

Cultural Heritage in a Comparative Approach

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In the Name of Aphrodite

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NOTE OF INTRODUCTION

After a long period of absence, the matter of cultural heritage is becoming today one of the most relevant within cultural and political debates. It appears that national governments and international institutions are giving growing attention to the problem of organization, management, and promotion of their heritage and of their history, as reflected in monuments, museums, and sites of natural, historical, and artistic interest.

Numerous new laws and international conventions have also been introduced in these last years, enforcing instruments of protection, but also – and above all – broadening the meaning and the concept itself of cultural heritage. Coming from the idea of beauty as an universal value – dominating the concept of cultural asset in an aesthetic approach at the origins – cultural heritage has today become a very general and inclusive matter within which we can find a range of elements: monuments and buildings, tangible objects and intangible experiences, rites and ceremonies, dance and music, culinary production and tradition.

But in contrast with this increasing interest, research about the problem of politics for cultural heritage management has yet to be profoundly considered, especially at a historical level. Many contributions – in terms of books and scientific articles or essays – have been published about the problem of legislative development, and – in particular during these last decades – about the economic aspects of culture. New categories, new key-words, new interpretative instruments have – consequently – been defined in a literature growing and increasing every day.

But this literature shows, in the opinion of an Italian researcher, at least two limits, both from a methodological and geographical point of view. The majority of contributions results today as coming from the Anglo-Saxon area, together with specific contributions from other countries and a much less developed attention in Italy.

On the other hand, they are above all essays and books juridically-based, where the historical aspects appear not so considered in the crucial role they instead play.

The work we present would be a first essay to build a general overlook around different ways along which politics for cultural heritage management have been developed in the history of the most relevant areas of the world. In this way it is not a very detailed analysis of each

experience but just a very brief and rapid sketch around the crucial elements characterizing the most relevant experiences. We speak of experiences, not of models, a term very common among political scientists and sociologists. In a historical perspective, we prefer to point out differences and similarities linked to different historical, economic, social and cultural aspects.

After a first chapter regarding problems of definition and methodology, the book follows, in this way, the problem of nation-building processes as relevant in the definition of the “symbolic stage” of nations, especially the origins of the protectionist movements and sensibilities. The war appears, in the third chapter, as a disruptive moment when attention to cultural heritage and protection, especially in the case of armed-conflicts, emerged at a high level. In this way, the creation of Unesco, and the introduction of the Hague Convention of 1954 were the crucial steps.

On another hand, the book tries to propose a reflection on the contemporary world – and the second post-war period in particular – looking at the politics for cultural heritage management in the two different parts of Europe and world as an instrument to better understand different systems introduced after the end of the war.

Finally, cultural heritage appears in this work as a new field of research and political action with regard to the new situation created in the globalized world: so with regard to the problem of the new political and economic direction defined by the emergence of the new great economic powers, so with regard to the decline of the West and in particular of Europe.

Of course just a proposal of reflection, opening some questions to be discussed in a further and more increased literature in future.

CHAPTER ONE

CULTURAL HERITAGE: PROBLEMS OF DEFINITION AND METHODOLOGICAL QUESTIONS

1. A controversial expression

Writing in regard to the growing interest in recent years towards the issue of cultural heritage, particularly in a juridical context, Anna Papa observed in 2004 how the various aspects of the matter found a lowest common denominator in the increasingly accentuated process of overcoming an elitist and static concept of cultural assets, which essentially relegates them to a role as vestiges of the past to pass on to future generations, and, consequently, considers as preeminent the activity of conservation of the same, even at the expense of a broader fruition on the part of the community, in favor instead of a dynamic approach tending towards accentuating the activities of valorization¹.

In an even more general and extensive acceptance of this consideration, there are those who have highlighted this conceptual translation towards the entire category of “culture”, for which, as has been underlined

it is considered by many [...] as a depository of memories to conserve under a well-protected case; a collection of signs turned museum specimens, and as such, somewhat mummified....the expectations of those who conceive of culture in this manner seem on the one hand excessive, insisting that culture “returns to the market” and produces earnings just as any manufactured product, on the other hand defective and simplistic, leaving under wraps the infinite and indefinite potential that culture could

¹ A. Papa, *La definizione del “patrimonio culturale europeo” e la tutela delle “testimonianze nazionali aventi valore di civiltà”*, in *Scritti in ricordo di Giovanni Motzo*, ESI, Napoli, 2004, pag. 213.

demonstrate if only it was allowed to escape from the cocoon, aristocratic and static, into which it was confined by an uncertain century².

At the base of the progressive conceptual expansion of the category can be identified the constant recognition on the part of juridical doctrine, of the necessity to bring together and govern phenomena of economic and social complexity in which cultural assets have acquired ever-greater centrality.³ Following the most recent indications offered by the reflections of scholars of international law, we may identify at least three phenomena. These are related to the transformation which in recent decades has undergone the original definition given by the UNESCO Convention of 1972, related to the global protection of cultural heritage and the environment. In this Convention centrality in the action of protection was placed on *cultural heritage*, an English expression which comprised the forms of “cultural bequest” but with greater weight, with the intent to protect treasures from threats of deterioration or from modernization. From that moment, in any case, it has been the ever-greater expansion of membership by States belonging to different geographical and cultural areas which has determined a corresponding expansion of the original concept. Secondly, the growing demand of cultural tourism has imposed the consideration of an increasing number and variety of sites and cultural events, together with the opportunities offered by the same. Thirdly, the loss or disappearance of expressions of traditional culture - a consequence of globalization - has called for new strategies of integration of tangible and intangible cultural heritage⁴.

