

DOMESTIC, SUPRANATIONAL AND INTERNATIONAL HISTORIC
 PRESERVATION LEGISLATION: DOES IT PROTECT OUR CULTURAL
 HERITAGE OR RESTRICT DEVELOPMENT? EXPLORING ITS
 IMPACT ON ANCIENT ROMAN MONUMENTS

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I. INTRODUCTION

Approximately two thousand years ago, the Roman Empire dominated Europe culturally, economically, and militarily. Previously, the sleepy continent had been a fragmented place, inhabited by disparate rural peoples who had little connection, physically, culturally, or linguistically, to each other. Once the Romans expanded beyond the Latium valley, they carried with them a culture which they imposed on all they conquered, thus bringing a common language, legal system, and a more urban way of living. They incorporated this way of life into many pre-existing settlements, as well as many new military camps built by the Roman army which later grew into towns of their own.¹ The domination of the Roman was far-reaching, engulfing most of Europe, as well as parts of Africa and Asia.

Eventually the Roman Empire crumbled and Europe split into a number of individual nations through a long and agonizing process which overshadowed European history for hundreds of years. Not all traces of the lengthy Roman occupation were erased, however. Many of Rome's contributions to Europe not only outlived the Empire, but have endured the rise and fall of many subsequent political systems. Today, Ancient Romans still impact modern Europeans by having created and defined the space in which people live, work, and shop. But it is not just the city layouts that the Romans have left behind; many physical remains of homes, temples, aqueducts, walls, etc. are scattered throughout Europe.

What is to be done with these remaining monuments to an ancient civilization? How stringently should they be protected? How are different countries approaching preservation? Are there supranational or international controls that can effectively supplement domestic efforts? How do these countries balance the competing interests of the historic preservationists and the urban developers?

This Note will seek to address each of these questions through a case study of two ancient Roman settlements that are now modern city centers. It will further examine the challenges faced by each site and the legislative solutions the individual countries have developed to face their unique challenges. The two cities to be considered are: Rome, Italy, a major metropolis packed full of ancient ruins; and Bath, England, a small town with few vestiges from its former Roman occupation. Each city has its own language, culture, political

¹ See, e.g., WILLIAM G. SINNIGEN & CHARLES ALEXANDER ROBINSON, JR., *ANCIENT HISTORY* 450-51 (3d ed. 1981).

history, economic standing, climate, and geography—each contributing to the current makeup of the governing heritage legislation. These contributing factors will be discussed in Part II.

This Note will analyze the fate of Classical Roman monuments under current domestic, supranational and international cultural heritage legislation.² In examining the applicable legislation, this Note will also seek to evaluate its effectiveness. In so doing, it selectively borrows evaluative criteria from the Council of Europe.³ Part II of this Note will further continue with a comparative analysis of the Italian and English domestic heritage legislation. This comparison will show that these very different legislative schemes could be used as models for each other in correcting weaknesses in their own systems. Specifically, the effectiveness of the Italian financial incentives could be incorporated into English law, thereby encouraging greater public participation in the preservation process. Meanwhile, Italy could benefit from the clear enforcement mechanisms of English law. Parts III and IV will examine how supranational and international legislative efforts seek to encourage heritage preservation through their own incentives.

II. CITY PROFILES AND DOMESTIC LAW

A. Rome, Italy

To walk through Rome today is to find the past made present at nearly every corner. This feeling of walking into another time has been created and nurtured through preservation efforts, large and small, ongoing for the last two thousand years.

² There is a wide array of cultural heritage legislation topics—enough to write a multi-volume treatise; therefore, discussion will be limited to legislation covering the immovable heritage such as buildings, monuments, and archaeological sites. Moveable heritage such as art and sculpture is expressly excluded from discussion here.

³ See generally Legislative Support Task Force of the Technical Co-operation and Consultancy Programme of the Council of Europe's Cultural Heritage Department, *Guidance on the Development of Legislation and Administration Systems in the Field of Cultural Heritage* (2000). Although the Council does not issue legally binding legislation, it has for many decades published recommendations on the protection of cultural heritage. In 1998, at the request of several member states, the Council established a Legislative Support Task Force to draft or assist a state in drafting or revamping its cultural heritage legislation. In 2000, the Task Force published the aforementioned document. *Id.*

1. *History of Urban Growth and City Administration in Classical Rome*

Even though its political significance is now diminished, Rome was the capital of the Western world for centuries. Of course, Rome did not spring from the earth in full form, like Athena from the head of Zeus; rather, it started off as a few ramshackle huts on the slopes of the Palatine Hill when, before the legendary founding of Rome by the brothers Romulus and Remus in 756 B.C.E., it was a small Etruscan outpost used as a river control center.⁴

Rome was not only the largest city in Europe until the Industrial Revolution, but also a capital city of the largest empire in the world at that point in history.⁵ Thus it necessarily follows that there was some overlap in city administration between the local city government and the larger, central state government. This lack of unified government fostered a painfully slow bureaucratic process which made many city public works projects difficult to administer.⁶

Most ancient textual evidence for Roman building and planning techniques comes from the architect turned writer, Vitruvius.⁷ Vitruvius thought all architects should know how buildings affected the health and environment of the community, although his concern was more within the sphere of building regulations rather than in the future land use development of the city.⁸ This narrow attitude was indicative of most Romans' non-comprehensive view of planning early in the first centuries of the city's history.⁹

It was really only in the building of the provincial towns outside of Rome that a coherent system of urban organization began to emerge.¹⁰ Unfortunately, that emergence came too late to be of much help to the capital city itself.¹¹ The building and expansion of Rome mirrored its own political revolving doors and was thus much more disorganized and chaotic than the cities and towns which the Empire later spawned.¹²

⁴ HENRY C. BOREN, *ROMAN SOCIETY: A SOCIAL, ECONOMIC, AND CULTURAL HISTORY* 9 (2d ed. 1992) (1977).

⁵ O.F. ROBINSON, *ANCIENT ROME: CITY PLANNING AND ADMINISTRATION* 2 (1992).

⁶ *Id.*

⁷ See generally VITRUVIUS POLLIO, *VITRUVIUS: THE TEN BOOKS ON ARCHITECTURE* (Morris Hick Morgan trans., Dover Publications, 1960) (first published in the first century B.C.E.).

⁸ *Id.*

⁹ ROBINSON, *supra* note 5.

¹⁰ SINNIGEN & ROBINSON, *supra* note 1; see also ROBINSON, *supra* note 5.

¹¹ ROBINSON, *supra* note 5.

¹² *Id.*

Ancient Rome's political history can be divided into three periods: the Monarchy (756-509 B.C.E.), the Republic (509-44 B.C.E.), and the Empire (44 B.C.E.-476 A.D.), although the Eastern Empire continued until 1453 A.D.¹³ Growth during the Monarchy was modest, as was it during the Republic.¹⁴

The Gallic invasions of 390 B.C.E. also caused considerable structural damage to many of the public buildings in the center of the city.¹⁵ Because of this, there is little evidence of buildings before this period in the archaeological record.¹⁶ In the wake of this massive destruction, there was much rebuilding during the fourth century; however, the rebuilding was not an orderly process governed by a master plan.¹⁷

There are other theories as to why the urban layout of Rome is so disorganized and incoherent, the most convincing being that there was not enough power or funds vested in those responsible for maintaining the city during the Republican period to permit them to create and enforce a master city plan.¹⁸ Also, the civil servants who held these offices were usually on an upward political track, holding the position for as little as eighteen months, and used the position of city administrator as a stepping stone into higher office.¹⁹

Not until Julius Caesar's rise to power at the end of the Republic was one man able to harness enough political power and possess enough vision to contemplate recreating the city and adapting it to future needs.²⁰ One of Caesar's main goals toward the end of his career was to establish order in the chaotic city plan.²¹ Sadly, he was assassinated before his vision could be fully realized, although some elements, such as a comprehensive paving plan, were begun.²²

Caesar's heir, Augustus, built on his uncle's plans, starting in 7 B.C.E., by reorganizing the city into fourteen regions with administrators in charge of each region with responsibilities for paving, repairing buildings, but with no

¹³ OXFORD HISTORY OF THE CLASSICAL WORLD 387 (John Boardman et al. eds., 1986).

