

ITALIAN HOURS AND AMERICAN DAYS: ONE LEGAL SCHOLAR'S TRAVEL DIARY

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What defines the journey of a legal scholar between Italy and the United States? In this brief academic travel diary, one Italian-American female scholar reflects on her legal formation and research in the United States and in Italy. Highlighting the inescapability of the Italian cultural tradition in her legal education, Felicia Caponigri reflects on the impact of interrogazioni, the uniquely Italian work/life balance, and on how diverse perspectives and experiences might be further welcomed as part of legal education through more dual Italian and American opportunities. Caponigri also explores the comparative value of the Italian legal and cultural tradition for two areas which increasingly seem connected through the legal rules that apply to them: cultural heritage and intellectual property. To conclude, she makes some future-looking observations about the Italian legal tradition as a cornerstone for future transatlantic dialogues.

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I. INTRODUCTION

The scene: an academic presentation at an American university. As is normal at such affairs, attendees are shuffling in, greeting one another, speaking of their travels (Yes – just at a conference in Rome last week!), and exchanging pleasantries about the challenges and joys of the semester. The speaker begins and, as is commonplace nowadays, has a slide show presentation. After some technical difficulties and a halting but enthusiastic introduction to the work (to be expected and taken in stride), images are projected onto a screen. There is the image of Michelangelo's David, and on another, the image of Botticelli's Venus. Then come the transformed images – the David blowing bubble gum or with a lightning rod drawn on his face. Botticelli's Venus on a kitchen apron or made into a questionable promotional campaign with the help of AI. There is the legal explanation of the relevance of the images – the discussion of cultural heritage law, copyright law, and trademark law. Soon after the conclusion of the presentation the engaged question and answer period begins. Why is the Italian State so concerned with stopping some uses of the images of their cultural properties? Are artists and scholars reacting to public attempts to circumscribe their commercial uses of Italian works of art, especially in collaborations with fashion companies or publishing houses? How can control over iconic images make sense in light of our robust public domain in the United States? Answers are proffered, some particularly detailed hypotheticals are untangled (perhaps with some trepidation), and attendees leave with perhaps more questions about Italian law and the Italian legal tradition than they had when the presentation began. The speaker is left afterwards to her own devices to note the questions, where her answers could be improved, and to ponder her choice of images and artworks in light of the cases and case studies chosen. How does one explain the inspiration which Italian culture and the Italian legal tradition offer for legal issues in the US? How much influence should the reasoning within Italian legal cases have on research questions grounded in American law?¹

II. DISCOVERING THE INESCAPABILITY OF THE ITALIAN CULTURAL TRADITION IN LEGAL EDUCATION

About ten years ago, when the *Italian Law Journal* was in its inception and early stages, I was an Italian-American law student at a US law school who

¹ This introductory paragraph is inspired by John Henry Merryman's own introductory paragraph in J.H. Merryman, 'The Loneliness of the Comparative Lawyer', in Id, *The Loneliness Of The Comparative Lawyer And Other Essays In Foreign And Comparative Law* (Dordrecht: Kluwer Law International, 1999), 1-12. It is also inspired by the author's lecture, Art and Its Image, at DePaul College of Law as part of the Arts Law Colloquium, which may be viewed in its entirety here <https://tinyurl.com/y3dht8th> (last visited 30 May 2025).

happened to be in Milan, studying abroad for a semester at Bocconi University. I had embarked on this opportunity to study Italian law in Italy thanks to an almost unstoppable driving force in my life: the question of how to be an American in Italy and an Italian-American in the United States. This almost existential question had begun at the tender age of six when I had moved, as an Italian-American girl whose great-grandparents had emigrated to the South Side of Chicago from Southern Italy a century before, to Florence, Italy, with my mother and brothers, in a vice versa journey from a small town by Lake Michigan in the great American Midwest. The presence of the existential question continued over the course of my childhood while I grew into adulthood and consistently moved between Italy and the United States, finding myself in different educational systems and friend groups in each place. I learned, for example, that most of my Italian friends were extremely detail oriented, had capacious memories, and could even be fiercely and passionately combative in our debates. I soon understood (what I surmised to be) the reason for this when I attended one semester of *liceo classico* (Italian classical high school). Gone were written essays and opportunities to think over the course of an hour long test that I had in my American high school (which also followed a classical curriculum modeled on the great books). Instead, there were *interrogazioni* - fierce oral exams in which students had no time to think and were called to repeat phrases from the readings practically verbatim. Interrogated in front of an entire classroom of peers, exams were not one on one written dissertations espoused and reviewed in private but, instead, public evidence-giving exercises which could result in shouting matches (as students supported their peers) or silent episodes of extreme mortification. My friends' memories were born out of necessity, skill, and hours of *repetizioni* – repetitions of information and knowledge to an empty room or anyone who would listen. The benefits of this educational tradition, while not translatable (at least in my experience!) to success in an American high school, only later became apparent when I decided to attend law school in the United States. There I found closed book exams, the Socratic Method (the closest thing we have, I would argue, to an *interrogazione* in the United States), and a need to master details and the specific reasoning in a legal opinion, even as we focused on the issue and the common law precedential form of reasoning. Many of my Italian peers excelled when they studied abroad themselves in the United States during law school for this reason: their training in an Italian educational system with its particularly Italian cultural nuances.