In this direction, the concept of cultural assets, or, in particular, the category of *cultural heritage*, today more common in international discussions, moves towards ever-broader and uncertain confines, and approaches lexical and interpretive concepts and categories which are fairly distant among themselves. Just to make some examples, *cultural*

² M. Trimarchi, *Premessa*, in Id. (a cura di), *Il finanziamento delle associazioni culturali ed educative*, Il Mulino, Bologna, 2002, pag. 7.

³ Cfr. for a general outline J. Blake, *International Cultural Heritage Law*, Oxford University Press, Oxford, 2015.

⁴ A. Buzio-A. Re, *Cultural commons and new concepts behind the recognition and management of UNESCO World Heritage sites*, in E. Bertacchini-G. Bravo-M. Marrelli-W. Santagata (ed.), *Cultural Commons. A New Perspective on the Production and Evolution of Cultures*, Edward Elgar, Cheltenham-Northampton, 2012, pagg. 178-179. For an initial exploration of the suggestions offered I cite the brief but useful bibliography attached to this essay, pagg. 192-193.

heritage comes significantly close to the concept of *cultural districts* as the seats of those cultural properties in which tangible and intangible cultural assets are intertwined, and thus, in this sense, comes close also to the concept of *common goods*; then again, if the object of protection moves from the sphere of tangible to intangible goods, towards *cultural manifestations* alongside the more traditional objects of protection (monuments, churches, sites) the concept of *cultural heritage* ends up spilling over and intertwining itself with that of protection of rights and recognition of diversity, as can easily be confirmed by the fact that UNESCO itself in recent years compiled a Red Book of languages at risk of extinction or disappearance (*Red Book of endangered languages*). Furthermore, consider the infinite implications that the relationship with processes of economic transformation may open to reflection, regarding the dilemma of opportunity vs risk, with respect to globalization, but also in the face of new perspectives of economic development linked to the promotion and wise management of “cultural and environmental repositories” in an idea of sustainable development, or yet again the possible implications offered by the construction and development of European identity.

That the concept is still far from a precise definition of its own perimeters and contents is demonstrated furthermore by the varied terminology with which the concept is declinated in different languages. In the well-known dictionary *Vocabolario della lingua italiana* edited by Treccani, there is not a precise reference of “cultural heritage”, but rather still to “**fine arts**”, an ancient denomination which generically included monuments, artworks, structures of historical interest, with an aesthetic meaning of the term. It is instead the *Grande Dizionario Italiano dell’uso*, directed by the eminent linguist Tullio De Mauro who speaks about **heritage** in terms of the group of assets having a recognized intrinsic value, precisely:

group of spiritual, cultural, social, or material values which through heredity or tradition belong to a community or individual;

in reference to the cultural heritage of a person, the artistic heritage of a population, the natural heritage of a region. And, of **world heritage** for:

that group of assets for which a particular legal protection is reserved, given that, for their characteristics, they belong to all humanity⁵.

⁵ *Grande Dizionario Italiano dell’Uso*, ideato e diretto da T. De Mauro, UTET, Torino, 1999, Vol. IV, p. 875.

Both the *Dizionario dell'uso* and the *Vocabolario Treccani* dictionaries give a more accurate definition in reference to the concept of **cultural asset**: the former indicating it as movable or immovable asset, of artistic, scientific, etc. value, protected by law as a part of collective heritage, even if privately owned⁶; the later refers to artistic, archeological, environmental assets as:

the national heritage, both natural and historic, intended as an ensemble of inalienable riches which must be valorized and passed down as a public good, because they satisfy collective needs, thus protected by the laws of the State and not the whims of private citizens⁷.

The latter also defers to a more precise juridical definition when listing, among the declinations of the adjective 'cultural', also **cultural heritage** next to **cultural asset**, as:

grouping of assets of historical, archaeological, artistical, environmental and natural, archival and book value, and any other asset which constitutes material proof of civilization⁸,

and making reference to the first definition coming from France - *biens culturels* used in the 1949 UNESCO Declaration – and the open codification of cultural asset as “material proof of civilization” proposed in Italy by the Franceschini Commission in 1966.

No less surprising is the example offered by the 1989 *Oxford English Dictionary*, in which there is only a very remote reference to **cultural heritage** or **cultural assets**, and more precise references to the problems of cultural heritage are connected to the term **art** and the concept of **fine arts**. Thus focus is placed on ability, or **skill**, and the concept of *art* alludes to practical and pragmatic implications which could even be attributed to the ancient Greek concept of *tecnè*. Under the entry of *art* we find in fact some of the entities, public or private, which in the U.K. are involved in protecting or promoting art: *art-gallery*, *art-museum*, *art-history*; above all, *Arts Council* or, with the full title, *Arts Council of Great Britain*:

⁶ *Grande Dizionario Italiano dell'Uso*, ideato e diretto da T. De Mauro, UTET, Torino, 1999, Vol. I, p. 644.

⁷ *Vocabolario della Lingua Italiana*, Istituto della Enciclopedia Italiana, Treccani, Roma, 1986, Vol. I, p. 438.

⁸ *Ivi*, pag. 1027.

an organization established by Royal Charter in 1946 to promote and support (esp. financially) the development and appreciation of the arts in Britain⁹.

However, it is quite significant that the very same dictionary offers a precise definition of *cultural diplomacy*:

the furthering of international relations by cultural exchange; the act of publicizing and exhibiting examples of one's national culture abroad¹⁰.

