Chapter 1
Introduction

> Remnants of things that have passed away,
> Fragments of stone, reared by creatures of clay
> The Siege of Corinth, 1816
> Lord Byron

In his seminal study of 1912, *Les Formes élémentaires de la vie religieuse*, Émile Durkheim argued that, since the dawn of human communal living, the basic habitat of religions has been the public domain; Durkheim located the notion of *sacredness* at the nexus of human practices and social projects. As far as the European continent is concerned, religions have been, indeed, molded within *foro externo*,[1] as symbolic constructions of 'collective identity',[2] closely related to the cultural construction of modernity and its institutionalization in nation-states.[3] Even in the present time of post-modernity, they still bear, according to Jürgen Habermas, a valuable semantic potential for inspiring other people beyond the limits of a particular community of faith, once that potential is delivered in terms of its 'profane truth content'.[4] This notion is best exemplified in the case of religious cultural goods. The latter manifest an aesthetic synthesis of the sacred/profane

---

[1] Durkheim E. (1912) *The Elementary Forms of the Religious Life,* translated by Cosman C. (2001) Oxford University Press, p. 319.

[2] For a constructive criticism on the notion of 'collective identity' *see* Vargas Llosa M. (2001) *The Culture of Liberty*, Foreign Policy No. 122, pp. 66–71.

[3] Koenig M. (2007) *Religion and Public Order in Modern Nation-States: Institutional Varieties and Contemporary Transformations*, in: Brugger W. & M. Karayanni M. (eds.) *Religion in the Public Sphere: A Comparative Analysis of German, Israeli, American and International Law* [=Max Planck Institut für ausländisches öffentliches Recht und Völkerrecht, Beiträge zum ausländischen öffentlichen Recht und Völkerrecht 190], Heidelberg: Springer, p. 5 f. cf. Siedentop L. (2014) *Inventing the individual. The origins of Western Liberalism*, Allen Lane, p. 252 f.

[4] Habermas J. (2006) *Religion in the Public Sphere*, European Journal of Philosophy, Vol. 14, p. 17.

---

qualities, since it is in their very nature to embody a complicated amalgam of the aesthetic and the numinous.

In other words, following the relevant German literature (Heckel 1968), these particular cultural elements, and perhaps more importantly those that still preserve an *active* devotional character as well as a liturgical function (*liturgische Funktion*), are, by their very nature, monuments of internal unity (*innere Einheit*): they demonstrate an indivisible union of sacred and aesthetic qualities, and, therefore, constitute a cultural blend of art and belief within the public sphere. Perhaps it is precisely this ambivalent unity between the sacred and the secular, which has always made religious cultural elements, landmarks of historical change and complex sociopolitical choices.

The balance of the aforementioned qualities is often delicate and contingent, when religious cultural goods are being produced to serve a particular (liturgical) function within a particular (devotional) setting, and, in the course of time, due to various reasons, their very function and/or setting is being altered. We could take as an example the religious products of classical Greece: we still find aesthetical delight in the beautiful temples and marvelous statues of the gods of the past, without necessarily accepting the worldview from which they emanate. A similar set of examples in this respect, can be found also in later religious monuments, such as the great *Stephansdom* in Vienna, the Byzantine *Daphni Monastery* in Athens, the *Hohe Domkirche St. Petrus* in Köln, the *Basilica di Santa Maria di Fiore* in Florence, the *Mezquita de Córdoba,* the *Dohány Street Synagogue* in Budapest, and Le Corbusier's *Chapelle Notre Dame du Haut* in Ronchamp, which is one of the finest examples of twentieth century religious architecture. This spiritual *tour de force* attracts huge numbers of visitors (be they tourists, regular worshipers, art aficionados, or pilgrims) from all over the world, albeit for quite different reasons: others seek just an enjoyment of the religious beauty, others seek a way to manifest their inner beliefs on a purely devotional level, while others experience mixed feelings since they cannot tell the difference "*between worldliness and grace, between the hard materiality and the conditional holiness inherent in art associated with religion*" (Feigenbaum and Ebert Schifferer 2011, p. 2).

Another common paradigm regarding the difficult equilibrium between the sacred and the secular, would be that of Europe's redundant historic places of worship. In Britain, for instance, according to the official 2012 Report of the competent *Church Buildings (Uses and Disposals) Committee* of the Church of England to the Board of Governors,[5] since 1969 over 1,800 church buildings have been closed, and since the mid 1990s the underlying rate of church closures is estimated to be about 25 annually.[6] The closure of historic buildings used for

---

[5] The Committee produces an annual report to the Board of Governors which is then presented at the Commissioners' Annual General Meeting (AGM) in June each year; at the time of writing this study, the relevant Report for 2013 was in preparation and was going to be made available after its presentation to the AGM in June, 2014.