Consider, as an example of a uniquely Italian cultural nuance, a professor's deference and respect for the sacredness of the weekend juxtaposed with the need to memorize the book in a class on Italian contract and tort law. I once had a professor at Bocconi pause in the middle of his lecture to note that many students had arrived to class with their suitcases, in preparation for their weekend trips home to see their families. He would end class about fifteen minutes early, to make sure his students caught their trains. This ability to study hard and then detach from

work was (and still is) a work/life balance that is central to the Italian cultural tradition. This balance allowed my Italian colleagues to thrive, even, in my observation, in practice, when I would observe my Italian peers break for lunch. While certainly not perfect (Beppe Severgnini has, after all, rightly compared the Italian office to an opera set),² the Italian cultural tradition's impact on my experience of legal education and life inside and outside of a classroom, both as a student and as a researcher and lecturer, has shown me alternative paths to success. These revelations highlight at least a few instances of the inescapability of the Italian cultural tradition's benefits, and its relevance for legal studies abroad. How much might other legal systems and networks of peers benefit their future practices by broadening their exchange programs to Italy and fostering research projects with Italian students and academics that could benefit future litigation and transactional deals?³ How much more might legal education benefit from express discussions of how Italian culture balances professional and personal commitments? What might be translatable, from this Italian system, to other systems of legal education abroad?

Despite my appreciation of Italian *interrogazioni* and the Italian work/life balance, I soon realized during my studies at Bocconi, however, that the benefits of the Italian cultural tradition for US legal education did not necessarily translate to a classroom of Italian law in Italy. Without a consistent Socratic Method to check in on students, my class on Italian contract law and tort law could, for example, turn into a semester long lecture that only required a firm memorization of the textbook to pass the final exam (still in an *interrogazione* format). To some extent, this was a benefit for Italian law students: given that the backbone of the Italian legal system was the Code, knowledge of specific articles and their clauses were fundamental to the future practice of law, and its analysis. I am still amazed, when I research Italian law and read Italian cases, at the liberty with which judges will just cite to an article and a clause in the Civil Code, or another Code, without sharing the *text* of that specific article. It is almost expected that the reader will know the article from memory (or, in my case, know how to look it up). At the

² B. Severgnini, *La Bella Figura: Field Guide to the Italian Mind* (New York: Broadway Books, 2006), 117-124 (with a whole section devoted to "The office, the opera house of orderly anarchy").

³ Many US law schools already engage in exchange programs with Italy and have externship programs which allow students to effectively intern with a law firm in Italy or in another Italian legal organization (public or private) for credit, requiring the student to also take an accompanying seminar in which they reflect on these early work experiences. In my experience, both as a student and by teaching as part of these programs, exchange and externship programs offer students an opportunity to build an international network of colleagues whom they later call on in practice, to learn the nuts and bolts of Italian law in an authentic Italian classroom setting, and to observe the nuances of working in Italy from a protected distance before taking on the actual responsibilities of doing so later in practice. For a description of the requirements of study abroad and externship programs see 'Criteria for Accepting Credit for Student Study at a Foreign Institution', in *Standards and Rules of Procedure for Approval of Law Schools* (American Bar Association, 2024-2025), 101-104, available at <https://tinyurl.com/r3dv7yj3> (last visited 30 May 2025); 'ABA Standard 304. Experiential Courses: Simulation Courses, Law Clinics, and Field Placements', in *Standards and Rules of Procedure for Approval of Law Schools* (American Bar Association, 2024-2025), 22-23.

same time, the inescapability of the Italian cultural tradition of rote memorization and *interrogazioni* over writing essays meant that when the time came to write the required thesis, or book-length original piece of writing, in law, many of my peers found themselves called to think creatively for the first time in their legal education. To borrow a phrase from US legal education, many of my Italian colleagues might find themselves, in light of the procedural nature of their legal education, unable to see the forest for the trees. It is perhaps for this reason that there are so many important treatises on how to write a thesis, including for law,⁴ that benefit the wider academic community beyond Italy.⁵ It was here that the US legal education's emphasis on brief writing, paper writing, and even serving as an editor on a Journal, could complement the Italian culture and legal tradition. It leads to a question for the growth of legal education in Italy in the future: could importing the American idea of clinics and student run journals as part of the Italian law school curriculum lead to a greater valorization of Italian legal minds?⁶