¹⁴ JOHN E. STAMBAUGH, THE ANCIENT ROMAN CITY 13 (1988).

¹⁵ OXFORD HISTORY OF THE CLASSICAL WORLD, *supra* note 13, at 397.

¹⁶ *Id.*

¹⁷ The ancient historian Livy lamented that the city administration did not then take a more aggressive initiative to redesign the damaged portions of the city in a more logical and modern fashion. LIVY, AB URBE CONDITA, BKV (Cambridge University Press, 1994).

¹⁸ ROBINSON, *supra* note 5, at 16.

¹⁹ *Id.*

²⁰ *Id.*

²¹ *Id.*

²² *Id.*

planning powers.²³ Augustus was responsible for many public building projects in Ancient Rome, although his projects were not nearly as sweeping as Caesar's vision, which included building over the Campus Martius and even diverting the course of the Tiber River.²⁴ There were negative effects from Augustus' cautious building practices as well. The Roman Forum became so monumentalized that many of the commercial functions were forced out and residential life was ousted from the city center because 50-70 percent of the area within the old Severian walls was taken up with massive public buildings and imperial palaces.²⁵

In pre-imperial Rome, the term 'forum' meant the Forum Romanum, dedicated to the Roman people. During the imperial period, emperors started building separate fora to immortalize themselves and their family lines.²⁶ They surrounded the Forum Romanum, creating a vast public complex known as the Imperial Fora.²⁷ The emperors recognized that Rome was a bustling city, the size of which had never been seen before.²⁸ They knew their city was the capital of the world and they wanted it to reflect that notion. Therefore, huge works such as the Flavian Amphitheater, better known as the Colosseum, were commissioned, as well as public bath complexes, the Pantheon, and more fora and palaces.²⁹ Also in the early imperial period, senatorial commissions were established to take over certain functions that would typically belong to a city planning board, including commissions for supervising public buildings (*cura aedium sacrarum et operum publicorum*), flood control (*cura riparum at alvei Tiberis*), and water supply (*cura aquarum*), among others.³⁰

When the Emperor Constantine divided the empire into east and western portions and set up Constantinople as a rival capital sometime between 312 and 337 A.D., it sounded the death knell for expansion of the city.³¹ As more imperial functions were moved eastward, the population of Rome decreased, so that by the reign of the sons of Constantine, the population of Rome was

²³ *Id.* at 9.

²⁴ *Id.* at 17.

²⁵ *Id.*

²⁶ SINNIGEN & ROBINSON, *supra* note 1, at 410, 424, 440, 451-52.

²⁷ *Id.*

²⁸ See Glenn R. Storey, *The Population of Ancient Rome*, 71 *ANTIQUITY* 966 (1997) (noting population estimates from 450,000 to 1 million).

²⁹ OXFORD CLASSICAL DICTIONARY 365 (3d ed. 1996).

³⁰ ROBINSON, *supra* note 5, at 3. However, the provision of public housing or transportation was never considered to be an appropriate function of the government in ancient Rome. *Id.* at 4.

³¹ OXFORD CLASSICAL DICTIONARY, *supra* note 29, at 378-80.

down to about half a million, more like its former days as a city-state rather than the capital of an empire.³²

2. *Historic Attitudes Toward Cultural Heritage Conservation in Rome*

It was centuries after the fall of the Roman Empire before the city government began to concern itself with the preservation of its heritage. In the intervening years, many works of art and monuments were lost.³³ The movement toward a culture of heritage preservation began in earnest with the unification of Italy in the late nineteenth century and the selection of Rome as a national capital once more.³⁴ Within ten days of Rome's selection, a commission on urban renewal and planning was appointed and it published the first master plan within one month.³⁵ Although much of the city was buried in the effort to create a modern capital, historic districts, including the Palatine Hill, the forums, the Colosseum, and the Appian Way were preserved; a balance had been struck between modern growth and historic preservation.³⁶ This path of moderate conservation was ensured by putting archaeologists and art historians on the planning commission who were interested in placing the modern city center on the periphery of the historic city center in an effort to maintain the cultural heritage that still existed in the ancient heart of the city.³⁷

Just as the ancient history of Rome can be divided into three eras (Monarchy, Republic, and Empire), so can post-unification Italy. In 1861, Italy became a kingdom; it was under a fascist regime from 1922 until 1943; subsequently, Italy has been a democratic Republic.³⁸ Some political leaders of the modern era have seen the legacy of ancient Rome as an obstacle to development. For example, Benito Mussolini, an ardent proponent of modernism, wanted to change the character of the city and increase the population rapidly.³⁹ One of his projects was the construction of a wide road

³² ROBINSON, *supra* note 5, at 9.

³³ Cevat Erder, *Italy, in* 20 MUSEUMS AND MONUMENTS 69 (UNESCO, 1986) at 71 (discussing in great depth the slow evolution and rise of preservation consciousness in Rome with a strong emphasis on the Papal vandalism by the Catholic Church).

³⁴ *Id.* at 96.

³⁵ *Id.*

³⁶ *Id.*

³⁷ *Id.* at 98.

³⁸ *Id.*

³⁹ *Id.*

which would pave over the medieval quarter and several ancient fora.⁴⁰ This plan was altered slightly in the interest of preservation, but acres of ancient ruins lay beneath the pavement to this day.⁴¹

3. *Modern Italian Cultural Heritage Legislation*

a. *Comments on the Legislation Generally*

There are so many monuments in Rome in varying stages of decay that the country's economy has difficulty supporting all of them.⁴² In fact, there are estimates that 50 percent of all building activity in Italy is preservationist in nature.⁴³ Because of the sheer volume of preservation projects, there needs to be comprehensive legislation governing these projects. Prior to Italian unification, the individual states were responsible for any preservation efforts in their territory.⁴⁴ Thus, when speaking of national Italian preservation legislation, the discussion is limited to the last 140 years. The major weakness of Italian cultural heritage legislation is not so much the substance of the laws, but that they are spread throughout the Civil Code and amended in a roughshod manner.⁴⁵ In short, it is difficult to know what the law is.

One of the hardest things to grasp in Italy's preservation legislation is the split of authority and duties among various departments and levels of government.⁴⁶ In its simplest terms, the Italian Constitution gives urban planning authority to the individual regions even though regional law can be superseded by any law the central government may choose to pass.⁴⁷ Further, Parliament has taken many opportunities to pass national preservation and

⁴⁰ *Id.*

⁴¹ *Id.*

⁴² Giorgio Gianighian, *Italy*, in POLICY AND LAW IN HERITAGE CONSERVATION 184-206 (Robert Pickard ed., 2001).

⁴³ *Id.*

⁴⁴ *Id.*

⁴⁵ *Id.*

⁴⁶ For a comprehensive discussion of how various Italian ministries interact in the preservation process, see Salvatore Cattaneo, *Planning Law in Italy*, in PLANNING LAW IN WESTERN EUROPE 353-88 (J.F. Garner & N.P. Gravells eds., 2d ed. 1986).