[6] The Church of England online Document Library: http://www.churchofengland.org/document-library. Accessed on March 31, 2014.

worship, has been an inevitable consequence of decreasing congregations also within the Methodist Church. However, unlike buildings owned by the Church of England or the Roman Catholic Church, Methodist places of worship are not consecrated; they are simply buildings which, once their function has ceased, may be disposed of for other uses. This is due to the fact that non-conformists do not accept consecration: holiness, they argue, resides in the people, not the buildings. The closure of a non-conformist church puts an end to any religious status it previously enjoyed. Thus, it becomes a vendible asset, to be sold off in order to finance further work of the denomination (Powell and De La Hey 1987, p. 10). Many redundant churches owned by the Church of England and the Roman Catholic Church seek new uses as places of worship by other Christian bodies, or as venues for a variety of social, community, commercial or residential purposes (Truman 2006; English Heritage 2010). Nevertheless, as far as consecrated churches are concerned, apart from the fact that in many cases their edifices have been previously listed due to their historical significance, it is quite difficult to find alternative uses suitable to their inherent cultural element of sacredness. By way of contrast, there are European countries where the closing of churches is hardly ever contemplated. In Norway, for instance, a negligible number of churches have been closed during the past six decades; on the basis of the Norwegian Church Act of 1996, the national government finances the dioceses and the Church's other central organizational structures, while the municipalities are responsible for the maintenance of the ecclesiastical buildings (Ingar Mørk 2006, pp. 449 f.).[7] Besides, the notion of 'religious heritage' is not limited to the Christian tradition only. In the aforementioned case of Britain, for example, "the biggest challenge remains tackling attitudes towards heritage buildings within the Jewish community itself. Nowhere is this more obvious than in the case of early 20th century synagogues, the best of which are coming within the purview of 'heritage', thanks to the passage of time" (Kadish 2009, p. 13).

Furthermore, apart from individual cases of religious edifices, the range of possible elements—both tangible and intangible—that the notion of religious cultural heritage in Europe might encompass, is rather extensive. It might include complexes of buildings, sites of archaeological or historic significance, ancient works of art, ethnographic items, landscapes and topographical features, natural features endowed with special cultural significance, ritual items and ceremonial traditions. The identification of this heritage is based on an active choice as to which elements of this broader 'religious culture' are deemed worthy of preservation as an 'inheritance' for future generations. Thus, the significance of religious cultural heritage as symbolic of the culture—and those aspects of it, which a society

---

[7] Nevertheless, according to Sørmoen O. (2009) *Maintenance of churches in Norway*, Conservation Bulletin, Vol. 61, pp. 26–7: "According to the Church Act (1996), the maintenance of the church should be funded by local government, a tradition going back over a century. The financial responsibility is therefore clear, although there are often insufficient funds to pay what is needed after the political priorities have been addressed. In practice the churches are underresourced. In fact there is, in many places, a considerable maintenance lag and an accelerating need for repairs".

(or religious group) views as valuable—is obvious. In fact, it is this role of religious cultural heritage which lends it its powerful political dimension, since the decision as to what is deemed worthy of protection and preservation is generally made by State authorities at national level and by intergovernmental organizations at a broader international level (Blake 2000, p. 68).

In the light of the above, and in view of understanding and defining crucial terms in the field of religious culture, such as the complex notion of '*sacredness*', the aim of this study is to augment and delve into the legal concept of religious cultural heritage within the European continent, on the basis of pertinent historical facts, philosophical and political questions, as well as relevant jurisprudence at the national and international levels. For this purpose, each chapter is supported by primary references (included briefly in the text, and presented, as full bibliographical references, at the end), as well as evidence and secondary sources (provided in footnotes).

References

Blake, J. (2000). On defining the cultural heritage. *International and Comparative Law Quarterly, 49*, 61–85.

English Heritage. (2010). *Options for the disposal of redundant churches and other places of worship*. London: Department for Media, Culture and Sport.

Feigenbaum, G., & Ebert Schifferer, S. (Eds.). (2011). *Sacred possessions: Collecting Italian religious art, 1500–1900*. Los Angeles: Getty Research Institute.

Heckel, M. (1968). *Staat, Kirche, Kunst: Rechtsfragen kirchlicher Kulturdenkmäler*. Tübingen: Mohr.

Ingar Mørk, M. (2006). Perspectives on the management of Church buildings in Norway today and in the future. In L. K. Morisset, L. Noppen, & T. Coomans (Eds.), *Quel Avenir Pour Quelles Églises? What future for which churches?* (pp. 441–451). Montreal: Presses de Université du Québec à Montréal.

Kadish, S. (2009). Historic synagogues: Appreciation and challenges. *Conservation Bulletin, 61*, 13–16.

Powell, K., & De La Hey, C. (1987). *Churches. A question of conversion*. London: Save Britain's Heritage.

Truman, C. (2006). New uses and new ownership in English historic churches. In L. K. Morisset, L. Noppen, & T. Coomans (Eds.), *Quel Avenir Pour Quelles Églises? What future for which churches?* (pp. 209–222). Montreal: Presses de Université du Québec à Montréal.

Law and Religious Cultural Heritage in Europe
Tsivolas, T.
2014, XII, 183 p. 3 illus., 1 illus. in color., Hardcover
ISBN: 978-3-319-07931-8