Beyond the classroom, there has been one area of Italian culture that has had the most impact on my study of the law, especially in the United States: cultural heritage. As that small Italian-American girl roaming the streets of Florence with her family, my first entrée into the differences between the United States and Italy was through Italian public art. Encountering a copy of Michelangelo's *David* in its original place in front of the Palazzo Vecchio, the statues on Orsanmichele, and even the Ponte Vecchio itself were crucial avenues for me to understand that there were properties that held importance for artistic, historic, and even more cultural reasons. While I appreciated their beauty as a child, it was only later that I would explore (and understand) the challenges of preserving these properties over centuries. When I would return to the US, I would see these same properties reproduced on screens, on mugs, on notebooks, books, and even on TV. The inescapability of the images of the Italian cultural properties I had seen in real life as a child in Florence made me question the purpose of these properties outside of Italy to a separate, transatlantic American cultural community. I was, of course, not the first American to be struck by Italian art and seek to import it, whether physically or intellectually, to the United States. I decided to study Art History as an undergraduate student in the United States and soon learned of Bernard Berenson's antiquarian model,⁷ Isabella Stewart Gardner's collecting and museum in Boston in the

⁴ G. Napolitano, *Le avventure del giovane giurista. Guida alla ricerca nel diritto* (Napoli: Editoriale Scientifica, 2014).

⁵ For example, U. Eco, *Come si fa una tesi di laurea* (Milano: Bompiani, 1977). The book was only translated into English in 2015. See Id, *How to Write a Thesis*, trans. C. Mongiat Farina and G. Farina (Cambridge: MIT Press, 2015).

⁶ Bocconi has already started a clinical program and a student run law journal. See D. Ripamonti, 'TradeLab, Legal Clinics with a View to the World' *Bocconi News* (23 February 2022), available at <https://tinyurl.com/3cmjdpsy> (last visited 30 May 2025); 'Legal Clinic', *Giurisprudenza, Università Bocconi*, available at <https://tinyurl.com/452w8mup> (last visited 30 May 2025); *Bocconi Legal Papers*, Università Bocconi, available at <https://tinyurl.com/5n9y2zeu> (last visited 30 May 2025).

⁷ E. Samuels, *Bernard Berenson: The Making of a Connoisseur* (Cambridge: Harvard University

design of a Venetian palazzo,⁸ and, while studying at the NYU La Pietra campus in Florence, about Hortense Acton, an American from Chicago who had moved to Florence and set up her life in a villa on Via Bolognese.⁹ It is, in fact, this awareness of other Americans before me that had moved to Italy, leading to legal issues in the process – this inescapability of both the Italian culture and the Italian legal tradition in everyday life while in Italy and even outside of its territory – that led me, ten years ago, to Bocconi and, before that, to law school itself. How many more students of different backgrounds might we lead to law school if we provided more express gateways to the law through Italian art and culture? How many more diverse perspectives and experiences might we gather within the legal profession by highlighting legal fields that are proximate to important areas of Italian culture, like Art Law, Cultural Heritage Law, and Fashion Law, especially to students with backgrounds in creative fields?

III. IDENTIFYING THE COMPARATIVE VALUE OF THE ITALIAN LEGAL AND CULTURAL TRADITION FOR CULTURAL HERITAGE AND INTELLECTUAL PROPERTY CROSS-POLLINATIONS

While researching my Senior Thesis on Hortense Acton, a female recovery project centered on her life in Florence, her identity as an American woman in Italy, and how her fashion and connection to art aided her presentation of self, I discovered the controversy surrounding the title of the villa in which Hortense lived with her family, Villa La Pietra.¹⁰ To make what would become a 30 year legal saga which I have written about more extensively elsewhere short,¹¹ and for the purposes of this anniversary issue, the most relevant aspect of the case for my own academic ideas was its introduction of the notion of forced heirship.¹² For

Press, 1979) (exploring Berenson's life and his choice of Italy). For just one example of a book written by Berenson see B. Berenson, *The Italian Painters of the Renaissance* (Oxford: Oxford University Press, 1930).

⁸ L.H. Tharp, *Mrs. Jack: A Biography of Isabella Stewart Gardner* (Boston: Little Brown, 1965) (exploring Stewart Gardner's life); R. Matthews, 'Collectors and Why They Collect. Isabella Stewart Gardner and Her Museum of Art' *Journal of the History of Collections*, 21(2) 183-189 (2009).

