majesty's Treasury.

Penalty for injury to ancient monuments.

6. If any person injures or defaces any ancient monument to which this Act applies, such person shall, on summary conviction, be liable, at the discretion of the court by which he is tried, to one of the following penalties; (that is to say,) (1.) To forfeit any sum not exceeding five pounds, and in addition thereto to pay such sum as the court may think just for the purpose of repairing any damage which has been caused by the offender; or, (2.) To be imprisoned with or without hard labour for any term not exceeding one month. The owner of an ancient monument shall not be punishable under this section in respect of any act which he may do to such monument, except in cases where the Commissioners of Works have been constituted guardians of such monument, in which case the owner shall be deemed to have relinquished his rights of ownership so far as relates to any injury or defacement of such monument, and may be dealt with as if he were not the owner. Recovery of penalties.

7. Offences and penalties under this Act shall be prosecuted and recovered in manner provided by the Summary Jurisdiction Acts.

The expression "Summary Jurisdiction Acts"--42 & 43 Vict. c. 49.

- (1). As regards England, has the same meaning as in the Summary Jurisdiction Act, 1879; and 27 & 28 Vict. c. 53. 44 & 45 Vict. c. 33.
- (2). As regards Scotland, means the Summary Jurisdiction (Scotland) Acts, 1864 and 1881; and 14 & 15 Vict. c. 93.
- (3). As regards Ireland, means, within the police district of Dublin metropolis, the Acts regulating the powers and duties of justices of the peace for such district or of the police of such district; and elsewhere in Ireland, the Petty Sessions (Ireland) Act, 1851, and any Act amending the same. In England any person aggrieved by any decision of the court acting under the Summary Jurisdiction Acts may appeal to a court of general or quarter sessions.

Description of Commissioners of Works, and law as to disposition in their favour.

8. The expression "The Commissioners of Works" means as respects Great Britain the Commissioners of Her Majesty's Works and Public Buildings, and as respects Ireland the Commissioners of Public Works in Ireland. Each of the said bodies, that is to say, the Commissioners of Her Majesty's Works and Public Buildings as respects Great Britain and the Commissioners of Public Works as respects Ireland, shall be incorporated by their said names respectively, and shall have perpetual succession and a common seal, and may purchase or acquire by gift, will, or otherwise, and hold without licence in mortmain, any land or estate or interest in land for the purposes of this Act; and any conveyance, appointment, devise, or bequest of land, or any estate or interest in land under this Act to either of the said bodies, shall not be deemed to be a conveyance, appointment, devise, or bequest to a charitable use within the meaning of the Acts relating to charitable uses. In the case of an ancient monument in Scotland, a duplicate of any report made by any inspector under this Act to the Commissioners of Works shall be forwarded to the Board of Trustees for Manufactures in Scotland, and it shall be the duty of the Commissioners of Works, in relation to any such monument, to take into consideration any representations which may be made to them by the said Board of Trustees for Manufactures. Description of owners for purposes of Act.

9. The following persons shall be deemed to be "owners" of ancient monuments for the purposes of this Act; that is to say, (1.) Any person entitled for his own benefit, at law or in equity, for an estate in fee, to the possession or receipt of the rents and profits of any freehold or copyhold land, being the site of an ancient monument, whether such land is or not subject to incumbrances: (2.) Any person absolutely entitled in possession,