⁴⁷ Council of Europe, *Analysis of National Policies on Cultural Heritage, a Report on Cultural Heritage Policies in Europe: Italy*, available at <http://culture.coe.fr/pat/eng/9684erev.htm>.

planning legislation, leaving applicable laws as a mixed bag of national and regional legislation.⁴⁸

b. Examination of the Provisions of the Italian Legislation

The Italian Parliament passed its first preservation law of significance in 1939, entitled the "Protection of Objects of Historical and Artistic Interest Act," and has been filling in the gaps of that law with piecemeal legislation ever since.⁴⁹ One of the major criticisms of the law is that it is too 'object' oriented; it is representative of the era in which it was created, in that it is geared toward the collection of 'things' (more specifically, the prevention of looting, selling or exportation of national treasures), rather than preserving the cultural heritage for the benefit of the public and future generations.⁵⁰ This slant of the law is even apparent in its title: the Protection of *Objects* of Historical and Artistic Interest Act [emphasis added].

The law provides for a registration system for all objects that come under its protection and the creation of a national register of cultural assets.⁵¹ However, this scheme has not actually come to pass, as the comprehensiveness of the list is seriously deficient.⁵² Whether this is because of a lack of political will, as some suggest,⁵³ or merely an issue of insufficient funds, is a matter of speculation.

Law number 1089 offers only one flat level of protection for all qualifying objects, thus falling below the Council of Europe's suggestion of having different grades or levels of protection for different classes of heritage. However, the one level of protection the law does give to eligible objects is varied and wide-ranging.⁵⁴ If a monument is placed on the protected list, it may be destroyed, modified or repaired only with the consent of the Ministry of Education.⁵⁵ This applies to public and private owners alike, including the

⁴⁸ *Id.*

⁴⁹ Law no. 1089, passed on June 1, 1939; published in *Gazz. Uff.* August 8, 1939, p. 184; 1939/2 *Lex* 1425.

⁵⁰ *See* Gianighian, *supra* note 42.

⁵¹ *Id.*

⁵² *Id.*

⁵³ *See id.* at 188 (explaining how the low budgets and disorganization characteristic of the Italian bureaucracy inhibits the enforcement of the more ambitious provisions of the legislation).

⁵⁴ *See id.* at 190-91.

⁵⁵ *Id.*

Catholic Church.⁵⁶ The Ministry has the power to enter and make any repairs on a monument, and even require the owner to reimburse the expenses.⁵⁷ The Ministry can override any Master Plans or building regulations.⁵⁸ Private owners are required to notify the Ministry of intent to sell and the government has a right of preemption within two months.⁵⁹ The provisions of law number 1089 dealing with sanctions have been replaced with the 1975 law, "New Discipline of Sanctions," which permits the fining of local governments for failing to present a list of assets to be protected, up to a year's imprisonment for unauthorized work on a protected building, and large fines for local governments that sell off protected assets.⁶⁰ The national legislation does not require the use of original materials in restoration projects; however, local administrators, the Soprintendenza, will often apply stricter standards in this area that are above the national minimal standard.⁶¹

A law passed in 1942 was the first to provide protection for the urban fabric; however, due to the destruction of Italian cities in World War II, the legislation's goals were not realized since there were bigger proverbial fish to fry at that time.⁶² Therefore, law number 1444 of 1968 was in practice the first law to stabilize building density, height, and the general character of historic areas.⁶³ Furthermore, the public has a right of access to items of cultural heritage if it is owned by the state or public bodies.⁶⁴ This provision also extends to privately owned assets that are endowed with exceptional value.⁶⁵

Financial incentives are quite possibly one of Italy's greatest success stories in the realm of cultural heritage legislation. This area of the law is governed primarily by the 1982 law number 512, entitled "Taxation on Properties of High Cultural Interest."⁶⁶ Most aid to private owners comes in the form of fiscal exemptions, although there are a few programs providing for subsidies

⁵⁶ *Id.*

⁵⁷ *Id.*

⁵⁸ *Id.* at 191.

⁵⁹ Preemption, in this context, is defined as a governmental right to purchase the protected property for the same price bid by a private bidder, as long as the government asserts this right within two months. *Id.*

⁶⁰ *Id.* at 195.

⁶¹ *Id.* at 203.

⁶² *Id.* at 195.

⁶³ *Id.* at 196.

⁶⁴ *Id.*

⁶⁵ *Id.*

⁶⁶ *Id.* at 200.

and low interest loans.⁶⁷ Examples of some of these fiscal exemptions include: owners of cultural assets do not have to pay property taxes if the property is devoted to cultural uses; they do not have to pay income taxes on income derived from places the Ministry of the Environment and Artistic Assets deem to be of public interest; almost the entire cost of maintaining and restoring protected properties is tax deductible; and inheritance taxes are reduced or waived.⁶⁸ This has led to a huge insurgence of private owners requesting their properties be placed on the protected properties list.⁶⁹ Thus, that which has traditionally been seen as a restrictive burden is now seen as a perk. Under various other programs, the proceeds of the national lottery go toward funding restoration projects, and a tax-payer can allocate up to 0.8 percent of his or her taxes to go to the Ministry of to Cultural Assets instead of the Church.⁷⁰

A few months after passing the 1939 law number 1089, Parliament followed it up with law number 1497, entitled "the Protection of Natural Monuments Act."⁷¹ Facially, this does not seem applicable to ancient monuments found in the historic center of Rome, since they are man-made and not the *natural* monuments protected by this Act. However, modern Italian jurisprudence has interpreted 'natural monuments' to include the urban landscape.⁷² Whereas law number 1089 protects individual buildings or sites, number 1497 offers broader coverage, giving protection to the entire urban fabric. The protection offered by this act is primarily in restricting building heights; it also includes similar regulations to protect panoramic views and the urban landscape.⁷³ However, this law suffers from non-enforcement since the committee in charge has not put many properties on the protected list.⁷⁴

A law that protects an entire area as an urban landscape is of particular importance in a city like Rome. The historic center of Rome is a united district and not merely a few buildings in isolation. While protecting the Arch of Titus, the Basilica Julia, or Trajan's Column may be worthwhile endeavors, for example, the individual monuments have much more significance, both aesthetically and historically, when put into the context of their respective fora or building groups.

⁶⁷ *Id.*

⁶⁸ *Id.*

⁶⁹ *Id.*

⁷⁰ *Id.* at 200-01.

⁷¹ *Id.* at 191, 196.

⁷² *Id.* at 192.

⁷³ *Id.*

⁷⁴ *See id.* at 194.

The last two programs of note are law number 765 and the Special Acts. Law number 765 of 1967, entitled "The Conservation of the Cultural Heritage of Monuments and Sites through Town Planning Act," requires every municipality to draw up an "urban land use master plan."⁷⁵ The plan, among other things, divides the city into historic and non-historic areas, with separate planning by-laws for the two categories.⁷⁶ The Special Acts are individual acts passed by Parliament that either provide an increased level of protection to specific monuments than that given by general legislation, or protect monuments that may not otherwise be covered under other provisions.⁷⁷

*c. Critique of the Italian Legislation*⁷⁸

The Italian cultural heritage laws effectively underscore the importance of cultural heritage preservation to the Italian people. The failings of the laws are that they are disorganized and reflect the outdated notions of the time in which they were passed. Therefore, Italian legislation would be much improved by passing an organic and unitary system of new laws that integrate the sentiments of these old laws while placing them into one comprehensive act, clearly delineating departmental authority over conservation. Such legislation should also take into consideration the current realities of parliamentary democracy and political pluralism, as well as advancements made in archaeology, environmental protection and other relevant sciences.⁷⁹

How do these laws fare against the preservation/development struggle? Although the laws encourage the continued use of monuments through tax breaks offered through law number 765, the restrictions on new buildings in areas of historic protection limit development considerably. However, the Italian government, developers, and Italian citizens might well say that development is not *unfairly* hindered, despite the large areas that restrict new development, because of the unique role Rome has played in the history of the world. Even though turning a city into a time capsule or museum of its past may not be advisable in that it becomes non-adaptable to the needs of a modern society, it may be a necessary sacrifice, given the importance of these

⁷⁵ See Council of Europe, *supra* note 47.