⁹ For insight into Hortense's life with her children in Florence see her son's memoir, H. Acton, *Memoirs of an Aesthete* (London: Faber & Faber, 2008). See also F. Caponigri, *Hortense Mitchell Acton: Fashioning Identity in Early Twentieth Century Florence* (Senior Thesis, on file with the author).

¹⁰ 'The Talk of the Town', *The New Yorker* (30 October 1995).

¹¹ F. Caponigri, 'Who Owns Villa La Pietra? The Story of a Family, Their Home, and an American University under Italian Law' *Notre Dame Journal of International & Comparative Law*, 5(1), 201 (2015), available at <https://tinyurl.com/2p9769s7> (last visited 30 May 2025); 'NYU Prevails in Nearly 30-Year Lawsuit Over the Ownership of Villa La Pietra' *Press Release, New York University* (30 April 2024), available at <https://tinyurl.com/ycdxajjv> (last visited 30 May 2025).

¹² F. Caponigri, 'Who' n 11 above, 229-230.

an American law student used to freedom of testament, forced heirship raised the possibility of keeping wealth in a family, preserving legacies and property, and even remedying some inequitable losses over generations under the law.¹³ Forced heirship also raised bigger picture questions about how the law defines family and balances an individual's rights with those of a collective¹⁴, legal issues which were highly relevant in the specific La Pietra case as Italian law developed in the early 21st century.¹⁵ I was, I know now, at the beginning of a comparative law project, one which saw solutions in other countries and asked how these solutions may, or may not, be imported to the United States to answer different questions.¹⁶ How many more solutions might American law students find if they learn and explore Italian law and Italian law's own answers to legal questions?

The issue of balancing, and finding the optimum legal framework for dueling private interests and public interests, became a throughline for my research. And thinking about what would happen to Villa La Pietra as an important historic building – the inevitable result of the La Pietra case, should NYU have lost under Italian law and in Italian courts – led me, in conjunction with all those other Italian masterpieces I had appreciated in my youth, to think about the notion of cultural property. At first introduced to me in law school as a concept in international law,¹⁷ the textbook for my Art and Cultural Heritage Law course,¹⁸ co-authored by an American legal scholar who had himself spent considerable time studying and analyzing the Italian legal tradition, John Henry Merryman,¹⁹ also included

¹³ See, as an example of the thinking about what is lost when forced heirship is abandoned in light of American culture, V.D. Rougeau, 'No Bonds but Those Freely Chosen: An Obituary for the Principle of Forced Heirship in American Law' *Civil Law Commentaries*, 3 (2008).

¹⁴ A central part of the Hortense Acton case involved the interpretation of Art 30 of the Italian Constitution and the protection of the family under Italian law. See F. Caponigri, 'Who' n 11 above, 215, 225-227, 229-230. The importance of the Italian Constitutional Court and its reasoning for comparative purposes was the foundation for a book by Italian scholars between the United States and Italy. See V. Barsotti et al, *Italian Constitutional Justice In Global Context* (Oxford: Oxford University Press, 2015). I was fortunate to work as Professor Paolo Carozza's research assistant while this book was being written by the authors and learned a great deal from the opportunity to have a front seat to this Italo-American exchange on constitutional law.

¹⁵ F. Caponigri, 'Who' n 11 above, 220-221 (exploring the 'filiazione reform').

¹⁶ For more on comparative law point and methodology see D. Nelken and E. Öricü, *Comparative Law: A Handbook* (London: Bloomsbury, 2007); K. Zweigert and H. Kötz, *An Introduction to Comparative Law*, trans. T. Weir (Oxford: Oxford University Press, 2011). For works that more fully concentrate on the Italian legal system in a comparative light see, for example, M. Cappelletti, J.H. Merryman, J. M. Perillo, *The Italian Legal System: An Introduction* (Stanford: Stanford University Press, 1967).

¹⁷ Through, for example, UNESCO, *Convention for the Protection of Cultural Property in the Event of Armed Conflict* (1954), available at <https://tinyurl.com/zxku84yk> (last visited 30 May 2025).

¹⁸ J.H. Merryman, A. E. Elsen and S. K. Urice, *Law, Ethics, and the Visual Arts* (Alphen aan den Rijn: Kluwer Law International, 2007).