- at law or in equity, for his own benefit, to a beneficial lease of land, being the site of an ancient monument, of which not less than forty-five years are unexpired, whether such land is or not subject to incumbrances; but no lease shall be deemed to be a beneficial lease, within the meaning of this Act, if the rent reserved thereon exceeds one third part of the full annual value of the land demised by such lease: (3.) Any person entitled under any existing or future settlement, at law or in equity, for his own benefit, and for the term of his own life, or the life of any other person, to the possession or receipt of the rents and profits of land of any tenure, being the site of an ancient monument, whether subject or not to incumbrances in which the estate for the time being subject to the trusts of the settlement is an estate for lives or years renewable for ever, or is an estate renewable for a term of not less than sixty years, or is an estate for a term of years of which not less than sixty are unexpired, or is a greater estate than any of the foregoing estates: (4.) Any body corporate, any corporation sole, any trustees for charities, and any commissioners or trustees for ecclesiastical, collegiate, or other public purposes, entitled at law or in equity, and whether subject or not to incumbrances, in the case of freehold or copyhold land, being the site of an ancient monument, in fee, and in the case of leasehold land, being the site of an ancient monument, to a lease for an unexpired term of not less than sixty years. Where any owner as herein-before defined is a minor, or of unsound mind, or a married woman, the guardian, committee, or husband, as the case may be, of such owner, shall be the owner within the meaning of this Act; subject to this proviso, that a married woman entitled for her separate use, and not restrained from anticipation, shall for the purposes of this Act be treated as if she were not married. Every person deriving title to any ancient monument from, through, or under any owner who has constituted the Commissioners of Works the guardians of such monument shall be bound by the deed executed by such owner for that purpose; and where the owner of any land, being the site of an ancient monument, is a tenant for life or in tail, or heir of entail in possession in Scotland, having a power of sale over such land, either under the terms of a will or settlement, or under an Act of Parliament, any deed executed by such owner in respect of the land, being such site as aforesaid, of which he is so tenant for life or in tail, shall bind every succeeding owner of any estate or interest in the land. Additions to Schedule by Order in Council.
10. Her Majesty may, from time to time, by Order in Council, declare that any monument of a like character to the monuments described in the Schedule hereto, shall be deemed to be an ancient monument to which this Act applies, and thereupon this Act shall apply to such monument in the same manner in all respects as if it had been described in the Schedule hereto. An Order in Council under this section shall not come into force

until it has lain for forty days before both Houses of Parliament during the Session of Parliament. Definitions.

11. The following expressions shall, except in so far as is inconsistent with the tenour of this Act, have the meaning herein-after assigned to them; (that is to say,)

The word "settlement" includes any Act of Parliament, will, deed, or other assurance whereby particular estates or particular interests in land are created, with remainders or interests expectant thereon: "Lands Clauses Consolidation Acts." 8 & 9 Vict. c. 19.

The expression "Lands Clauses Consolidation Acts" means, as respects England, the Lands Clauses Consolidation Act 1845, and any Acts amending the same; and as respects Scotland, the Lands Clauses Consolidation (Scotland) Act, 1845, and any Act amending the same; and as respects Ireland, the Lands Clauses Consolidation Act, 1845, and the Acts amending the same, so far as respects Ireland: "Ancient monuments to which Act applies."

The expression "ancient monuments to which this Act applies" means the monuments described in the Schedule hereto, and any other monuments of a like character of which the Commissioners of Works at the request of the owners thereof may consent to become guardians; and "ancient monument" includes the site of such monument and such portion of land adjoining the same as may be required to fence, cover in, or otherwise preserve from injury the monument standing on such site, also the means of access to such monument.

The SCHEDULE. LIST OF ANCIENT MONUMENTS TO WHICH ACT APPLIES. ENGLAND AND WALES. County. Parish. The tumulus and dolmen, Plas Newydd, Anglesea Anglesea Llandedwen. The tumulus known as Wayland Smith's Forge Berkshire Ashbury. Uffington Castle Uffington. The stone circle known as Long Meg and her Daughters, near Penrith. Cumberland Addingham. The stone circle on Castle Rigg, near Keswick Crosthwaite. The stone circles on Burn Moor St. Bees. The stone circle known as The Nine Ladies, Stanton Moor. Derbyshire Bakewell. The tumulus known as Arborlow Hob Hurst's House and Hut, Bastow Moor Minning Low Brassington. Arthur's Quoit, Gower Glamorganshire Llanridian. The tumulus at Uley Gloucestershire Uley. County. Parish. Kits Coty House Kent Aylesford. Danes Camp Northamptonshire Hardingstone. Castle Dykes ,, Farthingston. The Rollrich Stones Oxfordshire Little Rollright. The Pentre Evan Cromlech Pembrokeshire Nevern. The ancient stones at Stanton Drew Somersetshire Stanton Drew. The chambered tumulus at Stoney Littleton, Wellow. Cadbury Castle ,, South Cadbury. Mayborough, near Penrith Westmoreland Barton. Arthur's Round Table, Penrith ,, ,, The group of stones known as Stonehenge Wiltshire. Amesbury. Old Sarum ,, -- The vallum at Abury, the Sarcen stones within the same, those along the Kennet Road, and the group between Abury and Beckhampton. ,, Abury. The long barrow at West Kennet, near Marlborough. ,, West Kennet. Silbury Hill ,, Abury. The dolmen

(Devil's Den), near Marlborough ,, Fyfield. Barbury Castle ,, Ogbourne, St. Andrews, and Swindon.