⁷⁶ See *id.*

⁷⁷ See Cattaneo, *supra* note 46. For example, Parliament passed a law protecting the Vesuvian Villas. *Id.*

⁷⁸ This critique covers most Italian cultural heritage legislation that applies to the monuments of the Classical Roman period.

⁷⁹ See Council of Europe, *supra* note 47.

particular monuments. Perhaps the ultra-restrictive protection of making the historic center of Rome an open-air museum is necessary, given the density and cultural meaning of those monuments. After all, this is not merely an old train depot or county courthouse that is being protected; these awesome structures are a monument to an important era of architecture and a culture and city that ruled the Western world for centuries.

B. Bath, England

1. City Planning in the Roman Provinces

One of the key differences in urban planning theory between Rome and Bath is that one was the capital city of an Empire while the other was a provincial outpost in the far recesses of the Empire. Therefore a few principles of Rome town planning in the provinces should be noted. As previously mentioned, the Roman system of urban design was not evident in Rome itself. Rather, it only became clear once the Roman army left Rome and began organizing its network of provincial towns throughout Western Europe. Romans were generally great borrowers and adapters, but were rarely considered innovators. This notion can also be applied to their city planning theory. The Romans took their city planning foundation from the Greek Hippodamean planning theory and adapted it to fit their needs.⁸⁰ Hippodamean planning is characterized as the laying out of cities in a conscious manner, employing an orthogonal street grid that is also capable of adapting to and maximizing irregular topography. This provides for a tripartite division of land into public, private and sacred sectors (with the public sector being centrally located).⁸¹

Having adopted these general principles of Hippodamean planning, the Romans needed to adapt the system to fit the needs of the cities and towns they erected across Europe, Northern Africa, and Asia Minor. Towns in these Roman provinces predominately started as military camps or provincial capitals, built to spread Roman culture and dominance and quell any local

⁸⁰ Hippodamus was a Greek architect from the fifth century B.C.E. who was reputedly responsible for many of the major urban planning projects of his time. See ARISTOTLE, *POLITICS*, Book II (Grinnell, Iowa Peripatetic Press, 1986) (attributing the reworking of the street system of Piraeus, Athens' port town, to Hippodamus). See also XENOPHON, *HELLENICA* (Warminster, England Aris & Phillips, 1995) (crediting Hippodamus with the founding of Rhodes, among other projects).

⁸¹ See ARISTOTLE, *POLITICS*, *supra* note 80, at bk. VII.

uprisings as well as (and perhaps most importantly) to collect taxes to enrich the coffers back in Rome.⁸² One of the Romans' most significant adaptations to the Hippodamean planning system in building these provincial layouts was centering the town around a north-south road known as the *cardo* and an east-west intersecting axis known as the *decumanus*.⁸³ These roads intersected at right angles in the middle of the town and were straight and larger than most roads in the towns; typically the commercial center, the forum, was located at the intersection of these two roads.⁸⁴

Bath deviates slightly from this fairly uniform plan; experts generally believe that in Roman times, it was neither a military outpost nor an administrative town in the British province.⁸⁵ Rather, it was probably a resort for socialites or a holiday retreat for legionaries on furlough.⁸⁶

2. History of Urban Growth and City Administration in Bath

Bath⁸⁷ was initially founded in 836 B.C.E. after the discovery of the salubrious effects of the three natural mineral springs in the area.⁸⁸ The

⁸² See SINNIGEN & ROBINSON, *supra* note 1.

⁸³ See, e.g., Lepcis Magna: The Cardo, at <http://www.alnpete.co.uk/lepcis/plans/cardo.html> (last visited May 31, 2003).

⁸⁴ See *Roman City Planning*, at <http://encarta.msn.com/encnet/refpages/RefArticle.aspx?refid=761556319#endads> (2003).

⁸⁵ See BARRY C. BURNHAM & JOHN WACHER, *THE SMALL TOWNS OF ROMAN BRITAIN* 165 (1990). There is some dispute on this point. One scholar states that there is some indirect evidence from which one could feasibly conclude that a military presence existed in Bath; however, the evidence is not conclusive enough to warrant a positive assertion to that effect. *Id.*

⁸⁶ See 6 E.A. GUTKIND, *INTERNATIONAL HISTORY OF CITY DEVELOPMENT: URBAN DEVELOPMENT IN WESTERN EUROPE: THE NETHERLANDS AND GREAT BRITAIN* 420 (1971).

⁸⁷ The Roman name for the town of Bath was Aquae Sulis (the water of Sul or Sulis), which came from the name of the Celtic healing goddess of the spring, indicating Sul's long veneration, substantially pre-dating Roman times. Sul was Romanized into Minerva Sulis and the Romans dedicated the town's only temple precinct to her. See T.W. POTTER & CATHERINE JOHNS, *ROMAN BRITAIN*, illustration at 106 (1992). Thus, it is the Minerva temple precinct and the adjoining baths that are the major Roman relics of interest in the town. It is said of the Minerva temple that: "Bath epitomises the harmonious blending of Roman and British in a religious precinct which would have looked seemly and familiar to an urbane visitor from Italy or Greece, but which was nevertheless firmly based on the traditional beliefs and practices of the local population." See *id.* at 177.

⁸⁸ BURNHAM & WACHER, *supra* note 85, at 165. The rather amusing legend of this discovery is that a Prince Bladud was banished from his father's court for leprosy and wandered the countryside as a swineherd. One day he noticed his swine bathing in the mud of the spring; the swine were subsequently cured of an illness. He bathed in the waters and was similarly cured,

population of the town and the usage of the springs remained limited until the Roman occupation began in the first century A.D., and little archaeological evidence from the pre-Roman Iron Age exists.⁸⁹ However, as soon as the Romans discovered the springs at Bath, they immediately set to work on building the baths (since Bladud's baths, from almost 1,000 years earlier, had long since disappeared), and by the middle of the first century, the Roman baths were built.⁹⁰ The baths themselves were used as a place of recreation for citizens, but more importantly as a healing shrine to which the infirm traveled from far and wide.⁹¹ The excess water put off by the springs was fed through a series of pipes into the baths where the sick went to be healed.⁹²

Around 350 A.D., the nature of the temple precinct began to change with the emergence of Christianity, as more buildings were added and portions of the Minerva temple were dismantled.⁹³ Then, in 410, the Roman occupation of Britain came to an end.⁹⁴ At this point, the great bath fell into disrepair and sometime between the fifth and seventh centuries, the vaulted ceiling of the reservoir collapsed.⁹⁵

The 1,300 years following the end of the Roman occupation was a dark time for Bath. Money was hard to find and few inhabitants stayed in the area. In 1087, the town was burned and its citizens slaughtered.⁹⁶ By this time, no trace of the straight and wide Roman roads could be found; they were overtaken by the narrow winding roads of the medieval period.⁹⁷

Bath experienced its next great renaissance in the eighteenth century when English royalty came once more to bathe in the healing waters of its springs.⁹⁸ By this time, most of the Roman buildings had deteriorated so thoroughly that

returned to his father's court, and eventually ascended to the throne. Upon becoming King himself, Bladud had the springs cleansed, baths erected, and foundations laid for the city so others could benefit from the healing properties of the waters as he had. See GUTKIND, *supra* note 86, at 420.

⁸⁹ See BURNHAM & WACHER, *supra* note 85, at 165.

⁹⁰ GUTKIND, *supra* note 86, at 420.

⁹¹ See also BURNHAM & WACHER, *supra* note 85, at 174.

⁹² *Id.* at 168. This spring put off approximately 1,137,500 liters of water a day which was fed into the baths and the extra drained into the Avon River. *Id.*

⁹³ *Id.* at 175.