¹⁹ As just three seminal examples, J.H. Merryman, 'The Italian Style I: Doctrine' *Stanford Law Review*, 396 (1965-1966); Id, 'The Italian Style II: Law' *Stanford Law Review*, 18 (1965-1966), 396; Id, 'The Italian Style III: Interpretation' *Stanford Law Review*, 583 (1965-1966).

information about the Italian Code of Cultural Property.²⁰ I soon learned, thanks to a period of time researching at the University of Padova, that the Italian territory had hosted a number of laws and regulations for objects of artistic, historic, and many other types of cultural interest since the 15th century.²¹ This led me to consider, as my interest in intellectual property law grew, how our cultural interests apply to the supposedly new innovations and expressions we create just as they do to the older, more historic innovations and expressions we inherit from past generations. I soon found myself intrigued by one form of expression and product, and the industry for it: fashion. And, as I followed calls for increased copyright protection for American designers in the United States,²² and some American practitioners' calls for the United States to emulate Europe and its member states,²³ I realized that culture and heritage might be a more relevant comparator than originality. Could fashion be a part of cultural heritage under the law, I asked myself? There was only one place I thought I could go to answer this question, given its rich legislative history of cultural property law and the presence of design products at the nexus of intellectual property and cultural heritage: Italy.

In libraries, archives and at my PhD institute in Lucca,²⁴ I soon discovered a wealth of scholarship in Italian that parsed the public and private, tangible and intangible, local and global dichotomies²⁵ that are at the heart of preserving and valorizing cultural heritage. Scholars like Michele Cantucci and Mario Grisolia discussed the nature of the public interest in historic and artistic objects, how this public interest can apply to so many types of different objects, whether they are in public or private hands, and the inherent collectivity and public social interest that is at the heart of our public interest in these historic and artistic objects.²⁶

²⁰ J.H. Merryman, A.E. Elsen and S.K. Urice, n 18 above, 126-127.

²¹ A. Emiliani, *Leggi, bandi e provvedimenti per la tutela dei beni artistici e culturali negli antichi Stati italiani 1571- 1869* (Bologna: il Mulino, 1996). See also L. Casini, *Ereditare il futuro: dilemmi sul patrimonio culturale* (Bologna: il Mulino, 2014).

²² S. Scafidi, 'Intellectual Property and Fashion Design', in P.K.Yu eds, *Intellectual Property and Information Wealth* (2007), 15; S. Scafidi, 'Fiat Fashion Law! The Launch of a Label – and a New Branch of Law' 8 *Navigating Fashion Law: Leading Lawyers on Exploring the Trends Cases, and Strategies of Fashion Law* (Thomson Reuters/Aspatore, 2012), 8.

²³ *ibid* 22. See also excerpts of testimony on the subject before the US Congress reprinted in G. Jimenez and B. Kolsun, 'Comparative Design Piracy Protection: U.S. and E.U.', in *Fashion Law: Cases Aand Materials* (Durham: Carolina Academic Press, 2016); C. Horn, 'Schumer Bill Seeks to Protect Fashion Design', *On the Runway: All Things Fashion, The New York Times* (5 August 2010), 10:43 PM, available at <https://tinyurl.com/yc2pmzd2> (last visited 30 May 2025).

²⁴ IMT School for Advanced Studies in Lucca, available at <https://www.imtlucca.it/en> (last visited 30 May 2025).

²⁵ Dichotomies presented best in the work of Lorenzo Casini. See, for example, L. Casini, 'Italian Hours: The Globalization of Cultural Property Law' 9 *International Journal of Constitutional Law*, 369 (2011); Id, 'The Future of (International) Cultural Heritage Law' 16(1) *International Journal of Constitutional Law*, 1–10 (2018), available at <https://doi.org/10.1093/icon/moy038> (last visited 30 May 2025).

²⁶ M. Grisolia, *La tutela delle cose d'arte* (Milan: Giuffrè, 1952), 159-167, 239-240; M. Cantucci, *La tutela delle cose d'interesse artistico o storico* (Florence: Le Monnier, 1953), 100-103.

Another Italian scholar, Massimo Severo Giannini, crystalized and expanded on this previous scholarship in his own presentation of the concepts of publicness and the fundamental intangible nature of the cultural interest that actuates our preservation of certain properties under the law.²⁷ I studied the works of contemporary scholars like Sabino Cassese²⁸ and Lorenzo Casini²⁹ who, in turn, built on Grisolia, Cantucci, Giannini, and still other scholars,³⁰ to elucidate the *why* behind a legal framework to preserve cultural property and communicate its value to future generations. As I did so, I found particularly helpful examples in Giannini's work that had significant value for fashion as cultural heritage. Giannini gathered different examples of culturally significant properties in Italy into one category to challenge his reader to think how an intangible, public cultural interest is what they all had in common:

why is it that the Palazzo Pitti, which is a state-owned public property, Palazzo della Signoria, an inalienable patrimonial property of the Municipality of Florence, and a palazzo of private property located in the same city are all cultural properties...? What is the common element between these things, which [makes them] cultural properties?³¹