Apart from the similarity, with respect to the Italian language, in the expressions used in French or Spanish – *patrimoine culturel* or *patrimonio cultural* – a particular case is that of the German language, which offers three complementary but distinct terms: *Kunstschätze*, *Kulturgut*, *Geistiges gut*. The first, in an analogous manner to the English concept of *art*, alludes to the ability, the capacity put in practice, and thus to the work technically accomplished. The second refers to the *Kultur* as an area of intellect and reason, according to the well-known Kantian opposition which marked the Enlightenment as the opposition of *Kultur* to *Zivilisation*, in other words in opposition to the progress which reason tended to destroy. Finally, the third refers to spirit and ingenuity as a universal dimension, of Hegelian origin, and thus as an affirmation of the universal spirit in works of artistic creation, which historically accumulate themselves. However, in none of the three terms is there a unifying reference to the concept of heritage as a good economically defined as such in virtue of elements of intrinsic value external to the commercialization of the same good¹¹.

In reality the definition of cultural property, cultural heritage, good or heritage of cultural interest, becomes gradually clearer and more precise when one enters into specialist lexicon and literature, and as is fairly obvious, especially in that of the juridical-economic fields. Nevertheless, also in this case a certain degree of caution is necessary, because the generic concept of cultural property or cultural heritage, which is specifically accepted and defined, is however inflected in a series of diverse terms of varied contents. Several examples will be sufficient to render evident such multiform variety of meanings. The English-Italian legal dictionary edited by Igino Schraffl, released by Giuffrè in 2011,

⁹ *The Oxford English Dictionary*, Clarendon Press, Oxford, 1989², Vol. I°, p. 658.

¹⁰ *Ivi*, Vol. IV°, p. 121.

¹¹ *Das Pons Wörterbuch – Dizionario Tedesco-Italiano/Italiano-Tedesco*, Zanichelli, Bologna, 2002², p. 438.

utilizes contemporarily the locution *cultural property* and *world cultural heritage*, in both cases meaning the cultural good and cultural heritage. But, the former indicates a subjective condition which recognizes a right of enjoyment, precisely of ownership, to legally hold a good; in the latter, meanwhile, there is the sense of “bequeathment”, of “generational passage”. Again, the first case still underlines the personal, individual confines of ownership of the object, while in the second case the communal liberty of possession and enjoyment; similarly in the first case a property may be single, while the second case contemplates the whole of properties¹². Black Law’s Dictionary, edited by Bryan Garner, in reference to culture, speaks instead of *cultural property* as a concept defined by international law:

movable and immovable property that has cultural significance, whether in the nature of antiquities and monuments of a classical age or important modern items of fine arts, decorative arts, and architecture;

thus alluding to a broad meaning which includes both movable and immovable property, both relevant from the historical point of view (antiquities) and in virtue of the recognized artistic value, even if modern. However, immediately after, the entry adds,

some writers prefer the term *cultural heritage* which more broadly includes intangible cultural things such as folklore, crafts, skills¹³;

referring thusly to a broad concept, which, especially in recent years, has been extended to intangible cultural properties, expression of personal or collective creativity, and as such, and in virtue of being such, has been transmitted to future generations.

The consideration of cultural properties as tangible and intangible leads finally to a further opening which today has become particularly relevant to the point of constituting an object of a genuine scientific discipline, that is, of economics. **Economics of art, economics of cultural properties, economics of cultural tourism**, today represent in fact fields of scholarship in expansion in scientific discussion and political debates, a sign of the great importance that culture, above all when deposited, has acquired in the epochal transformation which the economy has now been undergoing

¹² I. Schraffl, *Dizionario giuridico Inglese-Italiano*, Giuffrè, Milano, 2011, p. 76 and 147.

¹³ *Black’s Law Dictionary*, B. A. Garner, Editor in Chief, Thomson-West, St. Paulo, 2004⁸, p. 407.

for two decades¹⁴. Not only from the point of view of the relationship between cultural influence and economic development as an element that shapes tastes and trends, but also on the level of the relationship between economic growth and protection of the existing patrimony, the theme appears today more relevant than ever. Especially from the 1980s-1990s, with the development of a specific attention to the problem of sustainable development, the decline of industrial capitalism, and the advance of the scientific categories proposed by Amartya Sen in terms of sustainable development, the relationship between culture and economics has also become a central element in the codification of a new model of development hinging no longer on only material success, but also human well-being¹⁵.

Despite being the subject of extensive scholarship, and constant attention in scientific and especially in political debate, the issue of cultural heritage is thus still today a concept of uncertain and problematic definition. Said difficulty generally pushes scholars towards two dangerous opposites of excess: limiting the investigation to only the consideration of “artistic and historical treasures”, that is, to those elements that in a more immediate manner are considered as heritage: from a painting to a sculpture, from a museum collection to a monument, from a church to a historic building, and in so doing enacting a conceptual expansion which poses risks; or, to the contrary, focusing attention, according to the indications of the most recent debate and most recent legal codification, on every element which, considered as proof of human action, can represent characteristic aspects of history, evolution, even the present itself. For example, such is the indication of the most recent Italian juridical doctrine, which, though following the disposition of article 2 of the recent Code emanated in 2004, states to consider as cultural assets “movable and immovable objects which, in accordance with articles 10 and 11, present interest of an artistic, historical, archaeological, ethno-anthropological, archival, and bibliographical nature, and the other things identified by law or on the basis of the law as proof of civilization”. It must however be noted that the concept of cultural assets appears for its

¹⁴ As confirmation, see the entries *art*, *economics of*, and *culture and economics*, in *The New Palgrave Dictionary of Economics*, edited by S.N. Durlauf and L.E. Blume, Palgrave MacMillan, New York, 2008², Vol. I, pagg. 245-250; Vol. II, p. 333-340

¹⁵ M.F. Peterson-M. Sondergaard, *Foundations of cross-cultural management*, Sage, Los Angeles, 2008, e D. Harrison-M. Hitchcock, *The politics of world heritage: negotiating tourism and conservation*, Chanel view publications, Clevedon, 2005.

nature, and above all in a comparative dimension, to be polyhedral, multifaceted and undoubtedly complex¹⁶.