⁹⁴ GUTKIND, *supra* note 86, at 420.

⁹⁵ BURNHAM & WACHER, *supra* note 85, at 175.

⁹⁶ GUTKIND, *supra* note 86, at 420.

⁹⁷ *Id.*

⁹⁸ *Id.* at 421.

there was no remaining evidence above ground.⁹⁹ In this time of prosperity the city was almost entirely rebuilt and much of the Roman buildings and infrastructure were uncovered.¹⁰⁰ Although many of the Roman relics were destroyed, the foundations and other stable portions of the great bath adjacent to the King Spring and some of the nearby religious sites were incorporated into the new buildings and thus nominally preserved.¹⁰¹

3. *Historic Attitudes toward Cultural Heritage Conservation in England*

State involvement in cultural heritage conservation was fairly late in coming to England in comparison to other European countries; however, attention to the preservation of monuments by the public came about relatively early.¹⁰² The middle of the eighteenth century marked the beginning of public support for conservation of ruins and old buildings.¹⁰³ Some explain this interest as spawning from a typically English predilection for nature and picturesque views.¹⁰⁴ However, these early conservation efforts were not just efforts to protect monuments from further damage, but to restore them to their original state.¹⁰⁵ This over-zealousness at times did more harm than good; the sciences of restoration and archaeology were not very precise, leading to further destruction of the original structures.¹⁰⁶ In fact, to this day, the word 'restoration' has a negative connotation in England, indicating ineptitude and brashness in the restoration process.¹⁰⁷

This danger, however, was realized by the early nineteenth century and many public academic and charity organizations were established to address such restoration issues and to begin documenting monuments.¹⁰⁸ Of all the privately sponsored conservation groups in England, by far the most effective and the most uniquely English is the National Trust, founded in 1895.¹⁰⁹ The organization was founded to preserve land and buildings of natural, historical

⁹⁹ POTTER & JOHNS, *supra* note 87, at 107.

¹⁰⁰ BURNHAM & WACHER, *supra* note 85, at 171.

¹⁰¹ *Id.*

¹⁰² See Cevat Erder, *The United Kingdom: The Institutionalization of Individual Concern* (Ayfer Bakalcroglu trans.), in 20 MUSEUMS AND MONUMENTS 165 (1986).

¹⁰³ *Id.* at 168.

¹⁰⁴ *Id.* at 168-69.

¹⁰⁵ *Id.* at 169.

¹⁰⁶ *Id.* at 170.

¹⁰⁷ *Id.* at 171.

¹⁰⁸ *Id.* at 169, 174.

¹⁰⁹ *Id.* at 174, 177.

and architectural significance; it allows "landowners and other persons to donate or entrust areas of natural beauty or historical significance to the organization, which would then safeguard them in the public interest."¹¹⁰ The Trust accepts only buildings whose conservation it can guarantee and leaves speculative restorations to specialists.¹¹¹ Today, the Trust is one of the largest landowners in the U.K. and has over one million subscribing members.¹¹²

During World War II, those sympathetic to the conservation of monuments were faced with a great challenge and given the chance to prove their commitment to the preservation of cultural heritage. Having suspected the Germans would target historical sites in bombing campaigns, there was a great rush to secure as much of the architectural heritage as possible.¹¹³ Moveable heritage, such as art and stained glass windows, were removed and sheltered in caves, while sandbags were placed over portions of buildings.¹¹⁴ There was also a great effort to photograph all historic monuments in the country before any bombing to give potential future restorers photographic depiction of the structures while intact.¹¹⁵ The National Buildings Record was hastily formed and managed to compile 400,000 negatives, drawings, and prints with the eager help of the British people.¹¹⁶

4. *Modern English Cultural Heritage Legislation*

a. *Examination of the Provisions of the English Legislation*

As previously noted, the British government did not become active in the pursuit of cultural heritage preservation until relatively late. Fortunately, the public was aware of the problem and concerned enough to compensate for the state's inaction. Today, however, "[a]ncient monuments are subject to a special control exercised directly by the Secretary of State, many of these monuments belong to the Crown, but others may be in private ownership."¹¹⁷ The government first became involved in preservation in 1882 with the

¹¹⁰ *Id.* at 177.

¹¹¹ *Id.*

¹¹² *Id.*

¹¹³ *Id.* at 181.

¹¹⁴ *Id.*

¹¹⁵ *Id.* at 182.

¹¹⁶ *Id.*

¹¹⁷ J.F. Garner, *Town and Country Planning Law in England and Wales*, in *PLANNING LAW IN WESTERN EUROPE* 119 (J.F. Garner & N.P. Gravells eds., 2d ed. 1986) (1975).

Ancient Monuments Protection Act.¹¹⁸ This law was designed to put sixty-eight primarily prehistoric monuments under governmental jurisdiction.¹¹⁹ However, caving to pressure from private landowners, submission to governmental jurisdiction by the monument's owner was voluntary and the Act did not permit expropriation.¹²⁰ The extent of the state's powers under this law was limited to carrying out repairs, prevention of damage by the owners, and the authorization to purchase monuments from willing owners.¹²¹ This resulted in very few properties actually being brought under governmental jurisdiction.¹²² In the 120 years since the passage of that weak law, great steps have been made extending the level of protections and planning integration of the built heritage.

The majority of British heritage conservation legislation is codified in the Ancient Monuments and Archaeological Areas Act of 1979 (hereinafter AMAAA).¹²³ The AMAAA is the primary legislation for the categories of monuments (defined as unexcavated archaeological areas and upstanding remains which usually have no utility other than as cultural heritage) and architectural heritage (including listed buildings and conservation areas).¹²⁴ Different governmental agencies handle the two categories and, until recently, they have not communicated much with each other.¹²⁵ This non-communication has sometimes led to a single site or building being classified as both a monument and a listed building;¹²⁶ consequently, even though provisions relevant to monument protection are of greater interest to this Note, it will also examine generally those provisions affecting listed buildings. Both classifications have protection devices such as a right of entry, no appeal from inclusion on the respective governmental lists, no right of compensation, compulsory purchase by the state, and unauthorized work resulting in criminal charges (contrary to non-compliance with other planning directives).¹²⁷

¹¹⁸ John Pendlebury, *United Kingdom, in POLICY AND LAW IN HERITAGE CONSERVATION* 289-314 (Robert Pickard ed., 2001).

¹¹⁹ Erder, *supra* note 102, at 180.

¹²⁰ *Id.*

¹²¹ *Id.*

¹²² *Id.*

¹²³ See Pendlebury, *supra* note 118, at 289; see also Ancient Monuments and Archaeological Areas Act, 1979, c. 46 (Eng.) [hereinafter AMAAA].

¹²⁴ See Pendlebury, *supra* note 118, at 290.

¹²⁵ *Id.* at 293.

¹²⁶ *Id.*

¹²⁷ *Id.* at 294.

The first category listed in the AMAAA is monuments.¹²⁸ Monuments are 'scheduled,' which is a type of statutory protection whereby the Monuments Protection Programme selects a site based on criteria of historic period, rarity, existence of documentation, group value, survival/condition, vulnerability, diversity, and archaeological potential.¹²⁹ Relative to listed buildings, there are not many scheduled monuments (in 1999, there were 18,000 scheduled buildings, compared to an impressive 453,000 listed buildings).¹³⁰ Scheduling is the strictest of statutory controls available in England, as all facets of it are overseen by the Secretary of State.¹³¹ Consent is required from the Secretary for *any* work done on the monument, including routine maintenance.¹³² Furthermore, there is no right to appeal a refusal decree from the Secretary.¹³³

The second AMAAA category, 'listing', is a much less stringent form of regulation and is part of a region's overall planning scheme.¹³⁴ Through the Planning (Listed Buildings and Conservation Areas) Act of 1990, the Secretary of State has delegated much of the oversight and regulation duties to the local district planning authorities.¹³⁵ No consent is required for necessary repairs to a listed building.¹³⁶ Actions which do require consent by the local planners include demolition of a building, changing its use, or meeting building code restrictions applied to modern buildings.¹³⁷ Any rulings on an owner's property by a local planning authority can be appealed to the Secretary of State.¹³⁸

The most significant source of English planning regulations is the Town and Country Planning Act, a national statute administered at the local level.¹³⁹ Relevant provisions include approval of every new building project by a local

¹²⁸ AMAAA, *supra* note 123, ¶ I, § 1.

