

The Right to Enjoy Cultural Assets



José Luís Bonifácio Ramos

Faculty of law, Lisbon, Portugal

ABSTRACT: The right to cultural enjoyment holds great importance within the framework of open, plural and democratic societies. As is generally agreed, even though the state not only guarantees but also encourages access to cultural goods and cultural heritage, it is not positioned to condition this enjoyment through adopting aesthetic, philosophical or ideological guidelines. Such has often been ignored in the past, especially during the Classical and Enlightenment periods as well as blatantly under the dictatorships that prevailed in parts of the 20th century, for example the National Socialist labelling of degenerate art. However, should democracy, even cultural democratization, prevent the conditioning of any aesthetic, philosophical or ideological nature, it is no less true that the right to cultural enjoyment, protected by public policies, is never limited to guaranteeing access to cultural heritage. It implies providing and raising the conditions for better and more appropriate cultural enjoyment. Furthermore, there is a dynamic aspect to the aforementioned cultural valorization that fosters interventions aimed at qualifying and avoiding degradation as well as those dimensions designed to involve civil society, for example patronage, cooperation and exchange.

KEYWORDS: Cultural Assets; Cultural Enjoyment; Beauty and Taste; Degenerate Art; Cultural Democratisation; Cultural Dirigisme; Patronage; Cultural Exchange; Cultural Management

1 GENERAL CONSIDERATIONS

Our aim here involves studying the right to cultural enjoyment not from any strict constitutional law or civil law perspective but rather from a broader, multi-disciplinary stance that enables us to ascertain the actual content of this very important cultural right. This right has become densified through historical evolution and, quite naturally, underpinned by contributions from comparative law. In accordance, and furthermore noting the growing importance of Cultural Law, Cultural Heritage Law and Cultural Goods Law, we seek to deepen the study of the content and potential of certain cultural rights. In particular, it is time to analyse those rights that shall, in all likelihood, assume still greater importance and weighting in contemporary society.

Particularly when engaging with the incessant debate, almost controversy, around cultural democracy, and especially within the scope of cultural democratisation, the right to cultural enjoyment stands out as a cultural right structuring open, pluralistic and democratic societies. Expressed otherwise, should culture represent part of an individual's social formation¹, cultural heritage and cultural assets become important above all as places of memory. Logically, this reflects in the priority of safeguarding the right to enjoyment, guaranteeing access and making the most of heritage and cultural goods both for individuals and for contemporary democratic society.

While cultural rights themselves enable an assessment of the relationship between the individual and the state², without overlooking the significant contribution made by supranational entities³, the right to cultural enjoyment takes on a fundamental mission. Thus, without ever ignoring the importance of the Right to Culture and the State of Culture⁴, the Right to Culture requires careful analysis. In other words, recognising the close link between the objective and the subjective protection of cultural rights necessarily requires deepening this recognition, particularly as regards the latter aspect. This spans both the perspective of culture as a fundamental right and the strict subjective right point of view whether approached from the position of a public subjective right⁵

¹ Cf. Hans-Georg Gadamer, *Hermeneutik: Wahrheit und Methode*, Vol. II, 2nd ed., Tübingen, 1993, trad. Port., pp. 16 et seq..

² Cf. Raymond Guess, *Public Goods, Private Goods*, New York, 2003, pp. 17 et seq..

³ Peter Häberle, "La Cultura Giuridica Europea" in *La Costituzione Europea: Tra Cultura e Mercato*, Turin, 1997, pp. 20 et seq..

⁴ Cf. Martin Wyss, *Kultur al seine Dimension der Völkerrechtsordnung*, Zurich, 1993, pp. 20 et seq..

⁵ Cf. Wilhelm Henke, "Das subjektive Recht im System des öffentlichen Rechts" in *Die öffentliche Verwaltung*, no. 17, 1980, pp. 661-2.

The Right to Enjoy Cultural Assets

or as a private subjective right⁶. Indeed, we believe we have on another occasion demonstrated how the dichotomous distance between public subjective law and private subjective law is narrowing sharply given the decline in this confrontation over a dichotomy that ends up as somewhat immobilising, traditional and without any relevant dogmatic or axiological value⁷.

In keeping with the literature dedicated to public policies and cultural rights, we correspondingly highlight the particular importance of one cultural right: the right to cultural enjoyment. Within this perspective, Vasco Pereira da Silva attaches extreme importance to the right to cultural enjoyment, integrating this into his restricted group of fundamental subjective rights⁸. Therefore, should dirigiste cultural enjoyment be conditioned by values of a political, ideological and aesthetic nature under dictatorships or absolutist monarchies, we need to carefully appreciate and consider the challenges, and also the constraints, faced by the right to cultural enjoyment in 21st century societies, especially when dealing with democratic, open, plural and participatory societies.

However, we should also define and delimit this subject as the right to cultural enjoyment, in all its antecedents, historical evolution and across multiple aspects and even more changes, spans extremely vast ground. Firstly, we would like to point out the duality of enjoyment. In other words, there is the enjoyment of the author of works of art and there is their enjoyment by third parties, the public that views, appreciates and values the heritage, the particular cultural asset. For our part, we shall only study their fruition by third parties, the public, within a given community. We would furthermore emphasise the contrast between cultural enjoyment in a dirigiste society, such as a dictatorship or absolutist monarchy, and enjoyment in a free, democratic society. In short, we will survey how aesthetic and ideological currents have guided and conditioned cultural enjoyment across its multifaceted and almost kaleidoscopic contents. Furthermore, while cultural democratisation has not completely eliminated the cultivation of taste by the political powers, it is important to appreciate cultural practices, cultural consumption as well as the policies designed to endow greater dynamism on the enjoyment and usage of cultural assets.

2 ASPECTS OF CULTURAL ENJOYMENT

Cultural enjoyment is neither a single nor a monolithic experience but rather displays different levels and facets. Therefore, we have to distinguish among these in order to deepen the enjoyment we wish to study in detail. In other words, that is the enjoyment both of the individual and of the general public when visiting museums and encountering exhibitions or public art in the streets of cities and places displaying memory and culture. Furthermore, should the term fruition correspond to the idea of taking advantage, enjoyment or pleasure from something, from an asset⁹, it is correspondingly understandable that the benefit, enjoyment or fruition is diverse and multifaceted. Logically, with regard to cultural assets, the term *cultural enjoyment* also does not display any sense of unity. Indeed, in addition to the plurality of objects, there is also the diversity of subjects providing such enjoyment in addition to the duality of perspectives and valences.

Thus, in terms of subjects, from a publicist perspective, cultural enjoyment may be perceived as a legal and material activity through which the public administration provides access to and usage of cultural assets¹⁰. As regards the duality, it is necessarily important to point out the obvious and unavoidable differences between the levels of enjoyment of artists, the creators, and the levels of the third party, the public who appreciates cultural assets in a museum, gallery or along the public highway. In fact, the enjoyment of artists, the creators, differs radically from the enjoyment of third parties, the public whether visiting museums and exhibitions or encountering public art or visiting sites of memory.

As regards the duality of levels of enjoyment, we must emphasise the level, the dimension in which artists, their creators, contemplate and enjoy their works. This level, interlinked with their artistic projects, their works of art, cultural assets, takes on various specific characteristics with certain aspects duly protected by copyright law¹¹. Logically, when creatives and artists enjoy their works, third parties, individuals within open and culturally motivated societies, are also able to do so. However, the enjoyment of artists remains qualitatively different to the enjoyment of third parties and the general public¹². This thereby confirms the existence of two levels: on the one hand, the freedom of creators¹³ and the cultural enjoyment of artists and, on the other hand, the enjoyment of third parties who appreciate the respective artistic object, the cultural asset.

