

## Legislation and Antiquarian Book Trade: how the different state regulations affect the international movement of antiquarian books

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### Abstract:

*The International League of Antiquarian Booksellers (ILAB), with its 22 member associations representing 37 countries in the world, is the world umbrella body for antiquarian booksellers. ILAB and its members regularly face issues caused by the conflicting regulations of the different states in which its affiliates are dealing. Export and import laws, cultural goods policies, right of prescription, confiscations, right of pre-emption, declarations of national interest, as well as thefts and forgeries, are among the many aspects that ILAB tackle on a regular basis on behalf of the national associations it represents. Fabrizio Govi, Vice President of ILAB will outline the perspective of booksellers on this vast and complicated subject.*

**Keywords:** Antiquarian books; Cultural goods policies; International trade; Thefts; Forgeries

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Books have been commercial goods throughout history. Even prior to the invention of printing with movable type, thanks to the widespread production and trade in manuscripts, paper products had a wide circulation all over Europe. The interest in collecting used and out-of-print books started as early as the first half of the 16<sup>th</sup> century. Towards the end of the century there is evidence in The Netherlands of the first auction sales of incunables. Book fairs, which were by that time growing and becoming regular events, often included a section of “old” books. However, it wasn’t until the second half of the 19<sup>th</sup> century that the antiquarian book trade as we know it today began to take shape. It was at this time major bookselling companies were founded, some of which are still active today, for example Quaritch in London, Gilhofer und Ranschburg in Lucerne, Gonnelli in Florence. Around the same time antiquarian book dealers realized that it could be an advantage for them to become organized and the first national associations were established. The first of these was the Antiquarian Booksellers’ Association (ABA) founded in Great Britain in 1906. In 1914 the French Syndicat National de la Librairie Ancienne et Moderne (SLAM) was founded, the Danish Antikvarboghandlerforening (ABF) in 1920 and others soon followed.

After WWII the Dutch bookseller and president of the Dutch National Association Menno Hertzberger conceived the idea of forming an international organization. His wish was to reunite the trade that had been separated by the war. His aims went far beyond anything the antiquarian booksellers had thought of before: establishing international peace through cultural exchange and open markets. “Five long years had put up extra barriers between nations. There was no communication. This enforced extra chauvinism and worse, hatred. Was there a possibility to do something about inter-human relationships, to bring nations closer together? This was my dream; but how could it be realized? Only on common ground, on mutual interests, and therefore, for an antiquarian bookseller, by his love, THE BOOK!” (Hertzberger). Through the vision and efforts of Hertzberger in 1947/48 the International League of Antiquarian Booksellers (ILAB) was founded. At the outset only five nations (Great Britain, France, Denmark, Sweden, and The Netherlands) were members, today ILAB operates as the international umbrella body for antiquarian booksellers uniting 22 national member associations representing 37 countries. As such, it has to face delicate issues caused by the conflicting regulations of the different states in which its affiliates are dealing. Export and import laws, cultural goods policies, right of prescription, confiscations, right of pre-emption, declarations of national interest, as well as thefts and forgeries, are among the many issues that ILAB tackles on a regular basis on behalf of the national associations it represents. The purpose of this paper is to show how regulations that are either too strict or too broad can both negatively affect the exchange of cultural goods, in our case, books.

Some scandals have occurred in the antiquarian book world over the last 20 years. These scandals have had a deep negative impact on the trade, but they have also had a positive influence. They have spotlighted issues that had not been addressed previously. In particular Italy and Germany, have shown the limits and flaws of their respective regulatory systems for two quite opposite reasons: one for being overregulated, the other one for being too permissive.

These scandals have rocked the trade. In France, the so-called Aristophil scandal, although the largest ever in terms of money in the antiquarian book trade (the individual charged is accused of having organized an almost one-billion euro Ponzi scheme, in which the unfortunate defrauded clients’ money was used to buy precious autographs and manuscripts) has remained essentially a French case and has little effect on the legislation of cultural goods of that country.

Unfortunately, the forgeries that have recently been offered on the market are outside the scope of this paper. Rather today I wish to discuss the situation surrounding theft cases especially those that involve Italy and Germany.

Italy has one of the oldest cultural heritage laws in the world, the first law on the export of cultural goods of the newly founded Italian State was passed in 1903 with the express purpose of limiting the flow of antiquarian items abroad. The aim of the law was noble, but the results were poor. The main reason why the movement of these goods occurred, was that the Italian institutions were not as interested in building their collections through purchase as foreign libraries were. In an article published in the October/November 1903 issue of “La Bibliofilia”, the most important Italian bibliographical magazine, the great bookseller Leo Olschki outlined the contradiction of the law, which required that an export license for every item, independent of its value, had to be applied for. However, this was not accompanied by genuine associated interest in the item from the Italian institutions.