LIST OF ANCIENT MONUMENTS TO WHICH ACT APPLIES.
 SCOTLAND. -- County. Parish. The Bass of Inverury Aberdeenshire Inverurie. The vitrified fort on the Hill of Noath ,, Rhynie. The pillar and stone at Newton-in-the-Garioch ,, Culsalmond. The circular walled structures called "Edin's Hall," on Cockburn Law. Berwickshire Dunse. The British walled settlement enclosing huts at Harefaulds in Lauderdale. ,, Lauder. The Dun of Dornadilla Sutherlandshire Durness. The sculptured stone called Suenos Stone, near Forres. Elgin Rafford. The cross slab, with inscription, in the churchyard of St. Vigeans. Forfarshire St. Vigeans. The British forts, on the hills, called "The Black and White Catherthuns." ,, Menmuir. A group of remains and pillars, on a haugh at Clava on the banks of the Nairn. Inverness Croy and Daleros. The Pictish Towers at Glenelg ,, Glenelg. The Cairns, with chambers and galleries partially dilapidated. Kirkcudbrightshire Minnigaff. The Catstane, an inscribed pillar Linlithgow Kirkliston. The Ring of Brogar and other stone pillars at Stennis in Orkney, and the neighbouring pillars. Orkney Firth and Stennis. The Chambered mound of Maeshowe ,, ,, The stones of Callernish Ross Uig. The Burgh of Clickanim Shetland Sound. The Pictish tower at Mousa in Shetland ,, Dunrossness. The inscribed slab standing on the roadside leading from Wigton to Whithorn and about a mile from Whithorn. Wigtowhire Whithorn. Two stones, with incised crosses, on a mound in a field at Laggangairn. ,, New Luce. The pillars at Kirkmadrine ,, Stoneykirk.

LIST OF ANCIENT MONUMENTS TO WHICH ACT APPLIES.
 IRELAND. -- County. Parish. Barony. The earthen enclosure and mounds called the Navan Fort. Armagh Eglis Armagh. Stone monuments and groups of sepulchral cists in Glen Maulin. Donegal Glencolumbkille Banagh. The earthen and stone inclosure known as Grianan of Aileach. Burt Westlinnishowen. The earthen inclosure and Cromlech called the Giant's Ring near Ballylessan. Down Drumbo Upper Castlereagh. The earthen fort at Downpatrick (Dunkeltair). ,, Downpairick Lecale. Stone structure called Staigue Fort Kerry Kilcrogham Dunkerron. The earthen mound at Greenmount ,, Kilsaran Ardee. The stone monument at Ballyna Mayo Kilmoremoey Tyrawly. Cairns and stone circles at Moytura ,, Cong Kilmaine. The tumuli, New Grange, Knowth and Dowth. Meath Monknewton and Dowth. Upper Slane. The earthworks on the hill of Tara, Tara Skreen. The earthworks at Teltown (Taltin) ,, Teltown Upper Kells. The earthworks at Wardstown (Tlaghta), Athboy Lune. The two central tumuli on the hills called Slieve Na Calliagh. Meath Loughcrew Fore. The Cairn at Heapstown Sligo Kilmacallan Tirerrill. Sepulchral remains at Carrowmore. The cairn called Miscaun Mave or Knocknarea. ,, Kilmacowen Curbury. The cave containing Ogham inscribed stones at Drumloghan. Waterford Stradbally Decies without Drum. The stone monument called the Catstone and the cemetery on the hill of Usnagh. Westmeath Killare Bathconrath.

DOC. 3. Loi ... à la conservation des monuments et objets d'art ayant un intérêt historique et artistique, 1887

Le Président, etc., promulgue la loi dont la teneur suit :

TITRE I^{er} CHAPITRE 1^{er}. IMMEUBLES ET MONUMENTS HISTORIQUES OU MÉGALITHIQUES.

