

Canopy Forum

On the Interactions of Law & Religion

Follow Us



Home

Read ▾

Watch

Listen

Engage ▾

Subscribe

Submit ▾



Donate

About

MAY 5, 2023 / SERIES / DIMODUGNO, DAVIDE, MAY 2023



Religion, Property Law, and the Crisis of Houses of Worship

A virtual conference sponsored by Canopy Forum and the Center for the Study of Law and Religion at Emory (CSLR) featuring scholars, experts and practitioners who will examine issues facing religious congregations, neighborhoods, towns, and cities where houses of worship are falling into disrepair or vacancy. View selected videos and browse all essays [here](#).

“New Perspectives For The Reuse Of Catholic Churches In Europe: From A Common Problem To A Common Good”



Davide Dimodugno

The redundancy of places of worship is emerging in Western Europe as a crucial challenge for the field of Law and Religion in the coming decades. With [600,000 places of worship](#) scattered throughout Europe, it is easy to understand the impact on different religious and civil communities.

In fact, due to growing secularization, the reduction in the number of priests, and the demographic crisis, buildings intended for worship are less and less used.

My doctoral research examined three traditionally Catholic countries, namely Belgium, France and Italy. For this reason, it focused only on the management and reuse of Catholic places of worship (churches, chapels and oratories) in the context of the universal framework provided by the [code of canon law](#).

In particular, Can. 1222 §2 grants the diocesan bishops the possibility of reducing a church to profane uses that are not indecorous so long as they have serious reasons for doing so, consult the presbyteral council, obtain the consent of the rightful owners, and determine that the good of souls is not at stake. Can. 1224 §2 establishes a similar procedure for oratories.

The results of the research showed that this issue constitutes a common problem, albeit in various stages of seriousness and addressed in different ways, based on three elements: (1) the system of relations between state and religious denominations, (2) the regime of ownership, public or private, of places of worship, and (3) the legislation on cultural heritage.

Belgium

In Belgium, as well as the other First French Republic and French Empire territories, the houses of worship confiscated during the French Revolution were transferred to public

ownership. With the signing of the [1801 Concordat](#) between Napoleon and Pope Pius VII, and the subsequent unilateral adoption of the [Law of 18 Germinal Year X](#) (*Articles Organiques*), the officiating curates were given back the use, but not the ownership, of churches built before 1802. These properties were transferred to the municipalities, while their management was devolved to the vestry boards (*fabriques d'église*) – public bodies composed of lay representatives elected by the parish community, the parish priest, and the mayor or a representative of the municipality. This system continues to exist to this day, although it has had to adapt to constitutional developments over time. In fact, the constitution of 1831 has been amended several times in order to transform the Kingdom of Belgium into a federal state. The 1990s reforms divided Belgium into three regions (Flanders, Wallonia, and Brussels-Capital) and three linguistic communities (Flemish, French, and German), each with different competencies.

According to the [Belgian Constitution](#), the salaries and pensions of ministers of the six recognised religions (Catholic, Protestant, Anglican, Hebraism, Orthodox, and Islam), as well as of representatives of philosophical non-denominational organizations, are paid by the Federal State. On the other hand, the control over material aspects of worship and over the *fabriques d'église* was devolved to the regions, which could approve their own regulations or maintain the original Napoleonic legislation. They are also responsible for the protection of immovable cultural heritage. The system of relations between state and religions thus outlined can be called neither separatist nor concordatist, but a hybrid, based on a principle of mutual independence, tempered by public funding for the six recognized religions.

As for the Flanders, a new [discipline on fabrique d'église](#) was approved in 2004 and a [discipline on immovable cultural heritage](#) entered into force in 2013. The combination of these regulations obligates the *fabriques d'église* to elaborate a “strategic plan,” in order to receive funds for restoration works. This is a written document approved first by the bishop and then by the municipal or provincial council, providing a long-term vision for all buildings for worship at a local level, including (a) a description of the buildings for worship, including their historical and cultural value, their architectural possibilities and their physical conditions; (b) the location of each place for worship in its spatial environment; (c) a description of the current use and function for worship; and (d) a substantiated vision of the future use and function of the buildings, including an approach plan describing how future development with related functions or their reuse will be considered.



This solution may appear to be inspired by some form of neo-jurisdictionalism and interference in the internal organization of the religious confession. In reality, it can be understood in light of the large sums of money that municipalities are obliged to invest to cover the deficits of the *fabriques* and the refurbishment works, even though people attending Sunday mass only made up about [5% of the population](#) in 2009. Indeed, it is important to remember that only 38% of Flemish parish churches are fully protected as monuments, 15% have partial protection, and 47% have no protection at all, so that even [“strange” forms of reuse](#) may be considered admissible.

A positive consequence of this approach is that parish communities have been induced to reflect on their own future and enter into dialogue with the municipal authorities, which own the church buildings. In writing the plan, they can count on the support of [PARCUM](#), a center of expertise on religious heritage, based at Park Abbey in Heverlee, a suburb of Leuven, which can be called upon to review or to support the drafting of these plans, as a result of participatory processes activated with the population. These processes involve administering questionnaires and organizing meetings with all stakeholders, not only members of the religious community but anyone who cares about the future of the building, so as to provide useful elements for reflection and discussion to representatives of the *fabrique* and the municipality.