⁶ Cf. Fritz Fleiner, *Institutionen des deutschen Verwaltungsrecht*, Tübingen, 1913, pp 37 et seq..

⁷ Cf. JL Bonifácio Ramos, *Direitos Reais Administrativos: Ficção ou Realidade?*, Lisbon, 2019, pp. 310 et seq.

⁸ According to Vasco Pereira da Silva, the types of fundamental subjective rights are the following: the right to cultural creation, the right to cultural enjoyment, the right to participate in cultural policies, the right of authorship and the right to enjoy cultural heritage. Hence, this author distinguishes the right to cultural enjoyment, fundamentally, as a right of access to culture and the right to enjoy cultural heritage and therefore as a special right aimed at enabling the right to action in order to protect the defence of cultural heritage linked interests. Cf. *A Cultura a que Tenho Direito*, Coimbra, 2007, pp. 70 et seq..

⁹ Cf. *Dicionário da Língua Portuguesa Contemporânea*, Vol. I, Lisbon, 2001, p. 1826.

¹⁰ Cf. Antonella Perini, "Fruizione dei Beni Culturali" in *Codice dei Beni Culturali e del Paesaggio*, Milan, 2012, p. 797.

¹¹ Cf. Haimo Schack, *Kunst und Recht*, 3rd ed., Tübingen, pp. 235 et seq..

¹² Cf. Erik Jayme, *Kunstrecht und Kunstgeschichte*, Cologne, 2017, pp. 15 et seq..

¹³ On creativity and artistic freedom, John Merryman and Albert Elsen, *Law, Ethics and the Visual Arts*, 3rd ed., London, 1998, pp. 412 et seq..

The Right to Enjoy Cultural Assets

In brief, even if we were to accept that third parties are able to adhere to the work, the creator's artistic project¹⁴, this neither accounts for the most common situation nor includes the different ways in which the public consumes and enjoys works of art and cultural assets. Indeed, as Lipovetsky argues, modernity has brought liberation from various canons and impositions, especially ideological, religious, ethical and aesthetic dictates¹⁵. Consequently, the ideas of creators, of artists, even when effectively conveyed to spectators, to the public, are not necessarily either followed or adopted and frequently not even perceived by the third party, the viewing public. Whether this arises due to the difficulties, almost the impossibility of placing themselves at the artist's level or simply due to how the freedom of third parties, the general public, demands distance, in both social and generational terms. Thus, interpretations, translations, within the framework of individual freedom, compatible with the diversity of subjectivity, become natural, healthy and understandable.

Thus, while there are certainly aspects interrelating with the enjoyment of creators, of artists, specifically of an authorial nature, we will here only deal with the enjoyment of third parties, that is, the enjoyment of the general public. As we can grasp, this raises particular difficulties, especially due to the plurality of the subjects, the diversity of subjective assessments and even, to a certain extent, the attempt to standardise different levels of appreciation. In this regard, let us recall the controversy around appreciations of objects as works of art whether in terms of issues raised by the public or by administrative and state bodies. A landmark case arises with Marcel Duchamp's urinal, which he called the fountain, sent to an exhibition of independent artists in New York in 1917¹⁶.

There was also the case of the work of Brancusi, a Paris based Romanian sculptor, which was exported with the objective of appearing in exhibitions in New York and Chicago in 1926. However, while the American rules allowed for the import of works of art without the corresponding payment of taxes¹⁷, customs refused entry to this work because they deemed it failed to qualify as a work of art. Instead, the customs authorities categorised it as something equivalent to a kitchen utensil, hence a manufactured product for which a customs fee had to be paid. The importer, Edward Steichen, lodged a complaint but the customs authorities, based on a previous court judgement that had defined what classed as a sculpture¹⁸, then confirmed the decision. Subsequently, after having paid the sum of 229.35 dollars, Brancusi took legal action against the New York State Customs Authorities in order to recover this sum. He declared not only that he was a sculptor and that the piece, entitled *Bird in Space*, was original but also that he had sculpted it in its entirety¹⁹. Furthermore, as regards the real versus abstract dichotomy, Brancusi warned of the absence of models, of the ending of hitherto predominant aesthetic and artistic currents²⁰. As a result, the judge-rapporteur became of the opinion that the previous criteria for determining whether an object could be categorised as a work of art were no longer appropriate. Therefore, the concept of sculpture could not be restricted to the imitation of natural objects and, furthermore, avant-garde ideas of an abstract nature had to be accepted and recognised by official bodies²¹. In brief, the court ruled that Brancusi's work was original, carried out by a professional sculptor and thus subject neither to any taxation nor any customs charge.

3. BETWEEN BEAUTY, TASTE AND CULTURAL DIRIGISME

In terms of the public, third parties who visualise and contemplate works of art and cultural assets, it is important to recall the facets conditioning the freedom and plurality of enjoyment. To achieve this, we need to step back in time and revisit, albeit briefly, the enjoyment of society when conditioned by strict aesthetic and ideological choices. In particular, the search for and cultivation of taste, a unitary and official taste as stipulated by dirigiste regimes, in particular, the classical civilisations, absolutist monarchies as well as contemporary autocracies such as national socialism or Chinese centralism.

In fact, due to the assertion of power involved, whether wielded by a single person or a ruling elite, the search for beauty and taste has taken on an impressive level of importance throughout human history not only because of issues of a philosophical, ethical and aesthetic nature but also in keeping with politically conditioning societies seeking to assert their identities. This was especially evident in classical times and throughout Greek and Roman societies. Indeed, the respective regime for deploying

¹⁴ Idalina Sardinha posits how third-party viewers can adhere to works of art, to artistic projects created by artists or aesthetic producers. If they do so, they should be able to interpret the deep structures of the work. If they cannot, or if the project remains foreign to them, they then become part of a wider group, the public. Cf. *A Fruição da Arte, Hoje*, Lisbon, 2007, p. 1.

¹⁵ Cf. Gilles Lipovetsky, *A Era do Vazio*, Lisbon, 1988, pp. 21 et seq..

¹⁶ As Martin Grossmann highlights, the piece was nothing but a urinal, acquired from the store of the Mott Iron Works plumbers. Indeed, on his return to his study, Marcel Duchamp turned the piece over by 90 degrees and signed the following: R. Mutt, 1917. Cf. "Dilação em Duchamp" in *Revista de Semiótica*, 1994, pp. 12 et seq..

¹⁷ Cf. Margit Rowell, *Brancusi contre États Unis, Un Procès Historique*, 128, Paris, 2003, p. 5.

¹⁸ Cf. *United States v. Olivotti and Company*, US Court of Customs Appeals, 1916.

¹⁹ Cf. Thomas Hartshorne, "Modernism on Trial: C. Brancusi v. United States (1928)" in *Journal of American Studies*, Vol. 20, no. 1, 1986, pp. 97-8.

²⁰ Cf. Thomas Hartshorne, "Modernism on Trial..." in op. cit., pp. 100-1.

²¹ Cf. Thomas Hartshorne, "Modernism on Trial..." in op. cit., pp. 102 et seq..