Thus it is fairly clear to see how the concept of cultural heritage is the product of a juridical reflection which has historically continuously evolved, making the effort to adjust interpretative and operative categories to different conditions, varied solicitations, and stimuli coming from quite different areas of social existence. On the other hand, said evolution is characterized by a double trajectory which is useful to keep in mind: one is the relationship between national legislation and the stance taken by juridical entities at the international level. The other is linked to the effort to open the reflection, debate, and action itself around heritage towards opportunities and horizons that release it more and more from an ancient normative significance projected exclusively towards protection from damages, theft, tampering, and thus from a hypothesis of a strongly negative character, towards an action which instead is full of positive contents where promotion and valorization prevail, both of the cultural asset and of the “fact” in a comprehensive meaning that now connects the production of culture to the center of social, economic, and political interest of every state.

2. *An evolving definition*

Thus, if the concept of cultural heritage – so varied and multiform - is the result of a historically deposited progressive evolution, it will be useful, in attempting to trace its perimeters in a more precise manner, to operate in the double direction of distinguishing it from concepts similar but not completely overlapping, and to underline the fundamental stages of the transformations which have taken place over time.

An initial aspect to consider in this sense is the problem of defining the confine separating the “sub-whole” *cultural heritage* from the comprehensive whole of *culture*; and to contextualize the theme of protection of heritage, as protection of culture, in the broader field of *human rights*. As has been recently underlined, the recognition and protection of culture as a human right is the result of a kind of “new humanism” growing in recent decades also in response to the lacerating tensions which mark – above all with the end of the bipolar system and the collapse of the Socialist system - the entire planet. In the face of the “clash

¹⁶ Cfr. D. Vaiano, *La valorizzazione dei beni culturali*, Giappichelli, Torino, 2011, e G. Alpa-G. Conte-V. Di Gregorio-A. Fusaro-U. Perfetti (a cura di), *I beni culturali nel diritto. Problemi e prospettive*, ESI, Napoli, 2010.

of civilization” evoked by Samuel Huntington, to the continuous fratricide wars which have bloodied and continue to bloody vast parts of the world from West to East, and, no less, as can be said, in the face of the economic and social divarication accentuated in recent years by the financial crisis which has struck a West in evident decline, culture appears as a possible terrain of encounter and confrontation, of construction of identity, of renewed civil and religious dialogue, and even of economic revival.

If indeed “culture” is what renders us “human”, then unsurprisingly the exponential expansion of our understanding of what is culture and cultural heritage within international law in the last half century has been intimately connected to more nuanced and deeper interpretations of human right norms. The diversity of engagement in international-law making since the end of the Second World War with the influx of new States from every region, augmented by the re-emerging or emerging influence of minorities and indigenous peoples, has propelled this trend¹⁷.

The accentuated multidisciplinary nature of research on the theme of culture and human rights, and of culture as human right, and the growing attention towards revendications of cultural identity which hide grave violations of human rights, furthermore confirm the importance of the issue¹⁸. On the other hand, the problem of recognition of culture as a human right, and thus of the **diversity of culture** as a right, involves a problem, that of the relativism and absolutism of moral laws, ancient and yet at the same time today relevant more than ever in light of the above mentioned questions. In the end, as has been observed, even the *Universal Declaration of Human Rights* can be, and has been, put to debate in virtue of the fact of being not a declaration of rights universally recognized (that is, in every place and time), but rather the result of a historical elaboration of a reflection leading to the recognition as universally acceptable certain rights of a determined culture: that of 20th century Europe and the West. And this certainly conflicts with and opens perspectives of great delicacy for the relationship which human rights must have with the plurality of cultures which is itself recognized as a right¹⁹. Regarding cultural heritage,

¹⁷ A.F. Vrdoljak, *Human Rights and Cultural Heritage in International Law*, in F. Lenzerini-A.F. Vrdoljak (ed.), *International Law for Common Goods. Normative Perspectives on Human Rights, Culture and Nature*, Hart Publishing, Oxford-Portland, 2014, p. 140.

¹⁸ *Ivi*, p. 140-141.

¹⁹ F. D’Agostino, *Pluralità delle culture e universalità dei diritti*, in *Pluralità delle culture e universalità dei diritti. Studi raccolti da Francesco D’Agostino*, Giappichelli, Torino, 1996, p. 33 and following.

the problem appears particularly evident in virtue of the recent recognition, continuous and growing, of cultural pluralism as a right and expression of civil living worth protecting. The recognition of the right to self determination and of safeguarding of indigenous populations, the result of a sensibility rooted as far back as 16th-17th century colonialism, has recently brought about the approval of a series of regulations founded on principles which seem inviolable, introduced beginning with the *Declaration of Principle* approved by the fourth general assembly of the World Council of Indigenous Peoples, held in Panama in 1984. It was thus established that the traditional homelands of indigenous peoples had to be respected and raised to a dignified quality of life, as a means for physical, cultural, and spiritual survival of the very same peoples. The council also established that indigenous peoples had the right to practice their traditional customs, and to celebrate their culture and spirituality with all inherent implications; that they should have access to government assistance, health care, education, and social services, that conquering nations should respect treaties; and that indigenous peoples had the right to self determination. From that moment, indigenous peoples have taken important steps forward towards the recognition of their own cultural identity, even though they have encountered difficulties in the relationship with government authorities, and often undertaking an adaptable integration of their own customs and traditions, including certain forms of tribal justice, with government regulations. The lack of recognition of the right to secession or political independence has produced a violent reaction on the part of the Islamist movement of the former ally Ansar Dine against the attempted secession of a faction of the Tuareg in the north of Mali, in 2012. In 2006, the opposition of the member states of the African Union temporarily blocked the approval of the *Universal Declaration on the Rights of Indigenous Peoples* by the General Assembly of the United Nations, obtaining the insertion of a preamble according to which the group affirmed that self-determination could not in any way threaten the territorial integration or political independence of a State or constitute an attempt of secession. There is furthermore the problem that the claim of self-determination can often conflict with the interests of the former owners of certain territories, or furthermore against the interests of investors, protected by bilateral treaties, as demonstrated in the case of the interests of German agricultural investors in Paraguay²⁰. But above all, there is the problem of an evident contrast between certain forms of social