In addition, the Flemish bishops themselves have been prompted to reflect and develop [different possible strategies](#) for how to enhance their churches, distinguishing between cultural valorization, mixed-use for worship and secular activities at different times or in separated spaces, and adaptive reuse. In this way, [according to the Flemish regional government](#), 181 Catholic churches were converted to secular use between 2011 and 2021.

France

In France, the legal regime of churches was exactly the same as in Belgium until the [Law of 9 December 1905 Concerning the Separation of Church and State](#), approved with the aim to create a clean break between the state and religious denominations. As worship was no longer conceived of as a public service, this law intended to abolish the *fabriques d'église* and transfer the ownership of the goods to new private associations for the exercise of religion (*associations cultuelles*). Since Pope Pius X forbade the French Church from establishing these associations, which did not respect the hierarchical structure of the Catholic Church, the ownership of all churches built up to 1905 was transferred to the municipalities. Paradoxically, the Catholic Church's failure to implement the law of

separation has resulted in a closer link between the state, which owns the buildings through municipalities — with all the economic consequences in terms of maintenance and restoration costs — and the use for worship, which is protected by a public law constraint (*affectation culturelle*). This bond, rendered in favor of the parish priest as representative of the community, is understood to be free of charge, exclusive, and tendentially perpetual, and concerns only churches built before 1905 and owned by public entities (state and municipalities).

In this framework, the possibility of terminating the constraint (*désaffectation*) is outlined in [Article 13 of the Law of Separation](#), which provides for a complex procedure, involving the prefect in the presence of an agreement with the ecclesiastical authority or even the Council of State in case of litigation and the Parliament in cases other than those provided for by the law.

According to the French Bishops' Conference, [only 255 buildings](#) out of a total of 40,307 communally owned churches and chapels were dismissed between 1905 and 2016. Nevertheless, according to [other references](#), updated to 2019, there are dozens of former churches placed on the market, ready to be transformed and reused.

In this context, [state legislation on cultural heritage](#) can guarantee a certain protection of the property, especially that it cannot be destroyed, but it does not affect its new use, which can be established independently by the public body that owns it once its use for worship ceases. Moreover, only 154 cathedrals, 673 abbeys, 15,621 parish churches and chapels, 105 Protestant temples, 61 synagogues, and four mosques were protected as *monuments historiques* in 2009, representing only about 20% of the existing places of worship in France. Overall, out of a total protected heritage of nearly [45,000 architectural](#) properties, [religious buildings account for about 34%](#).

Nevertheless, it is precisely in the cultural valorization of these goods that an unexpected way of overcoming the hard French secularism, solemnly declared by Article 1 of the [Constitution](#), can be found. In fact, [Article L2124-31 of the General Code of Public Property](#) makes the performance of non-religious activities inside churches subject to a prior agreement between the public owner and the officiating priest. In this way, the public and ecclesiastical sides are forced to confront each other in order to enhance these buildings, which can also generate economic value, as in the case of classical music concerts or tourist tours.



Italy

In Italy, a specific regime concerning only Catholic places of worship is still contained in the civil code, issued in 1942, during the Fascist period, when the Catholic Church was the established religion. [Art. 831\(2\)](#) states that: “Buildings intended for the public exercise of Catholic worship, even if they belong to private individuals, cannot be removed from their use, not even by alienation, until the destination itself has ceased in accordance with the laws concerning them.”

This private law constraint represents a strong protection of the use for worship, especially if the good is not owned by an ecclesiastical entity. Moreover, the disposition contains an implicit reference to the Code of Canon Law, which establishes conditions and procedures for the cessation of the use for worship. This rule must be read in light of the subsequent republican constitution of 1948, which opted for a system of relations between the state and religions, based on soft secularism and factual collaboration.

At the moment, in Italy there is not a precise estimation of the extent of the cases of decommissioning and reuse in each of its 226 dioceses. In the last decades, the Italian Bishops' Conference has launched a major census of Catholic places of worship belonging to the so-called hierarchical Church (parishes, confraternities, and dioceses), thus excluding the property of religious communities. The results are publicly available and searchable on the [BeWeb platform](#), on the basis of the architectural and canonical type of goods (churches, oratories, or chapels) or geographically (municipality, diocese, ecclesiastical, or civil region). This initiative represents a first cognitive step, necessary to making more conscious decisions about the future of these assets. More than 66,000 ecclesiastical-owned buildings are currently listed, but the estimates suggest a total of about 100,000 Catholic places of worship in Italy, considering those owned by public and private entities that were excluded by this census. Most of these assets are protected as cultural heritage, which includes all assets of historical and artistic interest, if they are owned by the public or by ecclesiastical bodies. Protection provides for an assessment by the Superintendency in the case of a change of use.