The Right to Enjoy Cultural Assets

historical, archaeological and cultural assets highlighted the affirmation of a political, economic and aesthetic ideology²². Furthermore, in subsequent eras, the affirmation or at least the search for an aesthetic ideology commonly emerged particularly as regards the idea of beauty or the predominant taste. We need only consider the Enlightenment period, a philosophical and aesthetic, but not strictly ideological, movement. In actual fact, while the Enlightenment may be characterised by the centrality of reason, it did not fail to question and reflect on the dominant aesthetic tendencies interlinked with taste and beauty.

In the Encyclopaedia, a very important Enlightenment era publication, first published between 1751 and 1772, we come across impressive reasoning set out in order to identify the world, man and society, and, accordingly, approaching questions of an aesthetic nature as regards taste and beauty. Thus, according to d'Alembert, taste oscillates between and dialogues with sentiment and reason²³. Therefore, as there is no unity, but rather differing levels, this emphasises the dimension of the object, of human understanding and the consequent transmission to others²⁴. Nevertheless, according to d'Alembert's writings, there remained a dominant taste, a first order, comprehensible by all, and another, of a second order, which needed education and aimed at the progression of society²⁵. In a similar vein, Montesquieu highlighted the tension between subjective taste and standardised, objective taste²⁶, representing a guideline, a generic aesthetic rule²⁷. Furthermore, this latter aspect was expounded upon in another work in which Montesquieu sought to demonstrate that works of art were subject to rules and taste stemmed from reason even though the rules were not fully known and taste was subject to shaping by emotional, historical or cultural circumstances²⁸.

The attempts to render beauty and taste explicit, or at least to distinguish good taste from bad taste, was certainly not confined to the Enlightenment and persisted throughout the following centuries. In fact, in the 19th century, beauty was particularly theorised as contrasting with the ugly. This becomes clear in Weisse's work where the ugly takes on a real counterpoint to establish an inverse of the beautiful²⁹. Thus, in the absence of the beautiful, we get the ugly³⁰, taking the place of the inverted beautiful³¹. Furthermore, these reflections began opening up the scope for densifying the aesthetics of the ugly. Rosenzkranz then took this on by defending the ugly not only as the negative of the beautiful but also, and above all, by recognising how the artistic movement of his time appreciated the horrible and the grotesque³². Thus, as Rosenzkranz noted, when the ugly emerges as an unavoidable reality, its display requires acceptance with great openness and total receptivity³³.

More recently, Paul Valéry made a notable contribution to the problematic of beauty at a conference in Paris in 1937 when defending the need to separate beauty from beautiful things³⁴. Accordingly, on the one hand there would be aesthetic metaphysics, on the other hand, the works themselves, the objects susceptible to appreciation by the public, by individuals, in more or less evaluative ways³⁵. In short, any idea of constructing a Science of Beauty, with generic and abstract rules, would always be doomed to failure as there was no unity with each individual able to enjoy the work differently and with their sensibilities potentially adding a multitude of changes³⁶.

Beyond the sheer diversity in the beauty of objects, as well as the plurality of tastes, the identification of the ugly, the horrible, follows a somewhat symmetrical path. In addition, another current emerges that calls for a paradigm shift, beyond the dichotomy between the beautiful and the ugly. In fact, the kitsch movement seeks to minimise the quality of an object, not according to its aesthetic value but rather due to its usefulness, despite being mass-produced and without artistic value. In this regard, let us recall how Benjamin contrasted art and technique and therefore alienated beauty from kitsch, with the latter characterised as a mass-

²² On this issue, Ignacio González-Varas highlights the importance of the aesthetic and artistic facets in the affirmation of a particular civilisation, which emerges from studying Greek and Roman cultural assets discovered in successive archaeological campaigns. Cf. *Conservación de Bienes Culturales*, Madrid, 1999, pp. 24 et seq..

²³ Cf. J.d'Alembert, *Encyclopedie ou Dictionnaire Raisonné des Sciences, des Arts et des Métiers*, Vol VII, Paris, 1768, p. 768

²⁴ In this regard, Martine Groult distinguishes between the dimension of the object, intelligibility and alterability. Cf. "Le Plaisir, Principe du Goût dans la Métapysique de D' Alembert", in *Dix-Huitième Siècle*, no. 35, 2003, p. 442.

²⁵ Cf. J.d'Alembert, *Encyclopedie...op. cit.*, p. 768,

²⁶ Cf. Charles Montesquieu, *Encyclopedie...op. cit.*, Vol. VII, p. 764.

²⁷ In this regard, Downing Thomas, "Negotiating Taste in Montesquieu" in *Eighteen-Century Studies*, Vol. 39, 2005, pp. 73-4.

²⁸ Cf. Charles Montesquieu, *Essai sur le Goût*, Paris, 1757, pp. 69 et seq..

²⁹ Cf. Christian Weisse, *System der Aesthetik als Wissenschaft von der Idee der Schönheit*, Leopzig, 1830, pp. 175 et seq..

³⁰ Cf. Christian Weisse, *System...op. cit.*, pp. 177-8.

³¹ Cf. Christian Weisse, *System...op. cit.*, pp. 178-9.

³² Cf. Karl Rozenkranz, *Ästhetik des Hässlichen*, Königsberg, 1853, p. 42.

³³ Cf. Karl Rozenkranz, *Ästhetik...op. cit.*, p. 43.

³⁴ Cf. Paul Valéry, *Discours sur l' Esthétique*, Québec, 2002, Paris, p. 9.

³⁵ Cf. Paul Valéry, *Discours sur l' Esthétique...op. cit.*, pp. 9-10.

³⁶ Cf. Paul Valéry, *Discours sur l' Esthétique...op. cit.*, p. 10.

The Right to Enjoy Cultural Assets

produced object, in series, without any intellectual elaboration, respect or intimacy³⁷. From another angle, Greenberg proclaimed the irreconcilability of modern art and kitsch³⁸, recalling the application of kitsch in Stalinism, Italian fascism and even German National Socialism³⁹.

Regarding the aesthetic directives issued in dictatorial environments, we may mention the improper artistic assets, the so-called *degenerate art* (*entartete Kunst*) of the Nazi period⁴⁰. In the field, any assets classified as degenerate art were compulsorily removed from museum collections and confiscated from their owners⁴¹. Such confiscation took on great significance after the degenerate art exhibition held in Munich in 1937, staged to publicise the negative aspects of modern art in contrast to German artistic values⁴². These values, these aesthetic directives, were enshrined in a new legal regime, designed to legitimise the previous loss of ownership of goods now classified as degenerate art⁴³.

In turn, the People's Republic of China has over the years recorded various incidents aimed at restricting artistic tastes and freedoms. Indeed, in addition to reports of arrests and the detention of famous artists such as Ai Weiwei, according to the international organisation Freemuse, dedicated to defending the freedom of artists, 15 artists were arrested in 2014 alone in reprisal for the content of their work⁴⁴. In addition, and more recently, Li Xianting, an important art curator, criticised the enormous political pressures placed on artistic creative processes and on the dynamics of the art market⁴⁵.

4. DEMOCRACY AND CULTURAL DEMOCRATISATION

Continuing with the public, there is the need to appreciate cultural enjoyment in the context of open, plural and democratic societies. This becomes especially the case as the consolidation of democracy has contributed to the recognition of cultural rights and freedoms. What is more, as Jorge Miranda states, as regards the Portuguese legal framework, national citizens enjoy freedom of cultural creation, freedom to disseminate cultural works, freedom of cultural initiation, freedom of cultural association and foundation, freedom of cultural economic initiative and freedom of cultural enjoyment⁴⁶. The latter, freedom of cultural enjoyment, involves freedom of access to cultural assets, whether they are the means and instruments of cultural action (literature, music, theatre, cinema, etcetera) or cultural heritage and cultural assets⁴⁷.