²⁰ See S. Wiessner, *The Cultural Dimension of the Rights of Indigenous Peoples*, in F. Lenzerini-A.F. Vrdoljak (ed.), *International Law for Common Goods...*, cit., p. 175-180.

organization, more precisely of cultural, and those which universally are recognized as values and cornerstones of progress. It is not only the question of maximizing profit, which itself involves delicate problems if for example one considers the fact that many impoverished groups or communities of the so-called “civilized society” do not receive benefits in terms of resources and territory in terms of international treaties or universal declarations. There is also, and above all, the problem of an evident difficulty in protecting and safeguarding practices and social/cultural forms objectively in conflict with values which belong to the unity of culture: violence against women or minors, incest, genetic mutilation, or even cannibalism.

Alongside these considerations, there is also a second problem linked to the recognition of rights in favor of individuals, or of communities that do not aspire to acquiring a state designation. Starting from the 1954 Hague Convention, which for the first time introduced the recognition of cultural property in the case of armed conflict, the principal role of protection of heritage was entrusted to the State, even if, as has been observed, the very same convention recognized that said heritage belonged to the population²¹. The model was substantially replicated in the Paris Convention of 1972, and only in 2003 UNESCO recognized, in the *Convention on Intangible Cultural Heritage*, the possibility on the part of States to insert in the list of protected properties also manifestations present inside their own territory. This, naturally, involves in the protection of heritage actors different from the State, above all actors inside the State, as demonstrated by the case of recognition of safeguarding of the community of Tibet, in which the government of the People’s Republic of China has recognized a role within the process of protection of Chinese silk art. Other examples include the traditional events in the southern neighborhoods of Montevideo in Uruguay. Naturally these actions concern a series of varied implications relative to the typology of subjects that represent the communities, their legitimization, the relationship that they construct with state authorities, and even the means and tools that can be used with the aim of safeguarding these events and their identity. But undoubtedly significant are the results determined by the shift towards a kind of “cultural heritage of people” and of communities, at times internal and together with the State, while at other time external and against the State.

²¹ L. Lixinski, *Heritage for Whom? Individuals’ and Communities’ Roles in International Cultural Heritage Law*, in F. Lenzerini-A.F. Vrdoljak (ed.), *International Law for Common Goods...*, cit., p. 196.

3. *Definitions and terminology*

In this varied panorama of cultural heritage, a series of definitions and the use of suitable terminology and conceptual categories can certainly contribute to clarity, in a world that otherwise could risk to remain confused and lacking in certainty. Inside the concept of culture, a universal whole that involves the issue of human rights, a second distinction to make is certainly that between ***Cultural Property*** e ***Cultural Heritage***. The first is a concept connected to personal subjectivity, the recognition of a right and thus the individual position that each person occupies within a society and opposite the object of this right. In fact, as has been observed, the laws protecting cultural property offer conceptual categories which above all interest the possessors of the right of enjoyment. It is no accident that these derive from the evolution of international norms since 1945, and in particular from the Hague Convention of 1954 which for the first time recognized protection of cultural property that is a cultural asset in the case of armed conflict. This interpretation, however, soon came into conflict with the fundamental objective of protection of cultural bequeathment, that is, with the concept of heritage which implicated a passage from the protection primarily personal interests towards a social interest in protection of cultural assets²². Legislation continued to be more precisely defined in the consideration of generational bequeathment and in the interest of the entire society much more than towards the possessor or the owner of a particular asset. Thus the concept of ***cultural heritage*** took its place in debate and literature especially in the Anglo-Saxon world. This passage, as has been observed, implicates opportunities of further expansion, but also the difficulties of further definition. From the point of view of difficulties, above all it can be noted that the concept of ***cultural heritage*** takes many of its elements from disciplines different from juridical science, without however acquiring the theoretical framework of these disciplines. This makes the concept of ***cultural heritage*** extremely complex to define at juridical level. Furthermore, to this is added the fact that the juridical concept of ***cultural heritage*** comprises national, regional, and local assets, an extremely broad and constantly changing range of elements to consider²³. Perhaps the most relevant issue of the concept of ***cultural heritage*** is today above all its ample and all inclusive meaning. This likely derives from the convulsive transformation that global culture and technological predominance has imposed on our lives, determining

²² L. Lixinski, *Intangible Cultural Heritage in International Law*, Oxford University Press, Oxford, 2013, p. 5

²³ *Ivi*, p. 6-7.

consequently a greater “social emotional need for the past”, which involves the particular role acquired by cultural heritage, that is, from the bequeathment of culture, in the construction of local, regional and national identity. In fact, these identities are now under pressure much more than ever before²⁴.