1. Art. 1^{er}. Les immeubles par nature ou par destination dont la conservation peut avoir, au point de vue de l'histoire ou de l'art, un intérêt national, seront classés en totalité ou en partie par les soins du ministre de l'instruction publique et des beaux-arts.
2. L'immeuble appartenant à l'Etat sera classé par arrêté du ministre de l'instruction publique et des beaux-arts, en cas d'accord avec le ministre dans les attributions duquel l'immeuble se trouve placé. Dans le cas contraire, le classement sera prononcé par un décret rendu en la forme des règlements d'administration publique. L'immeuble appartenant à un département, à une commune, à une fabrique ou à tout autre établissement public, sera classé par arrêté du ministre de l'instruction publique et des beaux-arts, s'il y a consentement de l'établissement propriétaire et avis conforme du ministre sous l'autorité duquel l'établissement est placé. En cas de désaccord le classement sera prononcé par un décret rendu en la forme des règlements d'administration publique.
3. L'immeuble appartenant à un particulier sera classé par arrêté du ministre de l'instruction publique et des beaux-arts, mais ne pourra l'être qu'avec le consentement du propriétaire. L'arrêté déterminera les conditions du classement. S'il y a contestation sur l'interprétation et sur l'exécution de cet acte, il sera statué par le ministre de l'instruction publique et des beaux-arts, sauf recours au Conseil d'Etat statuant au contentieux.
4. L'immeuble classé ne pourra être détruit, même en partie, ni être l'objet d'un travail de restauration, de réparation ou de modification quelconque, si le ministre de l'instruction publique et des beaux-arts n'y a donné son consentement. L'expropriation pour cause d'utilité publique d'un immeuble classé ne pourra être poursuivie qu'après que le ministre de l'instruction publique et des beaux-arts aura été appelé à présenter ses observations. Les servitudes d'alignement et autres qui pourraient causer la dégradation des monuments ne sont pas applicables aux immeubles classés. Les effets du classement suivront l'immeuble classé, en quelque lieu qu'il passe.
5. Le ministre de l'instruction publique et des beaux-arts pourra, en se conformant aux prescriptions de la loi du 3 mai 1841, poursuivre l'expropriation des monuments classés ou qui seraient de sa part l'objet d'une proposition de classement refusée par le particulier propriétaire. Il pourra, dans les mêmes conditions, poursuivre l'expropriation des

monuments mégalithiques ainsi que celle des terrains sur lesquels ces monuments sont places.

6. Le déclassement, total ou partiel, pourra être demandé par le ministre dans les attributions duquel se trouve l'immeuble classé par le département, la commune, la fabrique, l'établissement public et le particulier propriétaire de l'immeuble. Le déclassement aura lieu dans les mêmes formes et sous les mêmes distinctions que le classement. Toutefois, en cas d'aliénation consentie à un particulier de l'immeuble classé appartenant à un département, à une commune, à une fabrique, ou à tout autre établissement public, le déclassement ne pourra avoir lieu que conformément au paragraphe 2 de l'article 2.
7. Les dispositions de la présente loi sont applicables aux monuments historiques régulièrement classés avant sa promulgation. Toutefois, lorsque l'Etat n'aura fait aucune dépense pour un monument appartenant à un particulier, ce monument sera classé de droit dans le délai de six mois après la réclamation que le propriétaire pourra adresser au ministre de l'instruction publique et des beaux-arts, pendant l'année qui suivra la promulgation de la présente loi.

CHAPITRE II. OBJETS MOBILIERS.