Under democratic regimes, freedoms cannot condition cultural rights, particularly the right to cultural enjoyment; neither by reference to aesthetic choices nor by adopting, even implicitly, any policy stipulating preferences in taste. In fact, in the Portuguese case, this issue gains constitutional consecration. Article 43(2) of the Portuguese Constitution states that the state cannot program culture according to any philosophical, aesthetic, political, ideological or religious guidelines. Article 73(3) also stipulates that the state shall promote the democratisation of culture, encouraging and ensuring access for all citizens to cultural enjoyment in collaboration with the media, cultural associations and foundations, cultural and recreational groups and other cultural actors. On another level, the Framework Law for Museums affirms the museum as a permanent institution, designed to encourage regular public access, the democratisation of culture, the promotion of the individual and the development of society⁴⁸.

Accordingly, as public policy, on the one hand, we have cultural democratisation and, on the other hand, a refusal to proclaim, however indirectly, any official standard of taste. Consequently, there comes the neutrality that has coexisted with conceptual and aesthetic fluidity. The former boundaries and dichotomies have therefore lost their meaning. In particular, the rejection of ugly or kitsch with exhibitions and museums displaying artefacts from the consumer society, as is the case with Andy

³⁷ Cf. Walter Benjamin, "Dream Kitsch" in *The Work of Art in the Age of its Technological Reproducibility and Other Writings on Media*, London, 2008, pp. 236 et seq..

³⁸ Cf. Clement Greenberg, "Avant-Garde and Kitsch" in *Art and Culture: Critical Essays*, Boston, 1961, pp. 10 et seq..

³⁹ Cf. Clement Greenberg, "Avant-Garde and Kitsch" in op. cit., pp. 19 et seq..

⁴⁰ Cf. Ariela Freedman, "Charlotte Salomon, Degenerate Art, and Modernism as Resistance" in *Journal of Modern Literature*, Vol. 41, no. 1, pp. 5 et seq..

⁴¹ After Hitler ordered museums to declare whether they had any works representing degenerate art, hundreds of cultural objects were confiscated in July of the same year, especially from leading museums in Hamburg, Düsseldorf and Hanover. Some of these works were owned by individuals who had lent them to the museums. About this, Erik Jayme, "*Entartete Kunst*" und *Internationales Privatrecht*, Heidelberg, 1994, pp. 7 et seq..

⁴² On Adolf Ziegler's very important contribution to the preparation of the degenerate art exhibition and, after that, another event, *Der neue Mensch*, on the values of German national socialism, Claartje Wesselink, "On The New Man: The Interpretation and Function of a National Socialist Painting in the Past and in the Present" in *The Rijksmuseum Bulletin*, Vol. 60, no. 2, 2012, pp. 150 et seq..

⁴³ Cf. The Law for the Confiscation of Degenerate Works of Art (*Gesetz über Einziehung von Erzeugnissen entarteter Kunst*) of 31 May 1938.

⁴⁴ Cf. "O Pensamento Chinês Contemporâneo" in www.politize.com.br

⁴⁵ Cf. www.pontofinalmacau.wordpress.com.

⁴⁶ Cf. Jorge Miranda, *Notas Sobre Cultura, Constituição e Direitos Culturais*, Coimbra, 2006, pp. 41-2.

⁴⁷ Cf. Jorge Miranda, *Notas Sobre Cultura*...op. cit., p. 41.

⁴⁸ Cf. Article 3(1) of Law no.47/2004 of 19 August.

The Right to Enjoy Cultural Assets

Warhol's pop art, such as soap packaging, soup and soft drink cans, in addition to the works of Koons and Hirst, for example. In this way, kitsch crossed barriers, overcame obstacles and even gained recognition and prestige. As Calinescu duly noted, relativism has bestowed great centrality on individual contentment, fluidity and even the cultural variability of the masses in contrast to any unitary taste or aesthetic dirigisme⁴⁹.

On the other hand, the right to cultural enjoyment clearly does not end with access to cultural assets, however broad, anodyne, undifferentiated and uninformed they might be. Promoting the democratisation of culture requires building a cultural democracy. Within this scope, it is important to safeguard against an erudite culture and rather nurture an inclusive culture that enables critical and aesthetic awareness, recognises various cultures and understands citizens not simply as consumers but rather as cultural subjects⁵⁰. Bourdieu's reflections stand out in this regard, especially when describing how access to artistic works and historical assets is, after all, a privilege of the educated class⁵¹. Accordingly, should we render museums accessible and remove any major economic obstacles, it would be interesting to analyse the real opportunity to enjoy such assets as opposed to some theoretical or pure possibility⁵². In his opinion, we would still be facing inequality even while its basis would not be of an economic or financial nature but rather deriving from a different kind of obstacle⁵³. Hence, inequalities in access would still prevail, not exactly in terms of ticket prices but instead in terms of the inequalities in learning and the different educational trajectories which produce the marked cultural asymmetries that characterise modern societies⁵⁴. Accordingly, as Bourdieu emphasises, access to such cultural treasures was simultaneously open to all but also forbidden to the vast majority⁵⁵. He therefore defends the need to invert the status quo, particularly stressing the importance of museums displaying framing texts and captions alongside works of art⁵⁶. Meanwhile, after analysing the variety of cultural practices of the various social groups, he concludes that lifestyles and tastes are shaped by the trajectories each individual experiences⁵⁷. Logically, these remedies, as well as their underlying reflections, minimised the differences and enabled a rethinking of the key facets to cultural democratisation.

Despite the immense impact of Bourdieu's ideas, the controversy over the democratisation of culture persisted and especially as regards the right to cultural enjoyment. In this regard, Crane criticises Bourdieu for considering a culture legitimate before warning of the difficulties in ascertaining homologies between the tastes, choices and identities belonging to certain classes⁵⁸. Within the same framework, Lahire also emphasises the importance of the plurality of the groups, institutions and other influences that each individual undergoes, whether simultaneously or successively⁵⁹. Hence the need to dispel the somewhat simplistic image that individuals are only motivated by individual taste and heterogeneous, contradictory and competing cultural profiles⁶⁰. In this regard, this author recalls the influence of radio and television in terms of accessing cultural products that do not require careful choice⁶¹. Thus, although while claiming to be a disciple of Bourdieu, Lahire disagrees with any single scale, unitary markets or dominant classes and even with any supposed cultural legitimacy⁶². Similarly, Hanquinet points to the coexistence, in any given cultural space and particularly museums, of multiple trajectories among the different visitors and cultural users with varying eclectic and plural practices⁶³. In addition, in a retrospective on Argentine cultural policy, Escribal emphasises the importance of the shared competences of a federal state and the relative importance of cultural management⁶⁴.

⁴⁹ Cf. Matei Calinescu, *Five Faces of Modernity: Modernism Avant-Garde Decadence Kitsch Postmodernism*, Durham, 1987, pp. 255 et seq..

⁵⁰ Cf. Philippe Urfalino, *L'Invention de la Politique Culturelle*, Paris, 2010, pp. 13 et seq..

⁵¹ Cf. Pierre Bourdieu, Alain Darbel, *L'Amour de l'Art...* op. cit., p. 67.