Furthermore there are also those, especially among anthropologists, who maintain that the concept of ‘property’ is primarily a ‘western’ concept that does not respond to the basic needs of the individual. In this sense, there are many examples of societies that do not recognize property as a “social possibility”: instead of possessing something, the members of these societies believe to belong themselves to the surrounding environment, which in some cases is nothing more than the divinities that the community worships. Nevertheless, it should be observed that cultural assets clearly transcend the very same principle of property. The importance of an object, to which ownership is laid claim, lies not in the object itself, but rather in the value that the object holds for that society, and which gives recognition to the owner within that society. This is demonstrated by the fact that the right of “destruction”, which represents one of the aspects of property rights, is not exercisable by the owner of a cultural asset, precisely in virtue of the necessity to defend the universal value of said object for the entire society. In some cases, the objects that constitute cultural heritage even acquire totemic value, becoming points of reference for the identity and memory of a population or a society, and thus extend definitively outside the very framework of private property. After all, the concept of cultural heritage as a generational bequest involves also the issue of sustainable development, and the idea, connected to it, of an intergenerational equity and of the duty of current generations to guarantee protection of the cultural and natural environment of the planet for the future. This goes together with the idea, also connected, that while we may not know what the needs of the future will be, we must guarantee the current patrimony for a potential successive use²⁵.

This is a fact that brings us to consider a second significant difference related to heritage: that is, the distinction between *tangible cultural heritage* and *intangible cultural heritage*. Cultural heritage, which was defined by the 1972 UNESCO convention in relation to mobile and immobile heritage, that is, tangible, acquires relevance in virtue of the contribution that it offers in the structuralization of identity of a society or community. In this sense it may also be represented by ‘intangible’

²⁴ J. Blake, *International Cultural Heritage Law*, Oxford University Press, Oxford, 2015, p. 9.

²⁵ *Ivi*, p. 8-9.

elements: musical manifestations, traditions, habits, customs, that are noteworthy not as objects but as elements of social cohesion. Intangible cultural heritage may in this sense be defined in two directions: in one, linked to the concept of tangible cultural heritage, it refers to that ensemble of processes, creativity, ability necessary for reaching that particular result embodied in the object under consideration. In the other, it refers instead to all those forms of cultural expression which cannot be embodied in tangible objects. In this sense, as has been observed, the concept of intangible cultural heritage has a holistic, unidirectional nature: an object is protected in as much as it is linked to a particular tradition, and is born of the same. However, the reverse is not true: an object is not protected in hopes of protecting that tradition. In second place, as has been remembered, intangible cultural heritage, which intersects the issue of recognition of human rights, tries to balance the safeguarding of certain traditional practices with respect for rights which could be in conflict with those same practices. These practices, according to the statements of the 2003 UNESCO Convention, do not disappear even though in conflict with universally recognized rights.

Finally, it should be observed that the concept of intangible cultural heritage is relevant since it is considered necessary for the continuation of life of a certain society or a certain community. The distinction between *tangible* and *intangible cultural heritage* implicates an additional difficulty related to the evaluation of the heritage itself, especially for the scholars who work on the second of these two areas. In fact, the field of tangible cultural heritage considers the fact that the objects that make up said heritage have an intrinsic value that does not require any knowledge of their intangible value. In other words, for an object connected to tangible cultural heritage to be appreciated as such, it is not necessary for the object to be connected to a determined cultural group, also because such a connection is immediately recognizable to observers. Those who support the protection of cultural assets in virtue essentially (or usually) of the aesthetic value, seem to take for granted the value, also cultural, of said object. Another point of view connected to this vision underlines how, given that intangible cultural heritage is destined to be lost or in any case to be in constant change, it does not make sense to protect it; rather, protection should focus exclusively on objects of tangible cultural heritage. Or again, in an opinion quite common in academic discourse and among museum curators, that the values connected to intangible cultural heritage would be useful for the consideration and the protection of a particular object but would not represent the object itself. In other words, these are accessory values while the true value of an object derives from

its own aesthetic content, rather than from the connection to a particular cultural origin. These values could thus be described as “values of contextualisation” of an object, even though it is the object itself, in virtue of the aesthetic value attributed to it, that determines the call for protection.

On the contrary, scholars who focus attention on intangible cultural heritage consider this the only true object of their study, and the objects or other physical manifestations of tradition as little more than the manifestations of an intangible cultural heritage that the scholars attempt to understand and reconstruct through the examination of these objects. In this sense, tangible cultural heritage becomes a tool and vehicle for the study of intangible cultural heritage and every aesthetic value of the object is only to be considered as incidental. Nevertheless, the consideration of intangible cultural heritage tends to appear as more blurred and above all to reconstruct the meaning of the tradition from which it comes. The category of intangible cultural heritage, in numerous ways, goes beyond the more traditional categories of traditions based on considerations of the physical and monumental aspects of heritage, given that it is a broader, more distended category. An extreme version of this vision goes as far as to conceive all heritage as intangible inasmuch as only the expression of tradition, and the fact that any object is ascribable to a cultural tradition as giving meaning and value to the object. Without this possibility of contextualisation, an object will simply become a work of art, but not also an expression of cultural heritage. For this reason also the distinction between tangible and intangible cultural heritage will be overcome and scholarship will have to concentrate on the reconstruction of memory and the definition of an identity which will only acquire meaning through the consideration of the values associated with that particular object. Nevertheless, two problematic elements contrast this outlook: the first, of an essentially theoretical nature, resides in the fact that the objects of cultural heritage exist in the world independently from the awareness or comprehension of the whole of values of the cultural tradition to which the object is connected; the second, of a juridical nature, resides in the fact that regulatory legislation always requires an exact distinction of the object under consideration and thus a clear boundary must be defined between tangible and intangible cultural heritage, to ensure correct application of regulations²⁶.