¹²⁹ Pendlebury, *supra* note 118, at 291.

¹³⁰ *Id.* at 294.

¹³¹ *Id.* at 296.

¹³² *Id.* at 297.

¹³³ *Id.*

¹³⁴ *Id.*

¹³⁵ *Id.* at 291.

¹³⁶ *Id.* at 297.

¹³⁷ *Id.* at 298.

¹³⁸ *Id.* at 297.

¹³⁹ Garner, *supra* note 117, at 108. The Act was originally adopted in 1932 but almost immediately abandoned at the outbreak of World War II. Thus, it was completely rewritten in 1947. That version of the Act remained the basis of modern English planning law until it was overhauled in the Town and Country Planning Act of 1971 which has since been amended every few years. *Id.*

administrative body at a public hearing,¹⁴⁰ approved new structures are to harmonize with the facades of nearby historical ones and, any alterations affecting the historic character of a listed building can be done only with the consent of the district planning authority.¹⁴¹

All decisions made by the local district planning authorities may to be appealed to the Secretary of State's office except the decision to have the monument listed.¹⁴² However, before the property becomes listed, an owner may apply to the Secretary of State's office for a certificate keeping the property from being listed for five years.¹⁴³ The existence of this procedure, and the frequency in which it is used by owners, illustrates the pervasive attitude among the English that governmental identification of property is a burden to be avoided if possible.

This is very different from the Italian attitudes, where owners seek to have their property listed. This discrepancy is likely a result of the Italian listing system providing additional incentives such as tax breaks and governmental subsidies and grants. The availability of such resources in Italy makes owning a historic property beneficial. No similar tax incentives are available in England, and very limited grant resources go exclusively to endangered buildings.¹⁴⁴

b. Critique of the English Legislation

Overall, English preservation legislation appears to be comprehensive in its protection of monuments from threats such as irresponsible repairs and owner neglect. One of the greatest strengths of the English legislation is its centralization. Ancient monuments are directly overseen by the Secretary of State's office. This is in direct opposition to the bureaucratic tangle of the Italian legislation, where preservation duties are split among various departments and ministries. Clearly, the English scheme is much more efficient.

¹⁴⁰ This ensures historic buildings and conservation areas are not adversely affected by construction noise and vibrations, traffic pollution, and aesthetic considerations.

¹⁴¹ Garner, *supra* note 117, at 108.

¹⁴² *Id.* at 118.

¹⁴³ *Id.*

¹⁴⁴ However, private groups, such as the National Heritage Fund, offer grants to subsidize repair costs on historic buildings which can be applied for by the owner. *Id.* Furthermore, like Italy, England has a Heritage Lottery Fund. This does raise huge amounts of revenue for heritage projects; however, some speculate that this has resulted in a steady decrease in state spending for heritage conservation efforts. See Pendlebury, *supra* note 118, at 307.

However, the state fails to make the preservation process accessible to the people. With no tax benefits and limited resources available, the ability to care for the preservation of cultural heritage is taken out of the hands of all but the most wealthy of British society. Thus, if heritage is to be preserved, it must be through charitable institutions, such as the National Heritage Fund, or through the efforts of the British government. In the latter case, the government must then take the responsibility of opening these monuments up to the public so they can serve their greatest use, educating younger generations about the past.

III. SUPRANATIONAL PRESERVATION PROGRAMS

Two supranational entities in Europe have created preservation programs: the European Union (EU), and the Council of Europe. Italy and the U.K. are member states of both.

A. *European Union*

In Article 151 of its founding treaty, The EU states that one of its priorities for activity is the area of cultural heritage.¹⁴⁵ However, most EU heritage legislation deals with moveable heritage; this is likely because immoveable heritage is necessarily fixed within the borders of a country, perhaps making it more amenable to local legislative efforts rather than supranational efforts. The limited EU law that does address heritage at large, or specifically immoveable heritage, is generally vague and nebulous, essentially issuing policy recommendations that its member states promote awareness of dangers to the cultural heritage and take steps to address those concerns.¹⁴⁶ These laws come in the form of Commission Recommendations,¹⁴⁷ Resolutions of the Ministers with responsibility for Cultural Affairs¹⁴⁸ and European Parliament Resolutions.¹⁴⁹ These laws, which generally do not set out specific criteria or

¹⁴⁵ See 1997 O.J. (C 340) 173 (the Treaty of Amsterdam amending the Treaty on European Union, the Treaties establishing the European Communities and certain related acts—consolidated version of the Treaty Establishing the European Community).

¹⁴⁶ See, e.g., 1974 O.J. (C 21) 22 (asking member states to support conservation efforts).

¹⁴⁷ *Id.*

¹⁴⁸ See, e.g., 1986 O.J. (C 320) 1 (asking member states to share information and promote awareness).

¹⁴⁹ See, e.g., 1983 O.J. (C 267) 25 (creating 'European Historical Monuments and Sites Fund' to protect architectural heritage); 1988 O.J. (C 309) 423 (increasing spending and creating a

steps which the states must take, are the toothless tiger of cultural heritage law.¹⁵⁰

One positive step the EU has taken in the field of cultural heritage conservation is the creation of the Raphael Programme in 1997.¹⁵¹ The Programme was to last for four years, from January 1, 1997 to December 31, 2000; it had goals of raising awareness of dangers to cultural property, encouraging public participation in the process, sharing information and resources of heritage conservation among member states, and providing funding for rehabilitation projects.¹⁵² A member state that submitted an application to the Programme for a proposed project for the renovation of an item of cultural heritage exemplifying European culture could take no longer than three years to complete the project, and funding from the Raphael Programme was to constitute no more than 50 percent of the total budget for the project.¹⁵³ Furthermore, the teams working on the projects were to be multidisciplinary, and the directors of the projects were required to import any experience acquired and information learned therefrom to other professionals in the Community.¹⁵⁴ While this Programme may not have provided more mandatory protection for cultural heritage, it has provided more opportunities and funds for renovation and conservation projects within the member states.

B. Council of Europe

The Council of Europe often suffers from the same malaise of vagueness as the EU.¹⁵⁵ Their main efforts have been in awareness-raising measures, such as designating 1975 as the 'European Architectural Heritage Year,' which

budget for the aforementioned fund); 1993 O.J. (C 72) 160 (converting the fund into different appropriations).

¹⁵⁰ See generally *id.*

¹⁵¹ See 1997 O.J. (L 305) 31. Presumably, the Programme was named after the Renaissance artist Raphael, who served as Commissioner of Antiquities in Italy during the sixteenth century and who was very concerned about heritage conservation. He was, in fact, very much ahead of his time, since his contemporary policymakers were the very same Popes who pillaged the Roman monuments for their own benefit. See Erder, *supra* note 33, at 77.

¹⁵² See 1997 O.J. (L 305) 31, art. 3.

¹⁵³ *Id.* annex, Action I, § 1-2.