⁵² Cf. Pierre Bourdieu, Alain Darbel, *L'Amour de l'Art...* op. cit., p. 67.

⁵³ Cf. Pierre Bourdieu, Alain Darbel, *L'Amour de l'Art...* op. cit., pp. 68 et seq..

⁵⁴ Cf. Pierre Bourdieu, Alain Darbel, *L'Amour de l'Art...* op. cit., pp. 73 et seq..

⁵⁵ Cf. Pierre Bourdieu, Alain Darbel, *L'Amour de l'Art...* op. cit., p. 36.

⁵⁶ Cf. Pierre Bourdieu, Alain Darbel, *L'Amour de l'Art...* op. cit., pp. 109 et seq..

⁵⁷ Cf. Pierre Bourdieu, *Anatomie du Goût*, op. cit., pp. 15-6.

⁵⁸ Cf. Diana Crane, *The Production of Culture: Media and the Urban Arts*, London, 1992, pp. 19 et seq..

⁵⁹ Cf. Bernard Lahire, "Individue et Mélanges de Genres" in *Réseaux*, 2004, no. 126, p. 95.

⁶⁰ Cf. Bernard Lahire, "Individue et Mélanges de Genres" in op. cit., pp. 96-7.

⁶¹ Cf. Bernard Lahire, "Individue et Mélanges de Genres" in op. cit., pp. 101 et seq..

⁶² Cf. Bernard Lahire, "A Singularidade das Práticas Culturais" in *Plural: Revista de Ciências Sociais*, Vol. 24, no. 2, 2017, pp. 182 et seq..

⁶³ Cf. Laurie Hanquinet, "Place and Cultural Capital: Art Museum Visitors Across Space" in *Museum and Society*, 2016, pp. 65 et seq..

⁶⁴ Cf. Federico Escribal, "El Federalismo en la Gestión Cultural Argentina Contemporánea" in *Tramas de la Política Cultural en Argentina*, Buenos Aires, 2023, pp. 85 et seq..

The Right to Enjoy Cultural Assets

In the Portuguese context, the debate organised in 2016 on the occasion of the fiftieth anniversary of Bourdieu's work⁶⁵ deserves special mention. Thus, as Clara Camacho recalled, at the heart of *L'Amour de L'Art* is education⁶⁶. In other words, and contradicting Malraux's thinking, Bourdieu argued that displaying and providing access simply did not suffice given the need to accompany and mediate to counter the elitist nature of art museums⁶⁷. Conversely, José Neves placed Bourdieu's work in context by pointing out how he was writing during a period that was attempting to affirm democratisation policies designed to make art available whereas the social legitimacy of museums today comes less from conservation and more from communication and their relationships with their publics⁶⁸. In turn, Helena Neves emphasised the importance of love for audiences coupled with the need to appreciate broad and complex social relationships in culture, institutions and ways of life⁶⁹. For such reason, after refusing to circumscribe audiences at a certain extreme as a sum of false heterogeneity or sociological categories that instrumentalise them as mere consumers, she warns not only of the sheer complexity of cultural democratisation but also regarding the need to remove the preponderance of economic and managerial logics in favour of more appropriate sociologically structuring mechanisms⁷⁰.

5. RESTRICTIONS ON CULTURAL ENJOYMENT

Nevertheless, while cultural democratisation may move away from the previous dirigisme, it does not remove all barriers, limits and constraints. Indeed, by removing the preponderance of taste from public policies, cultural democratisation has revealed the importance of the other issues conditioning genuine cultural enjoyment ranging from the social and economic inequalities prevailing to the diversity of audiences and their diversified cultural practices. As a result, the right to cultural enjoyment is neither guaranteed nor even minimally safeguarded by simply moving away from dirigisme and unitary taste in favour of some broad cultural freedom. We instead need to seek the other constraints that are proven to exist even in societies proclaiming themselves as open, diverse and plural.

Within this scope, Fleury evaluates the attitudes of the masses in the context of modern sociology, intersecting education and culture, and attributing special emphasis to the diversity and heterogeneity of audiences after studying empirical data detailing relevant cultural practices⁷¹. In addition, he notes, particularly emphatically, that the monolithic public is a myth with the existence of diverse publics, playing a variety of artistic, intellectual and emotional roles.⁷² He also disagrees with the idea of the non-public, a negative category of an essentially ideological nature, representing the excluded and marginalised in keeping with the 1960s trend not to take into account phenomena around cultural development or mediatisation⁷³. According to Fleury, the core of cultural democratisation lies not in access, the taste, habits and practices of individuals but rather in projects, in the cultural policies that are the responsibility of the various institutions⁷⁴. He maintains, for example, that Jean Vilar's National People's Theatre and the Pompidou Centre have played very important roles in structuring cultural policies since the Second World War⁷⁵. In brief, modelled by the state and society, these institutions have been able to participate in changing the cultural practices of individuals and furthermore influencing the activities of the state, for example, by changing the legislative framework in effect⁷⁶.

Should cultural practices and cultural consumption continue to be studied⁷⁷, the democratisation of culture implies initiative, guidelines and policies in line with the set cultural direction. However, the choice may imply conditioning, another form of dirigisme, even within the framework of a democratic society. Accordingly, there are important considerations about this conditioning whether undertaken by the state or other public and private organisations in democratically consolidated societies. We may simply recall the example of the French cultural policy under André Malraux or the policy subsequently developed by Jacques Lang and in terms both of the financial support endowed in the annual budgets and the multi-annual cultural production, promotion

⁶⁵O Encontro Nos 50 Anos de L'Amour de l'Art: Dívidas, Críticas e Desafios, held on 24 November at ISCTE in Lisbon, resulted in the book *Nos 50 Anos de L'Amour de l'Art*, published in 2020.

⁶⁶ Cf. Clara Camacho and Graça Filipe, "Sobre os Contextos, Temas e Contributos de L'Amour de l'Art para a Museologia Contemporânea" in *Nos 50 Anos de l'Amour de l'Art*, Lisbon, 2020, p. 21.

⁶⁷ Cf. Clara Camacho and Graça Filipe, "Sobre os Contextos..." in op. cit., pp. 21-2.

⁶⁸ Cf. José Neves, "L'Amour de l'Art e os Públicos de Museus Nacionais em Portugal" in *Nos 50 Anos de l'Amour de l'Art*, Lisbon, 2020, p. 53.

⁶⁹ Cf. Helena Santos, "E o Amor pelos Públicos?" in *Nos 50 Anos de l'Amour de l'Art*, Lisbon, 2020, p. 82.

⁷⁰ Cf. Helena Santos, "E o Amor pelos Públicos?" in *Nos 50 Anos...* op. cit., pp. 83 et seq..

⁷¹ Cf. Laurent Fleury, *Sociologie de la Culture et des Pratiques Culturelles*, 3rd ed., Paris, 2016, *Une Expérience de Démocratisation de La Culture*, Paris, 2006, pp. 24 et seq..

⁷² Cf. Laurent Fleury, *Sociologie...* op. cit., pp. 29-30.

⁷³ Cf. Laurent Fleury, *Sociologie...* op. cit., p. 35.

⁷⁴ Cf. Laurent Fleury, *Sociologie...* op. cit., pp. 70 et seq..

⁷⁵ Cf. Laurent Fleury, *Sociologie...* op. cit., pp. 86-7.

⁷⁶ Cf. Laurent Fleury, *Sociologie...* op. cit., p. 89.