This consideration of intangible cultural heritage ultimately opens to another innovation, that is, the application, beginning from the 1989

²⁶ L. Lixinski, *Intangible Cultural Heritage...*, cit., p. 20-22.

Recommendation on manifestations of folklore events, of a category, that of safeguarding, that goes beyond the concept of protection, in implying not only that the manifestation must be defended, but must also be kept alive through five typologies of action to be carried out by entities charged with safeguarding: identification, conservation, preservation, dissemination and protection. Thus, safeguarding is a much broader concept that includes not only actions related to protection, such as identification and conservation, for example, but also those actions aimed at creating suitable conditions so that the manifestation or value being safeguarded is kept alive and perpetuated. In this sense, more than the tradition, it is the community itself which is put at the center of the action of protection, as the 2003 convention underlines. The actions which must be taken by government are geared towards ensuring that conditions of life, economics, society, and community are suitable to ensure the perpetuation of said tradition. To conclude, it is in this sense that the frequently cited equation of tangible cultural heritage as a cultural heritage belonging to the West and to its culture, and intangible cultural heritage as a cultural heritage belonging to other parts of the world, seems to fall short. In fact, this equation is built on the base of inserting cultural assets in a list of classification, a typical tool of protection in the West. However, the protection of the conditions suitable for the perpetuation of the culture of indigenous peoples, which are the responsibility of the government having jurisdiction in the territory where these peoples live, means that the concept of cultural heritage and the action of protection involves areas far from the Western world, now tending to make heritage a concept of a universal nature.

4. The cultural economy: an opportunity for post industrial society?

It remains to say, in concluding this introductory reflection, that cultural heritage appears today as one of the most debated and monitored topics of the various governmental agencies, and no less by the entities of the European Union and international institutions. The reason for this renewed and growing interest is a question of sizable complexity, which brings together aspects and implications about cultural heritage which cross over a variety of profiles and fields of research. Overall, it can certainly be said that the recovery of the past, of its consideration and worth, and what it can offer to a broad audience, constitutes one of the aspects of reflections “on the crisis” begun with the decline of industrial society and accelerated by the financial meltdown of 2008. The cult of the

past appears in this sense as an attempt to respond to the fading of a paradigm along which Western society organized itself and found its guiding principles in the “glorious thirty years” following the Second World War: a period in which, in a peaceful political situation, technological progress, scientific innovation, and reason applied to action gave humankind seemingly limitless possibilities. The paradigm of sustainable development, which has greatly replaced that initial technological optimism, appears in this sense as the declination of a tangible need for a “return to the past” increasingly represented as a kind of “golden age” in which an orderly and respectful relationship with the environment, with territory, with nutrition, and in this frame also a harmonious organization of civil and human relationships, offered certainties much clearer than the current prevailing disorder. To these “limits of development”, today one of the great political and cultural debates of our time, a response seems to be offered to humankind in the idea of “taking a step backwards”: a return towards the Earth, towards control of the authenticity of production (in particular, but not exclusively, in terms of nutrition). That is, the rediscovery of the tradition and historical sedimentation of one’s own background. While the vectors of development seem to go evermore towards the dimension of “macro”, among the general public there prevails the common conviction of a need to return to the “micro”: from (or against) the great city, growing more and more into a metropolis which swallows up nearby towns, neighborhoods, suburban areas, towards instead the community of a town, small city, even the countryside, an area of recovery of human and civil relations; in opposition to an increasingly atomized society, a return to community, to family, a secure refuge from the uncertainties which plague above all younger generations; against the financial economy, in continued turbulent expansion, a return to the material dimension of small, quality production; against mass markets, of poor quality, the expansion of the demand for production of high quality, prestigious, for market sectors of limited size but wide possibility. Thus cultural heritage today becomes the object evermore elastic and malleable of a culture which counters the “global brand” with a “local brand”, and which designs or even invents a tradition of quality on everything: from clothing to food, from luxury goods to one-of-a-kind items, everything becomes a tool to counter massification with a model of development founded on attention to well-being, quality, in a word, to beauty.

The degree to which this trend, and thus also the use of cultural heritage, can today represent a component of a possible new, different model of economic development, is a topic which economic literature, and

in particular the specific economic discipline defined as “*economy of culture*”, has been investigating for some time. Most everyone sees in the use of heritage and landscape the prospect of a sustainable economy that offers important opportunities for profit above all to those countries that, while in decline in terms of economic, and especially industrial production, are however in possession of artistic, monumental, and natural riches at least on par, and often superior, to those of more advanced countries. And tracing, albeit in a rapid manner and only to offer further reflections, the indications of the most recent scholarship²⁷, we cannot help but recognize that to the exploitation of a “cultural repository” understood in the broadest, most flexible meaning, are unquestionable linked significant margins of revenue and profit. It is not only the case of *direct revenue*: that is, those most immediately visible, such as revenue from tickets, single or groups, entrance fees, season passes (above all for cultural events: theater, music, shows, cinema), purchases made at venue book-shops, consumption at internal cafes or canteens. To the valorization of a monument, museum, historic center, are linked a series of indirect revenues and profits which can at times be surprising. In fact, around a museum there is once again a network of operators, direct or indirect, which are essential for the functioning of the institution: custodians, staff, security guards, guides, to name a few. But, in addition, there are also those organizers of exhibits, gallery curators, experts and technicians for conservation and for museum organization, then also those higher level officials who manage the choices of “museum policy”. Then, consider all those figures, such as movers and manual laborers, who can be periodically hired for services of transport and exhibit set up/take down. Next, consider the important contribution for event promotion: a press office, marketing and product/sponsor placement both for the institution overall and for individual events organized onsite. All these elements are decisive in the correct functioning of the institution and of specific events. And, these reflections on museums are naturally valid for any other institution of conservation: libraries, galleries, archives. Among the indirect revenues, mention should be made of that income born of the creation of a “pleasant and welcoming environment” around an institution: if for example a small town hosts a small but important museum, or a noteworthy library, or even just a painting or fresco inside a church or building, the increase in visitors will be favored not only by the promotion and publicity that the monument offers, but also by the fact that the visitor