8. Il sera fait, par les soins du ministre de l'instruction publique et des beaux-arts un classement des objets mobiliers appartenant à l'Etat, aux départements, aux communes, aux fabriques et autres établissements publics dont la conservation présente, au point de vue de l'histoire ou de l'art, un intérêt national.
9. Le classement deviendra définitif si le département, les communes, les fabriques et autres établissements publics n'ont pas réclamé, dans le délai de six mois, à dater de la notification qui leur en sera faite. En cas de réclamation, il sera statué par décret rendu en la forme des règlements d'administration publique. Le déclassement, s'il y a lieu, sera prononcé par le ministre de l'instruction publique et des beaux-arts. En cas de contestations, il sera statué comme il vient d'être dit ci-dessus. Un exemplaire de la liste des objets classés sera déposée au ministère de l'instruction publique et des beaux-arts et à la préfecture de chaque département, où le public pourra en prendre connaissance sans déplacement.
10. Les objets classés et appartenant à l'Etat seront inaliénables et imprescriptibles.
11. Les objets classés appartenant aux départements, aux communes, aux fabriques ou autres établissements publics ne pourront être restaurés, réparés, ni aliénés par vente, don ou échange, qu'avec l'autorisation du ministre de l'instruction publique et des beaux-arts.
12. Les travaux, de quelque nature qu'ils soient, exécutés en violation des articles qui précèdent, donneront lieu, au profit de l'Etat, à une action

en dommages-intérêts contre ceux qui les auraient ordonnés ou fait exécuter. Les infractions seront constatées et les actions intentées et suivies devant les tribunaux civils ou correctionnels, à la diligence du ministre de l'instruction publique et des beaux-arts ou des parties intéressées.

13. L'aliénation faite en violation l'article 11 sera nulle, et la nullité en sera poursuivie par le propriétaire vendeur ou par le ministre de l'instruction publique et des beaux-arts, sans préjudice des dommages-intérêts qui pourraient être réclamés contre les parties contractantes et contre l'officier public qui aura prêté son concours à l'acte d'aliénation. Les objets classés qui auraient été aliénés irrégulièrement, perdus ou volés, pourront être revendiqués pendant trois ans, conformément aux dispositions des articles 2279 et 2280 du Code civil. La revendication pourra être exercée par les propriétaires, et, à leur défaut, par le ministre de l'instruction publique et des beaux-arts.

CHAPITRE III FOUILLES

14. Lorsque, par suite de fouilles, de travaux ou d'un fait quelconque, on aura découvert des monuments, des ruines, des inscriptions ou des objets pouvant intéresser l'archéologie, l'histoire ou l'art, sur des terrains appartenant à l'Etat, à un département, à une commune, à une fabrique ou autre établissement public, le maire de la commune devra assurer la conservation provisoire des objets découverts, et aviser immédiatement le préfet du département des mesures qui auront été prises. Le préfet en référera, dans le plus bref délai, au ministre de l'instruction publique et de beaux-arts, qui statuera sur les mesures définitives à prendre. Si la découverte a eu lieu sur le terrain d'un particulier, le maire avisera le préfet. Sur le rapport du préfet et après avis de la commission des monuments historiques, le ministre de l'instruction publique et des beaux-arts pourra poursuivre l'expropriation dudit terrain en tout ou en partie pour cause d'utilité publique, suivant les formes de la loi du 3 mai 1841.
15. Les décisions prises par le ministre de l'instruction publique et des beaux-arts, en exécution de la présente loi, seront rendues après avis de la commission des monuments historiques.

CHAPITRE IV. DISPOSITIONS SPECIALES A L'ALGERIE ET AUX PAYS DE PROTECTORAT

16. La présente loi est applicable à l'Algérie. Dans cette partie de la France, la propriété des objets d'arts ou d'archéologie, édifices, mosaïques, bas-reliefs, statues, médailles, vases, colonnes, inscriptions, qui pourraient exister sur et dans le sol des immeubles appartenant à l'Etat ou concédés par lui à des établissements publics ou à des particuliers, sur et dans des terrains militaires, est réservée à l'Etat.
17. Les mêmes mesures seront étendues à tous les pays placés sous le protectorat de la France et dans lesquels il n'existe pas déjà une législation spéciale.

18. Un règlement d'administration publique déterminera les détails d'application de la présente loi.

DOC. 4. Loi organisant la Protection des sites et monuments naturels de caractère artistique, 1906

published in *Journal Officiel de la République Française*, 24 April 1906, p. 2762

Le Sénat et la Chambre des députés ont adopté

Le Président de la République promulgue la loi dont la teneur suit:

Art. 1er — Il sera constitué dans chaque Département une commission des *sites et monuments naturels de caractère artistique*.