¹⁵⁴ *Id.*

¹⁵⁵ The Council of Europe puts out many non-binding resolutions and recommendations on the subject of cultural heritage protection. For a list of such documents see Council of Europe, *supra* note 3, at app. 1.

resulted in the production of two important documents.¹⁵⁶ One significant exception to this general trend of vagueness is the Granada Convention of 1985 (known as the Convention for the Protection of the Architectural Heritage of Europe), which Italy and the UK signed and ratified in 1989.¹⁵⁷ The Granada Convention has been one of the more influential and effective multinational documents in the area of cultural heritage conservation.

The Convention defines protected heritage as monuments, groups of buildings, and sites, and also institutes an inventory system.¹⁵⁸ It is the most assertive supranational statement made in cultural heritage law because it mandates each signatory to establish a competent authority to approve all schemes that involve the demolition or alteration of a protected monument, or that affect the monuments' surroundings, or that erect new buildings in protected areas.¹⁵⁹ It also permits authorities to compel an owner to perform maintenance work or to allow the authority to perform such work itself; it also allows compulsory purchase of a property.¹⁶⁰ Signatories are also required to provide financial support for maintaining and restoring the architectural heritage and to incorporate conservation policies into town planning objectives while still addressing the needs of contemporary life.¹⁶¹

C. Comparing Supranational Law with Domestic Law

When comparing existing Italian law to the Granada Convention or any other supranational law, it is clear that these provisions of supranational legislation are already well-instituted within the domestic law of Italy. While it may not have the most modern legislation in Europe, Italy certainly started

¹⁵⁶ See European Charter of the Architectural Heritage, adopted by the Council of Europe in October, 1975, available at http://www.icomos.org/docs/euroch_e.htm (encouraging the signatories to adopt legislation to protect architectural heritage and measures of integrated conservation); The Declaration of Amsterdam, adopted by the Congress on the European Architectural Heritage on October 21-25, 1975, available at <http://www.iconos.org/docs/amsterdam.html> (a more in depth document encouraging, *inter alia*, making architectural heritage conservation an integral part of urban and regional planning, community involvement at all levels of heritage conservation, that restoration efforts still make the restored areas useful for the community, and that more money be spent on restoration).

¹⁵⁷ See Granada Convention, Oct. 3, 1985, Europ. T.S. No. 121.

¹⁵⁸ *Id.* arts. 1-2 (noting that the Council of Europe's inventory of cultural heritage sites is considered to be the most complete of any in Europe).

¹⁵⁹ *Id.*

¹⁶⁰ *Id.* art. 4.

¹⁶¹ *Id.* arts. 6, 10-11.

embracing its heritage well before many other European nations. Therefore, it does not appear as though supranational law has put any further requirements or protections on the cultural heritage beyond what Italy has imposed on itself. The most significant impact supranational legislation has had on Italy is that additional funds are now available to fund more restoration projects.

England, however, falls short of fully satisfying all of the Granada Convention mandates. Currently, English law does not require local planning authorities to maintain buffer zones around protected monuments. Furthermore, there is a less than ideal supply of government funds funneled toward restoration and maintenance.¹⁶²

IV. INTERNATIONAL PRESERVATION PROGRAMS

There are two primary intergovernmental organizations responsible for cultural heritage protection in the international scene: the United Nations Educational, Scientific and Cultural Organization (UNESCO) and the International Committee on Monuments and Sites (ICOMOS). There is some overlap in duties between the two organizations since the creation of the World Heritage Centre. Italy and the UK are members of both of these organizations.

A. United Nations Educational, Scientific and Cultural Organization (UNESCO)

UNESCO was the first international organization to get involved in the protection of cultural heritage. In fact, the first international document concerning such matters¹⁶³ was the Hague Convention on the Protection of Cultural Property in the Event of Armed Conflict.¹⁶⁴ This document was promulgated in response to World War II and the destruction of cultural property that occurred throughout Europe during that dark time.¹⁶⁵ In Europe, where many different cultures live in close proximity to one another, and

¹⁶² This is, in part, due to the overwhelming financial support the private sector gives to the cause. Garner, *supra* note 117.

¹⁶³ Actually, the first document discussing cultural heritage protection on an international level was the 'Athens Charter for the Restoration of Historic Monuments,' adopted at the First International Congress of Architects and Technicians of Historic Monuments in Athens, 1931. However, because of the lack of legislative force and the devastating effects of World War II, this document never carried much legal weight. *Id.*

¹⁶⁴ Hague Convention, May 14, 1954, 38 I.L.M. 769.

¹⁶⁵ *Id.*

where domestic law cannot effectively address these concerns, the Hague Convention can be very useful. The Convention's signatories are required to develop schemes in peacetime which will protect its heritage during times of war.¹⁶⁶ An example of such a scheme is devoting military personnel to safeguarding property.¹⁶⁷ The most important protection the Convention offers, however, is a state's ability to grant 'special protection' to individual heritage items, which entails listing the property on the International Register of Cultural Property under Special Protection.¹⁶⁸ The effect of 'special protection' is that all signing parties to the Convention agree the registered properties are immune from acts of hostility and the property is open to international control.¹⁶⁹ The Convention also requires signing parties to provide criminal sanctions against individuals who breach the Convention.¹⁷⁰ The Second Protocol to the Convention considerably fleshes out the criminal sanctions and establishes a fund for the protection of properties in the event of armed conflict.¹⁷¹

Another area in which UNESCO has worked to protect the immoveable heritage of Europe is through the creation of the World Heritage Committee. The Committee and its corresponding fund were established by the Convention Concerning the Protection of the World Cultural and Natural Heritage.¹⁷² While still respecting state sovereignty, the Convention recognizes the existence of a world heritage whose protection is the responsibility of the international community.¹⁷³ The World Heritage Convention delegates responsibility for conservation to the state in which the heritage resides and it gives very little to the states in the way of financial assistance.¹⁷⁴ Essentially it functions as an awareness—raising and prestige—conferring mechanism, with the hope being that a country will be more amenable to spending its own funds on heritage conservation when it has World Heritage Sites within its

¹⁶⁶ *Id.*

¹⁶⁷ *See id.* art. 7.

¹⁶⁸ *See id.* art. 8, § 6.

¹⁶⁹ *See id.* arts. 9-10.

¹⁷⁰ *See id.* art. 28.

¹⁷¹ Added on March 26, 1999. *See generally id.* arts. 15-21, 29.

¹⁷² Convention Concerning the Protection of the World Cultural and Natural Heritage, available at <http://www.unesco.org/whc/nwhc/pages/doc/main.htm>.

¹⁷³ *See id.*

¹⁷⁴ *See id.* arts. 19-26 (stating only \$3 million is available for state assistance through the World Heritage Fund, and that typically only the poorest states or those suffering from a recent natural disaster get that funding since the applicant must show an inability by the state to fund the project).

borders.¹⁷⁵ Every member state voluntarily submits an inventory of any cultural property within its borders it would like listed and the Committee then votes on what sites are suitable for inclusion on the World Heritage List.¹⁷⁶ A site is listed only if the state in which it is situated is a dues-paying member of UNESCO, has signed the Convention, and has requested the site be included on the World Heritage List.¹⁷⁷

Italy has been very active in this regard, and it has more items on the World Heritage List than any other country, thus reflecting the high importance the Italian government and people place on their cultural heritage.¹⁷⁸ Meanwhile, England has eleven sites on the List (one of those being Bath), and eighteen further sites have been put forward by the government for nomination in the next five to ten years.¹⁷⁹ Furthermore, in England the listing of a site on the World Heritage List can be very influential in determining the level of protection afforded to the building and the future land use considerations for the area surrounding the listed site.¹⁸⁰

B. International Council on Monuments and Sites (ICOMOS)

The overlap between UNESCO and ICOMOS becomes apparent in the World Heritage identification process in which ICOMOS serves in an advisory capacity. ICOMOS was established in 1965 by the decree of the Second Congress of Architects and Technicians of Historic Monuments in the International Charter for the Conservation and Restoration of Monuments and Sites (also known as the Venice Charter).¹⁸¹ It is an intergovernmental organization that deals exclusively with the immovable heritage.¹⁸² ICOMOS serves as UNESCO's primary advisor on heritage conservation and in selecting items for the World Heritage List.¹⁸³ It has committees in 107 different countries, including Italy and the UK.¹⁸⁴

¹⁷⁵ *Id.*

¹⁷⁶ *Id.*

¹⁷⁷ *Id.*

¹⁷⁸ See World Heritage List, available at <http://whc.unesco.org/heritage.htm>.