Since then the situation hasn’t changed. The export law, like the policy regulating the control over antiquarian books (dating back to 1931), has been reviewed but basically has remained unchanged. The European regulation that includes value thresholds for the exportation of printed books outside the territory of the EU (with the exclusion of incunables and manuscripts) has not been accepted in Italy. Even the very recent reform (2017) that had finally introduced a value threshold of 13.500,00 euros was immediately suspended and is likely to be soon annulled. To carry over the Italian border any book older than 70 (soon to be 50) years, independent of its value, an export license is required, however on average it takes more than 2 months for such a licence to be granted.

The two core points of the Italian regulation that affect more negatively the trade are the following:

- The very broad definition of cultural heritage contained in the Italian regulations, as anything older than 70 years, created by a non-living author and presenting a cultural interest;
- The right of the Italian State to stop any private property from leaving the country if it is considered of cultural interest. Unlike France where the right of pre-emption is followed by the purchase of the good by the State within a limited period of time, in Italy, when the State declares a particular object as being of cultural interest, the object is permanently denied the permission to be exported but may not be acquired. Moreover, it is the responsibility of the owner of the object to communicate to the State and get permission to restore it and even to move it from one location to another within Italy. If sold or inherited, the purchaser or the heir will not receive the object free from this inherent obligation. Finally, the State has no obligation to provide any indemnity to compensate the loss of value of the item that cannot be exported.

You may think that export denials are applied only to very important pieces of art or extremely rare items. Not at all! I can tell you from personal experience that the State has declared books valued at less than 100 Euros, as goods of national interest but show no interest in purchasing them. The cost of the act of notification is sometimes much higher than the value of the good that has been blocked.

It is also a common practice in Italy that the Carabinieri confiscate books from auction houses or bookshops because of a simple correspondence of author and title. They don't look at the copy-specific details of a book and sometimes even the editions are not the same. The onus is on the seller to demonstrate that the confiscated copy is not the stolen copy the Carabinieri are looking for. To complete the picture, I must add that everything that is owned by the State or public entities is by definition presumed to have cultural interest. This is the reason why de-accessioning is virtually impossible when it comes to State collections.

It is in this overregulated and confusing law environment that the most active and dangerous book thief and forger of our time has operated. You may think that a high level of regulation should help to prevent crime from happening; on the contrary. In Italy where the law is so daunting and contradictory that it is nearly impossible to comply with it in full, a smart criminal mind can find different ways to circumvent the law and exploit in his favour the vulnerability of other players. This is exactly what Marino Massimo De Caro has done.

In March 2012 Tomaso Montanari, professor of art history in Naples, visited the Girolamini library, one of the most important historical libraries in the city, which had been closed to the public for many years. The abandoned state that he found the library in (books piled haphazardly, empty shelves, coke cans and garbage on the floor) and the suspicious figure of its director struck him forcibly. On returning home, he simply checked De Caro's name on Google and discovered incredible things about him and his relationships with senator Marcello Dell'Utri, the right-hand man of Silvio Berlusconi. A few days later, Montanari wrote an article on "Il Fatto Quotidiano" about the Girolamini Library's poor condition and its questionable director. He also prompted a petition to remove De Caro from his post.

As soon as the investigation started, it was immediately clear that De Caro had neither the background nor the qualifications to become director of a historical library. He had started his career as a bookseller in Verona, his hometown, at the end of the 1990s. Around 2002 De Caro met at the Milan antiquarian book fair an Argentinian bookseller Daniel Pastore, owner of the bookshop Imago Mundi in Buenos Aires. With the help of this new friend, he moved to Argentina, where he found all he required to enhance his career in Italy. He was granted an Honorary Professorship by a small private University in Buenos Aires in exchange for an incomplete Galileo edition and, it is rumoured, a piece of meteorite. Afterwards he somehow got the title of honorary consul of Congo and became vice-president of a company working in renewable energy, owned by a Russian oligarch, Viktor

Vekselberg. In Argentina De Caro also met Cardinal Mejia, who later became librarian of the Vatican Apostolic Library. For reasons that are unclear, in 2003, the Vatican agreed to a book-exchange with De Caro: De Caro gave them 13 incunables and, in exchange, he received a copy of the first dated book printed in Italy, the famous Lactantius issued in Subiaco in 1465, a copy of the Aldine *Hypnerotomachia Poliphili* (1499), and copies of some of Galileo's major works. The exchange was indeed very favourable for De Caro. Still more impressive, Cardinal Mejia also provided De Caro with a letter of recommendation, which gained him access to an unknown number of libraries. Finally, in Argentina he became business partner of Imago Mundi, who applied for membership of the Italian Association of Antiquarian Bookseller (an ILAB affiliate) as a foreign member.