⁷⁷ On the attitudes of cultural consumers, Sylvie Octobre, "Les Temporalités du Métier de Consommateur Culturel chez les Enfants et les Jeunes" in *Généralisations et Pratiques Culturelles*, Quebec, 2017, pp. 91 et seq..

The Right to Enjoy Cultural Assets

and dissemination policies⁷⁸. Indeed, Urfalino, after studying these remarkable periods in French cultural history, recognises not only the existence of intense ideological battles but also a pronounced and affirmative cultural dirigisme⁷⁹.

We therefore understand that cultural democratisation can be neither anodyne nor inert but must strive to reduce, minimise or, whenever possible, eradicate the constraints placed on cultural enjoyment. This facet is protected by Article 43 in the Portuguese Constitution that prevents the state from promoting cultural policies according to philosophical, aesthetic, political, ideological or religious guidelines. Furthermore, Article 73, in stipulating the democratisation of culture, encourages and guarantees access to cultural enjoyment for all citizens. Subsequently, the Framework Law for Museums encourages regular public access and the democratisation of culture, seeking to affirm museums as institutions truly open to society.

Elsewhere, Italian legislation also places special emphasis on the enjoyment of places of culture. Thus, after encompassing museums, libraries, archives, archaeological parks and monumental complexes in the term *places of culture*, the law renders cultural enjoyment autonomous⁸⁰. Accordingly, this establishes the framework for material and legal activities in which the public administration promotes collective access to and usage of heritage and cultural assets⁸¹. This furthermore aligns with Dugato's thinking when the latter emphasises cultural enjoyment and the public services provided by the state and other public bodies⁸². Meanwhile, after highlighting the importance of public service, and after stressing the importance of knowledge, Cavaliere argues that free access itself falls short; visitors must be informed and provided with the effective conditions for better and more appropriate cultural enjoyment⁸³. This aspect also receives the attention of Zanetti when he places the emphasis on improving the levels of service offered to the public, especially by museums and libraries⁸⁴.

Regardless of whether there are two facets to cultural enjoyment, one in the field of rights, freedoms and guarantees, and the other in social and cultural rights⁸⁵, the right to cultural enjoyment represents a right to use heritage and cultural assets that requires more from the state and other public bodies than abstention as regards taste and other aesthetic conditions. Instead, this requires a diligent attitude, striving to further democratise culture by eliminating barriers, overcoming constraints, providing information, encouraging consumption and cultural practices in addition to promoting the appropriate usage of the means of dissemination. Only thus shall we be able to make better use of our heritage and enjoy cultural assets more appropriately and efficiently.

6. THE DYNAMIC ASPECT OF CULTURAL ENJOYMENT

However, removing barriers, overcoming constraints, in the diligent way described above, does not attain the full content of the right to cultural enjoyment. Alongside this, there is another more dynamic aspect that also arises from the enjoyment of cultural assets. This aspect, identified in some legal systems as *cultural enhancement*, effectively accounts for another level of broad and effective cultural enjoyment. Italian law, for example, bestows ample prominence and even autonomy on the aforementioned enhancement of cultural assets⁸⁶. In effect, the Italian Code of Cultural Property, after prefiguring cultural enhancement as an activity aimed at ensuring the best conditions for the usage and enjoyment of heritage⁸⁷, sets out various ways of enhancing value, particularly focusing on interventions aimed at conserving, upgrading and halting the deterioration of cultural heritage⁸⁸. In other words, enhancement would ultimately amount to, in Cavallaro's appropriate words, increasing cultural enjoyment, the dynamic aspect of a previous function that was eminently static in nature⁸⁹.

Should this be the case, when accepting this dynamic aspect, we would consider it makes no sense to separate this enhancement from actual enjoyment. We are rather dealing with another prism conveying the broad valence of a wide enjoyment of cultural assets. If anything, the first aspect, enjoyment per se, constitutes the more static aspect, even if not amorphous or abstentionist. The other, that called cultural enhancement, becomes more proactive and dynamic. We thus take into account a broader and more integrative idea of deploying heritage and cultural assets. We defend this position not only because it is difficult to

⁷⁸ Cf. Philippe Urfalino, *L'Invention...* Op. cit., pp. 13 et seq..

⁷⁹ Cf. Philippe Urfalino, *L'Invention...* op. cit., pp. 56 et seq..

⁸⁰ Cf. Article 101 of the Italian Cultural Assets Code.

⁸¹ Cf. Antonella Perini, "Fruizione..." in op. cit., pp. 797-8.

⁸² Cf. Marco Dugato, "Fruizione e Valorizzazione dei Beni Culturali come Servizio Pubblico and Servizio Privato di Utilità Pubblica" in *Aedon, Rivista di Arti e Diritto on Line*, no. 2, 2007, pp. 4-5.

⁸³ Cf. Stefania Cavaliere, "I Livelli Essenziali delle Prestazioni e i Nouvi "Diritti Culturali" in *Rivista Associazione Italiana dei Costituzionalisti*, no. 3, 2017, pp. 3-4.

⁸⁴ Cf. Giovanni Zanetti, *Il Nuovo Diritto dei Beni Culturali*, Naples, 2017, pp. 95-6.

⁸⁵ On this matter, Vasco Pereira da Silva, *A Cultura a que Tenho Direito...* op. cit., pp. 72 et seq..

⁸⁶ Cf. Articles 11 et seq. of the Italian Cultural Assets Code.

⁸⁷ Cf. Article 6 of the Code.

⁸⁸ Idem.

⁸⁹ Cf. Maria Cristina Cavallaro, "I Beni Culturali: Tra Tutela e Valorizzazione Economica" in *Aedon*, no. 3, 2018, pp. 2-3.

The Right to Enjoy Cultural Assets

demarcate enjoyment per se, the static aspect, from enhancement, more dynamic in nature⁹⁰ but also because the difference between the two is, at best, a matter of intensity. In fact, there simply are not the differences necessary to justifying mutual autonomy. We therefore have these two overlapping perspectives on better usage, on more appropriately applying cultural assets, in short, on the effective right to cultural enjoyment for the various audiences in open, democratic and plural societies.

Having clarified this topic, which is essentially methodological in nature, it is important to highlight the most important sub-themes of the dynamic dimension to that known as cultural enhancement. However, we also have to accept that any exhaustive study of each sub-theme on which the supposed enhancement, the other aspect of cultural enjoyment, is based, would in itself provide for a conference, especially in the context of a panel dedicated to studying the cultural policies of democratic societies. Therefore, in order to remain brief, we shall but outline the key sub-themes where it seems clear there is a strategy for promoting better use of assets. These include at least the following: classification, inventory, conservation and restoration.

In the case of classification, the methodology par excellence for protecting cultural assets, controversy rages between the constitutive theory, which aims to restrict cultural assets to a scope delimited by already classified assets, or those undergoing classification, and the declarative theory, which argues that the classification procedure does not qualify the asset as a cultural asset⁹¹. The classification categories of buildings, monuments, ensembles and sites also stand out⁹² as clearly do the issues around protection zones, for example the collective cultural value of buildings depending on their destination and spatial integration. As regards inventories, these systematic, up-to-date and tending to be exhaustive surveys of existing cultural assets provide the lists of assets making up the collections of particular organisations, for example, the assets belonging to museums. In fact, under the terms of the Framework Law for Portuguese Museums, there may be an inventory of public assets alongside another inventory of private assets with museums attributed the task of documenting the ownership rights of the cultural assets in their possession⁹³.