²⁷ Cfr. ad esempio M. Rispoli-G. Brunetti (a cura di), *Economia e management delle aziende di produzione culturale*, Il Mulino, Bologna, 2009 e E.F.M. Emanuele, *Arte e finanza*, ESI, Napoli, 2012.

finds an environment surrounding that cultural product which renders the experience pleasing. In this sense, costs and revenues, allocation of resources and manpower, will go for example towards the side of maintenance of urban decor, cleaning, along with lodging and food services. Furthermore, these latter two aspects lead the discourse towards an additional trajectory of development of the economy of culture; that is, the impressive volume of business revolving around traditional foods, production of quality, and the market of quality products. The sale of a typical dish, or a famous wine, is after all certainly the result of the intrinsic value of the product, but no less of the promotion of the same: as an example, on the label of a wine bottle, there is the synthesis of an environment, a landscape, even a lifestyle, and it is no accident that the promotional opportunities of this type of product are often connected to the promotion of “intangible cultural products” such as events, performances, ceremonies and specific rituals of a place. Among the possible spheres of development revolving around a “cultural repository” there are also several sections which involve much greater dimensions of economic and even industrial policy and which apparently could seem distant from the issues being addressed but are instead closely linked. As an example, it would be completely useless for a town to possess a magnificent medieval castle, rich in history, in legend, in collections and artifacts, if this structure were unreachable by a visitor. Thus to the promotion of that “repository” is linked a policy of infrastructure development (the construction or improvement of a road or railway) that must necessarily involve the government, and that in itself will constitute a further important opportunity of economic growth and job creation. And again, it would be completely useless for a country to possess a rich cultural patrimony if the territory is difficult to reach by international visitors due to poor rail and airplane infrastructures. And this, evidently, should encourage the government of that country to carry forward a policy of infrastructure improvement which will itself generate profit, jobs, and markets. Consider also, as a second example, the economic benefits of the valorization of a historic center: not only for the importance of cultural tourism that it can attract, but also for the growth in value of the real estate present inside or nearby.

The brief reflections offered here lead us to say that there exists a real, concrete possibility to utilize cultural heritage as a flywheel of economic growth. There certainly remain two significant problems to resolve: the costs of valorization, and the risks. A cultural enterprise, as underlined in

scholarship²⁸ – has objectives that lie outside those of any other type of business. Alongside, and even more than, profit, there is the aim of an educational, pedagogical, recreational, precisely cultural, nature. The mechanisms through which said enterprise functions are nevertheless not unlike those of any other business: a cultural enterprise, if we consider as such any place or activity that produces or conserves culture, or any cultural activity in their being (events, festivals, film or music festivals) has costs and revenues, which if poorly managed determine losses and even the bankruptcy of the enterprise. It is this case that determines the need for decisive intervention by the State, which effectively prevents the collapse of a “place of culture” through the usage of structural or emergency funds, not in virtue of strictly economic motivations but rather in virtue of the intrinsic cultural value of the property. Nevertheless, even the State may encounter significant difficulties in allocating resources for the management of its own patrimony. The intervention of the private sector can be fundamental in this case, as many have already observed and maintained. The risks connected to a sort of “privatization” of the property do not appear in this sense so consistent as to negate the possibility of a public-private partnership, perhaps favored by fiscal exemptions and tax benefits for who wishes to invest in maintenance, recovery, and valorization of a property. And this is because not only the private investor will take an immediate economic benefit from the tax breaks, but also for the multiplier effect for the investor and his/her product brought by the fact of sponsoring this type of initiative.

A more complex matter is the business risk, that is, the profit margins possible for an entrepreneur who intends to “sell culture”. As every other product, culture also brings risks at the moment of start-up; when the available budget corresponds to a revenue and thus to an unpredictable profit. Cultural enterprise brings with it the necessity to carefully evaluate, through an analytical financial forecast, the real possibility of profit: for example, how many audience members can attend a cycle of performances in a particular theater? How many visitors can enter into a particular museum or gallery? How many tourists can choose a particular landscape, a particular cuisine, a certain wine? Nevertheless, also in this case we maintain that precisely cultural enterprise can offer an effective economic solution to the current recession. In the first place, in the face of the difficulty of the State to sustain operating costs, organization, and valorization of cultural heritage, and in the face of considerable risks in

²⁸ For a general reference see: L. Dwyer-P. Forsyth, *International Handbook on the Economics of Tourism*, Northampton, Elgar, 2006.

opposition to private management, a possible alternative can be a third option stably present in the market but with specific characteristics: the spread of cooperatives in charge of management of cultural and natural treasures and culture, could offer, together with an efficient cost-benefit ratio, also a diversification of supply much broader than that guaranteed by the State and by the private sector alone. Secondly, the cultural enterprise must navigate the market in a much more flexible manner than any other type of business: identifying profitable market sectors, the types of visitors, audience, consumer, the parts of a country, and the country itself, and constantly changing proposals to keep at heart the conservation of the past in step with the present and projected towards the future.