¹⁷⁹ See Pendlebury, *supra* note 118, at 296.

¹⁸⁰ *Id.* at 302.

¹⁸¹ Venice Charter, available at http://www.international.icomos.org/e_venice.htm.

¹⁸² ICOMOS Official Website, available at <http://www.international.icomos.org/about.htm>

¹⁸³ *Id.*

¹⁸⁴ *Id.*

ICOMOS has published numerous documents in the field of cultural heritage. The very successful Venice Charter, for example, gives specific guidelines on how a monument is to be restored.¹⁸⁵ It views monuments as evidence of history and not as works of art; therefore, preservation does not mean making the monument appear as it did when it was first built. Rather, the contributions of all periods on the building must be respected, and any non-original materials or parts of the building must fit harmoniously with the original, yet be distinguishable so as to not falsify the artistic or historic evidence.¹⁸⁶

Following the Venice Charter, several ICOMOS documents were promulgated. In 1972, ICOMOS established guidelines for introducing contemporary buildings into ancient sites.¹⁸⁷ These guidelines addressed the inevitability of such actions, but encouraged that any new structures conform to the size, scale, rhythm, and appearance of the ancient monuments.¹⁸⁸ The 1987 Washington Charter asserts that not only individual monuments, but entire historic towns and urban areas, should be preserved as a whole.¹⁸⁹ The 1990 Charter for the Protection and Management of the Archaeological Heritage builds on the success of the Venice Charter and extends it beyond architectural heritage to archaeological heritage in the form of a moral obligation.¹⁹⁰ The Charter requires that consideration for archaeological heritage be integrated into planning policies at all levels of government, and that such consideration be reflected in domestic legislation.¹⁹¹ These considerations are to include maintenance and conservation provisions, prohibition of destruction, survey requirements, etc.¹⁹²

Of particular relevance is the 1983 adoption of the Declaration of Rome by the ICOMOS General Assembly.¹⁹³ This document exclusively deals with the state of heritage conservation measures in practice in Italy. The Assembly recognizes the forward thinking and immense contributions of Italian experts

¹⁸⁵ See Venice Charter, *supra* note 181.

¹⁸⁶ *Id.* arts. 11-12.

¹⁸⁷ See Resolutions of the Symposium on the Introduction of Contemporary Architecture into Ancient Groups of Buildings, *available at* http://www.icomos.org/docs/contemporary_architecture.html.

¹⁸⁸ *Id.*

¹⁸⁹ Washington Charter, *available at* http://www.international.icomos.org/e_towns.htm.

¹⁹⁰ Charter for the Protection and Management of the Archaeological Heritage, *available at* http://www.international.icomos.org/c_archae.htm.

¹⁹¹ *Id.*

¹⁹² *Id.*

¹⁹³ Declaration of Rome, *available at* <http://www.icomos.org/docs/rome.html>.

in the field of heritage conservation; it notes the deep involvement of the Parliament, national government and public services departments in the conservation of cultural heritage, and the considerable funding for architectural heritage given the country's limited economic resources.¹⁹⁴ However, that is where the Assembly's praise ends. Essentially, the well-meaning theory behind Italian legislation is not correspondingly implemented by good practice, and this is exemplified by two glaring problems in the country's heritage administration.¹⁹⁵

The first problem in Italian heritage conservation is maligned by a non-existent coordination among the various levels and bodies involved in the conservation process.¹⁹⁶ The international, national, regional, and local organizations do not share information about each other's initiatives, and their efforts can be redundant, conflicting, or ignorant of the same problems.¹⁹⁷ The Italian Constitution and various Parliamentary laws delegate certain powers and authorities to various Ministries who do not coordinate or communicate with each other, especially the two primary bodies of the Ministry of Cultural Affairs and the Public Works Department.¹⁹⁸ The Assembly recommends that the Parliament and all competent controlling bodies coordinate all administrative and cultural initiatives taken by national and international organisms.¹⁹⁹

The second problem is that architects and construction contractors commissioned to carry out restoration projects are often insufficiently qualified.²⁰⁰ There is legislation on architecture and town planning addressing such problems, but it is in such a snarl that the "legislation is itself an expression of the present state of general confusion."²⁰¹ Gianighian also recognizes the lack of specialized training architects in Italy receive in conducting restoration projects in relation to the amount of work they will be doing in the field.²⁰² The ICOMOS Assembly recommends that the national government get involved in the policing of qualifications of these professionals working on restoration operations.²⁰³ The Assembly concluded its Declaration

¹⁹⁴ *Id.*

¹⁹⁵ *Id.*

¹⁹⁶ *Id.*

¹⁹⁷ *Id.*

¹⁹⁸ *Id.*

¹⁹⁹ *Id.*

²⁰⁰ *Id.*

²⁰¹ *Id.*

²⁰² See Gianighian, *supra* note 42, at 201-02.

²⁰³ See Declaration of Rome, *supra* note 193.

with a statement of intent to aid Italy in any way possible to achieve these goals.²⁰⁴

V. CONCLUSION

This Note has sought to examine various levels of cultural heritage legislation in Italy and England. The discussion was informative in that the areas in which one country's legislation was deficient the other country was exceptionally strong in the corresponding areas. For example, Italy's legislation has suffered from lack of codification and no centralization of oversight authority. Conversely, England has all of its authority in heritage preservation matters vested in the Secretary of State. However, England's legislation is inadequate in encouraging public participation in the preservation process. Meanwhile, Italy is a virtual paragon of encouraging public participation through significant financial incentives for owners of monuments and other pieces of cultural heritage.

Not much has taken place in domestic Italian heritage legislation in the last twenty years that would indicate an answer to the ICOMOS Declaration of Rome. Italy, therefore, represents a country with a great amount of heritage for which it must still be responsible (since no international organization will take direct control of it for fear of infringement on state sovereignty). Italy is aware of its burden and recognizes the importance of heritage conservation. The Italians' support of and appreciation for their heritage is quite inspirational. However, there is not an infrastructure of organization and communication to make their good intentions realized. The citizens of Rome who live in a city of crumbling monuments are waiting for precisely that.

The people of England have a similar appreciation for the importance of history and the safeguarding of the cultural heritage for the benefit of future generations. Fortunately for England, it is in a much better position financially to preserve that heritage than is Italy. According to the critiques discussed earlier in this Note, England could, however, benefit from taking a more unified approach to their planning process by integrating an emphasis on the historic character of a town in the planning process as opposed to focusing on individual buildings. Also, England would be well served to place a greater amount of preservation responsibilities into private hands. The best way to do this is to offer more tax incentives for work on and ownership of heritage sites.

²⁰⁴ *Id.*

Supranational and international law are limited in the preservation measures they can institute due to state sovereignty and compulsory jurisdiction issues. The only enforcement mechanism utilized by these groups is the rather ineffective 'mobilization of shame,' common throughout international law. Thus, these groups should merely retain their roles as advisor, encourager and potential funder of domestic preservation efforts. For example, ICOMOS has done an exemplary job in training people in restoration methods that protect the integrity of the original materials, and disseminating this information equally among all member states. This sharing of information will allow all states to benefit from the experiences of the others, both in areas of legislation and preservation technology.