My research took the diocese of Turin, in Northwest Italy, as a case study. An examination of the decrees, issued under Canons 1222 and 1224 between 1978 and 2019, shows the wide extent of the phenomenon, with [98 cases of relegation to profane uses](#) across 47 churches, 38 oratories, and 13 chapels. Concerning the ownership after the issue of the canonical decree, most of these assets were donated to municipalities in order to transform them into

multipurpose venues. Other kinds of uses concern social and cultural activities and religious use by other Christian communities, without excluding, in some cases, the alienation as private dwelling, or even the demolition.

Another particularly interesting aspect concerns the type of municipalities in which the decommissioning occurred: out of 50 municipalities affected, as many as 36 are small municipalities with less than 15,000 inhabitants. This means that in rural and peripheral areas the problem emerges with greater intensity, coupled with the more difficult identification of sustainable and practical uses for the population. What seems to be missing is a strategic vision: action is taken when the situation has become an emergency and there is no other solution but to transfer ownership to whomever, between the public and private sectors, is disposed to invest for restoration and re-functionalization.

Future Perspective and Conclusions

In light of this comparative analysis, two trends can be distinguished in the three countries under investigation, one towards the privatization of ownership, the other towards its valorization as a common good.

In Belgium and France, public ownership intrinsically entails and demonstrates the “common” character of these goods, while in Italy the prevalence of ecclesiastical ownership requires further argumentative effort. In 2007 in Italy, a Commission was appointed by the Parliament to present a draft law on the legal definition of commons. According to this proposal, “commons” are “goods that express functional benefits for the exercise of fundamental rights and the free development of the individual,” including “cultural goods.” This text has never entered into force. Nevertheless, it has prompted municipalities to adopt regulations for the [participatory management of urban commons](#), which can be either publicly or privately owned, thus including ecclesiastical ones.

Furthermore, if the use of a church for worship represents a shining example of the social function of property, proclaimed by Article 42 of the [Italian Constitution](#), then the secular use of this property should also maintain a public purpose. The question of community participation, both religious and civil, takes center stage when deciding the fate of a good perceived as common.

The perspective of [ecclesiastical and ecclesial properties as common goods](#) seems to be in line with both the Catholic magisterium on subsidiarity and the Council of Europe’s Faro Convention.

In terms of the Church's social doctrine, starting with Pope Leo XIII, subsidiarity has been recognized as a principle to be applied both within the ecclesial structure and within states. This principle entails, with reference to ecclesiastical temporal goods, the valorization of the laity and of all those who wish to commit themselves to using these assets for social and cultural activities. The [Apostolic Exhortation *Evangelii Gaudium*](#) of Pope Francis, according to which the Church ought to “initiate processes rather than possess spaces,” should be understood in this sense.

Elaborating more on this perspective, the Catholic Church itself seems to have realized the extent and seriousness of the phenomenon of the redundancy of places of worship. For this reason, the Pontifical Council for Culture approved a document in 2018, entitled [Decommissioning and Ecclesial Reuse of Churches Guidelines](#). In this text, a distinction is made, in order of preference, between intra-ecclesial use, use for worship by non-Catholic Christian denominations, reuse for social or cultural activities, and, lastly, alienation and transformation of less valuable assets into civil housing. In any case, it affirms the necessity to involve local communities, both religious and civil, in the processes of consciousness-raising, decision-making, and planning of reuse interventions, which must be sustainable from a technical, economic, social, and cultural point of view.

On the side of international law, the [Faro Convention](#), ratified by 23 states, including Belgium and Italy, emphasizes the role of communities in preserving cultural heritage. The definition of “heritage community” as “people who value specific aspects of cultural heritage which they wish, within the framework of public action, to sustain and transmit to future generations” suits religious communities very well. But it is also necessary to balance the cultural interests of a broader community, i.e. the entire civil society. For this reason, the provision of Art. 7(b) appears far-sighted, requiring states to “establish processes for conciliation to deal equitably with situations where contradictory values are placed on the same cultural heritage by different communities.”

In conclusion, the issue of the reuse of Catholic places of worship is widespread in all the European states examined. The phenomenon can be set within the framework of public or private law, depending on the different systems of relations between the state and religious denominations. What seems essential to ensure that the future of these religious buildings is in line with their glorious past is the involvement of communities. ♦

Daide Dimodugno, PhD in “Law and Institutions” at the Law Department of the University of Turin (Italy), has carried out his research on cultural heritage of religious interest and reuse of catholic places of worship, in a comparative perspective between Italy, Belgium and France. His contributions on these topics have been published in several law and architecture scientific journals and books. He has presented the results of his research at international conferences and events in Italy, Switzerland, Croatia, and South Africa.

Browse other essays in this series

Recommended Citation

Dimodugno, Davide. “New Perspectives For The Reuse Of Catholic Churches In Europe: From A Common Problem To A Common Good.” *Canopy Forum*, May 5, 2023. <https://canopyforum.org/2023/05/05/new-perspectives-for-the-reuse-of-catholic-churches-in-europe-from-a-common-problem-to-a-common-good/>

Share on Facebook

Tweet

Prev

Center for the Study of Law and Religion

Gambrell Hall, Suite 310, 1301 Clifton Rd.

Emory University, Atlanta, GA, 30322

canopyforum@emory.edu

Copyright © 2022 Canopy Forum