Cette commission sera composée :

Du préfet, président;

De l'ingénieur en chef des ponts et chaussées et de l'agent voyer en chef;

Du chef de service des eaux et forêts;

De deux conseillers généraux élus par leurs collègues,

Et de cinq membres choisis par le conseil général parmi les notabilités des arts, des sciences et de la littérature.

Art. 2. - Cette commission dressera une liste des propriétés foncières dont la conservation peut avoir, au point *du vue artistique ou pittoresque*, un intérêt général.

Art. 3. - Les propriétaires des immeubles désignés par la commission seront invité à prendre l'engagement de ne détruire, ni modifier l'état des lieux ou leur aspect, sauf autorisation spéciale de la Commission et approbation du ministre de l'instruction publique et des beaux-arts.

Si cet engagement est donné la propriété sera *classée* par arrêté du Ministre de l'instruction publique et des beaux.

Si l'engagement est refusé, la commission notifiera le refus au Département et aux communes sur le territoire desquels la propriété est située.

Le déclassement pourra avoir lieu dans les mêmes formes et sous les mêmes conditions que le classement.

Art. 4. - Le préfet, au nom du Département, ou le maire, au nom de la commune, pourra, en se conformant aux prescriptions de la loi du 3 mai 1841, poursuivre l'*expropriation* des propriétés désignées par la commission come susceptible de classement.

Art. 5. — Après l'établissement de la servitude, toute modification de lieux, sans l'autorisation prévue à l'article 3, sera punie d'une amende de cent francs (100 fr.) à trois mille francs (3000 fr.).

L'article 463 du code pénal est applicable.

La poursuite sera exercée sur la plainte de la commission.

Art. 6 – La présente Loi est applicable à l'Algérie

La présente Loi, délibérée et adoptée par le Sénat et la Chambre des Députés, sera exécutée come loi de l'Etat.

Fait à Paris, le 21 avril 1906

A. Fallieres, par le Président de la République

Le ministre de l'instruction publique, des beaux arts et des cultes, Aristide Briand

DOC. 5. Yosemite Act, 1864

An act authorizing a grant to the state of California of the "Yo-semite Valley" and of the land embracing the "Mariposa Big Tree Grove", approved June 30, 1864 (13 Stat. 325)

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That there shall be, and is hereby, granted to the State of California the "cleft" or "gorge" in the granite peak of the Sierra Nevada Mountains, situated in the county of Mariposa, in the State aforesaid, and the headwaters of the Merced River, and known as the Yo-Semite Valley, with its branches or spurs, in estimated length fifteen miles, and in average width one mile back from the main edge of the precipice, on each side of the valley, with the stipulation, nevertheless, that the said State shall accept this grant upon the express conditions that the premises shall be held for public use, resort, and recreation; shall be inalienable for all time; but leases not exceeding ten years may be granted for portions of said premises. All incomes derived from leases of privileges to be expended in the preservation and improvement of the property, or the roads leading thereto; the boundaries to be established at the cost of said State by the United States surveyor-general of California, whose official plat, when affirmed by the Commissioner of the General Land Office, shall constitute the evidence of the locus, extent, and limits of the said cleft or gorge; the premises to be managed by the governor of the State with eight other commissioners, to be appointed by the executive of California, and who shall receive no compensation for their services.

SEC. 2. And be it further enacted, That there shall likewise be, and there is hereby, granted to the said State of California the tracts embracing what is known as the "Mariposa Big Tree Grove," not to exceed the area of four sections, and to be taken in legal subdivisions of one quarter section each, with the like stipulation as expressed in the first section of this act as to the State's acceptance, with like conditions as in the first section of this act as to inalienability, yet with same lease privilege; the income to be expended in preservation, improvement, and protection of the property; the premises to be

managed by commissioners as stipulated in the first section of this act, and to be taken in legal subdivisions as aforesaid; and the official plat of the United States surveyor general, when affirmed by the Commissioner of the General Land Office, to be the evidence of the locus of the said Mariposa Big Tree Grove. (U.S.C., title 16, sec. 48.)