And, in another section of his seminal work, *I Beni Culturali*, Giannini asks his reader to consider *why* we might, at certain times, feel the need to expand cultural heritage law, a public law regime, to objects, like intangible texts, that are now only regulated by private law regimes, like copyright:

...positive legal frameworks concern themselves only with some, with those for which practical reasons of public preservation are posedFor properties of other types, no problem of preservation can be posed (it is not necessary, for example, to preserve the Illiad or the scores of Bach), [although] problems of private or inter-private preservation may be posed (and in this we find the reason for laws on literary, artistic, and scientific property). It is obvious that on the day in which there would be posed, because of the advent

²⁷ M.S. Giannini, 'I Beni Culturali [Cultural Properties]' 3 *Rivista Trimestrale di Diritto Pubblico*, 21-22, (1973).

²⁸ S. Cassese, 'I beni culturali da Bottai a Spadolini' *Rassegna del Archivio di Stato*, 116, 137 (January–December 1975).

²⁹ As one example connected to Giannini's work, L. Casini, '“Todo es Peregrino e Raro”: Massimo Severo Giannini e i beni culturali' 3 *Rivista Trimestrale di Diritto Pubblico*, 987 (2015).

³⁰ C. Barbati et al, *Diritto del patrimonio culturale* (Bologna: il Mulino, 2017), 31-32. See also S. Pugliatti, *La proprietà nel nuovo diritto* (Milan: Giuffrè, 1954); S. Pugliatti, *Beni e cose in senso giuridico* (Milan: Giuffrè, 1962).

³¹ M.S. Giannini, n 27 above, 33 ('...com'è che sono beni culturali Palazzo Pitti, che è bene demaniale dello Stato, il Palazzo della Signoria, bene patrimoniale indisponibile del Comune di Firenze, ed il palazzo di proprietà privata che si trovi nella medesima città, e come mai le alture del Golfo della Spezia, dichiarate bellezza paesistica, comprendano insieme beni del demanio militare, beni statali e comunali del patrimonio indisponibile e beni privati? Qual è l'elemento comune fra tutte queste cose, per cui esse sono beni culturali?').

of events in our society, problems of public preservation for other types of cultural properties beyond those for which we already have a particular law, then it would be necessary [to provide for one].³²

Without reading Giannini's seminal Italian text (which has not yet been translated into English) I would not have started to think of cultural purposes that are proximate to and might inform copyright law, and other intellectual property regimes, in my own American legal system. I likely would not have sought out works by Julie Cohen,³³ Rosemary Coombe,³⁴ Rochelle Dreyfuss,³⁵ Sonia Katyal,³⁶ and still more Anglo-American scholars who were thinking of the cultural lives and cultural value of intellectual properties in copyright law and trademark law. I would not have thought about my intellectual property lectures in law school from a more expressly cultural gaze. And I would not have had an indication of how the law could identify fashion as part of cultural heritage through a multi-faceted framework that included private intellectual property rights alongside public regimes of preservation. How many more answers to their questions might other scholars find to the problems they pose if seminal Italian works of scholarship like Massimo Severo Giannini's *Beni Culturali* were translated into English? How many more innovative answers and possible solutions might we find to our research questions by looking at Italian law and its legal tradition from the outside?

IV. IMAGINING THE ITALIAN LEGAL TRADITION AS A CORNERSTONE FOR FUTURE TRANSATLANTIC DIALOGUES

My discovery of the depth of Italian cultural property law, and the doctrine³⁷ written by so many Italian scholars that enriches its interpretation, also raised more questions. At the same time as I celebrated the Italian cultural property regime and the answers it offered, training my own American gaze on it raised concerns. Was Italian cultural property law, even with its historically grounded

³² M. S. Giannini, n 27 above, 34 ('...gli ordinamenti positivi si occupino solo di alcune, di quelle cioè per le quali si pongono ragioni pratiche di tutela pubblica...Per i beni delle altre specie può non porsi alcun problema di tutela (non è necessario, p. es. tutelare l'Illiade o le Partite di J.S. Bach), oppure possono porsi problemi di tutela privata o interprivata (ed è in questo il caput delle normazioni sulla proprietà letteraria, artistica, scientifica). È chiaro che il giorno in cui si ponessero, per volgersi di eventi della nostra società, problemi di tutela pubblica di altre specie di beni culturali oltre quelle per le quali già vi è una normazione apposita, occorrerebbe provvedere').

³³ J.E. Cohen, 'Creativity and Culture in Copyright Theory' 40 *Davis Law Review*, 1151 (2007).