In terms of conservation, the utilisation of cultural assets incorporates a greater restriction on individual freedom of enjoyment and even the removal of *ius excludendi e abutendi*. We may even encounter special limits on the exercising of ownership in keeping with the specific nature of certain cultural assets. In addition, the passage of time necessarily causes wear and tear, erosion, in corporeal objects, in material cultural assets even when housed in a structure covered with somewhat durable components. Therefore, while conservation is a set of activities aimed at prolonging and maintaining the constitutive materials over an extended period of time, restoration is aimed at reinstating, improving the legibility or re-establishing the physical and/or aesthetic integrity of cultural assets. However, under no circumstances should conservation and restoration activities adulterate the material components of the object in such a way as to introduce a modification that would contradict the authenticity and genuineness of the asset. Thus, while in certain historical periods, restoration activities involved impressive alterations in pursuit of modernising guidelines, the doctrine of stylistic restoration seeks to protect the work of art, regardless of the component materials. In fact, the importance of buildings remaining in ruins has even gained prominence to the detriment of reconstructive or restorative activities. However, this aspect cannot be perceived in the same way when dealing with movable cultural assets, such as paintings or sculptures.

In the aforementioned sub-themes, the attitude of the state, of the administrative entities, cannot be one of mere abstention, acting only as an arbitrator intervening to allow access to certain cultural assets for different audiences. This rather implies something more: a diligent, dynamic, intervening and mobilising attitude towards protecting, safeguarding and preserving cultural assets. This attitude becomes particularly evident in classifications with the aim of conservation and the related prevention of any alteration or transformation of the asset. To achieve this requires acting in committed and diligent approaches, particularly in the context of administrative procedures. Something similar applies to the context of the restoration of cultural assets where a complex set of works takes place with the purpose of restoring the asset and, accordingly, enabling it to be enjoyed more appropriately by contemporary society as well as ensuring this asset gets passed onto future generations⁹⁴.

We would note, however, the dynamic aspect is not restricted to classifications, inventories, conservation and restoration. While these aspects display undeniable dynamism, the cultural enhancement detailed above also encompasses various other issues. Some of them are unavoidably important and topical, for example, cultural patronage⁹⁵, sponsorship or sponsoring⁹⁶, the initiatives

⁹⁰ Antonio Mansi emphasises this point, attributing prominence to cultural use, enjoyment and fruition, while withdrawing autonomy from the aforementioned enhancement. Cf. *La Tutela dei Beni Culturali e del Paesaggio*, 3rd ed., Padua, 2004, pp. 446 et seq..

⁹¹ Cf. JL Bonifácio Ramos, *Direitos Reais e Bens Culturais Móveis*, Cascais, 2020, pp. 33 et seq..

⁹² Cf. Flávio Lopes, *Património Arquitectónico e Arqueológico: Noção e Normas de Protecção*, Lisbon, 2012, pp. 47 et seq..

⁹³ Cf. Articles 15, 23 and 24 of the Framework Law.

⁹⁴ Cf. Licia Borrelli, *Conservazione e Restauro delle Antichità*, Rome, 2010, pp. 225 et seq..

⁹⁵ Cf. Girolamo Sciuillo, "I Beni Culturali Quali Risorsa Collettiva da Tutelare: Una Spesa, Un Investimento" in *Diritto e Gestione dei Beni Culturali*, Bologna, 2011, p. 592.

⁹⁶ Cf. Massimo Cagli, "La Fruizione e la Valorizzazione ed il Regime delle Sponsorizzazioni" in *La Gestione dei Beni Culturali*, Santarcangelo di Romagna, 2019, pp. 46 et seq..

The Right to Enjoy Cultural Assets

of private foundations⁹⁷, tourism⁹⁸, sustainability⁹⁹, co-operation and exchanges between public and private entities, as well as the international circulation of cultural assets and cultural management¹⁰⁰. To summarise, we may identify several insights and different sub-themes to explore in greater depth within the framework of the dynamism of cultural enjoyment, the cornerstone of the intrinsic relationship between the past and the present, between heritage, cultural assets and humankind. This furthermore demonstrates the existence of different levels of Culture¹⁰¹ and the importance of cultural objects and assets in public policies, in informed choices and in the cultural activities of a democratic society.

7. CONCLUSIONS

On the cultural level, should enjoyment correspond to the idea of benefiting from something, we then must distinguish between the creator, the artist, and the cultural enjoyment of the public. The ideas of creators, although communicated and disseminated, may not be followed, understood or internalised by the public. In the context of unavoidable individual freedom, cultural freedom incorporates a radical diversity of political, ideological, aesthetic and artistic values.

While questions about the search for beauty and taste have been of great importance throughout human history, it is important to emphasise the proclaimed need to separate beauty from beautiful things. Indeed, attempts to establish a Science of Beauty have failed because each individual enjoys different things differently and with each person's sensitivities revealing infinite changes. Still furthermore, the acceptance of the ugly, the horrible and, above all, the kitsch shook up the previously prevailing aesthetic and ideological dichotomies. Sociological considerations have since emerged in their place. Therefore, should access to cultural assets exist in formal terms, it would be interesting to consider the real possibility of enjoying cultural heritage and assets as opposed to something theoretical without any practical correspondence. For this reason, the democratisation of culture and the deepening of cultural enjoyment have taken centre stage coupled with warnings about the coexistence of the multiple trajectories existing in any given space among the different cultural enjoyers that make up the diverse and heterogeneous audiences prevailing.

Cultural democratisation can be neither anodyne nor inert. This process must rather reduce, minimise and, whenever feasible, eradicate the constraints around cultural enjoyment. Positive law endeavours to respond to these desires. In particular, the Portuguese constitution states the state cannot program culture according to philosophical, aesthetic, political, ideological or religious guidelines. Furthermore, the state is attributed responsibility for promoting the democratisation of culture, encouraging and ensuring that everyone has access to cultural enjoyment. Furthermore, overcoming the various constraints does not represent the full content of the right to cultural enjoyment that also requires important consideration of the dynamic aspect of cultural enhancement. Here, in addition to classification, inventory, conservation and restoration, it is worth highlighting patronage, sponsorship, co-operation and exchanges between public and private entities, the international circulation of cultural assets and cultural management. To summarise, there are various sub-themes inherent to any understanding of the multitude of changes in the right to cultural enjoyment which embodies recourse to cultural heritage and tangible and intangible cultural assets.