Back to Italy, De Caro opened a shop in Verona, a branch of Imago Mundi, and gained the protection of Marcello Dell'Utri's circle, and in particular of Giancarlo Galan, a man whose political career owed everything to Dell'Utri. When in 2010 Galan was appointed Minister of Agriculture, De Caro was at his side as personal consultant. In 2011 Galan was moved to the Ministry of Culture, always keeping De Caro with him. His appointment to the Girolamini library was ratified in June 2011 in just one day, a record time by Italian standards. After the fall of the Berlusconi's government in November 2011, De Caro was confirmed in both his posts, at the Ministry and at the Library, by the new minister Lorenzo Ornaghi.

Following De Caro's arrest, Montanari was in conversation with two very senior librarians of 35 years standing at the Girolamini. During this conversation Montanari discovered that they had sent a letter to the Ministry advising them not to provide De Caro with the key that gave access to the 'Sancta sanctorum' of the library, the protected area where until that time only the two librarians were allowed to enter. However, in the meantime, according to prosecutors, De Caro had already started stealing books and destroying book records. The librarians received a quick answer from the Ministry: "you must give him the key."

In early 2012 some books from the Girolamini Library appeared for auction at Christie's in London and were identified as stolen after the due diligence was carried out even though all of them had a regular export license issued in Milan. De Caro went to retrieve them, saying they must have been stolen before he became director. Indeed, before he confessed, the key point of his defence was that many books had already been stolen from the library in the past, which is true. He then presented to the police a list of 1500 stolen books he claimed previous library directors had compiled. That defensive strategy was possible because the library didn't know which books it had and which it had lost; there wasn't a complete inventory. It is evident that the library was chosen on purpose due to its extreme vulnerability and abandoned state.

In May 2012 the Munich auction house Zisska und Schauer was forced by the police, the night before a sale, to withdraw several hundred books (among them the first, second and third editions of Copernicus, and very rare scientific items), which, according to prosecutors, had been stolen from the Girolamini Library and exported illegally. During the same period, the Carabinieri inspected a warehouse near Verona finding a thousand books in it, a good number of them from the Girolamini, along with invoices relating to the sales of more stolen books to the U.S.A., U.K. and Japan. Other books, already boxed up, were found within the Girolamini complex. De Caro was arrested, along with four accomplices, and finally admitted the thefts from the Girolamini Library, as well as from many other Italian libraries he had visited while Minister consultant.

Since his arrest in 2012 De Caro was sentenced to 7 years in Naples for the Girolamini theft and ordered to refund the Italian State for an amount of 19.000.000,00 euros; to 2 and a half years in Florence for the thefts at the Scolopi and at the Ximeniano Libraries; to 1 year in Rome for the theft from the library of the Ministry of Agriculture; to 1 year for the theft at Montecassino; to 2 years for a robbery in a supermarket in Verona while he was on home arrest. He is now free awaiting sentencing from the second trial in Naples where he is accused of devastation and looting, as well as other trials for defamation and thefts in Perugia and Orvieto.

After a period of silence, De Caro has become popular once again with the press. Professor Luzzatto of the University of Turin has just published a book on him. Tomaso Montanari, the professor who forced the initial investigation, has said of Luzzatto's book that it is an “unworthy apology of the Girolamini monster”.

De Caro has recently given a few interviews in national newspapers, in which he pretends to be repentant claiming to have acted solely to protect the books, not in his own interest. He has also written several emails to the Italian Association of Antiquarian Booksellers stating that he is now devoting himself to fighting crime. In fact, according to the sentence that required him to repay the Italian State for 19.000.000,00 euros, he kept most of the money for himself to buy a villa in Verona, which had belonged to the Tiepolo family. It is rumoured that he had already planned to create a library in the villa with a fake bookplate. However quite recently, after having spent most of his house arrest in that villa, De Caro has now lost it for good.