³⁴ R.J. Coombe, *The Cultural Life of Intellectual Properties: Authorship, Appropriation, and the Law* (Durham: Duke University Press, 1998).

³⁵ R.C. Dreyfuss, 'Expressive Genericity: Trademarks as Language in the Pepsi Generation' 65 *Notre Dame Law Review*, 397 (1990), available at <https://tinyurl.com/2bdhjjaac> (last visited 30 May 2025).

³⁶ K.A. Carpenter et al, 'In Defense of Property' 118(6) *Yale Law Journal*, 1022 (2009).

³⁷ J.H. Merryman, 'The Italian Style I' n 19 above.

clauses and intricate balancing of interests, too preservationist?³⁸ Was there a moment when the freer exchange of cultural information, the comparatively lesser regulated cultural dialogue in the United States, might well be needed in Italy?

These questions, which I first asked theoretically as an American lawyer and PhD student in Italy, soon moved from an ivory tower of academia to a more practical, litigious sphere which I saw play out from afar.³⁹ Shortly after I returned to the United States and the coronavirus pandemic began, questions of the legality of using images of Italian cultural properties became more pressing as so much of our world went online. While Italian museums, thanks to an extensive museum reform,⁴⁰ had already begun to take control of the intangible rights in their names,⁴¹ control over intangible rights to the images of their cultural properties was less evident. As soon as Italian museums started using parts of the Italian Code⁴² to halt commercial uses of images of cultural properties, like the Vitruvian Man from one of da Vinci's notebooks, American practitioners and scholars⁴³ (and even Italian practitioners and scholars)⁴⁴ had questions. How could a cultural property right give rise to the right to the *image* of a cultural property,⁴⁵ that

³⁸ Some Italian scholars and cultural heritage professionals were asking this too. See, for example, protests made by the antique dealer and *Segretario Generale della Biennale Internazionale dell'Antiquariato di Firenze*, Fabrizio Moretti, at the symposium *Esportazione dei Beni Culturali: Italia, Regno Unito, Stati Uniti, Olanda, Germania a Confronto* on March 28, 2017 in the *Salone dei Cinquecento* in Palazzo Vecchio organized by Moretti to coincide with and as part of activities surrounding the first G7 Meeting on Culture. For a more nuanced view of how to treat Italian cultural property as a type of property between a completely alienable and frozen, untouchable asset see S. Settis, *Italia S.p.A.* (Turin: Einaudi, 2007).

³⁹ For example, when Italy protested an Illinois rifle company's use of an image of the David for an advertising campaign in which a rifle was superimposed on the Renaissance cultural property. See L. Casini, 'Noli me tangere: I beni culturali tra materialità e immaterialità [‘No one touch me’: Cultural Properties Between Tangibility and Intangibility]' 1 *Aedon – Arte e Diritto Online* (2014), available at <https://tinyurl.com/2pnjjzjh> (last visited 30 May 2025). See also G. Rau, 'Il David Testimonial di un Fucile, il Fotomontaggio Scatenò la Polemica' *La Repubblica – Firenze* (7 March 2014), available at <https://tinyurl.com/bdnkpswc> (last visited 30 May 2025).

⁴⁰ L. Casini, 'The Long and Winding Road to the Establishment of State-Museums in Italy' 33(6) *Museum Management And Curatorship*, 546–554 (2018), available at <https://tinyurl.com/388w7hmv> (last visited 30 May 2025) (for an explanation of the Italian museum reform).

⁴¹ See also F. Caponigri, 'Cultural Heritage Law Between Truth and Power: Law's Evolution and Our Collective Cultural Interest in an Informational Economy' 96 *Notre Dame Law Review Reflection*, 163, 174–175 (2021), available at <https://tinyurl.com/2pryrdjf> (last visited 30 May 2025) (exploring *BoxNic Anstalt v Gallerie degli Uffizi*, No. CV-18-1263, 2020 WL 570945 (D. Ariz. Feb. 5, 2020)).

⁴² Decreto Legislativo 22 gennaio 2004 no 42, Arts 107 and 108.

⁴³ C. Barry, 'A fight to protect the dignity of Michelangelo's David raises questions about freedom of expression' AP News (28 March 2024), available at <https://tinyurl.com/2aev9mvp> (last visited 30 May 2025).

⁴⁴ D. Manacorda, 'Prof. Manacorda: “Sentenza sul David è grottesca. Stop a divieto di usare immagini del patrimonio culturale pubblico”' *Archeoreporter* (30 September 2022), available at <https://tinyurl.com/bddzdvwu>; G. Dore, 'The puzzled tie of copyright, cultural heritage and public domain in Italian law: is the Vitruvian Man taking on unbalanced proportions?' *Kluwer Copyright Blog* (6 April 2023), available at <https://tinyurl.com/ms2fc2jv> (last visited 30 May 2025).