DOC. 6. Yellowstone Act, 1872

An act to set apart a certain tract of land lying near the headwaters of the Yellowstone river as a public park, approved march 1, 1872 (17 stat. 32)

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the tract of land in the Territories of Montana and Wyoming, lying near the headwaters of the Yellowstone River, and described as follows, to wit, commencing at the junction of Gardiner's river with the Yellowstone river, and running east to the meridian passing ten miles to the eastward of the most eastern point of Yellowstone lake; thence south along said meridian to the parallel of latitude passing ten miles south of the most southern point of Yellowstone lake; thence west along said parallel to the meridian passing fifteen miles west of the most western point of Madison lake; thence north along said meridian to the latitude of the junction of Yellowstone and Gardiner's rivers; thence east to the place of beginning, is hereby reserved and withdrawn from settlement, occupancy, or sale under the laws of the United States, and dedicated and set apart as a public park or pleasuring-ground for the benefit and enjoyment of the people; and all persons who shall locate or settle upon or occupy the same, or any part thereof, except as hereinafter provided, shall be considered trespassers and removed therefrom. (U.S.C., title 16, sec. 21.)

SEC 2. That said public park shall be under the exclusive control of the Secretary of the Interior, whose duty it shall be, as soon as practicable, to make and publish such rules and regulations as he may deem necessary or proper for the care and management of the same. Such regulations shall provide for the preservation, from injury or spoliation, of all timber, mineral deposits, natural curiosities, or wonders within said park, and their retention in their natural condition. The Secretary may in his discretion, grant leases for building purposes for terms not exceeding ten years, of small parcels of ground, at such places in said park as shall require the erection of buildings for the accommodation of visitors; all of the proceeds of said leases, and all other revenues that may be derived from any source connected with said park, to be expended under his direction in the management of the same, and the construction of roads and bridle-paths therein. He shall provide against the wanton destruction of the

fish and game found within said park, and against their capture or destruction for the purposes of merchandise or profit. He shall also cause all persons trespassing upon the same after the passage of this act to be removed therefrom, and generally shall be authorized to take all such measures as shall be necessary or proper to fully carry out the objects and purposes of this act. (U.S.C., title 16, sec. 22.)

DOC. 7. Antiquities Act, 1906

An act for the preservation of American antiquities, Approved June 8, 1906 (34 Stat. 225)

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That any person who shall appropriate, excavate, injure, or destroy any historic or prehistoric ruin or monument, or any object of antiquity, situated on lands owned or controlled by the Government of the United States, without the permission of the Secretary of the department of the government having jurisdiction over the lands on which said antiquities are situated, shall, upon conviction, be fined in a sum of not more than five hundred dollars or be imprisoned for a period of not more than ninety days, or shall suffer both fine and imprisonment, the discretion of the court. (U.S.C., title 16, sec. 433.)

SEC 2. That the President of the United States is hereby authorized, in his discretion, to declare by public proclamation historic landmarks, historic and prehistoric structures, and other objects of historic or scientific interest that are situated upon the lands owned or controlled by the Government of the United States to be national monuments, and may reserve as a part thereof parcels of land, the limits of which in all cases shall be confined to the smallest area compatible with the proper care and management of the objects to be protected: Provided, That when such objects are situated upon tract covered by a bona fide unperfected claim or held in private ownership, the tracts, or so much thereof as may be necessary for the proper care and management of the object, may be relinquished to the Government, and the Secretary of the Interior is hereby authorized to accept the relinquishment of such tracts in behalf of the Government of the United States. (U.S.C., title 16, sec. 431.)

SEC. 3. That permits for the examination of ruins, the excavation of archaeological sites, and the gathering of objects of antiquity upon the lands under their respective jurisdictions may be granted by the Secretaries of the Interior, Agriculture, and War to institutions which they may deem properly qualified to conduct such examination, excavation, or gathering, subject to such rules and regulations as they may prescribe: *Provided*, That the examinations,

excavations, and gatherings are undertaken for the benefit of reputable museums, universities, colleges, or other recognized scientific or educational institutions, with a view to increasing the knowledge of such objects, and that the gatherings shall be made for permanent preservation in public museums. (U.S.C., title 16, sec. 432.)

SEC. 4. That the Secretaries of the departments aforesaid shall make and publish from time to time uniform rules and regulations for the purpose of carrying out the provisions of this act. (U.S.C., title 16, sec. 432.)

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