REFERENCES

- 1) BELSEY, Catherine, *Culture and the Real: Theorizing Criticism*, Abingdon, 2005.
- 2) BENJAMIN, Walter, "Dream Kitsch" in *The Work of Art in the Age of its Technological Reproducibility and Other Writings on Media*, London, 2008, pp. 236 et seq.
- 3) BORRELLI, Licia, *Conservazione e Restauro delle Antichità*, Rome, 2010.
- 4) BOURDIEU, Pierre, *Anatomie du Goût*, Paris, 1968.
- 5) CAMACHO, Clara and Graça Filipe, "Sobre os Contextos, Temas e Contributos de L'Amour de l'Art para a Museologia Contemporânea" in *Nos 50 Anos de l'Amour de l'Art*, Lisbon, 2020, pp. 15 et seq.
- 6) CRANE, Diana, *The Production of Culture: Media and the Urban Arts*, London, 1992.
- 7) DUGATO, Marco "Fruizione e Valorizzazione dei Beni Culturali come Servizio Pubblico and Servizio Privato di Utilità Pubblica" in *Aedon, Rivista di Arti e Diritto on Line*, no. 2, 2007, pp. 1 et seq.
- 8) ESCRIBAL, Federico, "El Federalismo en la Gestión Cultural Argentina Contemporánea" in *Tramas de la Política Cultural en Argentina*, Buenos Aires, 2023, pp. 85 et seq.
- 9) FLEINER, Fritz, *Institutionen des deutschen Verwaltungsrecht*, Tübingen, 1913, pp 37 et seq
- 10) FLEURY, Laurent, *Sociologie de la Culture et des Pratiques Culturelles*, 3rd ed., Paris, 2016.
- 11) FRIEDMAN, Ariela, "Charlotte Salomon, Degenerate Art, and Modernism as Resistance" in *Journal of Modern Literature*, Vol. 41, no. 1, pp. 5 et seq

⁹⁷ Cf. Girolamo Sciallo, "Restauro, Tutela e Valorizzazione dei Beni Culturali" in *Aedon*, 2007, no. 2, p. 4.

⁹⁸ Cf. Luca dal Pozzolo, *Il Patrimonio Culturale Tra Memoria e Futuro*, Milan, 2018, pp. 78 et seq..

⁹⁹ Cf. Lorenzo Casini, "Valorizzazione e Gestione" in *Diritto del Patrimonio Culturale*, Bologna, 2017, pp. 207-8.

¹⁰⁰ Cf. "Prospettive di Management: Criticità e Innovazioni" in *La Gestione dei Beni Culturali*, Santarcangelo di Romagna, 2019, pp. 43 et seq..

¹⁰¹ On this subject, Catherine Belsey, *Culture and the Real: Theorizing Criticism*, Abingdon, 2005, pp. 37 et seq..

The Right to Enjoy Cultural Assets

- 12) GADAMER, Hans-Georg, *Hermeneutik: Wahrheit und Methode*, Vol. II, 2nd ed., Tübingen, 1993, trad. port..
- 13) GONZALEZ-VARAS, Ignacio, *Conservación de Bienes Culturales*, Madrid, 1999.
- 14) GREENBERG, Clement, “Avant-Garde and Kitsch” in *Art and Culture: Critical Essays*, Boston, 1961, pp. 10 et seq..
- 15) GROULT, Martin Le Plaisir, Principe du Goût dans la Métaphysique de D’Alembert”, in *Dix-Huitième Siècle*, no. 35, 2003, p. 440 et seq..
- 16) GUESS, Raymond, *Public Goods, Private Goods*, New York, 2003.
- 17) HÄBERLE, Peter, “La Cultura Giuridica Europea” in *La Costituzione Europea: Tra Cultura e Mercato*, Turin, 1997, pp. 20 et seq..
- 18) HANQUINET, Laurie, “Place and Cultural Capital: Art Museum Visitors Across Space” in *Museum and Society*, 2016, pp. 65 et seq.
- 19) HARTSHORNE, Thomas, “Modernism on Trial: C. Brancusi v. United States (1928)” in *Journal of American Studies*, Vol. 20, no. 1, 1986, pp. 95 et seq.
- 20) HENKE, Wilhelm, “Das subjektive Recht im System des öffentlichen Rechts” in *Die öffentliche Verwaltung*, no. 17, 1980, pp. 15 et seq.
- 21) JAYME, Erik, Erik Jayme, “Entartete Kunst” und Internationales Privatrecht, Heidelberg, 1994, pp. 7 et seq..
- 22) JAYME, Erik, *Kunstrecht und Kunstgeschichte*, Cologne, 2017.
- 23) LAHIRE, Bernard, “Individue et Mélanges de Genres” in *Réseaux*, 2004, no. 126, pp. 93 et seq..
- 24) LIPOVETSKY, Gilles, *A Era do Vazio*, Lisbon, 1988.
- 25) LOPES, Flávio, , *Património Arquitectónico e Arqueológico: Noção e Normas de Protecção*, Lisbon, 2012.
- 26) MANSI, Antonio, *La Tutela dei Beni Culturali e del Paesaggio*, 3rd ed., Padua, 2004.
- 27) MERRYMAN, John and Albert Elsen, *Law, Ethics and the Visual Arts*, 3rd ed., London, 1998.
- 28) MIRANDA, Jorge, *Notas Sobre Cultura, Constituição e Direitos Culturais*, Coimbra, 2006.
- 29) MONTESQUIEU, Charles, *Essai sur le Goût*, Paris, 1757.
- 30) NEVES, José, “L’Amour de l’Art e os Públicos de Museus Nacionais em Portugal” in *Nos 50 Anos de l’Amour de l’Art*, Lisbon, 2020, p. 51 e segs.
- 31) PERINI, Antonella, “Fruizione dei Beni Culturali” in *Codice dei Beni Culturali e del Paesaggio*, Milan, 2012, pp. 797 et seq.
- 32) POZZOLLO, Luca dal, *Il Patrimonio Culturale Tra Memoria e Futuro*, Milan, 2018.
- 33) RAMOS, JL Bonifácio, *Direitos Reais Administrativos: Ficção ou Realidade?*, Lisbon, 2019.
- 34) RAMOS, JL Bonifácio, *Direitos Reais e Bens Culturais Móveis*, Cascais, 2020.
- 35) ROSENKRANZ, Karl, *Ästhetik des Hässlichen*, Königsberg, 1853.
- 36) ROWELL, Margit, *Brancusi contre États Unis, Un Procès Historique*, Paris, 2003.
- 37) SANTOS, Helena “E o Amor pelos Públicos?” in *Nos 50 Anos de l’Amour de l’Art*, Lisbon, 2020, pp. 80 et seq.
- 38) SARDINHA, Idalina, *A Fruição da Arte, Hoje*, Lisbon, 2007.
- 39) SCHACK, Haimo, *Kunst und Recht*, 3rd ed., Tübingen.
- 40) SCIULLO, Girolamo, “I Beni Culturali Quali Risorsa Collettiva da Tutelare: Una Spesa, Uno Investimento” in *Diritto e Gestione dei Beni Culturali*, Bologna, 2011, pp. 590 et seq.
- 41) SCIULLO, Girolamo “Restauro, Tutela e Valorizzazione dei Beni Culturali” in *Aedon*, 2007, no. 2, pp. 1 et seq.
- 42) SILVA, Vasco Pereira da, *A Cultura a que Tenho Direito*, Coimbra, 2007.
- 43) THOMAS, Downing, “Negotiating Taste in Montesquieu” in *Eighteen-Century Studies*, Vol. 39, 2005, pp. 70 et seq.
- 44) URFALINO, Philippe, *L’Invention de la Politique Culturelle*, Paris, 2010, VALERY,
- 45) WEISSE, Christian, *System der Aesthetik als Wissenschaft von der Idee der Schönheit*, Leipzig, 1830.
- 46) WYSS, Martin. *Kultur al seine Dimension der Völkerrechtsordnung*, Zurich, 1993.
- 47) ZANETTI, Giovanni, , *Il Nuovo Diritto dei Beni Culturali*, Naples, 2017.



There is an Open Access article, distributed under the term of the Creative Commons Attribution – Non Commercial 4.0 International (CC BY-NC 4.0) (<https://creativecommons.org/licenses/by-nc/4.0/>), which permits remixing, adapting and building upon the work for non-commercial use, provided the original work is properly cited.