⁴⁵ Tribunale di Firenze 20 April 2023 no 1207.

seemed to be a mutant copyright? How could cultural property law infringe on the vast (and quasi-sacred) public domain?

These questions, and the need to explain Italian cultural property law to an audience of American expatriates who continue to buy houses and land that could themselves be cultural properties and protected landscapes,⁴⁶ has resulted in at least a few conferences and summer programs between Florence and Lucca that have united American and Italian scholars to explore the differences and commonalities between the Italian and American legal traditions' approach to cultural heritage.⁴⁷ Individual podcasts devoted to Art Law are also hosting interdisciplinary conversations about images of cultural property that highlight the Italian legal tradition to a non-legal audience abroad.⁴⁸ Thanks to just one area of Italian law – cultural property law – scholars and practitioners are continuing traditional conversations about the repatriation of cultural property to Italy⁴⁹ while opening new avenues of inquiry into the very justifications for those repatriations. As new technologies, including AI,⁵⁰ continue to make Italian cultural heritage more visible and more shareable, and as museums and brands collaborate to create *Made in Italy* products that blur the boundaries of commercial and cultural uses⁵¹ and challenge prevailing notions of authenticity, the Italian legal tradition can become a cornerstone of future legal discussions. With its myriad of sources, from the Code to legal cases and rich tradition of doctrine and scholarship, Italian law and its sources offer rich analysis and reasoning that is still to be fully appreciated outside of Italy. Interacting with Italian legal thought and culture has already opened new ways for me to think about fashion as part of cultural heritage, and a path to more fully consider culture's role within American intellectual property law. How many more transatlantic dialogues might begin from presenting Italian law to a foreign audience, by looking at Italian law from the outside?

⁴⁶ The premise of the Soprintendenza of Florence's interest in supporting the conference *The Italian Law of cultural heritage: A dialogue with the United States* in Florence on 17-18 June 2022.

⁴⁷ For the memorialization of two senior scholars' thoughts on this theme see C. J. Sprigman, 'The Jeffersonian Model of U.S. Cultural Property Law' and M. Graziadei, 'Cultural Property Law: Notes on How to Conduct Transatlantic Dialogues' *The Italian Law Of Cultural Heritage: A Dialogue With The United States*, Florence, June 2022 (published conference proceedings 2024).

⁴⁸ 'Italy's Expansive Control Over Cultural Heritage' *The Art Law Podcast* (3 June 2024), available at <https://tinyurl.com/yy363x6e>.

⁴⁹ See, for example, the work of L. Aminedolleh, 'The Getty Museum's Non-Victorious Bid to Keep the "Victorious Youth" Bronze' III(1) *Art & Cultural Heritage Law Newsletter* (2011), available at <https://ssrn.com/abstract=2370742> (last visited 30 May 2025).

⁵⁰ Many Italian scholars with a track record of comparative work are now focusing on AI. See, for example, A. Simoncini and E. Longo, 'Fundamental Rights and the Rule of Law in the Algorithmic Society', in H.-W. Micklitz et al eds, *Constitutional Challenges in the Algorithmic Society* (Cambridge: Cambridge University Press, 2021), 27-41.

⁵¹ See, as just one example, Ferragamo's New Renaissance Campaign which used images of Italian cultural properties with permission from the Uffizi. Press Release, *Ferragamo*, available at <https://tinyurl.com/yvwpvy2> (last visited 30 May 2025).

V. CONCLUSION

In this brief reflection, I've had the opportunity, thanks to the 10th anniversary of the Italian Law Journal, to reflect on the role that the Italian legal tradition has had in my own personal journey as a junior scholar, as a traveler with so many Italian hours and American days logged in her diary. The inescapability of the Italian cultural tradition in legal education, the comparative value of Italian legal sources for legal issues at a frontier of cultural heritage, and the beginning of transatlantic dialogues with the Italian legal tradition as a cornerstone are the three main aspects of this journey. As Henry James wrote in *Portrait of a Lady*, 'Italy, as yet imperfectly seen and felt, stretched out before her as a land of promise, a land in which a love of the beautiful might be comforted by endless knowledge'. Perhaps this will continue to be so, or perhaps I will continue my academic journey without such an express use of the Italian legal tradition. In any event, my formation in Italy and the inspiration I draw from Italian culture and the Italian legal tradition will always remain with me, as I hope it does for so many other scholars who have had the privilege of looking at the inside of the Italian legal tradition and culture from an outsider's point of view.