The other major aspect of De Caro's illegal activities are the forgeries, but this will bring us too far from the main purpose of this paper. It is however clear that we are faced by an unprecedented case of theft, forgery and sophistication, which caused incalculable damage to the antiquarian book business, to the Italian bibliographical heritage, and to the academic world. It is also hard to evaluate in full the historical impact caused by De Caro's activities, even by the less significant ones such as introducing false library stamps onto genuine books.

There is absolutely no doubt that the De Caro case originated in Italy and that his main theft leads us to Germany. In Spring 2012, a few months before his arrest, De Caro consigned to the Munich auction Zisska und Schauer about 500 books which were mostly stolen from the Girolamini Library. The responsible person in that auction house did not only omit to request the necessary export licenses (the books were brought to Munich from Italy by an Italian dealer) and to properly check the condition of the volumes (mostly in bad condition and with library stamps and shelf-marks roughly removed), but in order to ensure the items would be sold by their business they advanced a large amount of money (almost 1.000.000,000 euros) in cash. One of the partners of the auction house was arrested and sent to prison in Italy. This is a borderline case in which apparently the only crime perpetrated by the auction house, according to German law, was tax evasion. But this brings us directly into Germany's “exceptional” position within the book trade.

In the late 1940s, after the end of World War II, a law was passed in Germany that stated that if an auction house sold an item in good faith as not stolen, and the buyer purchased the item in good faith as not having been stolen, title and ownership legally passed to the purchaser. This right or privilege was granted to a number of auction houses and remains in force even today for these older auction houses. The combination of this privilege with an easy-going regulation and, above all, a very short period of prescription in case of theft, made these German auction houses the ideal place to sell stolen books, in particular from Eastern Europe from which there was a flood of books after the fall of the Berlin Wall.

In 1995 a senior librarian of National Library of Sweden in Stockholm started stealing a large number of significant books from the library and selling them through a German auction house over a period of years. In this case none of the books had any sign of previous ownership. The thief consigned the books using an assumed name, because he was not required to provide any ID and was paid in cash by the auction house. The thefts were discovered in 2004, but the National Library of Sweden issued a list of the stolen books only eight years after the thief's confession and it was only in 2013 that the library began to pursue its stolen books. The auction house was finally forced to reveal the purchasers' names and the purchasers were contacted by the police and asked to give the books back.

There was however a big impediment. Because of the exemption granted to the auction house after WWII and still in place to this day, according to German law, title and ownership had passed to the purchasers legally. The auction house had sold the books in good faith believing that the books were not stolen, and the purchasers had acquired them in good faith believing that they had clear title. In

order to regain the books, the National Library of Sweden decided to pursue the purchasers using Anglo-Saxon law so purchasers could not hide behind German law. German law was clear: purchasers owned the books. But in Anglo-Saxon law, as in the Italian law, the ownership of stolen materials never passes.

What happened next is a scenario in which all purchasers who could not use German law as a legal shield had to give the books back without getting any reimbursement from the auction house, while the other purchasers including the auction house itself did not have to deal with the consequences.

After the two scandals that I have just mentioned and some others, German authorities have become aware that something had to be done. On August 2016 a new law was passed which imposes on German dealers much stricter due diligence obligations on consignments for cultural items whose value exceeds 2.500,00 euros, but as far as I know the old privilege granted to auction houses is still in place.

The present paper is not intended to be an indictment against German auction houses, which are largely composed of serious and competent people who are simply complying with the regulations of their country. The purpose of this paper is to show how ill-conceived or out-dated policies on cultural goods can lead to detriment of the market players and also the conservation and value of the books themselves. Books are commercial goods; they carry across borders ideas and culture and must be allowed to freely circulate. There must be rules and controls, but when regulations are so strict as to make them impossible to implement or so permissive that stolen books may be openly sold, bad things happen, and bad guys find an easy way to pursue their crimes.

The International League of Antiquarian Booksellers is deeply concerned about the traffic of stolen and forged books and other associated materials. We are very keen to work with our colleagues in the library fraternity to stop criminal acts such as theft from our public institutions. ILAB invites you to waste no time in informing us of books, manuscripts, maps, etc. that are missing from your collections. Immediately email [secretariat@ilab.org](mailto:secretariat@ilab.org) with the details of the missing items. The details will then be sent out to our worldwide membership of nearly 1700 booksellers without delay. If we make it difficult to sell stolen materials a primary incentive to steal is removed. A book stolen in Paris today can be sold in New York tomorrow – do not delay acting!

ILAB also runs the stolen books database [www.stolenbooks.org](http://www.stolenbooks.org). Send us details of materials that have gone missing from your institution whatever the date of their loss. They are out there somewhere, let us help you return them to their rightful place in your library!

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